ABOLITION OF INSIDER TRADING ON THE TANZANIA'S SECURITIES MARKET: A COMPARATIVE LEGAL APPROACH FROM SOUTH AFRICA AND UK

Written by ***Dr. Telesphory D.B. Magogo* & Ghati William Mathayo***

** Dean, School of Law, St. Augustine University of Tanzania*

*** State Attorney, NPS, Government of Tanzania*

ABSTRACT

Practicing insider trading on any securities market is an unprofessional conduct. It is against this panorama that authors get courage to carry out the study which examines the Tanzania's insider trading legal regime's adequacy to eliminate insider trading actions on the securities market. This paper discovers that Tanzania's insider trading legal regime is characterised with flaws, duplications and ambiguities. Authors have employed a comparative legal approach which substantiates the best practices in controlling or eliminating insider trading dealings on the securities market. Compared jurisdictions of South Africa and UK have proven the best standards in controlling insider trading. Compared statutes include the Financial Markets Act[i] of South Africa and the Financial Services and Markets Act[ii] together with the Criminal Justice Act[iii] of UK. These statutes are compared in their respective provisions of prohibition, enforcement and defences including remedial measures. Ideas in this paper advance from the LL.M Mini-Thesis of the Co-author at the University of the Western Cape.

Keywords**:** Insider Trading, Securities Market, Capital Market and Securities Act, Inside Information

GENERAL OVERVIEW ON INSIDER TRADING LEGAL FRAMEWORK IN TANZANIA

The legal tradition had considered directors and officers of companies' only persons in possession of price-sensitive information (insider trade). In Tanzania as the case may be studied in other jurisdictions, today not only directors and officers of companies who possess company's price-sensitive information. Other persons possess insider information as well. These include tippees or secondary insiders and persons wrongly gained possession of insider information. Insider trading is a practice by which one person armed with price or value sensitive non-public (confidential) information, concludes a transaction in securities to which that information relates without sharing that piece of information with others.[iv]
Insider trading includes tipping off others when you have any sort of non-public information.[v]
It is composed of elements, such as:

1. there is an informationally advantaged party possessing information that the trading partner could not possibly have accessed through the exercise of diligence or the expenditure of financial resources;
2. the informationally advantaged party is able to achieve abnormal profits or avoid losses in an extraordinary fashion; and
3. the perpetrators of insider trading are usually persons whose use of the securities related information they possess in securities trading violates some legal (contractual/ fiduciary) or moral duty.[vi]

Insider trading is an unprofessional conduct. Trade in a company's securities is carried out by people who by virtue of their work possess the otherwise non-public information, the information that can be crucial for making investment decisions, while the other stock holders are at a great disadvantage for lack of the same.[vii]

Practice shows that it is not only directors and officers of companies who can be convicted of insider trading as traditionally ought to be. Other persons can do as well. These could include brokers, and family members, and any other persons who can wrongly have gained possession of insider information.[viii]

The prerequisite for regulating insider trading is envisioned in the very potential contribution that securities markets can offer to the economy's growth if insider trading practices are controlled by law, if not eradicated. Insider trading practices undermine the integrity of the investing system, and discourage non-insiders from investing unless they believe that they are operating in the same footing as insiders who are investing. Allowing insider trading to go unchecked would reduce a number of investors willing to invest their capital. It could potentially harm the economy of the country.

The legal framework of Tanzania on trading in securities generally dates from 1994. The existing Capital Market and Securities Act,[ix] is the first legislation on trading in securities in Tanzania. This legislation is a result of the efforts of the government of Tanzania in its investment sector, of raising its economy and making it internationally competitive. Since 1980s the government of Tanzania has with some rapidity been adopting changes in its economy. The government has adopted reforms with the view to transforming the economy from the constraints of centrally planned to more open market based regime.

Dynamic economic policies, legal and institutional frameworks have been adopted for the purpose of coping with the ongoing changes in the world economic system; the free market economy. The shift from a state controlled economy to a market oriented economy also referred to as liberalised economy has had significant impacts, in particular the need to control insider trading practices on the securities markets.

From 1994 several measures to effect changes in the economy have been adopted. These include legal reform measures in the investment sector where company's securities fit in. In the securities industry attempts have led into establishment of only one stock exchange, the Dar es Salaam Stock Exchange (DSE), which was created in 1996. DSE became operational in 1998. But since its establishment only a few companies are listed on the DSE despite the many companies operating in Tanzania.

The Capital Market and Securities Act of Tanzania establishes the Capital Market and Securities Authority (CMSA), as the body corporate for promoting and facilitating the development of orderly, fair and efficient capital stock exchanges, stockbrokers, and other persons dealing in securities.[x] CMSA discharges the following responsibilities:

1. protecting the integrity of the securities market against any abuses arising from the practice of insider trading; and
2. maintaining surveillance over securities to ensure orderly, fair and equitable dealings in securities and creating the necessary environment for the orderly growth and development of capital market.[xi]

The Capital Market and Securities Act of 1994, has been twice amended with an intention to incorporate the demands of the securities market in the country. The first amendment was in the year 1997 which incorporated changes related to market players and operators to giving more protection and security to securities investors. The second amendment was in the year 2002. This amendment was done in view of coordinating with the changes in other laws related or connected to the securities industry in the country, which have a direct impact on the operation of securities market, the Companies Act[xii] and the Fair Competition Act.[xiii]

Despite the amendments mentioned in the above immediate paragraph the legal framework of Tanzania on securities is still observed being characterised with flaws, duplications and ambiguities especially in combating insider trading practices. This is more evident in provisions related with prohibition, enforcement and defences including remedies. It is against this fact that the authors get the vigour to analyse the law on the basis of comparing it with legal frameworks of other jurisdiction which have achieved the best standards.

PROHIBITION, ENFORCEMENT AND DEFENCES INCLUDING REMEDIES ON INSIDER TRADING

The analysis of the law governing the aspects of prohibition, enforcement and defences including remedies in insider dealing aims to discover whether the Capital Market and Securities Act of Tanzania successfully fulfils its objectives; to protecting the integrity of the securities market against any abuses arising from the practice of insider trading.

Insider trading falls under part ix of the Capital Market and Securities Act. The Act prohibits dealings in securities by insiders. In Tanzania insider dealing is treated as both a civil wrong and a criminal offence.[xiv] The offence of insider trading is established under Section112 of the Capital Market and Securities Act. It is worth to underscore the fact that the offence of insider trading is established mainly with the view to protect the integrity of the securities market from abuses by insider trading practices, to attract both domestic and foreign investors to trade on the Tanzanian securities market.

Acts that amount to insider trading are provided for under subsection (1) and (2) of Section112 of the Capital Market and Securities Act. The Act provides inter alia that,

(1) a person who is, or has at any time in the preceding six months prior to a specific deal been connected with a body corporate shall not deal in any securities of that body corporate if by reason of his association, he is in possession of information that is not generally available but, if it were, might materially affect the price of those securities.

(2) a person who is, or has at any time in the preceding six months prior to a specified deal been connected with a body corporate shall not deal in any securities of another body corporate if by reason of his being; or having been connected with the first-mentioned body corporate he is in possession of information that; (a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and the securities of the other.

From the above provisions, an insider can be defined as a person who is connected to a body corporate, being so connected he has obtained inside information not available to the public that if it were, might materially affect the price of the securities. Subsection (8) of Section 112 provides for persons connected with a body corporate, who can acquire inside information. These include: a natural person such as an officer of that body corporate or of a related body corporate; a substantial shareholder in that body corporate or in a related body corporate; or any occupier of a position that may reasonably be expected to give him access to inside information about a body corporate. It also includes any professional or business relationship existing between himself or his employer or body corporate of which he is an officer, and that body corporate or a related body corporate; or an officer or a substantial shareholder in that body corporate or in related body corporate or a dealer's licence.

An "officer", in relation to a body corporate is defined in the Capital Market and Securities Act of 1994 to embrace:

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or receiver and manager, of property of the body corporate;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator of the body corporate;

and (e) a trustee or other person administering a compromise body corporate and another person.[xv]

The scope of the definition of insider is wide. It covers various categories of insiders like primary insiders such as directors, employees or share holders of an issuer of securities to which the inside information relates that include fortuitous insiders or individuals who obtained access to the inside information by virtue of their employment, office or profession. Secondary insiders such as tippees are also covered. Scholars argue that a company which repurchases its own shares is an insider to itself.[xvi]

The Capital Market and Securities Act of Tanzania does not provide a description as to what amounts to inside information of a body corporate. It is only from the provision of Section 112 subsections (1) and (2) that a person can extend the interpretation of inside information to encompass any information that is not generally available to the public but, if it were, might materially affect the price of the securities at the market. This would mean that not all information is treated as inside information for the purposes of regulating insider trading. Cassim (et al.) delineate inside information as specific or precise information which has not been made public and which;

(a) is obtained or learned as an insider, and
(b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market.[xvii]

In order for the information to qualify as inside information in the view of Cassim (et al.), the information must be specific or precise, not have been made public, must be obtained or learned as an insider and if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market. The Capital Market and Securities Act of Tanzania defines the term securities as to include:

(a) debentures, stock, shares, bonds, or notes issued or proposed to be issued by a body corporate and any right, warrant or option in respect thereof;

(b) bonds or other loan instruments of the Government of Tanzania or of any other country;

(c) rights or interests, whether described as units or otherwise under any collective investment scheme; and

(d) such other rights, interests or instruments as the Minister may prescribe by notice in the *Gazette*.[xviii]

This definition is very widely. It may be criticized of having excluded other interests such as instruments based on an index, derivative instruments, depository receipts in public companies and other equivalent equities other than shares from the meaning of securities.

The Capital Market and Securities Act of 1994 defines a stock market to mean a market, exchange or other place, at which, or a facility by means of which, securities are regularly offered for sale, purchased or exchanged.

Dealing in securities in terms of the Capital Market and Securities Act means whether as principal or agent making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into;

(a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement the purpose or the intended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the price of securities.

Dealing in securities by an insider is prohibited, especially on information that is not published but, if it were, might materially affect the price of those securities.[xix] The Capital Market and Securities Act does not provide the meaning of the term publication. However, inside information ceases to be inside information for purposes of the Act upon its publication. Already published information does not attract any liability unless such publication was not made in terms of the Act. The failure of the Act to provide the meaning of the term publication is a weakness in law because publication of inside information carries a heavy weight to the establishment of the offence of insider trading. As it is discussed by Cassim (et al.),[xx] the legislation should clearly state circumstances in which information is to be regarded as having been made public so that the moment it is published, dealing is permissible.

Again, it is submitted that even the method through which inside information is purported to have been possessed does not preclude other methods of receiving inside information so as to cause the commission of the offence of insider trading. Inside information can still be acquired through other methods such as espionage, theft, bribery, fraud, misrepresentation or any other wrongful method to affect materially the price of securities on the market. The Act does not provide for information obtained by theft as an offence. This is a loophole in the Act. The Capital Market and Securities Act has established other offenses related with dealing in securities such as false trading and market rigging transactions, stock market manipulation, false or misleading statements, fraudulently inducing persons to deal in securities, dissemination of information about illegal transactions, employment of manipulative and deceptive devices.[xxi]

Subsections (4) and (6) of s. 106 of the Capital Market and Securities Act provide defences regarding false trading and market rigging transactions as follows; that it is a defence if the defendant establishes that the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the stock exchange. Subsection 6 of s. 106 provides the defence if the defendant establishes that the purpose for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

Subsection (2) of s. 109 provides the defence on the offence of fraudulently inducing persons to deal in securities. Subsection 10 of s. 112 provides the defence on insider trading 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. Section 113 (1) provides generally that any person who contravenes any of the provisions of this Part is liable on conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both such fine and imprisonment.[xxii] Subsection (2) of s. 113 imposes civil liability on an insider who, in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time when the transaction took place if the contravention had not occurred.[xxiii]

The authors consider that the 5 million Tanzanian shillings fine and a 5 years imprisonment term or both cannot be an effective deterrent. It is still possible that prospects of enormous profits may outweigh the deterring effect of the fine or prison sentence. The fact that the actual perpetrators may plead guilty and be convicted of lesser offences also has a negative effect on any impact a criminal sanction might have. In Tanzania insider trading practices at the securities market is rampant and nothing like prosecution has been put into criminal records. It is important to note that despite the fact that the practice of insider trading is rampant on the securities market nobody has been prosecuted, successfully or unsuccessfully for insider trading in Tanzania.

Subsection (3) of s. 113 requires the amount of compensation for which a person is liable under subsection (2) of s. 113 to be the amount of the loss sustained by the person claiming the compensation.[xxiv] The Capital Market and Securities Act, under subsection (5) of Section 113 allow the operation of any other laws to enforce any liability that a person may incur due to the practice of insider trading. This is the identified flaw in the Capital Market and Securities Act of Tanzania. The Capital Market and Securities Act, instead of regulating the securities market, it invites other laws to supplement it. This implies that for any investor to be able to invest in the Tanzania securities industry must acquire knowledge from other Tanzanian laws besides the Capital Market and Securities Act. Such a practice discourages investors.

Furthermore, criminal sanctions as discussed in this paper can never be an effective deterrent; consideration should be given, perhaps to other appropriate sanctions such as forfeiture or cancellation of business licences, professional accreditation or registration of financial advisors and disqualification for life of directors. This may deter many more persons from practising insider trading. In addition to the inadequacies relating to enforcement, the Capital Market and Securities Act contains a number of inconsistencies and ambiguities as the paper reveals and that lead to uncertainties. It is revealed that the current enforcement mechanisms are inadequate and ineffective. The Capital Market and Securities Act neither define nor provide the interpretation of the term insider. Insider is only referred to under Section 112 of the Act as a prohibition of dealings in securities. However there has never been prosecution in terms of insider trading legislation successfully in spite the existence of illicit practices conducted by insiders on the securities market. Civil remedies and criminal penalties provided in the Tanzanian Capital Market and Securities Act are inadequate for deterrent purposes. The application of the Act is limited to insider trading activity in respect of securities listen on the DSE, which is the only regulated market in the country. It is strongly submitted that the Capital Market and Securities Act which is the Act established to regulate insider trading is still inadequate and ineffective for purposes of combating insider trading in Tanzania. There is an urgent need to introduce more effective and practical measures to ensure speedy enforcement of insider trading legislation and to eliminate insider trading practices on the securities market of Tanzania. Other jurisdictions considered to have similar features with that of Tanzania in the regulation of their securities can also adopt the same recommendations to improve their securities industry.

INSIDER TRADING REGULATION: THE UK PERSPECTIVE

The UK's market abuse has a separate and specific statute that deals with insider trading and another statute which broadly deals with market manipulation and other related market abuse activities.[xxv] The UK's insider trading regime is formed by multiple pieces of legislation, overlapping and in many cases containing similar but not identical provisions and definitions. Market abuse legislation in the UK has been carefully formulated to incorporate some of the provisions of the EU Directive on Market Abuse.[xxvi] Since June 1980 when the UK Companies

Act[xxvii] came into force, the UK's regime on insider trading has been attracting both criminal and civil liabilities. Some other pieces of legislation that regulate insider trading include the Criminal Justice Act, of 1993, The Financial Services and Markets Act, of 2000 which was enacted to improve and align the UK's market abuse legislation with the international best standards, and the Financial Services Act, of 2013.

Section 118C (2) of Financial Services and Markets Act, of 2000 provides for the meaning of inside information as:

> information; of a precise nature; which is not generally available; which relates, directly or indirectly to one or more issuers of the qualifying investments or to one or more of the qualifying related investments; and which would if generally available, be likely to have a significant effect on the price of qualifying investments or the price of related investments.

Inside information for criminal purposes, is defined under Section 56(1) of the Criminal Justice Act, of 1993 as:

> information which relates to particular securities or to a particular issuer of securities and not to securities generally or to issuers of securities generally; is specific or precise, has not been made public, and if it were made public would be likely to have a significant effect on the price of any securities.

Section 56(2) of the Criminal Justice Act provides clearly that securities are price-affected securities in relation to inside information. And inside information is price-sensitive information in relation to securities if and only if, the information would, if made public, be likely to have significant effect on the price of the securities. Section 118C(6) of the Financial Services and Markets Act, of 2000 provides further that information would likely to have significant effect on the price of the securities if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decision.[xxviii] Regarding precise information, the Financial Services and Markets Act, of 2000 provides that information is precise if it; indicates circumstances that exist or may reasonably expected to come into existence, or an event that has occurred or may reasonably expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the qualifying investments or related investments.[xxix] Information is considered as made public in terms of s. 58 of the Criminal Justice Act, 1993 if it is published in accordance with the rules of a regulated market for the purpose of informing investors and their professional advisers. Information can also be contained in records which by virtue of any enactment are open to inspection by the public, information can be readily to be acquired by those likely to deal in securities, or derived from information that has been made public. Under subsection 3 of s. 58 of the Criminal Justice Act, 1993 information may be treated as made public even though it can be acquired only by persons exercising diligence or expertise, or it is communicated to a section of the public and not to the public at large, or it is acquired only by observation, or it is communicated by payment of a fee, or it is published only outside England.

Section 57 of the Criminal Justice Act, 1993 provides for an insider as an individual who has inside information. An individual is considered of having an insider information if and only if it is, and he knows that it is inside information, and he has it, and he knows that he has it from an inside source.[xxx] S.57 (1) and (2) of the Criminal Justice Act, 1993 provides that an individual acquires information from an inside source if, and only if he has it through being director, employee or shareholder of an issuer of securities, or having access to the information by virtue of his employment, office or profession; or the direct or indirect source of his information is a director, employee or shareholder of an issuer of securities.[xxxi]

An insider is also defined under section 118 B of the Financial Services and Markets Act, of 2000 as any person who possess inside information as a result of his membership of administrative, management or supervisory bodies of an issuer of a qualifying investment. Generally, there are three groups of individuals (insiders) that are statutorily prohibited from committing insider trading as identified in the Criminal Justice Act, 1993. These groups are; individuals who have direct knowledge of non-public inside information, also referred to as primary insiders, by virtues of their being directors, employees or shareholders of an issuer of securities or by virtue of their employment or office;[xxxii] individuals who obtain information directly or indirectly from primary insiders, also referred to as secondary insiders;[xxxiii] and tippees.[xxxiv]

Insider trading usually involves the sale or purchase of company shares or securities by persons connected with a company, who have price-sensitive information not generally known by the public or by the persons with whom the insiders deal.[xxxv] Herne delineates insider trading as an activity that many jurisdictions have sought to proscribe.[xxxvi] S.52 of the Criminal Justice Act, of 1993, provides that an individual who has information as an insider is guilty of insider dealing if he deals in securities that are price-affected securities in relation to the information.

The Criminal Justice Act, 1993, provides circumstances that should be considered to convicting a person with the offence of insider dealing. The Act provides that an individual shall be guilty of insider dealing if the acquisition or disposal of information occurs on a regulated market or that the person relies on a professional intermediary or is himself acting as professional intermediary.[xxxvii] The law also convicts an individual, who has information as an insider when it is found that such an individual has encouraged another person to deal in securities that are price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances that attract the offence of insider dealing.[xxxviii] The law also provides for conviction of an individual, who discloses to another person the information otherwise than in the proper performance of the functions of his employment, office or profession.[xxxix]

Section 53 of the Criminal Justice Act, 1993 provides defences for the offense of insider dealing. An individual may be acquitted of the offense of insider dealing if he is able to prove beyond reasonable doubt that; he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was a price-sensitive information in relation to the securities; that at the time he believed on a reasonable ground that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information; and that he would have done what he did even if he had not had the information. These defences apply even to an individual accused of encouraging another person to deal in securities. Apart from defences that are expressly provided in the Criminal Justice Act, s.53(4) of the same Act makes further reference to special defences provided in schedule I which demonstrate the high level of knowledge or intention required for a successful prosecution.

There are criminal and civil penalties which can be employed in the UK to combat and discourage insider trading practices.[xl] Criminal penalties may be imposed on all individuals convicted of insider dealings in the UK.[xli] The contravention of the insider trading provisions contained in the Criminal Justice Act, criminal penalties for insider trading under the Criminal Justice Act may only be imposed on individuals.[xlii] Criminal penalties that may be imposed on individuals for insider trading or market manipulation include a fine or imprisonment for a term not exceeding six months, or both on summary conviction; or upon conviction on indictment, a fine or imprisonment for a term not exceeding seven years, or both.[xliii]

Apart from criminal penalties provided in the Criminal Justice Act, 1993, there are civil penalties provided under the Financial Services and Markets Act, 2000 for insider dealings.[xliv] Civil penalties that the offender of market abuse, including insider trading may suffer under the Financial Services and Markets Act are such as unlimited monetary fines, disgorgement of profits and, or the payment of compensation, injunctions (including cease or desist orders) to take remedial steps, secure or freeze assets and to discourage a certain conduct.[xlv] It is submitted that court injunctions can also be imposed on any person who commits market abuse practices than insider trading, regardless of whether such person is regulated by the Financial Services Authority.[xlvi] Chitimira[xlvii] presents a number of factors that need to be considered in the determination of the amount of the fine to be imposed on the offenders including;

(a) the adverse effect of the behaviour on the market in question,

(b) whether the person on whom the penalty is to be imposed is an individual or a juristic person,

(c) the amount of profits accrued or loss avoided,

(d) the degree to which the conduct in question was deliberate or reckless and

(e) the conduct following the behaviour of the alleged offender in question.

Under section 129 of the Financial Services and Markets Act, of 2000 courts may at the request of the Financial Services Authority further impose monetary fines on a person who violates any market abuse provisions.[xlviii]

There is established a single administrative regulator, the Financial Services Authority in the UK. The Financial Services Authority is vested with powers to ensure that the prohibition on market manipulation and related practices is consistently complied with.[xlix] The Financial Services Authority Code of Market Conduct has, for instance, stipulated some factors to be considered when determining whether a person dealing in any qualifying investment has created a false or deceptive appearance of a trading activity in relation to a certain security or an artificial price or value of the qualifying investment and the extent to which the price, rate or option volatility movements for the affected investment are outside their normal daily, weekly or monthly range.[l]

INSIDER TRADING REGULATION: THE SOUTH AFRICAN PERSPECTIVE

The Financial Markets Act, 19 of 2012 which came into force on 30th January 2013 is a piece of legislation that regulate among others, the prohibition of insider trading and other market abuses in South Africa. This Act was enacted to replace the Securities Service Act, 36 of 2004 as amended by the Financial Service Laws General Amendment Act, 2008. Among the objects of the Financial Markets Act, 19 of 2012 is to ensure that the South African financial markets are fair, efficient and transparent and to promote the international and domestic competitiveness of the South African financial markets and of securities services.[li] Insider trading is specifically found under part X of the Financial Markets Act, 19 of 2012, the part which regulates market abuse in South Africa. Essentially both the South African and the English insider trading regulatory frameworks prohibit individuals from committing insider trading offences, especially in relation to securities listed on regulated financial markets.[lii] Both, the South African and English insider trading regulatory frameworks prohibit the three groups of insiders; namely, primary insiders, secondary insiders and their tippees, from knowingly dealing directly or indirectly in securities of the basis of non-public price-sensitive inside information for their own benefit or the benefit of others.[liii]

The concept of inside information is provided under section 77 of the Financial Markets Act, 19 of 2012. Under this section inside information means specific or precise information which has not been made public, and which is obtained or learned as an insider; and if it were made public, would be likely to have a material effect on the price or value of any security listed on a regulated market.[liv] As it is also discussed by Cassim,[lv] the provision of section 77 requires that to qualify as inside information, the information in question must be specific or precise, it must not have been made public, it must be obtained or learned as an insider, and if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market.

Like the English legislators in the Criminal Justice Act, of 1993 where an attempt to introduce a measure of certainty to information to be regarded as having been made public was taken,[lvi] the South African legislators have taken the same approach in the Financial Markets Act,19 of 2012.[lvii] Section 79 of the Financial Markets Act, 19 of 2012 provides four alternative circumstances, but which are not limited, through which information may be regarded as having been made public as follows;

(a) When the information is published in accordance with the rules of the relevant regulated market, or
(b) when the information is contained in records which by virtue of any enactment are open to inspections by the public, or
(c) when the information can be readily acquired by those likely to deal in any listed securities to which the information relates or of an issuer to which the information relates, or
(d) when the information is derived from information which has been made public.

Therefore, the provision of section 79 of the Financial Markets Act, 19 of 2012, permit dealing in securities after the information is being published as to the prescribed four circumstances, but which are not limited. The law on insider trading provides securities which qualify for protection against insider trading practices as those securities listed on a regulated market.[lviii] And a regulated market is defined under section 77 of the Financial Markets Act, 19 of 2012 as any market, domestic or foreign, which is regulated in terms of the laws of the country in which the market conducts the business as a market for dealing in securities listed on that market.

Unlike the English insider trading legal framework,[lix] the South African insider trading legal framework extends the regulation of insider trading beyond its territorial jurisdiction.[lx] The prohibitions of insider dealing extend to securities listed on a regulated foreign market.[lxi] The English insider trading regulation framework which expressly discourages dealing in securities on unregulated market,[lxii] but the South African insider trading regulatory framework does not expressly discourage dealing in securities on unregulated market. This is what Chitimira[lxiii] has discussed as could be due to the fact that insider trading activities in the over the counter markets are probably very restricted since such transactions are mostly done on a face-to-face basis between persons who know each other quite well. The Financial Markets Act, 19 of 2012 does not provide the definition as to who is an agent? But for the purpose of improving the implementation of insider trading prohibition in South African, the Financial Markets Act, should have provided an adequate and clear definition of an agent as it is also discussed by Chitimira.[lxiv]

An insider is defined to mean a person who has inside information through either of the following ways;

(a) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or
(b) having access to such information by virtue of employment, office or profession; or
(c) being of knowledge that a direct or indirect source of information is a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates.[lxv]

As it is discussed above the South African insider trading regulatory framework prohibit primary insiders, secondary insiders and their tippees from knowingly dealing directly or indirectly in securities of the basis of non-public price-sensitive inside information for their own benefit or the benefit of others.[lxvi]

Inside dealing is prohibited and it attracts both criminal offense and civil liability in South Africa.[lxvii] Section 78(1) of the Financial Markets Act, 19 of 2012 prohibits insider trading practices on a regulated market. It is an offense for an insider who is of knowledge on inside information but still deals directly or indirectly or through the agent in the securities listed on the regulated market to which the inside information relates or are likely to be affected by it. The law specifies four kinds of conducts that an insider who has inside information is prohibited, and which if committed, creates an offense. These conducts are; dealing in one's own account,[lxviii] dealing on behalf of someone else,[lxix] improper disclosure or tipping[lxx] and encouraging dealing or, causing dealing, or discouraging dealing.[lxxi]

An insider who deals on one's own account is not guilty if such an insider proves on the balance of probabilities that;

(a) one became an insider after had given the instruction to deal to an authorised user and the instruction was not changed in any manner after one became an insider.
(b) one was acting in pursuit of a transaction in respect of which all the parties to the transaction had possession of the same inside information, and that trading was limited to the said parties, the transaction was not aimed at securing a benefit from exposure to movement in the price of the security or a related security resulting from the inside information.

An insider who deals on behalf of someone else is not guilty if such an insider proves on the balance of probabilities that;

(a) is an authorised user and was acting on specific instructions from a client and did not know that the client was an insider at the time?
(b) only became an insider after had given instruction to deal to an authorised user and the instruction was not changed in any manner after one became an insider, or
(c) was acting in pursuit of a transaction in respect of which all the parties to the transaction had possession of the same inside information, and that trading was limited to the said parties, the transaction was not aimed at securing a benefit from exposure to movement in the price of the security or a related security resulting from the inside information.

An insider who knows of having inside information and discloses such inside information to another person (tipping) is not guilty if such an insider proves on the balance of probabilities that the disclosure of inside information was necessary for the proper performance of the functions one's employment or office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that one disclosed at the same time that the information was inside information.

The law does not provide any circumstances which may exempt an insider who encouraging dealing or, causing dealing, or discouraging dealing or stopping from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it from liability. The maximum penalty for committing any offense of insider dealing is a fine of R50 million or imprisonment of ten years or both such fine and imprisonment.[lxxii]

A person having committed an offense is also liable to pay administrative sanctions, which include; the payment of the amount not exceeding R1 million, the equivalent profit or loss that would have made to the securities through insider dealing, interest and cost of suit, including investigation costs.[lxxiii] The law recognises common law rights of any person aggrieved by any dealing or offense contemplated in the law to claim any amount unrecovered amount.[lxxiv]
There is established the Financial Services Board[lxxv] responsible for the supervision of compliance to the Financial Markets Act, 19 of 2012. Like the Financial Services Authority in the UK, the Financial Services Board in South Africa is allowed to publish by notice on its official website or by means of other appropriate public media, any outcome, status or details of market abuse investigations (public censure) if such publication is in the public interest.

CONCLUSION

Both, the UK's and South African laws have presented strong, efficient, effective and clear pieces of legislation, reliable to investors as compared to Tanzanian insider trading law. The wisdom drawn from compared pieces of legislation as described in this article could serve as one of the means which facilitate Tanzania and the like countries to strengthen their frameworks and make them align with the international best standards. We suggest for amendments in provisions of law which have shown flaws, namely; prohibition, enforcement and defences, including remedies. We have found that both, the UK and South Africa insider trading legal frameworks establish strong criminal and civil liabilities, and administrative sanctions to be employed to a person found guilty of the offence of insider dealing. We have also found the same lacking in the Tanzania insider trading legislation. With regard to criminal penalties for example, the South African legislation has provided for a fine of R50 million or imprisonment of ten years or both such fine and imprisonment.[lxxvi] This and other number of penalties that are available, in their respective pieces of legislation in UK and South Africa, have been useful to discourage and curb insider trading practices.

It should be noted that strong penalties and sanctions help to combat insider trading practices. Like the South African Financial Markets Act, 19 of 2012, we recommend that the law on insider trading in Tanzania should provide no defences as to escape from liabilities to individuals who encourage dealing or, cause dealing, or discourage dealing or even stop from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it. Both, the UK and South Africa insider trading legislation have established similar factors to be considered to determine appropriate civil compensatory fines and administrative sanctions. Tanzania and the like jurisdictions can also learn and adopt the same in protection of securities market. Tanzania and other jurisdictions with similar features on insider trading legal regime can also learn from the compared jurisdictions on the establishment and functioning of authorities, the Financial Serves Authority of the UK and the Financial Services Board of South Africa; how these authorities play their roles to facilitate for compliance in dealing with insider trading practices in their respective jurisdictions. Generally compared laws of UK and South Africa present features required for fair, adequate, effective and competitive investment in the securities industry.

REFERENCES

[i] Act 19 of 2012. This Act came into force on 30th January 2013.
[ii] Financial Services and Markets Act 2000.
[iii] Criminal Justice Act 1993.
[iv]Arshadi N &Eyssell T H *The Law and Finance of Corporate Insider Trading: Theory and Evidence* Kluwer Academic Publishers Massachussetts (1993) 240.
[v] Available at*http://www.businessdictionary.com*

[vi]Farouk H.I Cassim (et al.) *Contemporary Company Law* (Juta & Co. 2011) 944-946.
[vii]Farouk H.I Cassim (et al.) *Contemporary Company Law* (Juta & Co. 2011) 833.
[viii]Available at *http://www.businessdictionary.com*

[ix]Cap 79 [R.E 2002].
[x] Section 6 of the Capital Market and Securities Act, Chapter 79 [RE 2002].
[xi] Section 10 of the Capital Market and Securities Act, Chapter 79 [RE 2002].
[xii] The Companies Act, Chapter 212 [R.E 2002].
[xiii] The Fair Competition Act, Chapter 8 of 2002.

[xiv]The Capital Market and Securities Act, Chapter 79 [RE 2002].
[xv] Section 2 of the Capital Market and Securities Act, Chapter 79 [RE 2002].
[xvi] Farouk H.I Cassim (et al) *Contemporary Company Law* (Juta & Co. .2011) 944.
[xvii] Farouk H.I Cassim (et al.) *Contemporary Company Law* (.Juta & Co. 2011) 940.
[xviii] Section 2 of the Capital Market and Securities Act, Chap 79 [RE 2002].
[xix] Section112 subsections (1) and (2) of the Capital Market and Securities Act, Chap79 [RE 2002].
[xx] Farouk H.I Cassim (et al) *Contemporary Company Law* (Juta & Co. 2011) 941.
[xxi] Sections 106, 107, 108, 109, 110 and 111 of the Capital Market and Securities Act, Chapter 79 of 1994 (RE 2002).
[xxii] The Capital Market and Securities Act, Chapter 79 [RE 2002].
[xxiii] The Capital Market and Securities Act Chapter 79 [RE 2002].
[xxiv] The Capital Market and Securities Act Chapter 79 [RE 2002].
[xxv] Chitimira H.A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014) 20 *Mediterranean Journal of Social Science* 5.
[xxvi] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014) 20 *Mediterranean Journal of Social Science* 5.
[xxvii] Peter T.L Law and Practice with Respect to Insider Trading and Trading on Market Information in the United Kingdom (2014), 4 J. Int'l L. 389 available at: http://scholarship.law.upenn.edu/jil/vol4/iss4/6
[xxviii] Slaughter & May The EU/UK Market Abuse Regime- Overview available at https://www.slaughterandmay.com/media/39260/the-eu-uk-market-abuse-regime-overview.pdf
[xxix] Section 118C(5) of the Financial Services and Markets Act , of 2000.
[xxx] Section 57 of the Criminal Justice Act, of 1993.
[xxxi] Section 57 (1) and (2) of the Criminal Justice Act, of 1993.
[xxxii] Section 57(1)(a) & (2)(a) of the Criminal Justice Act, of 1993.
[xxxiii] Section 57(1)(b) & (2)(b) of the Criminal Justice Act, 1993.
[xxxiv] Section 57 of the Criminal Justice Act,1993 also Chitimira H ‘A Historical Overview of Market Abuse Prohibition in the United Kingdom’ (2014) 20 *Mediterranean Journal of Social Science* 5.
[xxxv] Stephen Herne ‘Insider Information: Definitions in Australia, Canada, the U.K and the U.S’ available at http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1665&context=jil
[xxxvi] Stephen Herne ‘Insider Information: Definitions in Australia, Canada, the U.K and the U.S’ available at http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1665&context=jil

[xxxvii] Section 52 of the Criminal Justice Act, of 1993.
[xxxviii] Section 52(2)(a) of the Criminal Justice Act, of 1993.
[xxxix] Section 52(2)(b) of the Criminal Justice Act, of 1993.
[xl] Directors’ Dealings, Market Efficiency and strategic Insider Trading in German Stock Market’available at http://www.d-nb.info/1006415319/34
[xli] S. 61 of the Criminal JusticeAct, of 1993. See also Directors’ Dealings, Market Efficiency and strategic Insider Trading in German Stock Market’available at http://www. http://www.d-nb.info/1006415319/34
[xlii] Directors’ Dealings, Market Efficiency and strategic Insider Trading in German Stock Market’available at http://www. http://www.d-nb.info/1006415319/34
[xliii] Section 61(1)(a &b)of the Criminal Justice Act, 1993.
[xliv] Section 402 Financial Services and Markets Act, 2000.
[xlv] Sections 380&381of the Financial Services and Markets Act, of 2000.
[xlvi] ‘Directors’ Dealings, Market Efficiency and Strategic Insider Trading in German Stock Market’available at http://www.d-nb.info/1006415319/34
[xlvii] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014)20 *Mediterranean Journal of Social Science* 5.
[xlviii] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014)20 *Mediterranean Journal of Social Science* 5.

[xlix] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014) 20 *Mediterranean Journal of Social Science* 5.
[l] Peter T.L Law and Practice with Respect to Insider Trading and Trading on Market Information in the United Kingdom (2014), 4 J. Int'l L. 389 available at: http://scholarship.law.upenn.edu/jil/vol4/iss4/6
[li] Section 2 of the Financial Markets Act, 19 of 2012.
[lii] Section 61 of the Criminal Justice Act, of 1993 and section 78 of the Financial Markets Act, 19 of 2012.
[liii] Section 77 of the Financial Markets Act, 19 of 2012 & Section 57 of the Criminal Justice Act, of 1993.
[liv] Section 77 of the Financial Markets Act. 19 of 2012.
[lv] Farouk HI Cassim (et al.) *Contemporary Company Law* (2011) 940.
[lvi] Section 58 of the Criminal Justice Act, 1993.
[lvii] Section 78 of the Financial Markets Act. 19 of 2012.
[lviii] Section 77 of the Financial Markets Act. 19 of 2012.
[lix] Sections 60(1) & 62 of the Criminal Justice Act, 1993.
[lx] Section 77 of the Financial Markets Act. 19 of 2012.
[lxi] Farouk HI Cassim (*et al,*) *Contemporary Company Law* (2011) 951.
[lxii] Section 57 and 52(3) of the Criminal Justice Act, of1993.
[lxiii] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014) 20 *Mediterranean Journal of Social Science* 5.
[lxiv] Chitimira H A Historical Overview of Market Abuse Prohibition in the United Kingdom (2014) 20 *Mediterranean Journal of Social Science* 5.
[lxv] Section 77 of the Financial Markets Act, 19 of 2012.
[lxvi] Section 2 of the Financial Markets Act, 19 of 212.
[lxvii] Section 77, 78 and 82 of the Financial Markets Act, 19 of 2012.

[lxviii] Section 78(1)(a) of the Financial Markets Act, 19 of 2012.
[lxix] Section 78(2)(a) of the Financial Markets Act, 19 of 2012.
[lxx] Section 78(4)(a) of the Financial Markets Act, 19 of 2012.
[lxxi] Section 78(5)(a) of the Financial Markets Act, 19 of 2012.
[lxxii] Section 109 of the Financial Markets Act, 19 of 2012.
[lxxiii] Section 82 of the Financial Markets Act, 19 of 2012.
[lxxiv] Section 87 of the Financial Markets Act, 19 of 2012.
[lxxv] Section 84(2) of the Financial Markets Act, 19 of 2012.
[lxxvi] Section 109 of the Financial Markets Act, 19 of 2012.