



**LACS**

**Performance Risk Management Report**

**Quarter ended July - September (Quarter 1), 2019-2020**

# Background

The main objective of the established Enterprise Risk Management (ERM) framework is to ensure alignment of strategy, processes, people, technology and funds in order to identify, evaluate and manage opportunities, uncertainties and threats in a structured and disciplined manner and geared towards achieving strategic objectives.

As part of the reporting requirements contained in the Risk Management Policy and Procedures, Management is mandated to report on a periodic basis to the Board on the extent of implementation of risk management strategies. This report presents progress made in the implementation of risk mitigation strategies established under the Enterprise Risk Management Framework that was adopted by the Board in August 2017. Presented below is the risk assessment and ranking methodology adopted;

## Risk Impact Rating And Score

Insignificant 1	Minor 2	Moderate 3	Major 4	Catastrophic 5
An event that, if it occurs would have no effect on the achievement of the targets set	An event that, if it occurs, will cause small cost (and/or schedule) increases that, in most cases, can be absorbed by the activity, project or department	An event that, if it occurred, would cause moderate cost and schedule increases, but important requirements would still be met	An event that, if it occurred, would cause major cost and schedule increases. Secondary requirements may not be achieved	The regulatory or statutory standing of the Authority is brought into serious question or the project is terminated

## Opportunity Impact Rating And Score

Insignificant 1	Minor 2	Moderate 3	Major 4	Transformational 5
An opportunity that if it materializes would have no noticeable effect on the achievement of the targets set.	An opportunity that if it materializes would yield a small cost and/or schedule saving to an activity, project or department	An opportunity that if it materializes would yield a moderate cost and/or schedule savings and would enhance the achievement of important requirements	An opportunity that if it materializes would yield a major cost and/or schedule savings and would greatly enhance the achievement of important and secondary requirements	An opportunity that if it materializes would greatly transform the strategic impact of the Authority and the continued realization of its strategic mandate.

## Risk/ Opportunity Likelihood Rating and Score

Probability	Description	Risk Score	Opportunity Score	Consideration
Almost Certain	90% or greater chance of the event occurring during the life of the objective	5	5	The risk/ opportunity event has occurred during the last 3-6 months or is certain to occur in the next 3-6 months
Highly Likely	65% to 90% chance of the event occurring during the life of the objective	4	4	There is a history of frequent occurrence. The risk/ opportunity event has occurred during the last 6-12 months or may occur in the next 6-12 months
Likely	35% to 65% chance of the event occurring during the life of the objective	3	3	There is a history of casual occurrence. The risk/ opportunity event has occurred during the last 12-36 months or may occur in the next 12-36 months
Unlikely	10% to 35% chance of the event occurring during the life of the objective	2	2	The risk/ opportunity event occurs from time to time. The event has occurred during the last 36-60 months or may occur in the next 36-60 months
Rare	Less than 10% chance of the event occurring during the life of the objective	1	1	The risk/ opportunity event has not occurred in CMA but has occurred in other similar organizations. The risk event may occur beyond the next 60 months

## Overall Risk Rating

Impact	Catastrophic 5	5	10	15	20	25
	Major 4	4	8	12	16	20
	Moderate 3	3	6	9	12	15
	Minor 2	2	4	6	8	10
	Insignificant 1	1	2	3	4	5
		Rare 1	Unlikely 2	Likely 3	Highly Likely 4	Almost Certain 5
		Likelihood				

## Risk Treatment Decision

Overall Score	Overall Rating	Risk Treatment Decision
20-25	Very High	Extensive management essential
10-16	High	Management effort required
5-9	Medium	Management effort worthwhile
3-4	Low	Risk may be worth accepting while monitoring
1-2	Very Low	Accept

## Overall Opportunity Rating

Impact	Transformational 5	5	10	15	20	25
	Major 4	4	8	12	16	20
	Moderate 3	3	6	9	12	15
	Minor 2	2	4	6	8	10
	Insignificant 1	1	2	3	4	5
		Rare 1	Unlikely 2	Likely 3	Highly Likely 4	Almost Certain 5
		Likelihood				

## Opportunity Treatment Decision

Overall Score	Overall Rating	Opportunity Treatment Decision
20-25	Very High	Extensive management effort essential to harness opportunity
10-16	High	Management effort required to actualize opportunity
5-9	Medium	Management effort worthwhile to pursue opportunity
3-4	Low	Opportunity worth monitoring
1-2	Very Low	Opportunity worth noting

## Detailed Activities With Risks:

NO	Strategic Objective	Strategic Outcome	Strategic KPI	Departmental Objective	Related Risk/s	Activity Description	Departmental Activity KPI	Activity Performance Update
1	Enhancing strategic influence	-> Institutional Service Delivery, Operational Efficiency and Sustainability	->Enhanced business intelligence, analytics, policy formulation and decision making process across the Authority.	To facilitate productive relationships between CMA and stakeholders through sound Agreements that secure CMA's interests	Delay in finalisation of Agreements between CMA and Interested parties and/or contracting parties 16	Conducting proper due diligence and drafting sound contracts/agreements  98 %	Number of Sound Contracts/MoUs documents or other instruments that appear to protect CMA from adverse claims and enhance partnerships	We received approximately 10 instructions for preparation of contracts and MoUs in relevant quarter. Due diligence has been conducted in all instructions. Normally it has been taking between 2-3- weeks to finalise contracts because we must get review feedback from internal stakeholders and 3rd parties we are contracting.

2	To Ensure sound market infrastructure, institutions and operations	-> Supervision, Stability and Governance	->100% implementation of supervision program on compliance status of issuers and market intermediaries.	To ensure that CMA is competently represented in litigious matters	Unfavourable judgements or decisions or orders that may threaten to impede CMA from realising its mandate 12	Securing the best legal representation (internal/external or blend of both) for CMA at reasonable costs proper briefing of advocate representing CMA in court and sharing of information adhering to interim directions of court on proceedings in court  99 %	compliance with court directions on fillings/how matters are conducted court documents that clearly articulate CMA's case	We did not have new cases in this quarter but we had a favourable judgement in the IBL case that we shared with external advocates for use in ongoing and future litigations. In all matters that came up in court, we were able to adhere to court directions.
3	To ensure a robust, facilitative and responsive policy and regulatory framework for capital market development and efficiency	-> Supervision, Stability and Governance	->Enhanced accountability and sanction tools by June 30, 2020.	To enhance the capacity of the Board to enable it effectively and efficiently deliver on its mandate	Non availability of funds to facilitate training of Board Members 4	Organising for Board Members to attend relevant trainings/courses to build their capacity  99 %	Number of relevant trainings attended by Board Members One Board member attended a mandatory Training on Corporate Governance and Mwongozo spearheaded by SCAC	we did not have any Board Member attend any training in this quarter. This is chiefly because of financial constraints.

4	To ensure a robust, facilitative and responsive policy and regulatory framework for capital market development and efficiency	-> Supervision, Stability and Governance	->Enhanced accountability and sanction tools by June 30, 2020.	To Provide timely and competent legal advice to the Authority in order to enable it effectively deliver on its mandate	Delay in giving legal advice 6	To Provide timely and competent legal advice to the Authority in order to enable it effectively deliver on its mandate 100 %	Providing timeous and sound legal advisory and opinions to CMA	We received 3 requests for legal advice within the relevant quarter. We gave the legal opinion within reasonable turnaround times.
5	To ensure a robust, facilitative and responsive policy and regulatory framework for capital market development and efficiency	-> Supervision, Stability and Governance	->Enhanced accountability and sanction tools by June 30, 2020.	To coordinate (a)efficient conduct of Board & Board Committee meetings and (b) prompt communication of the resolutions of the Board to Management for action	Failure to carry on Board business by the rescheduling/cancellation of meetings leading to interruption of Board work plan. 12	Organise for meetings of the Board and disseminate decisions of the Board for implementation 99 %	99% of Board meetings to be held.	We had all scheduled Board meetings take place. None was postponed or cancelled.
6	To ensure a robust, facilitative and responsive policy and regulatory framework for capital market development and efficiency	-> Supervision, Stability and Governance	->Enhanced accountability and sanction tools by June 30, 2020.	To coordinate (a)efficient conduct of Board & Board Committee meetings and (b) prompt communication of the resolutions of the Board to Management for action	Failure to carry on Board business by the rescheduling/cancellation of meetings leading to interruption of Board work plan. 12	Organise for meetings of the Board and disseminate decisions of the Board for implementation 98 %	Number of Board meetings held in the relevant quarter and speed wt which decisions are shared for implementation	All Board meetings that were scheduled for the relevant quarter took place. The Matters arising for action were also circulated within 48 Hours after the Board Meeting





# RISK ANALYSIS



## Overview

Impact	Catastrophic 5					
	Major 4		LACS/R/1	LACS/R/6 LACS/R/7 LACS/R/2	LACS/R/5	
	Moderate 3		LACS/R/8	LACS/R/10		
	Minor 2		LACS/R/3 LACS/R/4			
	Insignificant 1					
		Rare 1	Unlikely 2	Likely 3	Highly Likely 4	Almost Certain 5
		Likelihood				

No	Risk	Score	Ref No
1	Delay in finalisation of Agreements between CMA and Interested parties and/or contracting parties	16	LACS/R/5
2	Unfavourable judgements or decisions or orders that may threaten to impede CMA from realising its mandate	12	LACS/R/6
3	Delay in expeditious determination or resolution of the cases	12	LACS/R/7
4	Failure to carry on Board business by the rescheduling/cancellation of meetings leading to interruption of Board work plan.	12	LACS/R/2
5	failure/prolonged delay in payment of the external advocates	9	LACS/R/10
6	Faulty legal Agreements or instruments that expose CMA to adverse claims	8	LACS/R/1
7	Delay in giving legal advice	6	LACS/R/8
8	Weak governance Practices in executing Board business	4	LACS/R/3
9	Non availability of funds to facilitate training of Board Members	4	LACS/R/4

## Detailed Status of Departmental Risks

#	Description	Current Rating	Prior Rating	Risk Drivers	Risk Management Strategy Undertaken	Effect of Risk to Authority	Action to be Undertaken	Person Responsible
1	Delay in giving legal advice	6 (3*2) 	9 (3*3)	- Inadequate access to research resources/limited access Ambiguous instructions on nature of advice required	- sought clarifications early enough in order to be able to be able execute instructions timely	- Delayed decision making	- recommend for access to more research resources and continue promptly seeking instructions	Manager Legal Affairs and Corporation Secretary
2	Delay in finalisation of Agreements between CMA and Interested parties and/or contracting parties	16 (4*4) 	12 (4*3)	- Insufficient instructions e.g. documents Protracted negotiations with the other party	- Ensuring that we get all documents together with instructions to prepare the contract. Also, we were more aggressive in getting feedback from service providers and user departments.	- delayed formalization of relationships/partnerships between CMA and 3rd parties Delay in delivery of goods and services as well as payments to service providers	- Ensure always that we get all the documents required in order to reduce the delays	Manager Legal Affairs and Corporation Secretary

3	Failure to carry on Board business by the rescheduling/cancellation of meetings leading to interruption of Board work plan.	12 (4*3) 	12 (4*3)	- Late submission or clearance or upload of Board papers on the e-board	- we have been aggressively following up with HODs on Board papers including walking to work stations to request for Board Papers. We have also been issuing timeous notices to members.	- Lack of resolutions leading to adverse results like Lack of approvals e.g. budget approvals for onward transmission to the National Treasury; Delay in implementation of the Corporate Plan & deliverables/targets in the performance contract of the Authority and Lack of strategic & policy decision/guidance to facilitate management implement mandate of the Authority Delay in decision making leading to the impacts noted herein above	- retain aggressive follow up of Board Papers and issuance of timeous notices.	Manager Legal Affairs and Corporation Secretary
4	Non availability of funds to facilitate training of Board Members	4 (2*2) 	15 (3*5)	- Unexpected shortfalls in revenue collections by CMA	- There was an allocation of resource to train the Board Members	- Lack of full participation by board members in deliberations Effective decision making will be hampered	- In the event there are budgetary constraints, engaging with 3rd parties we have strategic alliances with to provide subsidized training for Board Members e.g. Strathmore with whom we have a MoU.	Manager Legal Affairs and Corporation Secretary

5	Weak governance Practices in executing Board business	4 (2*2) ← ● →	4 (2*2)	<ul style="list-style-type: none"> <li>- Failure to observe tenets of good corporate governance such as: Accountability, Responsibility, fairness, confidentiality, transparency, ethics and vision to create long term value.</li> </ul>	<ul style="list-style-type: none"> <li>- we have continuously availed the tools to facilitate good corporate governance . practices like relevant registers including in this quarter. They also attended trainings that covered good governance practices in Boards during the relevant quarter.</li> </ul>	<ul style="list-style-type: none"> <li>- Delayed and faulty decision making which may embarrass the Authority Decision making without adequate consideration due to lack of participation of members during meetings</li> </ul>	<ul style="list-style-type: none"> <li>- notwithstanding limitation of resources to facilitate training, we can work with training institutions we have partnered with to facilitate subsidized training on good corporate governance-this will come in handy especially for the new Board member who was appointed in May 2019.</li> </ul>	Manager Legal Affairs and Corporation Secretary
6	Faulty legal Agreements or instruments that expose CMA to adverse claims	8 (4*2) ← ● →	8 (4*2)	<ul style="list-style-type: none"> <li>- Insufficient due diligence before preparing contracts e.g establishing ownership of property subject of lease and also whether if signatories of contracts are authorised to sign on behalf of relevant contracting entities</li> </ul>	<ul style="list-style-type: none"> <li>- thorough due diligence in preparation at the departmental level (LACS), user department and CE</li> </ul>	<ul style="list-style-type: none"> <li>- CMA may suffer pecuniary loss, loss of image and possible litigation.</li> </ul>	<ul style="list-style-type: none"> <li>- To continue undertaking due diligence whenever we are preparing contracts. Including thorough reviews.</li> </ul>	Manager Legal Affairs and Corporation Secretary
7	Delay in expeditious determination or resolution of the cases	12 (4*3) ← ● →	12 (4*3)	<ul style="list-style-type: none"> <li>- Failure by parties to file court documents as directed by court Constrained court schedule/diary Delayed payments of legal fees to external counsel</li> </ul>	<ul style="list-style-type: none"> <li>- We have been filing documents in accordance with court directions</li> </ul>	<ul style="list-style-type: none"> <li>- challenge to CMA exercising its mandate over the securities market because of lack of judicial affirmation of its jurisdiction</li> </ul>	<ul style="list-style-type: none"> <li>- To ensure that CMA complies with court directions so that matters do not delay because of something that we are in control of</li> </ul>	Manager Legal Affairs and Corporation Secretary

8	Unfavourable judgements or orders that may threaten to impede CMA from realising its mandate	12 (4*3) ← ● →	12 (4*3)	- Lack of appreciation of the mandate of the Authority by judges partly due to lack of rich jurisprudence on capital markets issues e.g. like capacity of CMA to carry out multiple functions under the Capital Markets Act	- We retained Senior Counsels in crucial matters closely linked to the CMA's mandate e.g. the Aly Khan Satchu matter Continuous thorough reviews of Court documents filed to ensure that they properly articulate CMA's case	- CMA is impeded from realising its mandate	- We continued drawing lessons from previous unfavorable judgements and ensured that future enforcement processes comply with judicial thresholds so that we increase chances of favourable decisions where enforcement decisions of CMA challenged in Court e.g. on formation of ad hoc committees We have a judicial training on financial services and there is a section on capital markets in November 2019	Manager Legal Affairs and Corporation Secretary
9	failure/prolonged delay in payment of the external advocates	9 (3*3) ← ● →	9 (3*3)	- extended periods of negotiations as a result of disagreements on the legal fees to be paid.	- Promptly forwarding invoices for settlement to Finance	- compromises competent representation Negative public image/reputation in legal fraternity	- reducing the length of negotiations by promptly scheduling negotiation meetings and making them well structured	Manager Legal Affairs and Corporation Secretary

