



IMPOTANT PROPOSED CHANGES BY ACT No. 2 OF 2021 OF TANZANIA

The parliament of Tanzania, on 17th day of January 2021 through the Special Gazette of the United Republic of Tanzania No4. Vol.102 dated 17th January, 2021 Printed by the Government Printer, Dodoma by Order of Government, issued a supplement bill to amend various written laws including the Companies Act Cap 212; the Magistrates' Courts Act, (Cap. 11) and the Interpretation of Laws Act, Cap 1 of the laws of Tanzania. One of the major changes that is proposed is the use of *Kiswahili* as the language of the law and court.

Below we have listed the proposed changes to the Companies Act Cap 212; the Magistrates' Courts Act, Cap. 11 and the Interpretation of Laws Act, Cap 1.

a. Amendment of the Companies Act, (CAP. 212)

The new propos bill aims to make some crucial aspects in the companies act in order to improve efficiency in making. Among other things the new proposed law aims to incorporate the following into the Act.

1. Essential particulars during registration of a new company.

The new amendment has stipulated some necessary particulars to be used during incorporation of a new company. These new particulars were not among of the essential required particulars in the current law. Hence, the new proposed law has amended section

3 of the Current law in force by adding subsection (4), the new proposed bill requires the following particulars to be included in the new incorporation of a company.

- (a) date of birth or date of incorporation or registration;
- (b) nationality or nationalities;
- (c) country of residence or country of incorporation or registration;
- (d) residential address or an address of registered office;
- (e) national identity number, registration or incorporation number;
- (f) Tax Payer Identification Number, where applicable; and
- (g) any other information as may be prescribed in the regulations.

The differences with the current law in force is to the effect that, the current law had only wanted the following particulars, personal particulars of the shareholders and their origin in order to ascertain whether it is a foreign company or a local company. It is indeed that the new proposed law has widen the scope of particulars required in order to incorporate some changes and development from other laws of the land.

NB: The new proposed amendment highlights for the persons who are not eligible to incorporate a company, these persons includes; if such person is reported by competent authorities to have been convicted or associated with instances of or related to money laundering, terrorism financing, human trafficking, drug trafficking or any other related offences as may be prescribed by the Minister.

2. Notification to the Registrar during transfer and transmission

The new proposed bill proposes that, a company which undergoes transmission or transfer shall cause to notify the Registrar about the matter within twenty eight days from the date of transfer or transmission has been effected. The notification of transfer or transmission must be supported by tax clearance. The current law does have this requirements of notifying the Registrar within 28 days however, in practice it is must to notify the registrar in order to enable him to make changes in the register. Therefore, the amendment of section 83A has gone beyond to impose a mandatory requirement to the company to

notify the registrar within 28 days from the date when the transfer or omission was effected.

3. Duty of Directors to choose a company secretary in a public company or A Private Company.

The new proposed bill confers power to Directors of a public company to secure a Company secretary or each joint secretary of the company who is a person qualified as an advocate, certified public accountant, auditor or such other qualifications as the Minister may prescribe in the regulations. HOWEVER, in Private Company, the proposed bill imposes the same obligation to Directors of a Private company to take all reasonable steps to secure a secretary, or each joint secretary of the company who appears to them to have the requisite knowledge and experience of discharging the functions of the secretary of a private company.

4. Minimum age for appointment of a Director of a company.

The new proposed bill, under section 36 proposes for a person to hold a position of a director must be a person of eighteen years. This is quite different from the current law that provides for the minimum age to be twenty one years so to hold a position of a Director. This amendment aims to go in line with the law of contract act which provides for the age of 18 years and above has capacity to enter into contract, as indeed serving the position of a Director to a company is purely a contractual in nature hence, falls within the laws of contract.

5. Waive of late filing fees

The new proposed law confers power to the minister in consultation with the Minister responsible for finance may, for the purpose of enabling effective and smooth operation of online registration system, by Notice published in the Gazette, waive fees associated with late filing of documents payable under the Act.

Under the current law the minister has no power to waive late filing fee as the system was manually done, but currently we have adopted the new online system whereas, filling will be done electronically, therefore in case of any justification of late filling the system cannot be interrupted hence, in order to rectify the same, minister has been conferred power by the new proposed law under section 452A to waive late filing fee under a reasonable and justified reasons.

6. Keeping of documents

The new proposed intends to confer an obligations to the company to maintain and keep originals of the company's filed documents for a period of not less than thirty years. Under the current law the duty of keeping the original documents was conferred to the Registrar only for keeping original documents of a company for a period of not less than ten years. However, in some another laws the company or an entity supposed to keep its records for a period of not less than five years. The new proposed amendment expects to confer a direct obligation to the company to keep their original records for a period of not less than 30 years this will increase efficiency in dealing.

b. Amendment of the Magistrates' Courts Act, (Cap. 11)

The new proposed Bill has also proposed the amendment and repealing of some provision as follows:-

1. Advocates and public prosecutor appearance in Primary courts

The crucial aspects which has brought an attention to the public is an amendment of Section 33 of the Act which does not allow an advocate to enter appearance in Primary Courts. However, the new proposed law intends to amend the provision of Section 33 of the Act in order to allow appearance of Advocates and public prosecutors before Primary courts.

2. De-establishment of Assessors in primary courts

The new proposed law intends to repealed section 7, 8 and 9 of the Act which provides for the establishment of assessors and its role in primary courts. The law intends to maintain

judicial impartiality where the magistrate will be independent in reaching their decision rather than depending opinion from the assessors.

Note: The proposed Bill repeals section 13 which provides for the language of the court.

c. Amendment of the Interpretation of Laws Act, Cap. 1.

The new proposed law intends to amend and propose to use Kiswahili as the language of the law. Currently in the Act the language of the law is either English or Kiswahili, the proposed law tries to limit the use of English in courts of laws and emphasize to the use of Kiswahili. The new proposed law goes further to invoke another new provision of which it provides as for the matter of justice in case where justice demands the law shall be interpreted into English as a case may be.

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