

UPDATE TO CLIENTS

NEW PENALTIES FOR NON-COMPLIANCE WITH THE REQUIREMENT TO FILE ANNUAL RETURNS



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KEY HIGHLIGHTS:

- ❖ *The Finance Bill, 2022 has proposed changes to the Companies Act, by amending section 128 which deals with the companies' requirement to submit their annual returns.*
- ❖ *Companies must now deliver their annual returns within 28 days of the return date.*
- ❖ *Failure to do so will attract a penalty of Tshs. 100,000 and an addition of Tshs. 10,000 for every day during which the default continues.*
- ❖ *This penalty is imposed on the company and every officer of the company.*
- ❖ *The word "officer" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act.*
- ❖ *BRELA notice reminding all companies to submit annual returns by 26th June 2022, failing which the Registrar would exercise his power to strike off the defunct companies from the Register of Companies*

Section 128 of the Companies Act requires every company to file its annual returns. Annual returns must be filed on the anniversary of the company's incorporation, or if the company's last return delivered in accordance with the Companies Act was made up to a different date, the anniversary of that date. Annual returns are filed by submission of completed company form 128 together with the most recent Audited Financial Statements (AFS) of the company.

On 27th May 2022, BRELA issued a notice reminding all registered local companies to file their annual returns on the Online Registration System (ORS) as per section 128 of the Companies Act. Failing which the Registrar of Companies will exercise his power under section 400 of the Companies Act and strike off the defunct companies from the Register of Companies. The deadline for compliance with the notice was 26th June 2022.

Historically, late submission of the annual returns attracted a late filing fee of Tshs. 2,500 for every month that the return remained unfiled. This was charged in addition to the annual returns filing fee of Tshs. 22,000. However, under the proposed amendments to the Companies Act, the late filing fee seems to have increased substantially to Tshs. 100,000 and an addition of Tshs. 10,000 for every day during which the default continues.

It is still unclear how the new penalties will practically be applied, since under the current ORS system if there is an ongoing application a company cannot lodge another application. Usually, ORS applications can take a while to be completed. As such, it may reach the time for the company to file its annual returns but it may be unable to do so because of a subsisting pending application on ORS. Perhaps BRELA will have to implement a way in which companies will be able to proceed with filing annual returns even if there is another company application pending. Otherwise, companies may incur substantial penalties because of the way ORS is designed.

Additionally, the ORS requirement of submitting annual returns together with the most recent AFS may also prove problematic. This is because not all companies' auditing dates coincide with the date of the annual return. It may therefore reach the date to file the annual returns but the AFS are not yet ready. If the company is to wait until the AFS are ready it will be in default and subject to the new substantial penalties e.g. Tshs. 10,000 daily. Therefore, BRELA will have to allow for companies whose AFS are not yet ready at the return date to be able to just proceed with the filing of their annual returns.

In line with the new proposed changes we would urge our clients and others to ensure compliance as required and REX will be happy to provide any assistance you may need in this regard.

Should you require any assistance please contact our Senior Associate Nancy Tarimo, via email: n.tarimo@rexattorneys.co.tz, web: www.rexattorneys.co.tz

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