



Proposed amendments to the Companies Act (Cap 212 R. E. 2002)

Summary,

The Government introduced in the February Session of Parliament, a Bill, which, among other things, is aimed at amending the Companies Act [Cap 212 R.E. 2002].

The proposed changes (in Part VI of the Bill) include the following.

- Requirement for additional particulars including Tax Identification Number (TIN) and National Identity Number (NIDA);
- Persons convicted of money laundering, terrorism financing, human trafficking, etc not eligible to incorporate a company;
- Requirement to file information of shares transfer along with tax clearance certificate within 28 days of such transfer;
- Repeal of the requirement to provide details of beneficial ownership in annual returns;
- Registrar has power to verify particulars presented in support of company incorporation;
- Prescribed qualifications for company secretary for public companies;
- Reduction of minimum age for appointment as company director to 18 and removal of limitation of 70 years for appointment as company director; and
- Limit for the time for keeping company records to thirty years.

Additional Requirements at Incorporation

If passed, the Bill will introduce certain changes by way of additional requirements at the time of incorporation of companies. These include:

Section 3 of the Act will require that a person who intends to incorporate a company must provide the Registrar of Companies with certain additional particulars other than those already mentioned in the law. The new particulars are:

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- His/her date of birth (or date of incorporation for non-natural persons, residential address of registered office, national identity number, registration or incorporate number, taxpayer identification number (where applicable) and other information as may be prescribed in regulations made under the Act (new section 3 (4));
- Name, email, address, telephone, fax numbers and websites (if any), National Identification Number, Tax Identification Number (in the case of Tanzanian Nationals), Passport (in the case of foreigners) and certificate of incorporation (in the case of a company incorporated outside Tanzania) and registered office (new section 14(2));

A person would not be eligible to incorporate a company 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 offenses as may be prescribed by the Minister.

Other Registration Requirements

The Government is also asking Parliament to add a new section, numbered 83A. In subsection (1) of that section, a company which has transferred or transmitted its shares would be required, within twenty-eight days from the date of transfer or transmission, to notify the Registrar in such a manner as may be prescribed in the regulations, and the notification is to be accompanied by a copy of tax clearance certificate.

A new section 458A has been introduced to provide the Registrar with powers to verify facts and information lodged.

Registration of Beneficial Owners

One of the most significant changes sought to be introduced by the Bill is in the amendment of section 129. It deletes paragraph (f) to remove the requirement of disclosing information of beneficial owners in the annual return of the Company.

As the reasons for the Bill state, an Annual return is a public document, and the current requirement that companies should disclose information on beneficial owners is a violation of the aspect of confidentiality that it carries.

It will however still remain debatable as to whether the Government's stated intention that information on beneficial ownership should be submitted in a different mode as may be prescribed in the regulations would still not be a violation of the principle. If the Bill is passed, therefore, we will have to wait for the Regulations. For now, at least, it is clear that the Government has realised the negative implication of the requirement that was only very recently enacted into law.



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Qualifications for Company Secretaries

The Bill has also introduced the requirement for public companies to have company secretaries and joint company secretaries with certain qualifications. He or she must be an advocate, a certified public accountant, an auditor or possess such other qualifications as the Minister may prescribe in the regulations. For private companies, the requirement is slightly relaxed. All that is required of them is that they be persons who “appear to the company to have the requisite knowledge and experience of discharging the functions of the secretary of a private company”.

Directors’ Age

Section 194(1) is being amended to reduce the minimum age for a person to be a director of a company from 21 years to 18, and to remove the limit that now compels company directors upon reaching 70 years to retire. If the Bill passes, one can be appointed a director upon reaching the age of 18, or one can be a director even after reaching the aged of 70. The Government thought that this is an internal affair of companies and should be regulated by law.

Time Limit for Keeping Records

There is a new section 455A being introduced, which sets the time limit for companies to keep their records and documents at a maximum of thirty years. Current Act places no such time limit. However, thirty years is an entire generation. A lesser time period could be sufficient.



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