

**A BILL  
SUPPLEMENT  
TO AMEND WRITTEN LAWS**

*Change Starts Here*

# A BILL SUPPLEMENT TO AMEND WRITTEN LAWS THROUGH WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO. 2) ACT, 2021.

- Criminal not to form Companies
- Thirty (30) years Retention period of Original Documents
- Minister's power to waive Late Filing Penalties
- Verification of facts by Registrar to ascertain the authenticity of facts lodged by a company



The Bill proposes amendments to various laws including the Companies Act, 2002 (the Act) which is the focus of this alert. The amendments proposed are analyzed as follows;

## **ONLINE REGISTRATION SYSTEM LEGALIZED.**

The bill proposes that section 3 of the Act be amended to include all the information required during incorporation or update on Online Registration system (ORS). The requirements currently in practice will be legalized.

The information required include date of birth or date of incorporation or registration, nationality or nationalities, country of residence or country of incorporation or registration, residential address or an address of registered office, passport, national identity number, Tax Payer Identification Number etc.

It is proposed that section 3 be amended by introducing section 3(5) prohibiting persons reported by competent authorities to have been convicted or associated with instances related to money laundering, terrorism financing, drug trafficking and other related offences as may be prescribed by the Minister of Industry and Trade from incorporating companies.

The question is will shareholders be vetted before inception? People should be very keen before engaging partner in forming companies.

## **CRIMINALS NOT TO FORM COMPANIES**



## **QUALIFICATION FOR A COMPANY SECRETARY IN PUBLIC COMPANIES.**

Section 35 of the bill proposes that section 187 of the Act be amended to add a qualification for a company secretary in Public Companies to be an advocate, CPAT or an Auditor. In Private companies, the qualification remains to be “who appears to the directors to have requisite knowledge and experience”.

The bill proposes amendment on section 83 by introducing section 83A which provide for a period to notify the Registrar in case of share transfer or transmission. The bill proposes a mandatory requirement to notify the Registrar within 28 days from the date of transfer or transmission took place. The same to be supported with a tax clearance certificate issued by Tanzania Revenue Authority.

When there is a failure there is a penalty. We have noticed instances when obtaining tax clearance from TRA would take longer than 28 days. The question is do the wordings “the date of transfer or transmission” mean the date when tax clearance is issued?

**TIME LIMIT TO NOTIFY THE REGISTRAR ON SHARE TRANSFERS / TRANSMISSION.**

## **AGE RESTRICTION FOR DIRECTORS**

It is proposed that Section 194 is amended to remove retirement age for directors. As per the current law under Section 194, a director who attains 70 years is disqualified from directorship. This Bill proposes to remove that restriction.

Connected to that, it is proposed to amend section 194(1) whereas the minimum age of an appointed director is to be 18 years.

Moreover, It is proposed that section 452 be amended by introducing section 452A whereas the Minister in consultation with the Minister of Finance may by Notice in the Government Gazette waive penalties on late filing of documents payable under the Companies Act.

This proposed provision is a great move. If passed, companies which could not update their details in Online Registration System due to penalties of non-filing of Annual Returns or Financial Statements for Branch companies will benefit.

**WAIVER OF LATE FILING PENALTIES**



## **RETENTION PERIOD OF ORIGINAL DOCUMENTS.**

Pursuant to section 39 of the bill, it is proposed that section 455 is amended by adding section 455A which requires companies to keep original documents filed with the registrar for a period of thirty (30) years. The Act currently requires to retain books of accounts for a period of six (6) years under section 151(4) and requires the Registrar to keep filed original documents for a period of ten (10) years under section 455(2).

The proposed retention period seems long given the fact that many companies frequently change managements however, there are instances when authorities such as TRA and BRELA during investigation, audits or other fact findings efforts may request for documents over six/ five-year period. If this passed, companies would now have a clear guidance to retain documents for a longer period which will be useful with other authorities as well.

**VERIFICATION OF  
FACTS BY REGISTRAR  
TO ASCERTAIN THE  
AUTHENTICITY OF  
FACTS LODGED  
BY A COMPANY.**

Ultimately, the bill proposes to amend Section 458 by introducing Section 458A which provides for a requirement for verification of facts for the documents lodged at the registry.

If the bill is passed, the Registrar will have power to request such information as he may deem fit to verify facts.

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