



## AMMENDMENTS TO THE COMPANIES ACT AND THE NGO ACT IN TANZANIA

A notice was released by BRELA through an authorization from the Ministry of Industry Trade and Investment on 12<sup>th</sup> July 2019, whereas. It is important to understand that considering, the change done on the Companies Act Cap 212R.E 2002 and the Non-Governmental Organizations Act, No.24, 2002 (as amended) through the Written Miscellaneous Laws (No 3) of 2019 the following processes should be adhered by the NGO's;

1. Registration of NGO's will now be done by Registrar of NGOs, Ministry of Community Development, Gender and Children, instead the Registrar of Companies (BRELA) as previously done.
2. Following the new amendment, all NGO's will be struck off from the book of Registrar of Companies (BRELA) after two months starting from 30<sup>th</sup> June 2019 and will be handed to the Registrar of NGOs, Ministry of Community Development, Gender and Children.
3. From the date of this notice, the Registrar of Companies (BRELA) will not register any NGO's, the registration process for NGO's will be done by the Registrar of NGOs, Ministry of Community Development, Gender and Children.
4. From the 1<sup>st</sup> September 2019, the Registrar of Companies (BRELA) won't reserve any information or background check for any NGO's.

NGO registration in Tanzania is governed by the Non-Governmental Organizations Act, No.24, 2002 (as amended). Hence Written Miscellaneous Laws (No 3) of 2019 was passed in Parliament whereas, it has amended many laws one of them been Non-Governmental Organizations Act, No.24, 2002. Whereby one of the amendment done is to require any companies limited by guarantee (**CLG**) which are not carrying out commercial activities to move to be registered and governed under the Non-Governmental Organization regime.

**Section 28** of the Miscellaneous Amendments Act No. 3 of 2019 has added Section 8A of the NGOs Act which provides for de-registration of all NGOs which are registered as NGOs but are literally not NGOs as according to **Section 2** of the NGOs Act read together with its amendments. In essence, the Registrar of NGOs shall have mandate to assess entities, which do not discharge NGOs duties.

As per the new/ current Amendment of the Companies Act, it provide as follows:

***“Company means a company formed and registered under the company act or an existing company established for investment, trade or commercial activities and any other activity as the Minister may, by notice published in the Gazette,***



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**prescribe;**

Also, it goes further to explain the meaning of a company Limited by Guarantee as;

*“A company which is limited by guarantee which intends to **promote commerce, investment, trade or any other activity** as the Minister may, by notice published in the Gazette, prescribe, shall be incorporated or registered under this Act”*

As per the above provisions of the new Amendment, as long as the Memorandum and Articles of Association of a Company Limited by Guarantee has Objectives/ Activities which aim at/ promote **commerce, investment and trade**, the said company has no need/ will not be required to shift to a company limited by shares or NGO.

But, if a company is currently Limited by Guarantee and its Memorandum and Articles of Association has Objectives/ Activities that do not aim at promoting investment, commerce and trade, then the said company must shift/ convert to a company Limited by Shares or NGO.

In addition to that, the new Amendment also defines the three pillars of a company which are as follows:

**“COMMERCIAL ACTIVITIES”** means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling;

**“INVESTMENT ACTIVITIES”** means transactions involving sale or purchase of equipment plants, properties, securities, capital, stocks, debentures or other assets generally not held for immediate re-sale and any other activity as the Minister may, by notice published in the Gazette, prescribe;

**“TRADE”** means the transfer of goods or services from one person to another.”

Due to the amendment the definition of an NGO has been narrowed down. Section 9 of the Miscellaneous Amendments Act No. 3 of 2019 amends Section 32 of the Companies Act by removing charity organizations as one of associations which can be registered as private companies with limited liability. Only associations which intend to promote commerce can be registered as private companies with limited. The associations are:

- i.) a company formed and registered under the Companies Act,
- ii.) a trust formed and registered under the Trustees’ Incorporation Act,



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- iii.) a trade union formed and registered under the Employment and Labour Relations Act,
- iv.) a religious or faith propagating organization; a cooperative society formed and registered under the Cooperative Societies Act,
- v.) an agricultural association formed and registered under any written law other than this Act
- vi.) a society formed and registered under the Societies Act
- vii.) a political party formed and registered under the Political Parties Act
- viii.) a microfinance group (VICOBA) registered under the Microfinance Act ,
- ix.) a sports association formed and registered under the National Sport Council of Tanzania Act, and
- x.) any organization which the Minister may, by order published in the Gazette, declare not to be a non-governmental organization for the purpose of this Act.

The proposed amendment gives powers to the Registrar of NGOs to suspend and/or investigate NGOs that could hamper the effective functioning of NGOs in Tanzania.

Furthermore, if an NGO that does not fit to be an NGO by virtue of section 2 shall, after expiration of two months from the date of coming into operation of the amendments , be deemed to have been de-registered. The amendment demands an automatic deregistration which will affect a number of entities that are doing NGO work but may not meet the new criteria.

### **Procedures of Application under Compliance and Application from Company Limited by Guarantee to a NGO.**

It is important to understand if a party wants to apply for a certificate of compliance and application from Company limited by Guarantee to NGO must submit the following:

1. Certificate of incorporation
2. Founder members
3. Constitution/memorandum
4. Personal particulars of office bearers (CV)
5. Form No.3



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After submitting all the prerequisites your Application shall be sent to the Registrar of NGOs, Ministry of Community Development, Gender and Children for review and registration

And must abide as per the forms require whether one is applying under compliance or company limited by guarantee to NGO, depending on the prime selection of the organization and the members themselves. Section 6 of the Miscellaneous Amendments Act No. 3 of 2019 amends of Section 3 of the Companies Act by adding Section 3A which states that, all organisations which were incorporated under the Companies Act and obtained a certificate of compliance under section 11 of the NGOs Act, shall be deemed to have been registered under the NGOs Act.

### **It is also important to highlight on the Procedures for registering an NGO as per the amended laws in Tanzania categories;**

Registration of a Non-Governmental Organization in Tanzania which is governed by the Non-Governmental Organizations Act, No.24, 2002 (as amended) is categorized into four levels namely;

- i.) District Level
- ii.) Regional Level
- iii.) National Level
- iv.) International Level

In Section 22(1) of the Non-Governmental Organizations Act, No. 24, 2002 (as amended) empowers the Registrar to appoint public officers within the Region or District for the purpose of facilitating registration in such levels. In the current practice the Public Officers as referred in the Act are the Community Development Officers of the Region or District. Subject to the provision of Section 12(1) of the Act, every application shall be made in a prescribed form by a group of persons to the Registrar. The term "group of persons" include group of Non-Governmental Organizations. However, Regulation 3 of the Non-Governmental Organizations (Amendments) Regulations, GN No. 8, 2015 refers "group of persons" to be not less than five (5) members. Pursuant to the provisions of Section 12(2) of the Act, every application shall be accompanied by the following documents;

1. Copy of Constitution of the Non-Governmental Organization (3 bound Copies).



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2. Minutes containing full names and signatures of founder members.
3. Personal particulars of office bearers (Chairperson, Secretary and Treasurer with 2 photographs). NOTE: For International NGOs 2 CVs must be of citizens of Tanzania
4. A filled NGO a Form No.1 attached with 3 Stamp Duty worth 1500 Tanzania shillings for Local NGO and Stamp Duty worth 2 USD for International NGO.
5. Recommendation letter from District/Regional Assistant Registrars.
6. Any other particulars as may be required by the Registrar.

Application shall be sent to: Registrar of NGOs, Ministry of Community Development, Gender and Children.

### **Other Notable changes:**

Section 28 of the Miscellaneous Amendments Act No. 3 of 2019 has added Section 8A of the NGOs Act which provides for de-registration of all NGOs which are registered as NGOs but are literally not NGOs as according to Section 2 of the NGOs Act read together with its amendments. In essence, the Registrar of NGOs shall have mandate to assess entities, which do not discharge NGOs duties.

NGOs, should conduct verification on whether they fit in as NGOs or not. If they do not fit as NGOs, they have to make sure that they comply with all the requirements needed for an organization to operate as an NGO as according to Section 2 of the NGOs Act otherwise, they will be de-registered.

The limitation of holding a certificate has been made to 10 years by Section 30 of the Miscellaneous Amendments Act No. 3 of 2019 which amends Section 17 of the NGOs Act by adding subsection (3) which imposes period limit of the Certificate of Registration of an NGO to be not more than ten (10) years. An application for renewal of Certificate of Registration i must be made six month before the expiration to the Non-Governmental Organizations Coordination Board.

There is also a requirement to publish report under Section 31 of the Miscellaneous Amendments Act No. 3 of 2019 which amends Section 29(1)(b) of the NGOs Act by imposing a requirement that, NGOs make their Annual report available to the public after submitting the same to the Non-Governmental Organizations Coordination Board.