

Companies Act in Tanzania and Its Recent Amendments: 10 Reasons Why This Proposed Section Will Discourage Foreign Direct Investment in Tanzania

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The Companies Act Cap 212 has been amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019 (Act No. 9 of 2019) where among other amendments an additional section 400A has been added. The “controversial amendment” has given the Registrar of Companies powers to strike off a company from its registry for any of the following reasons:-

- Where a registered company has been fraudulently been registered;
- Where a registered company is engaged in criminal activities such as money laundering, human and drug trafficking, terrorist financing or any other offences as may be prescribed by the Minister;
- Where at the time of incorporation the company committed an act of misrepresentation or fraud;
- By operation of law, where all shareholders or directors have been prohibited from entering the country (Tanzania); and
- Where a Company is operating contrary to its objectives contained in the memorandum and articles of association.

The Law has however, provide for a step by step guide for the Registrar to comply with before finally striking off the Company to be:-

- The registrar must issue a notice of its intention to strike off the Company;
- The Company shall be afforded 30 days to provide reasons why it should not be de-registered or the Company can challenge the notice in Court.

If you have any question concerning this memorandum, please reach out to your regular firm contact or the following authors:

Ally M. Kileo
Managing Advocate

+255 769 500 100
+255 787 630 150
ally.kileo@mdmlaw.co.tz

MAIN OFFICE
Msasani Peninsula, Chole Rd,
Golden Heights, 2nd Floor,
Dar-es-Salaam, Tanzania.

T: +255 22 2602382
+255 22 2602250
E: info@mdmlaw.co.tz

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The Companies Act Powers of the Registrar of Companies have been enhanced to strike off a company fraudulently registered or conducting illegal business.

The following are the 10 reasons why this proposed Section will discourage Foreign Direct Investment in Tanzania;

1. Striking off a company is normally reserved for cases whereby a company is not operational or carrying on a business. Article 400A proposes that a company that is operational and conducting business may be struck off.
2. The Registrar of Companies' powers to strike off any company can be exercised not based on definitive and conclusive evidence, judgment or conviction from a court of law, but on a mere belief that may constitute a reasonable ground.
3. One of the reasons for a company to be struck off is if the Company is "fraudulently registered" (Section 400A (1) (a)) and this goes against the principle of the "conclusiveness of certificate of incorporation" provided and guaranteed under section 16 (1) of the Companies Act which states that a certificate of incorporation given by the Registrar is conclusive evidence that all requirements of this Act in respect of registration have been

complied to. Essentially, this weakens the value of a certificate of incorporation under the Companies Act of Tanzania.

4. Section 400A (1) (c) proposes that a company can be struck off because of "misrepresentation" by the registered company. This directly contradicts section 472 of the Companies Act that provides that false statements and misrepresentation may constitute an offence which is punishable by conviction or a fine.
5. Section 400A (1) (b) undermines the authority of the Financial Intelligence Unit established by the Anti-Money Laundering Act of Tanzania and puts in danger any investigation or criminal proceeding taking place with regards to offences under this Act. It also denies the right to be heard and to have fair trial since the Registrar in striking off a Company based on a belief has already condemned the Company.
6. The shareholders and directors being prohibited to enter the country as a ground for the Registrar to strike off a company denies the freedom of shareholders to appoint other directors so that the management of the company can continue or to exercise the shareholders' right of constituting a proxy so that his or her rights are still exercised. This

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- is a direct interference in the affairs of a private company.
7. In striking off a Company, the Registrar has no obligation beforehand to notify creditors that may have claims over the Company and creditors will not have any right to object until after the Company is struck off where a long process of restoration is to commence should creditors wish to enforce their creditors' rights. Where restoration is granted, the Company will have to pay interest it accumulated from the date the Company was struck off irrespective of whether or not there was cause since the financial instrument will be valid despite the Company being struck off (section 400A (6)).
 8. Once a company is published in the Gazette as being struck off, any other person / company can register a company using the same name as the company struck off and this mere fact negates the right of the company that has been struck off to ever be considered for registration again, even where the court may find cause for restoration and another person/ company can benefit from the brand equity built by the Company that is struck off "just like that".
 9. Section 400A undermines the provisions in the Companies Act for winding up a company which are there to protect creditors, partners and shareholders. This provision seeks to punish which is contrary to the spirit of the Companies Act and general principle of good faith in conducting business.
 10. Section 400A gives Registrar of Companies unprecedented powers "to undo" what potentially has taken investors years "to do" and potentially if exercised goes against the principle of sanctity of contract as enshrined in the Law of Contract Act of Tanzania