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A Glance at The Legal Framework of Non-Governmental Organizations in Tanzania

On 30th June, 2019, the President of the United Republic of Tanzania assented to the Written Laws (Miscellaneous Amendments) Act No. 9 of 2019, which incorporates amendments of eight (8) pieces of legislation. The pertinent amendments, for purposes of this updater, relate to the Companies Act, No. 12 of 2002 (or Cap 212) and Non-Governmental Organizations Act, No. 24 of 2002 (or Cap 56).

These amendments are important, as far as NGOs are concerned. The reason is simple, the two types of entities, before the amendments, used to overlap, in terms of registration/incorporation and compliance.

For some of NGOs, the previous practice, before the amendments, was to incorporate them as companies limited by guarantee with the Registrar of Companies and then applying for a certificate of compliance with the Registrar of NGOs.

This was made possible by section 10 of the Companies Act (before the 2019 amendments) that provided for companies limited by guarantee and section 11 (before the 2019 amendments) of the NGOs Act that provided for a certificate of compliance for all entities qualifying as NGOs but registered or established under other laws. There was no legal definition of a company limited by guarantee.

Before the enactment of the NGOs Act in 2002, organizations operating as NGOs did not have a clear regulatory and/or legal framework. They used to be registered or formed under various pieces of legislation, e.g. the Societies Act (Cap 337) the Trustees Incorporation (Cap 318) Act and the Companies Act.

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The NGOs Act was enacted in 2002 to address this legal gap. Despite the passing of the law, from a practical point of view, most NGOs still preferred to be incorporated as companies limited by guarantee first, in order to have a corporate personality to shield members from any liability, just the way companies are.

This was partly because the NGO Act as enacted in 2002, did not accord NGOs with such personality. Only in the 2005 amendments, through the Written Laws (Miscellaneous Amendments) Act No. 11 of 2005, all NGOs were accorded corporate personality.

Despite the amendment, still NGOs continued to be registered as companies limited by guarantee. With the 2019 amendments, this practice has ended, by operation of law.

The Companies Act, as amended, has given a new definition of a company, which under section 2, now means "*a company formed and registered under this 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, prescribe*".

Similarly, there are definitions of commercial activities, investment and trade under the Act. Under sections 3 (3) and 14 (6) of the Act as amended, a company limited by guarantee can only be incorporated under the Act if it intends to promote commerce, investment, trade or any other activity as the Minister may, by notice published in the *Gazette*, prescribe, effectively proscribing incorporation of companies limited by guarantee operating as charities or NGOs.

Farther with the amendments, all such companies have been migrated to the NGOs Registry and will be struck off the companies register.

On the other hand, in the 2019 amendments, the NGOs Act has introduced a new definition of an NGO, in section 2, which now includes community-based organizations (CBOs).

An NGO now means "*a voluntary grouping of individuals or organizations which is non-partisan or non-profit sharing established and operates for the benefit or welfare of the community or public, organized at the local, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment, good governance, law and order, human rights and lobbying or advocating on such issues*".

Likewise, the NGOs Registry will strike off such entities that do not qualify as NGOs following the amendments of the laws. As we understand it, the two Registries have already issued public notices to that effect.

Some important observations are that the NGOs Act as amended, has proscribed the grant of certificates of compliance and, now, even those entities registered for advancement of good governance, law and order or human rights and similar objectives, by the new definition under the amendments, qualify to be NGOs and therefore falling under the mandate of the Registrar of NGOs.

These amendments have streamlined the registration and regulation of NGOs, discarding multiple compliance and/or overlapping of registration and regulation of NGOs and other organizations. Another key issue for NGOs relates to sources of funds, given the fact that by the legal definition, NGOs are not commercial, investment or trading entities. Section 32 of the NGOs Act allows registered NGOs to engage in all legally acceptable fund-raising activities.

The Act is however, silent, if such fund-raising activities would entail activities that are commercial or business in nature, for example, obtaining (commercial) loans from (commercial) banks or other financial institutions.

The Business Licensing Act (Cap 208), under section 2 defines business as "*any form of trade, commerce, craftsmanship or specified profession carried on for profit or gain and to which the provisions of this Act apply*".

This definition echoes the definition of a company under the Companies Act as amended. One of the customary and standard requirements by commercial banks and financial institutions in Tanzania, prior to giving a loan to an applicant, is for the applicant to have a valid business license. Under section 5 of the Business Licensing Act (Cap 208), save for specific exempted categories, a license is granted to all other businesses in Tanzania.

It is undeniable that NGOs need funds to operate. Therefore, to our understanding, to engage in legally acceptable fund-raising activities, an NGO has to be careful on the nature of the fund-raising activities under consideration while navigating through the various laws lest it falls under the wrong side of the law and attract administrative scrutiny as per sections 4, 4A, 35 and 36 of the Act.

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