

Fate of Mainland Companies Operating in Zanzibar Under Certificates of Compliance/Branches of Foreign Companies.

The “Blue Economy” is a dominant theme to the current Revolutionary Government of Zanzibar. A lot is being done to ensure full participation of indignant and foreign investors to the new economy in the Isles. During the sessions of the Zanzibar House of Representatives debating on the budget for the 2021/2022 financial year, the Zanzibar House of Representatives amended various laws, perhaps in view of aligning with the Government’s implementation of the “Blue Economy” theme. The amendments are incorporated in the Finance (Public Revenue Management) Act No. 03 of 2021.

The amendments cover about twelve (12) pieces of legislation, including the Companies Act, No. 15 of 2013, which is the subject of this updater. In nearly all countries across the globe, company legislation is the getaway to investors, both local and foreign to participate in a country’s business, economic, investment and trading activities, enabling flow of foreign capital into a country stimulating a country’ economy.

Thus, it is expected that such legislation should consider what is globally agreed to be best practice, to do away with unnecessary requirements that might hinder smooth investment by (foreign) investors. Invariably, the company legislation triggers the interoperability of various other pieces of legislation including taxation, investment, licensing, regulation and several others on each and every sector of the economy.

Relevant to this updater is the fact that generally, the scheme of the Zanzibar Companies Act, No. 15 of 2013, is significantly the same as the Companies Act (Chapter 212 revised edition of 2019) that applies in Tanzania Mainland. One should take note that for purposes of incorporation, registration and management of companies and business names/partnerships; Tanzania Mainland and Zanzibar are different jurisdictions and any company registered in the other becomes a foreign company in the other.

Author



LUBANGO SHIDUKI

Partner

CREDENTIALS

QUALIFICATIONS:
LLB | Advocate

EXPERTISE:
Tax | Corporate | Dispute
Resolution | Tax | Real Estate

CONTACT:
lubango.shiduki@beakolaw.co.tz |
+255 754 973 327 | +255 767 250 296

When it was passed in the year 2013, replacing the old Companies Decree (Chapter 153 of the laws of Zanzibar), the Zanzibar Companies Act, under Part VIII running from section 238 through to 254, dealt with establishment of foreign companies in Zanzibar, including companies incorporated in Tanzania Mainland. Section 238 brought the application of the Act on companies incorporated outside Zanzibar which establish a place of business in Zanzibar, and which had established a place of business within Zanzibar and continue to have an established place of business within Zanzibar.

Once a foreign company delivers to the Registrar of Companies, a list of documents and information required under section 239 (1), including copies of constitutional documents, certificate(s) of incorporation, list of directors and secretaries and representatives in Zanzibar, the same are registered and such companies are issued with certificate(s) of compliance giving such companies the same power including power to hold land in Zanzibar in accordance with Land Tenure Act of 1994, as if they were companies incorporated under the said Act, in terms of section 240 of the Act. In the company law parlance, such companies are referred to as branches of foreign companies.

Following the amendment of the Act companies from Tanzania Mainland, whose presence in Zanzibar was made possible under the previous section 238, now have to be incorporated anew, in Zanzibar. The amendment added a new subsection (3). The current section 238 (3), as amended, now provides thus:

Notwithstanding the provisions of subsections (1) and (2) of this section, a company incorporated under the law applicable in Mainland Tanzania shall register a foreign subsidiary company under the law

applicable in Zanzibar if it establishes a place of business in Zanzibar.

With the said amendments, automatically all companies incorporated in Tanzania Mainland, whose presence in Zanzibar is through branches of foreign companies, under certificates of compliance, have to incorporate subsidiaries under the Zanzibar Companies Act. As far as company law is concerned, subsidiaries are fully-fledged entities with own and independent/separate boards of directors and shareholders, with the parent company being merely a shareholder. Branches of foreign companies are an extension of main companies, incorporated outside a jurisdiction in consideration.

Following the amendments, on 21st September, 2021, the Zanzibar Ministry of Trade and Industrial Development published a notice to the public informing them of this amendment and advising all such companies that might be affected by the amendment, to incorporate such subsidiaries within a period of ninety (90) days from the date of the publication of the notice.

After the expiry of such period, any company incorporated in Tanzania Mainland carrying on business in Zanzibar under a certificate of compliance/branch, that will not have incorporated a subsidiary will automatically be struck off the companies register leading to cessation of operations in Zanzibar. We take it that the spirit behind the amendment may be to keep all ducks in a row-- ready to participate in the Blue Economy.

However, the amendment of the Zanzibar Companies Act potentially poses drastic ramifications to such companies pertaining to licensing, reporting, regulation and like matters.

Such drastic ramifications arise from the fact that some sectors, including banking, telecommunications and transportation are regulated by industry regulators, including the Bank of Tanzania (BOT), Tanzania Communications Regulatory Authority (TCRA), Tanzania Civil Aviation Authority (TCAA), Tanzania Revenue Authority, Zanzibar Revenue Board (ZRB) and the like, whose licensing, compliance and reporting procedures and processes take considerably long to complete.

Some of such companies operate in sectors/matters which fall across the Union and their regulators operate as such, for example, banking, civil aviation, post and telecommunications. Thus, the transition period would certainly bring about practical challenges. The amendment might most likely necessitate such companies to make applications for new licenses and permits in terms of the requirements of the sectors of the economy in which they operate and also in line with regulators' requirements.

In view of such amendment, currently it is not clear what directives, covering licensing, statutory compliance, operations and

customers/consumers relationship, regulators will issue to such companies in the period between ceasing operations as branches of foreign companies and incorporation as subsidiaries, to ensure that consumers and the public are not adversely affected; despite the period given that to some might seem short, and the potential ramifications, compliance by such companies is imperative.

Takeaways:

1. Tanzania Mainland Companies operating in Zanzibar under certificates of compliance/branches of foreign companies have a period of ninety (90) days from 21st September 2021 to incorporate subsidiaries in Zanzibar, failing with such companies will be struck off the register of companies.
2. Despite the window given being short, companies that are required to implement the law as amended are eager to hear about the commercial incentives attached to such order so as not disrupt their participation in the Blue Economy in Zanzibar. But until then, the law and directive from the Ministry are very clear.

NB: The Above update does not constitute a legal opinion by the firm/authors. Kindly contact the authors or the firm for more clarification through the contacts provided in the author's profile. The authors/firm will not be liable for actions or decisions which will directly be made based on the above update.