

IMMMA Advocates Newsletter

NOVEMBER 2018

RWAZO'S COMEBACK FROM SECONDMENT PROGRAMME.

Mr. Libent Rwazo, Senior Associate together with other 8 Senior Associate from other DLA Piper Africa Firms were seconded to DLA Piper London Office, Manchester Office and Liverpool Office from October 6 to November 4, 2018.

As part of global law firm, DLA Piper encourages succession plan and offers high quality and high standard service which is similar along the globe to its client. Secondment program helps the secondees to share knowledge and expertise to enhance the service provided.

As part of secondment our Mr. Rwazo and other secondees were able to work with DLA Piper colleague at London, Manchester and Liverpool Offices where by they worked in teams according to the area of Specialization. As part of secondment

they visited the House of commons and the House of Lords and attended several cases at the Royal Court of Justice and Chancery Division.

The secondee also attended a one-week training at the Management Academy held at Amba Hotel, Marble Arch, London with 47 representatives form DLA Piper firms. Countries represented where Tanzania, United Kingdom, Russia, Netherland, Belgium, Australia, New Zealand, Hungary, United Arab Emirates, Nigeria, Germany, Finland, Morocco, Switzerland, Zambia, Romania, Spain, Thailand, Italy, South Africa, Ethiopia, Uganda, Rwanda, Kenya.

Since Tanzania legal system is premised under the common law legal system there were few challenges encountered during the secondment for example the issue of Solicitor and barrister and their scope of work and strictly specializations. While in Tanzania an Advocate can draft documents and appear in Court, in England only the Barrister can address the

Court and the solicitor do all the drafting and briefing the Barrister to address the Court. Another challenge was strictly specialization lawyers in England specializes on one area only, I.e. litigation on construction industry, litigation on employment, intellectual property and technology, employment, tax, real estate. While in Tanzania we tend to do all types of work fearing to specialize in a certain area of practice.



Mr. Libent Rwazo, Senior Associate.

The Non-Governmental Organizations Act (Amendments) Regulations, 2018-

Faizal Salah, Associate

On the 12th October 2018, the Minister for Health, Community Development, Gender, Elderly and Children, issued a Government Notice No. 609 which was published on October 19, 2018 as “Non-Governmental Organizations Act (Amendments) Regulations, 2018” (the “new Regulations”) amending the Non-Governmental Regulations, 2004 (NGO Regulations, 2004). The new Regulations aim at providing financial transparency and accountability to the Non-Governmental Organizations (“NGOs”).

Salient features of the amendments made.

The new Regulations add a new part, “**PART IV**”, to the NGO Regulations, 2004 covering disclosure to the funding activities, publication of funds received and its expenditure for amount exceeding twenty million Tanzania shillings, financial transparency and accountability and obligation of each NGO to the community it serves. The new Regulations must be read together with the NGO Regulations of 2004 that was gazette as GN No. 152 of 2004.

The new Regulations, in short, have been introduced on the basis of creating financial transparency and accountability.

The views expressed herein are not a legal opinion and readers are advised to consult their legal advisors on the impact of these new Regulations to their operations or activities.



Faiza Salah, Associate

MICROFINANCE BILL ALERT:
Flora Obeto, Associates

Introduction

On the 16th November 2018, the Microfinance Act No. 7 of 2018 (the **Bill**) which is to be passed under the certificate of urgency was tabled for 2nd reading in the National Assembly. The Bill proposes to enact the Microfinance Act with a view to License, Regulate, Monitor and Supervise microfinance business. It provides for different tiers of microfinance institutions and how they may transform from one tier to another. It also vests the Bank of Tanzania with the mandate to oversee the microfinance sub-sector, puts in place means for consumer protection and sharing of credit information through credit reference bureau.

Salient Features of the Bill:

1. Bank of Tanzania (the “Bank”) to be the overall regulator of the Microfinance activities;
2. provides the 4 tiers of microfinance service providers;
3. license (for tier 1 to 3) and certificate of registration (for tier 4) to be mandatory requirements;
4. provides for consumer protection including transparency on interest rates; and
5. service providers must comply with the Anti- Money Laundering Act.

The proposed Bill also defines Microfinance business as the deposit and non-deposit taking business which includes all types of credit and or borrowing financial transactions like loans or other

credit facilities to macro, micro or small enterprises and low-income households and or individuals.

Microfinance service providers

the proposed bill defines a microfinance service provider to mean an entity or a person registered or licensed to undertake microfinance business (the “service provider”).

These are categorized into the following tiers:

- i. Tier 1- banks and Microfinance banks;
- ii. Tier 2- credit companies and financial institutions;
- iii. Tier 3- SACCOS; and
- iv. Tier 4- Community financial groups, individual money lenders and community-based organizations.

While service providers are allowed to transform from one tier to another provided that they meet the minimum capital and members requirement as provided for in the Bill, the Bill provides an additional obligation for Tier 1-4 Service providers to prepare financial accounts annually in line with international financial reporting standard denominated in Tanzania Shillings. Such financial accounts must be audited annually by a qualified auditor.

The Bill requires foreign owned service providers to obtain license from the Bank and comply with local content laws including employments and training of Tanzanians.

The Bank of Tanzania (the “Bank)

The Bank is the overall regulator of all the Microfinance business and is responsible to issue licenses for Tier 1- 3 service providers. The Bank is also vested with the power to delegate its powers for issues concerning Tier 3 and 4 service providers to the Tanzania Cooperative Development Commission, the local government authorities respectively.

The Bill also imposes penalties of a fine of up to TZS 100 million or imprisonment for a term of between 2 to 5 years or to both for tiers 1 to 2, up to TZS 50 million or to imprisonment for a term of between 2 to five years or to both for tier 3 and TZS 50 million or to imprisonment of not less than 3 months and exceeding 5 years or both for tier 4 in event one contravenes the provisions of the pending law..

Other proposed issues:

the Bill requires microfinance business to comply with the Anti-Money Laundering Act and establish internal control procedures for the purpose of identifying and reporting suspicious transactions. This Bill also demands service providers in the microfinance business to comply with consumer protection principles including vetting of standard contracts, transparency on interest rates, debt collection methods and debt recovery process.

The Service Providers are given 12 months from the *commencement of the Act* to comply.

Conclusion

Despite the fact that the above proposed Bill is necessary for curbing money laundering, easing loan repayment terms and saving borrowers from exorbitant interest rates, this Bill is likely to hamper financial inclusions especially for community groups not commercial in nature but are nevertheless beneficial to the locals. Thus to some extent the proposed Bill will discourage low income individuals from forming income generating community-based groups.

This introduction was provided by IMMMA Advocates. The contents herein are a basic overview and should not be relied upon without seeking specific legal advice. For more information please contact the author or our Managing Partner Sadock Magai on magai@immma.co.tz



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