



LEGAL ALERT:

DE-REGISTRATION OF NGOs REGISTERED UNDER OTHER LAWS: FEW DAYS TO GO

Introduction

- 1.1 On 30th June 2019, the Parliament in Tanzania has passed amendments to the Non-Governmental Organizations Act (Cap 56), by enacting the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019 (**‘the Act’**) which came into operation through the Government Notice No. 27, Vol. 100 of 2019. The Act has also amended, other laws including, the Companies Act, [Cap. 212] (**‘the Companies Act’**), the Societies Act, [Cap. 337] (**‘the Societies Act’**) and the Trustees’ Incorporation Act, [Cap. 318] (**‘the Trustees’ Incorporation Act’**).
- 1.2 In this Article we analyse the major changes brought about by the Act, and how these changes will impact the legal status and operation of NGOs in Tanzania.

Definition of NGOs

- 1.3 The Act has provided for a new definition of an NGO to mean a non-partisan or non-profit voluntary grouping of individuals or organizations established for the welfare of the community or public at the local, national or international levels for economic, environmental, social or cultural development or protection of good governance, law, order and human rights. The new definition excludes all NGOs which were formed and registered under the Companies Act, Societies Act and Trustees’ Incorporation Act, among others.

1.4 Basically, the Act has narrowed down the definition of NGOs to exclude NGOs established and registered under laws other than the NGOs Act.

Registration of NGOs

1.5 Previously, an NGO could be registered under any other written law and apply for a certificate of compliance in terms of section 11 (3) of the NGOs Act and become an NGO under the NGOs Act. Now, the Act has provide for a new definition of an NGO and deleted section 11 (3) and all the provisions of the NGOs Act providing for certificate of compliance for NGOs formed and registered under other written laws. These deletions with the new definition of NGOs imply that all the certificates of compliance together with the NGOs formed thereof will cease to be NGOs within the time provided by the Act. With the amendments, for an organization to be legally recognized as an NGO, it must be established and registered under the NGOs' Act.

Scope of operation – (NGOs, Trust, Societies, Companies)

1.6 The Act has also narrowed down the scope of societies, company limited by guarantee not having a share capital and trust by providing for new definitions of the same under the Societies Act, Companies Act and Trustees' Incorporation Act respectively and expressly excluding NGOs formed and registered under the NGOs' Act.

1.7 The definition of a society under the Societies Act has been amended to be a non-partisan organization and non-political association of ten or more persons established for professional, social, cultural, religion or economic benefits or welfare of its members, formed and registered as such under the Societies Act. Such organization/association excludes an NGO registered under the NGOs Act, a Company under the Companies Act and Trust under the Trustees' Incorporation Act, among others.

1.8 Previously a society could be any association of ten or more persons whatever its nature or object. But with the new definition, a society should be of a nature or object related to professional, social, cultural, religion or economic benefit or welfare of its own members.

1.9 Further, the definition of a Trust has been amended to refer to a legal relationship created by personal acts, an order of the court or operation of the law, when specified property or interests are placed under the control and management of a trustee or trustees, for the benefits of another party or parties, called a beneficiary or beneficiaries, and excludes an NGO formed under the NGOs Act, a Company formed under the Companies Act and Society registered under the Societies Act, among others.

- 1.10 Furthermore, the scope of a company limited by guarantee not having share capital has been limited to such companies established for purposes of promoting commerce, investment, trade or any other activity specified, incorporated and registered under the Companies Act.
- 1.11 In all the new definition/scope of societies, companies limited by guarantee not having a share capital and trust under their respective laws, NGOs formed under the NGOs Act are expressly excluded. Consequently, following the amendments, all NGOs established and registered under such laws other than the NGOs Act will cease to be so registered.

Cessation of NGO's not registered under the Ministry for Health, Community Development, Gender.

- 1.12 It follows that the amendments of the definition and scope of NGOs operations, will amount to cessation of operations for all NGOs established and registered under any law other than the NGOs Act. Hence such NGOs must then shift and be registered under the Ministry for Health, Community Development and Gender.
- 1.13 The time provided for all NGOs which fall short of the new definition of NGOs to shift to where they fit is two months from the coming into operation of the Act i.e by 30th August, 2019. The law provides that all such NGOs shall be deemed to have been de-registered within two months from coming into operation of the Act. But, the law gives a room to NGOs to seek extension of time within which to shift to their relevant registries from the Minister responsible for NGOs, currently the Minister for Health, Community Development, Gender, Elderly and Children, who will in turn liaise with Ministers in their relevant ministries where their registration fall.
- 1.14 However, it should be noted that the time provided under the NGOs Act and Societies Act which do not fall under the new definitions to shift to where they fit is the same i.e two months from coming into operation of the Act. The time is also the same for companies limited by guarantee not having share capital and obtained a certificate of compliance under the NGOs Act which will be deemed to have been registered under the NGOs Act and struck off from the companies register. This will affect the NGOs which were registered under the Companies Act but do not fall under the new definition of NGOs. This is also clear from the Public Notice issued by the Registrar of Companies on 12th July, 2019 on this effect.
- 1.15 That means, following the amendments, by 30th August 2019, there will be concurrent automatic deregistration of NGOs which were registered under both the Societies/Companies/Trustees' Incorporation Act and the NGOs Act. That means, for instance an NGO that was registered under the Societies Act and obtained a certificate of compliance under the NGOs Act will cease to be a society

under the Societies Act and an NGOs under NGOs Act at the same time. In other words, such an NGO will cease to have any registration come 30th August 2019.

1.16 It is therefore advised that NGOs should identify their formation objectives with one of the new definitions and take initiatives to shift their registrations to their relevant registries where they belong before the automatic deregistration provided under the law. The societies, trusts and companies limited by guarantee should also evaluate themselves to see if they still fit in the new definitions and take necessary actions.

1.17 The Act is silent on the procedures for shifting, but such NGOs may seek clarification from their relevant registries for smooth transfer of their registration.

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