

## 2018 YEAR IN REVIEW



2018  
Year in Review

## THE HIGHLIGHTS OF THE LEGISLATIVE CHANGES AND DEVELOPMENT IN 2018

### A. Introduction

2018 was a busy year, with a number of important legal and regulatory developments that affect businesses in Tanzania. To help you keep track of these key changes, FIN & LAW, has prepared a year in Review, 2018 on the most significant legal developments affecting business and their implications for the coming year and beyond.

**B. Amendment of Land Act, Cap 113:** The Land Act, Cap. 113 was amended by the Written Laws Miscellaneous Amendment Act, 2018 (Act No. 1 of 2018). The new Section 120A and 120B were introduced whereby, *it is now prohibited to mortgage an undeveloped land. It is the requirement of the Land Act now that, any loan taken from the undeveloped land must be first utilized to develop the land not otherwise* (S. 120A(2)(b)). The amendments also require the Mortgagor to furnish information, within six months, to the Commissioner for Lands on the use/investing the loan in developing the mortgaged land.



**C. The Statistics Act, Cap. 351** was also amended by the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2018 (Act No. 8 of 2018) to *restrict the publication of statistics without prior government approval*. The amendment entailed imposition of a penalty of TZS 10M or minimum 3 years or to both to any person who publishes or causes to be published or communicates any official statistic or statistical information contrary to this Act. Further, additional changes made on the definition of official statistics to mean, statistics produced, validated, compiled and disseminated by or under the authority of the Bureau. The Director General of the National Bureau of Statistics has been re-designated with a new title known as Statistician General.



### KEY ISSUES:

- In 2018 several laws and regulations were amended and/or enacted that has increased the compliance and regulatory framework for business in Tanzania
- Particular attention and major focus have been on the Mining Sector. About 6 regulations were passed in 2018 by the government to put into effect the Amendments of the Mining Act in 2017.
- Generally, there is continued emphasis by the Government on local content requirement for business in Tanzania.

#### D. Official appointment and recognition of Dodoma as Tanzania's capital city

On 24<sup>th</sup> September 2018 the President of the United Republic of Tanzania assented into law the declaration of Dodoma, as a Capital City of the United Republic of Tanzania pursuant to the Dodoma Capital City (Declaration) Act, 2018 (Act No. 5 of 2018). The enactment of the act, legalizes and officially appoint the City of Dodoma as the Capital City of Tanzania. Prior to the enactment of this act, there has never been a specific act of parliament defining the country's Capital city.

#### E. The official recognition of Teaching as profession and regulation of the profession through the enactment of the **Teachers Professional Board Act, 2018 (Act No. 6 of 2018)**. *The act defines*

*a teacher as, a person who pursued a teaching course in a teaching college or university recognized by the Teachers Board to teach pupils or students in pre-primary, primary, secondary, and teachers and adult education institution.* On top of that, the Act establishes a board, which among others maintain the register of professional teachers and promote teaching standards in Tanzania. The act imposes a penalty of up to TZS 3Million or a jail sentence of 3 months or both, against any person who teaches or employ an unregistered teacher in Tanzania.



#### F. The enactment and operationalization of PSSSF and NSSF as two social security funds. In

February 2018 the parliament passed the **Public Service Social Security Act, 2018 (Act No. 2 of 2018)**. The Act established the Public Service Social Security Scheme in respect of the service of employees in the public service. The Act repealed the existed pension funds including the Public Service Retirement Benefit Act, the LAPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the PPF Pensions Fund Act. The National Social Security Fund Act Cap. 50 (NSSF Act) was as well amended to provide for consequential changes to the Pension scheme in Tanzania focusing on social security benefits to employees in the private sector. *The coming into effect of the PSSSF Act on the 01<sup>st</sup> August, 2018 effectively remodeled the pension system into two tier system of Social Security Schemes in Tanzania.* Those are, the Public Service Social Security Fund (PSSF) under the Public Service Social Security Act, 2018 and the Private Sector Social Security Scheme (NSSF) under the National Social Security Fund Act Cap. 50. The latest outcry on the operationalization of the PSSSF Act has been on the enactment of the Social Security Schemes (Benefits) Regulations, 2018 (GN No. 467 of 2018). The Regulations provides for a formula whereby, a retiring Employee would be entitled to only 25% of the lumpsum payment upon retirement and 75% to be paid monthly for the period of 12 years after retirement (Regulation 8). *Eventually, on 28th December 2018 the President ordered the formula used to calculate the retirement benefits before the merger of the pension funds be used until 2023. The directive was made when the President met with the leaders of Trade Union Congress of Tanzania (TUCTA) to discuss on the issue that had raised many concerns to the workers.*



#### About FIN & LAW

FIN & LAW is a full service highly accredited law firm in Tanzania with top notch legal practice on corporate and commercial matters including Banking law and Capital Markets, Wealth Management, Insolvency, Intellectual Property law, Mining, Oil & Gas, Tax, Commercial Litigation, Merges and Acquisitions, Competition and Anti-Trust law.

G. In 2018 we also saw the amendment of the Appellate Jurisdiction Act, Cap 141 and Civil Procedure Act, Cap. 33 through the **Written Laws (Miscellaneous Amendment) Act (No.3), 2018 (Act No. 8 of 2018)** to facilitate just, expeditious, proportionate and affordable resolution of all disputes brought before the Courts in Tanzania. *The amendments have been regarded as a step towards reducing the procedural and legal technicalities that had rendered administration of justice unnecessarily complicated.* In achieving the objectives, we saw the publication of Judicature and Application of Laws Act (Electronic Filing) Rules, 2018 (Government Notices No. 148 of 2018) that provided for electronic filing of documents to the Courts in Tanzania. Moreover, the Court fees rules were as well revised through the Judicature and Application of Laws Act (Court Fees) Rules, 2018 (Government Notices No. 247 of 2018) to provide for clear and ascertainable court fees in Tanzania. On top of that, in facilitating the just and affordable justice, the Chief Justice also issued circular No. 1 of 2018 with effect from 06<sup>th</sup> March 2018 to abolish court fees on copies of the court judgments, orders, decrees and drawn orders.



H. On Technology and Telecommunication sector, the Government operationalized the regulations on blogging and online content providers pursuant to the **Electronic and Postal Communications (Online Content) Regulations, 2018 (Government Notice No. 133 of 2018)**. The regulations were made effective on 16<sup>th</sup> March 2018. These regulations are made under section 103 (1) of the Electronic and Postal Communications Act, Cap. 306 *demands for registration of bloggers; internet cafes; online content hosts; online forums; online radio or television; social media; subscribers and users of online content.* The regulations require online content providers to ensure that online content is safe, secure and does not contravene the provisions of any written law but also consider trends and cultural sensitivities of the general public. According to regulation 8, all internet cafes are required to ensure that all computers used for public internet access at the café are assigned public static IP addresses. It is now the requirement under regulation 9(2) that all the CCTV images recorded in the Internet Cafe as well as the register of users are to be kept for a period of twelve months.



I. **Amendment of the Taxes:** Several tax laws were also amended in 2018 through Finance Act, 2018 (Act No. 4 of 2018) as the result of the budget proposals submitted to the parliament in June, 2018. Among the key amendments were on:-

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a) Income Tax Act, Cap. 332 for the *reduction of the Corporate Income Tax from 30% to 20% for new investors in the pharmaceutical and leather industries for five consecutive years from the date of commencement of production.*



b) Value Added Tax, Cap. 148 on the *exclusion of Non-Government Organisations (NGOs) from VAT Refunds* (input tax) on an acquisition or imports. Also, amendment to provide VAT exemption on Sanitary pads to make it available and affordable to women and girls. In promoting the investment on Pharmaceutical Industry, VAT exemption has been allowed on pharmaceutical packaging materials Specifically for use by the local manufacturers. But in order to enjoy the exemption the packaging materials must be printed or labeled with the name of the local pharmaceutical Company.

c) Gaming Act, Cap 41 was also *amended to provide increase taxes for Sports Betting Operations from 6% on stakes (sales) to 25% on gross gaming revenue.*

**J. On Mining and Extractive industry, the 2018 was a turning point.** *About 6 Regulations were gazetted to bring a new regulatory framework of the sector.* This follows the earlier amendments of the Mining Act, 2010 in 2017 through the Written Laws (Miscellaneous Amendment) Act, 2017 as well as enactments of the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 and the Natural Wealth and Resources (review and renegotiation of unconscionable terms) Act, 2017. To put into operations the amendment and enactment of the said legislations, in January 2018 several regulations were gazetted to provide for the official regulatory platform of the sector. The new regulations includes the following:-

**a) Mining (Mineral Rights) Regulations, 2018 (Government Notice No. 1 of 2018)**

*The regulations prescribe the procedures for the application and renewal of mineral rights in Tanzania. The regulations define the shapes of the mining areas, Demarcation and pegging of the mining areas also the size of each the mining areas licensee (Prospecting License, Special mining license, Mining license and Primary mining license).* The regulations require the Prospecting License holder to have defined minimum expenses during the prospecting period but also, keep record of these expenses supported by receipts, vouchers and such other documentary evidence of expenditure as the Commission may require. The regulations also provide for the procedures for the Amalgamation and Convention of a Primary Mining License to a Mining license. The publication of these regulations also cancels all the Retention Licenses that were issued and renders them with no legal effect also reverts to the Government all areas which were under retention licenses.

**b) Mining (Minerals and Mineral Concentrates Trading) Regulations, 2018 (Government Notice No. 2 of 2018)**

*These regulations prohibit any export or import of Minerals or Mineral concentrates unless there is an authorized licensing and export/import permit for that purposes.* According to Regulations 3 and 4 the Mining Commission can only issue such export or import permit upon an evidence for payment of royalty or in the case of a holder of a processing, smelting or refining licence or provisional payment in lieu of royalty.

**c) Mining (Local Content) Regulations, 2018 (Government Notice No. 3 of 2018)**

These regulations were passed with *the main objectives of promoting the maximization of value-addition and job creation using local expertise, goods and services, businesses and financing in the mining industry value chain and their retention in Tanzania (Regulation 4).* The focus is on developing local capacities in the mining industry value chain. The regulations establish Local Content Committee (Regulation 5) responsible for implementation of the regulations and ensuring measurable and continuous growth in local content in all mining activities. The regulations require a contractor, subcontractor, licensee or other allied entity when making application to undertake mining activity prepare and submit a local content plan for approval by the Commission. The first schedule to the Regulations provides for specific local content levels to be attained from date of effectiveness of licence or mining agreement. For instance, at the start, the Mining Company must use 10% of local services. Within 5 years Mining Company should increase local content to 50% and by year 10 a mining company should use local content up to the levels of 60-90%.



**d) Mining (Radioactive Minerals) Regulations, 2018. (Government Notice No 4 of 2018)**

These regulations apply to exploration, mining, processing, tailing, storage, transportation, acquisition, disposal and exportation of radioactive minerals. *The regulations provide for measures in enhancing radiological safety, security and environmental protection. The regulations prohibit any activity relating to prospect, mine or process of radioactive mineral unless there is conformity to the standards as provided for in the Environment Management Act Cap. 191, the Atomic Energy Act Cap. 188, the Water Resources Management Act.* More importantly, no license shall be granted in dealing with radioactive minerals unless a person provides a written undertaking not to involve in the production of nuclear weapons or devices. To ensure safety and environment protection resulting from Radioactive minerals, A holder of radioactive mining license shall not conduct any mining operations for radioactive minerals unless the holder submits to the Mining Commission for approval a Radiation Operation Management Protection Plan; a Radioactive Waste Management Plan; a Plan to Transport and Store Radioactive Ores and Products; a Quantitative Radiological Hazard and Safety Assessment in accordance with the guidelines; a detailed Mine Water Management Plan for both natural and mine water, on and off site (Regulation 9)

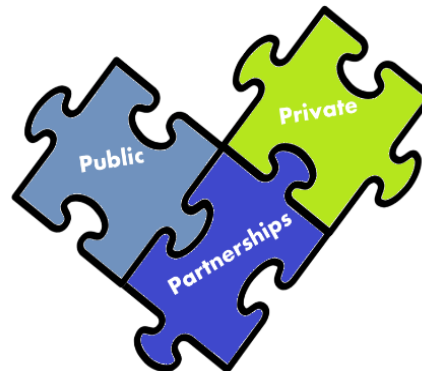
**e) Mining (Mineral Beneficiation) Regulations, 2018 (Government Notice No. 5 of 2018)**

The regulations *lay down the procedure for the application, handling as well as rights and duties for mineral processing licence, mineral smelting licence and mineral refining licence.* The regulations lay obligations of holder of processing, smelting or refining licence to employ and train Tanzanians and implement a succession plan on expatriate employees; implement plan for procurement of goods and services available in Tanzania and to adhere to environmental management safety in stacking or dumping any mineral or waste products.

**f) Mining (Audit and Inspection of Records) Regulations, 2018 (Government Notice No. 7 of 2018).** These regulations put an obligation to *every mineral right holder to keep and maintain records in respect of all mining activities or operations within the mining areas or at the mineral rights holder's office located in Tanzania (Regulation 3). Records must be kept for a period of five or more years* as the Commission for Mining may determine. The information envisaged by the regulations includes books of accounts, documents, or records of any kind; drilling logs; maps; vouchers etc. The Regulations creates an offence on fail to comply by imposing a fine up to one hundred fifty million or to imprisonment for a term of up to 12 months (Regulation 16).

**K. Public Private Partnership Amendment Act, 2018 (act No. 9 of 2018)**

Pursuant to the Public Partnership Amendment Act, 2018 (act No. 9 of 2018) *the Public Partnership Act was amended by the parliament to improve the PPP implementation in Tanzania and removing implementation legal challenges.* The amendment act has reduced the red tape and bureaucracy in approval of PPP projects and the time frame required on approval (S. 7A(1)(c) and 7A(2). Notable amendment included the requirement of embracing local content in PPP project (S.15(5). Dispute resolution under PPP should be done through either Mediation or arbitration and must be adjudicated by bodies or organs within Tanzania and established by the laws of Tanzania. PPP Projects relating to Natural Resources are tied to follow the requisite legislations governing natural resources (Section 25A of the act) i.e. Natural Wealth and Resources (Permanent Sovereignty) Act, No. 5 of 2017 and Natural Wealth and Resources (Review and Renegotiation of Unconscionable Terms) Act, No. 6 of 2017.



**L. Non-Government Organisation Regulations:** In lining up the operations of Non-Government Organisations (NGOs), the Minister for Health, Community Development, Gender, Elderly and Children issued the Non-Government Organisation (amendments) Regulations, 2018 (Government Notice No. 609 of 2018), amending the earlier regulations of 2004. *The amendment regulations requires any NGO in Tanzania to adhere to Financial Transparency and Accountability* including:-

- a) Disclosure of fundraising activities –sources, expenditure and activities to be carried out.
- b) Publish bi-annually financial reports –all information of sources and expenditure in a wide circulated newspaper and other media channels.
- c) Disclose contracts and agreements –entered with donor or person who grant the fund.
- d) Adhere to defined financial regulations –that are consistent with sound financial management principles and practice.
- e) Zero tolerance on corruption –money laundering and other forms of substantive misuse of funds/embezzlement.
- f) Protection of State Sovereignty –Not to enter into contracts that undermine sovereignty of the state and rights of the people.



**M. The Microfinance Act, 2018**

The Microfinance Act, 2018 (Act No. 10 of 2018) was enacted to provide for *the regulatory framework for licensing, monitoring and supervision of microfinance activities in Tanzania. The Act prescribes different tiers of Microfinance institutions and how they can be transformed from one tier to another.* These includes:-

- Tier 1** -Banks and microfinance banks.
- Tier 2** -Credit companies and financial organizations.
- Tier 3** -Savings and Credit Cooperatives Societies (SACCOS)
- Tier 4** -Community microfinance groups.



The Act requires all microfinance institutions to be issued with an approval by the Bank of Tanzania (BoT) prior to the opening or closing of business. *The BoT has been vested with powers to supervise and regulate the microfinance business through investigating, inspecting books of accounts, returns or records as well as demanding any information from the employee or agent of any microfinance business.* Moreover, the Act demands microfinance institutions to comply with consumer protection principles such as vetting of standard contracts, transparency on interest rates as well as lawful debt collection and recovery process. Finally, the Act requires microfinance institutions to comply with the Anti-Money Laundering Act and establish controls for identifying and reporting suspicious transactions.

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