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MISCELLANEOUS AMENDMENTS OF THE LAWS GOVERNING CIVIL SOCIETY ORGANIZATIONS (CSOS) IN TANZANIA: IMPLICATIONS AND WAY FORWARD

1. Background Information

The Written Law (Miscellaneous Amendments) Bill of 2019 (Act No. 3/2019) was passed by National Assembly in May 2019 and thereafter, it became law on 1st July 2019 after the bill was assented by the President of Tanzania on 30th of June 2019. This Act amends eight (8) laws, including the Companies Act, Cap. 212; the Non-Governmental Organizations Act, Cap. 59 (NGOs law); the Societies Act, Cap. 337; and, the Trustees' Incorporation Act, Cap. 318. These are also main laws governing operation of a large section of CSOs in Tanzania Mainland.

1.1 Overview of the Changes

The legislative changes highlighted above, will have the following implications to the regulatory framework of the broader civil society sector:

- i. Changed eligibility criteria under different laws (re-definition of companies, NGOs, societies and trustees).
- ii. Increased oversight powers of registrars and ministers.
- iii. Transferring of registration status from one law to another.
- iv. Limiting the validity of NGOs' certification to a span of ten years subject to renewal.

1.2 Companies Act, Cap. 212

□ Definition of companies:

- Meaning of companies limited by guarantee have been changed and re-defined. An entity will be qualified to be called a company limited by guarantee if it is involved in investment, trade or commercial activities and any other activity as the Minister may prescribe. Some of the CSOs which were formerly registered as companies limited by guarantee will no longer be eligible to operate as not-for-profit entities under this law.

□ Deregistration of all CSOs registered as companies:

- Two months after operation of the new law, all CSOs which were registered as companies limited by guarantee will cease to operate. However, those with certificate of compliance will be deemed to have been registered under the NGOs Act, Cap. 59. This will be applicable to both locally registered entities/

CSOs and international NGOs which obtained certificates of incorporation under the Companies Act. This change has to be accomplished within two months only from the date of operationalization of this law on 1st July 2019. The Minister may extend time for such new compliances.

□ **Power to de-register companies:**

- A new provision (section 400A) is added to the Companies Act, the provision gives the Registrar of companies more powers - of striking off from register any company which, among other things, is fraudulently registered, conducts illegal business or has all of its shareholders or directors prohibited from entering the country by operation of law.

1.3 NGOs Act, Cap. 59

□ **New definition of NGOs:**

- The additions include promotion of good governance, law and order and human rights. The deleted words are 'autonomous' and 'public interests' (substituted by the phrase 'welfare of the community and public').

□ **Exclusion of other CSOs:**

- The eligibility criteria for being non-governmental organizations (NGOs) also exclude those which are under the auspices (support) of religious organizations or faith propagating organizations, trade unions, sports club and political parties, which were previously, recognized so under the law.

□ **Power of the Minister:**

- A new provision has been introduced which gives discretionary powers to the Minister responsible for NGOs to declare any organization not to be an NGO for purposes of this law.

□ **Additional statutory powers to the Registrar of NGOs:**

- Suspending operation of any NGO which violates this law pending determination of the Board of NGOs.
- Conducting monitoring and evaluation of NGOs on quarterly basis.
- Investigating any matter against an NGO in collaboration with the law enforcement agencies (in Tanzania, include, police; and, the Prevention and Combating of Corruption Bureau (PCCB)).

□ **Limitation of validity period of the Certificates of Registration:**

- A life-span of ten (10) years as the validity period for a certificate of registration has been introduced.
- A leeway for renewal is given but subject to:
 - Application for renewal made six months before the expiry of the validity period.
 - Satisfaction of the Board of NGOs that an applicant for renewal has complied with requirements of registration under this and any other written laws.

□ **Additional compliance requirements:**

- A new requirement of disseminating audited reports to the public - apart from the council and board has been introduced.
- The emphasis on adherence to the principles of financial transparency and accountability as prescribed under other written laws.

1.4 Societies Act, Cap. 337

□ **Definition of Societies:**

- The previous definition has been replaced. The new one which introduces slight changes, namely removal of clubs, companies and partnerships from the list of eligible societies. It also pre-defines or determines the nature of interventions a society can be registered for.
- The eligibility criteria have been slightly twisted from '*whatever its nature and object*' of a society to (only) '*professional, social, cultural, religion or economic benefits or welfare of its members.*'

□ **Flexibility to operate a society in Tanzania:**

- A new provision introduced to remove the leeway for foreign registered (international) organizations to operate in Tanzania without being locally re-registered. Under the previous law, such organizations (societies) were allowed to operate in Tanzania on the condition that, their office-bearers or members were residing in the country or had representation. This is no longer the case. It is the same legal regime now under all laws governing CSOs.

□ **Power of the President to declare a society unlawful:**

- Section 8 is amended. It affirms multi-control of the societies' operations whereby, the President of Tanzania has discretionary powers to declare any registered society 'unlawful' or 'dangerous to the good governance of Tanzania.'
- The impact of that order or declaration is deregistration of a society.

□ **Penalties for offences under the Act:**

- Amendments to introduce severe punishment against the office bearers or managers of the society which is declared unlawful.
- The fine is hiked from 'not exceeding TZS 10,000' to 'not less than TZS 1,000,000 but not exceeding TZS 10,000,000.'

1.5 Trustees' Incorporation Act, Cap. 318

□ **Definition of Trust and Trustees:**

- A new provision is introduced to define 'trust' and 'trustees', which were missing before the amendments.
- There is no restriction imposed through the amendments. Therefore, the status of organizations or individuals registered as trustees remains the same.

2. Implications of Amended Provisions to CSOs and Way Forward

Basing on the viewpoint of the nature of amendments made under those and other laws, the following could be the implications for every stakeholder to consider:

- (i) The flexibility that existed in registration of NGOs no longer exists after these amendments. All NGOs must now comply and regulated under the NGO Act.
- (ii) Civil societies registered under other laws and currently doing community work (service delivery, advocacy, reforms, community development, grassroots

development, et cetera) will have two months from 1st July 2019 to comply with the NGOs Act. Failure to comply will make the CSOs cease to operate by operation of the law.

- (iii) All international NGOs must comply in the same manner as local NGOs basing on the current eligibility criteria.
- (iv) Certificate of registration under the NGOs law will now be valid for 10 years only with effect from 1st July 2019. After 10 years, NGOs will be obliged to apply for renewal of the same from the Registrar of NGOs.
- (v) Registrar of NGOs has more regulatory powers under the new legislation under the NGOs Act.
- (vi) NGOs are required to file quarterly reports. NGO activities will be monitored and evaluated on quarterly basis by the Registrar of NGOs.
- (vii) The amendments do not solve the charitable status issue for CSOs to enjoy tax reliefs from Tanzania Revenue Authority (TRA). Charitable status certificates for the purpose of tax reliefs will continue to be issued by Commissioner of TRA under the Income Tax law.

3. Way Forward

- (i) The government through the Registrar of NGOs has designated five zones as registration centers (Dar es Salaam, Dodoma, Kilimanjaro, Mwanza and Mbeya) in order to fast-track compliance for CSOs registered under other laws, as well as those seeking new registration. CSOs interested in complying with the NGO Act are encouraged to use this window.
- (ii) After the closure of this window, issuance of certificates of compliance and new registrations will be done at the Office of Registrar of NGOs in Dodoma.

About Foundation for Civil Society (FCS)

Foundation for Civil Society (FCS) is an independent Tanzanian not for-profit development organization that provides grants and capacity building services to Tanzanian Civil Society Organizations (CSOs). FCS was registered as a legal entity in September 2002 and became operational in January 2003. For over 17 years, FCS has strengthened more than 5,500 CSOs in all regions of Tanzania, mainland and Zanzibar, with capacity and resources to engage and reach more than 31 million citizens.

For assistance or clarification on these matters, you can consult our Business and Partnership Department.

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