

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

No. 3

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THE BUSINESS LAWS (MISCELLANEOUS AMENDMENTS) ACT, 2012

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THE UNITED REPUBLIC OF TANZANIA



NO. 3 OF 2012

I ASSENT,

JAKAYA MRISHO KIKWETE,
President[15th June, 2012]

An Act to amend laws which regulates the conduct of business with a view to create more conducive climate for doing business in Tanzania.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

1. This Act may be cited as the Business Laws (Miscellaneous Amendments) Act, 2012.
2. The laws specified in Parts II, III, IV and V are amended in the manner specified in their respective Parts.

PART II
AMENDMENT OF THE BUSINESS NAMES (REGISTRATION) ACT,
(CAP. 213)

3. This Part shall be read as one with the Business Names (Registration) Act, hereinafter referred to as "the principal Act".

Amend-
ment of
the long
title

4. The principal Act is amended in the long title by repealing and substituting for it the following:

“An Act to provide for the registration of firms, individuals and corporations carrying on business under a business name and to provide for other related matters.”

Amend-
ment of
section 1

5. The principal Act is amended by repealing section 1 and replacing for it the following:

“Short title 1. This Act may cited as the Business Names Act.”

Amend-
ment of
section 2

6. The principal Act is amended in section 2, by-

- (a) inserting the words “every trade and” between the words “includes” and “profession” appearing in the definition of the term “business”;
- (b) adding in its appropriate alphabetical order the following new definitions:

““carrying on business” includes establishing a place of business and soliciting or procuring any order from any person in Tanzania;

“the Registrar” means the Registrar or any of the Deputy Registrars performing the functions of registration of business names under this Act;

“Minister” means the Minister responsible for trade;

“corporation” means any legal person that possess a corporate personality status;

“correspondence address” includes e-mail, fax, website and telephone numbers; and

“surname” in relation to a peer or person usually known by a title different from his surname, means that title.”

Amend-
ment of
section 3

7. The principal Act is amended in section 3, by-

- (a) deleting subsection (1) and substituting for it the following:

“(1) The Minister may appoint a Registrar, Deputy Registrar and such Assistant Registrars as may, from time to time, be required for the purposes of this Act.”; and

- (b) inserting the words “and Assistant” between the words “Deputy” and “Registrar”.

8. The principal Act is amended in section 6(1), by-

- (a) deleting the words “send by post” appearing in subsection (1);
- (b) adding the phrase “its postal and any other correspondence address” at the end of paragraph (a); and
- (c) deleting the phrase “twenty one years, it shall be sufficient for him to state his age as full age” appearing in the proviso and substituting for it the phrase “eighteen years, it shall be sufficient for him to state his age as full age and that the use of general terms to describe nature of business shall be avoided.”

9. The principal Act is amended in section 8, by deleting the words “twenty-eight” and substituting for them the word “twenty one”.

10. The principal Act is amended in section 9 as follows:

- (a) in subsection (1), by-
- (i) deleting paragraph (b) and substituting for it the following new paragraph (b):
“(b) which is expressing or implying the sanction, approval or patronage of the Government;”;
- (ii) deleting a “full stop” appearing in paragraph (d) and substituting for it a “semi colon” and adding immediately thereafter the word “and”;
- (iii) adding immediately after paragraph (d) the following new paragraph (e):
“(e) which in the opinion of the Registrar, is undesirable;”.
- (b) in subsection (3), by deleting the words “twenty-eight” and substituting for them the word “five working days”; and
- (c) in subsection (4), by deleting the phrase “whose decision shall be final”.

Amend-
ment of
section
11

11. The principal Act is amended in section 11, by deleting the words “twenty-eight” and substituting for them the word “fourteen”.

Amend-
ment of
section
12

12. The principal Act is amended in section 12, by-

(a) deleting subsection (1) and substituting for it the following new subsection:

“(1) Where a business name sought to be registered under this Act is in contravention of section 9(1) or is by inadvertence or otherwise, registered, the Registrar may submit, by correspondence address, a notice addressed to the person in relation to whom the name is registered at the place shown in the register where business is carried on under that name:

(a) stating the Registrar’s proposal to cancel or refuse the registration of that name upon expiration of a period of not more than twenty one days; and

(b) stating the reasons for the proposed cancellation or refusal.”;

(b) deleting the phrase “whose decision shall be final” appearing in subsection (2).

Amend-
ment of
section
13

13. The principal Act is amended in section 13, by deleting the words “two hundred” and substituting for them the words “fifty thousand”.

Amend-
ment of
section
18

14. The principal Act is amended in section 18, by deleting the words “five thousand” and substituting for them the words “fifty thousand”.

Amend-
ment of
section
20

15. The principal Act is amended in section 20, by-

(a) deleting the word “post” appearing in subsection (1) and substituting for it the words “correspondence address”; and

(b) adding immediately after subsection (4) the following new subsections:

“(5) Upon removal from register, any firm,

individual or corporation, that firm, individual or corporation shall, within twenty one days, from the date of the expiration of the notice of removal from the register, surrender to the Registrar, any certificates issued under this Act.

(6) Upon receipt of a certificate in terms of subsection (4), the Registrar shall cancel that certificate."

16. The principal Act is amended by adding immediately after section 24 the following new section:

"Forms

25. Every certificate issued under this Act shall be in the form set out in the Second Schedule to this Act."

PART III

AMENDMENT OF THE COMPANIES ACT, (CAP. 212)

17. This Part shall be read as one with the Companies Act, hereinafter referred to as "the principal Act".

18. The principal Act is amended in section 3(1), by deleting a full stop at the end of that subsection and insert thereat the phrase "save for a limited liability single shareholder company formed by an individual."

19. The principal Act is amended in section 4(1), by inserting between the words "English" and "language" the words "or Kiswahili".

20. The principal Act is amended in section 9(2), by inserting between the words "English" and "language", appearing in paragraph (a), the words "or Kiswahili".

21. The principal Act is amended in section 14(2), by adding immediately after the words "or registered officer" the phrase "e-mail addresses, telephone, fax numbers and websites, if any".

22. The principal Act is amended in section 26, by-

- (a) designating the contents of section 26 as subsection (1);
- (b) deleting a full stop at the end of subsection (1) as

- re-designated and inserting thereat the phrase “save for limited liability single shareholder company”; and
 (c) adding immediately after subsection (1) the following new subsection:

“(2) The single shareholder shall, where he contravenes the provisions of this Act, be sued personally and in his own name.”

Addition
of section
26A

23. The principal Act is amended by adding immediately after section 26 the following new section:

“Single
share-
holder

26A.-(1) A limited liability single shareholder company shall be formed by one member.

(2) The company’s list of members shall contain:

- (a) the name and address of the sole member; and
- (b) identification and a statement that the company contains only one member.

(3) Where the membership of a limited liability single shareholder company increases from one to two or more, the occurrence of that event shall be entered into the company’s register of members with-

- (a) the name and address of the person who was formerly the sole member;
- (b) a statement that the company ceased to have one member; and
- (c) the date on which that event occurred.

(4) A company or any officer of the company who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine of shillings five million or to imprisonment for a term of two years or to both.

(5) The Minister may make regulations and rules for carrying out the provisions of this section.”

Amend-
ment of
section
69

24. The principal Act is amended in section 69(4), by deleting the words “five working days” and substituting for them the words “fourteen working days”.

Amend-
ment of
section
186

25. The principal Act is amended in section 186, by deleting a full-stop at the end of that section and inserting thereat the phrase “save for a limited liability single shareholder company which shall have one Director.”

Amend-
ment of
section
187

26. The principal Act is amended in section 187, by adding immediately after subsection (3), the following new subsection:

“(4) The requirement for a company to have a Secretary as provided for under subsection (1) shall not be necessary for a limited liability single shareholder company.

Amend-
ment of
section
275

27. The principal Act is amended by repealing section 275 and substituting for it the following provisions:

“Jurisdi-
ction to
wind-up
companies
registered in
Tanzania

275.-(1) The High Court shall have jurisdiction to wind up any company registered in Tanzania and a body corporate as provided for in section 279(2).

(2) The District or Resident Magistrate Court shall have original jurisdiction to wind-up a single shareholder company registered in Tanzania and a body corporate.

(3) The provisions of sections 276, 277, 278 and 279C(1) shall not apply to a limited liability single shareholder company.

(4) The Minister may make regulations governing the winding-up of a limited liability single shareholder company.”

28. The principal Act is amended in section 436, by adding immediately after subsection (2) the following new subsections:

“(3) Where a foreign company change its name in the country of origin, that company shall, within thirty days of the change, submit to the Registrar a certified copy of the certificate of change of name.

(4) Upon receipt of the certified copy, the Registrar shall issue a certificate of change of name.

(5) The Registrar shall not issue a certificate of change of name of a foreign company if the new name is similar to the name existing in the Register of Companies.

(6) Where the Registrar cannot issue a certificate of change in terms of subsection (5), the Registrar shall advise the foreign company concerned to submit an alternative name.”

PART IV

AMENDMENT OF THE TANZANIA TRADE DEVELOPMENT AUTHORITY ACT,
(NO. 4 OF 2009)Constru-
ction
Cap.155

29. This Part shall be read as one with the Tanzania Trade Development Authority Act, hereinafter referred to as “the principal Act”.

Amend-
ment of
section 5

30. The principal Act is amended in section 5, by-

- (a) inserting the words “and regulate” between the words “integrate” and “the” appearing in paragraph (b) of subsection (1);
- (b) adding immediately after paragraph (o) the following new paragraph:
 - “(p) authorize any person, organization or institution wishing to undertake within and outside Tanzania any international trade fair exhibition and to facilitate, assist and where necessary provide consultancy and technical advisory services to such person, organization or institution.”
- (c) renaming subparagraphs (p) and (q) as sub paragraphs (q) and (r), respectively.

Amend-
ment of
section 8

31. The principal Act is amended by repealing section 8 and replacing for it the following:

“Appoint-
ment and
functions of
the Director
General

8.-(1) There shall be appointed by the President a Director General and Deputy Director General of the Authority.

(2) A Director General shall be the chief executive officer of the Authority and the Secretary to the Board of Directors.

(3) Appointment of the Director General and Deputy Director General shall be made on the basis of the principle that where the Director General hails from one part of the United Republic, the Deputy Director General shall be a person who hails from the other part of the United Republic.”

Amend-
ment of
section 12

32. The principal Act is amended in section 12, by -

- (a) adding immediately after paragraph (c) the following new paragraph:
“(d) fee and levy or charge from services provided;” and
- (b) renaming paragraph (d) as paragraph (e).

Amend-
ment of
section 20

33. The principal Act is amended in section 20, by deleting the designation “Tanzania Trade Development Authority” and substituting for it the designation “Board of External Trade.”

Amend-
ment of
the
Schedule

34. The principal Act is amended in the Schedule, by-

- (a) adding immediately after paragraph 1(1) the following new paragraph:
“(g) one member from the Ministry responsible for local government;”
- (b) renaming paragraphs (f), (g) and (h) as paragraphs (g), (h) and (i), respectively.

PART V

AMENDMENT OF THE MERCHANDISE MARKS ACT, (CAP.85)

Constru-
tion
Cap.85
Amend-
ment of
section 2

35. This Part shall be read as one with the Merchandise Marks Act, hereinafter referred to as “the principal Act”.

36. The principal Act is amended in section 2, by inserting in its appropriate alphabetical order the following new definitions:

“intellectual property rights include any right protected under:

- (a) the Copyright and Neighbouring Right Act;
- (b) the Trade and Service Marks Act;
- (c) the Patents Act;
- (d) the Protection of New Plant Varieties Act; and
- (e) any other related law;

“counterfeit goods” means goods that are a result of counterfeiting and includes any goods generally known as pirated goods and any other means used for counterfeiting;

“exporter” includes any person who, at the relevant time:

- (a) is the owner or is in control or possession of any goods exported or to be exported from Mainland Tanzania;
- (b) carries the risk for any goods so exported or to be

exported;

- (c) represents or acts as if he is the exporter or owner of any goods so exported or to be exported;
- (d) takes or attempts to take any goods from Tanzania;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be exported;
- (f) acts on behalf of any person referred to in paragraphs (a), (b), (c) or (d); or
- (g) in relation to imported goods destined for exportation from Tanzania, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside Tanzania representing or acting on behalf of such a manufacturer, producer, maker, supplier or a shipper;

“importer” includes any person, who at the material time-

- (a) is the owner or is in control or in possession of any goods imported or to be imported into Tanzania;
- (b) carries the risk for any goods imported or to be imported;
- (c) represents, or acts as if he-
 - (i) is the importer or owner of any goods so imported;
 - (ii) actually brings or attempts to bring any goods into Mainland Tanzania;
 - (iii) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported; and
- (d) acts on behalf of any person referred to in paragraphs (a), (b) or (c);

“protected goods” means-

- (a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual right or goods to which that subject matter has been applied by that owner or authority;
- (b) any particular class kind or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an Intellectual Property Right only with the authority of the owner or to which that subject matter may in law be applied by that owner or with the authority, but which has not yet been manufactured, produced or made to which that subject matter is not yet;

applied, with the authority of ,or by that owner, whichever is applicable;

“vehicle” means motorcar, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessels and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self propelled or not as well as any pack animal; and

“place” includes premises or any container or freight container irrespective of its size at, or in such place or premises;”.

Amendment of Part II

37. The principal Act is amended by deleting a title to Part II and substituting for it the following new title:

“PROHIBITION TO DEAL IN COUNTERFEIT GOODS”

Amendment of section 3

38. The principal Act is amended by repealing section 3 and replacing for it the following:

“Offence own counterfeit goods 3.-(1) A person shall not, in the course of trade-

- (a) own, possess or be in control of any counterfeit goods;
 - (b) manufacture, produce or make any counterfeit goods;
 - (c) sell, hire out, barter or exchange, offer or offer for sale of any counterfeit goods;
 - (d) expose or exhibit any counterfeit goods;
 - (e) distribute counterfeit goods;
 - (f) own or be in possession or be in control of any die, block, machine or other instrument for the purpose of, or use for counterfeiting;
 - (g) import into, export, transit through or trans ship within or outside Tanzania, except for private or domestic use by the importer or exporter any of such counterfeit goods;
 - (h) apply any false trade description of goods; or
 - (i) dispose in any other manner any counterfeit goods.
- (2) A person who contravenes the provisions of subsection (1), commits an offence and shall upon conviction be liable:
- (a) in case of a first offender -
 - (i) to imprisonment for a term not exceeding five years; or to a fine not exceeding ten million shillings;
 - (ii) to a fine of not less than three times the value of the prevailing retail total price of the goods in respect of each or item involved in an act of dealing in

- counterfeit goods to which the offence relates; or
- (iii) to both, such fine and imprisonment.
- (b) in case of a second or any subsequent offender-
 - (i) to imprisonment for a term not exceeding fifteen years; or
 - (ii) to a fine of not less than fifty million shillings or five times the value of the prevailing retail price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates or whichever amount is greater; or
 - (iii) to both, such fine and imprisonment.
- (3) A holder of an intellectual property right or his successor in title, a licensee or agent who, in relation to any protected goods, has reasonable cause to suspect that an offence against section (1) has been or is being committed may make a complaint to the Chief Inspector."

Amend-
ment of
section 6

39. The principal Act is amended in section 6 by:

- (a) deleting the phrase "to a fine of not less than ten million shillings but not more than fifty million shillings or to imprisonment of not less than four years and not more than fifteen years or to both such fine and imprisonment" appearing in the closing words and substituting for it the following words:
 - "(i) in case of a first offender:
 - (a) to imprisonment for a term not exceeding five years;
 - (b) to a fine not exceeding ten million shillings or not less than three times the value of the prevailing retail total price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates or whichever greater; or
 - (c) to both, such fine and imprisonment.
 - (ii) in case of a second or any subsequent conviction:
 - (a) to imprisonment for a term not exceeding fifteen years; or
 - (b) to a fine not less than fifty million

shillings or five times the value of the prevailing retail price of the goods in respect of each or item involved in the particular act of dealing in counterfeit goods to which the offence relates or whichever greater; or

 to both, such fine and imprisonment;”;

Amend-
ment of
section 10

40. The principal Act is amended in section 10, by inserting the word “Mainland” between the words “into” and “Tanzania”.

Amend-
ment of
section 11

41. The principal Acts amended in section 11, by inserting the word “Mainland” between the words “into” and “Tanzania”.

Amend-
ment of
section 12

42. The principal Act is amended in section 12, by-

- (a) inserting the words “ place or vehicle” between the words “premises” and “in”; and
- (b) deleting subsection (5).

Amend-
ment of
section 16

43. The principal Act is amended in section 16(2), by inserting the word “Mainland” between the words “to” and “Tanzania”.

Addition
of
sections
18B and
18C

44. The principal Act is amended by adding immediately after section 18A, the following new sections:

“Prohibition
to host
websites in
contravention
of the Act

18B.-(1) Any person who hosts, operates or manages any website or other electronic network by or through which counterfeit goods or copyright infringing materials are displayed or advertised, commits an offence.

(2) Upon receipt of a complaint from the owner of intellectual property right, the Chief Inspector shall forthwith issue a notice in writing to

the service provider to expeditiously disable access to the website or remove the relevant material from the website not later than three days after receipt of such request.

(3) Any person who contravenes the provision of subsection (2), commits an offence and shall be liable upon conviction, to a fine not exceeding twenty million shillings or imprisonment for a term not exceeding two years or to both.

(4) The Chief Inspector may, in his reasonable discretion and the powers conferred upon him under subsection (2), decline to accept any complaints of material from the website unless the owner of the intellectual property right on whose behalf the power is to be exercised has furnished security to the Chief Inspector of the amount and manner that the Chief Inspector of such require to indemnify the other inspectors against any liability that may be incurred in the exercise of such power.

Prohibition to
advertise
counterfeit
goods

18C. Any person who-

- (a) advertises counterfeit goods through any media;
- (b) aids, abets or assists in the advertising of counterfeit goods in any media whatsoever,

commits an offence, and upon conviction shall be liable to a fine not exceeding thirty percent of the loss caused to the plaintiff or to imprisonment for a term not exceeding two years."

Passed in the National Assembly on the 11th April, 2012.

DR. THOMAS D. KASHILILAH
Clerk of the National Assembly