

July 2017



New law to plug cybercrime

Days are numbered for cybercriminals as the government works on a new law to give enforcement 'teeth' against communication intruders, block ill information dissemination and to facilitate use of 'cyber evidence' in courts of law.

The law to be known as the Personal Data Protection Act will be ready in a year's time from now and it could add onto the two cybercrime laws dubbed Cybercrimes Act 2015 and Electronic Transactions Act 2015.

The Deputy Minister for Works, Transport and Communication, Engineer Edwin Ngonyani, disclosed this in a keynote address to launch the China-Tanzania cyber media round table meeting, which brought together various media stakeholders, government officials from Tanzania and their counterparts from China led by the Deputy Minister for Cyberspace Administration, Mr Ren Xianliang and the Chinese Ambassador to Tanzania, Mr Lu Youqing.

"In consideration of regional and international cyber legal requirements, Tanzania has enacted the Cybercrimes Act, 2015 and Electronic Transactions Act, 2015 ... and we are in the process of enacting the Personal Data Protection Act to make our cyberspace more secure ... in protecting users," he noted.

Eng. Ngonyani noted that the proposed law would for the first time allow the law enforcers to intrude suspected communications and allow the use of social media communication including pictures, messages as evidence in the court.

"This Act (Personal Data Protection Act) is expected to be ready in one year time from now and it will ensure safety to internet and mobile phone users" he clarified.

New laws on oil, gas and mining sectors now operational

On 3 July 2017, the National Assembly enacted the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2017. The Written Laws (Miscellaneous Amendments) Act 2017, which amends several laws, was enacted on 4 July 2017. All these laws are now in force.

The Natural Wealth and Resources (Permanent Sovereignty) Act 2017

The Act proclaims that the people, through the Government, have permanent sovereignty over all natural wealth and resources. The Act further provides that natural wealth and resources shall be inalienable and always remain the property of the People, and held in trust by the President on behalf of the People. In this regard, authorisation granted for extraction, exploitation or acquisition shall ensure that the Government obtains an equitable stake in the venture and the People acquire stakes in the venture.

Around the World

Judge calls for clarity on status of ECJ rulings in UK after Brexit

The government must provide clarity on whether it wants UK courts to take into account rulings of the European court of justice after Brexit. The ECJ rules on how EU laws should be interpreted and courts in member states are bound to follow its rulings. The government's position is that this arrangement should end for cases that have not already been put before the court when the UK leaves the EU.

Same-sex relationships still illegal in 72 countries

The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) released a report stating that same-sex relationships are still illegal in 72 countries around the world. The report identifies these 72 nations as "criminalising States" or countries where gay individuals can face legal ramifications if their relationships are disclosed. Out of these 72 countries, anti-gay legislation is applied equally to men and women in 45 nations. The report also states that four nations apply the death penalty to identified homosexuals while eight other states "allow" the death penalty but do not apply it in every instance.

Zimbabwe parliament amends constitution empowering president to select top judges

Zimbabwe's parliament voted to amend its constitution to empower the president to handpick the nation's top judges. With this amendment, President Robert Mugabe will have substantially greater power than he did under the 2013 constitution. Under the previous version, the president's power in selecting top judges was limited, as he could only choose justices from the judiciary services commission's list of candidates. The decision sparked political tensions in Zimbabwe, since many who oppose an authoritarian government have made great strides in recent years to democratize the country.

July 2017

It is now a mandatory requirement that beneficiation must be done locally. Similarly, all earnings from disposal or dealings in natural resources must be retained with Tanzanian banks and it is unlawful to keep such earnings in banks outside Tanzania unless it's repatriation of distributed profits.

All arrangement for exploitation of natural resources must be under Tanzanian laws and all disputes to be adjudicated in Tanzania. In addition, the National Assembly has been given mandate to review such arrangements or agreements. Moreover, the Act vests the Minister with powers to make Regulations prescribing the code of conduct for investors and minimum guidelines for inspection, monitoring and evaluation of investments.

The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act 2017

Defines 'unconscionable term' as any term in the arrangement or agreement on natural wealth and resources which is contrary to good conscience and the enforceability of which jeopardises or is likely to jeopardise the interests of the People of Tanzania. The Act enumerates instances of terms that may be deemed to be unconscionable to include terms: restricting the right of the State to exercise authority over foreign investment; inequitable and onerous to the state; restricts periodic review of arrangement or agreement which purports to last for life time; securing preferential treatment designed to create a separate legal regime to be applied discriminatorily for the benefit of a particular investor; subjecting the State to the jurisdiction of foreign laws and fora; undermining the effectiveness of State measures to protect the environment or the use of environment friendly technology.

The Act vests the National Assembly with powers to review any arrangements or agreement, both existing and new, relating to natural wealth and resources. All new arrangements or agreements must be reported in the next National Assembly sitting (within the first six days). If when report submitted, National Assembly finds that the arrangement or agreement contains unconscionable terms, it may, by resolution, advise the Government to initiate re-negotiation of the arrangement or agreement with a view to rectifying such unconscionable terms. After National Assembly so resolves, the government must serve, within 30 days, the other party a notice of intention to renegotiate such unconscionable terms. This notice shall state nature of the unconscionable terms and intention to expunge (remove) the term if renegotiation is not concluded within a specified term. Maximum time to renegotiate (unless time extended on mutual agreement) is 90 days from date of service of notice. Where no agreement is reached, such unconscionable term shall cease to have effect and be expunged by operation of the law.

The Written Laws (Miscellaneous Amendments) Act 2017, amends the Mining Act 2010

This primarily changes the Mining Act 2010, with very few non substantial amendments to the Petroleum Act. It states that all minerals property vested in the President in trust for the People and that the Government has a lien over any mining material, substance, product or associated products.

Further, mineral rights are not to be granted to Companies without a physical and postal address in Tanzania for purpose of serving notices or Companies that are not incorporated in Tanzania under Companies Act.

Around the World

Trump signs Russia sanctions bill into law

US President Donald Trump signed legislation imposing new sanctions against Russia and limiting the president's ability to ease existing sanctions. The legislation also imposes sanctions against North Korea and Iran. In a statement, Trump said that while he supports "tough measures to punish and deter aggressive and destabilising behavior ... this legislation is significantly flawed." Both the US House of Representatives and Senate voted overwhelmingly in favor of the sanctions last week. Moscow responded over the weekend by ordering the US to reduce its number of diplomats in the country to 455 and evacuate two buildings used by the embassy.

'Incredible shrinking airline seat': US court says seat size a safety issue

A US appeals court panel has said that federal officials must reconsider their decision not to regulate the size of airline seats as a safety issue. In a ruling, one of the judges called it "the case of the incredible shrinking airline seat". The Flyers Rights passenger group challenged the Federal Aviation Administration in court after the agency rejected its request to write rules governing seat size and the distance between rows of seats. A three-judge panel for the federal appeals court in Washington said the FAA had relied on outdated or irrelevant tests and studies before deciding that seat spacing was a matter of comfort, not safety.

July 2017

Holders of Mining License or Special Mining License must now cede minimum 16% free carried interests (non dilutable) to the Government. In addition, the Government can acquire up to 50% of the shares commensurate with the total tax expenditures incurred by the Government in favour of the mining company.

The Act establishes a power new body- the Mining Commission whose functions are very wide and include: issue licenses under the Mining Act; regulate and monitor the mining industry and mining operations in Tanzania; resolve disputes arising out of mining operations or activities; carry out inspections or investigations on health and safety issues related to mining operations or activities; advise the Government on, and ensure compliance with all applicable laws and regulations related to the health and safety of persons involved in mining operations or activities; monitor and audit environmental management, environmental budget and expenditure for progressive rehabilitation and mine closure; examine and monitor implementation of feasibility reports; mining programs and plans; annual mining performance reports; and environmental management plans and reports of mining companies; secure a firm basis of comprehensive data collection on national mineral resources and technologies of exploration and exploitation for national decision making; issue, suspend and revoke exploration and exploitation licences and permits.

A Mines Resident Officer is to also now be stationed in every mine site to monitor day to day production process, verify records, access to mineral storage facility inside mine, oversight over mineral removals and transportation to Government Minerals Warehouse.

The Act establishes the National Gold and Gemstone Reserve which will collect all royalties in paid in kind, impounded minerals to be deposited and Government purchased minerals to be kept. There will also be an establishment of Government Minerals Warehouse which shall be a Central custodian of all the metallic minerals and gemstones won by mineral rights holders in Tanzania.

Special Mining Licence now also requires Cabinet approval before issuance, with changes in royalty for gold, copper, gemstones, silver, diamonds from 5 to 6%.

License holder are now obliged to construct a secure storage facility for storing of won raw minerals and access to the raw minerals can only be procured from joint authorisation by an appointed official of the mining company and the Mines Resident Officer with special log book. Won minerals to be stored at the mine for not more than five days before they are moved to the Government Minerals Warehouse to await disposal for home refining, authorized mineral dealers or, where so permitted, for export. Raw minerals shall now only be removed from the mine under the supervision of the Government and shall be kept secured in the Government Minerals Warehouse.

All won raw minerals shall be mined, sorted and valued in the presence of Mines Resident Officer, an Officer from TRA and relevant institutions of state organs. The Government can under this Act reject valuation of minerals and can buy the minerals at the declared value. Further, all minerals won from the mines shall be beneficiated within the United Republic and no permits to be issued for export of raw minerals.

This law states that stabilisation clauses shall be specific and time bound and no life time stabilisation is henceforth allowed. Tax exemptions to be quantified with an option to convert quantified values of tax to convert into equity in mining company.

Around the World

Sex is just as important to older women, European court rules

Judges in Portugal were guilty of sexual discrimination in a medical compensation case when they decided that the importance of sex diminished with the age of a woman, Europe's human rights court has ruled. Maria Morais, a 50-year-old Portuguese woman with two children, claimed that medical negligence during botched gynaecological surgery at a Portuguese hospital in 1995 left her unable to have normal sex. She won her compensation case for physical and mental suffering, but the hospital then won a 2013 appeal that cut the payout by around one third. Justifying the cut, judges in Lisbon argued sex was not as important because of her age.

The three-judge panel — made up of two men and a woman — were all over 50, according to Morais's lawyer, Vitor Ribeiro. The case triggered a storm of protest in Portugal, where one female lawmaker described the ruling as "Taliban jurisprudence."

Low-crime Singapore investigating man after toothpicks found in bus seat

A 60-year-old Singaporean man is under investigation for inserting toothpicks into a seat on a public bus, a suspected case of "mischief" that could put him behind bars for up to two years, the police said.

"Through extensive inquiries and with the assistance of CCTV footage, officers ... established the identity of the suspect," a police statement said. Pictures of three toothpicks sticking up from the seat were posted last month by a Facebook user, who said she noticed them just as she was about to sit down.

July 2017



Enact tough tobacco law

The anti-tobacco campaigners want Tanzania to enact new laws that prohibit firms from advertising tobacco products, and also to increase taxes on cigarettes, make them more expensive and out of reach for the country's youth.

The new push for tougher laws to curb the use of tobacco and save the millions of lives lost to cancer, heart disease and related non-communicable diseases every year in Tanzania should be supported. There are many reasons why policy makers must seriously consider the latest proposals by the Tanzania Tobacco Control Forum (TTCF).

Considering that at least 14.1% of Tanzanians smoke every day, exposing themselves to life-threatening diseases, according to information from the ministry of Health, these are choices worth pursuing. The World Bank reports that increasing the real price of cigarettes by 10 per cent can save 10 million tobacco-related deaths worldwide and 700,000 in sub Saharan Africa.

Private Sector Wants a Part in Law Making

The CEO Roundtable Tanzania (CEOrt) wants to be a part of the process of drafting new bills in the country. Members argue that the private sector's views are important if Tanzania's business environment is to improve.

The CEOrt, which comprises of 130 chief executive officers and chairpersons of organisations that operate significant business in Tanzania, believes that there is something lacking with regard to the advancement of the dialogue between the public and private sectors.

This, it says, is more pronounced in the way some laws are drafted, endorsed and ultimately assented to, only to be amended later after the government gets convinced that the legislations will have negative impact on the private sector and the economy at large.

Among issues that CEOs want addressed is the 18% Value Added Tax (VAT) on tourism services, which was introduced in the 2016/17 budget.

Although the government has at several times said that the decision was arrived at after careful planning, the private sector believes it has had a number of negative impacts on its operations. Since only the wearer knows where the shoe pinches, CEOs want to be involved in the different stages of drafting bills before they become laws.

Around the World

Jordan parliament repeals law encouraging rapists to marry victims

The Jordanian parliament narrowly voted to repeal Article 308 of the penal code, which permitted rapists to escape punishment if they married their victims. Rights groups applauded the decision, calling it a step forward in ending violence against women, especially in Middle Eastern countries where girls and women were offered as gifts to their rapists to avoid family shame. Though the Jordanian Cabinet voted to revoke the law in April, Parliament's upper body and King Abdullah II must also approve this action before the repeal can take effect.

Kenya president's controversial reelection triggers deadly protest

According to the Kenya National Commission on Human Rights, a protest in opposition of the reelection of President Uhuru Kenyatta for a second five-year term has resulted in at least 24 people dead on Saturday. Kenya police used live ammunition and tear gas against citizens and opposition officials in order to quell the protest, which they say was a guise to rob and destroy property. Those opposing the reelection have justified their protest, declaring that the election was rigged and opposition leader Raila Odinga was the actual winner. The ballots, however, were recounted and the Elections Observation Group, Kenya's main poll monitoring organization, stated it found no evidence of manipulation. Nonetheless, Amnesty International (AI) officials are still requesting Kenyan authorities to investigate the use of force by police during these protests, attesting that "everyone has a right to peaceful protest and they must not be hurt, injured or killed for exercising that right."

July 2017

Tanzania Media Act brings trouble for journalists

The Tanzania Media Services Act 2016, which was meant to repeal the controversial 1976 Newspaper Act and the Tanzania News Agency, and create a media-friendly environment, seems to have brought more trouble and misery for journalists and media houses operating in the East African nation of 56 million people, according to media experts. Critics believe the legislation appears to have reinforced the state's powers to place a leash around the media's neck, while striving to hide its own wrongdoings.

Main provisions of the law

The Media Services Act of 2016 establishes, among others, a penalty of three to five years in prison and a fine of between USD 2,250 and USD 9,000 for intentionally publishing information that threatens national security, public safety, public order, the country's economic interests, public morality or public health, or that injures the reputation, rights and freedom of other persons.

The same punishment applies to anyone who operates a media outlet without a license, practices journalism without accreditation, disseminates false information without justification, or prints, publishes, sells, distributes or reproduces any seditious material.

The law also allows for a journalist's name to be struck off the 'Roll of Journalists' for "gross personal misconduct," denying the 'disgraced' journalist the right to continue their work. Furthermore, the law warns anyone who imports media material or publishes it, could be jailed for up to between five and 10 years, or pay a fine of between USD 3,600 and USD 9,000.

The proposed legislation, passed by Parliament on 5 November 2016 and signed into law by President John Magufuli less than two weeks later, gives the courts the power to seize material and equipment used to publish alleged "seditious" content. The owner can forfeit the material, which can be sold, with proceeds going to the Media Fund.

According to the Act, seditious content incites hatred or contempt, or excites disaffection against the Tanzanian government.

Every freelancer and correspondent should also have personal risk insurance cover before practicing journalism in Tanzania.

A publication could be suspended for up to 12 months for publishing seditious comment, while any stories incriminating the state require authorisation from the government.

The law also maintains and brings to the fore defamation, this "sword of Damocles" hanging over the heads of critical African journalists, which media campaigners are working hard to get abolished in various countries.

For further information on the current issue of the Legal Digest, please contact:

Fayaz Bhojani
Managing Partner
M: +255 784 322751
E: fbhojani@fbattorneys.co.tz

Feizin Amlani
Head, Corporate Affairs
M: +255 688 253509
E: famlani@fbattorneys.co.tz

FB Attorneys
8th floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

[Click here](#) to subscribe to our weekly Q&A with FB Attorneys

About FB Attorneys
FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 2 by Chambers and Partners General Business Law.

Disclaimer

Information found in the Legal Digest and any attachments are confidential and may be privileged or otherwise protected from disclosure, and intended solely for the use of the individual or entity to whom it is addressed to. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of FB ATTORNEYS.

© FB Attorneys 2017. All rights reserved.

