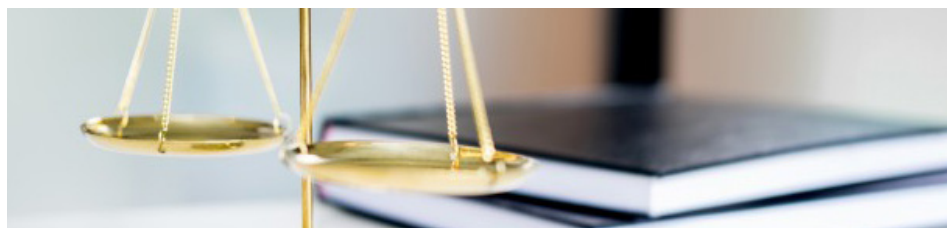


11 July 2019



Companies Act amended by addition of controversial section 400A

- Power to strike out company by Registrar retained subject to a slightly improved due process
- If company involved in money laundering, can be struck out
- Registrar has strong powers to strike out companies
- Not a welcome move for the business community

After much debate on the insertion of a controversial provision in the Companies Act 2002, the said insertion has now come into force albeit a slightly improved version, vide the Written Laws (Miscellaneous Amendments) (No. 3) Act 2019 (the Act).

Below is a comparison of what appeared in the Written Laws (Miscellaneous Amendments) (No. 3) Bill 2019 (Bill) as section 400A, and what now appears in the Act. Changed subsections are highlighted in blue.

Written Laws (Miscellaneous Amendments) (No. 3) Bill 2019 (Bill)

Section 400A

400A.-(1) Where the Registrar has reasonable cause to believe that-

(a) a registered company has been fraudulently registered;

(b) a registered company is engaged in criminal activities such as money laundering, human trafficking, drug trafficking; terrorism financing or any other offence punishable by law;

(c) at the time of incorporation, there was misrepresentation or fraud by a registered company;

(d) by operation of law, all shareholders or directors have been prohibited from entering the country; or

(e) a registered company is operating contrary to its objectives as prescribed in the memorandum and articles of association,

he shall issue a notice in writing to the company, of his intention to strike the company off the register.

Written Laws (Miscellaneous Amendments) (No. 3) Act 2019 (Act)

Section 400A

400A.-(1) Where the Registrar has reasonable cause to believe that-

(a) a registered company has been fraudulently registered;

(b) a registered company is engaged in criminal activities such as money laundering, human trafficking, drug trafficking, terrorism financing or any other offence as may be prescribed by the Minister upon consultation with the relevant authorities;

(c) at the time of incorporation, there was misrepresentation or fraud by a registered company;

(d) by operation of law, all shareholders or directors have been prohibited from entering the country; or

(e) a registered company is operating contrary to its objectives as prescribed in the memorandum and articles of association,

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11 July 2019

(2) Upon receipt of the notice referred to under subsection (1), the company may, within thirty days provide to the Registrar reasons in writing as to why the company should not be struck off the register.

(3) Where the company fails to provide reasons under subsection (2) within the prescribed time or where the reasons provided are not satisfactory, the Registrar shall strike the company off register, publish in the Gazette the name of the company which has been struck off and notify the company accordingly.

(4) Where a company, member or creditor is aggrieved by the decision of the Registrar under subsection (3) shall, within five years from the date of publication in the Gazette, apply to the court for restoration of the company in the register:

Provided that, the Registrar shall not, within such period of five years, register another company with the same name.

(5) Upon receipt of the application for restoration, the court may-

(a) order restoration of the company in the register; and

(b) give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(6) The company restored under subsection (5) shall be deemed to have continued in existence as if its name had not been struck off, and the court may, by order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) The Minister may make regulations necessary or convenient for better carrying out or giving effect of this section.

(2) Upon receipt of the notice referred to under subsection (1), the company may, within thirty days-

(a) provide to the Registrar reasons in writing as to why the company should not be struck off the register; or

(b) challenge the notice of intention to strike the company off register by making an application to the court of competent jurisdiction.

(3) Where the company fails to provide reasons under subsection (2) within the prescribed time or where the reasons provided are not satisfactory, the Registrar shall strike the company off register, publish in the Gazette the name of the company which has been struck off and notify the company of its decision and the reasons thereof.

(4) Where a company, member or creditor is aggrieved by the decision of the Registrar under subsection (3) shall, within five years from the date of publication in the Gazette, apply to the court for restoration of the company in the register:

Provided that, the Registrar shall not, within such period of five years, register another company with the same name.

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LEGAL UPDATE

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11 July 2019

Analysis

The final amendment still gives powers to the Companies Registrar to use the drastic step to strike off a company but subject to a slightly improved 'due process'. Whilst this is better for companies compared to the initial drafting in the Bill, it still allows the Registrar powers to strike off a company for reasons that can be controversial like (i) fraudulent registration, (ii) company engaging in money laundering which is very widely defined and includes tax evasion, corrupt practice, forgery, insider dealing, environmental crimes, amongst others, (iii) misrepresentations or fraud by a company (iv) immigration status of shareholders or directors, meaning that a company which is a separate entity altogether from its shareholders and directors can now be struck out on the basis of the directors/shareholders status in Tanzania, or (v) a company operating contrary to its objectives.

Further, a lot of reliance is now being placed on the Registrar's own assessment, for example, that the company is engaging in criminal activities, as a ground of striking out a company, without obtaining Court conviction on the said criminal activities as a precondition. Overall the amendment to the Companies Act will likely have negative repercussions on local and foreign companies wishing to register in Tanzania.

Other laws that have been amended by the Act include the Copyright and Neighbouring Rights Act, Films and Stage Plays Act, NGOs Act, Societies Act, Statistics Act, Tanzania Shipping Agencies Act and Trustees Incorporation Act.

To read the Act [click here](#).

To read the Bill [click here](#).

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