

17 February 2023



## Whistleblower and Witness Protection Regulations Issued

- Provide for disclosure and application for protection
- Types of protection elucidated
- Concealment of identity and property ownership matters addressed
- Provide for interrogation and investigation of protected persons
- Circumstances for restoration of original identity stipulated
- Conditions for whistleblower rewards and compensation set
- Duty to keep record or information of whistleblowers cemented
- Standard forms provided

In a bid to promote and facilitate reporting of organized crimes, corruption offences, unethical conduct, abuse of office, illegal and dangerous activities and to provide for the protection of whistleblowers and witnesses (witnesses) against potential retaliation or victimization, the Minister for Constitutional and Legal Affairs in exercise of his power under section 15 of the Whistleblower and Witness Protection Act (the Act), has issued the long awaited Whistleblower and Witness Protection Regulations, 2023 (the Regulations). The Regulations came into force on 10 February 2023.

The Regulations are meant to provide detailed guidance on matters relating to whistleblower and witness protection in addition to the already existing framework on the subject. In circumstances where specific measures are required to be taken for the protection of a witness, the Regulations mandate a competent authority (the Authority), on its own motion or upon an application by the witness, to grant such protection to the witness. Once a decision to grant protection is made, the Authority is required by the Regulations to enter into a protection agreement with the said witness within seven days. The standard protection agreement is prescribed in the Regulations as Form No. 2.

Regarding types of protection, the Regulations list a number of protection measures that may be employed by the Authority in protecting witnesses. These include, physical protection of a person, his residence and property; concealment of identity of a person and ownership of any of his property; provision of weapon for self-defence; relocation; provision of immunity from prosecution for an offence for which a person renders information or testifies; hearing evidence in camera, behind the screen or in disguising identity; and voice and face distortion techniques.

It should be noted that in determining the type of protection measures to be employed in protecting a witness, a number of things have to be taken into consideration, including whether a witness has a criminal record; nature of

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the imminent danger to which a witness is exposed; whether the intended protection measure entails a risk to the public; competence of a witness; cost to be incurred for the protection; the damage that may result due to the intended protection, to mention a few.

The Regulations oblige the Authority to submit an application to the Minister for concealment of identity of the witness in the manner set out in Form No. 4 which is prescribed in the schedule. Further, the Regulations allow the Minister to order concealment of identity of a witness upon consultation with the Attorney General and after being satisfied that other types of protection measures are incapable of protecting the security of a witness. However, the Regulations require concealment of identity not to affect the rights of third parties, marriage, paternity or maternity and not to be used for issuance of a professional certificate that a witness does not rightly possess.

Further to the above, a protected person whose identity or property ownership has been concealed, is allowed to enter into legal obligations upon obtaining a written consent of the Minister. The said consent is granted in the manner prescribed in Form No. 5 of the Schedule to the Regulations.

Moreover, the Regulations vest powers to the Authority to reward a witness who voluntarily provided original information to the Authority that led to successful enforcement of the covered judicial or administrative action. The said reward may be in monetary form or otherwise as the Authority may deem fit. The Regulations also empower the Authority to compensate a witness who has suffered detrimental action such as unlawful termination, demotion, or any other form of discrimination after the exposure of the wrongdoing.

Regarding the issue of confidentiality, the Regulations require all record/information relating to a protected person to be treated and kept as confidential. However, the Minister is allowed to disclose the information where a protected person consents to the disclosure; has already disclosed the information; the evidence of the protected person is necessary to prove the innocence of another suspect in the criminal case; or the disclosure of information is necessary in the investigation of a criminal offence punishable with more than 7 years imprisonment or death.

Lastly, the Regulations stipulate that a protected person who knowingly fails to provide true, accurate or complete information to a case which is subject matter of protection agreement; fails to return new identification/documents; refrains from activities that may impede the protection measure commits an offence which is punishable by payment of fine not exceeding TZS 1M or to imprisonment for a term not exceeding 12 months.

To read the Whistleblower and Witness Protection Act, 2015 [click here](#)

To read the Whistleblower and Witness Protection Regulations, 2023 [click here](#)

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