

**A CRITICAL ANALYSIS ON EFFECTIVENESS OF THE LAWS  
AND PRACTICE GOVERNING REGISTRATION OF FOREIGN  
COMPANIES IN TANZANIA**

**A CRITICAL ANALYSIS ON EFFECTIVENESS OF THE LAWS  
AND PRACTICE GOVERNING REGISTRATION OF FOREIGN  
COMPANIES IN TANZANIA**

**By  
Bahati Kashoza**

**A Dissertation Submitted in Partial Fulfillment of the Requirements for Award  
of the Degree of Master of Laws (LL.M.) Commercial Law of Mzumbe  
University.  
2018**

**CERTIFICATION**

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled: **A CRITICAL ANALYSIS ON EFFECTIVENESS OF THE LAWS AND PRACTICE GOVERNING REGISTRATION OF FOREIGN COMPANIES IN TANZANIA** in partial fulfillment of the requirements for award of the degree of Master of Laws of Mzumbe University.

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## DECLARATION

I, Bahati Kashoza, declare that this thesis is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

Signature\_\_\_\_\_

Date\_\_\_\_\_

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## **DEDICATION**

To my beloved parents Mr. and Mrs. Kashoza Ibrahim together with my young sister Tunu and Mariam Kashoza

## **LIST OF ABBREVIATIONS AND ACRONYMS**

BRELA	Business Registration and Licensing Authority
ITA	Income Tax Act
PAYE	Pay As You Earn
TIC	Tanzania Investment Centre
TIN	Taxpayer Identification Number
TRA	Tanzania Revenue Authority
VAT	Value Added Tax
ZRA	Zambia Revenue Authority
CAP	Chapter
UK	United Kingdom
R.E	Revised Edition
S	Section
IPTL	Independent Power Tanzania Limited
ITR	Income Tax Report
V.	Versus
Co.	Company
No.	Number
G.N.	Government Notice
SDR	Special Drawing Rights
TIPER	Tanzania and Italian Petroleum Refining Company Limited
LTD	Limited Company
DSM	Dar es Salaam
LTD	Limited
B.o.T	Bank of Tanzania
NBS	National Bureau of Statistics
FDI	Foreign Direct Investment
ITFN	income tax file number
BLTCC	business license tax clearance certificate
LLC	Limited Liability Company
NBAA	National Board of Accounts and Auditors

LGA	Local Government Authorities
P.A.Y.E	Pay as you earn
USD	United States Dollar
TANESCO	Tanzania Electronic Supply
RE	Revised Edition
P	page
S	Section
NO	Number
OP. CIT	In the work cited
Cal	California Supreme Court Report
Ch. D	Chancery Division Law Report

## **LIST OF STATUTES**

### **LOCAL STATUTES**

#### **PRINCIPAL LESLATIONS**

Business Law (Miscellaneous Amendment) Act, 2012 (Act No. 3 of 2012)  
Business Licensing Act, [Cap. 213 R.E. 2002]  
Companies Act, [Cap 212 R.E. 2008]  
Constitution of United Republic of Tanzania, 1977 [Cap.2] (As amended from time to time)  
Contractors Registration Act, [Cap. 410 R.E. 2002]  
Finance Act, [Cap. 348 R.E. 2002]  
Foreign Investment (Promotion and Protection) Act, 1990  
Immigration Act, [Cap. 54 R.E. 2016]  
Income Tax Act, [Cap. 332 R.E. 2008]  
Industrial (Acquisition) Act, 1967 (Act No. 5 of 1967)  
Investment (Protection) Act, 1963 (Act No. 40 of 1963)  
Mining Act, 2010 (Act No. 14 of 2010)  
Stamp Duty Act, [Cap. 189 R. E. 2002]  
Tanzania Investment Act, [Cap. 38 R. E. 2002]  
Tax Administration Act, [Cap. 438 R.E. 2002]  
The Environmental Management Act, 2014 (Act No. 20 of 2014)  
The public corporation Act, 1967 (Act No. 17 of 1967)  
Value Added tax Act, [Cap. 148 R.E. 2002]

#### **SUBSIDIARY LEGISLATIONS**

Non Citizens (Employment Regulations), Government Notice No. 331 of 2016.  
Tax Administration (General) Regulations, Government Notice No. 230 of 2017.

#### **FOREIGN STATUTES**

The Companies Act (UK), Act No. 71 of 2006  
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## **LIST OF CASES**

African Barrick Gold PLC v Commissioner General, Tax Appeal No. 16 of 2015, in the Tax Revenue Appeals Tribunal at Dar es Salaam, (2016),(Unreported).

CIT v Bank of China [1985]154 ITR 617 (Cal)

CIT v Chitra Palayakat Co [1985] 156 ITR 730

CIT v Subbiah Chettiar [1947] 15 ITR 502 (Mad)

CIT v. Bank of China 23 Taxman 46 (Cal)

Erin Estate v CIT [1958] 34 ITR 1 (SC)

Narottam and Pereira Ltd v CIT [1953] 23 ITR 454

Smith v Anderson (1880) Ch. D. 247

## ABSTRACT

Foreign company means company incorporated outside the territory which have established a place of business in the territory and continue to have an established place of business within the territory.<sup>1</sup>

Tanzania is endowed with enormous natural resources and other economic potentials that provide for the increasing opportunities of investment. Owing to her rich natural resources and potential areas for investment in the agriculture, manufacturing, tourism, mining and energy industries, Tanzania has attracted a handful of big investors from foreign countries.

This study was aimed to examine on the laws and practice governing the registration of foreign companies in Tanzania. In which the study contained five chapters. In the study, the main objectives was to have a critical analysis in the legal and regulatory framework in relation to the registration of foreign companies in Tanzania while specific objectives were to examine the extent of benefits on effective laws and practice governing registration of foreign companies; to analyze loopholes in legal and regulatory framework governing the registration of foreign companies that attracts foreign companies to the abuse of freedom of investment and doing business and examine to what extent of awareness provided by the institution concerned registration of foreign companies.

The study was conducted at Dar Es Salaam City and involved a sample size of 30 respondents was recruited for this study. The population sample was based from TIPER (Tanzanian and Italian Petroleum Refining Company Limited). Cargo Delivery Freighters Ltd and East Cost Oil & Fats Co. Ltd, in Directors, legal officers and Company Secretaries were selected.

Also interviews and questionnaire were administered to advocates dealing with corporate laws, academicians experts in corporate Laws, high court judges of the Commercial Division, TRA and BRELA officials.

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<sup>1</sup> Section 320 of the Companies Act, 2006

The data were collected through a combination of techniques namely; interviews, documentary review and questionnaires. The collected data were analyzed qualitative data analysis, discussed and presented through the use of tables as well as text in chapter four.

Chapter three of the study based on the analysis of the different legal regimes governing registration of foreign companies of some selected case studies which demonstrated the problems. In the last chapter (five) contain conclusion on the findings of the study and recommendations

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## CHAPTER ONE

### INTRODUCTION AND PROBLEM SETTING

#### 1.0 Introduction

In Tanzania Partnerships, Sole Proprietorships, Cooperative societies, Trusts, Joint ventures, and Companies/ incorporated company<sup>2</sup> and registered branch of overseas are the main forms of business associations.<sup>3</sup> There are several ways in which a company may be classified. It may be classified on the basis of ownership (members), liability, control and incorporation. As far as foreign companies are concerned, they are classified on the basis of incorporation.

Foreign companies have been defined to mean companies incorporated outside Tanzania, which, after the appointed day, establish a place of business within Tanzania and companies incorporated outside Tanzania which have, before the appointed day, established a place of business within Tanzania and continue to have a-place of business within Tanzania on and after the appointed day:<sup>4</sup>

Also, it has been defined to mean companies incorporated outside the territory which have established a place of business in the territory and continue to have an established place of business within the territory.<sup>5</sup>

Tanzania is endowed with enormous natural resources and other economic potentials that provide for the increasing opportunities of investment. Owing to her rich natural resources and potential areas for investment in the agriculture, manufacturing, tourism, mining and energy industries, Tanzania has attracted a handful of big investors from foreign countries. In recent Tanzania has made major progress in

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<sup>2</sup>Read more at: <https://www.tanzaniainvest.com/economy/tanzania-investment-legal-framework/accsed> on the 8th feb.2018

<sup>3</sup>Farrar J.H & B.M Hannigan, (2000), Farrar's company law, (4th ed), The Bath press, Butterworths, London. at p 5

<sup>4</sup> Section 433(1) of The Companies Act, 2002

<sup>5</sup> Section 320 of the Companies Act, 2006

putting into place a general policy and legal environment which is more favorable for private sector expansion and sustainable economic development.<sup>6</sup>

In the investment arena, almost all key players have been liberalized ranging from monetary management, foreign exchange system, agriculture marketing arrangements, local and foreign banks and non- bank institutions, and also tax regime system.<sup>7</sup>

This study mainly focuses on the analysis on the effectiveness of the laws and practice governing the Registration of Foreign Companies in Tanzania. Therefore, this study has analyzed on the effectiveness of the laws and practice governing registration of foreign companies in Tanzania.

### **1.1 Background of the Problem**

Registration of foreign companies' history in Tanzania can be traced back to the period of pre-independence there was a Companies Ordinance which was the Colonial pieces of legislation. Whereby the post-independent Tanzania had adopted/ inherited. It has its origin in the 1913 Indian Companies Act, and it was enacted in Tanganyika by then in 1932.<sup>8</sup> The Ordinance has existed for about seven decades hence the Companies Act which enacted 2002 and came into force from 1<sup>st</sup> March, 2006.<sup>9</sup> The existing Companies Act has gone with minor amendments which have been effected to it by the parliament in the Companies Act. Both the old legislation

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<sup>6</sup><https://www.tanzaniainvest.com/economy/tanzania-investment-legal-framework/> accessed on 23 January 2018 at 11:07 pm

<sup>7</sup> ibid

<sup>8</sup> Sylvester Sebastian, Corporate Responsibility under The Companies Act: An Examination Towards Compliance with Companies' Constitutions In Tanzania. [https://www.academia.edu/10473060/Issues\\_on\\_Company\\_Law\\_In\\_Tanzania?auto=download/](https://www.academia.edu/10473060/Issues_on_Company_Law_In_Tanzania?auto=download/) accessed on 10<sup>th</sup> Feb. 2018 at 5:32 am

<sup>9</sup> **Company Law Reforms in Tanzania: The Companies Act 2002** extracted from <http://lawworldwide.com/company-law-reforms-in-tanzania/> accessed on 10<sup>th</sup> Feb.2018

and the existing Companies Act are propagating for similar procedures in the regulation of Foreign Companies since pre-independence.<sup>10</sup>

The law allows a Foreign Company to establish a place of business in Tanzania only if the Foreign Company proves that their Overseas Companies are in existence.<sup>11</sup> As to prove, according to the Companies Act, a foreign company can establish a branch by registration of an established place of business in Tanzania but is not deemed to have a place of business in Tanzania solely on account of its doing business through an agent on his place of business in Tanzania.<sup>12</sup>

Upon the registration, the foreign company will have the same power as if it has been incorporated in Tanzania and will be subjected to the laws of Tanzania.<sup>13</sup> A foreign company seeking to establish a place of business in Tanzania must deliver various documents to the Registrar which includes:-

A certified copy of the Charter, Memorandum and Articles of association and other instrument constituting/defining the constitution of the company *for example* by-law and share holder's agreements.

The document submitted to the Registrar must be in English or otherwise must be translated and certified. Out of that the list of director(s) and company secretary of the foreign company must be accompanied with the statement of all subsisting charges created, names, addresses of one or more persons whom are resident of Tanzania authorised to accept on behalf of the foreign company service of process and any other notice like demand notice required to be served on the company or to represent the company as its permanent representative at its place of business (with a statement as to the extent of its authority).<sup>14</sup>

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<sup>10</sup> Mndolwa E.B et el, (2003), Liquidation Law and Practice in Tanzania Mainland. Mzumbe Book Project, Mzumbe, Tanzania At Pp 3-4

<sup>11</sup> Section 434 of the Companies Act, No. 12 of 2006

<sup>12</sup> Section 433 of the Companies Act, No. 12 of 2002

<sup>13</sup> [https://uk.practicallaw.thomsonreuters.com/7-562-2905?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1/](https://uk.practicallaw.thomsonreuters.com/7-562-2905?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1/) accessed 15<sup>th</sup> Feb. 2018

<sup>14</sup> Act No.12 of 2006 section 434(a)

Also, must provide with the Registrar full address of registered principal office of the company and its full address of place of business in Tanzania. Statutory declaration made by the director or secretary of the company stating the date on which the company's place of business in Tanzania was established, the business that is to be carried on and if different from the registered name of the company, the name under which the business is to be carried on and the copy of the most recent financial records and related reports of the company in English or certified translation.<sup>15</sup>

The registered foreign company will be issued by BRELA with Certificate of Compliance. It has to file, among other things, annual accounts in every calendar year.

Also from the BRELA, Certificate of Compliance, the branch must obtain a TIN Certificate, that is to say, branch must register with the Tanzania Revenue Authority (TRA)<sup>16</sup> for a Tax Identification Number<sup>17</sup> that will be used by the branch for payment of taxes and VAT Verification Number<sup>18</sup>.

Business License<sup>19</sup> must be obtained by the foreign company for specific to its type of business. This is usually obtained from the Ministry of Industry, Trade and Investment, or relevant Municipal Council, depending on the type of business.<sup>20</sup> Other license or authorisation for trading in certain business sectors may require special license/ authorisation.<sup>21</sup> For example, a company dealing in manufacturing of commodities must obtain an Environmental Impact Assessment Certificate<sup>22</sup> from

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<sup>15</sup> Ibid section 434(a)

<sup>16</sup> Tanzania Revenue Authority Act, No. 11 of 1995

<sup>17</sup> Income Tax Act Cap. 332 Revised Edition 2008

<sup>18</sup> the Value Added Tax Act, 2014 and its Regulations under the EAC Customs Management Act, 2015

<sup>19</sup> Under section 11 (1) of Business Licensing Act, No. 25 of 1972

<sup>20</sup> <http://www.ey.com/gl/en/services/tax/international-tax/alert--tanzania-companies-registry-requires-companies-to-file-annual-returns-by-5-january-2015/> accessed on 15<sup>th</sup> Feb. 2018 at 11:03 am

<sup>21</sup> Under Contractors Registration Act No. 17 of 1997, [cap 235 R:E 2002] and Contractor Registration (Amendment) Act, 2008, Act No. 15 of 2008

<sup>22</sup> Under Regulation 5 of The Environmental Impact Assessment and Audit Regulations, 2005 which has been made under Sections 82(1), 230(2) (h), (q) of The Environmental Management Act, 2004 (Act No. 20 of 2004)

the National Environmental Management Council hence TAX clearance Certificate<sup>23</sup> to the TRA.<sup>24</sup>

In other countries with regards to this matter, for instance in UK all companies registered can be viewed on electronic registrar supplied via the Registrar's website of UK where any person can check through the status of the company on whether it is dormant, wounded or existing. However an overseas company can form a base in UK by joining with a British company are usually with limited companies or as a partnership.<sup>25</sup>

With the shared legal history with common law countries like Kenya, a foreign company wishing to open an office in the country should deliver to the Registrar of Companies, all requirements as they are envisaged in the Companies Act of Tanzania, together with a list of all existing charge(s) entered into by the company affecting properties in Kenya, and Full address of place of business in Kenya.<sup>26</sup>

While in Ugandan perspective is that a company incorporated outside Uganda may carry on business in Uganda through a branch. In order to establish a branch in Uganda all document or forms and details as the requirement with registration of the same in Tanzania must be submitted to the Registrar of Companies but with the additional requirement of a statement of existing charges created by the company in Uganda, if any<sup>27</sup>.

Banks and other financial institutions are fraught with risks and dangers ranging from instability in the economy, moral hazards and human misjudgement<sup>28</sup>. Foregoing facts are highlighted by the Meridian Biao Bank (T), Greenland Bank

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<sup>23</sup> Under The Finance Act No. 16 of 2014

<sup>24</sup> Under The Tax Administration (General) Regulations, 2016 made under GN NO. 101/2016 under sections 28, 30, 35, 92, 94 and 98 The Tax Administration Act, 2015

<sup>25</sup> <https://publications.parliament.uk/pa/cm199899/cmweb/wb990729/wgp.htm/> accessed on 11/2/2018 at 06:06 am

<sup>26</sup> <https://www.companysecretariesafrica.com/foreign-company-registration-kenya/> accessed on 15<sup>th</sup> February 2018 at 10:00 am

<sup>27</sup> Part X, Particularly Section 370, Uganda Companies Act, Cap 110 of Laws

<sup>28</sup> <https://economictimes.indiatimes.com/> accessed on 3<sup>rd</sup> day of October, 2019

Ltd<sup>29</sup> and 1<sup>st</sup> Adili Bancorp Ltd.<sup>30</sup> With this regards, the foreign company wish to be registered in our country BoT is required to conduct investigations, it may deem necessary to ascertain the validity of the documents submitted, the history and financial status, the charter and experience of the prospective management, adequacy of its capital structure and its *modus operandum*.

Despite the presence of such a regulatory framework, registered foreign companies in Tanzania have been reported doing business without being registered, doing business without a business license, also illegal exportation of minerals and not paying taxes.<sup>31</sup> It has been reported that between 44,000 and 61,000 containers of gold and copper estimated had been exported between 1998 and March 2017 whereby estimated losses in government revenue running into trillions of shilling over the two decades.<sup>32</sup>

It is the friendly policy and good legal framework governing the registration of foreign companies that will attract number of foreign companies and the country which foreign company will benefit from the registration of that company in his country.

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<sup>29</sup> This was a subsidiary of the Greenland Bank in Uganda. There was news that the bank in Uganda is in economic shambles. This caused **bank run (flow of customers and depositors rushing to their banker to withdraw their deposits)**. Accordingly the central bank of Uganda took over the Bank and liquidated it. As news spread in Tanzania that the Greenland Bank in Uganda has collapsed, customers rushed to the bank and started to withdraw their deposits. To contain this situation, the B.O.T investigated the financial status of the bank and declared it to be in good financial condition. Even after declaration customers/ depositors were not comfortable and therefore continued withdrawing their money. To avoid further bank run and contagion effect (spreading of ideas, rumours and feelings influencing customers to feel that their deposits are unsecured), the BOT put it under statutory management until October 2000 when the independent Auditor, **Tana Somaiya** confirmed that the bank was insolvent therefore the unable to carryon business. As a result BOT issued the notice of liquidation and appointed DIB as an official liquidator of the bank.

<sup>30</sup> Unlike the Greenland Bank, the 1<sup>st</sup> Adili Bancorp Ltd was faced with the poor management, as a result sustained a huge loss. On examination the BOT put it under a statutory management for five months( from 15<sup>th</sup> May to Sept. 2006) it was satisfied that the problem was mismanagement. After the change of management, shareholders and recapitalization, the bank was reopened and came in a full swing as Azania Bancorp Ltd. As a result the bank won back its confidence.

<sup>31</sup>Prof. Nehemia Osoro, “Mapendekezo 21 ya kamati ya pili ya makinikia” Available at <https://www.ipppmedia.com/sw/habari/haya-ndiyo-mapendekezo-21-ya-kamati-ya-pili-ya-makinikia/> accessed on 21/03/2018

<sup>32</sup> Roger Nellist, the Mineral Sands Export Saga: Tanzania Affairs, Britain Tanzania Society, No.118 sept.2017

## 1.2 Statement of the Problem

Foreigners register companies in Tanzania so as to have a place of business in Tanzania. The laws of Tanzania on foreign companies registration aim to ensure foreign company's activities are regulated in the manner they can have safety establishment and operation within the country.<sup>33</sup>

Once a foreign company or companies registered it has the same power as if it is the company incorporated in Tanzania, and therefore subject to the laws of Tanzania. In Tanzania foreign companies are regulated by various laws such as the Companies Act,<sup>34</sup> tax laws (includes the Value Added Tax Act,<sup>35</sup> the Stamp Duty Act,<sup>36</sup> Income Tax Act,<sup>37</sup> Tax Administration Act,<sup>38</sup> and Business Licensing Act<sup>39</sup>.

Despite such legal framework which exists for registration of foreign companies still foreign companies abuse their freedom to invest and doing business.<sup>40</sup> For example, current registered Foreign Companies in Tanzania have been reported doing business without being registered, doing business without business license, also illegal exportation of minerals<sup>41</sup> and not paying tax<sup>42</sup> hence lead to loss of revenue by the government.<sup>43</sup>

Since it has been reported foreign companies have been doing business without being registered doing business without business license, also illegal exportation of minerals<sup>44</sup> and not paying tax<sup>45</sup> hence lead to loss of revenue by the government<sup>46</sup>

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<sup>33</sup>See: read:<https://www.cti.co.tz/cpages/regulatory-framework/> accessed on 4<sup>th</sup> October, 2019

<sup>34</sup> No.12 of 2006 [CAP. 212 R.E. 2002]

<sup>35</sup> [Cap. 148 R.E. 2002]

<sup>36</sup> [Cap. 189 R.E. 2006]

<sup>37</sup> [Cap. 332 R.E. 2008]

<sup>38</sup> [Cap. 438 R.E. 2002]

<sup>39</sup> [Cap. 208 R.E. 2002]

<sup>40</sup> African Barrick Gold PLC v. Commissioner General, Tax Appeal No. 16 of 2015, in the Tax Revenue Appeals Tribunal at Dar es Salaam, (2016)(Unreported).

<sup>41</sup> Prof. Nehemia Osoro, "Mapendekezo 21 ya kamati ya pili ya makinikia" Available at: <https://www.ippmedia.com/sw/habari/haya-ndiyo-mapendekezo-21-ya-kamati-ya-pili-ya-makinikia/> accessed on 21/03/2018

<sup>42</sup> Ibid.

<sup>43</sup> African Barrick Gold PLC v. Commissioner General, Tax Appeal No. 16 of 2015, (Unreported).

<sup>44</sup> *Op. cit*

while the legal and regulatory framework of registration of foreign companies in Tanzania. Hence this research had the following objectives:-

### **1.3 Objectives of the Study**

The main objective of this research was to have a critical analysis in the legal and regulatory framework governing the registration of foreign companies in Tanzania.

#### **1.3.1 Specific objectives of the study**

- i. To examine the laws and practice governing registration of foreign companies.
- ii. To identify the loopholes in legal and regulatory framework for registration of foreign companies in Tanzania that attracts foreign companies to the abuse of freedom of investment and doing business.
- iii. To examine to what extent of awareness provided by the institution (BRELA) concerned registration of foreign companies to the community.

### **1.4 Research Questions**

This research study was guided by the following questions:-

- i. Is the legal framework governing the registration of foreign companies effectively?
- ii. Is the regulatory framework governing the registration of foreign companies effectively?
- iii. What are the loopholes in the legal framework governing the registration of foreign companies that attracts foreign companies to the abuse of freedom of investment and doing business?

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<sup>45</sup> Prof. Nehemia Osoro, “Mapendekezo 21 ya kamati ya pili ya makinikia” Available at: <https://www.ippmedia.com/sw/habari/haya-ndiyo-mapendekezo-21-ya-kamati-ya-pili-ya-makinikia/on 21/03/2018>

<sup>46</sup> African Barrick Gold PLC v. Commissioner General, Tax Appeal No. 16 of 2015 (Unreported).

- iv. What are the loopholes in the regulatory framework governing the registration of foreign companies that attracts foreign companies to the abuse of freedom of investment and doing business?
- v. To what extent does the institution (BRELA) concerned registration of foreign companies provides awareness to the community?

### **1.5 Significance of the Study**

To determine the effectiveness of the laws and practice governing registration of foreign companies in Tanzania and make suggestions on any gaps in laws and practice that attracts foreign companies to the abuse of freedom of investment and doing business.

### **1.6 Literature Review**

There is scanty literature on the subject matter under discussion. However, the researcher was able to review some of the literatures that in one way or another had some aspects of the covered topic as discussed below

**Farrar, J.H & Hanning, B.M (1998)**<sup>47</sup> write about *International dimensions of company law* and sub-heading: *The extension of corporate activity beyond national frontiers*, they establish that, engaging in such activities eventually occasions complex problems of private international law. As such they indicated the need of a type of registry which carries all such activities as far as the registration of companies in general is concerned in UK. On what they called *Disclosure by overseas companies* while quoting section 691<sup>48</sup> the authors pointed out that a company incorporated outside Great Britain looking for a place of business must file a certified copy of its constitution; a list of directors and secretary; and the name and address of one or more persons authorised to accept service which is subject to the jurisdiction as well disclosure and intends to protect creditors. These authors went

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<sup>47</sup> Farrar's Company Law, . International dimensions of company law ,(4<sup>th</sup> ed) P. 747-751

<sup>48</sup> UK, Companies Act, 1989

further and said any alteration must be notified within 21 days after notice could with reasonable diligence have been received in Great Britain<sup>49</sup>.

Accounts must also be prepared and filed<sup>50</sup>, and particulars of charges registered. The company must exhibit its name and the fact of limited liability. In addition to these requirements which only apply to a company which has established a place of business in Great Britain, the provisions of the Financial Services Act, 1986<sup>51</sup> apply to issues of, or dealings in, foreign company securities in the UK. Lastly a foreign company which are carrying on business in Great Britain or have at any time done so can be the subject of an investigation by the Department of Trade and Industry.<sup>52</sup>

The writer however, dealt much with registration of foreign companies in relation to the position in UK. The research will explore the effectiveness of the laws and practise governing registration of foreign companies in Tanzania.

**Dowdall**<sup>53</sup> who was once the Registrar of companies in Tanzania (Tanganyika) wrote about the registration of companies in Tanzania. His article of *Company law in Tanzania and its Administration* provides the historical background of registering foreign companies and traces the development of the laws governing and regulating companies in Tanzania Mainland. He hinted on the effects of adopting laws and thus he states” When a law has been made in another country like England, it particularly suitable for the conditions of that country, and if we adopt the same law here, it may not be suitable to the peculiar condition of this country”. This had always to be borne in mind, apart from the difficulty that many areas to lawyers in practice.

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<sup>49</sup> S. 692, Companies Act, 1985

<sup>50</sup> S. 700 Companies Act, 1985

<sup>51</sup> B. Rider, D Chaikin & C Abrams, Guide to the Financial Services Act, 1986

<sup>52</sup> *Supra note 30*. Sections 431,432 Op Cit

<sup>53</sup> Dawdall, D.J.A, *Company law in Tanzania and it's Administration*, In P.A Thomas(Ed), Private Enterprise and the East African Company, Tanzania Publishing House, Dar es salaam,2014. At pp. 46-58

However, he does not discuss clearly on how application for registration were scrutinized before registration is affected in the country. The unjust, he provides though is that” What of foreign companies are they either locally incorporated companies dominated by foreign capital or personal or companies incorporated outside the country? I can see no difficulty in providing legislation suitable for the country’s needs in this respect, and because it is separate legislation, it does not imply that it should be harsh or oppressive because after all, although included in the same Companies Ordinance, the requirements and relation to companies incorporated outside and registered in Tanzania are of necessity separate and different but not, I suggest, harsh or oppressive. This is in line with Companies Act (Cap. 212).

From the above, it obvious that little is known on how scrutiny of companies before registration is affected, hence resort to English experience. We are aware of the advancement of level of development but still experience may be shared.

**Gower (2008)**<sup>54</sup> writing about companies in Britain explains how to register or establish foreign company under the British Law. He states that, before establishing a place of business of a foreign company there must be delivered or required documents like certified copy of its Charter or Memorandum and Articles of Association; A list with particulars as to directors and secretary; the name and address of one or more persons resident in Britain authorised to accept service of process and notice; and an annual statement in form of balance sheet and profit and loss account with particulars required in case a company is registered in this country. However, he does not review the mechanism applicable to test or check validity and liquidity of the foreign company before registering it as to avoid absurdity of registering an insolvent company or an illegal company.

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<sup>54</sup> The Principles of Modern Companies Law (3<sup>rd</sup> ed) at Chapter 28

It is not the same like the former author, **Ivamy Hardy(1979)**<sup>55</sup>, while writing about company law in UK, specifically on the registration of foreign companies termed those companies, *overseas companies* made a step ahead as far as the scrutinisation of such companies is concerned by saying that such companies must deliver to the Registrar of Companies a certified copy of its Charter or Memorandum and Article; a list with particulars as to the directors and secretary; the names and address of one or more person resident in the United Kingdom authorised to accept service of process and notice and an annual statement in the form of a balance sheet and profit and loss account with the particulars required in the case a company registered in this country. He does not tell though the process that goes on with the office of Registrar of Companies and how incompetent company's application is treated. The author does not expand our understanding on the role of the accountants and other related professionals with regard to foreign investments. As such the inputs do enlighten a bit on the dilemma.

Comparing with other authors however, **William C & Mc Andrew(1972)**<sup>56</sup> reveals the development of the law governing registration process of foreign companies, by contending that overseas (foreign) company may carry on business without being incorporated under the legislation relating to companies, however large or small its membership may be<sup>57</sup>. The discussion of these authors indicates that there exists a lacuna in law. *If the company is not registered under the laws of a respective country, will it be just to liquidate such company under those laws?* The authors went further saying, before an overseas company gets registered it must within a month of doing so file with the registrar a certified copy of the instruments defining the constitution of the company, and a certified translation if not in English; a list of directors and secretary; the date and the address of at least one person resident in Great Britain authorised to accept services of notice on behalf of the company and

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<sup>55</sup> Topham and Ivamy's Company Law, (15th ed), Butterworth & Co.(Publishers) Ltd, London at p. 21

<sup>56</sup> Jones H.F, (1972), The student's guide to company law, (2nd ed), Gee 7 Co (Publishers) Limited, London at p. 42

<sup>57</sup> (1881) 6 App. Case 386

lastly the date on which the company's place of business in Great Britain was established.

As a result of the proposal made for a consolidation of the various Acts, from 1948 onwards, two joint reports by the law commission which recommended many technical amendments to the existing law in the order to assist consolidation.

**Morse (1999)**<sup>58</sup> in his writing established that there have been several changes and addition of the text of the 1985 Act as a result of the implementation of several directives. Among other things he advanced and indicated the need of directives on disclosure requirements for branches of the overseas companies while emphasising on the requirement of a certified copy of its constitution; a list and particulars of directors and secretary; and the name and address of the person to be authorised or authorised to accept or host services.

However, Tanzanian authors have recently made efforts in matters regarding foreign investments in Tanzania. **Mndolwa et al (2000)**<sup>59</sup> show in their book that, the most common way of doing business in the world is through the limited liability form. In their assertion they emphasized that in light of the liberalisation of the Tanzania economy and the laws changing to accommodate foreign investment hitherto shunned, a lot more international companies have sprung up as joint ventures with Tanzanian counterparts, or solely in their own capacity. However, they note, and reveal that, there are liquidation problems at the time these foreign companies cease operations and subsequently need to be liquidated; they went further, arguing that the liquidations are under Tanzanian laws, which do not do justice to cross boarder obligations of these companies. Again, such measures in equity are detrimental to the intended atmosphere of encouraging inward investment and inter regional trade.

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<sup>58</sup>Morse G, (1999), Charlesworth's Company Law, (17th ed), Sweet & Maxwell, London. At Page 10

<sup>59</sup> Mndolwa, E.B, Kashonda, M.A & Binamungu, C.S, (2000), Business Law Students Manual, NBAA, Dar es salaam. p 4 & 5

With the resurrection of the East African Community, the presence of SADCC and COMESA, cross borders provisions have to be seen to encourage cross borders modalities rather than be left to *ad hoc* actions. These authors show and further make shed light on the problem with the existing Company laws in Tanzania prompting a need to be addressed, made and provided clear guidelines compatible with the laws and fill the existing gaps left.

**Chris P.M and Saudin J.M (2004)**<sup>60</sup> have presented the issues where foreign investors failed to pay PSRC the purchasing price of the statutory corporation they have bought. Worse enough due to the loop 825204

hole on the procedures caused by our laws, the same foreign company also raised capital from Tanzanian local banks to purchase the public owned assets. This shows that the foreign company was not scrutinised about their financial status before registering it in Tanzania. Effects of non- cutinisation of such companies before registering them has caused and results into great loss to the Government. My thesis has recommended on what should be done preventing foreign investors from abusing investment laws and procedures.

In summary, Companies are registered under the jurisdictional laws of Tanzania, whether local or foreign. They are managed under Tanzanian laws; their annual compliance requirements are under Tanzanian laws. The foreign companies amongst these are used to advanced legal framework that facilitates their operations in the world. As our laws are not updated to be tandem with world trade, we are not only scuffling inward investment efforts currently being marketed by the government, but also discouraging existing foreign companies continuing activities. Since these all remain incidental to the registration of such companies it is these gaps my research will fill by paying great attention to the competence of the laws as far as the registration of foreign companies is concerned in Tanzania.

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<sup>60</sup> *Some Comments-Some Issues*, in Investment in Tanzania, Ecoprint Ltd, Dar es salaam. p 51-55

## **1.7 Research Methodology**

Research methodology shows the framework in which this research study was carried out. The empirical, methodological approach for this study has been informed by qualitative research methods. The qualitative research is flexible with multi-method focus.<sup>61</sup> This part therefore tells, about the research design, area of the study, population sample, sampling techniques, types of data, data collection methods, data collection tools and data analysis techniques.

### **1.7.1 Research Design**

This part of the study focuses on the structural aspect of the research. Aimed at analysing the way the study was organised to achieve the specific ends.<sup>62</sup> It is the conceptual structure<sup>63</sup> within which this research study was conducted, it constitutes the blueprint for the collection, measurement and analysis of data, hence facilitate the smooth sailing of the research operations.

The research design which has been used is case study research design.

#### **1.7.1.1 A case study**

A case study employed, observation, interviews, and focus group discussions as methods of data collection from TIPER (Tanzanian and Italian Petroleum Refining Company Limited), Cargo Delivery Freighters Ltd and East Cost Oil & Fats Co. Ltd, legal officers and advocates from corporate law firms and Company Secretaries. Tanzania Revenue Authority (TRA) and BRELA.

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<sup>61</sup> Introduction: The Discipline and Practice of Qualitative Research, In N. Denzin and Y. Lincoln, (eds.), Handbook of Qualitative Research, Thousand Oaks, CA: SAGE pp1-28

<sup>62</sup> Milanzi, M.C., (2002), Research Methods in Social Sciences: Theory, Philosophy, Methodology and Observation, Institute of Public Administration, Mzumbe University, p.29

<sup>63</sup> Kothari, C. R., (1990), Research Methodology, Methods & Techniques, 2nd Edn., K.K. Gupter for New Age International (P) Ltd p.39, see also Rwegoshora, H. M. M. (2006). A Guide to Social Research, Mkuki and Nyota Publishers, Dar es Salaam p.83 where a research design is said to be an arrangement of the conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure

Respondents with experience, familiarity with the topic and shaped by common established features, such as laws from the above category were involved.

### **1.7.2 Area of the Study**

The area of the study was Dar es Salaam, Tanzania. The rationale of selecting Dar es Salaam stems from reasons that include: First, it was easier for researcher to access the case under the study *for example* TIPER, Cargo Delivery Freighters and East Cost Oil and Fat Co. Ltd in the city. Second, it was also helpful as all the researchers secondary sources of data were obtained from the Tanganyika Library, High Court Commercial Division and the University of Dar es salaam Faculty of Law Library.

In other words it was easy and convenient in making quick references to the secondary data as needed.

### **1.7.3 Population Sample**

This sample of the study concerned with a total of 30 respondents which includes TIPER (Tanzanian and Italian Petroleum Refining Company Limited). Cargo Delivery Freighters Ltd and East Cost Oil & Fats Co. Ltd, Advocates, Academician in corporate Laws, Judges of High Court, Tanzania Revenue Authority (TRA) and BRELA.

### **1.7.4 Sampling Techniques**

To choose a study sample is an important step in any research project since it is rarely practical, efficient or ethical to study the whole population.<sup>64</sup> In obtaining the respondents, the researcher has used a systematic sampling method and purposive sampling.

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<sup>64</sup> Mashall, M.N., (1996), Sampling for Qualitative Research , Family Practice, Oxford University Press, UK p.522

Systematic sampling method requires that, the population be accurately listed in such a way that each element of the population can be uniquely identified by its order.<sup>65</sup> The information obtained in systematic sampling is reliable.<sup>66</sup> Purposive sampling enables the researcher to choose respondents because of certain criteria<sup>67</sup> it is a deliberate selection of sample units that conforms to some pre- determined criteria. This involves the selection of cases which we judge most appropriate ones for the given study.<sup>68</sup>

That being the case therefore the selection of the respondents in this research was based on the reason that, the respondents must be well acquainted with company law and experience since the research at hand highly requires knowledge in corporate laws.

### **1.7.5 Types of Data, Data Collection Methods and Tools**

#### **1.7.5.1 Types of Data**

The word data is defined to mean and include all the information that the researcher collected and gathered for the study.<sup>69</sup> There are two types of data namely primary and secondary data. In this research, the researcher used both primary and secondary.

#### **1.7.5.2 Primary Data**

Primary data is the original information collected for the first time. It is the information that is collected directly from the subjects. It is the information that is obtained from the persons who are directly affected by the problem or information

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<sup>65</sup> Myneni, S. R. (2001). Legal Research Methodology, Allahabad Law Agency, Assian Offset Press p.226

<sup>66</sup> *Ibid*

<sup>67</sup> Dooley, D. (1995), Social Research Methods, (3rd Edn.), Prentice- Hall of India Private Limited, Delhi p. 136

<sup>68</sup> Krishnaswami, O. R. and Ranganatham, M., (2005), *ibid* p. 139

<sup>69</sup> Mugenda, O. M. and Mugenda, A.G., (2003), Research Methods: Quantitative and Qualitative Approaches, Acts Press Nairobi p. 64

that is obtained through observation.<sup>70</sup> In this research primary data were obtained from BRELA, TRA and TIPER (Tanzanian and Italian Petroleum Refining Company Limited), Cargo Delivery Freighters Ltd and East Cost Oil & Fats Co. Ltd.

The researcher interviewed people who deal with this problem on the day to day activities. In line with this the researcher also had responses from academicians, judges, advocates, lawyers and the Registrar of companies this happened to know the topic at hand.

#### **1.7.5.2 Secondary Data**

Secondary data is the information that is obtained from published sources such as books, journals, articles or from someone who worked on the subject.<sup>71</sup> This included reviewing of written materials including statutes, books journals, and case laws since they have legal interpretation of the laws and statements of facts with relation to the study. Or it might be information from a person who had dealt with the problem at one point or the other for example through research however in this study none of this was available.

This research employed secondary data from books, articles from internet sources and case laws. This is based on the footing that it enabled the researcher to know the research gaps and the extent in which the registration of foreign company has been underscored by other writers. This also helped the researcher to verify the findings on primary data.

#### **1.7.5.3 Data Collection methods**

The study used both primary and secondary data collection methods. The primary data were collected through questionnaires, interviews and personal observation; whereas secondary data were obtained from various documents such as books,

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<sup>70</sup> Ibid., p.134

<sup>71</sup> Ibid

journals and other written reports which were available in the libraries. In this study the following data collection tools were employed. Personal interviews and questionnaires survey were the main methods in collecting primary data. Secondary data were collected by a literature review. These are discussed herein below:-

#### **1.7.5.3.1 Primary Sources of data.**

This method of data collection helped the researcher to avoid chances of making assumptions and relying on hearsay from unreliable sources. Interviews and Questionnaires was used. Data obtained in this form are called primary data.

The field research for collecting primary data was conducted through the following ways:-

##### **1.7.5.3.1.1 Interviews**

This is a face to face interaction in which the researcher obtained information from the interviewee. The researcher used both structured and unstructured interviews in order to exhaust the data collected. Through interview, the researcher was able to obtain the data from the experience and views of the interviewee. This method was complemented by the use of questionnaires.

##### **1.7.5.3.1.2 Questionnaire**

The researcher prepared questions to be answered by a selected group of research respondents. Questionnaire has been termed to be a good means of data collection as it provides a chance to the respondents to think thoroughly before responding. Questionnaires were used to the respondents whom the researcher could not meet physically. The researcher supplied questionnaires to the relevant personnel from the aforementioned sample. The questionnaires contained both; structured and unstructured questions; with both; open and close ended questions in order to obtain all the information relevant to the study.

#### **1.7.5.4. Secondary Data**

Secondary is the data that were collected by someone else for some other purpose i.e. the data which was not collected to answer the researcher's specific research questions and was instead collected for another purpose.<sup>72</sup> Secondary data is economical; the researcher saves money, time, energy, and other resources. A major disadvantage of using secondary data is that it may not answer the researcher's

##### **1.7.5.4.1 Documentary Review**

During the research, the researcher visited Mzumbe University library, the University Dar es salaam library and Tanganyika Library at Dar es Salaam in order to collect the information relevant to the study. Information was obtained through the analysis of statutes, cases, textbooks, journal articles and reports on the related study.

#### **1.7.6 Data Analysis Techniques**

The research used qualitative data analysis, which is the process in which we move from the raw data that have been collected as part of the research study and use it to provide explanations, understanding and interpretation of the phenomena, people and situations which were under the study. The aim of analysing qualitative data was to examine the meaningful and symbolic content of that which is found within. What we are aiming for is to try to identify and understand such concepts, situations and ideas.<sup>73</sup>

Qualitative research method was involved, the procedure in which the research question requires an understanding of the processes, events and relationships in the context of social and cultural situation. Qualitative research aims at producing

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<sup>72</sup> <http://sociology.about.com/od/Research-Methods/a/Secondary-Data-Analysis.htm> / last visited on the 14<sup>th</sup> October 2019

<sup>73</sup> Mugenda, O. M. and Mugenda, A.G., (2003), Research Methods: Quantitative and Qualitative Approaches, Acts Press Nairobi p. 64  
[http://www.researchproposalsforhealthprofessionals.com/qualitative\\_data\\_analysis1.htm/](http://www.researchproposalsforhealthprofessionals.com/qualitative_data_analysis1.htm/) accessed on 21 day of September 2017 at 19.15 PM

factual description that is based on face to face knowledge of individual and social groups in their natural setting that is relevant to this study. It is useful for obtaining insights into situations and problems concerning which one may have little knowledge

It is argued that a qualitative method can be used for better understanding of phenomena which is not well known. It can also be used to gain new perspectives on the things or issues that are already known or to gain more in depth information that may be difficult to convey quantitatively.<sup>74</sup> With the study at hand it was imperative that qualitative method be used to analyse data to explain the problem.

The researcher used content analysis<sup>75</sup> with respect to documentary data which were obtained from the named libraries above from. In addition, the analysis of primary data includes the tabulation and graphing of the said data to explain the problem at hand.

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<sup>74</sup>Marie C. H., Choosing Qualitative Research: Primary for Technology Researchers, in Journal of Technology Education, Vol. 9 No.1 of 1997

<sup>75</sup>Krishnaswami, O. R. and Ranganatham, M., (2005), *ibid* pp 211-212 defines Content analysis is a research technique for making inferences by objectivity and systematically identifying certain specified characteristics of a content of a document. This is the method of data collection and data analysis. This is used for gathering data from archival records, documents, newspaper. The content of the written material serves as a basis of inference. The analysis is made objectively and systematically. Objectively refers to making to making analysis on the basis explicit rules which enable different researchers to obtain the same results from the same document. Systematic analysis refers to making inclusion or exclusion of content of according to consistently applied criteria of selection; only materials relevant to the research design are examined.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK GOVERNING REGISTRATION OF FOREIGN COMPANIES IN TANZANIA

#### 2.0 The Concept of Company

According to **Dignam, A and Lowry, J A** a company is the legal entity which made up of an association of people for carrying on commercial or industrial enterprise and abbreviated as co.<sup>76</sup>

In Tanzania the law defined to mean a company formed and registered by the Act (The Companies Act Cap. 212).<sup>77</sup> The definition under the Act is not exhaustive, but under common law the term company was defined in the case of SMITH V ANDERSON<sup>78</sup> as a group of persons associated together for the attainment of a common end, social or economic or a voluntary association of persons or individuals formed for some common purpose.

In Tanzania the law allows two or more people with respect of registration form an incorporated company.<sup>79</sup> But for the company which registered out of Tanzania to establish a business presence in Tanzania is either by setting up a limited liability company as group subsidiary or register a foreign limited liability company as a branch that having established place of business in Tanzania.<sup>80</sup>

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<sup>76</sup> Dignam, A and Lowry, J. *Company Law*. Oxford: Oxford University Press, 2006. At pg. 3

<sup>77</sup> Section 2 of the Companies Act, [Cap. 212 R.E 2002]

<sup>78</sup> 1880 Ch. D. 247

<sup>79</sup> Section 3(1) of the Companies Act,

<sup>80</sup> [https://uk.practicallaw.thomsonreuters.com/75622905?transitionType=Default&contextData=\(sc.Default\)/](https://uk.practicallaw.thomsonreuters.com/75622905?transitionType=Default&contextData=(sc.Default)/) accessed on 10<sup>th</sup> Feb., 2018

## 2.1 Foreign Companies under common law

The Foreign Company is the company which has been incorporated under the laws of different states or nations.<sup>81</sup> In India foreign company is the company incorporated outside India, establish a place of business in India by itself or through an agent, physically or through electronic mode and conduct any business activity within India.<sup>82</sup> The liabilities of a foreign company is based on the residence status through test of “control and management” the place where the key management and commercial decision that are necessary for the conduct of business of an entity as a whole are in substance mode.<sup>83</sup> In determining the place from where effective management is exercised the following factors held<sup>84</sup> to be useful in determining:-

A place where the Board Meetings are held and the business transacted by the Board, Categorization of the decisions taken by the Board as critical policy decisions and routine operational decisions and identifying (a) the person or the Body takes such decisions and (b) the place where such decisions are so taken, whether the Board deliberates intensively on the proposals or do they, as a formality, approve the proposals put forth before it, a Place where the Executive Officers exercise their functions, a place where the accounting records are kept and a place where the company is incorporated and the laws of the jurisdiction on the functioning of the company from a place outside the jurisdiction.<sup>85</sup>

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<sup>81</sup> <https://legal-dictionary.thefreedictionary.com/Foreign+Company/> accessed on 9<sup>th</sup> Feb.,2018

<sup>82</sup> Section 2(42) of the India Companies Act,2013

<sup>83</sup> <https://www.lakshmisri.com/News-and-Publications/Publications/Articles/Tax/taxation-of-foreign-companies-regarded-as-resident-in-india/> accessed on 5<sup>th</sup> day of Feb., 2018

<sup>84</sup> Erin Estate v CIT [1958] 34 ITR 1 (SC), CIT v Subbiah Chettiar [1947] 15 ITR 502 (Mad), Narottam and Pereira Ltd v CIT [1953] 23 ITR 454 (Bom), CIT v Bank of China [1985]154 ITR 617 (Cal), CIT v. Bank of China 23 Taxman 46 (Cal), CIT v Chitra Palayakat Co [1985] 156 ITR 730

<sup>85</sup> *ibid*

## 2.2 Foreign Companies in Tanzania

In Tanzania definition is similar to that of India.<sup>86</sup> Therefore the company incorporated in a country other than Tanzania under the laws of that other country and has established the place of business in Tanzania is a foreign company.

In Tanzania Companies existed from the early 15<sup>th</sup> century. Under Germany regime existed the Germany East Africa Company [GEACO] and the Imperial British East Africa Company to mark the British Rule in Tanzania the then Tanganyika. The cited companies under colonial regime were all registered in their countries of origin.

It is meaningful pointing out at this stage that, the history of company law and its development in Tanzania went through different phases.

Before the enactment of the Companies Act, No.12 of 2002, Companies in Tanzania were regulated by the Companies Ordinance, No. 46 of 1931. The Companies Ordinance<sup>87</sup> literally embodied complex features in the formation of the Company. Apart from the complex membership requirement, demanding not less than seven members for a Public Company and two members of a Private Company,<sup>88</sup> individuals could not form<sup>89</sup> a Company of any type solely; Jurisdiction on the winding up of the Companies generally got bestowed with the High Court, above all, the practical aspect on winding up of a Company did not extend to subordinate courts to say District Courts and the Resident Magistrates Courts.

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<sup>86</sup> Luoga William R., (2016), Manual for Business Associations in Tanzania, Ndaga Printers, Dar es Salaam, Africa Page 34

<sup>87</sup> The Companies Ordinance No. 46 of 1931

<sup>88</sup> Section 3 of the Companies Ordinance No. 46 of 1931 “(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability

<sup>89</sup> section 3 of the Companies Act. No.12 of 2002 “ Any two or more persons, associated for any lawful purpose, by subscribing their names to a memorandum of association and otherwise complying with the requirement of this Act in respect of registration, form an incorporated company, with or without limited liability.

The enactment of the Companies Act,<sup>90</sup> which repealed and replaced the old Companies ordinance became a lubricant and softened the complex features of the old regime.<sup>91</sup> This act reduced the membership requirement to two members for both Private and Public Companies to be formed, but maintained the legacy of the old laws that a company of whichever kind could not be formed with a single member or rather shareholder. It is vital appraising the initiatives by the Tanzanian Parliament, which through the 2012<sup>92</sup> amendments it is now possible to have a limited liability single shareholder Company in Tanzania.

The Companies Act<sup>93</sup> defined foreign companies as companies incorporated outside Tanzania, which, after the appointed day, establish a place of business within Tanzania and companies incorporated outside Tanzania which have, before the appointed day, established a place of business within Tanzania and continue to have a place of business within Tanzania on and after the appointed day. Having a place of business in Tanzania doesn't mean doing business through an agent in Tanzania.<sup>94</sup> Since registration of foreign company in Tanzania is one of the options of the foreign company to establish a place of business in Tanzania as provided by the law. Once a foreign Company is registered in Tanzania, it has the same powers as if it was a company incorporated in Tanzania, such power include to hold lands in the Territory as if it were a company incorporated within the territory.<sup>62</sup>

The companies do not have a physical body, but do have all rights and duties like natural person. This happens when the foreign company successfully registered in Tanzania.

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<sup>90</sup> Companies Act. No 12 of 2012 section 275

<sup>91</sup> See. The National Investment (Promotion and Protection) Act, 1990

<sup>92</sup> the Business Laws (Miscellaneous Amendments) Act No.3, 2012

<sup>93</sup> [Cap. 212 R.E. 2002 ] under section 433

<sup>94</sup> Section 433 sub (2) of the Companies Act, 2002

<sup>62</sup> *ibid.*, Section 322 and Section 435.

Generally, foreign company a natural person who is not a citizen of Tanzania, and a company incorporated under the laws of any country other than Tanzania in which more than fifty percent of the shares are held by a person who is not a citizen of Tanzania.<sup>95</sup>

### **2.2.1 Historical Background of Foreign Companies**

The history of foreign companies can be traced from the revolution of industries in Europe. At this time, developed nations were finding the area of investing their capitals so that they can accumulate much worth to feed their industries in Europe. Generally, the history of Foreign Companies in Tanzania can be categorized into the period before market era and during the market era.

### **2.2.2 Foreign Company before Market Era**

This period covers the period during colonialism, after independence and the period of Arusha Declaration. During colonialism, that is to say 1885-1960 Foreign Companies operating in Tanzania were for the purpose of acquisition of raw materials for the economic development in foreign countries.<sup>96</sup>

The government of Tanzania had made efforts after independence to attract more investors from abroad. The early intention of the government was shown by enactment of the Foreign Investment (Promotion and Protection) Act, 1990<sup>97</sup> which repealed the Foreign Investment (Protection) Act, 1963<sup>98</sup> enacted to give protection to certain approved Foreign Investments and for matters incidental thereto,

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<sup>95</sup> Mahiti, M. F., (2012) Determinants of Foreign Direct Investments (FDIs) in East Africa Countries of Tanzania and Kenya. A Thesis Submitted to Mzumbe University, Dar es Salaam Campus College in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Science in Accounting and Finance (MSc-A&F) of Mzumbe University.

<sup>96</sup> Tanzania Mainland formally known as Tanganyika were under German colonial rule as the first colonial master as soon as Berlin conference 1884 up to the end of first world war on 1919, after the first world war, Tanganyika was under the British colonial rule since 1919 to 1961

<sup>97</sup> Act No. 10 of 1990

<sup>98</sup> Act No.40 of 1963

incorporated priority for investment, controlled and reserved areas for investment and activities which are exclusively for local investors.<sup>99</sup>

The main part of the Act<sup>100</sup> covered the procedures for investment, incentives, dispute settlement, and transfer of foreign currency in order to attract foreign Companies in the new independent country.<sup>101</sup> With the aim to build an independent nation, the economy continued to be based on the capitalist mode of production with private sector dominating the market.<sup>102</sup>

Foreign Investment (Promotion and Protection) Act, 1990 were major effort made by the government to rescue investment system in general from the Arusha Declaration, which introduced socialist policies that was to be followed by the country. Hence, the ministerial order under the Industrial (Acquisition) Act<sup>103</sup> it required all private businesses operating in Tanzania to make the government of Tanzania majority shareholder of such companies. The majority of companies operating in Tanzania were nationalized. The public corporation Act,1967<sup>104</sup> was created to put all nationalized companies under the government control and management<sup>105</sup>

### **2.2.3 Foreign Companies during Market Era**

This period can be called, the reform era of Foreign Direct Investment. It is characterized by the development of privatization, trade liberalization and globalization. The state allowed private ownership of industries which were nationalized during the Arusha Declaration. Trade liberalization led to the opening

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<sup>99</sup> ICSID Review - Foreign Investment Law Journal, Volume 6, Issue 1, Spring 1991, P. 292–312. Available at: <https://doi.org/10.1093/icsidreview/6.1.292>

<sup>100</sup> Supra., note 97

<sup>101</sup> Mahiti, M. F., (2012) Determinants of Foreign Direct Investments (FDIs) in East Africa Countries of Tanzania and Kenya, page 10

<sup>102</sup> Ngowi, H., (2009) Economic Development and Changes in Tanzania Since Independence. p.4

<sup>103</sup> Act No. 5 of 1967

<sup>104</sup> **Act No. 17 of 1969**

<sup>105</sup> Ngowi, H. P. J., (2000). “FDI Determinants: Can sub-Sahara Africa Increase its Global FDI share?” p.7

of trade borders and allows the flow of capital and transfer of technology from foreign states to Tanzania for the purpose of investment.<sup>106</sup>

It is after the government of Tanzania found that it could not cope with the ailing and ill-managed public enterprises and companies. It was a failure of *Ujamaa policy* which led the government of Tanzania Mainland to find the solution of facilitating investments in Tanzania. The government introduced new laws such as Foreign Investment (Promotion and Protection) Act, 1990 to revival foreign investment in Tanzania.

FDI activities in Tanzania have been increasing rapidly, the report of the Bank of Tanzania (BOT), Tanzania Investment Centre (TIC) and National Bureau of Standards (NBS) inform that the stock of FDI increased persistently.<sup>107</sup> Many foreign investment projects have been registered in different sectors such as agriculture, mining, manufacturing, tourism and telecommunication to mention but a few.

#### **2.2.4 Registration of Foreign companies in Tanzania.**

Registration of Foreign Companies is the legal process used by a company incorporated in a country outside Tanzania under the law of that other country undertook in order to establish the place of business in Tanzania.<sup>108</sup> Registration of a company is like the birth of an individual in the particular country.<sup>109</sup>

A company which has been incorporated outside of Tanzania in order establishes a branch office in Tanzania must follow the procedures laid down under the companies Act Cap 212 R.E. 2002 (hereinafter referred to as the Act). The only element for the companies to be regarded as foreign company is where such company is incorporated outside Tanzania.<sup>110</sup>

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<sup>106</sup> *Op cit.*

<sup>107</sup> BOT, TIC and NBS Report of 2017

<sup>108</sup> Luoga William R., (2016), Manual for Business Association in Tanzania. At p. 31

<sup>109</sup> *ibid*

<sup>110</sup> Section 434 (1) of the Companies Act

Registrar of the Companies is the officer responsible for registration of the companies in Tanzania. Therefore foreign company must obtain a Certificate of Compliance from the registrar by following the procedure laid down under the Act.<sup>111</sup> A Foreign Company with a branch in Tanzania is required to have representative by a person resident in Tanzania with a Power of Attorney as the person authorised to receive court process. An applicant must file company Form No. 434<sup>112</sup> at BRELA together with the followings:-

A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, a list containing particulars of the directors and secretary of the company, a statement of subsisting charges created by the company related to property located in Tanzania, name(s) and address(es) of one or more person(s) resident in Tanzania authorised to act as the company's representative, a full address of the registered principal place of business and place of business in Tanzania and a statutory declaration made by a director or secretary of the company stating the date on which the company's place of business was established in Tanzania and the business that is to be carried out and a copy of the most recent accounts in order to be issued with a Certificate of Compliance.<sup>113</sup>

The rationale behind registering foreign companies is that business at some stage of development may come up with certain ideas to increase its assets. In order to implement those ideas or protect the assets they need to expand the geography of corporate or private business structure arise. In such circumstance, one needs to set up a legal entity outside home state.

Tanzania due to her rich natural resources and potential areas for investment has attracted a handful of big investors from foreign countries to invest.

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<sup>111</sup> Part XII of the Companies Act, Cap. 212

<sup>112</sup> The Companies Forms Rules GN NO 41 of 2005

<sup>113</sup> <https://www.abccattorneys.co.tz/registration-of-a-company-in-tanzania/> accessed on 7<sup>th</sup> April 2018 at 11:28 am

### 2.2.5 Legal position of registered foreign companies in Tanzania

Registered foreign companies in Tanzania they are offices will be treated as branches of those foreign companies, even of all shareholders and subscribers are nationals of United Republic of Tanzania.<sup>114</sup>

After registrar certification under his hand that the company has complied with the provisions of the Act, a certificate shall be conclusive evidence that the company is registered as a foreign company and from that date of registration a foreign company shall have the same power to hold land in Tanzania as if it were a company incorporated the Act.<sup>115</sup>

They can trade directly within the country through a branch after registration of an established place of business subject to the laws of the country. But such foreign company will not be deemed to have a place of business in Tanzania solely on account of its doing business through an agent in the country at the place of business of that agent.<sup>116</sup>

The branch company will operate within the scope defined by the parent company to allow the company to do business in Tanzania.<sup>117</sup>

The researcher is aware of the Business Law (Miscellaneous Amendment) Act, 2012<sup>118</sup> which amended the Companies Act to introduce, as an addition to the existing company setup, a new one shareholder company.<sup>119</sup> The law extends the meaning of the word company by amending section 3 of the Companies Act, to include a “single shareholder company formed by an individual”. The amending law also introduced a new Section 26A to the Companies Act, whose subsection (1) provides that a limited liability single shareholder company shall be formed by one

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<sup>114</sup> Luoga. *Op. cit.*

<sup>115</sup> Section 435 of the Companies Act.

<sup>116</sup> <https://uk.practicallaw.thomsonreuters.com/> accessed on 8<sup>th</sup> April 2018 at 06:19 am

<sup>117</sup> <https://www.healyconsultants.com/tanzania-company-registration/setup-llc/> accessed on 8<sup>th</sup> April 2018 at 06:23 am

<sup>118</sup> The Business Law (Miscellaneous Amendment) Act, 2012 (Act No. 3 of 2012)

<sup>119</sup> sections 18

member. It is by virtue of this section company set up, structure and management considered to have been modified.

The law requires any person who is of the age of majority, who is not undischarged bankruptcy or disqualified director may set up a one Shareholder Company. Currently, it is not a requirement that a person setting up the company must be a citizen or resident in Tanzania. Therefore, this is an opportunity for national and foreigner entrepreneurs who prefer to work alone or do not require business partners to set up their corporations in Tanzania. The process of setting up a one shareholder company is still considered the same as for a private limited company unless otherwise modified by long waited regulations to regulate the business of one shareholder company.<sup>120</sup>

The government wanted to encourage corporatization of business and entrepreneurship by enabling business persons who wanted to venture into corporate world singularly to be able to do so but the Business Law (Miscellaneous Amendment) Act, 2012 has not come into force.

### **2.3 Conclusion**

From the literature review it can conclude that foreign companies are recognised in Tanzania, its history is connected to the history of colonialism specifically during the period of the industrial revolution with slight changes which can be identified and to be improved. Its registration is very important in every country in order to ensure smoothly selling of foreign companies for contribution of economic growth of the country.

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<sup>120</sup> Note that under Section 26A (5) of the Companies Act, Cap 212 R.E 2002, The Minister Responsible for Trade Affairs is required to make regulations for set up and management of a Single Shareholder Company.

## CHAPTER THREE

### THE LEGAL FRAMEWORK GOVERNING THE REGISTRATION OF A FOREIGN COMPANY IN TANZANIA

#### 3.0 Introduction

The legal framework governs the registration of foreign companies; it consists of the laws and legally binding regulations that govern the registration of foreign companies in Tanzania. A well-established legal framework is the foundation of an effective and well-functioning national registration system on foreign company's hence well operational foreign companies. This stems out of the facts that laws are the ones which directs, regulates and control the operations in Tanzania.

Therefore, this chapter is going to examine the laws governing registration of foreign companies in Tanzania.

#### 3.1 Principal Legislations

##### 3.1.1 The Constitution of the United Republic of Tanzania<sup>121</sup>

The Constitution is the mother law of the country.<sup>122</sup> It has set up an independent judiciary organ of state and does recognize the sacred right of individuals to acquire and own property.<sup>123</sup> It provides for the right of a person to work for gain and own properties.<sup>124</sup> It is from these parameters that, the business of companies both local and foreign companies receives the constitutional guarantee.

The constitution further prevents forfeiture of one's property for the purpose of nationalization without compensating the affected person fully and fairly.<sup>125</sup>

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<sup>121</sup> 1977 [Cap. 2] (as amended from time to time)

<sup>122</sup> Article 64(5) of the Constitution of United Republic of Tanzania, 1977

<sup>123</sup> Ibid article 24

<sup>124</sup> Article 22 of the URT Constitution, 1977

<sup>125</sup> Article 24(2) Ibid

Therefore the Constitution guarantees investment and ownership of property. Being the basic fundamental law, it protects and defends the right of a person to own property without being interfered. As such a foreigner can own properties and business in Tanzania and no one can forfeit such properties or business without lawful and probable cause.

This guarantee, however, was not in existence until 1984 upon the introduction of the bill of rights in Tanzania to prevent nationalization.

### **3.1.2 The Companies Act, 2002<sup>126</sup>**

The Act provides for the procedures and guidelines on how to register a branch of a foreign company Tanzania.<sup>127</sup> The Companies Act restricts the foreign companies to conduct business in Tanzania without getting approval from the Registrar of Companies.<sup>128</sup> Every company incorporated outside Tanzania and wishes to establish a branch in Tanzania are required to submit the following: -

Certified copy of the Memorandum and Articles of Association, charter or statutes. (Certified translation if the said documents are not in English, Full address of the registered principal office of the company, name of directors; and a copy of the most recent accounts and the related reports of the company including, if not in English, a translation of the same into English.

After the registration, a foreign company is required to submit a financial statement (Auditor's report) annually from their mother company. That is to say the financial statement of the foreign company is rarely dealt with in the compound Auditors' report of their mother company. As such this situation may render it hard to realize whether the branch of a foreign company in Tanzania can do business and get profit and not loss since the financial Auditors' report shows that its mother company overseas is Running at a profit.

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<sup>126</sup> [Cap. 212 R.E 2002]

<sup>127</sup> Section 434 Ibid

<sup>128</sup> Section 435 ibid

Name and addresses of persons residing in Tanzania Mainland authorised to accept service of process or notice on behalf of the company service of process and any other notice required to be served on the company, and to represent the company as its permanent representative at its place of business (with a statement as to the extent of its authority), statement of all subsisting charges created by the company, Statutory declarations made by the director or secretary of the company stating the date on which the company's place of business in Tanzania was established, the business that is to be carried on and if different from the registered name of the company, the name under which that business is to be carried on.<sup>129</sup>

The submissions of the said documents<sup>130</sup> are accompanied by payment of prescribed fees The total fees for registration are approximately US\$1,250. The filing fees are approximately US\$220.<sup>131</sup> As filling fee for the memorandum of the charter or Statute being the filling fee for the particulars of the registered principal office, particulars of directors, and particulars of, the person residing in Tanzania authorised to accept service of notice on behalf of the company.<sup>132</sup>

The Registrar after receiving the application of the foreign company to register its business in Tanzania may in his absolute discretion refuse to register without disclosing reasons, or he may register the branch of the foreign company in Tanzania.<sup>133</sup> In a situation where the Registrar approves the registration, then a certificate of compliance is issued to a branch of a foreign company as evidence that a company has been duly registered in Tanzania.<sup>134</sup>

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<sup>129</sup> Section 440 Op. cit.

<sup>130</sup> Such submissions are normally made with a covering letter for application

<sup>131</sup> Government Notices Number 126 and 127 published on 25 April 2014, fees payable under the Companies Act (Cap. 212)

<sup>132</sup> *ibid*

<sup>133</sup> Available at  
[https://business.go.tz/search?p\\_p\\_id=101&p\\_p\\_lifecycle=0&p\\_p\\_state=maximized&p\\_p\\_mode=view&\\_101\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_assetEntryId=120628&\\_101\\_type=content&\\_101\\_urlTitle=register-a-company&inheritRedirect=false/](https://business.go.tz/search?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=120628&_101_type=content&_101_urlTitle=register-a-company&inheritRedirect=false/) accessed at 09:00 am on 16<sup>th</sup> April 2018

<sup>134</sup> Section 435 of The Companies Act, No. 12 of 2002

Requesting submission of the copy of the current financial statement (most recent accounts) and the related reports of the company of the overseas company before a foreign company is registered that document is the one which avoid onerous investors.<sup>135</sup>

Winding up of a branch of a foreign company in Tanzania is done by writing to the Registrar notifying the intention of closing business of the branch of a foreign company in Tanzania. No winding up by supervision of the court or by the court like the winding up procedure of the local company is allowed for. That is, a branch of a foreign company can be wound up without its creditors in Tanzania knowing that the company has been wound up. Therefore, it is very easy for the branch of a foreign company to refuge Tanzania without paying its liabilities.<sup>136</sup>

### **3.1.3 The Income Tax Act,<sup>137</sup>**

Under the Act, for a foreign company to establish a branch in Tanzania is required to register its directors, shareholders, as tax payer so must have Taxpayer's Identification Number (TIN). Also, must open income tax file number for the purpose of paying corporate tax and other necessary taxes and revenues (ITFN) together must process business license tax clearance certificate (BLTCC), which proves the foreign company has no tax liabilities in Tanzania and open an account for paying employment taxes (Pay as you earn – "PAYE").

The registration for tax purposes just like the registration of a foreign company with the registrar of companies requires no due diligence credentials,<sup>138</sup> that is to say the Tanzania Revenue Authority (TRA) may allow a foreign company with a bad record of paying taxes in their overseas country to operate in Tanzania without considering that such companies can do the same in Tanzania.<sup>139</sup>

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<sup>135</sup> Ibid., Section 434 (1) (g)

<sup>136</sup> Sections 348 – 355 of the Act.

<sup>137</sup> [Cap.332 R.E. 2008]

<sup>138</sup> Section 53 of the Income Tax Act, [Cap. 332 R.E 2008]

<sup>139</sup> Section 53 and 54(1) (b) of the Income Tax Act,

The documents of the foreign companies that are required to be submitted for tax purposes to TRA to process documents said in (a-d) above are copies of certificate of compliance, memorandum and articles of association which in fact you cannot understand or make or exercise a due diligence to establish whether the foreign company is very active in paying taxes. After all, in a situation where the directors or shareholders of the foreign company can escape paying taxes and run away from Tanzania to avoid paying taxes and in turn TRA cannot bring them to justice because they do not know even the essential identification particulars such as passport numbers, residential address in the foreign country and the alike, because they do not require them at all during registration for tax purposes.

#### **3.1.4 Business Licensing Act, [Cap. 213 R.E. 2002]<sup>140</sup>**

This is the main Act for Business licensing provision in Tanzania.<sup>141</sup> The law makes mandatory for business to operate in Tanzania must hold a valid Business License issued under the Authority, namely Ministry of Industry, Trade and Investment for Class “A” Business Licenses and Local Government Authorities (LGAs) for Class B Licenses.

For a foreign company registered in Tanzania must apply from the ministry for a business license (general license) under the Act. Respective Authority. The application of the authority must be in the authorized form,<sup>142</sup> attached with photocopy of Certificate of Registration, a photocopy of Memorandum, articles of Association together with proof of Tanzania citizenship by attaching photocopy of passport, birth certificate or affidavit.

For non citizen should attach a photocopy of Residence Permit Class A" -showing the holder to be invested in that company or powers of Attorney to citizen/Residence should be submitted/attached, proof by the applicant having a suitable business premises for the business applied. For example applicant can submit a copy of the

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<sup>140</sup> [Cap. 208 R.E. 2002]

<sup>141</sup> <https://business.go.tz/obtain-a-business-license/> accessed on 10<sup>th</sup> May, 2018

<sup>142</sup> TFN 211

title deed or lease agreement, proof of Registration for Tax Payment from TRA by attaching a copy of TIN Certificate and Business License Tax Clearance Certificates and proof of Registration and/ or Permit from the Sector Regulating Authority

### **3.1.5 Tanzania investment Act, 1997 (Act No. 26 of 1997)**

The Tanzania Investment Act, govern the companies which have been registered with the TIC. Registration of a company in Tanzania can also be done under the auspices of the TIC. The law governs the incentive<sup>143</sup> provision to certain investors (excluding those in the mining and upstream oil and gas sectors, which are governed by tailored legal frameworks) where the value of an investment from a foreign company or foreign owned company is greater than USD 500,000. Such investors are entitled to certain fiscal and non- fiscal incentives and exemptions which would not otherwise be available to them in Tanzania, including, amongst other things, tax incentives, assistance with gaining all necessary licenses and permits, guarantees against misappropriation and the ability of a foreign investor to hold a derivative title to land.

Generally speaking the Act guide investment activities in Tanzania, provide for more favorable conditions for foreign investors and provides Definitions for a foreign investors<sup>144</sup> so as to be covered by the law.

A foreign company with share capital of about 300,000 USD falls within the priority sector or lead sector,<sup>145</sup> therefore must comply with the provision of the Act and enjoy the benefit provided by the same.

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<sup>143</sup> Section 17 of The Tanzania Investment Act, 1997

<sup>144</sup> Section 2 of the Investment Act,1997

<sup>145</sup> Tanzania offers a well-diversified economy with the following categories as lead sector, these are agriculture, agro-based industries, mining, tourism, petroleum and gas and economic infrastructure. The priority sector however, includes manufacturing of natural resources such as fishing and forestry, aviation, commercial building, financial services, transport, broadcasting, human resources development and export oriented projects.

### **3.1.6 The Immigration Act, [Cap. 54 R.E. 2016]**

The Act prohibit any person as far as foreign company is concerned to engage in any prescribed trade, business, profession or other occupation or paid employee, except with the proper visas and work permits in Tanzania, as established by immigration laws.<sup>146</sup> Therefore a foreign compny to conduct business in Tanzania must process a class “A” working permit for shareholders of the foreign company upon depositing a sum sufficient to cover the cost of returning him, his wife and dependent children, if any, to his country of origin or, in the discretion of the immigration officer,<sup>147</sup> and class “B” for employees of a foreign company who are not Tanzanians.<sup>148</sup>

Only five (5) members who are non-citizens are allowed in a foreign company. When processing for a class “A” working permit, foreign shareholders must be holders of certificates of incentive or approval, otherwise they are required to prove that they have injected the share capital of about 300,000 USD in Tanzania, whereas foreign employees who applies for class “B” working permit are required to prove that they are expatriates and there is no Tanzanian with has the same qualifications.<sup>149</sup>

### **3.2. Subsidiary Legislation**

#### **3:2:1 The Company’s Winding-up Rules, 1929**

Is not very strictly to bind unserious branches of foreign companies just like local companies are bound during liquidation to meet their liabilities and pay their creditors.

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<sup>146</sup> The Immigration Act, [Cap. 54 R.E. 2016] section 16

<sup>147</sup> Ibid., Section 19.

<sup>148</sup> Ibid., Section 20

<sup>149</sup> Section 24 (2) of The Tanzania Investment Act, 1997 is to the effect that any application for an extra person within an immigrant quota shall be submitted to the centre which shall, in consultation with the Immigration Department, authorise any additional person which it shall deem necessary taking into consideration the availability of qualified Tanzanians, complexity of the technology employed by the business enterprise and agreements reached with the investors.

### **3:2:2 The Income Tax Regulations, 2004**

Rule 5 of the Income Tax Regulations, 2004 made under section 121 of the Income Tax Act, 2004 provide that, the accounting principles of the foreign company must be those adopted by the national board of accountancy and auditors (NBAA). The researcher's interview with NBAA personnel gave an insight that auditing of a branch of a foreign company in Tanzania is done separately from the Auditors report of the overseas company. While under the Companies Act, a foreign company is required to file auditors accounts of their overseas company i.e consolidated accounts which contain less particulars about the branch of a foreign company in Tanzania as the overseas company may have many branches all over the world.

What is striking here is that, **The Companies Act** does not require a branch to have a separate Auditors' report from that of the overseas Auditor's Report. The conflict between **The Companies Act** and **The Income Tax Regulation** is among the flaws in financial accounting of a branch of a foreign company. As such, it renders it difficult for the foreign owners understand what procedural requirement should they adopt or follow when preparing their accounting report.

### **3.2.3 The Noncitizens (Employment Regulations) Regulation, 2016.<sup>150</sup>**

The regulation provides for criteria and conditions for issuance of each type of work permit, Employment of Refugees, Employment of non-citizens in the public sector, Bulk recruitment of non-citizens, Report on cessation of employment and failure by non-citizen issued with a work permit to enter Tanzania.

Regulation 4 (1) (a)<sup>151</sup> a letter justifying why a work permit should be granted, two recent passport-size photographs, copy of a valid passport, sectorial approvals (where applicable), previous work permit (for renewal application), copy industrial license, business or operating license, a copy of certificate of Tax Identification

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<sup>150</sup> The Government Notice No. 331,

<sup>151</sup> **The Non-Citizens (Employment Regulations) Regulation, 2016 under The Government Notice No. 331**

Number (TIN), a copy of certificate of Value Added Tax (where applicable), a copy of certificate of incorporation or business name and extract from the Registrar of companies and Memorandum and Articles of Association (where applicable) to be accompanied in application for work permit class A.

### **3.3 Conclusion**

This chapter examined the laws governing registration of foreign companies in Tanzania. It has spelt out the provision for registration of foreign companies. It has touched various piece of legislations that provide procedures for registration of foreign companies and management. The chapter saw it that the legal pluralism that involves registration of foreign married the stability of operation of foreign companies in Tanzania. The provision that are available within the piece of legislation cause the weakness of registration of foreign companies as they make foreign companies to abuse freedom of investment.

## **CHAPTER FOUR**

### **FINDINGS AND ANALYSIS**

#### **4.0 Introduction**

In this chapter, findings from the field will be presented to show the actual observations, the practice of registering Foreign Companies as well as their operations in Tanzania. This part covers the data collected in the field and all the drawbacks of the laws governing the registration process of foreign companies, the due diligence taken by the Registrar during registration, their operations right up to their winding up.

#### **4:1 The Legal and Regulatory Framework on the registration of foreign companies**

Findings show that, there is no provision of the law which allows the Registrar of companies to remove any doubt over the actual existence of the foreign company in a foreign country. It only allows the Registrar of companies to request a certified copy of the Memorandum and Articles of association, Certificate of incorporation or charter and particulars of directors and persons who accept services in Tanzania on behalf of the foreign company. I managed to interview more than twenty (20) people in this important requirement before registering a branch of a foreign company, but from both of them the response was that, “there is no other legal requirement to remove any element of doubt to the registrar other than what has been provided under the Act” so as to ascertain the existence of a foreign company from their original countries of incorporation.

It can happen a mother company is liquidated in overseas without notifying the registrar of companies in Tanzania, and the branch of the foreign company continues to exist in Tanzania, notwithstanding liquidation of its mother company. Case in point the Supreme Furnishers South Africa (pty) Company being the mother

company of its branch in Tanzania known as Supreme Furnishers (T) Ltd, the Mother company had already been wound up while its branch in Tanzania was still operating.

Subsequently followed by the matter of Winding up between THE SUPREME FURNISHERS (T) LTD and THE REGISTRAR OF COMPANIES, this did not end here, knowing that the branch cannot operate after liquidation the name the company as Royal Furnishers (T) Ltd with the same assets and management. This proves the existence of such default companies which have not yet been discovered due to our scrutiny system.

#### **4:1:1 Failure of the registrar of companies to apply objective principles**

Objective principles such as liaising to know the criminal record, media, corporate scandal, liquidity, ability to trade/ make business, qualification identity, Passport identity and photos when registering a foreign company in Tanzania for stakeholders safety and peace of mind. On my interview with the Assistant Registrar of Companies, proved that the Registrar never inquire at all on the criminal records, tax evasion records and even corruption of the applicants. He went further to say, for the sake of proving the liquidity and ability to trade, there is no requirement to submit current financial statements or balance sheets of the company from its original country of incorporation.

No provision under the current law requires for the statement of accounts during registration in case such company has operated for more than a year in its original country. Upon the interview with among the appointed members to make a review of the newly enacted Companies Act (Act No. 12) of 2002 reveals the absence of the law provisions requiring for the complete address, phone numbers (both mobile and landline), facsimile, website and E-mail address of the registering authorities in foreign countries. As such making it hard to make a quick follow up of those applications made to the registrar.

#### **4.1.2 No cooperation between the Registrar of companies in Tanzania and fellow Registrars of overseas countries**

No cooperation between the Registrar of companies in Tanzania and fellow Registrars of overseas countries in respect of exchanging information about bankruptcy, winding-up and the existence of a foreign company during the registration of such companies. There is no International law which binds the states to cooperate on issues of companies. While discussing with several staff members of BRELA, I realized that, there is no good mechanism established between BRELA with other relevant foreign registration office for coordination to ensure the reliability of documents submitted. This being the case, the system of submitting only the certified copies of the memorandum and articles of association as the current law requires may open a flood gate for registering of non- existing companies.

Worse even, there is no good mechanism and coordination established between BRELA and other relevant licensing authorities in Tanzania. Had there been good or even centralized coordination system within these authorities in Tanzania both local and foreign registering and licensing authorities would submit themselves to BRELA to secure information about those companies tending to establish a place of business in Tanzania as is the case with the Companies House in United Kingdom.

One would strongly argue that there is no problem with the registration authority, but rather the problem is with the licensing authority. The observation in the course of research shows that a foreign company is granted a business license after being issued with the certificate of compliance. This certificate of compliance vests the branch of the foreign company in Tanzania the status of corporate personality, since no company can be issued with the certificate of compliance unless it has certified the Registrar of companies as to the requirements set forth under the Companies Act<sup>54</sup>. As such, it is the duty of the Registrar of Companies rather than the licensing authority to scrutinize the legality of the company wishing to establish a branch of a

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<sup>54</sup>Section 321

foreign company in Tanzania because upon application for business license the company is required to submit the following:-

- i. Copy of a certificate of compliance;
- ii. Copy of a memorandum of a foreign branch;
- iii. Proof of title deed or lease agreement to prove that a foreign company has suitable premises for conducting business;
- iv. The Foreign Company is required to issue a special power of Attorney to Tanzanian who will be responsible for the overall business affairs of such company. However, no even physical addresses or other particulars of such a Tanzanian are required rather than proving he is a Tanzanian national. At least one shareholder of a foreign company is normally required to a class “A” working permit. The fact that getting such a license is very cumbersome, most foreign companies opt to issue special power of Attorney instead;
- v. Foreign company also submits a copy of TIN Certificate to prove that they been registered for taxation purposes.

One of the suspected causes for the possibility of submitting forged documents is that, there is no provision of the law and additional requirements to compel submission of the original documents to the Registrar of companies during registration after submission of the certified copies of the required document for perusal. In line with that, there is no requirement under the law compelling the Registrar of companies abroad to prove the validity of the certified copies of the required documents to be submitted.

The findings show that, even after registration there is no elaborate mechanism to ensure that companies do not change names in their original jurisdiction of incorporation without informing the Registrar of companies in Tanzania. In essence, this results into a number of problems for instance, bringing or proposing registration of the name which already exists in Tanzania.

## **4.2 Gaps exist in Legal and Regulatory Framework governing the registration of foreign companies that attracts foreign companies to the abuse of freedom of investment and doing business.**

The followings below are the gaps which have been revealed from the study:-

### **4.2.1 The stay in the registry of companies without submitting the balance sheets**

The observation from the field shows also that, the branch of the foreign companies in Tanzania may stay in the registry of companies without submitting the balance sheets for a long period of time, thus contravening the provisions of the laws<sup>55</sup>. This clearly indicates that there is a weakness in the registration process. Had there been good, proper and systematic means as well as effective laws for keeping records of such branches of foreign companies and the entire process of registering branches of foreign companies' occasions of such mischief would be highly limited.

### **4.2.2 The changes of directors and principal registered office**

And that, of shareholders are not reported or notified to the registrar of companies in Tanzania while such changes have been made in their mother companies abroad. Thinking of the situation where a branch of the foreign company is registered under the same name of the mother company and such mother company changes its name and brings the new name to Tanzania such a situation may bring problems in terms of registration due to the fact that before registering these companies they have to undergo the name clearance process, as such as the Registrar may refuse to register with respect to the provision in section 18 of the Companies Act.<sup>56</sup>

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<sup>55</sup> Section 323 of the Companies Act, 2006 which imposes a requirement of making out a balance sheet of company business in every calendar year to the Registrar for registration

<sup>56</sup> . That, no company shall be registered by a name, which in the opinion of the Registrar is undesirable.

As if that is not enough, there is an additional requirement of registering a company with the name of its mother company subsequently this may raise a problem of registering the name which already exists in Tanzania.

The absence of provisions regulating change of names with regard to the foreign companies in Tanzania with the current law is the main cause to this problem. It only allows issuing of certificate of change of names of local companies as per section 12<sup>57</sup> of the Companies Act, cap 212, but with regard to the foreign companies the same does not apply for it solely provides for registration of such companies and not for the change of names specifically as the case above. In the instance where a mother company changes its name abroad, for those changes to be effected by the branch of that company the Registrar of companies has to write an affidavit making a declaration as to the validity of such changes. Also, when naming the new company a new name is written and in bracket the former name is also written. During the interview with Chairman of The Tax Revenue Appeals Board- DSM, it was revealed that, presently where there is a law making the companies registry to be the Executive Agency, there may seem to be no problem during the registration process of the foreign companies in Tanzania provided that the applicants comply with the prevailing legal requirements.

#### **4.2.3 Short falls on computerized systems**

The registration process of foreign companies in Tanzania has short falls on computerized systems for matters pertaining to record filling including statutory forms for registration. Unlike the System in UK where there is a well advanced computerized system in which an applicant can simply search and make preliminary Steps of name clearance before further attempts to register such Companies.

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<sup>57</sup>. That a company may by special resolution alter or add its articles. As such any alteration or addition so made shall be as valid as if originally contained therein, and be subject in the like manner to alteration by a special resolution.

### **4.3 Due diligence Registration of a Foreign Company in Tanzania**

The registration process of foreign companies in Tanzania requires submission of several documents from the mother companies abroad, that is to say the due diligence should be exercised by the Registrar of companies in Tanzania, at the request of the necessary documents before registering. Not only that, but also the filling of statutory forms is implicitly necessary.

#### **4:3:1 Filling of Statutory Forms.**

As a matter of practice before the applicant establish a Branch of a foreign company in Tanzania, will have to complete the following forms: -

**Table 4.1 Filling of Statutory Forms**

a) <b>FORM 1F</b>	Application to the Registrar of Companies for the registration of a branch of a foreign company in Tanzania.
b) <b>FORM 4F</b>	The form under which you will have to give the following details about <b>TWO PEOPLE</b> who are residing in Tanzania on whom "legal" notices can be served: - <ul style="list-style-type: none"> <li>• NAME</li> <li>• SURNAME</li> <li>• CHRISTIAN NAME</li> <li>• ADDRESS IN TANZANIA</li> <li>• DESCRIPTION OR OCCUPATION</li> </ul>
c) <b>FORM 3F</b>	The form under which you will have to provide the following details of all the directors of your company who are registered with the Registrar of Companies: - <ul style="list-style-type: none"> <li>• PRESENT CHRISTIAN NAME</li> <li>• FORMER CHRISTIAN NAMES (IF ANY)</li> <li>• NATIONALITY</li> <li>• NATIONALITY OF ORIGIN (IF OTHER THAN PRESENT NATIONALITY)</li> <li>• USUAL RESIDENTIAL ADDRESS</li> <li>• OTHER BUSINESS OCCUPATION OR ANY DIRECTORSHIP (IF ANY)</li> </ul>
d) <b>FORM 1F</b>	The form under which you will have to give the full address of Registered Office of your Branch here in Tanzania
e)	TWO COPIES of the "Constitution" of your company duly translated into English by the Tanzanian High Commission Office.
f)	TWO COPIES of "Certificate of Incorporation" or "Certificate of Compliance" which you must have obtained from the Authorities on registration of your company there.

#### **4:3:2 Due Diligences Taken By the Registrar of Companies**

The due diligence exercised by the registrar of companies is what is provided under section 321 of The Companies Act (cap.212). The requirement for submission of certified relevant documents is the gist for the extent of which the Registrar exercises his due diligence in the registration process of foreign companies in Tanzania. As such the registrar cannot impose requirements which are not provided under the law.

#### **4.4 Major Impediments Those Foreign Companies Should Be Aware When Coming to do Business in Tanzania**

While in the interview with **Leonard Mususa**, who brought to my attention that the first thing you have to understand, particularly when you're coming from a developed economy where there are well-established legal and government institutions and functioning regulatory frameworks is that, an entirely different mindset is required in a place like Tanzania. In Tanzania, our legal and regulatory institutions and structures are still changing, still developing; so, before you make any moves, business-wise, you should seek professional advice. Why do I say that? Because while the Government is trying to remove obstacles and the inevitable red tape and at the same time has established the Tanzania Investment Centre, there is still no fully centralized authority to deal with all licensing requirements of foreign investors.

So, as a result, there are circumstances in which a corporation can either find itself at the mercy of conflicting regulations or requirements, or fall foul of laws or regulations that have been "on the books" for quite a while but are rarely enforced. We have seen many instances where a new organisation is set up, begins to operate and then suddenly finds that it has overlooked some regulation,

Case in point: we recently saw a major retail operation set up a supermarket here. The investors had rightly sought professional advice on regulatory requirements. However, a supermarket of this scale was new to Tanzania, and even the professional advisors considered it prudent to verify the licensing requirements with relevant government officials. The investor and the advisors thought that they had fulfilled all their legal obligations, but, of course, it turned out that they hadn't. In fact, the corporation actually needed 12 licenses in order to operate in Tanzania, but they had begun operations with fewer. The information supplied by government officials turned out to be wrong. But now the advisors have first-hand experience to use in similar situations in future.

Well, apart from the obstacles that can be thrown up by the country's multiplicity of laws and regulations, and its confusing array of licensing laws that I mentioned earlier the biggest issue facing Tanzania is its poor infrastructure. The legal, regulatory and bureaucratic problems are temporary impediments, in my opinion, and they are being resolved. Although Tanzania's infrastructure problems are also being addressed, the time frames involved are naturally different, given the scale of what needs to be done. The road system, for instance, is inadequate and both the cost and reliability of power supplies are still a pertinent issue. As far as the latter is concerned, the Government is currently looking into ways in which private investors might participate in the business of power supply. Our water resources are inadequate too<sup>58</sup>.

But again, the concession process, which will pave the way for outside financing to flow in, will certainly bring about an improvement. Huge efforts are being made to address all these problems, hopefully they will succeed. In fact, compared to how things were, say, ten years ago, we've come a very long way.

#### **4.5 Operation of a Foreign Company**

As far as the operation of foreign companies is concerned in Tanzania, the Provisions of **cap 212** are to the effect that when a foreign company is registered, it is only capable of doing business in the Tanzania territory as D.J.A Dowdall is established in his article *Company Law in Tanzania and its Administration* that, a separate Register of Companies is maintained in Zanzibar under separate legislation and is administered by the Registrar of Companies. However Hon. Justice J.F. Spry in his article *Company Legislation* went further, in saying that, it should perhaps be

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<sup>58</sup> **Brian Cooksey** in his article "*The Power and the Vainglory: Anatomy of a Malaysian IPP in Tanzania*" wrote that, there was a long dry spell and the water level in Tanzania's main dam drops to crisis point. Hydro provides Tanzania with most of its power. Rationing begins. Industrial production slumps. The rich buys generators. Dar's shopping centre sounds like an industrial estate: every *duka* has a noisy little generator spewing diesel fumes at the passersby. The government decided there is a need for emergency power. A number of local and foreign investors came with proposals to solve the crisis. Eventually there arose Independent Power Tanzania Limited (IPTL).

added that the laws of Tanganyika and Zanzibar are separate consequently company legislation is a union matter in Tanzania.

#### **4:5:1 A foreign company has all rights similar to those of a local company.**

That is to say, the corporate income tax for both resident and non- resident companies is 30%, the withholding tax rates on dividend is 10% for both resident and non- resident companies<sup>59</sup>.

#### **4:5:2 On matters pertaining to VAT**

Both resident and non- resident companies are **equally** rated at 20%. This is to say, if a company Purchases property at 100,000/- it has to pay 120,000/- on inclusion of 20% VAT on the total amount to be paid. Section 8 of the Value Added Tax Act is to the effect that VAT is charged at the rate of 20% of the taxable value. However, the Minister for Finance may vary the VAT rate from time to time under the procedures contained in the Provisional collection of Taxes and duties Act, 1963.

Upon registration for VAT, the commissioner shall maintain a register in which he shall record such particulars of the taxable persons and their business. As such the application for registration shall be made in the form of the prescribed form as per the VAT regulation (GN. No. 176, published on 17<sup>th</sup> April, 1998). The application shall be lodged with the commissioner of VAT in any manner within thirty days of the taxable person becoming liable to make the application. Thus, any person whose turnover exceeds Tshs 40,000,000/- is required to apply for registration<sup>60</sup>.

#### **4:6 Benefits of effective Laws and Practice governing registration of foreign companies.**

The establishment of the branch of foreign companies in Tanzania has got great impact on the national economy. A great advantage of their existence is recognized

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<sup>59</sup> . Income Tax Act, (ACT 11), 2004 and Deloitte Quick Tax Guide, Tanzania- m 2005/ 06

<sup>60</sup> . Section 55, Value Added tax Act, *op cit*

in enhancing production and cutting down costs through market strategies and economies of scales.

Apart from that, it becomes easy to register with the companies Registrar. Similarly, it is easy for the company to be struck off the register kept by the registrar of companies in the event of corporate misconduct.

In addition, there is no withheld tax payable on the interest, royalty, management and technical fees charged by the head office to the branch. However, these expenses will not be allowed for tax purposes when calculating tax liability of the branch in Tanzania.

With regards to banks and financial institution businesses, the branch can without prior approval from the Bank of Tanzania operate current accounts with the head office, unlike local company which can locally raise funds without the Bank of Tanzania's approval.

Moreover, external auditor for tax purposes need not audit a branch account. However, under the prevailing: "Law Review Commission" established by the government the exemption from having accounts audited will be revoked soon.

Not only that, but also the head office can charge its administrative expenses to the branch which will be then allowed for tax purpose for long as they are considered reasonable by the Commissioner of Income tax.

#### **4.6.1 Effects of non-existence of effective Laws and Practice governing registration of foreign companies**

The operation of branches of foreign companies is not without consequences and certain difficulties in some other respects. As such any interest, royalty, management and technical fee is charged by head office to the Tanzanian branch will not be allowed for expenses in computing branch's tax liability in Tanzania.

But also, the branch can only raise funds locally for its trading activities after obtaining prior approval from the Bank of Tanzania, and by producing a counter guarantee from a reputable bank in their home country.

The branch will have to pay withholding tax at the rate of 20% on its profit after taxation. The branch will only avoid paying tax if it convinces the Commissioner of Income Tax it requires funds for business expansion purposes. With the current chronic budget deficit the commissioner will always force the branch to pay withholding tax on the surplus whatever its business circumstances.

- **Investors and Abuse of the Investment Process**

Investors both local and foreign are not angels. They are business persons who above all are motivated by the possibility of making profit over and above that which could be made in a simple business transaction. Therefore, they may exploit each and every loophole in the statute books to ensure that they invest as little as possible, avoid paying taxes, pay low salaries as much as the law can permit and so on.

- **Investing Nothing and Getting Everything**

It is now common knowledge that some “investors” come into the country with almost nothing but “brilliant” and “impressive” business plans. They target a particular parastatal on the privatization list and approach the Parastatal Sector Reform Commission with a bid. Normally they pay 10% down payment in order to acquire the firm and that is all. Thereafter, they use the very assets of the newly acquired firm as collateral to get loans from financial sector. For example, an investor acquired a firm in Dar as salaam. He paid down payment of 10% and took possession of a factory and some of the residential flats owned by the acquired firm. He used the title deeds of the residential flats to get the following some of the money:

- a) US\$ 1,910,000 from the National Bank of Commerce as overdraft, short term loan, and collateral management loan;

- b) SDR 940,000 loan from the East African Development Bank;
- c) US\$ 125,000 and US\$ 150,000 from the National Bank of Commerce again as overdraft and collateral management facility respectively.

All this happened between 1998 and 2002. By the time the financial behaviour of this firm was brought to the attention of the National Assembly, the firm had paid neither the remaining part of the purchase price of the firm, i.e. 90% and the various loans it has taken locally and within the region. Strange enough, instead of the government standing firm and demanding payment for the “privatized” assets, it defended this non- performing “investor”.

Strictly speaking, can one say that this investor was a serious investor? What had the firm invested in the country- 10%? Is it not the government, which is actually investing in that firm? This firm had clearly violated all the rules involved in the investment process, including the very terms and conditions of acquisition of property being privatized. To make it worse government of Tanzania was fully privy to this.

The Tanzania Investment Centre had already detected this method of “cheating” by certain “investors”. It had thus warned that it will not register any foreign investor planning to raise capital to purchase public- owned assets through loans from local banks. According to the center, such behavior had the effect of, *inter alia*, distorting statistics on foreign direct investment in the country because there was nothing foreign in such transactions.

- **Evasion and Underpayment of Taxes by Investors.**

According to information made available by the Tanzania Revenue Authority, a number of these so-called foreign investors studiously work out ways of evading taxes due to the government and if that proves difficult they underpay when it is absolutely possible. For example, one investor underpaid Value Added Tax by over Shs. 192 million in a period of three years (1998-2001). When the TRA officials

confronted with the Directors of this investment firm over this tax anomaly they had nothing to say.

Within the said period, another investor underpaid taxes by almost Shs. 50 million. This was in relation to VAT, Stamp Duty on Lease and Stamp Duty on Share transfers. Again, when confronted by TRA officials, they could not provide clear and understandable answers. The informer went further adducing that, this is just a tip of an iceberg. There are many others who are involved in the game and are not yet to be caught. The question is whether these are the investors about whom we hear so much noise about their protection because they are agents of progress and development and change in the economy of Tanzania.

- **Tendering Without Due Diligence**

This involves all acts, which a person either with authority or the applicant does as against the legal and procedural requirement set forth before the establishment of a branch of or place of business. The case in point is the Independent Power Tanzania Limited (IPTL). During the power crisis in 1990's the government approved the Power Purchase Agreement between IPTL and TANESCO in 1995.

It did so with the express understanding that prior to the commencement of commercial operations they would negotiate a final tariff based on one, the actual, reasonable and verifiable capital costs incurred by IPTL, two actual reasonable and verifiable costs to operate the project, and three a fair return to IPTL's investors. The investment consisted of ten state of the art medium speed diesel generators, manufactured in the Netherlands by Wärtsilä, a Finish company with a global reputation for quality engineering. Without informing TANESCO, IPTL unilaterally decided to substitute medium- speed diesel engines for the slower - speed engines stipulated in the Power Project Agreement (PPA). On April 9, 1998, TANESCO issued a Notice of default to IPTL but at the meeting held on April, 14 – 16, 1998 IPTL denied that there was a default and steadfastly refused to discuss any matter

related to the Tariff unless and until TANESCO withdrew its notice of default<sup>63</sup>. Despite the fact that IPTL deal involved all such kinds of fraudulent transactions still it was passed, although at one point Patrick Rutabanzibwa (who was a commissioner for energy when the project was first launched) tried to convince the president that IPTL is a disaster waiting to happen. It was passed since many heavyweights in the part and cabinet was in favor of IPTL. This IPTL transaction what has taken place in the **Enron's case** in Nigeria.

Also in the year 2006 Tanzania faced an electricity supply crisis whereby to rescue the situation Richmond Development Company, LLC was awarded the contract to supply generators of 100 megawatts for the cost of Tshs 172 billion and the government agreed to pay some some USD 137,000 a day regardless of the amount of electricity provided. But the subject matter of the contract failed to be delivered on time and after being delivered they didn't work as required.

The opposing MP's smell a rat whereby the house of Assembly sets up a committee to investigate the problem under Kyela Mp. Dr. Harrison Mwakyembe.

The committee on RICHMOND REPORT<sup>152</sup> proved beyond reasonable doubt that the company didn't deserve to be awarded the tender for the generators, it lacked experience, expertise and was financially incapacitated. Also the firm had no share records or registration in the US or Tanzania and the whole bidding process had been marred by corruption with gross irregularities.

Further, it was proved that the business registration authority, BRELA had allowed the swapping of genuine files of Richmond with fake ones, Mwakyembe said BRELA should submit reports to the relevant ministry on a weekly basis and copies of the files should be preserved by the government separately.

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<sup>63</sup> Chapter 5 of the book titled UGLY MALAYSIANS? South- South Investments Abused edited by Jomo K.S, Brian Cooksey in his article *TOWER AND VAINLORY: ANOTOMY OF A MALAYSIAN IPP IN TANZANIA* establishes that, there were problems, though. First, the PPA signed in 1995 specified slow-, not medium – speed generators, as explained above. Second, what IPTL claim to have for the plant and its installation was arguably anything up to twice its actual cost.

<sup>152</sup> Available at: <https://www.tzaffairs.org/2008/05/report-on-richmond-scandal/> accessed on 29<sup>th</sup> May 2018

As it has been asserted earlier, when a branch of a foreign company is given rights and liabilities, that is to say after the branch of a foreign company has been issued with the certificate of compliance it acquires the status of corporate personality.

As such, it becomes an independent legal entity separate from its members or shareholders and eventually can buy allotted shares from the mother company.

However, the observation of the research on operation of branches of foreign companies in Tanzania shows that they cannot buy shares of any company or sell its shares since it owns no shares on itself, but the mother company in abroad is the one which owns shares regardless of its legal personality.

Initially, it should be noted that, upon the operation of the foreign companies in Tanzania transactions are very often. And the passage of information takes time, even longer due to logistics as the mother company is far geographically. Thus changing of Company's structure regarding shareholders, directors, Memorandum and articles of association may render it difficult for the Registrar of companies to get notice on time putting into consideration it is within 14 days to make a notice. This small window of time renders it impossible for the Registrar to get the requisite information for making all those changes before giving the go ahead.

#### **4.7 Conclusion**

This chapter provides the findings of the study with regard to the laws and practises governing registration of foreign companies. It gives out the structural set up procedures and regulatory authorities in registration of foreign companies. Generally the findings shows that legal and regulatories is weak as the provisions of laws are are silence to matters that are supposed to be addressed to gurantee foreign companies do not mis use freedom of investment.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5:0 Conclusions**

The aim of the study was to analyse on the legal and regulatory framework in relation to the registration of foreign companies in Tanzania focusing on the provisions relating to foreign investments in Tanzania. It covered the application to register a new Foreign Company, procedures to be followed up to the issuance of a certificate of Compliance. Registration problems as well as the drawbacks of the laws were analysed. As such, it provided for some specific examples on the effect of the non-compliance of the prerequisites with regard to the registration process of foreign companies in Tanzania. The report has reviewed Company laws and other related laws with regard to foreign investments.

The findings showed that there are various requisites Registrar considers before issuing the certificate of compliance to the applicants which have been provided under the law governing their registration and operations. However the study has revealed the difference and identified gaps of our laws have, compared to the experience of other countries pertaining registration of the same.

A critical analysis of the different legal regimes in force governing registration of foreign companies was covered under chapter three highlighted by some selected case studies which demonstrated the problems inherent in the law and practice of Foreign Companies in Tanzania, and how these problems affect the creditors and the entire public at large.

Foreign companies in Tanzania should be controlled by the existing laws governing them be reviewed by the statutory compliance of the Tanzanian laws and as such the control should be made under the existing companies and other written laws of the country as they may change from time to time.

## **5:1 Recommendations**

The researcher suggests the following recommendations which will give more efficiency on the laws governing registration of foreign companies in Tanzania and prevent onerous companies from being registered in Tanzania and avoiding tax payment.

The following are recommended to institutions:-

### **MINISTRY**

1<sup>st</sup> to avoid registering companies which are not capable of doing business and checking for their liquidity, a need to provide financial statements of the branch separately from the financial statements of the overseas mother company just as it has been provided under the Income Tax Regulation, 2004 and discard what has been provided under the Companies Ordinance. In line with this, the requirement of the good and honestly prepared financial standing proof from the parent company to avoid foreign company to be registered and be deregistered forthwith because of bankruptcy (Insolvency).

2<sup>nd</sup> because the research has revealed a lack of clear information of the mother companies abroad and lack of cooperation and coordination between Registration and licensing authorities of Tanzania with those of abroad, a need for the provisions of the laws requiring complete addresses, telephone numbers, facsimile, websites and E- Mail addresses of the registering authorities in foreign countries.

3<sup>rd</sup> as such effective communication of the Registrant and the Licensing authorities should be facilitated to provide the efficiency of their duties.

4<sup>th</sup> The Registrar of Companies should not rely only to the objective rule before registering a branch of a foreign company when testing for existence of such companies in their home country. As such the test to be applied should be a

subjective rule application on a case to case basis. It should vary subjectively when the existence of a particular foreign company is in issue.

### **PARLIAMENTARY**

Firstly, to prove the existence of foreign company in their home country there should a requirement by the law to furnish the Registrar with the proof of existence of the foreign company from the home country of origin as the precedent condition in lodging other registration documents.

Secondly, since there are no clear procedures with regard to the winding up of the foreign companies in Tanzania, a need to for the reformation of the laws to cater for such drawbacks in inevitable. The current law provides for the procedure to wind up foreign companies as unregistered companies. The situation seems to be unjust because those companies are registered under the foreign laws and they should also be wound up by such laws. As such there should be a mechanism of recognizing foreign decisions to avoid companies enter into such defaults.

Thirdly, because the law governing the registration of foreign companies in Tanzania is that adopted colonial legislations, thus it is outdated and out of necessary current economic changes over the world, and even after the existing Companies Act still there are a lot of gaps to cater for the situation, a need to overhaul the existing laws to accommodate the necessary global economic changes.

Fourthly, it is hereby recommended by the researcher that, there should be established a system of cooperation and coordination between The Registrar of companies Office with other related offices in Tanzania to improve the efficiency of performance of duties as well making it more easier to discover fraudulent transactions and even such unserious foreign investors.

Fifth, The law governing registration of foreign companies in Tanzania has to be amended so as to contain the provisions with the requirement that no registration right shall be granted to a branch of a foreign company or a body corporate,

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**APPENDIX**

**APPENDIX I:**

**COPY OF QUESTIONNAIRE**

Personal Particulars

Name:-.....

Postal Address:-.....

Physical Address:-.....

Phone no:-.....

Mobile:-.....

Occupations:-.....

1. Do you think that the existing legal framework governing registration of foreign companies is satisfactory?

Yes..... No.....

b. Do you think that existing legal framework governing registration of foreign companies should be discouraged?

a). Yes.....

b).No.....

c). Further comments, if any:

.....  
.....  
.....

(ii) Are the available procedures provided under the Companies Act, [Cap. 212 R.E. 2002] are effective?

a). Yes.....

b). No.....

(iii) If so, what special provisions are needed?

.....  
.....  
.....

(iv). What are your comments concerning with registration of foreign companies provisions under the Companies Act?

.....  
.....  
.....  
.....  
.....  
.....

Are up-to-date with the regulatory authorities concerning with registration of foreign companies?

a). Yes.....

b). No.....

c).mention

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d).comment

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(v) Do you think the existing regulatory framework governing registration of foreign companies is effective?

a). Yes .....

b).No.....

Comment.....  
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(vi). Do you think that the regulatory authorizes provide education to the foreign companies wishing to be registered in Tanzania on the laws governing the process?

a. Yes..... b. No.....

Comment

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(vii) Do you think that foreign registered companies abuse freedom of investments and doing business in Tanzania?

a. Yes.....

b. No.....

Comment.....  
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