

**COMPLIANCES TO LAWS, REGULATIONS AND POLICIES GOVERNING
CORPORATE BUSINESS IN TANZANIA:GENERAL AND CROSSCUTTING
REGULATORY ISSUES.**

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REQUIREMENT FOR THE DEGREE OF THE MASTER OF LAWS (COURSE
WORK & DISSERTATION) OF THE OPEN UNIVERSITY OF TANZANIA**

2020

CERTIFICATION

The undersigned is certifying that he has read and recommends for acceptance by the Open University of Tanzania, the dissertation entitled “**Compliances to Laws, Regulations and Policies Governing Corporate Business in Tanzania: General and Crosscutting Regulatory Issues**” for partial fulfillment of the requirements for degree of the Master of Laws (Course Work & Dissertation) of the Open University of Tanzania.

Dr. Abdallah Hashil

.....

Signature

(Supervisor)

Date.....

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DECLARATION

I, **Dunia Kema Mwenhwandege**, do declare that this dissertation is my own original work and that it has not and will not be presented to any other institution for the award of the degree or other similar award.

.....

Signature

.....

Date

DEDICATION

This dissertation is dedicated to my beloved wife Marcia Mhiro whose love, moral and financial support, inspiration and devotion made my study and life worth living throughout the period of my career.

Also, this work is dedicated to my beloved late father Mr. Kema Mwenhwandege, my mother Ms. Magdalena F. Kema and beloved siblings whose encouragement and support made me successful in pursuing this dissertation.

Sincerely, this work is dedicated to Mr. Richard Z. Shilamba, the Executive Director for CHESO and a Board member for TASAF who lost his beloved father while doing this dissertation final touches for submission. His prior encouragement and support made me successful in pursuing this dissertation.

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No. 95 of 2016) [2017] TZHCComD 5; (16 February 2017)

ABBREVIATIONS AND ACRONYMS

AQRB	Architects and Quantity Surveyors Registration Board
BEST	Business Environment Strengthening Tanzania
BFI	Banking and Financial Institutions
BoT	Bank of Tanzania
BRELA	Business Registration and Licensing Authority
BRN	Big Result Now
Cap	Chapter
CRB	Contractors Registration Board
CTI	Confederation of Tanzania Industries
DNA	Deoxyribonucleic Acid
EAC	East African Community
EIA	Environmental Impact Assessment
EPZ	Export and Processing Zone
EPZA	Export and Processing Zone Authority
ERB	Engineering Registration Board
EWURA	Energy and Water Utilities Regulatory Authority
EWSA	Energy, Water and Sanitation Authority (of Rwanda)
FCC	Fair Competition Commission
FEZs	Free Economic Zones
GCLA	Government Chemist Laboratory Authority
GCRA	Government Chemist Regulatory Authority
GDP	Gross Domestic Product

GMP	Good Manufacturing Practice
HACCP	Hazard Analysis and Critical Control Point
ICC	The International Chamber of Commerce
ILO	International Labor Organization
LGA	Local Government Authority
LATRA	Land Transport Regulatory Authority
NEMC	National Environmental Management Council
NSSF	National Social Security Fund
OHS	Occupational and Health Safety
OSHA	Occupational Safety and Health Authority
OUT	Open University of Tanzania
PSSSF	Public Service Social Security Fund
RDB	Rwanda Development Board
REMA	Rwanda Environmental Management Authority
SADC	Southern African Development Community
SUMATRA	Surface and Marine Transport Regulatory Authority
TAEC	Tanzania Atomic Energy Commission
TanTrade	Tanzania Trade Development Authority
TBS	Tanzania Bureau of Standards
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture
TCRA	Tanzania Communications Regulatory Authority
TFDA	Tanzania Foods and Drugs Authority
TIC	Tanzania Investment Centre
TIN	Tax Identification Number

TPRI	The Tropical Pesticides Research Institute
TMDA	Tanzania Medicines and Medical Devices Authority
TPA	The Tanzania Ports Authority
TRA	Tanzania Revenue Authority
TIRA	Tanzania Insurance Regulatory Authority
TRA	Tanzania Revenues Authority
TPSF	Tanzania Private Sector Foundation
TBT	Tea Board of Tanzania
TTB	Tanzania Tobacco Board
TTLB	Tanzania Tourism Licensing Board
UNCTAD	The United Nations Conference on Trade and Development
URT	United Republic of Tanzania
VAT	Value Added Tax
WMA	Weight and Measures Agency
WCF	Workman Compensation Fund
SSF	Social Security Fund

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ABSTRACT

This dissertation is specifically exploring the Compliances to Laws, Regulations and Policies Governing Corporate Business in Tanzania: General And Crosscutting Regulatory Issues. The data for the study were obtained from scholarly books from both physical and online sources, LGAs, TRA and TPSF offices. At first the study states the history and problem of this work, then presents the organization of this work and dissertation methodology, other scholars' views and justifications for undertaking this study. Then it explores the current Laws, Regulations and Policies Governing Corporate Business in Tanzania. The dissertation is basically looking at the legal compliances governing corporate business by case studying the overlapping of general and crosscutting regulatory bodies that regulate, supervise and license businesses, which end up increasing bureaucratic processes, cost of compliances and levies, time to obtain certificates and end up confusing investors as to which matter should be addressed to or which requirement is a subject of legal compliance. On top of that, these bodies and boards are located in different locations, have different timeline to acquire such certificates of compliances and have different legal processes to be compliant in order to be issued with license. These have decreased the pace for the implementation of the new economic blueprint aiming at taking Tanzania to the middle economy country with industrialization agenda. Lastly the dissertation presents prospects that would help Tanzania improve on the convenience of doing business by suggesting some legal and administration reforms and thereafter concludes the study by urging the responsible authority take initiatives by implementing the suggested actions to boost the business operations to spur the economic growth

CHAPTER ONE

1.0 INTRODUCTION

This area discusses an introduction of the dissertation, a historical narrations and influences which facilitated the dissertation work on Compliances to Laws, Regulations and Policies Governing Corporate Business in Tanzania: General And Crosscutting Regulatory Issues. It also describes in detail the historical background of the study immediately post-colonial regime and magnitude of the problem around commencement of business in Tanzania. Also, problem statement, reasons why this dissertation, the guiding questions to the dissertation, the importance of undertaking this dissertation, review of other scholarly works, methods and the scope of the dissertation will be covered in this work.

The term company is derived from two words of Latin origin com and pains. To sum-up their meaning, it is clearly stated that:-

“Com means with or together and pains meaning bread’. Originally, it referred to a group of persons who took their meals together.¹”

In Tanzania, a company is defined in the Companies Act² as“...a company formed and registered under this Act or an existing company”.

¹Business incorporation, retrieved from <https://www.investopedia.com/terms/i/incorporate.asp>, (accessed on 18 June 2019).

²Section 2 of the Companies Act No 12 of 2002.

Again, in the case of *Smith v Anderson*³, a company is defined in the following words.

“A company is nothing but a group of persons who have come together or who have contributed money for some common purpose and who have incorporated themselves into a distinct legal entity in the form of a company for that purpose. It is an association of many persons who contribute money or money’s worth to a common stock, and to employ it in some common trade or business, and who share the profit or loss arising therefrom”

These words simply means for a company to be formed, there should be a union of two or more for a business reason. It is a person though natural as human being, cannot be seen however has capacity to own properties.

Under Online Halsbury Laws of the Oxford Law Faculty, defines the term "company"

“as a collection of many individuals united into one body under special domination, having perpetual succession under an artificial form and vested by law with the capacity of acting in several respect as an individual, particularly for taking and granting of property, for contracting obligation and for suing and being sued, for enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution or the powers upon it, either at the time of its creation or at any subsequent period of its existence⁴.”

Incorporation of business is the way through processes outlined in the laws to bring a company to life. It is a legal result which marks line of limits to its assets and revenues

³1880 Ch. D. 247

⁴<https://www.law.ox.ac.uk/legal-research-and-mooting-skills-programme/halsburys-laws-online>.

from that its shareholders⁵. The result of incorporation sets the directors of the company free from any liability resulting from its operations⁶.

This principle was adopted by *Lord Macnaghtan* in the leading case of *Salomon v Salomon & Co. Ltd.*⁷ where among other things it was held that “the Company is at law a different person altogether from the subscribers”⁸, and capable of being sued in its name⁹ unless there are special circumstances that the court may consider lifting the veil of the company¹⁰. This principle was adopted from *Oakes v Turquant*¹¹. These principles were applied in Tanzania and was laid down in the case of *Tanzania Assurance Company Ltd*¹² and *Vitafoam (T) Ltd v. Lumumba Street Godoro Store*¹³. A company to come into life require a lot of paper work and legal compliances to be met for it to enjoy the advantages as legal person¹⁴. A certificate of incorporation serves as a comprehensive evidence and a proof of meeting all legal requirement to open and start a business in a particular country¹⁵.

⁵Gulshan, S.S, et al, Business Law Including Company Law, Fifteenth edition, New Age International (P) Ltd., Publishers, New Delhi, 2011, pp 240-241.

⁶Business incorporation, retrieved from <https://www.investopedia.com/terms/i/incorporate.asp>, (accessed on 18 June 2019)

⁷[1877] AC22.

⁸*K.S. Mothilal v. K.S.Kasimaris Ceramique (P) Ltd. [2003] 113 COP.Cas.*

⁹*Lee v. Lee Air Farming Limited (1960) 3 All ER 420 PC*, *Bacha F. Guzdar v. The Commissioner of Income Tax, Bombay (AIR (1955) SC 74)*, *K.M Basheer v. Lona Chackola (2003)115 Comp. Cas. 127 (Ker)*. See also *Rajendra Nath Dutta v. Shibendra Nath Mukherjee (1982) 52 Comp. Cas. 293 Cal) and Savemarks Insurance Brokers Ltd [2000] EA, p 141.*

¹⁰*Yusuph Manji v. Edward Masanja and Abdallah Juma [2006] TLR p 127, at p 131*. This decision was also adopted in the case of *Zebedayo Mkodya v. Best Microfinance Solutions Limited & Ors. (Commercial Case No. 95 of 2016) [2017] TZHCComD 5; (16 February 2017)*

¹¹(1867) L.R. 2 H.L. 325.

¹²*Commercial Case No 37 of 2006 (unreported).*

¹³*Commercial Case No 34 of 2002 (unreported).*

¹⁴Singh, A., Company Law, Sixteenth Edition, Eastern Book Company, 2015, p.37.

¹⁵*Ibid*. See also *Barbed's Banking Co, re Peel case (1867) LR 2 Ch App 674: 16 LT780*

Incorporation of the company gives it an inductiveness nature. As an individual, a company can be taxable, buy or sell properties and has capacity to contractual obligations . Its affairs are run by board of directors and management and not owners who decides on daily functioning of it. However, the subscribers or founders of a company as right to elect directors and are entitled to profiting sharing¹⁶.

Jeanty in his words narrates what a status immediately a company is legally registered.

He says

“Incorporation distances the owners of a company from its affairs. This protects owners from financial liability if a company fails or is sued. As a corporate entity, any financial losses that occur come out of the company's assets and not the owners' personal assets. These same protections exist when a company is sued. If the corporation lacks the money to pay off debts or liabilities, incorporation prevents creditors from going after the owners for monies owed. As a separate entity, a corporation can enter into lease agreements, which enables owners to reduce the amount of taxes paid. Owners can lease assets, such as equipment, to a corporation, which allows them to charge rental fees. The company pays the rental fees while the owners receive rental income. Owners can depreciate rental equipment they own and deduct its upkeep costs. A corporation has no time limit in which to report profits or losses when filing taxes. This means a company can carry profits over from year to year or list them on prior tax years. In doing so, companies can shift their tax costs in accordance with their earnings”¹⁷.

¹⁶(n 14).

¹⁷Jeanty, J., The Effects of Incorporation of a Company, retrieved from <https://smallbusiness.chron.com/effects-incorporation-company-13232.html>, (accessed 28 January 2020).

Incorporation therefore happens as stipulated by each nation, where you will need to comply to the laid down processes and procedure. At the initial stage, founders are required to decide the nature of their corporation¹⁸.

As said earlier, a registered company will be subject to tax liability where annual returns will have to be submitted to the tax authority and for the case of Tanzania, the TRA, and pay the assessed tax. Since a company is different entity from its owners then, if the shareholders receive any dividend in their personal accounts, that amount so received will also be subject to taxation as a benefit from another legal person which is quite different from them.

This requirement needs the shareholders open separate bank accounts from those of the company and have their own credit cards apart from those of the company. They can loan and transact separately and in case of any liability a company or shareholders transacting from their personal capacities cannot be held liable as to one another's action. Registration of a company sets a demarcation of debts. A good example is when a transporter company driver overturns and causes a loss to a consignment then, the liability will lie to the transporting company to compensate the client, the driver in this case cannot be sued for the damages resulting from overturning of the vehicle. This however is different from unincorporated business where the individual running the enterprise will have to bear all the damages and recover with his own personal money.

¹⁸Thompson, V., The Effects of Incorporation of a Company, retrieved from <https://yourbusiness.azcentral.com/effects-incorporation-company-16412.html>, (accessed 03 January 2020).

In the case of *Senkin v Pharmaceutical Society of GB*¹⁹ the importance of limited liability was expressed as follows.

“Limited liability is the offspring of a proved necessity that, men should be entitled to engage in commercial pursuit without involving the whole of their fortune in that particular pursuit in which they are engaged. A member cannot claim to be owner of the company's property during the existence of the company. A shareholder doesn't even have insurable interest in the property of the Company²⁰.”

In the above case it was established that the main reason of making a limited corporation a legal entity separate from its owners was to indemnify them from the wrong decision that may be caused by the directors or the management thus separating the misfortunes from those of the company.

In *Macaura v Northern Ins. Co*²¹. Macaura was the shareholder and owner of the company whose main role was timber business. Believing that he was the owner of the company, he ensured it in his own personal name and not of the company. The timber stock was destroyed by an accidental fire thus causing a great loss. In the suite to recover the damage from the fire, he failed because it was held that, he was a natural person different from the company which on the other hand a different person though artificial.

¹⁹(1921) 1 Ch. 392.

²⁰Ibid.

²¹(1925) AC 619

An incorporation has succession trait and can transfer shares from one owner to heirs or another owner. In the provision of the Companies Act²², it states that

“the shares or any other interests of any member in a company shall be transferable in a manner provided by the articles of the company²³.”

This right to transfer of shares is freely granted to public limited companies but not easily to private as the law restrict for the interest of owners and shareholders especially those who run as a family business. This requirement is provided under the Companies Act²⁴

In Tanzania section 15 of the Companies Act²⁵ provides for the effect of incorporation. Subsection 1 requires the Company to be incorporated as limited or unlimited and subsection 2 provides that

“From the date of incorporation mentioned in the certificate of incorporation, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as provided for in this Act.”

This provision therefore, exempts subscribers or founders of the company from any liabilities unless to the extent of their unpaid shares during winding up in case the

²²Act No 12 of 2002.

²³Ibid at section 74.

²⁴Section 27 of the Companies Act no 12 of 2002.

²⁵No 12 of 2002.

company is to be sued for anything. In other words, the subscribers cannot be liable beyond their unpaid founding shares.

Incorporation gives a company capacity to sue or be sued in court of law as a natural person and suffer loss. This can be done as more equally as to how is done by a natural person. This happens only when a company is registered as opposed to unregistered company which cannot sue or be sued. This was held in the case of *Fort Hall Bakery Supply co. v. Frederic Mamgai Wangoe*²⁶ where a suit against unregistered company failed for a simple reason that the company never existed before fully registration and certificate of incorporated issues. The High Court of Kenya stated²⁷.

“It is not registered as a company under Companies Ordinance or formed in pursuance of some other Ordinances or Act of parliament or letters of patent. It cannot therefore be recognized as having any legal existence.”

In the words of Bankes, L.J. in *Banque Internationalis de Commerce de Petrograd vs. Goankassaow*²⁸

“ The party seeking to maintain the action is in the eye of law no party at all but a mere name only, with no legal existence...A non- existence person cannot sue, and once the court is made aware that the plaintiff is non- existent, and therefore incapable of maintaining the action.”

²⁶(1959) E.A. 474.

²⁷Ibid at page 475.

²⁸(1923) 2. K.B. 682 at 688.

As clearly pointed out earlier, in Tanzania, the laws also require a company to be incorporated and upon registration the Companies Act²⁹, would be subject to above said effects of incorporation. This is a requirement before a business is started.

According to the World Bank, Tanzania sits at 144 out of 190 countries for ease of doing business in 2019³⁰. In comparison, Kenya stand at 61 while Rwanda improved for eleven places to 29th ranking for easier environment for doing business³¹. For Starting a Corporate business in Tanzania is worse as it ranks at 163th, getting Construction Permits is ranked at 150, Registering Property ranked at 146, Getting Credit is ranked at 60, Paying Taxes is ranked at 167, Trading across Borders is ranked at 183, Enforcing Contract at 64 and Resolving Insolvency is ranked at 117, all these places are ranks out of 190 countries.

When addressing the Minister responsible for trade and industry affairs in Tanzania, Mr. Innocent Lugha Bashungwa, admitted when addressing the CTI, that as of now the environment for doing business does not support the mission to take Tanzania to industrial country. The government thus is reforming the business doing environment in Tanzania, and this requires a true commitment to be taken by the government. One of the commitments is to amend all the laws, regulations and policies which currently do not support easier and contemporary investment. In other words, the minister was referring to all outdated business laws and its entire regime. Along other areas to be

²⁹Section 15 of Act No 12 of 2002.

³⁰World Bank Group Flagship Report, Doing Business, 16th Edition, Training for Reform, Economy Profile Tanzania, 2019.

³¹Ibid. .

improved, legal barriers take a direct impact of doing business and investment in the country³².

On the same note the vice president for CTI, Paul Makanza, said that among other barriers to investing in Tanzania especially when it comes to supporting the government of Tanzania as an industrial country by 2025, is delay in VAT refund from TRA to investors, prolonged and complicated processes to issue work permits and residence permits to foreign experts. This alone is drawback factor to business men as some expatriates are rarely found in the country; and the process alone is very costly³³.

These complicated environments to start business have been contributed by many reasons which one of is the legal compliance issues which this work is about to unlock. These legal culprits among others include, the compliance issue which cut across areas of business licenses and work permit procedures, bureaucratic and absence of transparency on tax assessments and their regulations, presence of multiple regulatory bodies and unjustifiable local government levies. These create an unpredictable business operations, which forces the investors to consider them as one of the risk during their initial planning.

1.1 BACKGROUND OF THE PROBLEM

Company operations are commonly regulated and affected by different legal instruments which include the company laws, accounting and auditing laws, security

³²Bahemu, E., Serikali ya Tanzania Yazungumzia Uboreshaji Mazingira ya Biashara, Mwananchi Online Newspaper, Saturday August 31, 2019.

³³Ibid.

and insolvency laws, tax, labour and contract laws. In normal circumstances if not well coordinated it is likely evident there would be more inadvertent overlaps and sometimes conflicting functions which may disturb the well operation of the business. It is therefore important before business is commenced to look at the legal business regime and their impacts in order to ascertain the risks the business would encounter so that the right decisions are taken at the beginnings³⁴.

The current Tanzania business laws has at large been an effect of the colonial legal regime especially from the British rein from 1919 to 1961 when Tanganyika got independence. After independence, Tanganyika by then continued with the colonial capitalist economic system governed by market economy. After formation of Tanzania 1964, the market economy benefited only insignificant number of people and Tanzania wanted to improve rapidly the economic status of its citizens so as to meet the objectives of fighting for independence³⁵.

This objective was reinforced by the Arusha Declaration³⁶ when it became clearer to the State that it could not realise its programme reducing poverty and equality enhancement amongst the people via the Ujamaa economy led strategy to drive the government development vision³⁷. This influenced the legal framework reforms to

³⁴OECD, Investment Division of the OECD Directorate for Financial and Enterprise Affairs, 2011.

³⁵Ngowi, H.P., Economic development and change in Tanzania since independence: The political leadership factor, African Journal of Political Science and International Relations, Vol3, 01/04/2009, African Journal of Political Science and International Relations Vol. 3 (4), pp. 259-267, May, 2009 Available online at <http://www.academicjournals.org/AJPSIR> ISSN 1996-0832 © 2009 Academic Journals, retrieved from https://academicjournals.org/article/article1379789169_Ngowi.pdf, (accessed on 05 February 2020.)

³⁶Declaration of 1967

³⁷Ibid.

facilitate the ujamaa policy; laws like the Companies Ordinance³⁸, Foreign Investments (Protection) Act³⁹ which was repealed by the Tanzania: National Investment (Promotion and Protection) Act⁴⁰, Economic and Organized Crime Control Act⁴¹ were enacted. Under the Ujamaa, social services were provided through a centralized system free to everyone.

In the 1980s, the Ujamaa policy failed and as a result Tanzania had to adopt the Capitalism economy system, where again the laws were amended to cope with the new system⁴². The business commencement was affected by the laws which have undergone several amendments. In the 2000s, Tanzania reviewed most of the laws hence the current laws and business regulatory machinery we have. The current laws administering business include the Income Tax Act⁴³ Companies Act⁴⁴, the Business Activities Registration Act⁴⁵ the Value Added Tax Act⁴⁶, the Law of Contract Act⁴⁷, The Employment and Labour Relations Act⁴⁸ and the Tanzania Revenues Authority Act⁴⁹; to name just a few.

³⁸Cap 212 became operational on 1st October 1932 underwent several amendments.

³⁹An Act of 1963.

⁴⁰An Act of 1990.

⁴¹Act No 13 of 1984.

⁴²Clarence, D., (1970) "Tanzanian Nationalizations: 1967-1970," Cornell International Law Journal: Vol. 4: Iss. 1, Article 4. Available at: <http://scholarship.law.cornell.edu/cilj/vol4/iss1/4>, retrieved from <https://academicjournals.org/login>, (accessed 01 February 2020)

⁴³Cap. 332, R.E 2008.

⁴⁴No 12 of 2002.

⁴⁵Cap. 213 R.E 2002.

⁴⁶Act No 5 2014.

⁴⁷Cap 345 R.E 2002.

⁴⁸Act No 6 of 2004

⁴⁹Cap 399, R.E 2006.

At different times since the era of independence, the laws have remained unwelcoming to new investors due to unnecessary bureaucracy imposed by these laws. Examples, there still exist today a complicated legal process to register business which include, filing of legal documents with BRELA, tax registration and estimation, business license, VAT registration, specific trade or professional registration.⁵⁰ All these services are located in different government departments and locations; to get them all done could take a month to three months depending on the nature of the business.⁵¹

Among other barriers in Tanzania to opening business is “bureaucratic red tape”, corruption and complicated contractual liabilities enforcement in court of law⁵². The other legal issues that were pointed include the tax administration and trade regulations, business permits regulations, employment laws relating to work and resident permits necessary fair business decision during investment planning in Tanzania⁵³.

The recent amendment of the Companies laws under the Written Laws (Miscellaneous Amendments) Act⁵⁴, have not touched significantly on the said issues that affect the beginning of the business in Tanzania but ventures more on widening scope of business entities and powers of administrative bodies thus leaving the current legal issues unsolved.

⁵⁰PWC Africa Desk, Doing business in Africa Focus on Tanzania and Uganda, May 2018.

⁵¹Ibid.

⁵²The US Commercial Service, Doing Business in Tanzania 2016 Country Commercial Guide for U.S. Companies of 2016.

⁵³Ibid.

⁵⁴Act no 3 of 2019

There have been good efforts to arrive at the stable economy via different strategies and initiatives, yet there are specific legal and institutional challenges hindering best business operations. These bottlenecks mostly are contributed by the unpredicted changes in policies and political decision on business environments which influence legal changes. This not only negatively affects the best operation of the business but also creates a fear of uncertainty in business operations.

1.2 STATEMENT OF THE PROBLEM

The dissertation examines a problem on Compliances to Laws, Regulations and Policies Governing Corporate Business in Tanzania: General and Crosscutting Regulatory Issues. These legal compliance issues lead to high cost due to presence of cumbersome procedures, conflicting policies and duplicative functions under various laws at different levels of the authority. These issues relate to unclear taxes, licensing and other charges⁵⁵ across the LGAs ranges, has created an attention of stakeholders.⁵⁶ The procedure to start business in Tanzania require a cleared company name and register it with BRELA⁵⁷, obtain a TIN from TRA⁵⁸, get a relevant business license⁵⁹ and be issued with a tax clearance from TRA. For example, to get a business license, a tax clearance from TRA needs to be obtained to accompany the license application;

⁵⁵Ministry of Industry, Trade and Investment, Blueprint for Regulatory Reforms to Improve the Business Environment, Dodoma, April 2018, p.2.

⁵⁶Ibid.

⁵⁷Sections 11 and 12 of the Business Activities Registration Act No 14 of 2007 CAP 208 and S.4 of the Business Names (Registration) Act CAP. 213 R.E. 2002.

⁵⁸Section 7 of The Tanzania Revenues Authority Act, Cap 399, R.E 2006.

⁵⁹Section 3-6 of The Business Licensing Act, 1972.

and to get it you need to have assessed an estimated income for the year, paid tax for such estimated tax for a period of three months.

This claimed tax payment is against Sections 4 and 5 of the Income Tax Act⁶⁰ which requires tax from income not capital as is the current practice.⁶¹ Another issue is regarding work permits, it has been reported to be complicated and disappointing from application through issuance of a permit. They have been many Authorities dealing with permits thus causing unnecessary complications⁶².

The TRA system isn't certain on how tax assessment and estimation is done as there is no criteria that business would be required to take into consideration from the beginning to help investors decide at the early stage of planning their investment cost. For example, hotel levies which are subject to local authorities, charge up to twenty percent of the hotel charges per guest and not net income of the sales⁶³. TRA has also been blamed to be corrupt in assessing amount, for example for importers of same goods and same amounts would pay different tax assessed by the same TRA.

This dissertation ventures its study on exploring and looking at how these many regulatory bodies and agencies regulating and monitoring business compliances and their impacts. For example, a Company that does fuel transportation, would be

⁶⁰Cap. 332, R.E 2014.

⁶¹This Practice was experience in Mufindi District TRA office, in August 2018. Also, was confirmed to be the case in Dar es Salaam too by the Author of this dissertation.

⁶²(n 10)

⁶³Section 26 of the Hotels Act, Cap 105, R.E 2006. This was stated by business men in the Meeting of His Ex. Hon. President of URT Dr. John Pombe Magufuli with Business men from all Districts in Tanzania, at State House Meeting room on the 7th June 2019.

required to get license and pay fee to EWURA⁶⁴, Land Transport Regulatory Authority⁶⁵ TBS⁶⁶ and would be a subject of the Weights and Measures Act ⁶⁷, others include the TFDA which perform relatively same roles and at sometimes these bodies have same criteria for certificates of compliances to be issues. These are the areas the dissertation basically ventures to investigate, advise and propose best practices to responsible regulators and the government of the URT.

1.3 OBJECTIVES OF THE RESEARCH

1.3.1 GENERAL OBJECTIVES

The main objective this dissertation looks into is to explore and expose the extent to which overlapping legal compliance issues impact the conduct of corporate business in Tanzania. The dissertation also aims at exploring the best practices and initiatives to minimize or eradicate the regulatory compliance issues regulating corporate business in Tanzania.

1.3.2 SPECIFIC OBJECTIVES

Specifically, the objectives of this dissertation include the following;

- a. To explore the extent at which the compliance laws, regulations and policies regulating corporate business in Tanzania pose a challenge to investors and commerce.

⁶⁴Established by S.4 of the EWURA Act No. 11 of 2001.

⁶⁵Established by S.4 of the Land Transport Regulatory Authority Act No 3 of 2019

⁶⁶Established by S.3 of the Standards Act No 2 of 2009.

⁶⁷Cap 340 R.E 2002.

- b. To understand the need to reform the legal and regulatory bodies regulating corporate business in Tanzania.
- c. To suggest reforms on legal and regulatory framework governing corporate business in Tanzania with the focus on overlapping of general and crosscutting regulatory issues.

1.4 RESEARCH QUESTIONS

The dissertation is looking on the Compliances to Laws, Regulations and Policies Governing Corporate Business in Tanzania: General and Crosscutting Regulatory Issues. In doing so, the dissertation is guided by the questions as shown hereunder.

- a) To what extent does the compliance laws, regulations and policies governing corporate business affect the conduct of corporate business in Tanzania?
- b) How does the overlapping and crosscutting regulatory issues affect legal compliance in relation to corporate business in Tanzania?
- c) What kind of legal machinery should be adopted for proper, sufficient and expeditious restructuring of corporate governance and compliance in Tanzania?

1.5 SIGNIFICANCE OF THE RESEARCH

This dissertation is analysing the legal complications on commencing business in Tanzania; such analysis will help to influence the legal authorities in Tanzania to understand the extent at which the legal and regulatory governance on corporate business affect operations of corporate business and understand the need to reform the laws and regulatory bodies administering corporate business in the country.

The dissertation will also lay a foundation for more academic discussions and legal dissertation to be undertaken to find out more and bring them to the attention of the authorities and legal bodies mandated to oversee the business startup facilitation. On top of that the dissertation will enable the researcher, fulfil a partial requirement for award of the degree of the Master of Laws of the Open University of Tanzania.

1.6 LITERATURE REVIEW

Many other scholars, judiciary, Laws, organizations and regulatory bodies have explained their views on Legal complications on business commencement in Tanzania, whose views are clearly analysed hereunder.

The VELMA Law⁶⁸, clearly states the mandatory procedures and fees to be complied with before starting a business. These procedures include business registration from BRELA, whereas a Certificate of incorporation will be issued. In addition to Certificate of incorporation issued by BRELA, the Company has to register for and obtain TIN Certificate from TRA, VAT Verification Number⁶⁹. Tax clearance certificate which is obtained from the TRA prior to making an application for a

⁶⁸VELMA Law, Establishing a business in Tanzania, guide to establishing a business in Tanzania, as stated on 1 June 2019, retrieved from [https://content.next.westlaw.com/Document/I81810651b4f511e398db8b09b4f043e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default](https://content.next.westlaw.com/Document/I81810651b4f511e398db8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default) (accessed on 05 September 2019). The VELMA Law is registered law firm in Tanzania.

⁶⁹This number has to be issued to entities with an annual turnover of one hundred million Tanzanian shillings.

business licence. Depending on the nature of business, a company will also need a business licence from specific sector authority⁷⁰.

“Companies trading in certain business sectors may require special authorizations. For example, a company dealing in manufacturing of commodities must obtain an Environmental Impact Assessment Certificate from the NEMC. Other sector specific licences are issued by the relevant regulatory bodies and corresponding ministries, for example: Telecommunication/ICT sector licences are issued by the TCRA, Energy sector licences are issued by EWURA, Banking and financial institution sector licences are issued by the BoT, Insurance sector licences are issued by the TIRA⁷¹.”

This is an evident of presence of complicated procedures and too many regulatory bodies that unnecessary complicate doing business. However, the VELMA Law did not offer any advice or any legal suggestions as to what should be done to reduce these discouraging legal processes.

Gulshan, S.S, et al⁷² assets that, certificate of incorporation is a proof that the entity duly complied with the laws unless it is proved that the business was registered for an unlawful purpose, to foster the interest of the enemy. On the same note, he believes that, there should not be any other impendent as to why a lawfully registered Company should be restricted from doing the business. His work however, doesn't say anything

⁷⁰(n 68).

⁷¹Ibid.

⁷²Business Law Including Company Law, fifteenth edition, New Age International (P) Ltd., Publishers, New Delhi, 2011, p.239.

on the business license and has overlooked the role the business and tax administrative bodies come in between and their effect to business commencement and performance.

Generally, registration of business and operations in many developing countries like Tanzania, involve a lot of complicated expensive procedures compared to other forms of unregistered business or that of the nature of a sole proprietorship,⁷³. Singh doesn't provide the best practices that could reduce the accumulated paperwork specifically that could suit the developing countries business environment.

A recent research by the World Bank⁷⁴, Tanzania was ranked at 144th position among the 190 countries for having conducive environment for business in 2019. The report far explaining how business men are discouraged with presence of business regulatory bodies who make it tiresome and disappointing to set up a new business. The tax laws which significantly are not clear on how tax is assessed, a delayed and complicated work permits to foreigner professionals by the Labour Commissioner and the Immigration office, bureaucracy at the TIC make the situation worse. From this report, the World Bank, never pointed out what could best be improved to clear the path for opening more business as compared to countries like Rwanda and Kenya.

Clayde & Co contends that, laws in Tanzania at larger has been in favour of the employee. It is too hard to discipline an employee especially for the misconduct which warrants for termination without an employer being exposed to risk of penalties at

⁷³Singh, A., Company Law, Sixteenth Edition, Eastern Book Company, 2015, pp.35-37.

⁷⁴A World Bank Group Flagship Report, Doing Business 2019, 16th Edition, Training for Reform, Economy Profile Tanzania.

labour courts⁷⁵. Foreigners must obtain a class A or class B work permits for them to be engaged in any employment in the URT. There is no entitlement of automatic residency right after staying in the country for a long time. The options is either you have the work permit or attain citizenship, which is also surrounded by complicated lengthy processes⁷⁶.

The guide further illustrates a range of licences, permits and certificates a company must obtain from the government of Tanzania and other quasigovernmental bodies and agencies, which will vary depending on their size, structure and sector. The costs, timescale and ease of obtaining these will vary depending on the company and the awarding government department or body. It also touches the role of the TIC and EPZ but have not explored critically the legal challenges the investors may encounter when they make decision to invest in Tanzania in initial stages of commencement of business.

On the other hand, Ayoub⁷⁷ when quoting His Exc. President of the URT, Dr. John Pombe Magufuli, affirms that the TIC, EPZ and the TanTrade, all were established for the simple reason of assisting in promotion of economic, development and promotion of enhance services of goods at national and international market. That could be achieved by working together and attract more business opening in the country.

⁷⁵Clayde & Co LLP., Doing business in Tanzania, A guide for Chinese contractors, December 2015.

⁷⁶Ibid.

⁷⁷Ayoub. A., What is the meaning of TIC, EPZ and TANTRADE? Retrieved from <https://medium.com/@assanj34/je-nini-maana-na-kazi-za-tic-epza-na-tantrade-f80f2b355ec>, Nov 22, 2018 (accessed 18 August 2019)

However, it is disappointing that these three key authorities have been flourished with bureaucracy and unfriendly delivery of services.

Key legal and other problems facing business commencement in Tanzania have never been taken into expected seriousness. For example, one of the ideas why the EPZA was established was to have a one stop service center for all who wish to invest in Tanzania to avoid unnecessary multi offices one would need to walk through especially to those biggest investors⁷⁸; but to this point this goal seem not achieved.

Despite the raised legal issues facing the commencement and general conducts of business in Tanzania, all these scholars have not provided any significant way forward as to what could help to reduce or eradicate the said legal complications. This dissertation therefore, explores the best legal approach that could be adopted to promote more business opening in the country by setting up friendly legal requirements and processes yet that don't compromise the country's economy.

1.7 RESEARCH METHODOLOGY

The research of this dissertation is of the qualitative type whereas, the dissertation will be carried out through in-depth analysis of legal materials focusing both primary data sources such as the legislations, policies, decided cases, speeches interviews and secondary data sources like books, journals, articles, theses and dissertations, electronic, internet sources and media reports. The dissertation is principally

⁷⁸Ibid.

scrutinizing and evaluating the literature relevant to legal and regulatory governance of corporate business in Tanzania. Also, unstructured interviews will be employed.

1.8 SCOPE OF THE RESEARCH

This dissertation investigates on the legal impairments that face compliances to laws, regulations and policies governing corporate business in Tanzania with a case study on overlapping of general and crosscutting regulatory issues. The dissertation basically will be conducted within the URT, Tanzania mainland, whereas library of the OUT, different government Institutions, the TPSF and the TRA offices will be visited respectively for interviews and gathering relevant information. The dissertation covers Tanzania mainland only because Zanzibar has a different legal system⁷⁹ with different economic and business laws apart from those which apply to Tanzania main land⁸⁰. The decision to choose Tanzania Mainland was reached due to limited cost and time

⁷⁹See Article 114 – 116 of the Constitution of the URT, Cap 2.

⁸⁰Ibid, see also s.2 of the Judicature and Application of Laws Act Cap 358 R.E 2002.

CHAPTER TWO

2.0 OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

2.1 GOVERNING CORPORATE BUSINESS COMPLIANCE IN TANZANIA

2.1.1 LAWS, REGULATIONS AND POLICIES GOVERNING CORPORATE BUSINESS

Tanzania adopted the National Investment Promotion Policy⁸¹ with the aim of opening its economy market, this means bringing the private sector as the main actor in this agenda and review the legal framework to make the economy more liberal. Among other focus of the policy, was to exercise efficient and transparent rule of law to embrace practice of good governance, to the government itself and its related regulatory agencies so as to realise a consistent investment necessary for the development of the country⁸².

Along this Policy, the Sustainable Industries Development Policy⁸³ was formulated for a period covering 1996 to 2020. Among the aims of the Policy was to promote and let the private sector be the principle vehicle for investment in the country, thus the government made decision to phase out itself in this role. The Policy clearly states that in order to realise a stable economy there was a need to widen the base of production by adopting the industrialization agenda alongside with agriculture as one of the focus towards 2020. These together with agenda of liberalizing the labour market would be the vital machinery in the country's journey of development⁸⁴.

⁸¹The National Investment Promotion Policy, 1996

⁸²Ibid.

⁸³The Policy of 1996

⁸⁴Ibid.

All these Policies, called for a review of the laws which were operational by then and reform the legal framework for the governance of investment and industrialization agenda by enacting laws as was necessary to support and promote investments in the country. As the result of these policies, many legislations and regulatory institutions were created to facilitate bringing in life of these visions.

For example, the TRA, which became live on 1 July 1996 was established by virtue of section 4 of the Tanzania Revenue Authority Act⁸⁵. As the government institutions was, mandated with the responsibility of assessing, and collecting all central government revenues. Currently, TRA is under the Ministry Finance and Planning. It is also responsible for promoting awareness to the public to boost the voluntary payment of taxes.

Another vital agency formed was BRELA, a product of the Government Executive Agencies Act⁸⁶. The reason behind its establishment us to make sure that operations of business are conducted in compliance to the laws and principles. Among the specific roles of BRELA include

“to administer companies and business names laws, to regulate business by administering business and industrial licensing laws, to administer intellectual property laws, to encourage and facilitate local and foreign business investment, to stimulate scientific and technological inventiveness and innovation and

⁸⁵Act No 11 of 1995

⁸⁶No. 30 of 1997, It was established on the 28th of October 1999 by Government Notice No. 294 published on the 8th October 1999 and it was officially inaugurated on the 3rd December 1999.

encourage technology transfer and to protect the development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with rights owners and ensuring that businesses comply with the laid down regulations to the satisfaction of the Government and the business community⁸⁷.”

Also, TPA was established by section 4 of the Ports Act⁸⁸ as the main operator and controller of all ports in Tanzania mainland. The authority serves several landlocked neighboring countries which include Uganda, Rwanda, Burundi, DRC, Malawi, Zambia and sometime Zimbabwe. TPA currently performs the role of both a Landlord and Operator with the main functions of promoting the use, development and management of ports and their hinterlands, entering into contracts for the purpose of delegating the powers of the Authority (through licensing and concessioning ports services).

“TPA administers a diverse system of Tanzania’s Mainland sea and inland water ways (Lake Ports). The major sea ports are Dar es Salaam, Tanga and Mtwara while smaller sea ports are Kilwa, Lindi, Mafia, Pangani and Bagamoyo. The lake ports under TPA mandate are: on Lake Victoria include Mwanza North and South Ports, Nansio, Kemono Bay, Bukoba and Musoma: on Lake Tanganyika, are Kigoma and Kasanga: and on Lake Nyasa are Itungi Port, Kiwira, Manda Liuli and Mbamba Bay⁸⁹.”

⁸⁷ Section 8 of the Business Activities Registration Act No 14 of 2007.

⁸⁸No. 17 of 2004.

⁸⁹<https://www.ports.go.tz/index.php/en/about-us/overview>, (accessed on 31 January 2020).

These new regulatory bodies went along with the review of the regulatory bodies and agencies that were existing like the TBS, NEMC, WMA and many commercial crops' boards.

Later, Tanzania adopted a development vision which envisages a country with strong and competitive economy under friendly business environment which will see influx of local and international investors. The intended economy by 2025 should be as effective as capable to adapting to the changing market and technological conditions in the global economy⁹⁰.

As we have seen earlier, the government of the URT as has come with initiatives and efforts like BEST and BRN as attempts to attain its vision of industrialized country has resulted to some improvements reviewing the business regulatory regime and the government's agenda in provision and delivery of services . Different stakeholders have been consulted, researches conducted and advises received and now a consolidation of ideas through the blueprint has been generated.

In those efforts, the government of the URT is reviewing the National Investment Promotion Policy of 1996. As discussed earlier, this policy was formulated to address the challenges of Tanzania in meeting its socio-economic aspirations in consideration of the competitive advantages the country has over others with the East Africa . In

⁹⁰Small And Medium Enterprise Development Policy 2003.

addition, the review has resulted from various business and investment frustrations in the global, regional and national spheres since its inception in 1996.

Moreover, the review will among others, set a foundation and principles in formulating a new Investment promotion policy and its execution plan so as to align with and fast-track the realization of the ambition of the country development vision 2025 and optimizing the opportunities arising from the attainment of the middle-income economy status⁹¹.

This realignment has to go hand in hand with the need to consider the corporate laws which govern the kind of corporate business enterprise in the URT. The reason is that good corporate laws function as the backbone of any company's organizational structure, particularly as it yields capital to transact, and attain national and international growth economically which attributes political and social growth accordingly. This chapter describes in detail the overview of the Business Laws taking care of corporate business and all the preliminary compliance required before the business is actively set up in Tanzania.

Under this part of the dissertation, will also look at the present regulatory bodies that oversee the business. In doing so some of the key legislation governing corporate business in Tanzania just to name a few; The Companies Act⁹², The Law of Contract

⁹¹Ngelleshi, O., the Review of the National Investment Promotion Policy of 1996" Nation-Wide Call for Inputs, 12 September, 2019 retrieved from <https://tpsftz.org/the-review-of-the-national-investment-promotion-policy-of-1996-nation-wide-call-for-inputs>, (accessed on 30th January 2020.)

⁹²No 12 of 2002.

Act⁹³, The Business Activities Registration Act⁹⁴, The Income Act⁹⁵, Fair Competition Act⁹⁶, The Employment and Labour Relations Act⁹⁷, The Value Added Act⁹⁸ and laws establishing the business regulatory bodies will be discussed in detail.

Through the blueprint⁹⁹ the government essentially ventures on the review of and recommendations to improve among other factors the business regulatory framework. Foundations have been set to overcome wholistically the challenges and bottlenecks that affect the laws, execution coordination, which cause negative growth of the private sector. This document is the new Tanzania's guide to achieve a middle class economy led by industrialization agenda by 2025. This again calls for the review of the current legal regime in order to create friendly business environment.

The Blueprint was approved on 19th May 2018 by the cabinet of the URT for reforms, which were developed as a collaborative effort between the government on the one hand, and the private sector on the other, seek to improve the country's ease of doing business through regulatory reforms and to increase efficiency in dealing with the government and its regulatory authorities. The ministry has set an ambitious goal of improving its ease of doing business ranking by almost 40 points, from 137th to the double digits, within 18 months.

⁹³Cap 345 R.E 2002.

⁹⁴Act No 14 of 2007.

⁹⁵Cap 322 R.E 2008.

⁹⁶Act No 8 of 2003.

⁹⁷Act No 6 of 2004

⁹⁸Cap 148 R.E 2014

⁹⁹Ministry of Industry, Trade and Investment, Blueprint for regulatory reforms to improve the business environment, Dodoma, April 2018.

Like in many other developing economies, there are still significant number of laws, regulations and policies in Tanzania that overlap – creating a duplication of regulatory oversight and at times a bureaucratic rollercoaster of procedures when it comes to operating a business. These issues range from delays in issuance of licences and permits, to conflicting government agency mandates. These issues have at times suffocated the growth of business and constrained the flow of new investments. Following multiple interventions in the past with programmes such as BEST and BRN, the country has tried to work to reduce these bottlenecks.

The main question is whether these efforts are enough to address concerns of investors who over the last 24 months have been apprehensive about the unpredictability of the policy and regulatory regime that has hit strategic sectors in the country. As the government looks to operationalize institutional and policy reforms, the focus has to be on inclusive and consultative approaches to changes in the business operating environment in order to win back the confidence of investors. The Blueprint needs to fully address this and minimize the amount of state interventionist tendencies in regulatory decisions and the overriding and unlimited and contradictory powers in decision making.

Matters related to the noncompulsory decision-making powers of those in charge, such as regarding the renewal of permits or licences, are a major hindrance to business operations. These powers should be limited to extraordinary circumstances in which business has proven to fail to adhere to the respective laws, regulations and set goals for investment. As the country looks to attract investment and create an industrial

economy by 2025, there is a need to have clear and fair standard, and a legal administration which allows movement of labour.

This is key to allow for the transfer of technical capabilities and the seamless operation of business. With non-flexible laws on foreign staff making it difficult in get the right skills within the businesses, the government and private sector need to look into addressing this through clear local content development plans, notably ensuring that higher and vocational education institutions cater to the needs of local business as well as professional training for local staff to allow for the creation of a national pool of talent and knowledge.

Given Tanzania’s socialist history, the country at times has appeared to have interventionist policies as it relates to business. In the key note of the Blueprint, Prof. Elisante Ole Gabriel¹⁰⁰ acknowledged that,

“the system of State regulation of business has been taken with some skepticism by a cross section of private stakeholders who have occasionally argued that the conduct of business should be left to be determined by market forces. These concerns have been addressed in some aspects by the Blueprint, but it does not purport to remove government oversight”

Through the Blueprint, the government has seen the need to promote effective competition while creating an atmosphere for economic efficiency and protecting the fiscal capacity business entities.

¹⁰⁰The Permanent Secretary of the Ministry of Industry, Trade and Investment.

In summary, the combination of the Blueprint and the recent efforts in addressing issues raised by the private sector through public-private dialogue paints a hopeful picture for among the fastest rising economically in the world. Having suffered almost two years of negative publicity from foreign investors, Tanzania's message to the business community is clear. This rhetoric must now be backed up by government with evidence of its commitment to ensuring business growth and continuity in the long term. A concerted effort to achieve the highly ambitious improvement of nearly 40 places in the Ease of Doing Business rankings over the coming 18 months would certainly do the trick.

The initial stage to commence a corporation, you will need at first a business idea and a plan; the next step is registering and licensing the business. Legal businesses registration and licensing is done by organs like BRELA¹⁰¹ and TRA for obtaining TIN¹⁰². The time from name search for registration to issuance of Certificate takes up to 5 working days and obtain a notarized declaration of compliance¹⁰³. For locals you must also obtain introduction letter street/village government office¹⁰⁴ and for foreigners the Passport is used, a National Identity Card and other documents verifying citizenship are mandatory for other legal procedures to proceed¹⁰⁵.

¹⁰¹S.11 and S.14 of the Business Activities Registration Act No 14 of 2007.

¹⁰²S.22 of the Tax Administration Act No 10 of 2015.

¹⁰³(n 13).

¹⁰⁴Ibid.

¹⁰⁵Ibid.

These initial compliances are necessary to enable registration and license of the intended business and are a matter of practice and not of law. Registration of Companies is also required by the Companies Act¹⁰⁶ under section 14 and 15 for local companies and section 433 to 435 for the foreign companies. BRELA by virtue of section 5 of the Business Activities Registration Act¹⁰⁷ where all registration centers report to the Registrar of BRELA is empowered and responsible for

“making sure that all businesses are registered and licensed, relevant information to enable business decision to the public are collected, stored and available and provide information regarding services provided by the Government and other agencies to businesses including but not limited to training programmes, skills access in the form of technical advice and business development services, and the provisions of trading and operational facilities such as hawker stalls and industrial parks”¹⁰⁸.

Immediately after the business is set up or about to start, a TIN has to be obtained¹⁰⁹ for personal tax liability assessment and payment reasons¹¹⁰. This number is very useful in many business purposes such as obtaining business license and VAT registration¹¹¹. These TIN and VAT registration number are also useful for all documents required by most tax laws¹¹².

¹⁰⁶Act No 12 of 2002

¹⁰⁷Act No 14 of 2007.

¹⁰⁸Ibid S. 8

¹⁰⁹(n 15)

¹¹⁰Ibid S.24

¹¹¹S. 28 of the Value Added Tax Act No 5 of 2014.

¹¹²Ibid S.35.

The Business Activities Registration Act¹¹³ is the principle law regulating incorporation and licensing processes in Tanzania. It is prohibited start and operate a business in Tanzania without obtaining a valid business license issued by the respective authority as section per 11(3) of the Business Activities Registration Act¹¹⁴. There are two authorities administering business licenses are the Ministry of Industry Trade and Investment for class “A” business licenses and LGAs for class B Licenses, however, some other business are governed by specific regulatory bodies¹¹⁵.

Section 11(3) of the Act¹¹⁶ recognizes presence of other respective regulatory bodies that have licensing and regulatory authorities over specified business and section 18 for that purposes prohibits any local authority, or its agents to issue business licences other than BRELA except has been given such powers under any written law. The particulars for business registrations are provided for under section 13 of the Business Activities Registration Act¹¹⁷

Under other authorities different laws do regulate and supervise certain businesses as required under certain laws¹¹⁸. For example; transportation business in the area of rail transport, commercial road transport, commercial underground; and cable transport is being regulated by the Land Transport Regulatory Authority Act¹¹⁹. Tourism activities

¹¹³Act No 14 of 2007.

¹¹⁴Ibid.

¹¹⁵Ibid S.11(3) and S.18

¹¹⁶Business Activities Registration Act No 14 of 2007

¹¹⁷Act No 14 of 2007.

¹¹⁸Business Licensing Office, Business Registration and Licensing Agency, Tanzania National Business Portal, retrieved from <https://business.go.tz/obtain-a-business-license>, (accessed 30 September 2019).

¹¹⁹No 3 of 2019.

and tour guarding are being licensed and regulated by the Tourism Act¹²⁰ under part V and Part VI, where as the TTLB is mandated with such functions¹²¹. The BFIs institutions are being regulated and licensed the Banking and Financial Institutions Act¹²², as provided under section 6 and 7 of the Act¹²³.

Among other roles, the BOT has been empowered to regulate and ‘supervise banks and financial institutions including mortgage financing, development financing, lease financing, licensing and revocation of licenses’¹²⁴. With the enactment of the Microfinance Act¹²⁵, many other financial institutions that were not regulated by the BOT now have been brought under it¹²⁶.

With this Act¹²⁷ all financial institutions now fall under the powers of the BOT Act¹²⁸ and the Banking and Financial Institutions Act¹²⁹. The BOT is also mandated to oversee the financial capability of these institutions and has powers to take possession of such business when the business fails to meet the pre requisites of the Capital compliances in order to protect the interest of the investors and general public¹³⁰.

¹²⁰Act No 29 of 2008.

¹²¹S. 19(1) of the Tourism Act No 29 of 2008.

¹²²Act No 5 of 2006.

¹²³Ibid at Section 6 and 7.

¹²⁴S.5 of the Bank of Tanzania Act No 4 of 2006.

¹²⁵Act No 5 of 2018.

¹²⁶Ibid section 12 and 5.

¹²⁷(n 38).

¹²⁸Act No 4 of 2006

¹²⁹Act No 5 of 2006.

¹³⁰Ibid at S.16 and 56.

Another area which corporate businesses that require expertise that cannot be found in the country; need to obtain residence and work permit from the immigration department and Labour Commissioner under the TIC respectively. No foreigner can engage in any business or employment unless that person has obtained a residence permit class A as per s. 30(1, (2) and s.33(1) of the Immigration Act¹³¹ and for expertise need a class B residence permit as per s.34¹³².

No person can engage in any activities in Tanzania with payment unless has valid work permit as per sections 9, 10, 11 and 12 of the Non-Citizens (employment Regulation) Act¹³³. This Act seeks

“to regulate employment and engagement of non-citizens in Mainland Tanzania. Section 5 of the Act vests powers to the Labor Commissioner to issue and cancel work permits and process exemptions for the same. Section 6 of this Act provides for ‘authorized officers. These include labor officers, police officers, immigration officers who are for the purposes of this Act, are to exercise powers and discharge duties conferred to authorized officers in the Act. Labour Officers in collaboration with other Public Officers as the case may be, may enter and inspect any places of employment on matters related to work Permit.¹³⁴”

This contradicts their limits of powers as same documents are inspected and involve same people thus increase downtime especially for producers.

¹³¹Cap 54 R.E 2016.

¹³²Ibid.

¹³³The Non-Citizens (Employment Regulation) Act, No 1 of 2015.

¹³⁴(n 99).

2.2 REGULATORY FRAMEWORK GOVERNING CORPORATE BUSINESS IN TANZANIA

The introduction of regulatory institution in Tanzania was due to the purpose make sure there is well coordinated and supervised business operations to help the free market operate free from rough plays. Especially this was important in order to prevent and rework on the improper free market forces and keep safe the interest of consumers.

The government therefore had to establish several regulatory bodies for this specific reason. These have however, in the course of doing their core functions, raised a number of challenges in regard to powers and functions which has been a source of high cost either due to duplicative roles or crosscutting responsibilities and fees imposed by different regulatory bodies over same business compliance requirements.

There have been a complaint from businessmen and investors on the legal procedures and cost to meet the registrations requirement and start a corporate business. According to the World Bank Doing Business Country Report¹³⁵ it explains that

“stages and procedures, length of time taken, and monetary cost incurred to establish a new business in Tanzania, are complicated by, among other things, the multiplicity of Regulatory Agencies with attendant tax revenue collection procedures¹³⁶”.

¹³⁵World Bank, Economy Profile Tanzania Doing Business Report, 2017.

¹³⁶Ibid.

For example, The NEMC, OSHA, TFDA, TBS, FIRE Department, WMA and EWURA are some of the compliance Institutions mentioned to be the causes for complicated procedures with the danger of raising cost to the business operators.

LGAs have also been causing unnecessary difficulties in starting and registering businesses through enactment of the regulations. The TCCIA Report proposes the need unite these different regulatory bodies to eradicate the double functions and cost for compliance check by reviewing and amending the relevant laws¹³⁷. On the other hand, it has been suggested that it could be easier if all these roles of registrations and licensing roles were left under the BRELA TIC and all other specific sector regulators brought under a single stop shop with synchronized systems that would integrate them via a strong ICT infrastructure.

The problem here is that each agency sets their cost of compliance, levies, fees and other charges to facilitate their day to day functions. All these has made corporate business in Tanzania expensive and has for a time been named as one of the reasons that make Tanzania one of the countries where starting a business is very complicated and costly¹³⁸. A number of existing regulatory bodies are stated hereunder.

¹³⁷Tanzania Chamber of Commerce, Industry and Agriculture Report, March 2016.

¹³⁸Confederation of Tanzania Industry, Regulatory Framework, retrieved from <https://www.cti.co.tz/cpages/regulatory-framework>, (accessed 03 October 2019).

2.2.1 BUSINESS REGISTRATION AND LICENSING AGENCY

BRELA is a product of section 3 of the Executive Agencies Act¹³⁹ and was formally launched in 1999¹⁴⁰. This agency is also mandated with registering business names by the Business Names (Registration) Act¹⁴¹. It is an agency under the Ministry responsible for trade and investment and mainly responsible for administration of business registration and licensing of class A business category. BRELA is essentially for registering business names defined under it to include

“any name or style under which any business is carried out on be it partnership or otherwise. Also, sole trader, single individual two or more individuals or corporations who have entered into a partnership with the view to carry business for profit may register their business name, this includes all abbreviation names. The Act also applies to nominees, where a firm, individual, or corporation having a place within Tanzania carries on the business wholly or partially as nominee or trustees of or for another person or persons or another corporation or acts as general agent for any foreign firm, the first mentioned firm, individual or corporation must register in the manner provided in this Act¹⁴²”.

Agency was established with its headquarters at Dar es Salaam, where previously people had to travel from over to country for registration reasons but of recent, the agency has launched an online registration and payment system which has made it easy

¹³⁹Cap 245 R.E 2002.

¹⁴⁰On 3rd December 1999

¹⁴¹Cap 213 R.E 2002 as amended by the Business Laws (Miscellaneous Amendments) Act, no 3 of 2012.

¹⁴²Ibid section 8-20.

for registration of business and corporations. When responding a question in an interview with media, the BRELA CEO Mr. Frank Kanyusi admitted that

“currently, in order to start a business, one is required to visit a number of institutions to obtain necessary documents. To ease the starting of a business process there is a need for other institution like TRA to be streamlined and access BRELA service. He proposed a legal and regulatory framework review to suit the reforms and initiatives that the Agency is undertaking and also to eliminate the current bureaucracy in formalization of a business in the country. it has to be noted that once the company is incorporated it does not start the business on the spot, it has to obtain other clearances from the TRA, Business Licensing authorities and Regulatory authorities, if required. Formalization of a business is like a big set with several subsets within it, registration of company and business name being one of them¹⁴³”.

He believes there is an urgent need to relook on current legal system administering business in Tanzania as this would impact the future business development of Tanzania.

¹⁴³<https://www.tanzaniainvest.com/economy/interview-frank-kanyusi-ceo-brela> and follow us on www.twitter.com/tanzaniainvest.

2.2.2 THE NATIONAL ENVIRONMENT MANAGEMENT COUNCIL.

NEMC is established by 16 of the Environmental Management Act¹⁴⁴, to perform the environmental enforcement and monitoring environmental impact statements, research and awareness raising. This Act provides a legal and institutional framework for the sustainable management of the environment; it outlines the principles for management¹⁴⁵, impact and risk assessment; it provides for

“the prevention and control of pollution and waste management; it establishes environmental quality standards, compliance and enforcement; and provides for implementation of the National Environment Policy¹⁴⁶ and for all issues relating to the environment and health¹⁴⁷.

Further NEMC is empowered to do the EIA for different types processing and manufacturing sector. It also issues permit or licence for project under any other law for EIA. The Minister has powers to recommend a reject, suspension of a permit or license issued for any project or denial of either of them for lack of qualifications under this Act¹⁴⁸ NEMC is under section 18 (2) empowered to conduct out surveys to assist in management and preservation of the environment¹⁴⁹.

¹⁴⁴Act No. 20 of 2004.

¹⁴⁵Ibid.

¹⁴⁶Ibid under Part II of the Act.

¹⁴⁷S.18 of Act No 20 Of 2004.

¹⁴⁸Ibid at section 81.

¹⁴⁹Ibid at section 18, It is further tasked with power to “undertake and coordinate research, investigation and survey in the field of the environment, collect and disseminate information about the findings of such research, investigation or surveys and publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation”.

NEMC has the mandate facilitation role of carrying scientific research to prepare management plans for environmental protected areas as per section 48¹⁵⁰. Under section 55 of the Act requires the NEMC to issue guidelines and preparing measures for the conservation of water sources. The Council is required under section 108 of the Act to study the current capacity for effective integrated pollution prevention and control and align with the technological development and techniques for reducing pollution of the environment due to various ways.

The Council is also tasked with the duty to gather and do thorough analysis of information regarding environment and natural resources, also to disseminate them to the public and private users. The commission studies the population and development issues and how they have impact on environments. This role is granted under section 173 of the Act, the meaning of it is to help the government have accurate data which will help them arrive at fair environmental decision.

A central environmental information system is established within the Council with the reason of observations and management purposes¹⁵¹. Section 177 of the Act gives NEMC the mandate ‘to conduct surveys on the state of the environment and to research and make forecast on the environmental changes and other studies that may contribute towards the formulation of policies and preparation of actions and strategies with regard to environmental conservation and management’

¹⁵⁰(n 144)

¹⁵¹as per section 174 of the Act No. 20 of 2004.

Among the challenges NEMC currently face is inadequate capacity required for day to day environmental research and discharging its day to day activities. This has been said to a reason of poor service delivery; for example, long period and bureaucracy in issuing certificates of EIA¹⁵². It has been noted that EIA process in some project are signed and issued at the headquarter alone which disappoints investment. In turn this has made some project stop waiting commencement of operation or stop waiting approval of EIA before they are permitted to operate.

2.2.3 TANZANIA REVENUE AUTHORITY

TRA is established by section 4 of the Tanzania revenue Act¹⁵³. TRA is responsible for administering tax assessment and collection on behalf of the government as provided under section 5¹⁵⁴. The Income Tax Act¹⁵⁵, lays down the way TRA would be executing its roles and how to enforce it¹⁵⁶. TRA is given powers to issues TIN and under Fourth schedule Tax Administrations Act specifies the transactions for which a TIN is required¹⁵⁷.

After incorporation or registration of a business you then require to immediately register with the TRA to obtain TIN which will be required to process licence of the business for which the entity is established. Then you will need to register for VAT if

¹⁵²The National Environmental Research Agenda for Tanzania 2017 – 2022, pg. 5.

¹⁵³Cap 399 R.E 2006

¹⁵⁴Ibid

¹⁵⁵Cap 322 R.E 2008

¹⁵⁶Ibid s. 5-10 under part III

¹⁵⁷S.22 of the Tax Administration Act No 10 of 2015

the business taxable turnover exceeds, or you believe the business will exceed, the turnover prescribed in the regulations¹⁵⁸.

In Tanzania, they have been several tax reforms which has resulted into well commendable in terms of design. The regular legal adjustments and amendments, to improve revenues and attract more investors has created some gaps in tax laws and tax regime generally. There have been a practical inconsistency in policy and regulation applications. One of the examples that was given was that

“importers of flat rolled products of iron (H.S. Code 7208) have continued to be subject to indicative price of USD 800/ton even when the price in the world market ranged between USD 320-420/ton. Before domestic production of iron picks up, imported iron will continue to be one of the key inputs for the industrialization process and growth of the construction sector in Tanzania. Accordingly, careful application of import policies is imperative. TRA should find flexible, realistic and effective approach to determining indicative prices in order to arrive at a dutiable value, which enhances competitiveness among domestic industries¹⁵⁹”.

¹⁵⁸S.28 of the Value Added Tax Act Cap 148 R.E 2014 and registration has to be done in within 30days

¹⁵⁹In addition to that the Blueprint also noted that as I quote “Following are some of areas of concern; Tax relief for promotion of domestic industries, there have been efforts to reduce or raise tax rates in order to promote some domestic industries. For instance, the raw material for making animal feed such as sardines, cow bones, cow blood, and maize are exempted from VAT. However, cotton, sunflower, and soya meals (mashudu) which are also raw materials for animal feed production are subject to VAT. Nevertheless, both sets of raw materials have strong backward linkages to agriculture and part of the agro-process, which is one of the national priority sectors for industrialization. In addition, small-scale domestic processors do not have input VAT because they buy from small-scale farmers, who are VAT registered. This tends to reduce their competitive advantages in relation to those which procured from VAT firms. TRA should rationalize VAT treatment for raw materials with a view to promoting domestic industries and enhanced industrial inter-linkage and value addition. Application of Indicative Prices for Imports the application of indicative prices for imports has been a bone of contention among stakeholders. It is clear that, in order to ensure effective tax administration, indicative import prices

This has in itself created a room for unfair decisions and corruption practices due to lapses that has increased bureaucracy with the authority.

2.2.4 TANZANIA FOOD AND DRUGS AUTHORITY

The TFDA as an authority was created by the Tanzania Food, Drugs and Cosmetics Act¹⁶⁰ for the purpose of ‘regulating the quality, safety and efficacy of food, medicines, cosmetics and medical devices. This Act provides for the control of food, drugs, medical devices, cosmetics, herbal drugs and poisons. It was enacted to regulate food and food products manufactured and/or imported into the country’. The law established the TFDA for one main reason of ensuring that foods and drugs are regulated to protect consumers against their health and wellbeing in collaboration with other bodies. TFDA is given mandate to

“regulate all matters relating to the quality and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics; to regulate the importation, manufacture, labelling, marking or identification, storage, promotion, sale and distribution of food, drugs, cosmetics, herbal drugs and medical devices; to approve and register products regulated under the Act; to examine, grant, issue, suspend, cancel and revoke licences or permits issued under this Act; and to prescribe standards of quality in respect of products regulated under this Act¹⁶¹.”

need to be issued in order to enhance predictability of the amount of taxes the importers pay and the revenue accruing to the Government. One of the challenges however is the rigidity of the indicative prices, which makes them fail to reflect price trends in the world markets”.

¹⁶⁰Section of Act, No 1 of 2003.

¹⁶¹Ibid at section 5.

However, under section 5 (2), TFDA is required to consult and coordinate with other relevant regulatory bodies.

Unless you have a valid license or permit it is not allowed to engage in any, manufacturing or any way of storage in any premises or import and export, supplying of any product regulated under the TFDA Act¹⁶². In top of that under section 22 such activities are prohibited unless you are registered and issued with a license or permit. Such powers of TFDA are given under section 21 where the Authority can issues permit or licence as it deems good and in accordance with section 25 of the Act..

The Authority has the power to inspect any premises for the purpose of GMP, distribution and routine inspection after the product has been in the market. In order to perform its functions adequately, TFDA has the following regulations; the Tanzania Foods, Drugs and Cosmetics (Import and Export of Food) Regulations¹⁶³, the Tanzania Foods, Drugs and Cosmetics (Food Hygiene) Regulations¹⁶⁴, the Tanzania Foods, Drugs and Cosmetics (Fees and charges)¹⁶⁵ the Tanzania Foods, Drugs and Cosmetics (Treatment and Disposal of Unfit Food) Regulations¹⁶⁶.

¹⁶²Ibid at Section 18.

¹⁶³The Tanzania Foods, Drugs and Cosmetics (Import and Export of Food) Regulations, 2006, Published by GN No. 113 on 25/08/2006.

¹⁶⁴The Tanzania Foods, Drugs and Cosmetics (Food Hygiene) Regulations, 2006, Published by GN No 114 on 25/08/2006.

¹⁶⁵The Tanzania Foods, Drugs and Cosmetics (Fees and charges) Regulations, 2015, Published by GN No 464 on 23/10/2015.

¹⁶⁶The Tanzania Foods, Drugs and Cosmetics (Treatment and Disposal of Unfit Food) Regulations, 2006, Published by GN No. 116 on 25/08/2006.

Section 9 establishes a Board of directors to govern TFDA. The board in discharging its function has to involve necessary stakeholders in various sectors such from legal and other sectors. The composition of this Board suggests that it was expected to have worked out all the discussed overlaps. However, the observation and practice from the private sector proves a contrary that the board doesn't use the existing platform effectively as was expected¹⁶⁷.

The laboratory in the TFDA which is established under section 14 has a duty to discharge duties relating to the quality of products. Subsection 5 requires TFDA to recognize the existence of the GCLA for analysis of food, drugs, cosmetics and medical devices and also where necessary to seek assistance of GCLA Laboratory. TFDA issues various licenses and permits duties of which are stipulated under section 20 and section 121 allows delegation of TFDA powers and functions to other institution or body of persons.

Regulation 4 (1) of the Tanzania Food, Drugs and Cosmetics (Food Hygiene) Regulations¹⁶⁸, prohibits any kind of operation without prior possession of a valid license

“the use of any premises for the purpose of manufacturing, selling, preparing, packaging, storing or displaying for sale of food without possession of a license

¹⁶⁷(n 151), “The Board comprises of a Chairman who is the Permanent Secretary in the Ministry responsible for Health, representative from Attorney General Office, Chief Medical Officer, Director of Veterinary Services, Director of National Food Security, Chief Government Chemist, Director of TBS and a representative from the Local Government, Director of the Tanzania Food and Nutrition Center and Director General of Medical Services in the Revolutionary Government of Zanzibar”.

¹⁶⁸Regulations published by GN No 114 on 25/08/2006.

issued by TFDA'. TFDA is required, under Regulation 4 (2), to inspect and register premises before issuing licenses. Regulation 7 requires owners, operators or those in charge of growing, harvesting slaughter, milking and fishing operations to ensure such premises are clean so that they do not pose threat to the safety of food, or contaminate food or water supply¹⁶⁹".

It sets and monitors the standards of operating facilities with potentials to affecting quality of food premises such as sanitary amenities, water supply from adequate and adequate sewerage systems.

For the reasons of making sure that all standards and specifications set out by the law are observed the TFDA appoints and authorize inspectors or officers appointed under any law whose functions relate to the functions of the Authority to perform specific functions as inspectors, this is provided under section 5. In this contextual then, TFDA can use health workers and other LGAs to affect their roles under the Act.

TFDA functions overlaps with many others sectors that were either not contemplated at its inception or have emerged since it was established. In this regard the Regulations made by institutions that have similar roles with TFDA do not align to each other thus leaving a cross cutting function or powers that end mixing and costing the entities.

¹⁶⁹Ibid regulation 4 to 7

2.2.5 TANZANIA BUREAU OF STANDARDS

TBS established by the Standards Act under section 3¹⁷⁰ to execute the roles stipulated under section 4. These activities include undertaking activities that ensure measures and maintain quality control of products of all descriptions and promotion of standards in industry and commerce. This Act provides for the standardization of the specifications of commodities and services, the re-establishment of the TBS and an improvement in the provisions for the functions, management and control of the Bureau, as well as repealing the Standards Act¹⁷¹.

“The TBS sets standards and acts as a member of ISO providing International Standards to companies. The Agency certifies the imports and new company’s products introduced into the market for a fee. The Act confers powers on the Bureau of Standards to issue a licence for standard marks. Any mark approved by the Bureau for any commodity or for the manufacture, production, processing or treatment of any commodity will be a standard mark in respect of it and TBS may, in like manner, cancel or amend that mark.¹⁷²”

In discharging its duties, TBS is required to maintain a working relationship with other authority established by or operating under any written law and especially those which have functions similar to those vested on it or relating to industrial or commercial standards as required by provisions of section 4(2). Interestingly, standards set by TBS

¹⁷⁰Act No.2 of 2009

¹⁷¹Cap130 R.E 2002

¹⁷²http://www.tbs.go.tz/index.php/tbs/aboutus/questions_frequently_asked_about_tbs, (accessed on 29 January 2020)

prevail over other standards set by any other authorities as provided by section 4(3) of the Act. The law further provides ministers with related functions as regard to standards consult each other before any regulations is made the power which seem not exercised as required. The following regulations seem to interfere or overlaps with that of the TFDA.

“Regulations can be made on matters in respect of payable fees, levies and other charges; their amounts; and the persons who shall be liable for their payment. The Standards (Tested Products) Regulations¹⁷³ under regulation 3 provide that the TBS has the mandate to issue a tested product certificate in respect of a product which complies with the appropriate requirement as defined by the Bureau. Regulation 4 requires manufactures and dealers of a product to apply for the certificate. The application must be accompanied by a fee and inspection charges. Regulation 7 requires TBS to make inspections regularly without giving notice to ensure that conditions of the certificate are being complied with. The Standards (Certification) Regulation¹⁷⁴, provide for regulating the licenses granted to applicants. They require applicants to apply for a standard mark or marks for commodity or process manufactured or treatment of any commodity. Regulation 3 prohibits application of a standard mark to any commodity or process unless the holder has been granted a license. Regulation 4 requires that license applications be accompanied with the prescribed fee¹⁷⁵”.

¹⁷³Regulations 2009

¹⁷⁴Regulations 1981

¹⁷⁵<https://www.foodbusinessafrica.com/2019/07/02/tanzania-harmonizes-regulatory-bodies-roles-forms-drug-authority/>, (accessed on 30 January 2020)

The roles if were played well harmonization could have been happened in many areas unlike the current overlaps we see.

2.2.6 THE GOVERNMENT CHEMIST LABORATORY AUTHORITY

GCLA was established in accordance with the Executive Agencies Act¹⁷⁶ through the Executive Agencies (Government Chemist Laboratory Agency-GCLA) (Establishment) Order¹⁷⁷. In September 2016 transformed again into GCLA after Parliament to enact Government Chemist Laboratory Authority Act¹⁷⁸. The purpose of it being quality results, affordable testing and analytical tests, professional services to the public and private institutions and the general public on food, drugs, industrial and consumer chemicals and forensic sciences services (that include but not limited to DNA and toxicology)¹⁷⁹.

GCLA is given the power similar to that of the TFDA to ensure that any chemical producer complies with the GMP and does the EIA prior to business operations, the role that is also performed by NEMC. The GCLA is also empowered to issue a licence for producing, transporting, importing, exporting, storing and dealing in chemicals for a prescribed fee.

“GCLA, is a central laboratory analysing samples and exhibits related to forensic sciences in order to facilitate forensic investigations and hence assurance of justice and rule of law, samples related to agricultural and

¹⁷⁶Act No. 30 of 1997

¹⁷⁷GN. 106 of 2000

¹⁷⁸S.4 Act No. 8, 2016

¹⁷⁹Ibid s.5

industrial produce to ascertain safety and quality, samples related to paternity or sex identification in order to address society concerns and samples related to environmental and occupational health for the protection of health and the environment¹⁸⁰”.

GCLA was founded in 1895 during the German colonization with H. Von Wissman as the German to Tanganyika. It has come a long way from its beginnings of conducting researches on tropical diseases under the Chief Secretary's Office and thereafter to the Ministry of Health just after the 1st World War. Since independence of Tanganyika, GCLA has continued to operate as a department within the Ministry of health till 1999 when it changed its status to Government Chemist Laboratory Agency. The current status of GCLA being Government Chemist Laboratory Authority was acquired in 2016 when the Parliament of the URT enacted the law to establish the Authority¹⁸¹.

According to its establishing Act, the laboratory results issued by the GCLA are final and conclusive as they are generated from specialized equipment for laboratory analysis such as Liquid Chromatography Mass Spectrometer (LC-MS/MS) triple quadrant, “Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES), Energy Dispersive X Ray Fluorescence (ED-XRF), Polymerase Chain Reaction (PCR), Real time Polymerase Chain Reaction, Genetic analyzer, On-Site Analysis (OSA4), Gas Chromatography Mass Spectrometer (GC-MS/MS), Gas Chromatography (GC), Ultraviolet-Visible Spectrophotometer (UV-VIS) and Atomic

¹⁸⁰<https://portal.gcla.go.tz/app>, (accessed 12 January 2020)

¹⁸¹The Government Chemist Laboratory Authority Act, No. 8 of 2016.

Absorption Spectrometer (AAS)¹⁸². Furthermore, GCLA is ISO 9001:2008 certified and ISO 17025:2015 Accredited and hence the results generated are nationally and internationally recognized.

In addition, GCLA being the sole regulator of industrial and consumer chemicals and human DNA technology in the country is hereby committed to ensure that, chemicals are used in a manner that minimize adverse effects to health and the environment, also the human DNA technology and the respective results are used only for the intended purposes to safeguard human dignity. The long-term experiences have resulted to establishment of a competent Authority which has high quality professional staff, trust within and outside the Government and is able to provide check and balances to assist decision-making for any conflicting issues which require laboratory analysis¹⁸³.

2.2.7 OCCUPATIONAL SAFETY AND HEALTH AGENCY

Health and safety of all employees in all sectors are important factors for their wellbeing and are necessary for improving productivity. The government, and the working force has responsibility to maintain all workplaces safe and in healthy state. Governments has thus put in place regulations to ensure that workers are protected from well-known traditional work hazards as well as new hazards associated with working conditions and psychological stress.

¹⁸²<https://gcla.go.tz/>, accessed 12 January 2020)

¹⁸³<https://portal.gcla.go.tz/app>

In Tanzania, the supervisory role in respect of these hazards is the OSHA which is regulated by the Occupational Health and Safety Act¹⁸⁴ and established by section 3 of the Executive Agencies Act¹⁸⁵ maintaining health and wellbeing of workers, and of workplaces. This is achieved through promotion of OSH practices. The purpose of this Act is to make provision for the safety, health and welfare of persons at places of work, to provide for the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work, and to provide for connected matters¹⁸⁶.

The Act makes it mandatory for owner of workplace to register such workplace comply as is required by law. The Chief Inspector has power to enter and inspect any workplace as he may deem necessary. The Act mandates OSHA for coordinating the provision of health services for employees of these institutions, with technical support from the Regional Secretariat and Ministry of Health.

This Act mandates OSHA with the task of overseeing and improving occupational health and safety practices for the wellbeing of workers at factories and other work places in order to reduce accidents and occupational diseases. It covers workers in all sectors, including those in the public sector and in local government authorities. It is in this regard that the functions of OSHA have a direct bearing on doing business in the country.

¹⁸⁴Act No. 5 of 2003.

¹⁸⁵(n 70).

¹⁸⁶Ibid at S.15 require all place of works to be registered.

Sections 4 to 14 of the Act specify the powers and functions of OSHA. These are overseen by the Chief Inspector and other officials appointed in accordance with the provisions of the Act. The functions include,

“keeping record of publications on health and safety standards which are incorporated in the Regulations, Rules or Orders; keeping record of amendments or substitution of any health and safety standard so published; and inspecting health and safety in workplaces. The Chief Inspector may delegate any power conferred upon him by the Act to any officer or authorize any such officer to perform any duty assigned to him by the Act. The Chief inspector may also designate any person as an inspector to perform, subject to the control and directions of the Chief Inspector, any or all of the functions assigned to an inspector by the Act.”

However, responsibilities of OSHA overlap and sometime duplicative with other TBS, NEMC, TPRI, Fire and Rescue, AEA and TFDA are inevitable. Also, OSHA lack the capacity to cover the whole country in making sure that workplaces are kept safe and healthier. It is in this context therefore that section 105 of the Act makes a provision for the Minister to delegate the functions of OSHA to any officer or LGA. A number of Regulations have been promulgated under the law establishing OSHA. These include the Occupational Safety and Health Services (Vehicles Under Pressure) Regulations¹⁸⁷; Occupational Safety and Health (Notification of Occupational

¹⁸⁷GN 274/2016.

Diseases, Injuries and Dangerous Occurrences) Rules¹⁸⁸, and the Occupational Safety and Health (General Administrative) Rules¹⁸⁹.

2.2.8 WEIGHTS AND MEASURES AGENCY

The WMA is an Executive Agency, responsible for fair trade transactions through certification of weights and measures. It is the main and only agency in Tanzania for administration of weights and measures as under powers granted under the Weights and Measures Act¹⁹⁰. Since 1999 and in pursuance to the Executive Agencies Act¹⁹¹, the WMA came in to replace the former Directorate of Weights and Measures under the Ministry of Industry and Trade. The move was part of the Civil Service Reform Programme CSRP to increase efficiency and effectiveness of public service delivery.

WMA which was established by the Executive Agencies Act¹⁹² and the Weights and Measures Act¹⁹³ gives it mandate to provide protection to consumers in relation to legal metrological control which includes legal control of measuring instruments, metrological supervision and metrological expertise in trade, health, safety and environment. This Act reviews the previous laws on weights and measures and provides for the introduction of the SI and related matters. In the wording of section 11-(1), it is provided that:

¹⁸⁸GN 280/2016.

¹⁸⁹ GN 149/2015.

¹⁹⁰No.20 of 1982.

¹⁹¹ Act No. 30 of 1997.

¹⁹²Ibid.

¹⁹³Cap 340 R.E 2002

“unless otherwise permitted by this Act, every contract, bargain, sale or deal made, whereby any work, goods, wares, merchandise or other thing is or are to be, or is or are done, sold, delivered, carried, measured, computed, paid for or agreed by weight or measure, shall be made and had according to one of the relevant units of measurement specified in the First, Second, Third, Fourth, Sixth, Seventh and Eighth Schedule to this Act or to some multiple thereof...”

The provision above sets different units for different measurements to be used in daily transactions to control competitive and protect the consumers against untrustworthy business entities and individuals.

The Minister is empowered by section 9 to procure and cause to be maintained standard equipment, which he may from time to time determine as being proper and necessary for the verification of standards of weights and measures. The duties of an assizer have been clearly stated under section 16 as

“to carry out verification of weights, measures, weighing and measuring instruments; to care for and maintain any working standards which may be entrusted to his care; to keep records and make such reports as the Commissioner may require, to give effect to the directions of the Commissioner; and generally, to exercise such other powers and duties as may be conferred or imposed by this or any other Act or by regulations made under the Act”¹⁹⁴.

¹⁹⁴Ibid.

This specific section gives power and mandate to the minister in power to make rules on standards machinery to verify standards of weights and measurements,; the reason is as said earlier to protect the consumers and facilitate competitive grounds for all businesses within the same industry.

The Commissioner for Weights and Measures has been given power of setting standards as per section 15, he also makes verifications of all weights, measures, weighing, or measuring instruments used or intended to be used for trade in the United Republic¹⁹⁵. Certification is done by way of inspection calibration and verification. The Agency performs an advisory role on the proper use, care and custody of weights and measures. The law permits the WMA to delegate its functions to other institutions.

“The WMA’s main function is to protect consumers by putting in place systems to regulate legal metrological control which includes legal control of measuring instruments, metrological supervision and metrological expertise in trade, health, safety and the environment. Its specific roles include; protecting consumers in the course of transactions against consequences arising from trade, safety, health and environment in relation to legal metrology; approving measuring instruments to be used in public or private transactions in trade, safety, health and environment sectors; controlling the use of measuring instruments in public and private transactions, including pre-packaging of products; and providing information on Legal Metrology in general and ensuring that legal metrology measurement standards are traceable to national

¹⁹⁵<https://www.wma.go.tz/publications/35>, (accessed 08 February 2020)

and International measurement standards. In the course of undertaking its roles, the WMA is also required to liaise with regional and international organizations with similar objectives¹⁹⁶”.

The way in which agricultural products are transacted in Tanzania is laid out in the Weights and Measures Act of 1982 and subsequent amendments. According to existing legislation, specific goods must be sold by nett weight or measure except when in quantities not exceeding 50 grams or 50 millilitres. There are specified packing standards for agricultural goods as well as specified quantities in which certain goods shall be pre packed¹⁹⁷.

To quote the USAID, The practice of selling agricultural produce without the use of certified scales is commonplace. Virtually all transactions at farm level are conducted without the intervention of the WMA and its Assizers. The WMA does not have the capacity to ensure that the law is adhered to due to financial and operational constraints.

“Agricultural produce is, more often than not, sold at farm level by the debe and is either packed into bags on site or at collection centres operated by agents and/or middlemen. There is strictly speaking, no such thing as a “standard bag size”. From the starting point of a factory produced polypropylene (PP) bag of

¹⁹⁶ibid

¹⁹⁷USAID, Study on Weights and Measures Practices in Tanzania, Final Report May 2004.

50kgs or 100kgs, produce is stuffed into lubes or kosovo “bags” that can contain as much as 120-170kgs of product”¹⁹⁸.

Despite of weights and measure procedures, the local practice in Tanzania make it impossible for the WMA to ensure fair weights and measurements in the country because prices for commodities at market are extremely negotiable thus difficult to understand whether they are getting a fair price or not. without having prior knowledge of prices of the said commodity at either wholesale or farm level. Weights and Measures procedures although well known by market traders and market masters are not publicized at all and on occasions when they are, not done in a manner that would be considered easy or convenient for customers.

In exclusion of the commercial crops like tea, coffee, sugar and paprika, most agricultural crops sold at farm level are not impacted by WMA procedures. The reason for this exception is in some part due to the fact that the principal buyers of these crops from small-scale producers are involved in value addition processes in the rural areas and are contractually bound to small producers who perform as outgrowers¹⁹⁹.

The USAID narrates that in examining the role of the Weights and Measures Agency in Tanzania, one must also take into account the role of TBS, another quasi Government body involved in metrology related matters. As the custodians of National Standards in Tanzania, TBS are responsible for among other; the formulation and

¹⁹⁸Ibid

¹⁹⁹Ibid.

promulgation of Tanzania standards in all sectors of the country's economy. Here again we find some overlapping of roles and thus causing a gape of enforcement. Priorities have been established for national standards in the fields of textiles, leather, agriculture and food, chemicals and engineering. To improve the quality of industrial products for both exports and local consumption through various certification schemes like pre-export and pre-import inspection and testing and quality system registration²⁰⁰.

Others include to undertake calibration of industrial and commercial measuring equipment and instruments in the areas of mass, length, volume, energy and temperature. TBS seeks to inculcate awareness of Standardization and Quality Assurance by industry and commerce in order to enhance the availability of good and safe products for the Tanzanian public. Like the WMA, TBS falls under the auspices of the Ministry of Trade and Industry and there are synergies between the two agencies²⁰¹.

2.2.9 TANZANIA ATOMIC ENERGY COMMISSION

TAEC is of the Atomic Energy Act²⁰². TAEC is the government Commission responsible for all atomic energy matters in the United Republic of Tanzania. The main roles of the TAEC include 'the provision of regulatory and radiation protection services, coordinate, monitor, and promote peaceful use of nuclear technology in the

²⁰⁰Ibid.

²⁰¹Ibid.

²⁰²Act No. 7 of 2003 established under section 5.

country”²⁰³. The main purpose for the establishment TAEC is “to control the use of ionising and non-ionising radiation sources and promoting the safe and peaceful use of atomic energy and nuclear technology”.

According to the Atomic Energy Act, the Commission is mandated regulate and administer matters in relation to all licences on activities and use of radiation and nuclear. All the license and permits are issued after a successful application and payment of fees being made to the Commission on the prescribed form, depending on conditions or limitations as may be decided or deemed fit as necessary²⁰⁴. Under section 5 the TAEC is tasked with powers of regulation of acceptable use of atomic energy, promote and expand the contribution of atomic energy and nuclear technology to health and prosperity throughout the URT.

It is also a mandatory requirement for ‘any manufacturer, importer and exporter of foodstuffs specified in the relevant regulations to obtain a radioactivity analysis certificate from the Commission before the said food is imported into the country or exported from the country or distributed for human and animal consumption’²⁰⁵.

2.2.10 FIRE AND RESCUE FORCE

The Fire and Rescue Force established by section 4 of the Fire and Rescue Force Act²⁰⁶ among other things is tasked to rescue the people and their properties from fire

²⁰³Ibid at S.6

²⁰⁴S.17 and 18 of Act No 7 of 2003

²⁰⁵Ibid at s.30

²⁰⁶Act No 14 of 2007.

accidents²⁰⁷. The Act provides the ‘Commissioner, or any fireman or other person authorised by him in writing the right to enter any premises and inspect the fire safety standards. All application to the Commissioner are subject to payment of fees for the services of any fireman and for the use of equipment fees as may be prescribed by the Minister’²⁰⁸.

The works of the Brigade in preventing and minimizing impacts of fire events which may result in death ‘worst case scenario’, injuries and property damage in residential and commercial premises cannot be ignored. The Fire and Rescue Force (Safety Inspections and Certificates) Regulations²⁰⁹ with their amendments of 2012/2014, operationalizes the main Act which give the FRF mandates ‘to prevent and control fire risks and ensure the safety of households, enterprises and the general public’. As noted above in the discussion relating to OSHA, there are considerable overlaps between OSHA and FRF.

Besides the increase in fees, FRF is still weak and lacks capacity to perform its duties well, this make it necessary for most fire rescue operations to be undertaken by unprofessional private sector with less rescue training. The main weaknesses are delays in responding to disasters and fires; inadequate fire-fighting equipment and technology; inadequate services partly due to bureaucracy, and poor communication between FRF and enterprises; insufficient human resources; and multiplicity of fees charged by other regulators.

²⁰⁷Ibid at S.5.

²⁰⁸Ibid S.21(2).

²⁰⁹GN 106 of 2008.

2.2.11 FAIR COMPETITION COMMISSION

FCC is a public commission established by section 62 (1) of the Fair Competition Act²¹⁰, with the aim of ‘promoting and protecting effective competition in trade and commerce and protecting consumers from unfair and misleading market conduct’²¹¹. The purpose is to improve efficiency in the production, distribution and supply of goods and services. This commission primary role under the Act is to promote and protect effective competition in trade and commerce and protects consumers from unfair and misleading market conduct.

It regulates restrictive and monitors trade practices such as anti-competitive agreements, the misuse of market power, mergers and acquisitions. The commission under the law further

“protects consumers through regulating misleading and unfair business practices, deceptive and unconscionable conduct, conditions implied in consumer contracts, manufacturers’ obligations, product safety and product information and other related matters”²¹².

The FCC has powers to study government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and to publicise the results of such studies.

²¹⁰Act No. 8 of 2003

²¹¹Ibid S.65

²¹² Ibid S.65(2)

The Merchandise Marks Act²¹³ requires the FCC to control the use of marks and trade descriptions in relation to the merchandise mark. The Commission via the Act controls businesses related to food products and the food manufacturing sector as it controls counterfeits and provides for the offences of forgery and the deceptive application of trademarks.

The FCC implements this by using the Merchandise Marks Regulations²¹⁴, which mainly focus on controlling counterfeit and sub-standard goods, including food products which is defined under section 2 of the Act²¹⁵. The inspectors under the FCC has discretionary powers to inspect and seize impound or destroy or any goods and products they think are sub-standard or counterfeit.

2.3 SPECIFIC REGULATORY MACHINERY GOVERNING BUSINESS IN TANZANIA

2.3.1 THE DIRECTOR OF FISHERIES

Under the Fisheries Act²¹⁶ Section 22 for the interest of protecting the aquatic resources prohibits any kind of business relating to fishing, processing, importing or export of aquatic product, unless he applies for and is granted by the Director or any other authorised officer a licence in respect of such activity. Section 24 provides for standards for the quality and management of fish and fish processing and for monitoring quality management programmes and the application of HACCP.

²¹³Cap 85 R.E. 2002

²¹⁴Merchandise Marks Regulations, 2008, Published by GN No 89 on 20/06/2008.

²¹⁵CAP 85 R.E 2002 as amended by the Business Laws (Miscellaneous Amendments) Act No 3 of 2012

²¹⁶Act No. 22 of 2003

The Director is appointed under section 4 and who under Section 5 (4) shall be the Registrar of fishing vessels. Under the Director, there are officers responsible for the fishery administration as per section 5 (1) and (2) of this Act. Section 52 of this Act makes it illegal to conduct any activities, without undertaking an EIA in accordance with any other written laws of Tanzania. Additionally, the Act empowers the Minister responsible to impose the mandatory licensing and registration all fishing vessels, which could also be registered under the Business Activities Registration Act²¹⁷.

Generally, Regulations 3 to 23 of the Fisheries Regulations²¹⁸, provides for the registration, licensing of vessels, fishers and fish dealers. The Regulations implement provisions of the Fisheries Act²¹⁹, and make further provision with respect to marine, inland fisheries and aquaculture, the development of fisheries, the conservation of fish resources and the processing of fish in Tanzania. The Regulations make in particular provision with respect to - registration of fishing vessels, fishermen and fish dealers; development and sustainability of resources and stock restoration; use of fishing gear; control of aquaculture and standards.

2.3.2 THE DAIRY BOARD

The dairy industry in Tanzania has a long story and has gone through different period of development. Pre and after independence, dairying was practiced mainly in areas which had a conducive climate to enable production of sufficient milk and that had a

²¹⁷Act No 14 of 2007

²¹⁸Regulations of 2005.

²¹⁹Act No 22 of 2003.

potential market for milk such as Kilimanjaro, Arusha and Dar es salaam. In the rest of the country milk produced was consumed within the rural areas²²⁰.

In areas with surplus milk to warrant establishment of a dairy plant, Zonal Dairy Boards were established to regulate and develop the industry. After independence regulation of the industry was done through a Dairy Industry Ordinance²²¹ which was then replaced by a Dairy Act²²² that established a Government Controlled National Dairy Board. The board became moribund in 1973 as the then Minister of Agriculture did not appoint new members to the Board.

“In 1975 the government embarked on a programme to boost dairy development whereby efforts were put on increasing milk production. Main concentration was on improving the indigenous cattle through crossbreeding and upgrading programmes with the objectives of increasing the number of improved dairy cattle. Other programmes to improve productivity included disease control and animal nutrition. Alongside these programmes were investments in the establishment of parastatal medium and large scale dairy farms, livestock multiplication units, milk processing plants and milk marketing infrastructures”²²³.

²²⁰Njombe, A. P., et al, *The Tanzania Dairy Industry: Status, Opportunities and Prospects*, Paper Presented to the 7th African Dairy Conference and Exhibition held at Movenpick Palm Hotel, Dar es Salaam, 25 – 27 May 2011, p.2.

²²¹No. 61 of 1961 (Cap 456).

²²²No. 32 of 1965 (Cap 590).

²²³Mteti, W.G., *Milk Marketing in The Tanzania's Changing Environment: Regulatory Perspective of the Dairy Industry and the Role of Marketing Orders and Regulations*, Proceedings of a Workshop Held at Morogoro Hotel, Morogoro, Tanzania, 20 - 24th March 1995.

The approach for development of the dairy industry shifted from establishment of medium and large scale farms towards small holder dairy development during the 1980s. This shift was caused by the retard of parastatal dairy enterprises as a result of management failures as they proved to be more efficient and as a strategy for poverty reduction. The change in strategy towards dairy development coincided with economic reforms which included government withdrawal from performing production, marketing and processing and other business related functions and liberalization of markets among others²²⁴.

As a result of this reforms many individuals and agencies joined the industry as milk producers, processors, marketing agents and facilitating agencies performing various functions such as promotion of improved dairy breed, milk processing and marketing but without a proper primary regulator. This led to inadequate control of the industry. To rectify this anomaly the government enacted the Dairy Industry Act²²⁵ providing for the establishment of the Tanzania Dairy Board, which was inaugurated in 2006 with a mandate to develop and regulate the industry. The Board draws its membership from the Government and stakeholder organizations such as Milk producers, Milk Processors, milk traders, input suppliers and consumers.

The dairy industry is among the important components of the livestock sector. In Tanzania it contributes about one-third of the 4.6% livestock industry's contribution to the GDP. The industry has even greater potential for improving the living standards

²²⁴(n 218)

²²⁵Act, No. 8 of 2004.

of people through improved nutrition arising from milk consumption and incomes raised from sales of milk and milk products. Dairy is defined to mean the premises used for the production, processing, or manufacture of milk and milk products for sale²²⁶.

The Dairy Industry Act²²⁷ which repeals the Dairy Industry Act²²⁸ provides for the production, regulation and promotion of the dairy industry, Tanzania Dairy Board is established under section 8 to promote the development of dairy industry and other related matters. TDB is mandated to develop, regulate and promote the Dairy Industry in Tanzania mainland. The Board promotes production, collection, processing, marketing and consumption of quality milk and dairy products by facilitating stakeholders' activities. This Act applies to milk and milk products intended for sale.

The TDB was established by this Act with relevant powers to effective implementation of the Act under section 10 some of which are similar to those of the TFDA. The Act provides the Dairy Board with the power to inspect, provide certificates and charge fees. Under subsection (r), (s) and (t) of section 10, requires the Board to collaborate with TFDA in performing its duties when it comes to issuing licenses, quality, inspections of dairy facilities and in organizing dairy shows in and out of the country.

There is a magnitude of regulators, with similar functions; regulate the same issue but only use different terminologies such as registration premises, business name,

²²⁶(n 179).

¹bid.

²²⁸Cap 590 of 1965.

manufacturers, processor, company. In practice, they all mean the same. Furthermore, there are overlaps in inspection and focus areas for institutions like TDB, TFDA, TBS and LGA, which relate to the obligation to comply to set standards and hygiene. Also, these agencies issue permits, licenses for regulation of products and premises.

The TDB also controls importation and exportation of dairy products by issuing permits. The permit is valid for a period of only one month. The regulatory issue around this permit is that holders of the permit are also subjected to the requirement to obtain approval issued by the Division of Veterinary Services and TFDA. This is duplication of roles and functions.

2.3.3 THE CASHEW NUT BOARD

The Cashew Nut Industry Act²²⁹ establishes the Cashew Nut Board to regulate the production, grading, and processing of cashew nuts, to market the kernels and to provide for other related matters. The Act is also relevant to the food manufacturing sector as it obliges every cashew nut dealer, whether a buyer, processor, importer, exporter, warehouse owner or operator, to register with the Cashew Nut Board. Section 15 obliges

“any person registered as a cashew nut buyer, seller, processor, exporter, importer, warehouse owner or operator to apply for a licence. The Cashewnut Board of Tanzania is entrusted with the responsibility of regulating the

²²⁹Act No 18 of 2009

development of the Cashew Industry in Tanzania in undertaking its mandated roles”.

The Cashewnut Board is endowed with mandate to facilitate smooth operation of Cashewnuts business by bring together different stakeholders thereby enabling them to contribute to the national development.

The functions of Cashewnut Board of Tanzania are outlined out in section 5 of the Cashewnut Industry Act, as follows:-

“to advise the government on policies and strategies for the development of the Cashew industry, to promote the development of Cashewnut production, processing and marketing, to assist directly or through financial support the research and development of Cashew Industry, to regulate and control the quality of Cashewnut, to collect, refine and maintain, use, disseminate information or data concerning the Cashewnuts Industry”.

Other roles include to manage properly the Cashewnuts Development Fund established under the Act, to support and help in formation of associations involved in the business of Cashewnut or which has interest in Cashewnut Industry and coordinate their activities, to make and enforce Cashewnut Regulations, to provide consultancy and technical services to cashew farmers, processors, buyers, or exporters, to represent the Government in International Forum, to carry out other tasks that are associated with improvements in cashew industry as need arises in the course of time, such as; to register or license Cashewnut Growers, Buyers, Sellers, Processors and Exporters and to grant licenses and permits for buying and exporting of Cashewnuts.

2.3.4 THE SUGAR BOARD OF TANZANIA

The Sugar Industry Act²³⁰ establishes the Sugar Board of Tanzania²³¹ and the National Sugar Institute. It also provides for the improvement, development and regulation of the sugar industry and matters related thereto²³². The Board is basically responsible for matters pertaining to the improvement, development and regulation of the sugar industry in Tanzania²³³ “and to issue licences to sugar manufacturers and small plant operators and to register exporters, importers and industrial users of sugarcane”²³⁴.

The Board shall, on application,

“issue licence to sugar manufacturers and small scale sugar plants operators upon such terms and conditions as it thinks fit. It has also the power to issue sugar import and export licences”²³⁵.

All licences are issued subject to the payment of various fees. The SBT is an autonomous regulatory authority established under section 3 of the Sugar Industry Act²³⁶ which came into operation on 1st July 2003²³⁷, the Act was however revised in 2009.

Under the current Act the Board is a fully Authority with mandate to regulate and license all sugar industry related activities. The Board is fully supported financially by the government and further support itself from own sources. The Board is also

²³⁰Cap 251 R.E 2002

²³¹Ibid. S.3

²³²Ibid S.6

²³³Ibid S.4(1)

²³⁴Ibid S4(2) and S.12(1)

²³⁵Ibid.

²³⁶No. 26 of 2001.

²³⁷GN No 329 of 5th July 2002.

responsible for sustainable development of the country's sugar industry as well as achievement of sugar self-sufficiency and promotion of export. The Board is entrusted with the duties of supporting and co-ordinating the sugar industry in Tanzania.

As a result of the privatization of sugar production, the revised Act requires that, with effect from 1st July 2006, The SBT should not be involved in developmental and/or investment activities in the sugar industry as it used to. The factory and farm owners should be responsible for their investments and development of their factories and farms respectively. The Board carries out regulatory functions and such other activities necessary, advantageous or proper for the benefit of the sugar industry and shall include:-

“To promote the development and expansion of sugarcane cultivation, production and marketing of sugar and the use of by products; to advise the Government on the policies and strategies for promotion and development of the sugar industry. To promote the development of small-holder sugar cane growers; to create and recommend and promote a competitive environment conducive to fair play among stakeholders in the sugar industry; to regulate and recommend measures for prescription and enforcement for the control of sugar cane pests and diseases; to recommend and regulate measures and procedures for the importation of sugar cane planting materials²³⁸”.

²³⁸<https://www.kilimo.go.tz/index.php/en/stakeholders/view/sugar-board-of-tanzania-sbt>, (accessed on 12 January 2020).

It is also tasked to promote the training and improvement of skills in technological advancement in the sugar industry; to promote, develop and facilitate the formation of associations or other bodies of stakeholders within the sugar sector (which shall form a consultative conducive environment with the Board) and monitor their activities provided that the objectives of such associations shall not involve arrangement for price fixing or doing anything that is contrary to the Fair Competition Act, 1994²³⁹.

Others include to make available a favorable atmosphere for negotiations and discussions among stakeholders in the sugar sector; to screen the implementation of contracts and promotion measures between sugar cane outgrowers and sugar producers or other bodies to the sugar sector and reconcile the parties, when disputes arise. To collect, refine, maintain and disseminate data and information relating to the sugar industry; to collect any levy on behalf of any fund established under the Sugar Industry Act of 2001; to promote and co-ordinate and the development of large, medium and small scale sugar plants; to monitor the implementation of the provisions of the Agreements governing sale of privatized sugar factories and submit the report to the Minister; to represent the government in the international for a relating to or dealing with the sugar industry; to monitor trends for local sugar production, sugar export and import requirements; and to promote diversification to bio-ethanol and co-generation

There still some Inspection overlap roles among different authorities over sugar as pointed earlier especially between the TBS and TFDA. Due to shortage of manpower

²³⁹Ibid.

and technological capacity the sugar industry is faced with illegal business at the boarders. The government should use an opportunity of one crop board which may combine the resource of effective delivery of service.

2.3.5 THE LOCAL GOVERNMENT AUTHORITIES.

The Local Government (District Authorities) Act²⁴⁰ entrusts Local Governments (District Authorities) with immense powers to make by-laws to regulate various matters including the manufacturing activities and the payment of fees and levies. In particular, sections 153-162 authorize local governments within districts to make regulations for their area of jurisdiction, which demands the payment of fees and levies by manufacturers and business men.

The Local Government (Finance) Act²⁴¹ makes provision for sources of income and the administration of the funds and resources of local government authorities and for matters associated with or incidental to safeguarding the appropriate collection and sound management of finances in the local government system. The Local Government (Finance) Act²⁴² and Local Government (District Authorities) Act²⁴³ empower LGAs to make by-laws to regulate various matters, including the payment of fees and levies for the manufacturing activities in their area of jurisdiction. More specifically, section 66 of the Local Government (Urban Authorities) Act²⁴⁴ and

²⁴⁰Cap 287 R.E.2002

²⁴¹Cap 290 R.E 2002

²⁴²Ibid.

²⁴³(n 102)

²⁴⁴Cap 288 R.E 2002

section 128 of the Local Government (District Authorities) Act²⁴⁵ empowers LGAs to impose taxes and rates.

Essentially on the ground, LGAs have also been prevailing in many progressions at the operation stage by way surprising inspection visits, fees and charges. Their interferences have been a source of some of the barricade and a challenge to the private sector. Some LGA by-laws are silent on the key aspects of regulatory and revenue administration. A good example pointed out is the anticipated number of days a particular business permit or license would take. This creates a loophole for unnecessary delays and bureaucratic bottlenecks.

²⁴⁵(n 103)

CHAPTER THREE

3.0 OVERLAPPING OF GENERAL AND CROSSCUTTING REGULATORY ISSUES

3.1 INTRODUCTION

The analysed regulatory bodies and boards are just few among the existing one established by different laws which have been vested with supervisory, regulatory and licensing powers over different businesses. Worse enough all these are established in different ministries, their offices are located far from each other and has their own timeframe to register a business, issue compliance certificate, issue licence or permit for businesses and do impose different levies, charges and fees that increase the cost of doing business and making a process to commence business in Tanzania complicated, thus discouraging a good number of investors who would like to come and invest in the country.

To quote the blueprint for regulatory reforms to improve the business environment it revealed the problem of lacking a central board to coordinate all these boards enabling business commencement and thus complicating business registration and set up, it clearly points out that;

“the current review has revealed that Tanzania’s business regulatory regime is characterized by high compliance costs in monetary terms and time in starting and operating businesses. There is also a multiplicity of often overlapping and cumbersome pre-approval procedures and high enforcement costs. Also

notable are loopholes and conflicting mandates in some Laws and Regulations²⁴⁶ .

In other words; the starting procedures in Tanzania are surrounded by bureaucratic regime which in turn lead to prolonged time to go through the procedures and high cost that has to be born by business men.

Regulatory challenges like existence of high compliance costs in monetary terms and time in starting and operating business; remain a drawback to successful business implementation. This is partly due to lack of information on the part of users, complicated procedures, which create corruption opportunities. Also, multiplicity and duplicity of processes; existence of gaps in laws and regulations negatively used by regulators during the conduct of inspections; both at the central and local levels. This explains why licensing in most cases is meant to raise revenue; and existence of high costs and cumbersome procedures resulting in informal operation of businesses and hence loss of government revenues²⁴⁷.

The practical experience by private sector suggest that the existing regulatory regime is characterized by dominant or unclear lines of authority in the decision making procedures. Furthermore, issues of discretionary powers are potential for abuse of powers granted to those in decision-making positions as regards to renewal of permits or licenses have been pointed out as a constraint to operating business in Tanzania²⁴⁸.

²⁴⁶Ministry of Industry, Trade and Investment, Blueprint for Regulatory Reforms to Improve the Business Environment, Dodoma, April 2018.

²⁴⁷(n 246).

²⁴⁸Ibid.

This overlaps and conflicting regulatory powers have also been noted among national level regulatory agencies that deal with standards, safety, quality, weights and measures. These regulatory agencies include the TBS, WMA and TFDA. For example, Weights and Measures Act²⁴⁹ which establishes the WMA makes provisions for issues concerning weights and measures and provides for the International System of Units (SI) in Tanzania. Section 15 of this Act vests in the Commissioner for Weights and Measures the mandate of setting standards.

On the other hand, the TBS which is mandated to perform, among other functions, the promotion of standardization in industry and trade and that the standards set by the TBS and declared by the Minister responsible for industry and trade, prevail over any other existing standards. This has created an apparent conflicting overlap in relation to the issue of regulation of food safety control between TBS and TFDA, TBS and TCRA, TBS and EWURA, OSHA and NEMC, OSHA and Fire and Rescue Force, Workmen Compensations Fund and other Health related Insurers.

Several laws and regulations have been made to govern the agriculture sector. These laws form the basis of most of the licenses, permits, registration, and certifications and the areas of their sector. It has been observed that some of the regulatory roles have not been pro-business and they should be streamlined to improve the regulatory regime and enhance compliance and enforcement system. Due to weak cross-referencing in

²⁴⁹Cap 340 R.E 2002

several laws, it has been shown that compliance is unclear to business operators and there is lack of transparency among the regulatory agencies on how they exercise their regulatory functions²⁵⁰.

Furthermore, in some of the agencies capacity is relatively weak, resulting in additional costs in terms of delays and excessive risk aversion towards adoption of new technologies. Apart from being subjected to specific laws, agriculture is again a subject of compliance to Organisations like WMA, TBS and more others. The comfort of agriculture is highly affected by LGAs 'delegative powers in relation to levies and charges and further more constrained by overlaps of powers by different authorities . For instance, the registration of slaughter facilities is regulated Meat Board, and TFDA²⁵¹.

Carrier permits milk and products are regulated by TDB: The Dairy Industry Act, 2004, section 32 (b) and TFDA; Tanzania Food Drugs and Cosmetic Act, 2003 and its Regulations. Also, whereas produce levies remains an important source of LGA revenue, it is considered by the private sector as one of nuisance taxes at the local level as many businesses face confusion on the amount, frequency and point of payment of the levies. This unfriendly regulatory regime in agriculture partly explains low attraction of large foreign and domestic investment in agriculture.

²⁵⁰(n 99)

²⁵¹Ibid.

The manner in which policy decisions are made with regard to trade in agricultural produce , for example the ban on exporting food crops and import permits are unpredictable. It is pointed out that export ban and import tariff waivers make the policy regime unpredictable to investors, ordinary farmers, small-scale agro-traders and large-scale agro-processors. It is noted that such decisions, though often made with good intentions, penalize domestic producers and exporters. They also point out that there is lack of clarity on policy related to export taxes on some products.

3.2 STANDARDS, TFDA, SAFETY, QUALITY, WEIGHTS AND MEASUREMENTS

There have been duplicative roles among regulators that deal with standards, safety, quality, weights and measures. There are evidence of overlaps and conflicting mandates. These agencies include the TBS, WMA and TFDA. These overlaps are found more at the ground level of these agencies, the problem is not very acute in terms of their legal mandates. TBS, TFDA, and WMA mandates cut across many sectors when it comes to regulating business activities in the country. There is certainly a need to improve coordination to solve the challenges. An overview of the legislation of select agencies, viz. TBS, WMA and TFDA brings the challenges to the fore.

Section 15 of this WMA Act²⁵² vests in the Commissioner for Weights and Measures the mandate of setting standards. The Commissioner is also responsible for the verifications of all weights, measures, weighing, or measuring instruments used or

²⁵²Cap 340 R.E 2002

intended to be used for trade in the URT. Certification is done by way of inspection calibration and verification. The WMA's main function is to protect consumers by putting in place systems to regulate legal metrological control which includes legal control of measuring instruments, metrological supervision and metrological expertise in trade, health, safety and the environment²⁵³.

The TBS is entrusted with powers of promotion of the standardization of specifications of commodities and services. It recognizes that TBS is the custodian and an overseer of observance of standards in Tanzania. TBS is mandated to perform, among other functions, the promotion of standardization in industry and trade, assisting the Government or any other person in the preparation and framing of standards, co-operating with other government agencies, representatives of any industry or any other statutory corporation or person with the view to securing the adoption and practical application of standards.

Locally produced and imported products are subject to sampling and testing to establish whether they meet the compliance standards set by the Bureau . All use standard marks are licensed or cancelled and permits issued in relation to such activities by the Bureau . The standards set by TBS overrides over others.

²⁵³ Its specific roles are provided for in Weights and Measures Act Cap.340 R.E 2002 and the Executive Agencies Act Cap.245 R.E 2002 which among others include “protecting consumers in the course of transactions against consequences arising from trade, safety, health and environment in relation to legal metrology; proving measuring instruments to be used in public or private transactions in trade, safety, health and environment sectors; controlling the use of measuring instruments in public and private transactions, including pre-packaging of products; and providing information on Legal Metrology in general and ensuring that legal metrology measurement standards are traceable to national and International measurement standards.”

On the other hand, TFDA is mandated to regulate all matters relating to quality and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics, to ensure clinical trials on drugs, medical devices and herbal drugs are being conducted in accordance with prescribed standards, foster co-operation with other institutions or organization and other stakeholders, examine, grant, issue, suspend, cancel and revoke any licenses or permit, appoint inspectors and order inspection of any premises, prescribe standards of quality in respect of products regulated under the law, manufactured or intended to be manufactured or imported into or exported from the United Republic.

In discharging its functions TFDA is required under section 5 (2) to maintain a system of consultation and cooperation with various institutions which deal with atomic energy, Fisheries and Forests and Bee keeping, TBS, Directorate of Veterinary Services or anybody or Institution established by or under any other written law or having functions which relate to food, drugs, medical devices and herbal drugs, for example is given in the below quotation;

“According to stakeholders, hotel operators in the country are subjected to at least 55 payments related to taxes, licenses, fees and charges. Some of these are tourism sector-specific. Others are general and are found across all the sectors. In general, they pose challenges to the development of the hotel industry. Major concerns relate to opening hotels where several licenses are required, these include: (i) general hotel license; (ii) license to operate a restaurant and bar; (iii) LGA license, which requires inspection by health officer from the authority; (iv) TFDA license; (v) certification requirements

from environmental authorities; (vi) hotel levy (certificate); and (vii) certification from institutions such as SDL, VAT, and social security.²⁵⁴”

This alone, if looked at issues that could easily be taken away by a thorough coordinated regulatory regime which is more precise, fair and that allows integrated system for all agencies to smoothen the compliance regime with the business sector.

3.3 OVERLAPS IN THE FUNCTIONS OF TBS AND TFDA

As noted in the analysis of the law above, TFDA is responsible for regulating food safety and quality.. Despite it is contended that TFDA tests are only limited to food safety, TBS tests focus only on quality. In practice there is no any separation of the subjects to the tests as they all require same ingredients, a role which could be done by one of them.

There is also a duplicative role in registration of products by either TFDA and the TBS . It is in this respect that complaints have been raised that this procedure is unnecessary as it is duplicative. When it comes to import and export permits, both TBS and TFDA take samples to the laboratory for testing before issuing permits.

Such process could be undertaken by one of the two agencies. According to the Standards (Compulsory Batch Certification of Imports) Regulations²⁵⁵, the importers of products covered by the compulsory Tanzania Standards shall apply for an Import Batch Certificate. If such imports fall under foods, drugs and cosmetics groups, an

²⁵⁴(n 246).

²⁵⁵Rule 3 and 7 of the Regulations published by GN 405 of 2009.

additional permit certifying safety and quality of such items is needed. This is issued by TFDA. This has prolonged the time to get such registration done.

“A number of stakeholder’s complaints were directed at the capacity of TBS and TFDA to perform their duties properly and in timely manner. It has been observed that both physical and human facilities at these agencies are not sufficient to provide timely service to the entire business community in the country. The CTI, for example, observed that a local beer company attempted to reach the export market and submitted its consignment for a laboratory test in order to obtain a batch certificate before export permit is issued. The Company had to wait for over two weeks for the laboratory test results from TBS. The delay led to the expiration of the shelf life of the consignment to, and the consignment could not be sold domestically since it had already been declared as an export commodity. This led to a huge loss on the part of the beer producer who wanted to export the commodity²⁵⁶.”

There is an urgent need to review the roles TBS and TFDA do to make it easy coordinated functions with less cost and created a friendly regulatory regime. Both TBS and TFDA officials know these overlaps and other challenges. It is on this ground that some efforts to resolve the issues have commenced. For example, the two agencies have signed an MoU that requires some testing and certification done by either of the agencies to be recognized by the other. This would minimize the overlaps. However,

²⁵⁶(n 244).

the MoU is a short-term measure and a much more comprehensive and sustainable solution and framework is required.

3.4 OVERLAPS OF TBS AND TFDA FUNCTION IN THE INSPECTION OF BUSINESS PREMISES

TFDA is mandated to inspect and license business premises. It monitors warehouses and supermarkets dealing with staple crops. The same function is performed by TBS through its regular inspections as mandated by the Standard Act²⁵⁷. Under the Standards (Tested Products) Regulations²⁵⁸, TBS issues the tested product certificate after assessing premise and collecting samples for testing based on product specifications. The Bureau is also mandated to conduct regular inspections and to determine additional fees for inspection and testing where appropriate. This procedure has been decried by business entities arguing that it causes arbitrariness and harassment.

The Tanzania Warehouse Licensing Authority also comes in to regulate warehouses adding regulatory requirements to businesses, which are also attached with some costs of compliance including fees. TFDA issues licenses and premise permits to manufacturers regulated under its Act²⁵⁹. The substances to be used in the production process are checked for quality to ensure conformity to standards prescribed by the Authority. On the other hand, TBS encourages certification of products and tests the standard of a product. While TFDA registers food products, TBS conducts laboratory

²⁵⁷Act No.2 of 2009.

²⁵⁸Regulations GN 404 Published on 25/12/2009 see regulation 3, 4 and 7.

²⁵⁹Section 5 of the Tanzania Food, Drugs and Cosmetics No 1 of 2003.

tests before issuance of certificate of Standards, which brings in an element of duplication.

3.5 DUPLICATIVE MANDATES: TBS AND SECTOR SPECIFIC

REGULATORS

There are roles and functions of TBS are done by other sector specific regulatory authorities, making it difficult for the business entities to operate. Examples TBS and the TCRA, established under the Electronic and Postal Communications Act²⁶⁰. The Act mandates TCRA to regulate standards of communications equipment. At the same time section 4 (1) of the Standard Act²⁶¹, gives TBS the role ‘to set and regulate all standards of all commodities’. To a business entity operating in the communication industry, this appears to be a cause of inefficiency accompanied with significant time and financial loss.

However, the fact of the matter is that the two pieces of legislations make cross-reference to each other with the specific aim of avoiding conflicts. TCRA is also legally mandated to consult other sector regulators in the course of enforcing its mandates. Institutional coordination is key in this respect in order agree on operating or guiding frameworks.

“It is important to point out here that the Tanzania Communications Regulatory Authority Act²⁶², which established the TCRA provides that where there is any inconsistency between TCRA Act and sector legislation, TCRA Act shall

²⁶⁰Act No 3 of 2010

²⁶¹Act No.2 of 2009.

²⁶²No. 12 of 2003.

prevail over sector law to the extent of the inconsistency. However, where a sector law expressly provides that its provision will supersede or prevail that of the TCRA Act, then the TCRA Act shall not apply to the extent of the inconsistency. Where the inconsistency relates to the Fair Competition Act or the Standards Act, Section 44 provides that the TCRA Act will prevail. In this respect, an element of contradiction in the mandates is noted²⁶³”.

More issues have also been raised regarding the seemingly conflicting and duplicative mandates between the EWURA and TBS.

The concerns relate to monitoring of standards and quality of petroleum products and equipment in the country. This has led to EWURA and TBS signing an MoU concerning the matter. EWURA Act²⁶⁴, which establishes the EWURA takes into account the likelihood of overlaps which may cause conflicting mandates with other sectors. Accordingly, section 37 of the Act provides that where there is inconsistency with sector legislation, the sector law shall prevail and the EWURA Act shall be read down to the extent of the inconsistency.

The practice of making cross-reference to other laws seems not to be clearly understood by enforcers and the coordination envisaged by the laws establishing TBS and other sectors regulatory agencies is not done effectively. This leaves room for potential abuse and discretionary practice by some officials and does not augur well for an enabling business environment.

²⁶³These were also observed by the blueprint, see (n 244).

²⁶⁴Act No 11 of 2001.

3.6 OVERLAPS ON SOCIAL SECURITY AND LABOR ISSUES

Significant progress has been made in line with social security schemes. The Public Service Social Security Act²⁶⁵ has been enacted. The new Act unite and have only two schemes, the PSSF and the NSSF, to cater for the public and private sectors. Despite these efforts, to bring the labour regulatory management within the line of international standards, there are still challenges that need reformation.

A good example is the requirement that employers facilitate meeting monetary needed for staffs to attend to their union matters which they contribute to. Issues relating to payment of workers' insurance and social security are still a problem. The WCF is another insurance cover for work related accidents for government and private sector employees which functions could be left to the other health insurance schemes. The concern here is that some of the compulsory contributory Schemes have similar packages which could be merged for example be moved to NHIF and other health related insurance cover.

3.7 OVERLAPS BETWEEN FIRE AND RESCUE FORCE AND OSHA

Tanzania has a Fire and Rescue Force which oversees matters related to fire prevention and protection and coordinates all rescues. The Act is operationalized via the Fire and Rescue Force (Safety Inspections and Certificates) Amendment Regulations²⁶⁶, which give the Force mandates to prevent and control fire risks and ensure the safety of

²⁶⁵Act No 2 of 2018

²⁶⁶GN 106 of 2008 as amended in 2014

households, enterprises and the general public. As noted above in the discussion relating to OSHA, there are considerable overlaps between OSHA and Fire and Rescue Force. These overlapping powers and mandates have raised a concern among private sectors and is one of the biggest challenges to business operation in Tanzania.

3.8 OVERLAPS IN FOREIGN WORKERS GOVERNANCE

In the wording of the law regulating immigrants²⁶⁷ all non-Tanzanians who wish to do business or get employed in the URT, must obtain and possess a valid residential permits and work permits. One of the conditions for entry and residence for foreigners intending to reside in the United Republic of Tanzania for investment, business, employment or any other legal activity is a Residence Permit²⁶⁸. There are three kinds of classes of residential permits given to foreigners for a period limit of three years capable of being renewable for a time limited to two years.

Employers seeking to bring in skills from non-Tanzania must apply to the Labour Commissioner for a work permit which one must have it before their entry to the URT. The commission regulating work permits and workers matters in Tanzania is within the Ministry responsible for employment. This valid work permit is required for one to apply for a residential permit which is to be obtain from another ministry of home affairs under the division of immigration department.

²⁶⁷Immigration Act, No.7 of 1995 (as amended by the Immigration (Amendment) Act No. 8 of 2005.

²⁶⁸Ibid (Sections 28 - 40).

The Non-Citizen (Employment Regulation) Act²⁶⁹ seeks to regulate employment and engagement of non-citizens in Mainland Tanzania. Section 5 of the Act vests powers to the Labor Commissioner to issue and cancel work permits and process exemptions for the same. Section 6 of this Act provides for ‘authorized officers. These include labor officers, police officers, immigration officers who are for the purposes of this Act, are to exercise powers and discharge duties conferred to authorized officers in the Act. Labour Officers in collaboration with other Public Officers as the case may be, may enter and inspect any places of employment on matters related to work Permit.

The concern here is that the Act, does not stipulate any boundaries regarding the circumstances under which each one of these officers should go to inspect. As a result, each institution goes to business premises to inspect at the time and day of its choice. This practice leads to wastage of time and disturbance to the workers and the employer. Although in doing so, the Act requires the “Labor Officers” to collaborate with other Public Officers as the case may be, in practice there is no coordination.

“The total amount of fees required to process both residence and work permits have increased from USD 2,000 to a range of USD 2500-3000 per head for two years, depending on the type of permit. This is an outcome of splitting, as both residence and work permits were previously applied and paid jointly at one window at the rate of only USD 2000. The concerns raised by stakeholders in this area include a major increase in the costs of permits, especially for businesses with a sizable number of foreign employees. It has been noted that

²⁶⁹Act No 1 of 2015

this high permit cost is evident when compared to the rates applicable in neighboring countries such as Kenya and Rwanda, where acquiring both a residence and a work permit similar to that of class C in Tanzania costs KSHS 200,000 only (USD 1932) per person for two years and FRW 100,000 (USD 121.3) per person for 3 years, respectively”²⁷⁰.

Worse enough is that all these application and fees payment of work and residential permits are channeled through different divisions; applications for Class A and Class C permits should be forwarded directly to the Director of Immigration Services while applications for Class B permits should be forwarded to the Director of Immigration Services through the Labour Commissioner. The Labour Department is only involved in the issuance of Class B permits. Application forms for Class A, B and C Permit.

²⁷⁰ (n244) see also a Public Announcement from Principal Commissioner of Immigration Services in Tanzania, Informing the general public on the changes of fees and rates for various services offered by the Immigration Department with effect from 01/07/2011 as published through the Government Notice (G.N.) No.185, 186 and 189 of July 01, 2011, retrieved from <https://cn.tzembassy.go.tz/services/residence-and-work-permits-class-a-b-and-c>, (accessed 30 January 2020).

CHAPTER FOUR

4.0 RECOMMENDATIONS AND CONCLUSION

4.1 RECOMMENDATIONS

Middle economy country's vision cannot be separated from industrial development and business prosperity therefore a business-friendly environment is inevitable to achieve these goals. As it has been revealed, business environment in Tanzania doesn't offer an easy route to setting up a corporate business due unnecessary cost and prolonged compliance procedures due to bureaucratic regime imposed by presence of duplicative regulatory authorities. it is therefore recommended as follows.

On starting and registration of the new business, it is recommended that either BRELA or the TIC be given delegate power with other regulatory bodies and boards to register businesses and act as one stop centre where upon registration, issues of licence and permits be processed within one centre in very short time. This will also remove the contradictions on mandates and overlapping compliant powers which exist currently. For example, upon registration by BRELA, contractors are also required to be registered by the CRB, ERB and AQRB which also impose certain amount of fees and charges.

The construction sector need to go through all these sector regulatory agencies, as a result has raised a cost in the sector due high compliance expense a firm has to meet. The process to be compliant is expensive because the system is decentralized with

weak ICT infrastructure thus requiring a more manual work than an online platform which would have made it simple. Improvement in the area of ICT will allow a simplified and coordinated registration processes in point or few points at a short time and will automatically cut away the issue of bureaucracy created by the loopholes causes by overlapping and crosscutting issues among regulatory bodies.

Overlapping of different regulatory boards on registration and Licensing not only raises the cost of starting business, but also duplicates the roles performed by these agencies, lengthens time to process and acquire registration and compliance certificates and confuses investors as to which agency they are responsible to or required to channel their operational issues. The matter is magnified by the fact that the level of ignorance on these regulatory agencies is very high among Tanzanians who would have tried to invest but has met such blocking legal regime thus ending up with informal business ventures.

On the other hand, regulatory authorities and agencies overlapping with similar mandates over same business should be merges or separated to avoid this contradiction which not only raises the cost of compliance to investors but also create and increase bureaucracy in their services and thus high corruption being reported among these authorities and agencies.

For example, on registration completion, one stop centre would be depending on the sector of the investment, issue all relevant compliance certificates and licences at once and the same registration number be regarded as the TIN, licence number to simplify

the exercise. The system should be online and synchronized to allow specific LGA in which the investment will be located to access the details and particulars of the investor. This will ease any further compliance requirements as the same details would be used in such cases.

It is further recommended that some of these regulatory bodies which perform similar roles be merged together. For example, The WCF and the NHIF laws be amended to allow these two funds which perform alike duties merge in conjunction with other private led health Insurance entities to lessen the cost burdens to employers and their employees who has been forced to join WCF and not other health insurance entities which performs same responsibilities.

The available different crops' boards should also be merged into few or one crop board by amending the different crop boards currently running in Tanzania. For example, TBT, TTB, Sugar Board, Cusnuts Board and the Cotton Board should be managed by one board to easier address their challenges and bring together all stakeholders under one ministry and reporting line.

This will reduce bureaucracy, management cost and easier their management. The roles of Fire and Rescue Force which overlap with those of OSHA to be separated to allow each regulatory body to perform its duties without interfering each other. It is further recommended for a harmonization and consolidation of OSHA, NEMC with other regulatory bodies especially on inspection overlaps. The result of this would be

an agreement or a MoU to allow the regulatory with capability and efficiency to lead in specific sector.

TBS, as the current practice is, should be left to set standards and other agencies like WMA, EWURA, TFDA, implement and enforce in their specific sectors the standards set by TBS in order to avoid the conflicting overlaps and duplicative role we currently see. That is to say apart from making it as to who does what this, will help in minimizing operational costs and public will be more certain as to which standards to follow unlike the current practice where apart from TBS setting of standards, other authorities has in some cases setting standards which creates contradictory compliance practices to the private sector.

There is a need for a more coordinated inspection exercise among the authorities to reduce cost of compliance and downtime for manufacturing and processing industries. Each agency goes on their own time and some require the business entity to cater for their cost. It is highly recommended that an express coordination be arrived at to make it easy and not a burden to entities doing business in Tanzania. In case an emergence circumstance require inspection by a specific authority, other agency should accept the findings and implement where necessary.

Establishment of one window shop; for a centralised payment system and consolidate all payment system. This will enable the entity pay once invoice at once as opposed to the current practice where for instance in oil business, is that EWURA, TBS and other regulators involved submit separate invoices to same entities thereby causing problems

and time wasting and may confuse as to amount which keep changing from time to time.

One of the recommendations urges the TIC to do its main role for which it was established for; which is facilitation and promotion of investment in Tanzania. It has to invest in establishing and maintaining friendly and supportive investment environment by stimulating local and foreign investments. TIC facilitate reformation of claw back laws and disseminate updated data on investment reliefs and incentives available to investors. In doing so it should pioneer and practically show commitment to working on the issues that pose a challenge to investors.

At first and in essence TIC was to function as one stop centre to facilitate availability of all permits, licenses and visas as well as land derivative rights for investment purposes. However, this has not been easily been possible in practice. It is recommended that this one stop center should benefit all local and international investors by helping regulatory agencies to coordinate their compliance activities such that businesses do not have to make multiple payments or transactions..

As pointed above a well-coordinated licensing agency and a unified inspection to avoid conflicting recommendations from the regulators which end up with high cost of compliance to investors. It is recommended a legal reform to bring an accepted modality whereby the outcomes of one agency's inspection results are acknowledged and accepted by other agencies, save for exception circumstances which require a technical verification.

It is further recommended that the immigration and the labour laws governing immigration of experts be harmonized to allow the residence and work permits be issued under one authority and for work or employment purposes the Labour commission should be given powers to issue both the residence and work permit to avoid the current conflict that is caused by two authorities, the Immigration commissioner issuing residence permit and Labour commissioner issuing work Permit. The cost for the permits should also be relative reasonable to facilitate investors from all angles of the world for international integrated economy.

The laws should expressly provide for the specific time of permit issuance and there should be an online tracking portal to reduce cost of visiting office to ask. The proposed amendment should allow those applying for a renewal to continuously remain in the country after expiring of the permit and grace time granted under the laws. It is further recommended for a well-coordinated inspection of work permit between the Immigration officers, Police and Labour officers to avoid the current confusion and downtime for experts required for interrogations.

There are like challenges of overlaps in functions of crops boards. Each commercial crop has its own board, this brings more confusions to entities dealing with more than one crop. Again, there have been a more uncoordinated agriculture Policy and legal enforcement due to each board having their own standards, requirements and enforcement strategy. It is thus recommended for a one Board for a mixture of crops to allow a smooth and well-coordinated administration of agricultural sector in the country.

Another observed challenge facing almost all regulatory bodies is shortage of capacity, which includes required skillful personnel, working facilities, coordinated institutional framework, For instance,

“the Tanzania Meat Board and the Tanzania Fertilizer Regulatory Agency suffer from substantial capacity shortage. Likewise, the Zonal mine offices and TMAA, which are mandated to regulate, determine and collect revenue from the mining sector, suffer from a shortage of human and other resources. The capacity shortage coupled with corruption tendencies and unnecessary bureaucratic processes have also affected compliance. As noted elsewhere in this review, there are cases whereby lack coordination among some of the regulatory agencies is the real issue, which needs to be addressed. Furthermore, the delivery capacity by some LGAs has raised concerns from a cross section of stakeholders in the private sector²⁷¹.”

It is recommended that the government should increase build capacity of the current resources in terms of expertise required to run those regulatory bodies and improve the working environment and facilities by making sure, modern tools are available for the team to work effectively.

²⁷¹Ministry of Industry, Trade and Investment, Blueprint for Regulatory Reforms to Improve the Business Environment, Dodoma, April 2018.

4.2 CONCLUSION

One of the biggest challenges facing registration and commencement of corporate business is as discussed earlier is presence of multiple regulatory bodies, unfair taxation laws which leads to unjustifiable tax assessment and tax payments. The relevant authorities have bureaucracy system due to loopholes available in the laws administering different sectoral businesses.

Most of the laws are time consuming in the process of registration procedures to from registration of a business company name at the BRELA, certificate of incorporation and of commencement, TIN with the TRA, tax officials visiting for the purposes ascertaining the real location of the registered office, obtaining registration number at the NSSF, and other compliance certificates have retarded business growth and international integrated economy.

These challenges and others discussed in this dissertation will be resolved in the manner as indicate in the previous part which has outlined some recommendations through which will see a well liberal economy where private sector freely enterprise and conduct through a well, fair and just regulated business environment. It is thus urged that the government of the URT has to adopt these recommendations and implement as quick as possible the country's approved reforms on the regal business improvements.

Tanzania has more potentials to make positive economic revolution within few years only if the current regal regime is reformed as recommended there above. The dissertation emphasis the practical implementation of the blue print for enabling business environment in Tanzania and thus calls upon the implementations through the following strategies; carry out detailed needs assessment in ministries, department and agencies to identify the need for the appropriate skill gapes required to ensure the proposed reforms are capable of being executed as intended in the respective authorities for th better services and promotion of friendly business environment.

The other way would be to include review the current operational framework and create robust entities capable of operationalization of the regulatory roles comprehensively through the strong ICT to reduce duplicative roles and multiplicity of agencies with double operational cost. ICT capacity development strategies will enhance effective easy and consolidated payments, through the e-governance payment control. It will further link these compliance payments with other centralised payment schemes for easier management and shortened time moving from office to office.

These strategies increase trust and confident of the government by the private sectors in thus accountability, transparency and responsibility will be achieved as monitoring will be done at a central point and any bureaucratic practices will automatically be detected and escalated.

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