

PRACTICAL GUIDE: TANZANIA¹

How civil society organizations can comply with the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019

Introduction

On June 30, 2019, the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2019 (“the Miscellaneous Amendments Act”) took effect in Tanzania. It amends key laws governing the non-profit sector – namely, the Non-Governmental Organizations (NGO) Act, the Societies Act and the Companies Act.

This guide aims to help organizations to understand and comply with new obligations under the amended NGO Act and Societies Act.

Please note that in the Guide, provisions amended or added by the Miscellaneous Amendments will be denoted by an asterisk in the citation.

Why is the Miscellaneous Amendments Act important?

Non-profit organizations need to be aware of its provisions because:

1. Many organizations previously registered under the **Companies Act** will now have to register under the **NGO Act** or the **Societies Act**.
2. It imposes a **two-month deadline** (i.e. by August 30, 2019) for new registration.
3. It makes **registration mandatory** for societies and NGOs.
4. It expands the government’s **oversight over NGOs**.
5. It greatly **increases the fines** levied under the Societies Act.

¹ *This Guide was produced for informational purposes only and does not constitute legal advice or substitute for legal counsel. Laws may change, and interpretations of local law may vary. The authors are not liable for any differences or inaccuracies.*

Should my organization register as a “Non-Governmental Organization” or a “Society?”

NGOs and societies differ in structure and purpose. This section identifies key characteristics of both forms to help organizations determine whether they should register as NGOs or societies.

THE KEY CHARACTERISTICS OF A NON-GOVERNMENTAL ORGANIZATION (NGO)

An NGO is (1) voluntary, (2) non-partisan, (3) non-profit-sharing, and (4) established and operating for the benefit or welfare of the community or public to enhance or promote economic, environmental, social or cultural development or protect environment, good governance, law and order, human rights and lobbying or to advocate on such issues (NGO Act, Section 2*).

THE KEY CHARACTERISTICS OF A SOCIETY

A society is (1) non-partisan, (2) non-political, (3) composed of ten or more persons, and (4) established for professional, social, cultural, religion, or economic benefits or the welfare of its members (Societies Act, Section 2*).

ORGANIZATIONS THAT ARE NOT CONSIDERED NGOS OR SOCIETIES

The following chart lists organizations that cannot register as NGOs or societies, because they are recognized and governed by separate laws (See NGO Act, Section 2* and Societies Act, Section 2* for details on which acts govern the organizations listed below).

NOT CONSIDERED NGOS	NOT CONSIDERED SOCIETIES
<ul style="list-style-type: none"> - Companies - Trusts - Trade unions - Cooperative societies - Agricultural associations registered under other Acts - Political parties - Community microfinance groups (VICOBA) - Sports associations 	<ul style="list-style-type: none"> - Companies - Trusts - Trade unions - Cooperative societies - Agricultural associations registered under other Acts - Political parties - Community microfinance groups (VICOBA) - Sports associations

<ul style="list-style-type: none"> - Any other organization that the Minister may publish in the Gazette. - Religious or faith-propagating organizations - Societies 	<ul style="list-style-type: none"> - Any other organization which the Minister may publish in the Gazette. - NGOs
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What you need to know if you are an NGO

The following information will help organizations register and comply under the amended NGO Act.

REGULATORY BODIES WITH AUTHORITY UNDER THE NGO ACT

NGOs will encounter the following regulatory bodies. Thus, it is useful to understand each body's core powers and responsibilities.

I. DIRECTOR FOR NON-GOVERNMENTAL ORGANIZATIONS

Among other powers, the Director of Non-Governmental Organizations (1) acts as the Registrar of Non-Governmental Organizations, (2) registers and maintains the register of NGOs, along with other records and reports relating to NGOs, and (3) has expansive powers to investigate NGOs (NGO Act, Sections 3(2), 4(1)(e)-(g), 4(1)(i)*, 4(1)(j)*, and 4(A)(1)*).

II. NON-GOVERNMENTAL ORGANIZATIONS COORDINATION BOARD ("BOARD")

Among other powers, the Board (1) approves and coordinates registration of NGOs (2) examines annual reports of NGOs, and (3) investigates NGO adherence with their governing documents (NGO Act, Sections 7(1)(a), (c), (d), (f) and (l)).

III. NATIONAL COUNCIL FOR NON-GOVERNMENTAL ORGANIZATIONS ("COUNCIL")

The Council was established under the NGO Act as a collective forum of NGOs to coordinate and provide a network for NGOs in mainland Tanzania. It is comprised of 30 members appointed by NGOs. Among other responsibilities, the Council is supposed to develop and ensure adoption of a Code of Conduct for self-regulation (NGO Act, Sections 25(2)-(3), 27, and 28).

IV. MINISTER OF HEALTH, COMMUNITY DEVELOPMENT, GENDER, ELDERLY AND CHILDREN

The Minister hears appeals of decisions by the Board related to registration and cancellation of registration (NGO Act, Sections 16(2)-(4)).

REGISTRATION PROCESS

Due to the Miscellaneous Amendments Act, organizations will have until **August 30, 2019** to register under the appropriate Act.

All NGOs **must register** to operate under the NGO Act (NGO Act, Section 11(I)).

- NGOs **must renew** their certificate of registration **every 10 years**. (NGO Act, Section 17(3)*).
- Applications for renewal of registration must be made **6 months before the expiry date** (NGO Act, Section 17(4)*).

KEY DOCUMENTS AND INFORMATION REQUIRED TO REGISTER AN NGO

NGOs must submit the following documents upon registration:

- Copy of the organization's constitution;
- Minutes containing full names and signature of founder members;
- Personal particulars of office bearers;
- Address and physical location of the head office;
- Application fee; and
- Any other particulars or information as may be required by the Registrar (NGO Act, Section 12(2)).

GROUNDINGS FOR REFUSAL OF REGISTRATION

The Board can refuse to register an organization as an NGO if:

- The activities are not in the public interest OR are contrary to ANY written law;
- The application contains false or misleading information on any material matter; or
- The Council has recommended that the NGO not be registered (NGO Act, Section 14).

The Board is not required to explain the reason it has refused to register an NGO.

HOW LONG SHOULD IT TAKE TO REGISTER?

These are the steps for NGO registration.

STEP 1: Submit application for registration to Registrar

STEP 2: Within 1 month of receipt of application, Registrar must refer the application with his recommendations to the Board (NGO Act, Section 13(1)).

STEP 3: Within 2 months of receiving the application and recommendations from the Registrar, the Board must make a decision on whether to register the NGO (NGO Act, Section 13(2)).

The Board will either:

- **APPROVE** the application and direct the Registrar to register the NGO, or
- **REFUSE** the application and direct the Registrar to inform the applicants within 21 days of the Board's refusal (NGO Act, Sections 13(3) and 14(2)).

APPEALING A REFUSAL OF REGISTRATION

If an applicant is dissatisfied with a Board decision, it can:

- Apply to the Board to review its earlier decision (NGO Act, Section 16(1)), or
- Appeal the decision to the Minister, who will:
 - o uphold, quash or vary the decision of the Board; OR
 - o require the Board to revise or review its decision; OR
 - o require the Board to inquire into specific information from the appellant and make further consideration of the application (NGO Act, Sections 15, 16(2) and (4)).

CHANGING AN ORGANIZATION'S GOVERNING DOCUMENTS

NGOs must **notify the Registrar in writing** of any changes in its constitution, name or name of its office-bearers (NGO Act, Section 33(1)).

The notification of the change must be accompanied by (1) a copy of a **resolution certified by office bearers** stating that the resolution complies with the NGO's governing documents, and (2) a copy of the **certificate of registration** (NGO Act, Section 33(2)).

INVOLUNTARY SUSPENSION OR CANCELLATION OF AN ORGANIZATION

The Director (Registrar) may suspend the operations of any NGO that violates the provisions of the NGO Act, pending final determination by the Board (NGO Act, Section 4(1)(i)*).

ON WHAT GROUNDS CAN THE REGISTRAR CANCEL OR SUSPEND AN ORGANIZATION'S REGISTRATION?

The Board may suspend or cancel a certificate of registration if:

- The NGO has violated terms or conditions of the certificate of registration;
- The NGO has ceased to exist;
- The NGO operates "in variance" to its constitution; or
- The Council has submitted a recommendation for the suspension/cancellation of the NGO (NGO Act, Section 20(1)).

PROCESS FOR SUSPENDING OR CANCELLING REGISTRATION

These are the steps for suspending or cancelling the registration of an NGO.

STEP 1: Registrar decides to suspend or cancel the operations of an NGO and provides the NGO in question with notice and specified time to rectify the violation (NGO Act, Section 21(2)).

STEP 2: NGO may submit **in writing** its plans for rectifying the violation.

STEP 3: If the NGO has not rectified the violation within the specified time period, the Registrar submits recommendation for the suspension or cancellation of the NGO to the Board (NGO Act, Section 21(3)).

STEP 4: If the Board is satisfied that the NGO has committed a violation, it will direct the Registrar to suspend or cancel the certificate of registration (NGO Act, Section 21(4)).

STEP 5 (optional): An NGO whose registration has been suspended or cancelled can:

- Apply to the **Board** to **review** the decision (NGO Act, Section 21(5)), or
- **Appeal** the decision to the **Minister**, whose decision is final (NGO Act, Sections 19 and 21(6)).

The NGO Act does not protect an NGO's right to appeal the Board or Minister's decision to an impartial, independently-constituted court.

NGO REPORTING AND NOTIFICATION REQUIREMENTS

NGOs must publish **TWO annual reports**:

- (1) **Annual report of activities** (*Made available to the public, the Council, the Board, and other stakeholders*)(NGO Act, Section 29(1))
- (2) **Annual audited financial report** (*Submit to the Council and Board and make available to the public*)(NGO Act, Section 29(1)(b)*)

OTHER IMPORTANT DUTIES OR OBLIGATIONS FOR NGOS

NGOs also have a few other duties and obligations. They must:

- Treat their constitution as their governing document, and not operate contrary to their governing documents (NGO Act, Sections 30(1) and (2));
- Respect the laws governing their operations and respect the culture and traditions of people and communities in which they operate unless these are contrary to other written laws (NGO Act, Section 31); and
- Adhere to financial transparency and accountability principles as prescribed under other written laws (NGO Act, Section 31(c)*).

FINANCIAL TRANSPARENCY AND ACCOUNTABILITY

In addition to the annual audited financial report noted above, NGOs have financial transparency and reporting obligations under the NGO Act (Amendment) Regulations of 2018.

- NGOs must disclose to the public, Registrar, Council, Board, and other stakeholders the source, expenditure, purpose, and activities related to funds or resources obtained within 14 days from the date of completing fundraising activities (NGO Regulations, Regulation 12); and
- If the NGO receives funds exceeding twenty million shillings, then it must:
 - o Submit contracts or agreements entered with donors to the Treasury and Registrar for approval;
 - o Declare to the Registrar any resource received in cash or in kind before its expenditure; and
 - o Publish biannually in a widely-circulating newspaper or other media channels funds received and expenditures (NGO Regulations, Regulation 13).

International NGOs also have additional duties. These include (1) fostering and promoting the capacities and abilities of other NGOs, (2) participating in the activities of the Council; and (3) refraining from acts likely to cause competition or misunderstanding among NGOs (NGO Act, Section 31).

GOVERNMENT OVERSIGHT AND SUPERVISION OF NGOS

The government has significant powers to monitor NGO activities.

- (1) The Director of Non-Governmental Organizations (Registrar) may:
 - conduct **monitoring and evaluation** of NGO activities on a quarterly basis and report to the Board (NGO Act, Section 4(1)(i)*);
 - **investigate any matter** as required, through collaboration with law enforcement organs (NGO Act, Section 4(A)(1)); and
 - **require cooperation from law enforcement and public entities** to provide facilities and services of employees deemed necessary to help the Registrar perform its functions (NGO Act, Section 4(A)(2)).
- (2) The relevant Minister may **issue guidelines necessary for monitoring and evaluating** the operations of NGOs (NGO Act, Section 4(4)*).

SANCTIONS FOR VIOLATING THE NGO ACT

WHAT ARE THE PUNISHABLE OFFENSES UNDER THE NGO ACT?

A person commits an offense if he/she:

- Forges any document required for registration;
- Makes false statements in an application for registration;
- Conducts fundraising activities contrary to the NGO Act;
- Operates an NGO without registering under the NGO Act; or
- Violates the Code of Conduct or contravenes any regulation or rules made under the NGO Act (NGO Act, Section 35(1)).

WHAT ARE THE PERMISSIBLE PUNISHMENTS FOR THOSE OFFENSES?

If a person commits any of the above offenses, he/she can:

- Be liable for a fine of up to 500,000 shillings or imprisonment for up to one year, or both a fine and imprisonment (NGO Act, Section 35(1));
- Be disqualified from holding office in any NGO on mainland Tanzania for a maximum period of 5 years (NGO Act, Section 35(2));
- Undergo criminal proceedings under the Penal Code (NGO Act, Section 35(3)).

What to Know if you are a Society

The following sections will help organizations register and comply under the amended Societies Act.

REGULATORY BODIES WITH AUTHORITY UNDER THE SOCIETIES ACT

Societies will likely encounter the following regulatory bodies. Thus, it is useful to understand each body's core powers and responsibilities.

I. REGISTRAR OF SOCIETIES

The Registrar is appointed by the President and manages the registration of societies.

II. MINISTER OF HOME AFFAIRS

The Minister hears appeals of decisions by the Registrar related to registration and cancellation of registration.

REGISTRATION PROCESS

All societies **must register** to operate under the Societies Act (Societies Act, Section 3*). Under the new amendments, organizations will have until August 30, 2019 to register under the appropriate act.

- Foreign societies (i.e. societies registered outside of the United Republic of Tanzania and operating in Tanzania) must register under the Societies Act.
- The Minister has the discretion to require an organization to register as a society, even if it does not fit the definition under the Act (Societies Act, Section 6(A)(1)).

KEY DOCUMENTS AND INFORMATION REQUIRED TO REGISTER A SOCIETY

Societies must submit the following information for purposes of registration:

- Letter for the application for registration
- Introduction letter from the District Commissioner
- Letter from the Ministry or government agency that governs the sector in which the society operates
- Two copies of the minutes of the meeting during which the constitution was adopted
- Two copies of the curriculum vitae of the office bearers and two passport-size photos of the office bearers
- The names of the founders and two copies of the founders' signatures
- Two copies each of Forms No. SA 1 and SA 2
- Three copies of the organization's constitution containing:
 - o The name and address (physical location) of the organization
 - o The qualifications of the members
 - o The names of the office bearers, their positions, and term limits
 - o The procedures for meetings (including quorum information, elections, amending the constitution, dissolution and winding up.

GROUNDINGS FOR REFUSAL OF REGISTRATION

The Registrar may refuse to register a society if:

- (S)he has reason to believe the society is a **branch of, affiliated to, or connected with any organization or group of a political nature established outside Tanzania** (Societies Act, Section 13); or
- The society is being or is likely to be used for any **purpose prejudicial to or incompatible with the maintenance of peace, order, morality, or good governance**; or
- The application **does not comply with the Societies Act or its rules**; or
- The society **does not exist**; or
- The **name** proposed by the society is **identical to that of another society, or is so similar** to the name of another society that it is **likely to deceive** the public or other members of the society; or
- The society is **undesirable**, in the opinion of the Registrar (Societies Act, Section 14).

APPEALING A REFUSAL OF REGISTRATION

Any society that is not satisfied with the Registrar's refusal to register it may appeal the decision to the relevant Minister **within 21 days of the Registrar's refusal**. The Minister's decision will be **final** (Societies Act, Section 19).

The Societies Act does not permit a society to appeal an unsatisfactory decision by the Registrar or Minister to an impartial, independently-constituted court.

INVOLUNTARY CANCELLATION OF A SOCIETY

A society's registration can be involuntarily cancelled in two ways: under presidential order, or through a decision by the Registrar.

- (1) **Presidential order:** The President may issue an order declaring a society to be unlawful (and therefore cancel its registration) if it is **essential to public interest**, and:
- The society is being used **for a purpose prejudicial to or incompatible with the maintenance of peace, order, morality, and where it is "dangerous to the good governance of Tanzania"**, or
 - The society is being used for a **purpose at variance with its declared objectives** (Societies Act, Sections 6(1) and 8*).

The Societies Act does not provide societies with an opportunity to object to such a presidential order.

- (2) **Registrar's decision:** The Registrar may cancel the registration of any society if it is **expedient** to do so, and if the society:
- Is a branch of, affiliated to, or connected with any organization or group of a **political nature established outside Tanzania**; or
 - Is being used or is likely to be used for **unlawful purposes** or for any purpose prejudicial to or incompatible with the **maintenance of peace, order, morality, and good government**; or
 - Has **altered its objects** or pursues **objects other than its declared objects**; or
 - Has failed to comply with **orders related to audited accounts**; or
 - Has **ceased to exist, and fails to furnish proof of its existence** within 3 months after the Registrar calls for such proof (Societies Act, Sections 17 and 20).

If the Registrar decides to cancel the registration of a society, it must notify the society and give it opportunity to submit reasons the registration should not be cancelled (Societies Act, Section 17).

APPEALING CANCELLATION OF REGISTRATION

Any society that is unsatisfied with the Registrar's decision to cancel the society's registration may appeal the decision to the relevant Minister **within 21 days of the Registrar's refusal**. The Minister's decision will be **final** (Societies Act, Section 19).

The Societies Act does not protect a society's right to appeal an unsatisfactory decision by the Registrar or Minister to an impartial, independently-constituted court.

WHAT ARE THE EFFECTS OF CANCELLATION OF REGISTRATION?

- Any liabilities incurred by a director, officer, or member of the society will continue (Societies Act, Section 10(2)).
- Assets vested in or held in trust for the society will vest in an "official receiver" who will take necessary steps to discharge the liabilities, liquidate the assets, and distribute the money in accordance with the law related to winding up companies (Societies Act, Section 10(3)).

A SOCIETY'S REPORTING AND NOTIFICATION OBLIGATIONS

The Societies Act does not articulate any set reporting or notification obligations. However, the Registrar may at **any time** call on any registered society to furnish **in writing**:

- a true and complete copy of the **constitution and rules** of such society in force at the date of such order;
- a true and complete **list of office-bearers and members** of such society residing in Tanzania or present therein at the date of such order;
- a true and complete return of the **number of meetings** held by such society in Tanzania in the six months immediately preceding such order, **stating the place or places at which such meetings were held**;
- other information as may be prescribed (Societies Act, Section 21(1)); and
- **audited accounts** (Societies Act, Section 22).

GOVERNMENT OVERSIGHT AND SUPERVISION OF SOCIETIES

A **judge or magistrate may by warrant**, and the **President may by order** authorize certain officers, including the Registrar, to enter into the meeting place or place of business of a society and

- Search for evidence that the society is being used, has been used, or is about to be used to **purposes prejudicial to or incompatible with the maintenance of peace, order, morality, or good governance**, or
- Search for evidence that the society is being used, has been used, or is about to be used **against its declared objects**, or
- Search the place and make arrests under the reasonable suspicion or fact that the place is being used as a **meeting place for an unlawful society** or to **keep custody of the belongings of the unlawful society** (Societies Act, Sections 31 and 32).

SANCTIONS FOR FAILURE TO COMPLY WITH THE SOCIETIES ACT

- When an NGO **fails to comply with the reporting requests**, office-bearers and those in management positions will be personally liable for a fine of up to 2000 shillings (Societies Act, Section 23(2)).
- When an NGO **supplies incorrect or incomplete information on material matters requested by the Registrar**, the person who submitted the information will be personally liable for a fine of up to 2000 shillings, unless the person establishes to the satisfaction of a court that (s)he supplied the information in good faith (Societies Act, Section 23(3)).
- When an NGO **fails to keep a registered office and postal address** or **fails to notify the Registrar of changes to the registered office**, every office-bearer will be personally liable for a fine between 100,000 shillings and 4000 shillings for every day the society operates its unregistered office (Societies Act, Section 36).
- Any office-bearer or person **managing an unlawful society** will be personally liable upon conviction for a fine between 1 and 10 million shillings, imprisonment up to 7 years or both a fine and imprisonment (Societies Act, Section 25*).
- Any person who is **a member of an unlawful society or attending a meeting of an unlawful society** will be personally liable upon conviction for a fine between 200,000 and 2 million shillings, imprisonment up to 3 years, or both a fine and imprisonment (Societies Act, Section 26*).

- **Any person who knowingly allows a meeting of an unlawful society or members of an unlawful society to meet in a place belonging, occupied, or controlled by that person** will be personally liable upon conviction for a fine between 200,000 to 2 million shillings, imprisonment up to 3 years, or both a fine and imprisonment (Societies Act, Section 27*).