

THE UNITED REPUBLIC OF TANZANIA

SPECIAL BILL SUPPLEMENT

No. 7

19st October, 2017

to the Special Gazette of the United Republic of Tanzania No.7 Vol. 98 dated 19st October, 2017
Printed by the Government Printer, Dodoma by Order of Government

THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.5)
ACT, 2017

ARRANGEMENT OF SECTIONS

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PRELIMINARY PROVISIONS

1. Short title.
2. Amendment of Certain Written Laws.

PART II
AMENDMENT OF THE BANKRUPTCY ACT,
(CAP.25)

3. Construction.
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PART III
AMENDMENT OF THE BUDGET ACT,
(CAP.439)

5. Construction.
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PART IV
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(CAP. 113)

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8. Amendment of Section 45.
9. Addition of new section 120A.
10. Amendment of section 120A.

PART V
AMENDEMENT OF THE PUBLIC SERVICE ACT,
(CAP.298)

11. Construction.
12. Amendment of Part V.

NOTICE

This Bill to be submitted to the National Assembly is published for general information to the general public together with a statement of its objects and reasons.

Dar es Salaam,
17th October, 2017

JOHN W. H. KIJAZI
Secretary to the Cabinet

A BILL
for

An Act to amend certain written laws.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Written Laws (Miscellaneous Amendments) (No.5) Act, 2017.

Amendment
of certain
written laws

2. The Written Laws specified in various Parts of this Act are amended in the manner specified in their respective Parts.

PART II
AMENDMENT OF THE BANKRUPTCY ACT,
(CAP.25)

Construction
Cap. 25 **3.** This Part shall be read as one with the Bankruptcy Act,
hereinafter referred to as the “principal Act”.

Amendment
of section 2

Cap.27 **4.** The principal Act is amended in section 2, by inserting in its
appropriate alphabetical order the following new definition:
“Official Receiver” means the Administrator- General
appointed pursuant to the provisions of the
Administrator- General (Powers and Functions) Act;”

**PART III
AMENDMENT OF THE BUDGET ACT,
(CAP.439)**

Construction
Cap.439 **5.** This Part shall be read as one with the Budget Act,
hereinafter referred to as the “principal Act”.

Amendment
of section 21 **6.** The principal Act is amended in section 21, by deleting the
word “February” wherever it appears in subsection (2) and
substituting for it the words “October or November”.

**PART IV
AMENDMENT OF THE LAND ACT,
(CAP. 113)**

Construction
Cap. 113 **7.** This Part shall be read as one with Land Act, hereinafter
referred to as the “principal Act”.

Amendment
of section 45 **8.** The principal Act is amended in section 45(2), by-
(a) deleting the “fulstop” appearing at the end of
paragraph (f) and substituting for it a “semicolon”;
(b) inserting immediately after paragraph (f) the
following new paragraphs:
“(g) where there is contravention of section 120A or
120B.”

Addition of
section 120A

9. The Principal Act is amended by adding immediately after section 120 the following new sections:

“Mortgage of
Land

120A.-(1) Subject to the provisions of this Act, a person may mortgage any land for the purpose of obtaining money from the local bank or financial institution for developing his land or for any other investment.

(2) Where a land mortgaged under subsection (1) is undeveloped or underdeveloped, the money obtained from the local bank or financial institution shall be utilized to develop part or whole of such mortgaged land.

(3) A Mortgagor shall within six months submit to the Commissioner information as to the manner in which the money obtained from the mortgage is invested to develop the mortgaged land.

Money to be
invested in
Tanzania

120B.-(1) Money obtained from a mortgage from a local bank or financial institution referred to under section 120A shall be invested in Tanzania.

(2) Where the Mortgagor is a bank or a financial institution, the Mortgagor shall submit to the Commissioner a declaration that the money obtained from the mortgage is invested in Tanzania.

Non
compliance
under
mortgage of
land

120C. Failure to comply with the requirements under sections 120A and 120B shall constitute a breach of conditions of right of occupancy provided for under section 45(2).

Procedure relating to mortgage of land

120D. The procedure for administration and enforcement of section 120A and 120B shall be prescribed in the Regulations.

Amendment of section 120A

10. The Principal Act is amended by redesignating the contents of section 120A as contents of section 120D.

PART V
AMENDEMENT OF THE PUBLIC SERVICE ACT,
(CAP.298)

Construction Cap 298

11. This Part shall be read as one with the Public Service Act, hereinafter referred to as the “principal Act”.

Amendment of Part V

12. The principal Act is amended in Part V by inserting immediately after the heading the following:

“Age of retirement of public servant

25A.-(1) A public servant may retire from the Service-

- (a) in case of voluntary retirement after attaining the age of fifty five years; and
- (b) in case of compulsory retirement after attaining the age of sixty years.

(2) Notwithstanding subsection (1), a professor or a senior lecturer of a public university or a medical specialist of a public hospital may retire from the Service -

- (a) in the case of voluntarily retirement, after attaining the age of sixty years; and
- (b) the term in the case of compulsory retirement, after attaining the age of sixty five years .

(3) For the purposes of this section, the term:

- (a) “professor” includes an associate professor; and
- (b) “medical specialist” includes any specialist above the medical specialist.

Power to
alter age of
retirement

25B. The Minister may, in consultation with the President and by order published in the *Gazette*, alter the age of retirement of a public servant in such a manner as he may deem necessary, and every such alteration shall take effect as if it were provided for in this Act.”

OBJECTS AND REASONS

This Bill proposes to amend four laws namely, the Bankruptcy Act, Cap. 25, the Budget Act, Cap.439, the Land Act, Cap 113 and the Public Service Act, Cap.298.

The proposed amendments to the respective laws are intended to cure the shortfalls occasioned during the implementation of the respective laws.

This Bill is divided into Four Parts. Part I deals with Preliminary Provisions which includes the title of the Bill and the manner in which the laws proposed to be amended, are amended in their respective Parts.

Part II proposes to amend section 2 of the Bankruptcy Act, Cap. 25 by inserting in its alphabetical order the definition of the term Official Receiver to mean the Administrator General. This is due to the fact that all the functions of the Official Receiver are performed by the Administrator General.

Part III proposes amendment to the Budget Act, Cap.439 whereby section 21(2) is amended by changing the time frame within which the Plan and Budget Gridlines shall be laid before the National Assembly, which shall be October or November of each year. The objective of the amendment is to harmonise the time frame as that preferred under the Standing Orders of National Assembly, 2016 edition.

Part IV of the Bill proposes to amend the Land Act Cap, 113, whereas section 45 is amended by adding provisions regarding default against mortgage of land to considered as a ground for revocation of the right of occupancy.

Sections 120A, 120B and 120C are being added with the aim to allow any loan obtained through mortgaging a piece of land in Tanzania to be used for the development of the same parcel of land which has been used as a security. This condition is only for undeveloped and underdeveloped land. This amendment is intended to bind the occupier of the right of occupancy to be responsible and give feedback on how he has procured the loan obtained through mortgage. Further, this amendment also aims at making sure that moneys obtained from mortgaging piece of land in Tanzania is strictly used to develop the same mortgaged piece of land.

Through these amendments both local and foreign banks or financial institutions are required to disclose information to the Commissioner for Lands to ensure that the money borrowed through mortgage is actually invested on or develop a particular mortgaged land within Tanzania. As a sanction, through these amendments any loan obtained through mortgage and used for investment outside Tanzania shall be invalid. Further, this amendment allows legislations to be executed properly and to legitimize mortgages of rights of occupancy that have been effected before introducing of these amendments.

Part V of the Bill proposes amendment to the Public Service Act, Cap. 298, whereas a new section 25A is introduced with a view to provide for age of retirement for public servants. The amendment further propound on a new Scheme of retirement age for Public Universities professors, senior lecturer and medical specialist in the public hospitals. This new scheme intends to extend the voluntary retirement from the service of the above named categories to be sixty years while the compulsory age is extended to sixty five years. The amendment aims at

implementing a recent decision of the government that changed retirement age of professors, senior lecturers and medical specialist in public university and public hospitals. The extension of retirements to these categories will address the shortage of professor and senior lecturers in public universities and medical specialist in public hospitals. The extension will reduce the costs incurred by the government for re-engaging retired professors, senior lecturers and medical specialist under contract. The extension of retirement age will further afford more time for professors and senior lecturer in public hospitals to serve the nation and mentor young academician and medical officers.

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MADHUMUNI NA SABABU
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Muswada huu unapendekeza kufanya Marekebisho katika Sheria Mbalimbali Tano na ambazo ni Sheria ya Ufilisi, Sura ya 25 Sheria ya Bajeti Sura 439, Sheria ya Ardhi, Sura ya 113, NA Sheria ya Utumishi wa Umma, Sura ya 238.

Mapendekezo ya marekebisho haya yalitokana na mapungufu mbalimbali ya utekelezaji wa sheria hizo.

Muswada huu umegawanyiwa katika Sehemu Nne Sehemu ya Kwanza inahusu masharti ya Utangulizi ambayo yanajumuisha, jina la Muswada na namna ambavyo Sheria zinazopendekezwa kurekebishwa zitakavyorekebishwa ndani ya Muswada huu.

Sehemu ya Kwanza inapendekeza kufanya marekebisho katika kifungu cha 2 cha Sheria ya Ufilisi, Sura ya 25 kwa kupangilia mtiririko wa maneno ya kialphabeti katika kifungu cha 2 na kutoa tafsiri ya neno Mpokezi MKuu kuwa na maana ya neno Kabidhi Wasii Mkuu. Hii ni kutokana na ukweli kuwa shughuli zote za “Mpokezi Mkuu” zinafanywa na “Kabidhi Wasii Mkuu” ambaye anapendekezwa ateuliwe na Rais ili aweze kutekeleza majukumu mbalimbali ikiwa ni pamoja na hili.

Sehemu ya Pili inapendekeza kufanya marekebisho katika kifungu cha 21(2) cha Sheria ya Bajeti, Sura ya 439 kwa kuandika upya muda wa kuwasilisha

Bungeni muongozo wa kuandaa mpango wa bajeti lengo la marekebisho hayo ni kuondoa mkinzano na kuoanisha na muda uliorejewa katika kanuni za Bunge, Kanuni ya 94(1) na (2) ya Kanuni hizo, toleo la 2016.

Sehemu ya Tatu inapendekeza kufanya marekebisho ya Sheria ya Ardhi, Sura 113 ambapo kifungu cha 45 kimerekebishwa kwa kuongeza masharti ya adhabu inayotokana na ukiukwaji wa masharti kwa mtu anayeweka dhamana ya milki ya ardhi.

Vifungu vya 120A, 120B na 120C navyo vimeongezwa ili kuwezesha fedha zinazopatikana kutokana na mkopo uliyotolewa kwa dhamana ya milki ya ardhi ya Tanzania zitumike kuendeleza sehemu au ardhi yote iliyowekwa rehani. Sharti hili litahusu milki ambazo hazijaendelezwa. Aidha, marekebisho haya pia yanakusudia kuweka wajibu kwa mkopaji na mkopeshaji kuwasilisha taarifa kwa Kamishna wa Ardhi kuhusu fedha zilizopatikana kutokana na dhamana ya milki ya ardhi zilivyowekezwa kwa ajili ya kuendeleza ardhi husika. Aidha, marekebisho haya yanalenga pia kuweka wajibu kwa fedha zinazokopeshwa kutokana na dhamana ya milki ya ardhi ya Tanzania ziweze kuwekezwa Tanzania.

Aidha, Benki na Taasisi za fedha za ndani na nje ya nchi nazo zinatakiwa kuwasilisha kwa Kamishna wa Ardhi tamko kwamba fedha inayotolewa kutokana na dhamana ya milki ya ardhi ya Tanzania zinawekezwa Tanzania. Kwa maudhui ya marekebisho haya, uwekaji rehani milki ya ardhi katika Benki au Taasisi ya Fedha za ndani au nje ya nchi ambazo fedha zinayopatikana haitawekezwa Tanzania zitakuwa ni batili. Jambo jingine katika marekebisho haya ni kuwezesha kutungwa kwa kanuni za utekelezaji wa masharti ya fungu hili na kuhlalisha rehani za milki za ardhi zilizofanyika kabla ya marekebisho haya.

Sehemu ya Nne ya Muswada inapendekeza kufanya Marekebisho kwenye Sheria ya Utumishi wa Umma, Sura ya 298 ambapo kifungu kipyua cha 25A kinapendekezwa kuongezwa kwa lengo la kuweka kwenye Sheria masharti ya umri wa kustaafu kwa watumishi wa Umma, Masharti haya hayapo ndani ya Sheria kwa sasa. Aidha, mapendekezo ya kuongeza kifungu kipyua yanalenga kuweka utaratibu mpya wa umri wa kustaafu kwa maprofesa na wahadhiri waandamizi wa vyuo vikuu vya umma na madaktari bingwa wa magonjwa ya binadamu wa hospitali za

umma. Mfumo huu mpya unalenga kuongeza umri wa kustaafu Utumishi wa umma kwa ridhaa kwa maprofesa na wahadhiri waandamizi wa vyuo vikuu vya umma na madaktari bingwa wa magonjwa ya binadamu wa hospitali za umma ili umri huo uweze kuwa ni miaka sitini kwa wale ambao wanastaafu kwa hiari na kwa wale ambao wanastaafu kwa lazima iwe ni miaka sitini na tano. Marekebisho haya yanalenga kutekeleza maamuzi ya Serikali yanayolenga kuongeza umri wa kustaafu kwa maprofesa, wahadhiri waandamizi wa madaktari bingwa wa binadamu kutoka vyuo vikuu vya umma na hospitali za umma. Kuongeza umri kwa kada hizi kutapunguza gharama kwa Serikali ya kuingia mikataba na wataalamu hawa mara tu wanapostaafu, na pia kutaongeza muda kwa wataalamu, wengine kuweza kulitumikia Taifa kwa muda mrefu zaidi na pia kusaidia kufundisha na kukuza wataalam wachanga walioko nchini.

Dodoma,
16 Oktoba, 2017

GEORGE M. MASAJU
Mwanasheria Mkuu wa Serikali