

THE UNITED REPUBLIC OF TANZANIA

No. 11

19th October, 2023

SPECIAL BILL SUPPLEMENT

*To The Special Gazette of the United Republic of Tanzania No. 43 Vol. 104 Dated 19th October, 2023
Printed by The Government Printer, Dodoma by Order of Government*

THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO. 5)
BILL, 2023

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““certificate” means a trusted digital identity used to identify users, servers or things when communicating over untrusted networks, to sign code or documents and to encrypt data or communication;

“Root Certification Authority” means the certification authority which issues certificates to other subordinate certification authorities;

“subscriber” means a person who is the subject named or identified in an electronic certificate;”.

Amendment
of section 6

5. The principal Act is amended in section 6 by adding immediately after subsection (3) the following:

“(4) The procedures for determining the authenticity of electronic signatures shall be prescribed in the regulations.”.

Amendment
of section 7

6. The principal Act is amended in section 7-

(a) by designating the content of section 7 as subsection (1); and

(b) adding immediately after subsection (1) as designated the following:

“(2) The procedures for ascertaining the secure nature of an electronic signature shall be prescribed in the regulations.”.

Amendment
of section 34

7. The principal Act is amended in section 34, by-

(a) deleting paragraph (d) and substituting for it the following:

“(d) resolve conflict between cryptographic, certification service providers and subscribers;

(e) specify the qualifications and experience which employees of certification authority shall possess;

(f) recognise foreign certification authorities; and”;

(b) renaming paragraph (e) as paragraph (g).

Addition of
sections 35A
and 35B

8. The principal Act is amended by adding immediately after section 35 the following:

“Root
Certification
Authority

35A.-(1) The Minister shall, by notice published in the *Gazette*, appoint a Government institution under the Ministry responsible for information and communication technology to be a Root Certification Authority for purposes of this Act.

(2) The Root Certification Authority shall perform the following functions:

- (a) exercise supervision over activities of certification authorities;
- (b) approve certificate signing requests of certification authorities;
- (c) prescribe conditions subject to which certification authorities shall conduct their business;
- (d) specify contents of materials and advertisements which may be distributed or used in respect of a certificate;
- (e) prescribe the form and content of a certificate;
- (f) prescribe the form and manner in which accounts shall be maintained by certification authorities;
- (g) prescribe terms and conditions subject to which certification service auditors may be appointed;
- (h) facilitate the establishment and regulation of an electronic system by a certification authority;
- (i) prescribe the manner in

which certification authorities shall conduct their dealings with subscribers;

- (j) maintain a database of disclosure records of certification authorities; and
- (k) perform such other functions as may be required under this Act.

Certification authorities

35B.-(1) The Minister may, by notice published in the *Gazette*, appoint such number of certification authorities as he deems fit:

Provided that, where a certification authority appointed under this section is a private entity, the Minister shall comply with tendering process pursuant to the relevant laws.

(2) A certification authority shall perform the following functions:

- (a) manage the lifecycle of certificates;
- (b) validate the identity of a subscriber who requests for a certificate before issuance;
- (c) ensure confidentiality, integrity, availability, authentication and non-repudiation of certificate services;
- (d) keep and maintain accurate and complete information of certification service status;
- (e) operate and manage certification system, facilities and equipment in a safe and secure manner to assure validity and stability of issued certificate; and

- (f) control risks associated with certification services.
- (3) In the performance of its functions, the certification authority shall-
 - (a) use hardware, software and procedures which are secure from intrusion and misuse;
 - (b) ensure reliability of its services;
 - (c) adhere to security procedures to ensure that the secrecy and privacy of electronic signatures are assured; and
 - (d) comply with standards issued by the regulator.”.

PART III
AMENDMENT OF THE NATIONAL INDUSTRIES
(LICENSING AND REGISTRATION) ACT,
(CAP. 46)

Construction
Cap. 46

9. This Part shall be read as one with the National Industries (Licensing and Registration) Act, hereinafter referred to as the “principal Act”.

Amendment
of section 2

- 10.** The principal Act is amended in section 2-
- (a) by deleting the definition of the term “industry” and substituting for it the following:
 - ““industry” means any factory in which an individual, group of persons or entity produces goods;”;
 - (b) in the definition of the term “Registrar”, by inserting the words “Deputy Registrar and” between the words “includes” and “Assistant”.

Amendment
of section 3

11. The principal Act is amended in section 3(1) by deleting the marginal note and substituting for it the following:

“Registrar, Deputy Registrar and Assistant Registrars”

Amendment of section 4 **12.** The principal Act is amended in section 4 by deleting the words “or an Assistant Registrar”.

Amendment of section 10 **13.** The principal Act is amended in section 10, by-

- (a) designating the contents of section 10 as subsection (1);
- (b) adding immediately after subsection (1) as designated the following:
 - (2) The Board shall perform the following functions:
 - (a) to supervise the performance of the Registrar;
 - (b) to evaluate quarterly reports submitted by the Registrar;
 - (c) to issue directives to the Registrar for better carrying out the purpose of this Act;
 - (d) to advise the Minister on development of industrial sector; and
 - (e) to perform such other functions which are necessary or expedient for the proper discharge of the purpose of this Act.
 - (3) The Board may from among its members, appoint such number of committees as it deems necessary for purposes which, in the opinion of the Board, would be better administered through committees.

Repeal and replacement of section 11 **14.** The principal Act is amended by repealing section 11 and replacing for it the following:

“Appointment and Composition of Board **11.**-(1) The Minister shall, after consultation with the Minister responsible for industries in Tanzania Zanzibar, appoint members of the Board.

(2) The Board shall consist of the following members:

(a) a Chairman who shall be a person with knowledge and

- experience in industries matters;
- (b) a Law Officer representing the Attorney General;
 - (c) one member from the Ministry responsible for industries in Mainland Tanzania;
 - (d) one member from the Ministry responsible for industries in Tanzania Zanzibar;
 - (e) one member representing the Tanzania Chamber of Commerce, Industries and Agriculture;
 - (f) one member representing the Zanzibar National Chamber of Commerce;
 - (g) one member representing the association of industries;
 - (h) one member representing the authority responsible for small and medium industries in Mainland Tanzania; and
 - (i) one member representing the authority responsible for small and medium industries in Tanzania Zanzibar.

(3) The Registrar shall be the Secretary to the Board.

(4) The tenure and other proceedings of the Board shall be as provided in the Schedule.

(5) The Minister may, by order published in the *Gazette*, amend the Schedule.”.

- Repeal of section 12 **15.** The principal Act is amended by repealing section 12.
- Repeal and replacement of section 13 **16.** The principal Act is amended by repealing section 13 and replacing for it the following:
“Industrial licence **13.**-(1) A person who intends to establish an industry shall apply to the Registrar for an industrial licence in a manner prescribed in the regulations.
(2) A person who establishes an industry without a licence commits an offence.”
- Repeal of sections 14, 15 and 16 **17.** The principal Act is amended by repealing sections 14, 15 and 16.
- General amendment **18.** The principal Act is amended generally by-
(a) deleting the word “Board” wherever it appears in sections 17, 18, 19, 20, 22 and 25 and substituting for it the word “Registrar”; and
(b) deleting the words “it” and “its” wherever they appear in sections 19,, 20 and 22 and substituting for them the words “he” and “his” respectively.
- Repeal of section 21 **19.** The principal Act is amended by repealing section 21.
- Repeal and replacement of section 23 **20.** The principal Act is amended by repealing section 23 and replacing for it the following:
“Functions of Registrar **23.** The Registrar shall perform the following functions-
(a) approve and grant industrial licence and certificate of registration;
(b) approve the transfer of industrial licence or certificate of registration;
(c) carry out regular inspection in respect of adherence to the provisions of this Act;

- (d) prepare and maintain the register of industries;
- (e) prepare and submit quarterly reports to the Board; and
- (f) carry out any other function as may be directed by the Board.”.

Amendment
of section 26

21. The principal Act is amended in section 26 by deleting the words “ten hundred thousand shillings” and substituting for them the words “one million shillings”.

Amendment
of section 29

22. The principal Act is amended in section 29, by-

- (a) deleting paragraphs (f) and (g) and substituting for them the following:
 - “(f) prescribing conditions for licences and certificates of registration;
 - (g) prescribing the manner for appointment of industrial inspectors under this Act;”;
- (b) deleting subsection (2); and
- (c) designating the contents of subsection (1) as section 29.

Addition of
Schedule

23. The principal Act is amended by adding immediately after section 29 the following Schedule:

“ _____

SCHEDULE

(Made under section 11(4))

TENURE AND OTHER PROCEEDINGS OF THE BOARD

- | | |
|-------------------|---|
| Power to co-opt | <p>1. The Board may co-opt any person to attend its meetings for the purposes of rendering technical advice but such person shall have no right to vote.</p> |
| Tenure of office | <p>2.-(1) A member of the Board shall hold office for a period of three years from the date of his appointment and may be eligible for re-appointment for one further term.</p> <p>(2) A member of the Board may resign by giving a one months notice in writing to the Minister.</p> <p>(3) Where a member of the Board ceases to hold an office in respect of which he was appointed, he shall cease to be a member of the Board and the appointing authority shall fill the vacancy accordingly.</p> |
| Vice-Chairman | <p>3.-(1) Members of the Board shall elect one among them to be a Vice- Chairman:</p> <p>Provided that, where the Chairman hails from one part of the Union, the members of the Board shall elect a Vice- Chairman from among members hailing from the other part of the Union.</p> |
| Meetings of Board | <p>4.-(1) The Board shall meet at least four times annually for the transaction of its business.</p> <p>(2) The Board may hold an extra-ordinary meeting at any time where necessity requires if requested in writing by half of the members.</p> <p>(3) The Secretary of the Board shall give to each member adequate notice of the time and place of each meeting.</p> <p>(4) Where at any meeting of the Board the Chairman is absent, the Vice- Chairman</p> |

shall preside over such meeting.

(5) In the absence of both the Chairman and the Vice- Chairman at any meeting of the Board, the members present shall elect one person from amongst their number to be a temporary Chairman who shall preside at such meeting.

(6) All matters considered by the Board shall, in the event of a difference of opinion, be decided by votes of a majority of members present at any meeting, and in the event of an equality of votes, the Chairman or person presiding over the meeting shall have a casting vote in addition to his deliberative vote.

Quorum for meetings

5.-(1) The quorum at any meeting of the Board shall be half of the members.

(2) A decision may be made by the Board without a meeting by circulation of relevant papers among all members and the expression in writing of their views, but any member shall be entitled to require that any such decision shall be deferred until the subject matter is considered at a meeting of the Board.

Minutes of meetings

6.-(1) The Secretary shall record and keep minutes of business conducted or transacted at all meetings and the minutes of each meeting of the Board shall be read and confirmed or amended and confirmed, at the next meeting of the Board.

(2) Minutes of the Board signed by the Chairman or the person presiding over the meeting and the Secretary shall, in the absence of proof of error, be deemed to be a correct record of the meeting to which the minutes relate.

Fees and allowance

7. Members of the Board shall be paid such remunerations, fees and allowances as may be determined by the relelevant authority.

Procedures of Board

8. The Board shall regulate its own proceedings.”.

PART IV
AMENDMENT OF THE PUBLIC AUDIT ACT,
(CAP. 418)

Construction
Cap. 418 **24.** This Part shall be read as one with the Public Audit Act, hereinafter referred to as the “principal Act”.

Amendment
of section 3 **25.** The principal Act is amended in section 3 by deleting the definition of the term “public authority”.

PART V
AMENDMENT OF THE TANZANIA INVESTMENT ACT,
(ACT NO. 10 OF 2022)

Construction
Act No.
10 of 2022 **26.** This Part shall be read as one with the Tanzania Investment Act, hereinafter referred to as the “principal Act”.

Amendment
of section 3 **27.** The principal Act is amended in section 3 by deleting the definitions of the term “mwekezaji wa kigeni” and substituting for it the following:

““mwekezaji wa kigeni” ikiwa ni mtu binafsi maana yake ni mtu ambaye si raia wa Tanzania, na ikiwa ni kampuni, maana yake ni kampuni iliyosajiliwa chini ya sheria za nchi yoyote tofauti na Tanzania inayofanya uwekezaji wa moja kwa moja nchini;”.

Amendment
of section 19 **28.** The principal Act is amended in section 19(1) by deleting the words “na kinga”.

Addition of
section 29A **29.** The principal Act is amended by adding immediately after section 29 the following:

“Hadhi ya
mwekezaji wa
kigeni **29A.**-(1) Kwa kuzingatia masharti ya Sheria hii, mikataba na makubaliano ya kimataifa ambayo Tanzania ni mwanachama, mwekezaji wa kigeni hatatendewa mambo yasiyofaa kuliko yale anayotendewa mwekezaji wa ndani kuhusu uanzishaji, ununuzi, upanuzi, usimamizi, uendeshaji, uuzaji au uwekezaji mwingine

nchini Tanzania.

(2) Kwa kuzingatia masharti ya Sheria hii, mikataba na makubaliano ya kimataifa ambayo Jamhuri ya Muungano ni mwanachama, mwekezaji wa kigeni hatabaguliwa katika misingi ya uraia wake, eneo la makazi au mahali alipoandikishwa au kusajiliwa au nchi ya asili ya uwekezaji.

(3) Masharti ya kifungu hiki hayataafsiriwa-

(a) kuizuia Serikali kuchukua hatua za udhibiti au hatua nyingine ili kulinda maslahi ya umma, kama vile maadili ya umma, afya ya umma, usalama na ulinzi wa mazingira;

(b) kuizuia Serikali kuchukua jitihada zozote za kuwawezesha wawekezaji wa ndani; na

(c) kuilazimisha Serikali kutoa kwa mwekezaji wa kigeni na uwekezaji wake manufaa ya matibabu, upendeleo au fursa yoyote iliyomo katika-

(i) eneo lolote la biashara huria, umoja wa forodha, makubaliano ya soko la pamoja, makubaliano yoyote ya kimataifa au mipango ambayo nchi anayotoka mwekezaji si mshirika; au

(ii) makubaliano yoyote ya kimataifa yaliyopo au ya siku zijazo au sheria ya ndani inayohusu ushuru.”.

OBJECTS AND REASONS

This Bill proposes to amend four laws namely: the Electronic Transactions Act, Cap. 442, the National Industries (Licensing and Registration) Act, Cap. 46, the Public Audit Act, Cap. 418, and The Tanzania Investment Act, Act No. 10 of 2022.

The Bill is divided into Five Parts. Part I deals with Preliminary Provisions which include the title of the Bill and the manner in which the laws proposed to be amended are amended in their respective Parts.

Part II of the Bill proposes to amend the Electronic Transactions Act, Cap. 442. Section 3 is proposed to be amended in order to introduce the definition of the term “certificate” which has been used in the Act but not defined. Further, definitions of new terms “Root Certification Authority” and “subscriber” are proposed to be added in order to give meaning to words which have been used in the proposed new sections. The purpose of amendments in the interpretation section is to enhance clarity.

Sections 6 and 7 are proposed to be amended in order to enable the procedures for determining the authenticity and security of electronic signature to be prescribed in the regulations. The purpose of this amendment is to enable effective implementation of provisions relating to authentication and security of electronic signature. Section 34 is amended in order to introduce new functions of the regulator in order to ensure effective oversight and management of electronic systems. New sections 35A and 35B are proposed to be added in order to empower the Minister responsible for Information, Communications and Information Technology to appoint an institution under the Ministry to carry out the responsibilities of approving` users of systems. The aim of this amendment is to strengthen the regulatory framework of digital identity used to identify users of electronic systems and servers.

Part III of the Bill proposes to amend the National Industries (Licensing and Registration) Act, Cap. 46. Section 2 is proposed to be amended in order to improve the definition of various terms used in the Act. The purpose of the proposed amendment is to enhance clarity.

Section 3 is proposed to be amended by improving the marginal notes. The aim of the proposed amendment is to align the marginal notes with the contents of the provision.

Sections 10, 17, 18, 19, 20, 22, 23 and 25 are proposed to be amended and section 15 is proposed to be repealed in order to transfer operational functions from the Board to the Registrar. These amendments intend to confer to the Board the supervisory role over the Registrar and an advisory role to the Minister relating to development of the industrial sector. Section 11 is proposed to be repealed and replaced in order to introduce provisions relating to the appointment and composition of the Board. The aim of these amendments is to enable effective implementation of the Act.

Section 21 is proposed to be repealed and a Schedule is proposed to be introduced. The aim of these amendments is to enable provisions relating to the meetings and other proceedings of the Board to be provided for in the Schedule.

Sections 12 and 16 are proposed to be repealed as the advisory functions which were formerly being implemented by the Regional Advisory Committee are proposed to be transferred to the Board. Section 13 is proposed to be repealed and replaced. The purpose of this amendment is to impose an obligation for a person who intends to establish an industry to apply for a licence to the Registrar. Section 14 is proposed to be repealed as its contents are proposed to be incorporated in section 13.

Section 26 is proposed to be amended in order to increase the punishment given to a person who violates the provisions of the Act. The purpose of this amendment is to enhance compliance with the provisions of the Act. Section 29 is proposed to be amended so as to enable the Minister to make regulations prescribing for conditions for certificate of registration and appointment of industrial inspectors. The aim of the proposed amendment is to widen the scope of areas for which the Minister may make regulations.

Part IV of the Bill proposes to amend the Public Audit Act, Cap. 418 whereby section 3 is proposed to be amended by deleting the definition of the term “public authority”. The purpose of this amendment is to remove ambiguity which may arise due to the presence of two different definitions of the same term in the Act.

Part V of the Bill proposes to amend the Tanzania Investment Act, Act No. 10 of 2022 whereby section 3 is amended by deleting and substituting the definition of the term “mwekezaji wa kigeni”. The purpose of this amendment is to improve the definitions of such term as used in the Act. Section 19 is proposed to be amended in order to provide protection to all investors including those who do not have incentive certificate.

A new section 29A is proposed to be added in order to put in place conditions related to the status of foreign investors investing in the country. The aim of this amendment is to provide equal treatment between domestic investors and foreign investors in the country.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kufanya marekebisho katika Sheria nne ambazo ni Sheria ya Miamala ya Kielektroniki, Sura ya 442, Sheria ya Taifa ya Leseni na Usajili wa Viwanda, Sura ya 46, Sheria ya Ukaguzi wa Umma, Sura ya 418, na Sheria ya Uwekezaji Tanzania, Sheria Na. 10 ya Mwaka 2022.

Muswada huu umegawanyika katika Sehemu Tano ambapo Sehemu ya Kwanza inahusu masharti ya utangulizi yanayojumuisha Jina la Muswada na namna ambavyo Sheria mbalimbali zinapendekezwa kurekebishwa katika sehemu zake.

Sehemu ya Pili ya Muswada inapendekeza marekebisho katika Sheria ya Miamala ya Kielektroniki, Sura ya 442. Kifungu cha 3 kinapendekezwa kurekebishwa kwa kuongeza tafsiri ya msamiati “certificate” uliotumika katika Sheria lakini haukuwa na tafsiri. Aidha, inapendekezwa kuongezwa tafsiri ya misamiati mipya “Root Certification Authority” na “subscriber” ambayo imetumika kwenye vifungu vipya vinavyopendekezwa kuongezwa. Lengo la marekebisho katika kifungu hiki ni kutoa ufafanuzi wa misamiati iliyotumika na inayopendekezwa kutumika kwenye sheria.

Vifungu vya 6 na 7 vinapendekezwa kurekebishwa ili kuwezesha utaratibu wa kubainisha usahihi na usalama wa saina za kielektroniki kuainishwa katika kanuni. Lengo la marekebisho haya ni kuwezesha utekelezaji bora wa masharti ya sheria yanayohusu usahihi na usalama wa saina za

kielektroniki. Kifungu cha 34 kinapendekezwa kurekebisha kwa kuongeza majukumu ya mdhibiti wa huduma za uthibitishaji kwa lengo la kuhakikisha usimamizi na udhibiti bora wa mifumo ya kielektroniki. Vifungu vipya vya 35A na 35B vinapendekezwa kuongezwa ili kumpa mamlaka Waziri mwenye dhamana na masuala ya Habari, Mawasiliano na Teknolojia kuteua taasisi miongoni mwa taasisi zilizo chini ya Wizara hiyo ili kutekeleza majukumu ya uidhinishaji wa watumiaji wa mifumo. Lengo la marekebisho haya ni kuimarisha mfumo wa udhibiti wa utambuzi wa watumiaji wa mifumo ya kielektroniki na seva.

Sehemu ya Tatu ya Muswada inapendekeza kurekebisha Sheria ya Taifa ya Leseni na Usajili wa Viwanda, Sura ya 46 ambapo kifungu cha 2 kinapendekezwa kurekebisha kwa kuboresha tafsiri ya misamiati mbalimbali kwa lengo la kutoa ufafanuzi wa misamiati hiyo kama ilivyotumika katika Sheria.

Kifungu cha 3 kinapendekezwa kufanyiwa marekebisho kwa kuboresha maelezo ya pembeni ili kuwianisha maelezo hayo na maudhui ya kifungu husika.

Vifungu vya 10, 17, 18, 19, 20, 22, 23 na 25 vinapendekezwa kurekebisha na kifungu cha 15 kinapendekezwa kufutwa ili kuhamisha majukumu ya kiutendaji kutoka kwa Bodi kwenda kwa Msajili. Kwa mujibu wa marekebisho haya, inapendekezwa kuwa Bodi itekeleze jukumu la kumsimamia Msajili na kumshauri Waziri kuhusiana na maendeleo ya sekta ya viwanda. Kifungu cha 11 kinapendekezwa kurekebisha ili kuweka masharti yanayohusiana na uteuzi wa wajumbe na muundo wa Bodi. Lengo la marekebisho haya ni kuwezesha utekelezaji bora wa Sheria.

Kifungu cha 21 kinapendekezwa kufutwa na Jedwali linapendekezwa kuongezwa. Lengo la marekebisho haya ni kuwezesha masharti kuhusu vikao na taratibu nyingine za Bodi kufafanuliwa katika Jedwali.

Vifungu vya 12 na 16 vinapendekezwa kufutwa kwa kuwa majukumu ya ushauri yaliyokuwa yanatekelezwa na Kamati ya Ushauri ya Mkoa yanapendekezwa kuhamishiwa kwa Bodi. Kifungu cha 13 kinapendekezwa kufutwa na kuandikwa upya. Lengo la marekebisho haya ni kuweka takwa kwa mtu anayekusudia kuanzisha kiwanda kuomba leseni kwa Msajili. Kifungu cha 14 kinapendekezwa kufutwa kwa kuwa maudhui yake yanapendekezwa kujumuishwa katika kifungu cha 13.

Kifungu cha 26 kinapendekezwa kurekebisha ili kuongeza adhabu kwa makosa yaliyobainishwa kwenye Sheria. Lengo la marekebisha haya ni kuongeza utii wa Sheria. Kifungu cha 29 kinapendekezwa kurekebisha ili kumpa Waziri mamlaka ya kutengeneza kanuni kuhusu vyeti vya usajili na uteuzi wa wakaguzi wa viwanda. Lengo la marekebisha haya ni kupanua wigo wa maeneo ambayo Waziri anaweza kuyatengeneza kanuni.

Sehemu ya Nne ya Muswada inapendekeza kufanya marekebisha katika Sheria ya Ukaguzi wa Umma, Sura ya 418 ambapo kifungu cha 3 kinapendekezwa kurekebisha kwa kufuta tafsiri ya msamiati “public authority”. Lengo la marekebisha haya ni kuondoa utata unaoweza kujitokeza kutokana na uwepo wa tafsiri mbili tofauti za msamiati mmoja katika Sheria.

Sehemu ya Tano ya Muswada inapendekeza kufanya marekebisha katika Sheria ya Uwekezaji Tanzania, Sheria Na. 10 ya Mwaka 2022 ambapo kifungu cha 3 kinapendekezwa kurekebisha kwa kufuta na kuiandika upya tafsiri ya neno “mwekezaji wa kigeni”. Lengo la marekebisha haya ni kuboresha tafsiri ya msamiati huo kama ulivyotumika kwenye Sheria. Kifungu cha 19 kinapendekezwa kurekebisha ili kuwezesha kutoa kinga kwa wawekezaji wote hata wale ambao hawana vyeti vya vivutio.

Kifungu kipya cha 29A kinapendekezwa kuongezwa ili kuweka masharti yanayohusiana na hadhi ya wawekezaji wa kigeni wanaowekeza nchini. Lengo la marekebisha haya ni kuweka usawa kati ya wawekezaji wa ndani na wa nje wanaowekeza nchini.

Dodoma,
17th October, 2023

ELIEZER MBUKI FELESHI,
Attorney General