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THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.3) ACT, 2016

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NOTICE
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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,
26th August, 2016

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. 3) Act, 2016. |
| 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 CIVIL AVIATION ACT,
(CAP. 80)

- | | |
|-------------------------------|---|
| Construction
Cap. 80 | 3. This Part shall be read as one with the Civil Aviation Act, hereinafter referred to as the “principal Act”. |
| Addition of a new section 10A | 4. The principal Act is amended by adding immediately after section 10 the following new section:
10A. Where the Director-General has reasonable grounds to suspect that an aircraft is used in contravention of this Act or that it contains any matter which may be used as evidence in respect of an offence under this Act, the Director General may detain, inspect, board on or recall that aircraft in flight.” |

Addition of new sections 11A and 11B

5. The principal Act is amended by adding immediately after section 11 the following new sections:

“Transfer of responsibilities to another state

11A. Notwithstanding any provision of this Act, the Authority may, by agreement made with the appropriate foreign civil aviation authority under the Chicago Convention:

- (a) transfer to the concerned civil aviation authority of another state, all or part of the Authority’s responsibilities for a Tanzania registered aircraft operated by a foreign operator; or
- (b) vest in the Authority all or part of the responsibilities of the civil aviation authority of another state for an aircraft registered by that state and operated by a Tanzania operator.

Aircraft in distress

11B. Where an aircraft is in distress within the territory of the Authority, the Authority shall-

- (a) permit, subject to control by its own authorities, the owners of the aircraft or authorities of the state in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances rendering the distress;
- (b) in the case where the aircraft is missing, search the missing aircraft in line with the coordinated measures prescribed by the Authority; or
- (c) provide any other necessary assistance.”

Addition of new sections 19A and 19B

6. The principal Act is amended by adding immediately after section 19 the following new section:

“Revocation and suspension of certificates

19A. Where the Director-General has reasonable grounds to believe that any person has violated this Act, he may make an order to prohibit, suspend, revoke or vary the privileges of a licence, certificate or any other authorization issued by the Authority to that person.

Inspection

19B. For the purpose of ensuring aviation safety, security, consumer protection and for any other reasons for which the Authority is established, the Authority shall have unrestricted access to inspect-

- (a) any aircraft in Tanzanian territory regardless of its state of registry;
- (b) Tanzania registered aircraft wherever it may

- be;
- (c) flight compartment;
- (d) aerodrome used for civil aviation operations;
- (e) facilities and aircraft accident sites;
- (f) premises of any regulated agent or premises of the holder of an air service licence, certificate, authorization; or
- (g) other approval document issued by the Authority or any records, information and explanation.”

Amendment of section 26

7. The principal Act is amended in section 26 by adding a new subsection (7) immediately after subsection (6) as follows:

“(7) In providing air navigation services, the Authority shall ensure that a clear distinction and separation between its regulatory and operational functions is maintained.”

**PART III
AMENDMENT OF THE ENVIRONMENTAL MANAGEMENT ACT,
(CAP.191)**

Construction Cap. 191

8. This Part shall be read as one with the Environmental Management Act, hereinafter referred to as the “principal Act”.

Amendment of section 16

9. The principal Act is amended in section 16 by adding immediately after subsection (2) the following new subsections:

“(3) Notwithstanding the provisions of this section, the Attorney General shall have the right to intervene in any suit or matter instituted by, or against the Council.

Cap. 5

(4) Where the Attorney General intervenes in any matter pursuant to subsection (3), the provisions of the Government Proceedings Act shall apply in relation to the proceedings of that suit or matter as if it had been instituted by, or against the Government.

(5) For the purposes of subsections (3) and (4), the Council shall have a duty to notify the Attorney General of any pending suit or intention to institute a suit or matter by, or against the Council.”

Amendment of section 42

10. The principal Act is amended in section 42 by adding immediately after subsection (2) the following:

“(3) Local government authorities shall submit to the Minister environmental action plans prepared in respect of their areas of jurisdiction.”

Amendment of section 57

11. The principal Act is amended in section 57 by-

- (a) designating its contents as subsection (1); and
- (b) adding immediately after subsection (1) as designated, the following-

“(2) For the purposes of subsection (1), the computation of sixty meters shall be reckoned -

- (a) in the case of ocean or a natural lake, from the highest water mark; and
- (b) in the case of rivers, water dams or reservoirs, from the banks;”

Amendment of section 184

- 12.** The principal Act is amended in section 184 by -
- (a) designating its contents as subsection (1);
 - (b) deleting paragraph (a) appearing in subsection (1) as designated and substituting for it the following -
 - “(a) fails or refuses to conduct an Environmental Impact Assessment study in respect of a project for which the assessment is mandatory, commits an offence;”
 - (c) adding immediately after subsection (1) as designated the following-

“(2) A person who has paid a fine as a penalty for an offence of failing or refusing to conduct an Environmental Impact Assessment Study shall submit to the Council an environmental management plan for approval and guidance on how the project shall be implemented.

(3) Where the offence committed is that of failing or refusing to conduct an Environmental Impact Assessment study, the offender shall, upon conviction, be liable to a fine of not less than five million shillings but not exceeding one billion shillings or to imprisonment for a term of not less than two years but not exceeding seven years or to both.”

Amendment of section 187

- 13.** The principal Act is amended in section 187(1) by deleting the words “not less than three million shillings but not exceeding fifty million shillings” and substituting for them the words “not less than five million shillings but not exceeding ten billion shillings”

Amendment of section 191

- 14.** The principal Act is amended in section 191 by deleting the words “fifty million” and substituting for them the words “one billion”.

Amendment of the Fourth Schedule

- 15.** The principal Act is amended in paragraph 1 of the Fourth Schedule by-
- (a) deleting the word “nine” and substituting for it the word “eleven”; and
 - (b) inserting immediately after item (i) the following-
 - “(j) three persons from the private sector who have proven knowledge, skills and experience in matters relating to the operations of funds.”

PART IV
AMENDMENT OF THE HIGHER EDUCATION STUDENTS' LOANS BOARD ACT,
(CAP. 178)

Construction
Cap. 178

16. This Part shall be read as one with the Higher Education Students' Loans Board Act, hereinafter referred to as the "principal Act".

Amendment of
section 5

17. The principal Act is amended in section 5 by-

(a) deleting subsections (1) and (2) and substituting for them the following:

“(1) The Board shall consist of a Chairman who shall be appointed by the President and six other members to be appointed by the Minister as follows:

(a) one member representing the Ministry responsible for higher education;

(b) a member from the Treasury;

(c) a Law Officer representing the Attorney General;

(d) a member representing the Ministry responsible for finance in the Revolutionary Government of Zanzibar;

(e) one representative from umbrella students' association of higher learning institutions; and

(f) one member representing the Tanzania Commission for Universities.”

(b) renumbering subsections (3) to (6) as subsections (2) to (5) respectively.

Repeal of section
19

18. The principal Act is amended by repealing section 19 and replacing for it the following:

“Liability
and
obligation of
loan
beneficiary

19.-(1) It shall be the duty of every loan beneficiary to repay the loan within the time and manner specified in the loan agreement-

(2) Repayment of loan shall become due upon-

(a) completion of studies in respect of which the loan was granted; or

(b) immediately where studies are terminated for any reason.

(3) The loan repayable shall be the total sum of money:

(a) calculated on the basis of the loan agreement, which shall be established by the Board as having been received by a beneficiary; or

(b) which the Board paid to the account of a higher learning institution where the beneficiary pursued studies.

(4) A beneficiary who secures employment shall-

- (a) have the duty to notify the employer that he is a loan beneficiary;
 - (b) ensure that arrangement is made with the employer for deduction of monthly installment that shall include the principal, any fees, charges or penalties from the salary of the beneficiary;
 - (c) ensure that payments of monthly deduction by the employer are remitted to the Board from the date such remittance is due and that the loan deduction schedule bear the name of the beneficiary, loan number, employment number or cheque number;
 - (d) inform the Board in writing of-
 - (i) employer's name, address, telephone number and other necessary details;
 - (ii) any change of names;
 - (iii) the current address of the beneficiary and any subsequent changes of address;
 - (iv) any thing that may be prescribed by the Board in accordance with this Act.
- (5) A beneficiary who engages in self-employment, any trade, occupation or profession shall-
- (a) arrange with the Board about the amount or installments and period during which the beneficiary shall make remittance to the Board;
 - (b) ensure that the remittance of monthly installment is made to the Board bearing the correct name, address and the loan number;
 - (c) inform the Board of the-
 - (i) current postal and physical address;
 - (ii) occupational and residential addresses;
 - (iii) telephone numbers; and
 - (iv) any subsequent changes of such particulars;
 - (d) comply with any other requirement as may be prescribed by the Board under this Act.
- (6) For the purpose of subsection (5)(a), the amount payable by a self-employed beneficiary on monthly basis shall not be less than one hundred and twenty thousand shillings or ten percent of the taxable income, whichever amount is greater.
- (7) Subsection (4) shall apply *mutatis mutandis* to any beneficiary who is under employment of a foreign government, an international organization, a company, an agency or an association of any description.”

19. The principal Act is amended by repealing sections 20 and 21 and replacing them with the following:

“Obligation of employer **20.**-(1) For the purpose of identifying beneficiaries under this Act, every employer shall-

- (a) notify the Board on employment of any person who is a holder of degree or diploma, within twenty eight days from the date on which such person is employed;
- (b) upon confirmation from the Board that the person named in the notification is a loan beneficiary, deduct monthly installments of not less than fifteen percent of basic salary, wages or remuneration of the beneficiary, as the case may be;
- (c) treat deduction as statutory and make such deductions as first charge over non statutory deductions; and
- (d) inform the Board in writing of the status and rank of employment and any subsequent changes in the name, address, occupation and salary of the person who is a beneficiary.

(2) The employer shall remit every deduction from the beneficiary’s salary, wages or remuneration to the Board within fifteen days after the end of each month.

(3) The Board or its agents shall have power to inspect any record of the employer for searching the beneficiaries’ information.

(4) Where an employer fails to notify the Board about the employment of a holder of degree or diploma in accordance with this Act, such employer commits an offence and is liable on conviction to a fine of not less than seven million shillings or to imprisonment for a term of not less than twelve months or to both.

Failure of employer to make deductions or remittance

21.-(1) Where the employer fails to deduct or after making deduction from a beneficiary fails to remit such deductions to the Board within the prescribed period, the Board shall charge a sum of equal to ten percent of the total amount of the loan amount which is due for repayment for each month during which the repayment remains unremitted.

(2) Where the employer fails to remit monthly installments after deducting and is otherwise unable to pay the charge imposed under subsection (1), commits an offence and is liable on conviction to a fine of not less than the amount unremitted or to imprisonment for a term

of not less than thirty six months.

(3) Notwithstanding any other law to the contrary, where an employer is a body corporate, the chief executive officer or any other accountable officer of such body shall be personally liable for the penalty.

(4) Any person who obstructs an employee of the Board or its appointed agent from doing any act authorized by this Act, commits an offence and is liable on conviction, to a fine of not less than seven million shillings or to imprisonment for a term of not less than twelve months or both.”

Amendment of
the Schedule

20. The principal Act is amended in paragraph 4 of the Schedule by inserting immediately after subparagraph (6) the following:

“(7) The Board may co-opt any person to assist the Board on deliberation of any issue or matter that requires the person’s skills, expertise or advice, but the co-opted person shall have no right to vote in any meeting of the Board.”

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

Construction
Cap. 298

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

Amendment of
section 3

22. The principal Act is amended in section 3 by inserting in the appropriate alphabetical order the following new definition:

“Recruitment Secretariat” means the Public Service Recruitment Secretariat established under section 29;”

Amendment of
section 8

23. The principal Act is amended in section 8(3) by-

- (a) inserting immediately after paragraph (c) the following-
“(d) rationalize and harmonize salaries, allowances and fringe benefits in the Service;”
- (b) renaming paragraphs (e) to (h) as paragraphs (f) to (i) respectively.

Addition of
sections 9A and
9B

24. The principal Act is amended by adding immediately after section 9 the following new sections-

“Approval of
Salary and
incentives

9A.-(1) Notwithstanding the provisions of any other written laws, no public institution, Agency, Board or commission shall approve salaries, allowances, incentives and fringe benefits for its organization.

(2) Without prejudice to subsection (1), approval of salaries, allowances, incentives and fringe benefits in

the Service shall be determined by the Permanent Secretary (Establishments).

Conflict of laws in relation to remuneration

9B. Where there is a conflict between the provisions of this Act and the provisions of any other written laws, regarding remuneration, the provisions of this Act shall prevail.”

Amendment of section 20

25. The principal Act is amended in section 20(1) by:
(a) deleting paragraph (c); and
(b) renaming paragraphs (d) and (e) as paragraphs (c) and (d) respectively.

Addition of new section 32A

26. The principal Act is amended by adding immediately after section 32 the following new section:

“Remedies under labour laws

32A. A Public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act.”

Repeal of section 34

27. The principal Act is amended by repealing section 34 and substituting for it the following:

“Compensation for occupational disease and death
Cap. 263

34.-(1) A public servant who suffers occupational disease or dies in the course of employment, shall be compensated in accordance with the Workers Compensation Act.”

(2) For the purpose of this section “occupational disease” shall have a meaning to it under the Workers Compensation Act.

Amendment of section 35

28. The principal Act is amended in section 35(2) by:
(a) deleting “semi colon” appearing at the end of paragraph (d) and substituting for it a “full stop”; and
(b) deleting paragraph (e).

PART VI
AMENDMENT OF THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT,
(CAP. 105)

Construction
Cap. 105

29. This Part shall be read as one with the Public Service (Negotiating Machinery) Act, hereinafter referred to as the “principal Act”.

Amendment of section 4

30. The principal Act is amended:
(a) in section 4(3), by deleting the words “and the secretary” appearing in paragraph (b); and
(b) by inserting immediately after subsection (4) the following new subsection:

“(5) The Minister shall appoint a secretary of the Joint Staff Council from the respective service scheme.”

Repeal of section
11

31. The principal Act is amended by repealing section 11.

PART VII
AMENDMENT OF THE SURFACE AND MARINE TRANSPORT
REGULATORY AUTHORITY ACT,
(CAP.413)

Construction
Cap. 413

32. This Part shall be read as one with the Surface and Marine Transport Regulatory Authority Act, hereinafter referred to as the “principal Act”.

Addition of new
section 40A

33. The principal Act is amended by adding immediately after section 40 the following new section:

“Compo-
unding of
offences

40A.-(1) Notwithstanding the provisions of this Act relating to penalties, where a person admits in writing that he has committed an offence under this Act, the Authority may, at any time prior to the commencement of the hearing by a court of competent jurisdiction, compound such offence and order such person to pay sum of money, not exceeding one half of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

(2) Where an offence is compounded in accordance with subsection (1) and proceeding are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under subsection (1).

(3) Where any person is aggrieved by any order under sub-section (1), he may within the prescribed period, appeal against such order to the High Court and the provisions of the Criminal Procedure Act shall apply to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

(4) Where the person fails to comply with the order issued under this section within the prescribed period, the Authority:

- (a) shall, in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations; and
- (b) may enforced the order in the same manner as

a decree of a court for the payment of the amount stated in the order.

(5) The Minister shall make Regulations prescribing offences to be compounded and procedure for compounding of offences under this Act.”

PART VIII
AMENDMENT OF THE TRANSPORT LICENSING ACT,
(CAP. 317)

Construction
Cap. 317

34. This Part shall be read as one with the Transport Licensing Act, hereinafter referred to as “principal Act”.

Amendment
of section 11

35. The principal Act is amended in section 11, by deleting subsection (6) and substituting for it the following:

“(6) A person who uses a motor vehicle in contravention of this section commit an offence and shall be liable, on conviction-

- (a) in the case of the first offence, to a fine of not less than two hundred thousands,
- (b) in the case of second and subsequent offence, to a fine not less than five hundred thousand shillings,

and in addition to the fine, the court may, in the case of the second or subsequent offence, order the forfeiture of the vehicle in relation to which the offence is committed, whether or not the previous offences were committed in relation to the same vehicle.”

Amendment
of section 35

36. The principal Act is amended in section 35(1), by-

- (a) deleting the words “ not exceeding ten” appearing between the words “fine” and “thousand” and substituting for them the words “of not less than two hundred”; and
- (b) deleting the words “exceeding twenty” appearing between the words “not” and “thousand” and substituting for them the words “five hundred”.

Amendment
of section 41

37. The principal Act is amended in section 41, by-

- (a) deleting the words “exceeding fifty” and “exceeding five” wherever they appear in subsection (1) and substituting for them the words “less than five hundred” and “less than two” respectively; and
- (b) deleting the words “exceeding twenty” and “exceeding two” wherever they appear in subsection (2) and substituting for them the words “less than two hundred” and “less than two” respectively.

Amendment
of section 47A

38. The principal Act is amended by adding immediately after section 47, a new section 47A as follows:

“Compounding
of offences

47A.-(1) Notwithstanding the provision of this Act relating to penalties, where a person admits in writing that he has committed an offence under this Act, the Authority may, at any time prior to the commencement of the hearing by a court of competent jurisdiction, compound such offence and order such person to pay sum of money, not exceeding one half of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

(2) Where an offence is compounded in accordance with subsection (1) and proceeding are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under sub-section (1).

(3) Where any person is aggrieved by any order under sub-section (1), he may within the prescribed period, appeal against such order to the High Court and the provisions of the Criminal Procedure Act shall apply to every such appeal as if it were an appeal against sentence passed by a district court in the exercise of its original jurisdiction.

(4) Where the person fails to comply with the order issued under this section within the prescribed period, the Authority:

- (a) shall, in addition to the sum ordered, require the person to pay an interest at the rate prescribed in the regulations; and
- (b) may enforced the order in the same manner as a decree of a court for the payment of the amount stated in the order.

(5) The Minister shall make regulations prescribing offences to be compounded and procedure for compounding of offences under this

Act.

PART IX
AMENDMENT OF THE TREASURY REGISTRAR (POWERS AND FUNCTIONS) ACT,
(CAP. 370)

Construction
Cap. 370

39. This Part shall be read as one with the Treasury Registrar (Powers and Functions) Act, hereinafter referred to as the “principal Act”.

Amendment of
section 46

40. The principal Act is amended in section 3 by adding immediately after subsection (2) the following new subsections:

“(3) Notwithstanding the provisions of this section, the Attorney-General shall have the right to intervene in any suit or matter instituted by, or against the Board.

Cap. 6 (4) Where the Attorney General intervenes in any matter in pursuance of subsection (2), the provisions of the Government Proceedings Act shall apply in relation to the proceedings of that suit or matter as if it had been instituted by, or against the Government.

(5) For the purposes of subsections (3) and (4), the Treasury Registrar shall have a duty to notify the Attorney General of any impending suit or intention to institute a suit or matter by, or against the Board.”

PART XI
AMENDMENT OF THE WEIGHTS AND MEASURES ACT,
(CAP. 340)

Construction
Cap. 340

41. This Part shall be read as one with the Weights and Measures Act, hereinafter referred to as the “principal Act”.

General
amendments

42. The principal Act is amended generally by-

(a) deleting the words “weighing and measuring instrument” wherever they appear in the Act and substituting for them the words “measuring instrument or measuring system”.

(b) deleting the words “assizer” wherever they appear in the Act and substituting for them the words “inspector”.

(c) Inserting in its appropriate alphabetical order the following new definition:

“container” means any form of packaging of goods as a single item, whether by enclosing the goods wholly or partly.

Amendment of
section 2

43. The principal Act is amended in section 2 by deleting the definition of the word “trade” and substituting for it the following:

““trade” includes-

(a) the making, effecting or concluding of any contract bargain, sale, purchase or transaction, or any

- payment in connection therewith;
- (b) any services rendered in which measurements are used;
- (c) any other measurement within which a measuring instrument or system is used.”

Amendment of section 3

44. The principal Act is amended in section 3 by adding immediately after subsection (7) the following:

“(8) The Minister may, by order published in the *Gazette*, amend the Schedules to this Act.”

Amendment of section 19

45. The principal Act is amended in section 19 by-

- (a) deleting the words “Not more than” at the beginning of sub section (1) and substituting for it the words “At least once”;
- (b) adding immediately after subsection (1) the following new subsection:

“(2) Notwithstanding subsection (1), a person who possesses any weight, measure, weighing or measuring instrument which is used or intended to be used in trade, shall produce such weight, measure, weighing or measuring instrument to an inspector even if the notice in subsection (1) was not issued.”

- (a) renumbering subsections (2) to (6) as subsections (3) to (7) respectively.
- (b) inserting immediately after (4) as renumbered the following new subsection:

“(5) Any immovable weight, measure, weighing or measuring instrument, shall be examined and verified in *situ* in addition to any preliminary test.”

Amendment of section 26

46. The principal Act is amended in section 26 by deleting subsection (2) and substituting for it the following:

“(2) Any person who owns or hired to carry or transport by any means prepacked goods shall comply with manner of packaging specified in 10th, 11th and 12th Schedules to this Act.

(3) Any person who contravenes or fails to comply with subsections (1) and (2) commits an offence.”

Amendment of section 30

47. The principal Act is amended in section 30(2) by deleting the phrase “not exceeding two thousand shillings” appearing in subsection (2) and substituting for it the words “not less than three hundred thousand shillings and not exceeding fifty million shillings or to both”.

Repeal of section 45

48. The principal Act is amended by repealing section 45 and replacing it with the following:

“General
penalty

45. Any person who contravenes the provisions of this Act or Regulations made under this Act and which no specific penalty is provided shall commits an offence and on conviction, in the case of first offence to a fine of not less than three hundred thousand shillings and not exceeding fifty million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine of not less than five hundred thousand shillings and not exceeding one hundred million shillings or to imprisonment for a term not exceeding five years or to both.”

(2) On the conviction of any person for an offence under this Act, the court may, in addition to any other penalty which may be imposed, order the confiscation of all or any part of goods in respect of which the offence was committed, and all goods or instruments so confiscated shall be disposed of in a manner which the court directs.”

Amendment of
section 46

49. The principal Act is amended in section 46 by-

- (a) deleting subsection (1) and substituting for it the following:
- “(1) Where the Commissioner is satisfied that any person has committed an offence under this Act, he may by order, compound such offence by requiring such person to make payment of a sum of money, except that-
- (a) such sum of money shall not be less than one hundred thousand shillings and not exceeding twenty million;
 - (b) the power or conferred under this section shall be exercised when a person admits that he has committed he offence under this Act;
 - (c) the Commissioner shall give to the person from whom he receives such sum of money, a receipt;
 - (d) subject to the provision of subsection (1), where proceedings are brought against a person for an offence under this Act, it shall be a good defence if that person proves that offence with which he is charged has been earlier compounded;
 - (e) any sum of money received under this section shall be dealt with as if the sum of money were a fine imposed by the court of law for the offence;
 - (f) the order shall not be made under this section unless the person concern shall first had an opportunity of showing cause against the making of the order.

(2) In the addition to the fine, the Commissioner may ask the court to forfeit any weight or measure or weighing or measuring instrument or other item for which the offence was committed as directed by or under this Act or any regulations made under this Act.

(b) renumbering subsections (2) to (4) as subsections (3) to (5) respectively.”

Addition of section 53A

50. The principal Act is amended by adding immediately after section 53 the following new section:

“Compliance with prescribed measurement standards

53A. Local Government Authorities, government agencies shall, in prescribing measurements applicable in their respective jurisdiction, have regard to the prescribed standards of measurements under this Act.”

OBJECTS AND REASONS

This Bill proposes to amend Nine laws namely, the Civil Aviation Act, Cap. 80; the Environment Management Act, Cap.191, the Higher Education Student’s Loans Board Act, Cap.178, the Public Service Act, Cap. 298, the Public Service (Negotiation Machinery) Act, Cap. 105, the Surface and Marine Transport Regulatory Authority Act, Cap. 413, the Transport Licensing Act, Cap. 317, the Treasury Registrar (Power and Functions) Act, Cap370; and the Weights and Measures Act, Cap. 340.

The proposed amendments intend to keep the respective laws with changes so far observed in their implementation.

This Bill is divided into Ten 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 of the Bill proposes to amend the Civil Aviation Act, Cap. 80. The amendments proposes to introduce a new section 10A, that empowers the Authority to inspect, board or detain an aircraft where has reasonable grounds to suspect that the aircraft is being used in contravention of the Act. It is further proposed to add a new section 11A for the purpose of complying with Article 83 of the Chicago Convention which provided for transferring of oversight functions to another state upon entering into an agreement. Furthermore, the Part introduces a new section 11B to implement article 25 of the Chicago Convention on providing assistance to aircraft in distress.

The new section 19A and 19B proposes to empower the Director General to suspend or revoke certificate or licence and to provide for the unrestricted access to aviation facilities. The Part also proposes to amend section 26 by adding a new subsection (7) that requires the Authority to ensure that a clear distinction and separation between its regulatory and operational functions is maintained when providing air navigation services.

Part III proposes to amend the Environment Management Act, Cap. 191, where section 16 is proposed to be amended for the purpose of giving the Attorney General right to intervene any suit or matter instituted by or against the Council by representing the Council in the court accordingly. The proposed amendments aim at protecting the Government's assets and interest.

Section 57 is amended by introducing a new subsection (2) which intend to provide guidance on how "sixty meters" shall be measured from the water bodies which is prohibited to carry out human activities.

The Part further proposes amendment to section 184, whereby paragraph (a) is proposed to be deleted and be substituted for purpose of creating an offence of failure or refusal to conduct an Environmental Impact Assessment study in respect of projects for which environmental impact assessment study is mandatory. It is also proposed to introduce new subsection (3) which shall provide for a penalty to an offence of failing or refusing to conduct environmental impact assessment study. The proposed penalty to such offence shall be a fine of not less than five million shillings but not exceeding one billion shillings.

Section 187 is proposed to be amended by increasing the penalty from an amount that is not less than three million and not exceeding fifty million to an amount which is not less than five million and not exceeding ten billion. The purpose of this amendment is to enhance the penalty to an offence that bring about serious adverse effects to the environment and public health arising from mining operations or oil and gas explorations.

Section 191 which provides for the general penalty for offences committed under the Act, is proposed to be amended by deleting the words "fifty million" and substituting for them the words "one billion" for the purpose of enhancing penalty for offences committed under the Act that affect the environment and public health.

This Part also proposes amendment to the Fourth Schedule which deals with the composition and proceedings of the Board of Trustees of the Fund. The amendments are intended to increase the number of members of the Board, by adding three persons with proven knowledge, skills and experience in matters relating to the operations of the Funds.

Part IV of the Bill proposes to amend the Higher Education Students' Loans Board Act, Cap. 178. The part proposes to amend section 5 by limiting the number of Board members to seven for the purpose of minimizing administration costs. Section 19 of the Act is proposed to be repealed and replaced in order to create obligation to every loan beneficiary to disclose to the employer that he is a loan beneficiary. The new section also fixes the amount of loan repayment for the beneficiaries who are self employed to an amount which is not be less than one hundred and twenty thousand shillings or fifteen percent of the taxable income.

The amendments also proposes to repeal and replace section 20 for the purpose of imposing a mandatory requirement to employer to notify the Board about employment of any person who is a holder of degree or diploma and to deduct monthly installments form salaries of loan beneficiaries. The provision also intends to treat deduction as statutory and make such deductions as first charge over non statutory deductions. Section 21 of the Act is also proposed to be repealed and replaced for the purpose of introducing penalty to employers who fails to remit monthly installments after deductions.

The Bill further proposes to amend the Schedule by adding in paragraph 4 a new subparagraph (7) with the view to empower the Board to co-opt any person to assist the Board on deliberation of any issue or matter that requires the person's skills.

Part V of the Bill proposes to amend the Public Service Act, Cap. 298 for the purpose of defining the term "Recruitment Secretariat" that word has not been defined in the Act. Section 8 is proposed to be amended in order to empower the Permanent Secretary (Establishment) to rationalize and harmonize salaries, allowance and fringe benefits in the service.

This Part also proposes to add new sections 9A that intend to prohibit public institutions, agencies, boards and commissions to review salaries and other fringe benefits for its organization.

The proposed section 9B intend to create an overriding effect in the event of conflict between the Public Service Act and any other written law.

The Bill further proposes to add a new section 32A that requires the public servants to exhaust all remedies provided under the Sct before seeking remedies to other laws. It is also proposed to repeal section 33 and amend section 34 to reflect the amendments of the Workers Compensation Act that has established the Workers Compensation Fund.

Part VI proposes an amendment to the Public Service (Negotiating Machinery) Act, Cap.105. Section 4(3)(b) is proposed to be amended by removing the secretary from being an appointing authority for the Public Servants comprising Service Joint Staff Council. Nevertheless, it is proposed to amend the Act by introducing new subsection (5) of section 4 so as to warrant the Miniser to appoint a Secretary from the Ministry responsible for a respective Service Scheme. Further, it is proposed to repeal section 11 so as to part with the provisions prohibiting the Service Joint Staff Council and the Public Service Joint Staff to recommend on the matters of wages.

Part VII propose the amendments to the Surface and Marine Transport Regulatory Authority Act, Cap.413 by introducing a new section 40A to provide for compounding of offences. The objective of the amendment is to facilitate deterrence of offences an amicable settlement of dispute and discouragement of lengthy court trial process with a view to support continuity in trade.

Part VIII of the Bill proposes to amend the Transport Licensing Act, Cap. 317. It proposes to amend section 11(6), 35(1), 41(1) & (2) and 42(2) with a view to change the fines prescribed in the penalties so as to make them conform with the prevailing currency.

The Bill further proposes amendment to the Act by adding a new section 47A with a view to making provisions for compounding of offences so as to facilitate deterrence of offences and amicable settlement of disputes and the discouragement of lengthy court trial process and the support of continuity in trade.

Part IX of the Bill proposes to amend the Treasury Registrar (Powers and Functions) Act, Cap. 370. Section 3 is amended in order to give the Attorney General right to intervene in any suit or matter instituted by or against the Treasury Registrar by representing him in the court accordingly. These amendments are aimed at protecting the Government's assets and interest.

Part X of the Bill proposes to amend the Weights and Measures Act, Cap. 340. It proposes general amendment to the Act in order to make appropriate usage of the term "measurement" throughout the Act, the Bill further proposes general amendment by substituting the term "assaizer" with the term "inspector", the former being the internationally recognized terminology.

The Bill further proposes amendment to section 2 by deleting and substituting some of the definitions for the purpose of making better clarification of those definition which include the terms "trade" "container".

The Bill also proposes amendment to section 19 for the purpose of making it an obligation to a person who possesses any weight, measure, weight or measuring instrument which is used or intended to be used in trade, to produce such instrument for inspection at their own instance.

Section 26 is proposed to be amended to compel a person who owns or hired to carry or transport pre-packed goods to comply with manner of packaging specified in the Schedules to the Act. The section also creates an offence for a person who contravenes the provision of this section.

Section 30 is proposed to be amended to increase the penalty from an amount that does not exceed two thousand shillings to an amount which is not less than three hundred thousand shillings. It is also proposed to amend section 46 to extend the powers of the Commissioner to compound offences under the Act with the intention of facilitating deterrence of offences an amicable settlement of dispute and discouragement of lengthy court trial process with a view to support continuity in trade.

The Bill proposes to introduce a new section 53A that makes provision aimed at making uniformity of prescribed standards of measurement by requiring local government authorities and government agencies engaged in prescribing measurements to adopt the prescribed measurements under the Act.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kufanya marekebisho katika Sheria Tisa ambazo ni Sheria ya Usafiri wa Anga, Sura ya 80; Sheria ya Mazingira, Sura ya 191; Sheria ya Mikopo kwa Wanafunzi wa Elimu ya Juu, Sura ya 178; Sheria ya Utumishi wa Umma, Sura ya 298; Sheria ya Majadiliano ya Pamoja katika Utumishi wa Umma, Sura ya 105; Sheria ya Mamlaka ya Udhhibiti wa Usafiri wa Nchi Kavu na Majini, Sura ya 413; Sheria ya Leseni za Usafirishaji, Sura ya 317, Sheria ya Msajili wa Hazina, Sura ya 370 na Sheria ya Vipimo, Sura ya 340.

Mapendekezo ya marekebisho yanalenga kuondoa mapungufu ambayo yamejitokeza katika Sheria hizo wakati wa utekelezaji wa baadhi ya masharti katika Sheria hizo.

Muswada umegawanyika katika Sehemu Kumi, ambapo 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 Pili ya Muswada inapendekeza kuifanyia marekebisho Sheria ya Usafiri wa Anga, Sura ya 80. Mapendekezo hayo yanalenga kuweka kifungu kipya cha 10A kinachoipa uwezo Mamlaka kukagua au kuzuia ndege yoyote pale inapokuwa na sababu za msingi za kuamini kwamba ndege hiyo inatumika kwa lengo la kukiuka mashariti ya Sheria hii.

Aidha, inapendekezwa kuongeza kifungu kipya cha 11A kwa lengo la kukidhi matakwa ya Ibara ya 83 ya Mkataba wa Chikago. Sehemu hii pia inapendekeza kuweka kifungu kipya cha 11B illi kutekeleza masharti ya Ibara ya 25 ya Mkataba wa Chikago unaohusu utoaji wa msaada wa ndege zilizo katika hatari. Vifungu vipya vya 19A na 19B vinapendekeza kumpa mamlaka Mkugurugezi Mkuu kufuta au kuahirisha matumizi ya cheti au leseni ya matumizi ya huduma za anga. Vile vile, Sehemu hii inapendekeza kukifanyia marekebisho kifungu cha 26 kwa kuongeza kifungu kidogo cha (7) kinachoipa Mamlaka sharti la kuhakikisha kwamba wakati inapotoa huduma ya usafiri wa anga hakuna muingiliano wa majukumu yake kama mdhibiti na yale ya uendeshaji.

Sehemu ya Tatu inapendekeza marekebisho ya Sheria ya Mazingira, Sura ya 191, ambapo kifungu cha 16 kinapendekezwa kurekebishwa ili kumpa haki Mwanasheria Mkuu wa Serikali ya kuingilia kati shauri lililofunguliwa dhidi ya Baraza au kufunguliwa na Baraza kwa kuliwakilisha mahakamani ipasavyo. Marekebisho haya yanalenga kulinda mali na maslahi ya Serikali.

Kifungu cha 57 kinarekebishwa kwa kuongeza kifungu kidogo cha (2) ambacho kitakuwa kinaweka mwongozo wa namna ya kupima urefu wa mita sitini kwenye kingo ya bahari, ziwa, mto au bwawa la maji kinachozuiliwa kufanyia shughuli zozote za kibinadamu. Inapendekezwa kuwa upimaji wa mita sitini utapimwa kuanzia kwenye kingo za maeneo hayo.

Sehemu hii pia inapendekeza marekebisho kwenye kifungu cha 184 ambapo kipengele (a) kinapendekezwa kifutwe na badala yake kiwekwe kifungu kipya kwa lengo kuainisha ndani ya Sheria kosa la kushindwa au kukataa kufanya tathmini ya madhara ya kimazingira pale ambapo

inatakiwa kuwa ni lazima tathmini hiyo kufanyika. Inapendekezwa pia kuweka kifungu kipya cha (3) ambacho kinaweka kuweka kosa ndani ya Sheria, inapendekezwa pia kuweka adhabu ya kosa hilo ambalo linapendekezwa kuwa ni adhabu ya faini isiyopungua shilingi milioni tano lakini isiyozidi shilingi bilioni moja au adhabu ya kifungo kisichopungua miaka miwili na kisichozidi miaka saba au vyote kwa pamoja.

Kifungu cha 187 kinapendekezwa kufanyiwa marekebisho kwa kuongeza adhabu kutoka kiwango kisichopungua shilingi milioni tatu na kisichozidi shilingi milioni hamsini, na kuwa kiwango kisichopungua shilingi milioni tano na kisichozidi shilingi bilioni kumi. Lengo la marekebisho haya ni kuongeza adhabu kwa makosa ambayo yana madhara ya moja kwa moja kwenye mazingira na kwa afya za jamii kutokana na uchimbaji wa madini au utafiti wa mafuta na gesi.

Kifungu cha 191 ambacho kinatoa adhabu ya jumla kwa makosa yanayotendeka ndani ya Sheria hii. Inapendekezwa katika kifungu hicho kufutwa maneno “milioni hamsini” na badala yake kuweka maneno “milioni mia tatu” ili kuongeza adhabu kwa makosa ambayo yana madhara ya moja kwa moja kwenye mazingira na kwa afya za jamii.

Sehemu hii pia inapendekeza marekebisho kwenye Jedwali la Nne ambalo linahusiana na Muundo na Mwenendo wa vikao vya Bodi ya Wadhamini wa Mfuko. Marekebisho yanalenga kuongeza idadi ya Wajumbe wa Bodi. Madhumuni ya marekebisho haya ni kuongeza idadi ya Wajumbe wa Bodi ambao wanatakiwa wawe ni watu ambao wana uelewa, ujuzi na uzoefu kwenye masuala yanayohusiana na masuala ya Mifuko.

Sehemu ya Nne ya Muswada inapendekeza kuifanyia marekebisho Sheria ya Mikopo kwa Wanafunzi wa Elimu ya Juu, Sura ya 178. Sehemu hii inapendekeza kufanyia marekebisho Kifungu cha 5 kwa kupunguza idadi ya Wajumbe wa Bodi mpaka kufikia saba kwa lengo la kupunguza gharama za uendeshaji. Kifungu cha 19 cha Sheria kinapendekezwa kufutwa na kuandikwa upya kwa madhumuni ya kuweka wajibu kwa munufaika wa mkopo kumuarifu mwajiri kwamba yeye ni munufaika wa mkopo. Kifungu hiki kipya pia kinabainisha kiwango cha mkopo kinachopaswa kurejeshwa na munufaika aliyejijiri ambapo atalipa kiasi kisichopungua shilingi laki moja na elfu ishirini au asilimia kumi na tano ya kipato chake.

Marekebisho haya pia yanapendekeza kukifuta na kukiandika upya kifungu cha 20 kwa lengo la kuweka wajibu kwa mwajiri kuitaaruifu Bodi kuhusu ajira ya mtu yeyote ambaye ana Shahada au Stashahada na pia kukata makato ya mwezi kutoka kwenye Mshahara wa munufaika wa mkopo. Kifungu hiki pia kinapendekeza kufanya marejesho ya mkopo kuwa ya Kisheria na kupewa nafasi ya awali katika orodha ya makato. Kifungu cha 21 cha Sheria pia kinapendekezwa kufutwa na kuandikwa upya kwa lengo la kuweka adhabu kwa waajiri wanaoshindwa kuwasilisha marejesho ya mwezi baada ya makato.

Muswada unapendekeza kufanyiwa marekebisho katika Jedwali kwa kuongeza katika ibara 4 ibara ndogo ya (7) ili kuiwezesha Bodi kumualika mtu kuhudhuria vikao vya Bodi na kuisaidia Bodi kufikia maamuzi mbalimbali yanayohitaji maamuzi ya kitaaluma.

Sehemu ya Tano inapendekeza marekebisho katika Sheria ya Utumishi wa Umma, Sura ya 298 kwa lengo la kutoa tafsiri ya neno “recruitment Secretariat”, maneno haya yametumika katika Sheria lakini hayakuwa yamepewa tafsiri. Kifungu cha 8 kinapendekeza kufanyiwa

marekebisho ili kumpa mamlaka Katibu Mkuu (Utumishi) kurekebisha na kuwianisha mishahara, posho na marupurupu mengine kwa watumishi wa umma.

Sehemu hii pia inapendekeza kuongeza kifungu kipya cha 9A kinachozizuia taasisi za umma, wakala, bodi na tume zisirekebishe au kuwianisha mishahara, posho na marupurupu mengine kwa watumishi.

Kifungu kipya cha 9B kinachopendekezwa kinakusudia kuipa nguvu Sheria ya Utumishi wa Umma pale itakapokinzana na sheria nyingine kwenye mambo yanayohusu mishahara, posho na marupurupu ya watumishi.

Muswada pia unapendekeza kuweka kifungu kipya cha 32A kinachomtaka mtumishi kukamilisha taratibu zote za utatuzi wa migogoro ndani ya Sheria hii kabla ya kutumia taratibu zilizoainishwa kwenye sheria nyingine. Inapendekezwa pia kukifuta kifungu cha 33 na kukirekebisha kifungu cha 34 ili kuakisi marekebisho yaliyofanywa kwenye Sheria ya Mfuko wa Fidia kwa Waajiriwa ambayo yaliainisha Mfuko wa Fidia.

Sehemu ya Sita inapendekeza marekebisho katika Sheria ya Majadiliano ya pamoja katika Utumishi wa Umma, Sura ya 105.

Kifungu cha 4 kinapendekezwa kufanyiwa marekebisho kwa kumuondolea Katibu mamlaka ya kuteua Watumishi wa Umma wanaounda Baraza la majadiliano ya pamoja ya Watumishi wa Umma. Aidha, inapendekezwa kufanya marekebisho kwa kuingiza kifungu kidogo kipya cha (5) ili kumuwezesha Waziri kuteua Katibu kutoka Wizara yenye dhamana na kada husika ya watumishi. Vile vile, inapendekezwa kufuta kifungu cha 11 ili kuondoa masharti yanayokatiza Baraza la Majadiliano ya pamoja ya watumishi na Baraza la Pamoja la Watumishi wa Umma kutoa mapendekezo kuhusiana na ujira.

Sehemu ya Saba ya Muswada inapendekeza kufanya marekebisho katika Sheria ya Mamlaka ya Udhibiti Usafiri wa Nchi Kavu na Majini, Sura ya 413 kwa kuongeza kifungu kipya cha 40A ili kuweka masharti yanayoruhusu ulipwaji wa faini pale mkosaji anapokiri kosa badala ya kila kosa kufuata taratibu za kimahakama.

Madhamuni ya marekebisho haya ni kuweka utaratibu wa utatuzi wa migogoro pasipo kuhusisha mchakato mrefu wa kimahakama ambao umekuwa ni kikwazo katika kuendeleza na kukuza biashara katika sekta ya usafirishaji.

Sehemu ya Nane ya Muswada inapendekeza kufanya marekebisho katika Sheria ya Leseni za Usafirishaji Sura ya 317. Inapendekezwa kuvifanyia marekebisho vifungu vya 11(6), 35(1), 41(1) na (2) na 42(2) kwa lengo la kurekebisha adhabu zilizobainishwa katika vifungu hivyo ili viende na wakati.

Muswada pia unapendekeza kuongeza kifungu kipya cha 47A ili kuweka masharti yanayoruhusu ulipwaji wa faini pale mkosaji anapokiri kosa badala ya kila kosa kufuata taratibu za kimahakama.

Madhamuni ya marekebisho haya ni kuweka utaratibu utatuzi wa migogoro pasipo kuhusisha mchakato mrefu wa kimahakama ambao umekuwa ni kikwazo katika kuendeleza na kukuza biashara katika sekta ya usafirishaji.

Sehemu ya Tisa ya Muswada inapendekeza kufanya marekebisho kwenye Sheria ya Msajili wa Hazina, Sura ya 370. Kifungu cha 3 kinarekebisha ili kumpa haki Mwanasheria Mkuu wa Serikali kuingilia kati shauri lolote lililofunguliwa dhidi ya Msajili wa Hazina au kufunguliwa na Msajili wa Hazina kwa kumwakilisha mahakamani ipasavyo. Marekebisho haya yanalenga kulinda mali na maslahi ya Serikali.

Sehemu ya Kumi ya Muswada inapendekeza kuifanyia marekebisho Sheria ya Vipimo, Sura ya 340. Inapendekezwa kufanya marekebisho ya jumla kwenye Sheria kwa lengo la kukuboresha matumizi ya maneno “kifaa cha kupimia” na “mkaguzi”.

Kifungu cha pili kinapendekezwa kufanyiwa marekebisho kwa lengo la kutoa tafsiri ya neno “chombo” na kuboresha tafsiri ya neno “biashara”.

Pia Sehemu hii ya Muswada inapendekeza kukifanyia marekebisho kifungu cha 3 ili kumpa mamlaka Waziri kufanya marekebisho kwenye Majedwali ya Sheria pale itakapohitajika kufanya hivyo. Inapendekezwa kukifanyia marekebisho kifungu cha 19 ili kumtaka mtu anayemiliki kipimo au kifaa cha kupimia uzito ambacho kinatumika au kinachokusudiwa kutumika kibiashara kukiwasilishwa kwa mkaguzi hata kama taarifa ya kufanya hivyo haikuwa imetolewa hapo awali. Marekebisho kwenye kifungu hiki pia yanalenga kuwezesha vifaa vya kupimia vikaguliwe angalao mara moja kwa mwaka tofauti na ilivyokuwa hapo awali ambapo vifaa hivyo vilikuwa vinakaguliwa si zaidi ya mara moja kwa mwaka. Kifungu cha 26 kinapendekezwa kurekebisha ili kumtaka mmliki wa gari au mtu aliyekodishwa kubeba au kusafirisha mizigo iliyofungashwa kufuata masharti ya ufungaji wa mizigo yaliyobainishwa katika Majedwali ya Sheria hii. Kifungu hiki pia kinatoa adhabu kwa mtu anayekiuka masharti ya kifungu hiki.

Kifungu cha 30 kinapendekezwa kufanyiwa marekebisho kwa kuongeza adhabu kutoka kiasi kisichozidi shilingi laki mbili hadi kiasi kisichopungua shilingi laki tatu. Kifungu cha 45 kinapendekezwa kufanyiwa marekebisho ili kuongeza adhabu ambayo imepitwa na wakati. Inapendekezwa kufanya marekebisho kwenye Kifungu cha 46 ili kumuongezea Kamishna mamlaka ya kufilisha makosa yaliyotendwa chini ya Sheria hii kwa lengo la kuwezesha utatuzi wa migogoro kwa njia ya amani.

Pia inapendekezwa kuongeza kifungu kipya cha 53A kwa lengo la kuweka jukumu kwa mamlaka za serikali za mitaa na wakala wa serikali kuzingatia vipimo vilivyobainishwa katika Sheria hii.

Dar es Salaam,
15 Agosti, 2016

GEORGE M. MASAJU
Mwanasheria Mkuu wa Serikali