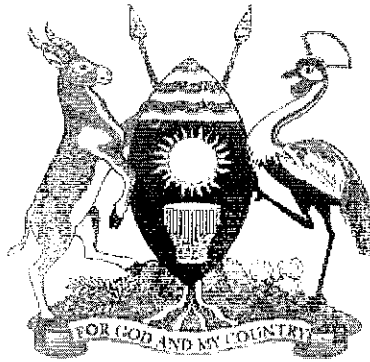


PARLIAMENT OF THE REPUBLIC OF UGANDA



**A REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND
ECONOMIC DEVELOPMENT ON THE COMPANIES (AMENDMENT) BILL,
2022**

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A REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT ON THE COMPANIES (AMENDMENT) BILL, 2022

1.0 Introduction

The Companies (Amendment) Bill, 2022 was read for the first time on 23rd August, 2022 and in accordance with Rule 129 (1) of the Rules of Procedure of Parliament was referred to the Committee on Finance, Planning and Economic Development.

Rt. Hon. Speaker, the Committee has considered the Bill and we beg to report.

2.0 Methodology

The Committee held meetings and received memoranda from the following:

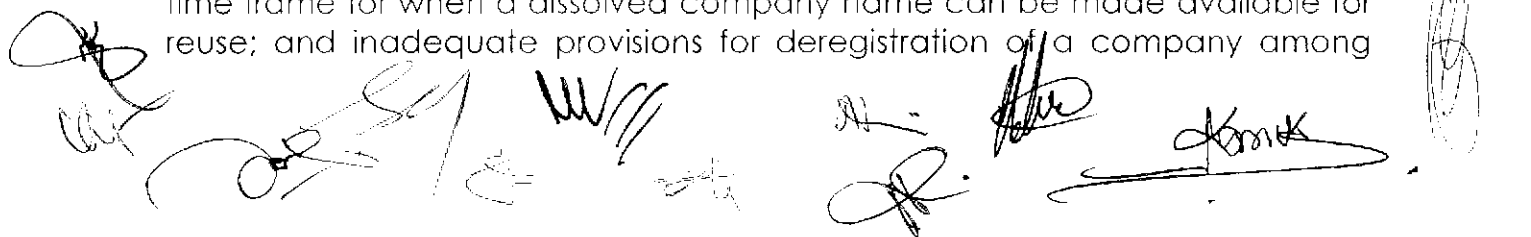
- a) Ministry of Finance, Planning and Economic Development;
- b) Attorney General;
- c) Financial Intelligence Authority;
- d) Uganda Registration Services Bureau; and
- e) Uganda Revenue Authority

3.0 Object of the Bill

The object of the Bill is to amend the Companies Act, 2012 to streamline and simplify the procedures for incorporation of companies, to require public companies which do not comply with any code of corporate governance to comply with Table F relating to corporate governance, to provide for the re-registration of a company limited by guarantee; to provide for the registration of a company limited by guarantee as a company limited by shares; to define "beneficial owners", to provide for a beneficial owners register and to empower the minister to make regulations for beneficial ownership; to provide for the registrar to cancel the registration of companies which are no longer in business; to provide for the company to voluntarily petition the registrar to strike off a company which is no longer in business from the register; to provide for the duties of the registrar as an accountable person; and to provide for any related matters.

4.0 Justification of the Bill

The Committee noted that the Bill seeks to address the inadequate provisions in the companies Act, 2012 manifested by lack of provisions on transparency and disclosure of beneficial owner's information and threshold; inadequate provision on striking off of defunct companies on the register; absence of a time frame for when a dissolved company name can be made available for reuse; and inadequate provisions for deregistration of a company among

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others. When these issues are addressed, it will facilitate the country to adhere to Financial Action Task Force (FATF) and East and Southern Africa Anti-Money Laundering Group (ESAAMLG) recommendations.

5.0 Committee Observations and Recommendations

5.1 Beneficial ownership for companies

The Committee observed that the Bill seeks to provide for the definition of beneficial owner and to require all companies to keep a register of beneficial owners.

The Committee noted that the rationale is to comply with Recommendation 24 of the Financial Action Task Force (FATF) which requires countries to take measures aimed at preventing misuse of legal persons for money laundering and terrorism financing.

The Committee further noted that the definition of "beneficial owner" as proposed in the Bill differs from the definition provided in the Income Tax (Amendment) Act, 2022 hence the need to harmonise the definition.

Whereas the Income Tax (Amendment) Act, 2022 restricts the definition of beneficial owner in relation to a legal person to among others a natural person who controls or owns ten percent of shares or voting rights of the person; the proposed definition in the Companies (Amendment) Bill, 2022 defines 'a beneficial owner' to mean a natural person who has final ownership or control of a company or natural person on whose behalf a transaction is conducted in a company and includes a natural person who exercises absolute control over a company.

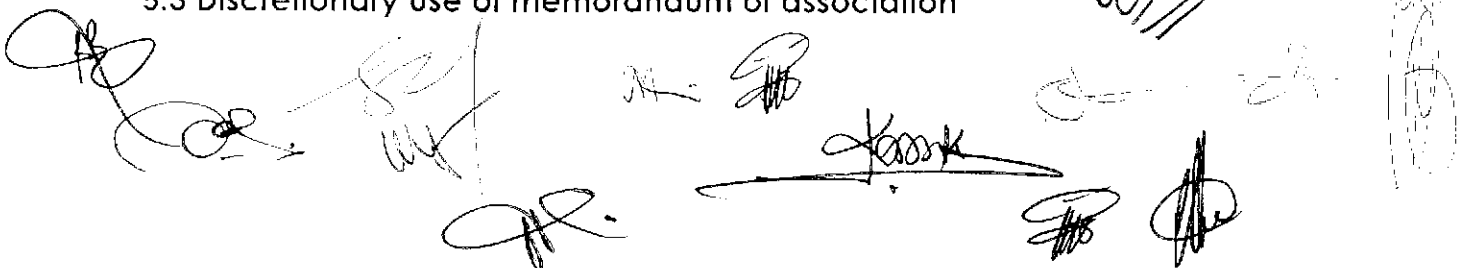
The Committee therefore recommends that Clause 2 of the Bill defining "beneficial owner" be maintained.

5.2 Centralised Register of beneficial owners

The Committee observed that under Clause 21, companies will be required to keep registers of their beneficial owners. However, the provision does not provide for the establishment of a centralised register of beneficial owners.

The Committee therefore recommends that Clause 21 is amended to provide for a centralised register of beneficial owners.

5.3 Discretionary use of memorandum of association



The Committee observed that Clause 2 of the Bill amending Section 4 of the Principal Act provides for a form under the second schedule of the Act, which when applied, makes the submission of Memorandum and articles of Association optional.

The Committee therefore recommends that Clause 2 of the Bill amending Section 4 of the principal Act be maintained.

5.4 Default code of corporate governance

The Committee observed that the Bill seeks to amend section 14 of the Act to have a default code of corporate governance specified in table F that applies to every public company that does not comply with any corporate governance provisions under any other law. The rationale for the proposed amendment is that there are other laws that require certain companies regulated under those laws to adopt codes of corporate governance, like the Capital Markets Authority Act, Cap 84 and the Financial Institutions Act, 2004.

The Committee recommends that Clause 4 amending Section 14 of the principal Act be maintained.

5.5 Repealing the issuance of share warrant to bearer

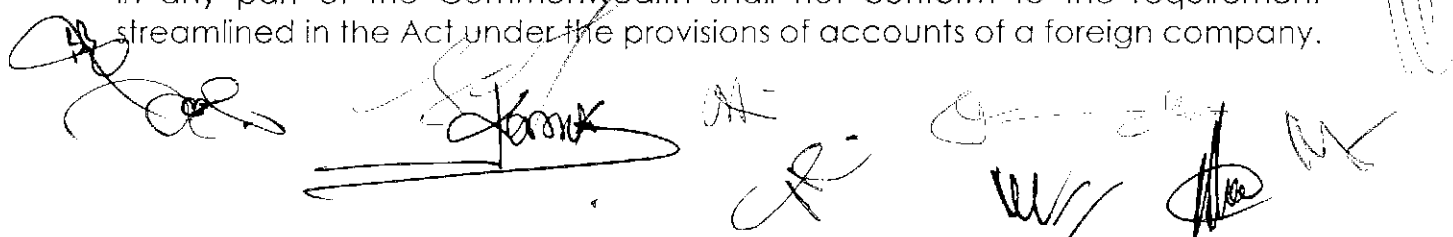
The Committee observed that provisions of the Companies Act, 2012 allowing for the issuance of share warrants to bearer does not allow for transparency and disclosure of information on the ownership of companies. This facilitates tax payers and shareholders to conceal information from both the Commissioner General of the Uganda Revenue Authority and the Registrar of Companies. This is not in line with the international standard for transparency and exchange of information for tax purposes. Resultantly, the issuance of share warrants has been done away with in the proposed Bill.

The Committee further noted that this provision is in line with Recommendation 25 of the 40 FATF recommendation relating to transparency and beneficial ownership of legal arrangements, under which Uganda is currently considered non-compliant.

The Committee recommends that Clause 16 amending Section 96 of the principal Companies Act be maintained.

5.6 Foreign company incorporated in any part of the Commonwealth to conform to the provisions of the Act

The Committee observed that the Bill seeks to repeal the exemption under section 256 (1) (a) of the Act to the effect that foreign companies incorporated in any part of the Commonwealth shall not conform to the requirement streamlined in the Act under the provisions of accounts of a foreign company.

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Section 256 (1) (a) of the Act gives preferential treatment to countries that are members of the Commonwealth group of countries in filing of returns. This disadvantages countries like Burundi which is a member of the East African Community but is not a Commonwealth country. This exemption is archaic and has been overtaken by events. While it was easy to access information on companies incorporated in other Commonwealth countries, it is not easy now and countries today have different legal registration requirements.

The Committee further observed that the exception and special treatment of Commonwealth countries contradicts FATF's recommendation 24, 25 and 26 on transparency and beneficial ownership for legal persons, legal arrangements and financial institutions simply based on their colonial legacies.

The Committee recommends that Clause 33 amending Section 256 of the Companies Act 2012 be maintained.

5.7 Power of the registrar to strike defunct companies off the register

The Committee observed that the Bill seeks to empower the registrar to strike off defunct companies from the register either on his or her own accord or at the request of the company. However, the registrar should give notice of the intention to strike off to the company.

The Committee took into consideration the concerns of some stakeholders that the striking off of defunct companies from the registrar may pose a risk of encouraging non-compliant companies and companies whose activities are considered unlawful to escape the law by simply voluntarily requesting for their striking from the registrar of companies.

The Committee recommends that Clause 37 of the Bill be amended to provide for 30 days notice period.

5.8 Registration Form

The Bill seeks to replace the registration form in Schedule 2 of the Act. The rationale for the proposal is to have a precise and comprehensive registration form that will enhance the ease of doing business.

The Committee recommends that Schedule 2 of the principal Act be amended as proposed by the Bill.



PROPOSED AMENDMENTS TO THE COMPANIES (AMENDMENT) BILL, 2022

Insertion of new clause in the Bill

The Bill is amended in clause 21 by inserting immediately after the proposed section 119A, the following-

“119B. Centralised Register of beneficial owners.

(1) Notwithstanding section 119A, there shall be kept by the registrar a record called the “centralised register of beneficial owners” comprising beneficial owners registered under the laws of Uganda.

(2) The Minister shall by regulations, prescribe the procedure for accessing the centralised register of beneficial owners”

Justification

This will ensure collection and disclosing of beneficial ownership information in a systematic and centralised register. It will ease access of beneficial ownership information in a standardised format. The centralised register will also limit the practical barriers in accessing beneficial ownership information that may be spread in various laws.

Clause 38: Amendment of section 259 of principal Act

Clause 38 is amended by substituting for the proposed sub clause (5), the following-

“(5) Notwithstanding subsection (1), a foreign company shall publish the notice of cessation of business in the Gazette or any other media of wide circulation as the registrar may determine by a notice published in the gazette specifying that the company is solvent and intends to cease business in Uganda after thirty days from the date of publication of the notice.”

Justification

There is need to recognise other forms of media other than newspapers of wide circulation

Clause 41: Insertion of new section 265A in principal Act

Clause 41 is substituted with the following-

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"41. Insertion of new section 265A in principal Act

The principal Act is amended by inserting immediately after section 265, the following new section-

"265A. Power of registrar to strike defunct companies off register.

(1) The registrar may, at the request of the company or on his or her own accord, cancel the registration of a company under this Act in accordance with the regulations made by the Minister.

(2) A company that is struck off the register under subsection (1), shall no longer carry on business.

(3) The registrar shall, before cancelling the registration of a company, give thirty days' notice to the company of the intention to cancel the registration of the company from the register in accordance with section 274 of the Act and shall publish the notice in the gazette or any other media of wide circulation as the registrar may determine by a notice published in the gazette.

(4) Where there is no objection and upon the expiry of the thirty days' notice under subsection (1), the registrar shall strike the company off the register."

Justification

Need to provide for the procedure to be followed by the registrar before striking off a company off the register and to require the registrar to give a thirty days' notice to a company that is to be struck off the register. This will provide the company an opportunity to respond to the notice should the company deem it fit prior to the registrar striking it off the register.

Clause 44: Amendment of section 272 of principal Act

Clause 44 is amended by substituting for paragraph (b), the following-

"by inserting immediately after subsection (1), the following-

"(2) Notwithstanding the provisions of subsection (1), where a company passes a resolution for voluntary winding up of the company and the registrar is satisfied in accordance with the regulations made by the

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Minister, that the company has no assets or liabilities, the registrar may strike off the company from the register without applying the provisions of the Insolvency Act, 2011."

Justification

To empower the Minister to prescribe by regulations the procedure for voluntary winding up of the company.

Clause 46: Amendment of section 277 of principal Act

Clause 46 is amended by substituting the words "Section 276" the words "Section 277".

Justification

To correct a typographical error.

Insertion of new clause in the Bill

The Bill is amended by inserting immediately after clause 50, the following-

"51. Amendment of principal Act

The principal Act is amended-

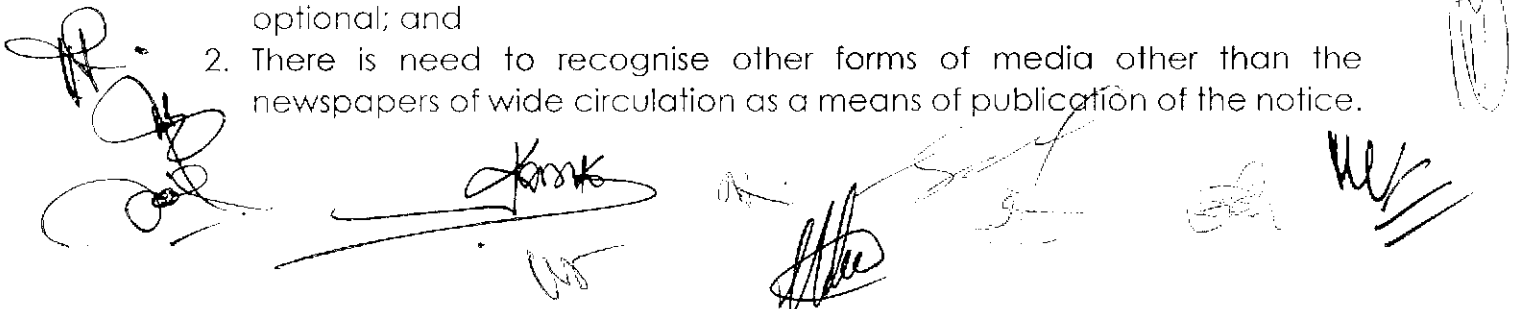
(a) by inserting the words "if any" immediately after the word "memorandum" wherever it appears.

(b) by substituting for the words "gazette and newspaper of wide circulation" wherever it appears, the words, "gazette or any other media of wide circulation as the registrar may determine by notice published in the gazette";

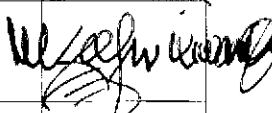
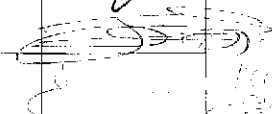
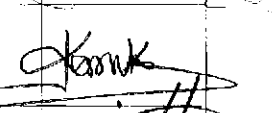

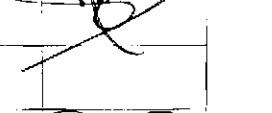
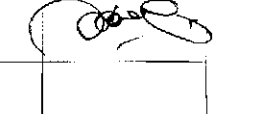



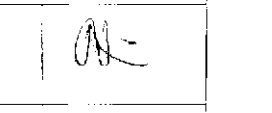
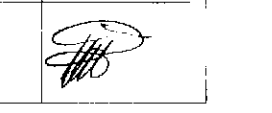
(c) by substituting for the words "newspaper of wide circulation" wherever it appears the words "any media of wide circulation as the registrar may determine by notice published in the gazette";

Justification

1. To ensure consistency that the requirement to file a memorandum is optional; and
2. There is need to recognise other forms of media other than the newspapers of wide circulation as a means of publication of the notice.

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MEMBERS OF THE COMMITTEE FINANCE, PLANNING AND ECONOMIC DEVELOPMENT; THE COMPANIES (AMENDMENT) BILL 2022

NO	NAME	CONSTITUENCY	PARTY	
1	Dr. Keefa Kiwanuka C/P	Kiboga East County	NRM	
2	Hon. Avur Jane Pacuto D/CP	DWR Pakwach	NRM	
3	Hon. Wamakuyu Ignatious Mudimi	Elgon County	NRM	
4	Hon. Kankunda Amos Kibwika	Rwampara County	NRM	
5	Hon. Atima Jackson	Arua Central	NRM	
6	Hon. Bataringaya Basil	Kashari North County	NRM	
7	Hon. Asiiimwe K Enosi	Kabula County	NRM	
8	Hon. Aleper Moses	Chekwi County	NRM	
9	Hon. Ssejoba Isaac	Bukoto County Mid West	NRM	
10	Hon. Tayebwa Herbert Musasizi	Kashongi County	NRM	
11	Hon. Lematia John	Ayivu West County	NRM	
12	Hon. Kyooma Xavier Akampurira	Ibanda County North	NRM	
13	Hon. Nakut Faith Loru	DWR Napak	NRM	
14	Hon. Nangoli Gerald	Elgon North County	NRM	
15	Hon. Katali Loy	DWR Jinja	NRM	
16	Hon. Ochai Maximus	West Budama County North	NRM	
17	Hon. Opolot Patrick Isiagi	Kachumbala County	NRM	
18	Hon. Wanda Richard	Bungokho Central	NRM	

19	Hon. Okwir Samuel	Moroto County	NRM	
20	Hon. Nabukeera Hanifa	DWR Mukono	NUP	
21	Hon. Muwanga Kivumbi	Butambala County	NUP	
22	Hon. Ssenyonyi Joel	Nakawa West	NUP	
23	Hon. Nandala Mafabi	Budadiri West County	FDC	
24	Hon. Nabagabe Kalule Flavia	Kassanda WDR	NUP	
25	Hon. Akol Anthony	Kilak North	FDC	
26	Hon. Luttaguzi Semakula P.K	Nakaseke South	DP	
27	Hon. Ocan Patrick	Apac Municipality	UPC	
28	Hon. Omara Paul	Otuke County	INDEP.	
29	Hon. Muhammad Nsereko	Kampala Central Division	INDEP.	
30	Hon. Aciro Paska Menya	DWR Pader	INDEP.	
31	Hon. Kinyamatama Suubi Juliet	DWR Rakai	INDEP.	
32	Hon. Masaba Karim	Mbale, Industrial Division	INDEP.	