

ANNEX 1

MATRIX OF PRIVATE SECTOR PROPOSED AREAS THAT SHOULD BE AMENDED IN THE BUSINESS ACTIVITIES REGISTRATION ACT (BARA Act) MAY, 2015

S/N	Issue or provision	Problem	Proposed amendments	Rationale for proposed amendments	Expected impact	Current Government proposals
1	Sections 3 (definition of “business” and “regulated business”); 11 (1), (2), (3) (4) and (5) (on registration of regulated and unregulated business); and section 13 (d) (e), (g), (h), (i) (on information that every application must contain)	<p>Problem:</p> <p>The BARA Act applies to all businesses regardless of size or type and regardless of prior registration except for regulated businesses or businesses which are not-for- profit leading to:</p> <p>Duplicative registration</p> <p>Confusion as to which businesses are regulated businesses. Ambiguity as to what constitutes a business which “is not regulated under any written law” in section 11 (2). This casts doubt about what is really meant by the definition of “regulated business” in section 3.</p> <p>Duplication of registration in section 13 regarding the information which an application for registration must contain which envisages businesses governed by other laws to have to be registered for compliance under the BARA Act (read section 11(3) together with section 13).</p>	<ul style="list-style-type: none"> Remove duplication by excluding all businesses: registered under any other law such as companies established or registered under the Companies Act, registered under the Business Names Act, established under the Cooperative Societies Act already excluded businesses namely regulated businesses and not-for- profit businesses. 	<p>Information about what these businesses do is already with the Registrar of companies who is also the Registrar for:</p> <ul style="list-style-type: none"> Business names Intellectual property (patents and Trademarks) <p>Information already with the Registrar of Cooperatives</p> <p>Information already with the Administrator General of Trusts under RITA in the case of trusts</p> <p>Information is already with the Registrar of NGOs for NGOs established under the NGO law.</p>	<p>This would remove duplication of registration</p> <p>Reduce the costs involved by businesses to comply and the costs of administration and enforcement</p> <p>Will limit the scope to businesses that choose to register under the BARA Act for first instance which would require a recast of the provisions to suit the limited scope.</p>	Not in the current Government proposals
2	<p>Section 11 (3) even regulated businesses must provide information to the Registration centres (BRC).</p> <p>A registrar of a centre is obligated to notify the Chief Registrar of regulated businesses licensed to undertake business operating within his jurisdiction (section 11 (3)).</p>	<p>Problem:</p> <p>A regulated business which is excluded from registration still has to provide information to registrar of BRC in order for Chief Registrar to be notified. It is not clear why the Chief Registrar should be notified of a regulated business operating within the jurisdiction of a BRC.</p>	Delete the provisions in section 11(3) and recast the whole of section 11 to suit limited scope	The amendments are necessary to effect the limited scope	<p>This will remove the obligation on Registrars from having to obtain information on businesses that are excluded from the BARA Act and notify the Chief Registrar about those businesses</p> <p>Will remove duplication of information as the Chief Registrar will have information about these businesses as almost all are established as companies limited by shares and have to file returns</p>	Not in the current Government proposals

					on their business activities annually and in some cases transnationally.	
3	BARA Act is about registration of business activities but, as section 13 is currently formulated, the Register cannot be on the registration of activities. See section 13 (a)-(h)	<p>Problem:</p> <p>BARA Act established a registration of activities system which does not suit the Tanzanian common law legal system.</p> <p>The Registry serves no purpose if it is a business activities Register but what it contains are not activities.</p> <p>Fundamental issue of integrity of the register. What is the nature of the register? Is it a business names Register, a Companies Register or Activities Register?</p>	Either the section is recast to provide for registerable activities which will require a clear definition of activities that are registerable or abandon the BARA Act and improve the Business Names Act to be the vehicle for the formalisation drive.	<p>The amendment will bring much needed clarity on the purpose of BARA Act that of registering activities.</p> <p>The confusion about what activities ought to be registerable with re-registration of businesses already registered is reflected in the provisions of section 13.</p>	It will be possible to list what activities are registerable.(however, this will expose the main weakness of the BARA Act, that it is not practical to register activities but more practical to register business names).	Current Government proposals re for a definition of “ business activity” to have to be provided rather than definition of registerable activities. In this sense it is different from this proposal
4	Registration assumes a business already established and operational- section 13- but the BARA Act covers unregistered businesses or businesses that have not been registered.	<p>Problem:</p> <p>New businesses would be unable to answer adequately the information required under section 13.</p>	Recast section 13 to only cover businesses registered under the BARA Act and remove information that assumes that businesses will have commenced before registration and make registration optional. Amend section 11 to make registration under the BARA Act optional.	Necessary in order to remove duplication of registration of businesses that are already registered and will provide for optional registration of businesses not registered under any other law to register under BARA Act.	Will make BARA Act applicable only to businesses that choose to register under the Act not registered anywhere else.[however, the Act will have to be amended further to provide for environment similar to that under the Business Names Act	Not provided in current Government proposals
5	BARA Act covers all businesses including informal businesses without any business premises (see section 3 and 11) - but no provision of information for registration suitable to informal businesses	<p>Problem:</p> <p>Some businesses which are registerable under the BARA Act have no fixed premises or fixed places or no particular place of business. These type of businesses would be in breach of will breach sections 19, 24, 26 and 28. For breach, the penalty could be of de-registration.</p> <p>The registration process, the information that must be provided in the application form (13 (0), the penalties (sections 19 (a), 24 (c), 26 (4) (a), and 28 (d) all assume that every business will be carried out in formal fixed premises.</p>	amend sections 3 and 11 to dis-apply the BARA Act to businesses with no fixed premises or places. Provide business premises available for businesses with no premises to encourage them to register.	For enforcement purposes it is impracticable to register businesses whose with no fixed premises or matching-guys	Will effectively remove businesses with no fixed premises or places from the BARA Act Put pressure on Government to provide business premises (affordable) to such business people.	Not in the current Government proposals
6	Section 11 (1) each business must be registered except regulated businesses or not-	<p>Problem:</p> <p>Duplication of registration, duplication</p>	Amend section 11 to suit the proposed limited scope of application of the BARA Act	Removes duplication of registration of businesses already established under other laws	BARA Act would be optional and applicable to businesses not registered under any other law	Not in the current Government proposals

	<p>for-profit businesses. Duplication of business registration see section 1 on definition of “ business”, and sections 11 (1) and 13 (a) (d) (e) & (g)</p> <p>A firm registered under the Business Names Act or a Company established or registered under the Companies Act No.12 of 2002 which is not regulated and issued with a certificate of registration in the case of a firm, or a company’s branch, or a certificate of incorporation in the case of a company established or a cooperative society established under the Cooperative Societies Act must register again under the BARA Act for a certificate of registration.</p>	<p>of costs and duplication of the registration process, increases the cost of doing business and complicates the process. The process adds no business or public administration value when compared to the time and money that would be spent.</p>				
7	<p>Multiple registrations under BARA Act itself.</p> <p>A business person has to register his business in every LGA and with respect to each premise even within the same LGA area. It is not clear what the objective of the registration of businesses under BARA is or what would be the effect of registration under BARA Act?</p>	<p>Problem:</p> <p>The process is burdensome to all businesses small and large but more on small businesses.</p> <p>Multiple registration increases the cost of doing business and the time it would take to register every premise where one’s business is located even within the same LGA.</p> <p>For instance, if a person has 1000 business premises situated in several regions in Tanzania, each one of the businesses must be registered although it may be the same and owned by the same person. Such person will have to have a 1000 certificates of registration just to comply.</p>	<p>Amend the Act to provide for only one registration and one certificate of registration for a business issued to an owner applicable anywhere in Tanzania.</p>	<p>This will simplify registration as is under the other laws where registration is one applicable everywhere in Tanzania.</p> <p>Reduces the cost of doing business as well as administration costs for implementing the BARA Act</p> <p>Reduces duplication of certificates</p>	<p>This will have the impact of LGA not getting a source of revenue but Government need to decide whether it has priority on encouraging business registration or revenue collection</p>	<p>Not in the current Government proposals.</p>
8	<p>Institutional duplication Sections 5,6,7 & 8</p> <p>Specifically institutional implementation structure involves two ministries whereby the registrars in the</p>	<p>Problem:</p> <p>Implementation by two different ministries creates inefficiencies in budgeting, prioritizing issues, disciplining personnel and in actions.</p>	<p>Amend the BARA Act to be implemented under BRELA by the Registrar of Companies who should be designated “Registrar of Business Activities”.</p>	<p>Reduces bureaucracy and duplication of administration,</p> <p>Provides more efficient institutional framework for implementing the BARA Act</p>	<p>Will remove registration from LGAs which have no professional training for maintaining registries.</p> <p>Will be a more cost effective way of implementing the BARA Act</p>	<p>Not included in the current Government proposals</p>

	<p>registration centres are appointed by the Minister for local Government but are supervised and answerable to the Chief Registrar who is under the Ministry of Industry, Trade and Marketing</p> <p>BARA Act, places implementation mandate in LGAs which are ill capacitated to implement it, in terms of expertise in registry maintenance, equipment and premises and at the same time links the centres with the companies' registry. BRELLA is under the Ministry of Industry, Trade and Marketing whereas the registration centres are under the Local Government Ministry. BRELLA which has to keep the central registration of BARA Act will supervise registrars employed by a different Ministry!</p>	<p>Under the Business Registration and Licensing Act, BRELLA is mandated and organized to provide registration and licensing of businesses. It has the expertise in terms of staff who are trained to maintain registries. The problem. The BRC have to be established in each LGA to international standards</p>		<p>RELA is more of a one- stop registration centre. BRELA is responsible for:</p> <ul style="list-style-type: none"> • Companies • Business names • Patents • Trade marks 	<p>This will allow a phased implementation of BARA Act because there is no prescribed registration centres in the Act establishing BRELLA</p>	
9	<p>Sections 5, 6, 7 & 8 Duplication of registries</p> <p>The BARA Act has created a parallel registration system for business registration at LGAs to do what BRELLA is established to in the whole of Mainland Tanzania (see sections 7&8 read together with sections 5 and 6). The BRC have yet to be set up, equipped and manned.</p>	<p>Problem:</p> <p>Duplication of costs, time, increases bureaucracy and makes the cost of doing business higher. Having to establish a very expensive parallel registry system. No value for money. Complication of business registrations to be under BRELLA and under BRCs.</p> <p>The cost of establishing registration centres that are able to provide international best practice quality of services have not been worked out fully, 8 years since the entry into force of the BARA Act. It is clear that such cost would run into hundreds of millions since in many places the centres have to be built and equipped and the potential registrars have to be trained.</p>	<p>Amend sections 5,6,7,8 and related sections in BARA Act to remove LGAs from registration and give this function to BRELA</p>	<p>Two systems of business registration which are parallel not justifiable</p> <p>Government has not evaluated how much compulsory implementation of BARA Act will cost the tax payer but not difficult to assess generally that the second registry system proposed in BARA Act is duplicative and very costly.</p>	<p>This will remove the costly establishment of parallel registration system</p> <p>Will reduce costs of maintaining the registry because BRELLA is already equipped institutionally to implement the BARA Act</p> <p>Reduce the costs of compliance for businesses and of administration for Government</p>	<p>Not included in current Government proposals</p>

		Duplication not necessary as BRELLA is more cost effective. BRELLA can very quickly roll out its services into regions and districts and eventually villages and it can do so in a practical manner and gradually as money and training of experts permit.				
10	Duplication of laws for registration of unincorporated small and micro businesses.	In respect of small and micro business which are not corporate, there is in place already a law, the Business names Act which is implemented by BRELLA and which fits into the Tanzanian legal system. It is very easy to implement.	Amend BARA Act to dis-apply BARA Act to businesses already registered under other laws as proposed above. Best alternative- repeal or do not implement BARA Act and instead use the Business Names Act	In its limited scope BARA Act should apply optionally to persons wishing to register their businesses under it excluding businesses registered under other laws The proposed alternative Avoids duplication of laws on same unincorporated businesses	Will dis-apply BARA Act from unincorporated businesses registered under Business Names Act Will not address the duplication of laws in the context described but proposal will limit the scope of application of BARA Act. The alternative will	Not included in the current Government proposals
11	Section 4- on operational issues on coordination and monitoring performance of BRC, is misplaced in the Minister operational responsibilities better handled by a professional Chief Registrar. On policy, section 4 is misplaced to include policy making in the registration process	Problem: Section mixes operational and policy issues in one section. Operational issues should be handled by the Chief Registrar. Policy issues on registration process misplaced.	Delete section 4	Not normal to include a policy provision in a purely registration legislation. Minister is given operational obligations that should be for the professionals	Policy provision will be removed from BARA Act	Not included in the current Government proposals
12	Section 5 Functions of the Chief Registrar Chief Registrar is primarily the Chief Executive Officer of BRELLA appointed under the Government Executive Agencies Act No. 30 of 1997 who is designated Chief Registrar under the BARA Act. The function of the Registrar is, inter alia, only to receive quarterly reports from the BRCs and to publish quarterly composite registers of all businesses every 3 months after the end of every quarter; and to ensure that each BRC maintains minimum acceptable standards of registry in its jurisdiction.	Problem: He is Chief Registrar but has no power to register any business activities under BARA Act.	Amend section 5 (2) to give Chief Registrar the power to register businesses under BARA Act Delete the word “Chief” appearing in that section and elsewhere in the BARA Act. Amend section 5 (2) to transfer the contents of section 5 (b) to the Agency Act by which BRELA is established to give therein the overall function for the Registrar (Chief Executive of BRELA) to maintain a composite register of all the business registries (this would include companies, business names, trade mark and patents and may include the other business registries). Amend section 5 (2) to suit a designation of registry functions as is in other laws such as the Business names Act.	Chief Registrar should have power to register. Industry practice. Government has yet to work out the costs of establishing a parallel registration system	Chief Registrar will have power to register Registration of businesses under BARA Act would be under him and under one ministry There will be no specific centres prescribed in each LGAs thereby making it possible for the Chief Registrar to decentralise services gradually There will be no BRCs thereby eliminating the possibility of parallel registration system and making it possible for gradual decentralisation of services	Not included in current Government proposals

13	<p>Sections 3, 26 and 27 on inspectors to inspect every business premises</p> <p>Inspectors are appointed to go around everywhere in the country to inspect and examine business premises and have been be given other yet clearly defined functions and powers. They have power to require production of certificates of registration or any document kept and inspect those documents and make copies of any of them; to demand from owners, occupiers or other persons in control of the premises to give any information that is in that person's powers and exercise any powers which may be necessary for carrying out the provisions of the Act.</p>	<p>Problem:</p> <p>First every activity registered will have to be inspected. There cannot be businesses which may be inspected and some not. This means that thousands of inspectors have to be employed simply to inspect and examine premises where businesses are carried out. Secondly this would encourages rent seeking, creates conducive environment for abuse of power; opens up businesses to robberies given the security situation in Tanzania; is a nuisance to businesses especially micro and small enterprises with several premises, and even more nuisance for businesses carried out on temporary places and on matching guys with no premises. There is no value- for - money for the costs involved relative to the purpose.</p> <p>In 8 years since the enactment of the BARA Act no evaluation has been carried out of how many inspectors may be required for the exercise and how much it would cost every year just to have inspectors to examine every registered business premise.</p>	Delete the provisions of section 3 on definition of inspectors, sections26 and 27 and any other provision referring to inspectors			
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14	<p>Section 14 No Limitation to timeframe in carrying out certain functions such as the time it takes to issue registration certificates.</p>	<p>Problem:</p> <p>Encourages rent seeking, abuse of power, complacency and inefficiency. Registration may be delayed unnecessarily.</p> <p>For instance under the Business Names Act CAP 213, the Registrar has 5 days within which to register a name. Registration under the Business names Act has time limit but no such limit under BARA Act. Technically a person may be registered under Business Names Act within 5 days but is delayed in obtaining registration under BARA Act and in terms thereof cannot conduct business.</p>	<p>Amend section 14 to include a time limit of 5 days from the date of receipt of application within which a certificate of registration must be issued.</p> <p>This is similar to the time limit in the Business Names Act.</p>	<p>International best practice, part of good governance</p> <p>Harmonise conditions for service delivery between the laws</p>	<p>Removal of contradictions</p> <p>Will improve environment for delivery of services</p>	<p>Not in current Government proposals</p>
15	<p>Refusal to register a business Section 14 (2) read together with section 11 (5) read together with the Business Names Act (CAP 213) section 8</p> <p>Section 11 (5) provides that a person may not carry on business if the business is not registered. This means a registration should be obtained before commencing business</p> <p>Chief Registrar may refuse registration if he is satisfied that the application for registration does not comply with the requirements set out in section 13.</p>	<p>Problem:</p> <p>Contradiction within BARA Act where particulars in section 13 assumes that applicant must have commenced business.</p> <p>Contradictions with similar legislation namely the Business Names Act which permits applicant to commence business up to 21 days before registration.</p> <p>This leads to:</p> <p>Actions which are legal under the Business Names Act become unlawful under the BARA Act.</p> <p>Problem</p> <p>The Particulars as currently formulated in section 13 are such that applicants would not meet some of them because they assume that applicants will have commenced business. As registration is compulsory, non-registration means one cannot conduct business at all</p>	<p>Amend section 11 (1) to provide for the necessity of registering within 21 days from date of commencement of business</p>	<p>This will bring the provision in line with similar provisions in the Business Names Act</p>	<p>Contradictions with the Business Names Act will be removed</p>	<p>Not included in the current Government proposals</p>

16	<p>No provision for consequences of refusal to register for businesses already registered under other laws</p> <p>A person cannot conduct business without registering under BARA Act even for persons already registered under Business Names Act or Companies Act</p>	<p>Problem:</p> <p>Third party rights will be jeopardized such as creditor rights.</p> <p>The BARA Act has no provision on what happens to businesses already incorporated as companies or registered but whose application under the BARA Act are refused. Section 11 (5) implies that such businesses have to stop carrying on business in terms of the BARA Act but would be within their establishing laws to continue conducting business.</p>	<ul style="list-style-type: none"> Provide for specified [period which applicants must comply with the particulars required as proposed earlier, exclude all businesses registered or established under other laws from the ambit of BARA Act amend section 13 to remove particulars that are not necessary at registration recast section 13 to list activities that are registerable as proposed remove from current list unnecessary particulars 	<p>To ensure that businesses registered or established under other laws are not registerable under BARA Act and thus not negatively affected by BARA Act due to different registration conditions,</p> <p>To provide for time within which information missing is provided for registration to be completed</p> <p>To remove duplication of data</p> <p>To ensure that particulars of registration remain essentially particulars of registerable activities</p>	<p>A BARA Act that is optional, that addresses only businesses registered under it only</p> <p>A provision that allows an applicant to complete the missing information so as to procure registration</p> <p>Creditor rights of third parties would not be affected</p>	Not included in the current Government proposals.
17	<p>Section 15 as amended in 2011 on validity of registration subject to annual license (see Section15 (1) (2) and (3)</p>	<p>Problem:</p> <p>Integrity of the certificate is undermined for purposes of access to loans. Instead of not having a license being a default chargeable to penalty, it affects the validity of the registration.</p>	<p>Amend section 15 to delete the provision subjecting the validity of the certificate to a license</p> <p>Amend section 15 to provide for a default fine, if Government retains the provision for license</p> <p>Amend section 15 (if Government decides to retain license requirement) to provide for only one license applicable throughout Tanzania and to be collected by TRA on behalf of Local Government to be distributed to all the LGA proportionally</p>	<p>To remove licensing</p> <p>To make validity of registration separate from license</p> <p>To provide for license to be collected by TRA which is more efficient in collecting taxes</p> <p>To distribute license collections proportionally amongst LGAs ultimately with the objective of simplifying business registration and taxes</p>	<p>removal of licensing if proposal is accepted</p> <p>If not: Simplified registration and licensing system and payment collection</p>	Not included in the current Government proposals
18	<p>Section 15 (4)</p> <p>Empowers LGAs and Village Councils through by-laws to charge different fees for various categories of licenses for businesses operating within their jurisdiction.</p>	<p>Problem:</p> <p>Introduces different types and amounts of charges for similar categories of licenses, divides up the country's market into more than 140 LGA areas into thousands of little location markets for same businesses. A business operating throughout the country has to multiple register for every premise where there is business even where the</p>	<p>Amend section 15 (4) to delete requirement for license</p> <p>If not accepted amend to: remove LGAs from charging fees for licenses</p> <p>provide for a single license applicable the whole of Tanzania</p> <p>provide for TRA to collect license</p>	<p>Licenses used as revenue collection tool increases the costs of doing business</p> <p>If licensing retained then: Proposals will simplify licensing</p> <p>Proportionate sharing of license collections ensures that LGAs receive money from licensing without each of them having to license businesses</p>	<p>Conducive environment for doing business</p> <p>Reduced costs of doing business</p> <p>Application of one license for the whole Tanzanian market</p>	Not included in the current Government proposals

		activities are identical and where they operate in the same LGA. This increases the costs of doing business for the time it would take and the money involved. It converts licensing essentially as a revenue exercise which could be done by one- off national charge recognised throughout the country.				
19	<p>Section 17 addresses only businesses carried on premises!</p> <p>The BARA Act covers all businesses as the definition of business includes any form of trade, commerce, craftsmanship, specified profession carried on for profit, gain and to which the provisions of the BARA Act apply. This covers matching guys, traders who conduct business by the roadside but not fixed places, with fixed places, on the roadside on their carts or baskets or trays, except the following:</p> <ul style="list-style-type: none"> Any business which is regulated (this would exempt banks, all professions such as lawyers, accountants, engineers etc. and telecommunications, water and electricity or energy sector) but these would not meet the conditions of section 11 (4) because a certificate of compliance as defined in the BARA Act does not exist under current laws. So even those businesses would have to be registered under the BARA Act; Not for profit businesses (meaning businesses which may make profit but the profit is not distributed to members but to the benefit 	<p>Problem:</p> <p>Businesses of micro- small, medium businesses operating alongside most urban and peri-urban roads, or matching guys have no premises to display their certificate of registration at, so they would be in breach of the provisions of section 17 and could be denied registration or if registered they could be de-registered for breach.</p> <p>Lack of clarity as to which businesses are regulated business which are excluded from registration.</p>	amend the definition to limit scope of the BARA Act as proposed above to businesses with fixed premises	Impossible for businesses without premises to display certificate	It would be possible for provision to be enforced	Not included in current Government proposals

	<p>of beneficiaries).</p> <ul style="list-style-type: none"> The definition of “regulated business” appearing in section 3 “ a business regulated under any written law” is confusing as many more companies in many more sectors could be classified as regulated under a law. Introduces ambiguity. 					
20	<p>Section 19- Tough punitive measures designed for small mistakes, otherwise subject to penalties under the Companies Act and other laws</p> <p>The Registrar (of any of the centres) may suspend, revoke or cancel registration on following grounds:</p> <ul style="list-style-type: none"> If the premises are used for a different purpose than was registered for; If the business owner, manager, or person in charge has since registration being convicted of any offence against BARA Act or any regulations made thereunder; If the business owner has become bankrupt, or if a company, has gone into liquidation; or If the business has failed to comply with any condition of the certificate of registration And if the business has no license (see section 15(1) as amended. 	<p>Problem:</p> <p>BARA Act criminalises actions that in other laws attract only penalties;</p> <ul style="list-style-type: none"> The section does not address third party rights such as creditors whose payment depends on the business continuing to thrive. Punishment for small infringement of the provisions disproportional Loss of business for infringements that under other laws would only lead to payment of penalties Contradiction- de-registration under the BARA Act prohibits a business from being carried on under BARA Act but if the business is registered under another law, the business would be lawfully conducted under such laws Introduces insecurity to borrowing by small businesses 	<p>Amend section 19 to provide for default fines for defaults</p> <p>Delete provisions for suspension, cancellation, revocation or de-registration of businesses</p>	<p>International best practice to charge default fines and not to deregister businesses as a result of defaults</p>	<p>Ease of enforcement as defaults attract immediate payment of default fines</p> <p>Would protect third party rights such as creditor rights</p> <p>Cost efficient enforcement regime</p>	<p>Not included in the current Government proposals</p>
21	<p>Section 18 after (new section 15)</p> <p>No authority to issue licenses, permits or authorizations as a pre-condition for the right to conduct business. Well, new</p>	<p>Problem:</p> <p>Contradictions within the BARA Act itself.</p>	<p>Retain section 18 as is and amend section 15 to remove the power of LGAs to issue licenses</p>	<p>Either delete provisions on licenses or have one license applicable throughout the whole of Tanzania and have license fees collectable by TRA and then distribute disproportionately to LGAs.</p>	<p>Environment for doing business improved</p>	<p>Not included in the current Government proposals</p>

	section 15 authorises licenses as pre-condition to right to conduct business. Section 15 subjects the validity of registration to obtaining a license in effect making the validity of registration annual not for the life of the business.					
22	<p>Sections 21-23 Where a person is notified by registrar of intention to de-registration such person is entitled to be heard before the registrar, may appeal against the decision of the registrar to the District Commissioner (DC) and from DC to the Minister responsible for LGA who shall be advised by an Appeals Committee. For more than 60 days the dispute resolution system if self-conflicted administered by the same party implementing the BARA Act and making the decision against which a party is aggrieved. From the Minister, who may take as long as he is able to attend to the dispute which could be months or years, the aggrieved party may appeal to the High Court. Meanwhile the owner of the business cannot expand it or borrow money from the banks or financial institutions because of the uncertainty hanging over the registration of the business</p>	<p>Problem:</p> <ul style="list-style-type: none"> The process for disputing a suspension, revocation, cancellation or de-registration decision is too long. (It would take a minimum of 60 days to appeal to the Minister from the Registrar and DC and take unspecified time to have appeal heard by the Minister (no time is prescribed) after which court action is permitted at the level of the High Court) Lack of clarity on the difference between revocation, cancellation and de-registration since they all lead to de-registration and there are no different processes for each of these During this time the owner may continue to conduct business but cannot borrow to expand business The process is too costly for all but more so to the estimated 1.5million small businesses which the Act would bring into its ambit will be a good motivation for businesses to be carried out without registration, illegally and underground despite the BARA Act. 	Amend section 21-23 and provide for the right of an aggrieved party taking legal action in any competent court in Tanzania	The process of appeal to DC, then Minister involves a party (Government side) responsible for the decision against which the appeal is to be made.	A much fairer independent dispute resolution process	Not included in the current Government proposals
23	<p>Section 28-offences and penalties Under section 28 it would be a criminal offence if:</p> <ul style="list-style-type: none"> Carries on business 	<p>Problem:</p> <ul style="list-style-type: none"> The punishments for the crimes described in section 28 are disproportionately harsh considering that the target group 	Delete section 28 and provide instead a provision for default payment	<p>International best practice.</p> <p>Will be in line with other laws such as the Companies Act or the Income Tax Act.</p>	<p>Stronger enforcement regime</p> <p>Reduced enforcement and administration costs</p>	Not included in current Government proposals

	<p>without being registered under BARA Act;</p> <ul style="list-style-type: none"> • Provides false information • Conducts business without observing other legislation • Carries on business at any place not specified in the certificate of registration • Fails to surrender the certificate after it has been suspended, revoked, cancelled. 	<p>will mostly include the 1.5 million micro and small businesses;</p> <ul style="list-style-type: none"> • Enforcement through criminal prosecution is weak, takes too long and more expensive than the fines to be collected; • Contradictions. Same defaults under the Companies Act or Business Names Act would only result into payment of penalties charged by the Registrar of Companies 				
24	<p>Section 28 (i) and (ii) If anyone has done any of the offences described above (item 23) from section 28, on conviction, be liable to pay minimum fine of 50,000 if turnover is does not exceed TZS 20mil; andTZS200,000 if turnover exceeds TZS 20mil</p>	<p>Problem: Unfair fines system</p> <ul style="list-style-type: none"> • The amount of fines prescribed are not the same for every defaulter but one pays more according to turnover! • Encourages rent seeking at the level of determining the turnover and the criminal proceedings stage • process more costly to enforce than the returns in terms of the cost of criminal prosecution and the time it would take to prosecute • there seems to be no rationale for the turnover limits set in the BARA Act 	<p>Delete section 28 (i) and (ii) and adopt a schedule of default penalties in regard to infringement of difference provisions of BARA Act</p>	<p>To provide for default penalties payable where Registrar ascertains that a person has defaulted</p>	<p>Decriminalised enforcement system</p>	<p>Not included in the current Government proposals</p>
25	<p>Section 31 This section repeals the Business Licensing Act 1972 but introduces business licensing in new section 15 (2).</p>	<p>Problem: Contradictions. Confusion. Licensing abolished but in the same Act reintroduced by the 2011 amendments.</p>	<p>Either the BARA Act repeals business Licensing as a whole or retains the Business Licensing Act 1972 as amended and abolishes licensing provisions in other specific laws and deletes any provision on licensing in section 15</p>	<p>Business licensing should either be abolished or if it must be retained, be provided in a special licensing law such as the Business Licensing Act 1972</p>	<p>Improved business environment if licensing is abolished but if not, improved business environment where one license is valid in the whole of Tanzania and if collection was carried out by TRA and LGAs receive payment distributed proportionally</p>	<p>Not included in the current Government proposals</p>

26	<p>BARA ACT – No protection for Civil Servants BARA Act has no standard protection to civil servants who will be involved in its implementation</p>	<p>Problem: Civil servants will be vulnerable to third party claims for actions done in good faith No reason why the usual protection is omitted as it could be costly to civil servants individually and by extension to Government as civil servants would be in their right to join Government in any claims</p>	Amend BARA Act to provide for the usual protection to civil servants not to be liable for actions done in good faith	It is international best practice. Good governance	If done, civil servants involved in the implementation of BARA Act would be suitably protected	Not included in the current Government proposals
27	<p>The costs to be borne by Government in administration and enforcement of the Act plus the costs borne by Businesses in complying with the BARA Act have not been worked out. The cost of:</p> <ul style="list-style-type: none"> inspectors, training LDAs staff; equipment; Installing generators that can work 24/7 because of poor power supply from TANESCO The cost of fuel office space of international best practice standard publications required of the Chief Registrar in section 5; employing adequate number of staff to implement BARA Act communications and reporting from BRCs to Chief Registrar; increased administrative and monitoring BRCs other operational costs, if the whole law is to be translated into Kiswahili as some demand, the costs for translation (refer to the Report of the Awareness 	<p>Problem:</p> <ul style="list-style-type: none"> The costing of implementing an Act that must be implemented in the whole country at once is crucial for GVT to be ready to implement it and crucially for the Government and the private sector to ascertain whether the costs justify the implementation of the BARA Act. The BRCs do not exist physically as demonstrated by LGAs meeting. Unable to remove some of obvious unnecessary costs because the whole cost is not disclosed Encourages uncontrolled costs on businesses as BRC find that they have no funds to implement BARA Act Increase of costs of doing business 	Since BARA Act as currently formulated is compulsory and implementable at once throughout the country throughout registration system to be created from starch, it is crucial that detailed cost evaluation is undertaken to ascertain the costs required to implement it and the availability of the funds necessary for implementation	<p>Important to work out how much it would cost to set up a new registry system parallel to the system under BRELA in order to gauge whether it would be more cost effective to have BRELA decentralise services gradually</p> <p>It will not be possible to implement BARA Act if sufficient funds are not made available for proper implementation</p>	This will require relaxing or dis-applying the devolution policy to business registration	Not included in the current Government proposals

	<p>Creation and Needs Assessment for 23 LGA meeting held at Ministry of Industry, Trade and Marketing May 2009 on the implementation of BARA Act on a pilot basis)</p> <ul style="list-style-type: none"> The implementation of BARA Act by 23 LGAs as a pilot process to learn from the issues that have been raised regarding BARA Act has not been independently evaluated by GVT to take lessons from the experience so as to implement BARA Act better in the rest of the LGAs 					
28	<p>No evaluation on the performance of pilot implementation BARA Act was implemented in 23 LGAs. Pilot implementation of BARA Act by 23 LGAs has not be independently evaluated by the Ministry for lessons to be learnt for further implementation</p>	<p>Problem:</p> <ul style="list-style-type: none"> Lessons learned from the experience will be lost Further implementation of BARA Act without evaluating the experiences of 23 LGAs or disclosing them may lead to repeat issues that could be avoided 	<p>Government needs to have an independent evaluation of the 23 LGAs pilot implementation of BARA Act to help identify areas which experience shows needed attention.</p>	<p>The rationale for the pilot implementation was to know which provisions needed change or not from the experience.</p>	<p>If evaluation was carried out, it would help understand better which provisions should be amended</p>	<p>Not included in the current Government proposals</p>
29	<p>Implementation everywhere at once BARA Act has no provisions for phased implementation but practically it would not be possible to implement BARA Act in all LGAs at the same time. The repetitiveness of the process of registration and its reach is massive if it has to be implemented all at once.</p>	<p>Problem:</p> <p>Impossible to implement the BARA Act as envisaged in its provisions without costing the exercise, budgeting for it and having the funds to do so at once everywhere. (In 2009 there were 133 LGAs. There are more in 2015)</p>	<p>Amend BARA Act to provide for phased implementation only if Government does not accept proposals to exclude businesses registered or established under other laws and if Government does not accept the proposal to make registration under BARA Act optional</p>	<p>The only practical way to implement BARA Act in its current form or if the compulsory registration for all businesses is retained</p>	<p>Legally it would allow for phased implementation</p>	<p>Not provided in the current Government proposals</p>
30	<p>BARA Act for 1st instance and secondary registration There is no distinction of 1st time registration from businesses already established under the Companies Act, or Business Names Act and other laws.</p>	<p>Problem:</p> <p>First instance businesses seeking to be registered under BARA Act will not meet the required particulars in section 13</p>	<p>Amend BARA Act to Dis-apply from it businesses registered under other laws which would make BARA Act applicable only to 1st instance businesses that wish to register under it</p> <p>Further, amend BARA Act to make it optional</p>	<p>To remove duplication To provide optional registration of businesses</p>	<p>Make BARA Act for optional registration and only in respect of businesses not registered under other laws</p>	<p>Not included in the current Government proposals</p>

	<p>There should have been a separate process for those registering under BARA Act only.</p> <p>The particulars that should be given for first instance registration under BARA Act should be different from the general particulars listed in section 13 and are not there.</p>		Further amend BARA Act to provide for suitable particulars for registration of activities for 1 st instance registration			
31	<p>Form of certificate of Registration- 1st schedule to the Act</p>	<p>Problem:</p> <p>Any amendment to the form of certificate has to have parliamentary amendment of the Act itself as the Executive has no power to amend acts of Parliament.</p> <p>In practice in Tanzania forms are in Regulations to make it easy for the Executive to make any changes through the subsidiary legislation process.</p>	Amend BARA Act to delete the schedule on form of certificate of registration	Usual practice for forms to be in regulations to allow for amendments if possible without resorting to parliament if it remains in the Act.	Form of registration will be rightly moved to regulations	Not included in current Government proposals
32	<p>BARA Act does not improve the conditions for doing business, does not simplify business registration and does not remove business licensing</p>	<p>Problem:</p> <p>It becomes a very expensive exercise that adds no value to the business environment</p>	Approve amendments proposed by private sector to make BARA Act practical	Reduces costs, duplication of institutional arrangements, laws, registration	Will make BARA Act implementable	Not included in current Government proposals
33	<p>Section 8 requires Registrars given functions that have nothing with business registration.</p> <p>The BARA Act enjoins the Business Registration Centres to do more than simply register businesses, that is, to collect business information in the areas of their jurisdictions for the purposes of public consumption. It is not clear whether such information is limited to the information which an owner of a business has to furnish the centre with, which is the information listed under section 13 of the BARA Act,</p>	<p>Problem:</p> <p>Danger of undermining the value of registries</p> <p>No immunity to officials who will implement the BRCs in terms of liabilities</p>	Amend section 8 to remove the extra undefined functions other than registration. This proposal is valid only if the proposals to transfer registration function to BRELA is not taken	<p>To protect integrity of registry</p> <p>To be in line with international best practice</p>	Will remove extra not so well defined functions from registrars	Not included in current Government proposals

	a lot of which is either not necessary or not available to the applicants or that it is additional to such information. If it means that it is the information listed as well as additional information neither defined nor specified, then this will introduce a substantive element of uncertainty in what information the applicant must furnish the centre as well as provide room for abuse from the Registrars and inspectors. That will present implementation difficulties					
34	Cumbersome registration process. Section 13 has 17 requirements for registration, difficult to comply	Problem: The nature of information required is difficult to comply	Amend section 13 to list particulars that are suitable to 1 st instance registration Amend section 3 to define what activities are registerable	To limit particulars to 1 st instance registrations	Will align particulars with the objectives of the BARA Act of registering activities	Not included in current Government proposals
35	Section 8 and 13 a Registrar is required (section 13 (p) of the BARA Act) to receive information, if any, from an applicant of a certificate of registration regarding the extent to which the business being registered has been granted an applicable certificate of compliance or authorization to trade or operate. This is the same as a registration process post establishment and issuance of a certificate of incorporation from the Registrar of companies. It is duplicative for no practical reason.	Problem: Certificate of compliance is not the norm for businesses registered under the Companies Act or the Business names Act	Amend BARA Act as proposed herein to remove businesses that are already registered under other laws. The requirement for certificate of compliance will not be there.	This cannot be implemented because it is not there for most businesses	A better provision	Not included in current Government proposals
36	Section 11 (2) requires existing businesses, save those exempted, to have to apply for certificate of registration	Problem: The usual procedure is that a new law would deem existing entities registered under it and not require them to have to register. In this case the information sought about the business activities	Amend section 11 (2) to recognize existing businesses. However, this is valid only if the proposals for dis-applying the BARA Act from businesses registered under other laws and for making registration under BARA Act optional are rejected by	It would be physically impractical to have all companies and business names existing to have to re-register under BARA Act.	Will save unnecessary costs	Not included in the current Government proposals

		when registering under the BARA Act is available to BRELA under the companies registry and the business names registry such that there would be no practical need to require them to physically re-register	Government.			
37.	The Business Registration Centres must also provide information regarding services provided by Government and other agencies to business including but not limited to training programmes, skills access in the form of technical advice and business development services and the provision of trading and operational facilities such as hawker stalls and industrial parks and to provide the facilities which may, as far as possible, be in the form similar to a website where any registered business may be entitled to place advertisements at a fee determined by the local authority	Problem: These are not registry functions. May compromise the integrity of the registry information The additional functions are not in accordance with international best practice	Delete the extra-registry functions from the provisions	It is to preserve the primary objective of business registries namely reliability and integrity of their data about the registered businesses.	The registries will be only for registration of businesses	included in the current Government Proposals
38	The system intended to be established under the Act envisions the use of technology and that what officials at the Registration Centres will do will be to key into the computers, data from an applicant most likely from a paper submission in the prescribed form and to transfer such data from Business Registration Centres to the Main Registry. Data transfer will also take place from the Main Registry to the Business Registration Centres. There is also the objective of providing the information on a website so that the information is	Problem: No protection to data subjects, users and the handlers	Amend the Act to provide for protection	Need to provide protection to data subjects, the users of such data and the officials, interrering data into computers, transferring data and providing information to the public about such data.	Electronic data protected	Not included in the current Government proposals

	<p>available instantaneously to the public and the Chief Registrar and to all Registrars. Yet the Act has made no provisions for data protection and the protection of those who are the subject of the data. To be fair in other countries where computerised registration is best practice, they have an independent legislation on data protection which gives rights to those who may be affected by loss of data regarding its business not entered or incorrect information is entered about a business which adversely affects such business to have redress. Tanzania has no data protection law.</p>					
39	<p>The computer revolution has changed permanently the way we do business. Contracts are concluded electronically, lawyers, banks, accountants and all others receive instructions for work electronically, accept instructions electronically and send completed work to their clients electronically and also invoice electronically, the banks retain data electronically, store data electronically and transact electronically. Electronic communication has become the most common means of doing business. The establishment of an electronic business registration system in Tanzania will change the way businesses are</p>	<p>Problem:</p> <p>Inadmissibility of electronic evidence as primary evidence</p>	<p>Amend the Evidence Act, 1967 as amended to include fully the admissibility of electronic evidence as primary evidence including from business registries.</p>	<p>To have electronic evidence from registries admissible as primary evidence</p>	<p>Electronic evidence from business registries would be admissible as primary evidence.</p>	<p>Not included in the current Government proposals</p>

	registered, the way business records will be stored and retrieved and the way business corporate search reports are handled and furnished by the registries to consumers of the information kept at the registries. Everything is fine until a dispute ensues or the Registrar is required by law to submit information about a business in court. How to prove one's case when the best evidence available is electronic? The Evidence Act does not provide for admissibility of electronic statements or printouts as primary evidence.					
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