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CRITICAL LEGAL APPRAISAL OF COMPANY DISSOLUTION BY DEREGISTRATION IN TANZANIA

*Yusto Lucian Habiye**

Abstract

This paper critically examines company dissolution by deregistration in Tanzania, shedding light on inherent conflicts and challenges within the current legal framework. It highlights the implications of dissolution by deregistration on dormant, defunct, and active companies, emphasising the need for legal clarity and procedural safeguards.

The analysis examines challenges faced by the dissolution by deregistration framework in Tanzania mainland, encompassing issues of conclusiveness of the certificate of incorporation, dual punishment, internal contradictions within the Companies Act, restrictions on shareholders' freedom, and potential interference in internal affairs of the Company by the Registrar of Companies.

The primary conclusion derived from the analysis underscores the need for legislative amendments to effectively address the identified challenges. Recommendations put forward advocate for the repeal and amendments of specific sections of the Companies Act to

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ensure a just and equitable framework for company deregistration in Tanzania.

Keywords: *Companies, Deregistration, Dissolution, Dormancy, Registrar of Companies, Winding Up.*

1. OVERVIEW OF THE LEGAL SCOPE OF COMPANY DISSOLUTION BY DEREGISTRATION IN TANZANIA

Companies serve as legal vehicles for commerce and investment, which is crucial to the economy of any nation, including Tanzania. Governments earn revenue for running their economies through them. Therefore, it is important to establish efficient and comprehensive legislation governing the dissolution of these companies.

The process of dissolution marks the conclusion and termination of a company's existence. It signifies the nullification or revocation of a company's incorporation, leading to the extinguishment of its legal corporate identity.¹ In essence, dissolution brings about the cessation of the company's being. However, the company's dissolution can be declared void by the court, allowing for its continued existence.² In Tanzania, the primary legislation governing company dissolution is the Companies Act,³ (referred to as "the Act"). This legal instrument comprehensively outlines the procedures and prerequisites for effecting company dissolution.

¹ Garner, B., (2004) *Black's Law Dictionary*, 8th edition, London, Thomson Reuters. pp. 1426 – 1427.

² S. 399(1) Companies Act, 2002.

³ Cap 212 of 2002.

Before a company ceases to exist, its affairs must be orderly wound up. This process, known as winding up, involves the sale of the company's assets to settle its liabilities. Winding up ensures the satisfaction of creditors' debts and the distribution of any remaining surplus to shareholders in accordance with their class rights. Therefore, prior dissolution is crucial to safeguard the interests of shareholders, contributors, creditors, employees, tax authorities, social security funds and other stakeholders associated with the company.

Typically, active operational companies undergo dissolution following the successful completion of the winding-up process. For instance, in the case of voluntary winding up, whether by members or creditors, a company is deemed dissolved three months after the liquidator submits returns to the Registrar of Companies (hereinafter "ROC"). These returns detail the company's winding-up accounts and the disposal of its properties.⁴ Compulsory or Court's winding up occurs when the company's membership drops below two, it cannot meet its debts, or the court deems winding up just and equitable.⁵

Conversely, the dissolution of dormant and defunct companies, which are not actively conducting business or operations, is carried out through deregistration by the ROC. These companies lack active and significant accounts and business concerns necessitating winding up, such as asset liquidation or creditor payment. The

⁴ See ss. 345(1) and 355(1), (4) of the Companies Act, 2002.

⁵ See ss. 279, 280 and 329(1), (2) *ibid.*

court can also dissolve a company if it remains inactive within a year of incorporation or suspends operations for a full year.⁶

In the present legal framework, the RoC possesses the authority to dissolve even actively operational companies by striking them off the register, bypassing the traditional business wind-up process. Grounds for such dissolution encompass various scenarios, including instances of fraudulent registration, engagement in criminal activities, misrepresentation, prohibition of shareholders and directors from entering the country, or operation contrary to the outlined objectives in the company's memorandum.⁷

This model of dissolution by deregistration skips the winding-up phase and promptly terminates the company by deregistering it. This model has captured the attention of the author of this paper. The said expedited process raises concerns about potentially overlooking the interests and rights of the company's various stakeholders.

The objective of this paper is to evaluate the legal framework governing the dissolution through deregistration of dormant, defunct, and active companies. It will investigate the legal issues arising during this process and propose potential recommendations for a just and equitable company deregistration in mainland Tanzania.

This study proceeds from the reality that many Tanzanians continue to face persistent economic hardship that is aggravated when companies collapse without orderly processes. Legal

⁶ S. 279(1) *ibid.*

⁷ S. 400(A) *ibid.*

framework for dissolution by deregistration influences the protection of creditors, and it supports a more predictable business environment that benefits the broader community.

2. EVOLUTION OF DISSOLUTION BY DEREGISTRATION IN TANZANIA'S COMPANY LAW

The foundation of Tanzania's Company Law can be traced back to both the UK Companies Act⁸ and the Indian Companies Act.⁹ These laws were fully adopted in Tanzania.¹⁰ The Tanganyika Order in Council¹¹, granted the governor the authority to legislate for the territory, permitting the direct importation of legislation from Britain, a practice initially implemented in India.¹² Notably, the Tanganyika Territory Gazette,¹³ extended the application of the Indian Companies Act, No. VII of 1913 to Tanganyika.¹⁴ The corresponding legislation, known as the Companies Ordinance¹⁵, (hereinafter "the Ordinance"), was subsequently enacted and published in 1931.

The provisions governing company dissolution through deregistration have their origins in colonial laws and have persisted throughout the transitions, including the enactment of the

⁸ UK Companies Act, 1929.

⁹ Indian Companies Act of 1913.

¹⁰ See s.9 Judicature and Application of Laws Act, Cap 358 R.E 2002.

¹¹ Tanganyika Order in Council, 1920.

¹² Chuwa, E., "The Termination of The Business Company in Tanzania: A Comparative Study of Receivership and Winding Up Procedure", LL.M. Dissertation, University of Dar es salaam, 2004, p. 16.

¹³ Tanganyika Territory Gazette Vol. XII, 1931.

¹⁴ Luoga, F., "Directors Duties: A Quest for Legislative Reform in Tanzania", 18(2) East African Law Review, 1991, p.16.

¹⁵ Company Ordinance, Cap 212 of 1932.

Companies Act. This concept has been an integral part of company law. For instance, the Companies Ordinance included provisions for dissolution through deregistration, granting the ROC the authority to strike off the names of defunct companies if reasonable grounds existed to believe that the company was not engaged in business operations.¹⁶ Remarkably, the repealed Ordinance did not significantly differ from the Companies Act, concerning the provisions related to the dissolution through deregistration of defunct and dormant companies from the company register.

The procedures outlined by the Companies Act, are akin to those provided in the Ordinance. While the Ordinance detailed the process in Section 283, the Act specifies it under Section 400.¹⁷ Additionally, the procedure closely resembles Section 560 of the Indian Companies Act.¹⁸

During the colonial era, due to the limited number of operational companies, the application of the dissolution through deregistration law was practically non-existent.¹⁹ A similar trend persisted in early post-independence Tanzania, attributable to the government's socio-economic policies that discouraged private sector growth and company incorporation.²⁰

It is evident that the influence and implications of the 1967 Arusha Declaration and the Ujamaa policy, upheld by the government

¹⁶ S.283(1) of the Company Ordinance, Cap 212 of 1932.

¹⁷ The Repealed the Companies Ordinance Cap 212 of the laws of Tanzania, also see section 400 Of Act No 12 of 2002 and Government Notice No 26 Vol. 83 of 2002.

¹⁸ See Bullu, S., above note 9, at p.7.

¹⁹ See Bullu, S., above note 9, at p.9.

²⁰ See Bullu, S., above note 9, at p.15.

until the mid-1980s, restrained the wide-reaching effects of the law on dissolution through deregistration. This scenario contrasts with the current landscape.²¹

The Companies Ordinance established the principle that dissolution through deregistration was applicable solely to defunct and dormant companies not engaged in business operations. However, a significant change has emerged with the enactment of the 2019 Written Laws (Miscellaneous Amendments) Act²² (hereinafter "the Amendment"). S.10 of the said Act, amended Section 10 of the Companies Act, 2002, granting the RoC the authority to deregister not only defunct or dormant companies but also active companies for reasons such as fraudulent registration, involvement in criminal activities, incorporation based on misrepresentation or fraud, prohibition of shareholders and directors from entering the country, or operation contrary to the goals outlined in the company's memorandum.²³ This evolution in the law was a consequence of the Amendment, allowing the RoC to effect dissolution through deregistration even for active companies without providing them an opportunity to undergo proper winding-up processes.

Next, I shift my focus to the legal framework governing the Dissolution by Deregistration of companies in mainland Tanzania. My debate will scrutinize the substantive aspects, delineating the reasons for dissolving active, defunct, and dormant companies,

²¹ See Bullu, S., above note 9, at p.15.

²² The Written Laws (Miscellaneous Amendments) Act no. 3 of 2019.

²³ S. 400 Companies Act, 2002.

accompanied by a detailed examination of the procedures involved in this dissolution process.

3. FRAMEWORK FOR DISSOLUTION BY DEREGISTRATION OF COMPANIES IN TANZANIA

Within the framework for dissolution by deregistration of companies in Tanzania, this study examines the main grounds on which a company may be removed from the register. The discussion covers the deregistration of active companies where registration was obtained through fraud, misrepresentation, criminal conduct, or where shareholders or directors fall within prohibited categories. The analysis also considers the treatment of dormant and defunct companies, requests for self-deregistration, removal following reconstruction or amalgamation, and deregistration arising from inactivity during winding up. Each element of this framework is examined in the section that follows, which lays out the operation of these mechanisms in a clear and orderly manner.

3.1 Deregistration of Active Companies

When contemplating the deregistration of an active company, the RoC squarely follows a series of well-defined procedures outlined in the Companies Act.²⁴ The initiation of this process involves a Reasonable Cause Determination, where the RoC thoroughly assesses whether conditions such as fraudulent registration, engagement in criminal activities, e.g., money laundering, human trafficking, drug trafficking, terrorism financing, misrepresentation, prohibition of shareholders or directors, and

²⁴ S.400(A) *ibid.*

contrary operations, exist within the company. Following the establishment of reasonable cause, a formal notice of intention to strike off is issued, articulating the RoC's intent to remove the company's registration from the official register.²⁵

Upon receiving this notice, the company is granted a thirty-day period to respond through a company's response.²⁶ During this timeframe, the company has the option to either provide written justifications to the RoC, outlining reasons why it should not be struck off the register, or challenge the notice by filing an application with the court of competent jurisdiction.

Opting for a court challenge temporarily halts the deregistration process until the court issues a final decision. The court's decision in this case may either endorse the deregistration or nullify the RoC's notice. Subsequently, the RoC's evaluation phase unfolds if the company provides valid reasons deemed satisfactory by the RoC within the thirty-day timeframe. In such cases, the RoC refrains from striking the company off the register.

In the event of failure to provide valid reasons or present unsatisfactory reasons, the RoC proceeds with the publication and notification phase. The name of the struck-off company is published in the Gazette, and the company is informed of the decision along with the rationale.²⁷

For dissenting parties, including the company, members, or creditors, the avenue of court application for restoration remains

²⁵ S.400(A)(1) *ibid.*

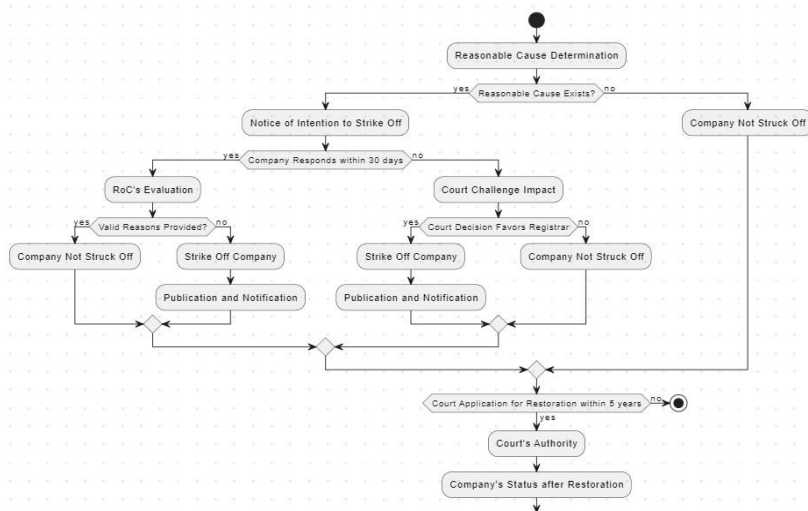
²⁶ S.400(A)(2) *ibid.*

²⁷ S.400(A)(3) *ibid.*

open for five years from the date of Gazette publication. During this timeframe, the RoC is prohibited from registering another company with the same name.²⁸ The court, upon receiving a restoration application, can order restoration of the company in the official register or provide directives and provisions as if the company had not been struck off.²⁹

In the event of successful restoration, the company's status after restoration deems the company to have continued its existence without being struck off. The court can then issue directives to reinstate the company and relevant parties to their positions as they existed prior to the strike-off, ensuring a comprehensive and equitable resolution.³⁰

Figure 1: Deregistration of Active Companies



Source: Self-generated representation synthesized from the Act.

28 S.400(A)(4) *ibid.*

29 S.400(A)(5) *ibid.*

30 S.400(A)(5) *ibid.*

3.2 Deregistration of Dormant and Defunct Companies due to Dormancy and Inactivity

On the other hand, the other facet of deregistration is dissolution of dormant and defunct companies due to dormancy and inactivity. Here the ROC deregisters Companies not engaging themselves in business or operation or have not started business in one year from when they were incorporated. Here, the ROC follows the following procedures:

If the RoC has reasonable cause to believe that a company is not engaged in business or operation, he may dispatch a letter via post to the company, inquiring about its business or operational status.³¹ If no response is received within thirty days from the first letter, the Registrar must, within fourteen days after the expiration of that period, send a second letter via registered post. This letter references the initial inquiry and states that no response was received to the first letter. It also indicates that if a response is not received within thirty days from the second letter's date, a notice will be published in the Gazette to consider striking off the company's name from the register.³²

If the RoC receives an answer that the company is not conducting business or receives no response within thirty days after sending the second letter, he may publish a notice in the Gazette and send a notice to the company by post. This notice informs the company that, after three months from the notice's date, the company's name will be struck off the register and the company will be dissolved, unless a valid reason is shown to the contrary. The RoC

³¹ S.400(1) *ibid.*

³² S.400 (2) *ibid.*

does not need to send these letters if the company itself, a director, or the Secretary of the company has requested deregistration or has indicated that it does not conduct business activities.³³

After the time specified in the notice has lapsed, the Registrar may strike off the company's name from the register unless valid cause to the contrary is shown by the company. A notice of this action will be published in the Gazette, and upon publication, the company will be dissolved. Directors, officers, and members' liability (if any) will persist and can be enforced as if the company were not dissolved. However, the court's power to wind up a company remains unaffected.³⁴

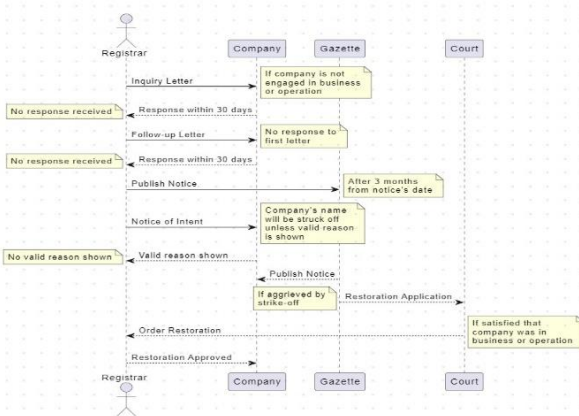
If a company, member, or creditor feels aggrieved by the company's strike-off, they can apply to the Court within ten years from the date of publication of the Gazette notice. The court can order restoration if it is satisfied that the company was in business or operation during the strike-off and can provide directions for restoring the company's name to the register. Upon restoration, the company is deemed to have continued its existence as if it were not struck off, and the court may issue orders to restore parties to their pre-strike-off position.³⁵

³³ S.400 (3) *ibid.*

³⁴ S.400 (5) *ibid.*

³⁵ S.400 (6) *ibid.*

Figure 2: Deregistration of Dormant and Defunct Companies due to Dormancy and Inactivity



Source: Self-generated representation synthesised from the Act.

3.3 Deregistration of Dormant Companies Requesting Self-Deregistration

An alternative avenue for the dissolution of companies through deregistration involves voluntary action initiated by the companies themselves. Under the Act, a dormant company may formally request the RoC to strike it off from the register if the company affirms its non-engagement in business activities or its inactivity for a year from the date of incorporation.³⁶ When a company opts for self-deregistration, the following procedures may unfold: The company itself, a director, or the Secretary of the company may initiate the process by requesting deregistration or notifying the RoC that the company is not engaged in business or operational activities.

³⁶ S.400 (3) *ibid.*

Upon receiving a request or notification that indicates the company is not conducting business or is not in operation, the RoC has the following actions: Within thirty days from the date of receiving the request or notification, the RoC may publish a notice in the Gazette. Simultaneously, a notice is sent to the company by post, outlining that after three months from the notice's date, the company's name will be struck off the register, leading to its dissolution.

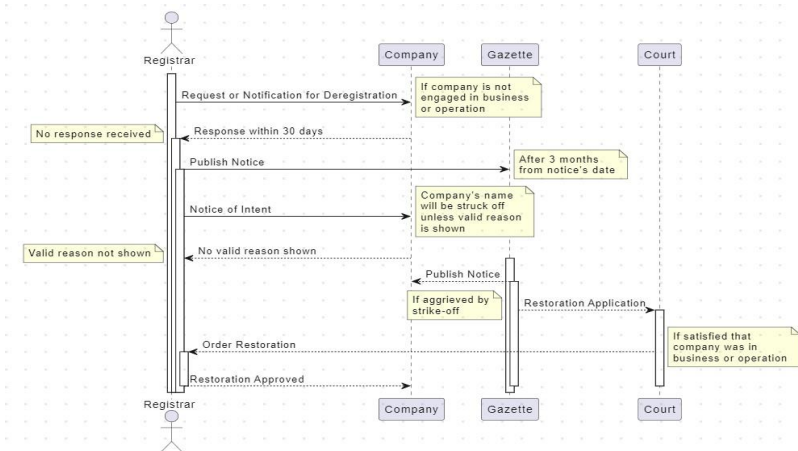
Following the specified period in the notice, if no valid contrary cause is demonstrated by the company, the RoC has the authority to strike off the company's name from the register. The action will be published as a notice in the Gazette, and as a result, the company will undergo dissolution.³⁷

If the company, a member, or creditor objects to the company's strike-off, they can initiate an application with the Court within a period of ten years from the notice's publication in the Gazette. The Court may thereafter order restoration if convinced that the company was conducting business or operational activities during the strike-off period, providing directions to reinstate the company's name in the register, ensuring affected parties are placed in a position as if the company's name was never struck off.³⁸

³⁷ S.400 (5) *ibid.*

³⁸ S.400 (6) *ibid.*

Figure 3: Deregistration of Dormant Companies Requesting Self Deregistration



Source: Self-generated representation synthesized from the Act.

3.4 Deregistration on Reconstruction and Amalgamation

The Act,³⁹ presents another distinctive pathway for the dissolution of a company without resorting to traditional winding-up procedures. The given method deals with the merging or reconstruction of companies and focuses on the significance of the court for approving deals related to the restructuring and amalgamation of companies.

The act mandates the court to entertain and dismiss the liquidation process related to the transfer of assets and liabilities, assignment of shares, and the termination of the transferor’s legal proceedings. The goal is to make sure the transition between the two companies is as smooth as possible while keeping everyone’s interests in mind

³⁹ S.231 *ibid.*

and making sure that everything goes according to plan during the restructuring or merger process.

If a company gives up its shares in another company during a restructuring plan or contract, such as a Squeeze-Out or Compulsory Acquisition, then Section 232 of the Act will apply.

The procedural journey commences with the submission of an application to the court by the concerned company and relevant stakeholders. This application seeks the court's approval for a compromise arrangement designed specifically for the purpose of reconstruction or amalgamation.⁴⁰ Once the court receives the application, it embarks on a thorough and comprehensive review of the transfer of undertaking and property,⁴¹ the court can approve the transfer of the whole or part of the undertaking and property or liabilities from the transferor company (the company being dissolved) to the transferee company, allotment or appropriation of Interests.⁴² The court thereafter authorises the transferee company to allot or appropriate shares, debentures, or continuation of legal proceedings.⁴³ Legal proceedings pending by or against the transferor company can be continued by or against the transferee company.

A critical juncture in this process is reached when the court issues an order for the dissolution of the transferor company, deftly sidestepping the need for conventional winding-up procedures. The dissolution is accompanied by the court's order for the transfer of property and liabilities from the transferor company to

⁴⁰ S.229 *ibid.*

⁴¹ S.231 (a) *ibid.*

⁴² S.231 (b) *ibid.*

⁴³ S.231 (c) *ibid.*

the transferee company. Furthermore, the court's order requires each implicated company to deliver a certified copy of the dissolution order to the RoC for registration within seven days of the order being made.⁴⁴

3.5 Deregistration due to Inactivity during Winding Up

The process of dissolving companies through deregistration also encompasses a specific avenue when dealing with inactive companies undergoing the winding-up process. The circumstance arises when the RoC reasonably determines that a company engaged in winding up has ceased its business activities, successfully concluded its affairs, and failed to submit required returns by the liquidator for a continuous six-month period.⁴⁵

Basically, the Act provides for a process to remove inactive companies from the official register with the main objective of keeping the companies registry accurate and trustworthy.⁴⁶ The first step in this process is the issuing of a formal notice by the RoC. It can be done through the Gazette as well as by making direct contact with the concerned Company or its liquidator. According to the given notice, if there is no suitable reason presented during the three months of notice period, then the company's name will be removed from the register, which will ultimately lead to the legal dissolution of the company.

This consequential action is formally published in the Gazette, serving as the official announcement of the company's dissolution. Importantly, even after the dissolution, the liability of directors,

⁴⁴ S.231 (d) *ibid.*

⁴⁵ S.400 *ibid.*

⁴⁶ S.400 (1-7) *ibid.*

officers, and members remains intact, subject to enforcement. Furthermore, the act maintains the court's jurisdiction to wind up a company whose name has been struck off the register.

In circumstances where any party, including the company itself, a member, or a creditor, disputes the strike-off during the winding-up period, the aggrieved party can file an application with the Court within ten years from the publication of the Gazette notice. The Court may order the restoration of the company if it determines that business or operational activities were ongoing during the strike-off period. Such restoration includes reinstating the company's name in the official register and ensuring that affected parties are restored to a position as if the company's name had never been struck off.

Having discussed the dissolution by deregistration framework in this section, my attention now pivots to the upcoming segment. Here, it is aimed to deliberate the challenges, legal dilemmas, and implications entwined with the process of Deregistration. Additionally, I will provide recommendations to address these issues and enhance the said legal framework.

3.6 Legal Dilemmas and Implications on Dormant, Defunct and Active Companies in Tanzania, Along with Recommendations for Effective Framework

As evidenced thus far, the exclusive avenue for dissolution through deregistration in Tanzania remains the solitary recourse for dormant and defunct companies that have either ceased operations or failed to commence activities within a year of their incorporation. The RoC can swiftly dissolve these entities either *suo motto* or upon request from the respective companies, within a

four-month span, indicating their inactivity and non-operation, employing procedures such as issuing an inquiry letter, follow-up letter, and a notice of intention to dissolve, as explicitly outlined in the Act.⁴⁷

Notably, the absence of a legal provision for companies to request "dormancy status" poses a significant challenge. The Act does not permit companies to submit a special resolution to the ROC, declaring their intention to suspend operations, in exchange for the RoC's endorsement of dormancy status registration. Accordingly, companies cannot be classified as dormant for an extended duration and subsequently reinstated conveniently upon their readiness to recommence activities. This dearth prevents companies from temporarily suspending operations with the intention to recommence activities later, as there is no provision for obtaining RoC's endorsement of dormancy status registration through a special resolution. Consequently, dormant and defunct companies intending to resume operations in the future face the risk of being dissolved as non-compliant entities by the RoC.

The RoC periodically issues public notices⁴⁸, announcing the impending or executed striking off the register of dormant and

⁴⁷ S. 400 (1-7) *ibid*.

⁴⁸ No wonder the Chief Executive Officer of the Business Registration and Licensing Agency (hereinafter "Brela"), Mr. Godfrey Nyaisa, issued a public statement on deregistration to 5,284 companies registered locally and 392 others registered outside Tanzania in May 2022, claiming that the register should no longer include inactive companies in Tanzania that do not operate or have any commercial activity. Mr. Nyaisa also warned that once the companies are deregistered, they will lose all assets until the company's owners obtain court approval to reinstate the company to the register of companies. See, Lamtey, G., "Brela threatens to revoke registration of 5,000 dormant firms", 28 May 2022, available at <https://www.thecitizen.co.tz/tanzania/news/business/brela-threatens-to-revoke-registration-of-5-000-dormant-firms-3830320>, (Accessed 28 December 2023).

defunct companies that fail to file annual returns, indicative of their non-operational status.⁴⁹ This practice may lead to dissolution of companies with unresolved tax liabilities and debts, as several defunct companies acquire these liabilities covertly during their operation prior ROC's deregistration, without submitting the requisite returns.

Besides, the dissolution by deregistration of defunct and dormant companies lacks provisions to ensure prior deregistration by the RoC or on application of dissolution by deregistration to the RoC, respectively. Defunct and dormant companies cannot be dissolved if they fail to demonstrate the absence of outstanding debts, legal disputes in court of law, and tax arrears.

Despite the RoC's publication of notices regarding dissolution through deregistration in a government gazette, information remains relatively obscure as interested parties struggle to access or become aware of the dissolution of these companies, since the gazette is unpopular with many. Many of these companies might still be operational but are classified as dormant and non-functional

⁴⁹ Further, a list of defunct and dormant local companies about to be dissolved by the Roc was publicised on Brela's website on May 27, 2022. See; Brela, "TAARIFA KWA WAMILIKI WA MAKAMPUNI", Dar es Salaam: Brela, 2022, at P. 1, available at [s sw-1653651054-1.pdf \(brela.go.tz\)](https://www.brela.go.tz/sw-1653651054-1.pdf), (Accessed 28 December 2022). Another list of defunct and dormant international companies about to be dissolved by the Roc was publicised on Brela's website on June 1, 2022. See also; Brela, "TAARIFA KWA WAMILIKI WA MAKAMPUNI", Dar es Salaam: Brela, 2022, at P. 1, available at [s sw-1653651054-1.pdf \(brela.go.tz\)](https://www.brela.go.tz/sw-1653651054-1.pdf), (Accessed 28 December 2022). Again, on 13th of July 2022 a second notice of deregistration was issued to the said 5,676 inactive companies. see also; Brela, "TAARIFA YA PILI KWA WAMILIKI WA MAKAMPUNI YALIYOSAJILIWA NCHINI", Dar es Salaam: Brela, 2022, at P. 1, available at [sw-1657704067-TAARIFA YA PILI KAMPUNI ZA NDANI \(3\) \(2\).pdf \(brela.go.tz\)](https://www.brela.go.tz/sw-1657704067-TAARIFA_YA_PILI_KAMPUNI_ZA_NDANI_(3)_2).pdf), (Accessed 28 December 2023).

merely due to their failure to submit returns, even though they are, in reality, operational and active.⁵⁰

Numerous defunct and dormant companies, which could have been positioned to resume operations, encounter this obstacle of being dissolved due to their failure to fulfil the legal requirements such as submitting financial statements and annual returns, while preparing for their business environment. Their only available choices include meeting these legal obligations by submitting the required returns, opting for voluntary winding up or seeking de-registration from the RoC. The Act is not supportive enough to let these companies recommence their operation. It goes, therefore that if a company gets delisted it means that they have to start all over again, and they lose all the recognition and profile they have earned. Creditors and tax authorities may also lose trust in the said companies, which could in turn harm their financial stability.

It is therefore important to push for a solution that will improve this system. First of all, there is a need to have legislative amendments in place to allow these companies to request "dormancy status". This will give them the legal base to stop working temporarily and then pick up from where they left off at a later date, to eliminate the risk of being dissolved by the RoC. The proposed amendments should also authorise companies to submit a special resolution to the RoC, enunciating their intent to

⁵⁰ Habiyе, Y., "Critical Analysis of The Powers of Registrar of Companies to Deregister Companies in Tanzania," LL.M. Post Graduate Essay, University of Dar es salaam, 2021, p. 22.

halt operations and seeking the RoC's authorisation for dormancy status registration.

Also, before the registration of the said dormancy status or deregistration, defunct and dormant companies need to establish the absence of outstanding debts, legal disputes in court, and tax arrears. This practical measure may serve as a safeguard, ensuring that only compliant companies undergo dissolution through deregistration.

Furthermore, the amendments may also implement procedural improvements to accelerate the process of obtaining dormancy status, through mechanisms like creating a dedicated online portal or service, working in tandem with the currently existing Brela online Registration System (ORS), to enable respective companies to submit the requisite documentation and receive quick approval from the RoC, thereby streamlining the entire process.

The dissolution of active companies through deregistration has attracted sustained criticism as public bodies and civil society groups question the scope of the RoC's authority and the consequences of its exercise. Their concern arises from the view that these powers unsettle the position of corporate creditors, particularly when summary procedures are used on grounds such as fraud, misrepresentation, money laundering offenses, unqualified shareholders or directors, and activities that fall outside stated objects. These grounds appear difficult to reconcile with the principle that a certificate of incorporation stands as conclusive proof of valid registration, which creates tension between statutory compliance and creditor protection. The absence of ordinary winding up processes adds to the unease expressed by the

Tanganyika Law Society (TLS), Amnesty International (Amnesty, 2019), Twaweza, Committee to Protect Justice – Kenya (CPJ, 2019), Legal and Human Rights Centre (LHRC), FB Attorneys (FB, 2019), and Tanzania Network of Legal Aid Providers (TANLAP, 2019).⁵¹ Under the Act, a company can also be deregistered from the register if it was fraudulently registered.⁵² This provision seems to conflict with the fundamental principle of the "conclusiveness of certificate of incorporation," under the Act.⁵³

A certificate of incorporation issued by the RoC stands as conclusive evidence that all statutory requirements for registration have been satisfied. Tension arises when a company is later described as having been fraudulently registered, which creates the impression that the certificate's authority can be questioned after the fact. This position sits at odds with the wider legal understanding that a certificate remains conclusive even in situations where, from a technical standpoint, proper registration might not have been possible.

In the case of *Moosa Goolam Arif v. Ebrahim Goolam Ariff*,⁵⁴ the binding nature of a certificate of incorporation, even if issued in error or without complete adherence to legal formalities, was recognised. This principle is further affirmed in the case of *Jubilee Cotton Mills Ltd. v Lew*,⁵⁵ where the Court deemed the certificate as

⁵¹ See Habiye., above note 51, at p.4.

⁵² S. 400 (1)(a) of the Companies Act, 2002.

⁵³ S. 400 (1-7) *ibid.*

⁵⁴ (1913) ILR40CAL1.

⁵⁵ (1923) 1 Ch 1 (CA).

conclusive evidence, validating actions taken by the company based on its incorrect date of incorporation.

The present author advocates for the retention of the principle of conclusiveness of the certificate of incorporation, stressing its role in providing legal certainty. The consensus is that challenges to the certificate should not be entertained, even when irregularities preceding registration come to light. This principle ensures that a company's legal existence is generally secure because when a company is struck off the register, its retrospective nullification renders contracts void and place corporate creditors at risk.

Besides, another challenge within the current dissolution by deregistration framework in Tanzania includes the puzzle of dual punishment which leads to internal contradiction within the Act. The particular Issue arises in Section 400A (1) (c) of the Act, which stipulates that a company can be struck off due to "misrepresentation" by the registered company, which severely conflicts with Section 472 of the Act, where misrepresentation is outlined as an offence punishable by imprisonment or fines.

The current position of the law in the said provisions implies that the said offence is not only penalized by fines and imprisonment, but also by dissolution of the said Companies committing misrepresentation. This lack of clarity raises concerns about internal contradictions, leaving ambiguity regarding what type of punishment for any given misrepresentation will be invoked.

It is argued that the powers granted to the RoC, particularly under the said section, allowing deregistration based on misrepresentation, clash with existing provisions in Section 472. A recommended action here is to repeal this provision through an amendment, preserving the option of imposing fines for the

misconduct or offence of misrepresentation by the Companies. This would therefore enhance the framework to conform to legal clarity and coherence and thus ensure proportional and just penalties for the offence.

An additional challenge also arises with Section 400A (1) (d) of the Act, which permits the striking off of a company if all shareholders and directors are prohibited from entering the country. This provision as well advances noteworthy concerns regarding potential interference in the internal affairs of private companies, which may curtail the freedom of shareholders to appoint alternative directors.

To alleviate this sort of ROC's interference in internal affairs and uphold corporate autonomy, I recommend an entire repeal of this section to afford companies with the flexibility to oversee their daily operations with minimal or no intervention from the ROC, except in situations deemed absolutely necessary. Since even if all shareholders and directors are prohibited from entering the country, they still have a room to appoint alternative directors or sell their shares to other shareholders.

Another issue is brought up by Section 400A (1) (e) of the Act, which allows companies operating contrary to the objectives stated in their memorandum and articles of association to be deregistered. The provision indeed contradicts the legal principle of *ultra vires*, which requires companies to operate exactly within the parameters of their objective clause, as provided for in the Act.⁵⁶ The legal principle presupposes that all actions that exceed the objects clause as non-company actions and are therefore void.

⁵⁶ See ss. 35,36 and 37 of the Companies Act, 2002.

The RoC's power to strike companies off register, for deviating from their stated objectives, certainly advances the compliance with this legal principle. To ensure consistency, this paper recommends for the repeal of this section and retention of the doctrine of *ultra vires*.

Moreover, the Act⁵⁷ limits the powers granted to the Financial Intelligence Unit (FIU) by providing the RoC with the powers to deregister companies engaged in criminal activities, such as terrorism financing, money laundering, drug trafficking, and human trafficking.

These powers granted to the RoC create a plain overlap with the established role of the Financial Intelligence Unit in dealing with fraud-related matters, as defined in the Anti-Money Laundering Act.⁵⁸ For instance, Suedi expresses concern that this provision can compromise ongoing investigations and criminal proceedings under the Anti-Money Laundering Act, thereby undermining the specialized functions of the FIU.⁵⁹

With this provision, the RoC, not only possesses powers that mirror those of the FIU but also exceeds them. The Registrar can unilaterally revoke a company's registration based on a reasonable belief that the company has engaged in the stated criminal activities, without requiring a court's verdict. Additionally, the law does not clearly define what constitutes a reasonable belief.

⁵⁷ See Section 400A (1) (b) and (c) *ibid*.

⁵⁸ The Anti-Money Laundering Act, Cap. 423 R.E. 2022.

⁵⁹ Suedi, A., "10 Reasons Why the Proposed S. 400A of the Tanzania Companies Act Will Discourage Foreign Direct Investment in Tanzania", 2019, available at <https://www.mondaq.com/corporate-and-company-law/819810/10-reasons-why-the-proposed-S.-400a-of-the-tanzania-companies-act-will-discourage-foreign-direct-investment-in-tanzania> (accessed 24 December 2023).

Since there is already existing legislation, namely the Anti-Money Laundering Act, which comprehensively addresses matters related to the said criminal offences, the recommended action is the amendment of Section 400A (1) (b) and (c) of the Companies Act, 2002. The proposed amendment advocates conferring such jurisdiction solely to the said unit, which is expressly designated for such responsibilities. The RoC should only exercise these powers upon the conclusive determination of the criminal case in a competent court of law and in accordance with the court's order.

Lastly, a critical flaw in the deregistration by dissolution processes arises from an inherent conflict of interest where the RoC assumes the roles of a prosecutor and a judge at the same time, with the entire procedure hinging on the RoC's "reasonable belief," a term left ambiguous and undefined in the act.

As the RoC initiates proceedings by summoning the charged company to defend itself, implicitly threatening to strike it off the register for non-compliance. He then presides over a hearing and renders a decision in a case that he himself has prosecuted.

This is procedural deficiency and it undermines the principle of natural justice, commonly known as "*Nemo iudex in causa sua*," translating to "no one shall be a judge in their own case," which is crucial in establishing public confidence and ensuring a fair and just trial, as it prevents arbitrariness and partiality by emphasizing that justice should not only be done but also seen to be done.

It is recommended that the RoC should adopt an alternative approach. Instead of wielding summary powers, he should conduct investigations and prosecute accused companies before the court. Dissolution should only be contemplated following a court's verdict, ensuring a fair and impartial process. The current

arrangement, where the RoC is responsible for decision-making, prosecuting the case, and overseeing hearings, poses a risk of violating this fundamental principle of natural justice by allowing the RoC to act as a judge in his own cause.

4. Conclusion

In Conclusion, this paper highlights significant challenges within the dissolution-by-deregistration framework in Mainland Tanzania. The examination is made on issues concerning the swift dissolution of active companies, raising substantial concerns about fairness and procedural steadiness. The paper also focused on the dissolution of dormant and defunct companies, with critical discussions on matters of dormancy status of those companies and their implication for dissolution and impacts on the company's interest group.

The legal issues critically discussed include issues related to the conundrum of dual punishment and internal contradictions within the Companies Act, conclusive nature of the certificate of incorporation, and limitations on shareholders' freedom, coupled with potential interference in internal affairs, the inherent RoC's conflict of interest in the dissolution by deregistration process which considerably underlines the need for in-depth review of the entire procedure.

Fundamentally, this legal appraisal calls for legislative amendments to eventually address the identified challenges. The proposed amendments are vital in ensuring the Company's deregistration framework is just, equitable and upholds essential legal principles, including those of natural justice and the conclusiveness of the certificate of incorporation.