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**INTELLECTUAL PROPERTY LANDSCAPE IN TANZANIA: THE EMERGING ROLE
OF THE BUSINESS REGISTRATION AND LICENSING AGENCY (BRELA) IN
ASSISTING SMALL MEDIUM ENTERPRISES USE INTELLECTUAL PROPERTY**

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A. Introduction

1. This presentation is set to examine two issues firstly, the intellectual property landscape in Tanzania generally and secondly, to examine the emerging role of the Business Registrations and Licensing Agency (BRELA) in assisting Small and Medium Enterprises (SMEs) to use intellectual property.
2. In dealing with the first task, it will be necessary to know what intellectual property is all about, in the first place. A brief historical development of intellectual property in Tanzania is also considered necessary, after the definition, in order to appreciate the role which intellectual property has been playing in the different social and economic settings in Tanzania. In considering the current position, the legal framework underlying intellectual property in Tanzania and the Regional and International Tanzania position in intellectual property, will be highlighted, focusing mainly on the implication of the prevailing legal framework vis a vis the role of intellectual and its contribution to the economic, social and cultural development generally.
3. The second task will mainly focus on examining the emerging role of BRELA in assisting Enterprises generally, and SME in particular to use intellectual property to enhance their competitiveness for better economic performance.
4. To that end it will be necessary to have a brief account of the BRELA and its mandate as an Industrial property office in Tanzania, the scope of industrial property in the overall organization structure of BRELA, its adequacy and inadequacy in executing its mandates in that respect, opportunities and challenges, visionary perception of an ideal industrial property office.
5. A clear nexus between the BRELA as an industrial property office, and enterprises, will be charted out, thereby showing the role that BRELA has to assist SMEs to use intellectual property as one of the formidable tools to enhance their competitiveness in global, as well as local markets.

I. INTELLECTUAL PROPERTY LANDSCAPE IN TANZANIA

B. Intellectual Property

6. What is intellectual property and what is it all about? It has in a number of times been assumed by many that intellectual property is purely an abstract concept devoid of any concrete societal realization. On the contrary, intellectual property like any other form of property, although intangible, is capable of being owned, transferred and or modified.
7. Broadly and probably loosely defined, intellectual property could be regarded as intangible creativity and inventivity embodied in tangible and intangible objects. Tangible and intangible objects, could either be in the form of inventions or innovations in technology, or literary, artistic works, music etc. At that level, intellectual property acquire the proprietary interests of their inventors or creators and hence, the need for their protection.
8. Intellectual Property is a set, previously of two subsets, now with new emerging forms of intellectual property in Traditional Knowledge, Genetic Resources and Folklore, a new and a third subsets could emerge. Discussion at the Intergovernmental Committee under the WIPO, as to

whether those new forms of intellectual property could be accorded similar status as conventional forms of Intellectual Property, is still going on and is yet to be decided.

9. The two subsets are:

- Industrial property which deals with protection of the rights on technology inventions and innovation in the form of patent rights, ownership of products and services markets identifiers in the form of Trade and Service Marks, Rights of ownership Value in certain products in the form of industrial designs and other forms like protection of undisclosed information, intergerated circuits topography, geographical indication of origin etc.
- In the second subset that of copyright, deals with the protection of the rights of authorship of literary and artistic works, performances in music, drama cinematograph protection of databases, architectural drawings etc.

Briefly and in summary this is what constitutes intellectual property.

C. Historical Background of Intellectual Property in Tanzania

10. As with the concept of intellectual property in general many Tanzanians, among the few who are aware of the existence of intellectual property, think that in Tanzania, intellectual property is a totally new concept very few among those who know that intellectual property in Tanzania came with the colonial administration, thus we see the introduction in 1924 through Chapter 218 of the Copyright Legislation and of Chapter 217 of the Patent Legislation and the introduction of Trade Marks in 1922. So the coming into then Tanganyika of the colonial administration with it came those aspects intellectual property.

11. The immediate post independent Tanganyika, did not have any significant change in the contents of the intellectual property legal system, although it is notable that the Copyright Ordinance Cap. 218 was repealed in 1966 by Copyright Act No. 61 of that year. In 1999 an altogether new Copyright Legislation was enacted. It is the current Copyright Legislation in force.

12. In 1986 the Trade Marks Ordinance of 1922 which was repealed by Cap. 394 of 1958, was also repealed by Act No. 12 of 1986, the notable changes in that the new Act, included the introduction of the extension of protection of marks to also cover service marks, previously only trade marks for products could be protected. It also removed the requirement that only trade marks which were registered in UK could be registered in Tanganyika. So the new Trade and Service Marks Legislation, gives the local Industrial Property Authority the mandate, to register all trade and service marks which meet the requirements as set out in the provisions of that legislation.

13. Similarly in 1987 a new Patents Act was enacted to repeal and replace the old Patents Ordinance Cap. 217. The specific features of the new Act include the independence of the Patent office to grant new patents instead of only registering UK granted patents which was the case before.

14. The Act also provides the necessary flexibility for Tanzania to join and participate in various Regional and International Treaties and Conventions in relation to Patents, it also has the feature to encourage transfer of technology and also a features on compulsory licensing of technologies when it is considered to be in the public interest, to grant such licences.

15. It would be pertinent to note at this juncture that, intellectual property is a non – union matter within the context of Tanganyika and Zanzibar political Union, as such, each part of the union has its own intellectual property regime.

16. Internationally Tanzania is a member of the Paris and the Berne Conventions from 1963 and officially joined the World Intellectual Property Organisation WIPO in 1983. Tanzania joined the Patent Cooperation Treaty (PCT) in 1999 and also in the same year became a member of the Nice Agreement on the International Classification Marks.

17. Tanzania is one of the founder members of the African Regional Intellectual Property Organisation (ARIPO) which is based in Harare, Zimbabwe, from 1976. In 1999, Tanzania joined two protocols administered by that organization namely, the Harare and Banjul Protocols, for respectively on Patents and Trade Marks.

18. Therefore it will clearly be seen, during the colonial administration, the forms of intellectual property then in existence, were mainly to protect the rights of the subjects who came and settled in the country and the national of the colonial power and of its allies. Intellectual property had little or no value to indigenous Tanzanians. This same position was maintained even after independence as indigenous Tanzanians did not have any objects of protection in the really intellectual property rights protection in the conventional sense. Indigenous Tanzanians did not have any patentable inventions or innovations, nor did they have trade marks to protect even in music, local composers knew nothing about the rights under copyrights. Intellectual Property then, was more or less an instrument of monopoly. There were in fact some laws which were promulgated to inhibit innovative activities among the indigenous Tanzanians.

19. It is however now different due to rapid technological developments and rapid globalisation process, co-operation among nations in all spheres of development including in intellectual property, becomes inevitable. International and Regional co-operation, to attempt the forging and harmonise intellectual property rights protection regimes among nations, have been made through various International and Regional Co-operation. The World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO) as intellectual property norm setters have been the driving force behind these efforts. There have been some achievements although the asymmetrical reality of the developed, developing and least developed countries, had made that task to be complex.

20. Alternatives to redefine intellectual property, have been introduced and vigorously pursued in some cases, to instill some relevance into some nations, which due to their levels of development intellectual property as it is, in its conventional sense, is not only irrelevant but also oppressive. The case of Intellectual Property Protection and issues of public health is one examples on this point.

21. The new WIPO perspective of looking at Intellectual Property as a progressive tool if carefully integrated into the national economic, social and cultural policies of developing and least developed countries, could bring about economic, social and cultural developments.

22. Indeed the above strategy was adopted in some jurisdictions and has proved to be workable and resulted in wealth creation for the people in those countries (India, China and Korea) could be some examples to illustrate this point.

23. So Intellectual Property from that perspective, could be seen to be a useful tool for economic, social and cultural development.

II. THE EMERGING ROLE OF BRELA IN ASSISTING SMES TO USE INTELLECTUAL PROPERTY

24. The Business Registrations and Licensing Agency (BRELA) is an Executive Agency established under the Executive Agencies Act No. 30 of 1997.

25. Apart from the role of the BRELA to provide formalisation of enterprises including Small and Medium (SMEs), the other role which in effect is an emerging one is to assist the enterprises including SMEs to use intellectual property for purposes of increasing their productivity and enhancing competitiveness in the global as well as local markets for their products.

26. BRELA is responsible for the Administration of Industrial Property laws in Tanzania. It administers the Patents Act No. 1 of 1987 and Trade and Service Marks Act No. 12 of 1986.

27. In its organizational structure, BRELA has an intellectual property division, which is headed by a Deputy Registrar. The main activities of this division is to administer the current Trade and Service Marks and Patent Acts. Through the Registration process of Trade and Service Marks, and through the grant of Patents. BRELA collects industrial property information including patent documents processes it stores it and disseminates to users of that information. This activity is not very active mainly to due to lack information from the demand side. Not many would be users of this information have the knowledge of its availability to BRELA or elsewhere.

28. BRELA also does not effectively perform this the function due to fact that it has a number of gaps. Being unable to cover the full range of industrial property products being the major problem. So far BRELA is active only in Trade and Service Marks and Patents.

29. Undercapacity is yet another handicap, there is a need to undertake capacity building to make optimum use of its potential. Training of personnel and properly equipping the division, could to a great extend improve the efficiency of the division and enable it perform its duties effectively.

30. Poor exposure to international best practices is another problem. BRELA finances its wage bill and other charges, its budget cannot enable it to adequately, finance its staff to participate in international and regional fora which could help its personnel to appreciate and where possible copy the best practices and be able to apply the same in their service delivery duties.

31. In brief BRELA does not adequately discharge its intellectual property mandate to the level of an ideal industrial property office.

32. An ideal industrial property office to effectively carryout that role can be summarized in the following quotation from a WIPO publication:

33. “..... Patent offices in today’s context and that of the future, have an important information function; they have to keep enterprises, industries and industry association appraised and informed about existing rights and new development The information about publication of each patent document could be the basis for new technical development by other inventors” (Shahid Alikhan soci-economic Benefits of intellectual property protection in developing countries WIPO publication 2000)

34. This is true with manufacturing enterprise which have the opportunity to enhance the quality and sometimes the quantity of their products in markets if the proper technology is applied in the production process.

35. Enterprises could access proper technology, through patent documents which contain the largest source of technological information in the world. Such patent documents are available free of charge in patent offices including BRELA and also in the internet. An enterprise could have the following options which BRELA could assist the enterprise to make use of the patent information:-

- To copy the technology disclosed in those patent documents if the patent in question is not protected in the territory or if its time of protection has expired.
- To negotiate with owners of such patents, to facilitates the contractual arrangements for technology transfer.
- To study the state of the art of the technology and innovate for purposes of adding an inventive step thereof and patent.
- To easily identify the source of the technology for purpose of determining the appropriateness of the technology to be applied in a particular enterprise.
- BRELA could also assist to digest and abridge intellectual property information available for use by small and medium enterprises.
- BRELA could also assist SMEs in conjunction with other R & D institutions to provide information to innovation clusters for manufacturing the necessary accessories and or parts for supply as inputs to bigger enterprises.
- Above all BRELA could assist researching SMEs to protect their intellectual property rights which the might develop in course of research or production thereby encouraging inventiveness and enhance investment in research.
- BRELA could also assist in branding new national technology.

36. Enterprises are encouraged to establish their own research and development departments or establish sustainable links with existing National and university research and development centers. This could assist enterprises to develop tailor made technology for the relevant industry but at the same time R & C could start developing market demand technologies which means such technologies will have ready markets.

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