



Retention of Documents |

Pursuant to section 455A of the Companies Act, Act no. 12 of 2002 (the Act), the minister of Industries and Trade through a Government Gazette no. 485 of the 21st day of July 2023 has published regulations regarding Documents retention known as the Companies (Retention and Disposal of Company Documents) Regulations, 2023.



Initially, the Act had a provision regarding the retention of documents but was general and there was no regulation laying down the procedures for retention and disposal of documents. These regulations are enacted to cure the same.

Overview

Modality of retention

Companies shall keep original documents in paper form or electronic record depending on the modality of the issuing authority.

Retention of documents under other written laws

Every company shall ensure that it maintains and keep available all original documents required to be kept under any other written law.

Adoption of retention period by companies

A company is allowed to adopt any other period of retention as long as it is not less than the period prescribed in the Regulations.

Powers of the registrar of companies

Assigning justifiable reasons, the registrar may direct any company to retain any document beyond the period prescribed in these Regulations.

Disposal of documents

- 01 Disposal of documents shall be done under the authority of the Board of Directors, administrator, administrative receiver, receiver or liquidator of the company.
- 02 It shall be the duty of the company secretary, director, administrator, administrative receiver, receiver or a liquidator of the company
 - ★ to enter the particulars of all documents to be disposed in the prescribed form;
 - ★ to be present at the time the documents are disposed; and
 - ★ to sign the prescribed form after the disposal;
- 03 The company shall file a disposal form to the Registrar within 21 days from the date of the disposal.

Investigation and Legal Proceedings

- 01 When anticipated or determined that some documents are or shall be subjected to Legal proceedings, Investigation or claims, the company shall keep and maintain such documents until the completion of legal proceedings or claims or investigation.
- 02 Where it has been determined that a document is required in any proceedings or claim or investigation, and such document is disposed, it shall be deemed that such document has been deliberately disposed hence an offence.

Penalties

A fine of not less than 1 million shillings but not exceeding 10 million shillings shall be imposed to the company and every officer of the company who contravenes any provision of the Regulations.



FIRST SCHEDULE

(made under regulation 5)

S/N	Type of Document	Retention Period
1	Memorandum and Articles of Association and Alterations or Amendments	10 years
2	Application for Registration of a new company Consolidated Form — Form 14a	10 years
3	Integrity Pledge Form	10 years
4	Return and declaration delivered for registration by a foreign company - Form 434	10 years
5	Certificate of Incorporation or Certificate of Compliance	10 years
6	Particulars of Beneficial Owners - Form 14b	5 years
7	Notice of Ceasing to be a beneficial owner — Form 14c	5 years
8	Declaration by the registered owner of shares but who does not hold the beneficial interest in such shares — Form 14d	5 years
9	Declaration by the beneficial owner who holds or acquires beneficial interest in shares but whose name is not entered in the register of members — Form 14e	5 years
10	Change of Beneficial Owners particulars — Form 14f	5 years
11	Certificate of Change of Name	10 years
12	Notice of increase in number of members — Form 10	10 years
13	Declaration of satisfaction in full or in part of mortgage or charge — Form 104	10 years
14	Notice of Change In Situation Or Address Of Registered Office — Form 111	5 years
15	Annual returns — Form 128	10 years
16	Appointment, Termination or Change Particulars of a Director or Secretary — Form 210a, 210b & 210c	10 years
17	Notification of ceasing to be a private company — Form 29	5 years
18	Liquidator's statement of receipts and payments — Form 305	10 years
19	Members voluntary winding-up declaration of solvency — form 338	10 years
20	Return of final meeting in a members voluntary winding-up — Form 345	10 years
21	Notice of appointment of liquidator voluntary winding-up — Form 360a	10 years
22	Notice of appointment of liquidator voluntary winding-up for insertion in gazette — Form 360b	10 years
23	Proof of debt general form — Form 365a	10 years
24	Affidavit of debt — Form 365b	10 years
25	Particulars with respect to the position of the liquidation — Form 394	10 years
26	Receiver or managers abstract of receipts and payments — Form 414	5 years
27	Notice of appointment of administrative receiver Form 420	5 years
28	Statement of affairs administrative receiver — Form 421	5 years

29	Return of alteration in the charter statutes etc of a foreign company - Form 436a,436c,436d	10 years
30	Return of alteration in the address of registered office etc. of a foreign company — Form 436b	10 years
31	Particulars of a mortgage or charge foreign company — Form 437a	5 years
32	General description of the property charged — Form 437b	5 years
33	Particulars of an issue of secured debentures in a series foreign company — Form 437c	5 years
34	Particulars of a mortgage or charge subject to which property has been acquired foreign company — Form 437d	5 years
35	Declaration of satisfaction in full or in part of mortgage or charge foreign company — Form 437e	5 years
36	Return of allotment of share — Form 55a	10 years
37	Particulars of a contract relating to shares Allotted — Form 55b or Contract	10 years
38	Statement of the amount in connection with the subscription of shares — Form 56	5 years
39	Notice of increase in Nominal capital — Form 66	10 years
40	Particulars of a mortgage or charge — Form 96	5 years
41	Particulars for the registration of a charge — Form 98a	5 years
42	Particulars of an Issue of Secured Debentures in a Series — Form 95b	5 years
43	Appointment of Receiver or Manager — Form 106	5 years
44	Resolution and Minutes of board and members meetings	5 years
45	Notices	5 years
46	Company Registers (including but not limited to Directors, Members, Beneficial Owners, Securities or Charges)	10 years
47	Director's Certificate of Solvency	10 years
48	Transfer or Transmission Instruments	10 years
49	Annual Accounts or Financial Statements	10 years
50	Disposal Form	10 years
51	Any other document or information that a company is required to keep in terms of the Act or any other written law.	10 years

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