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# The Passage of the Companies Act Somalia

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# The passage of the Companies Act in Somalia

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In December 2019, the Somalia Companies Act was passed into law. This is a critical milestone in the development of a modern Somali economy. The reform process, started in 2016, was led by the Ministry of Commerce and Industry (MoCI) in collaboration with the World Bank Group (WBG). This case study explains why the reform is important, how the Ministry and the World Bank Group partnered to implement it, what lessons have been learned, and what is needed to make the law effective.

“ Our objective is to enable Somali companies to compete and grow effectively.

*H.E. Abdullahi Ali Hassan,  
Minister of Commerce & Industry, Somalia*

# Why is the Companies Act important?

The Somalia Companies Act 2019 provides the legal basis to formalize businesses, establish the Office of the Company Registrar, and streamline the rules for starting and regulating companies in Somalia. The law also provides the necessary foundation to make operational the online business registration system and help establish the basic requirements for corporate governance, financial and operational reporting by companies, shareholder rights, responsibilities of directors and the dissolution of firms.

The Act's aim is to provide customers, creditors, and suppliers with the information they need to do business with a company with confidence. In this way, the Companies Act aims to help integrate Somali traders and entrepreneurs into the international economy, facilitating trade, and access to global value chains.

“ For Somalia to grow and prosper, the business sector needs to move onto a more formal footing so that we can better trade with our neighbors, bid for contracts, and enter supply chains. The Companies Act is a critical step in this process.

*Mr. Abdirashid Ainanshe, Vice President, Somali Chamber of Commerce and Industry*

Somalia has a dynamic and resilient private sector which has made progress despite decades of conflict. However, businesses operate in a legal and regulatory vacuum with little or no formal government enforcement, instead using traditional or customary mechanisms for dispute resolution. Until the passage of the Companies Act 2019, companies were regulated under the Somali Civil Code of 1974, augmented by the Italian Civil Code of 1942<sup>1</sup> and a number of decrees and directives. In practice, firms were licensed by the Ministry of Commerce and Industry<sup>2</sup>, and as of the start of 2017, only about 5,000 businesses were registered, a small portion of the total number of firms operating informally.

Missing, or out-of-date company accounts and ownership, meant that suppliers, creditors, and customers had to rely on their own information sources to guide their decisions on doing business in Somalia. As a result:

- A lack of company information has inhibited the growth of the finance sector. Banks haven't been able to lend because they lacked accurate information on company ownership and performance.
- A lack of formality has meant that much commerce proceeds without contracts – when things go wrong investors or creditors have often lost money.
- Similarly, trade finance and investment have proved difficult, limiting Somalia's development into an internationally connected economy.
- For these reasons, there is huge unmet demand in the credit market (which meets only 7% of current demand). Lending is heavily concentrated on trade finance, which makes up 85% of the total portfolio of financial institutions. As a result, companies rely on their own sources of finance – for example through family loans or remittances. This in turn inhibits the growth of formal SME's who are large enough to enter into supply chains and provide Somali owned and led market competition.
- This absence of domestic commercial finance provides a significant competitive barrier to entry. As a result, the Somali economy is dominated by a handful of conglomerates with links to remittance firms or banks who can provide them the finance they need for larger projects<sup>3</sup>.

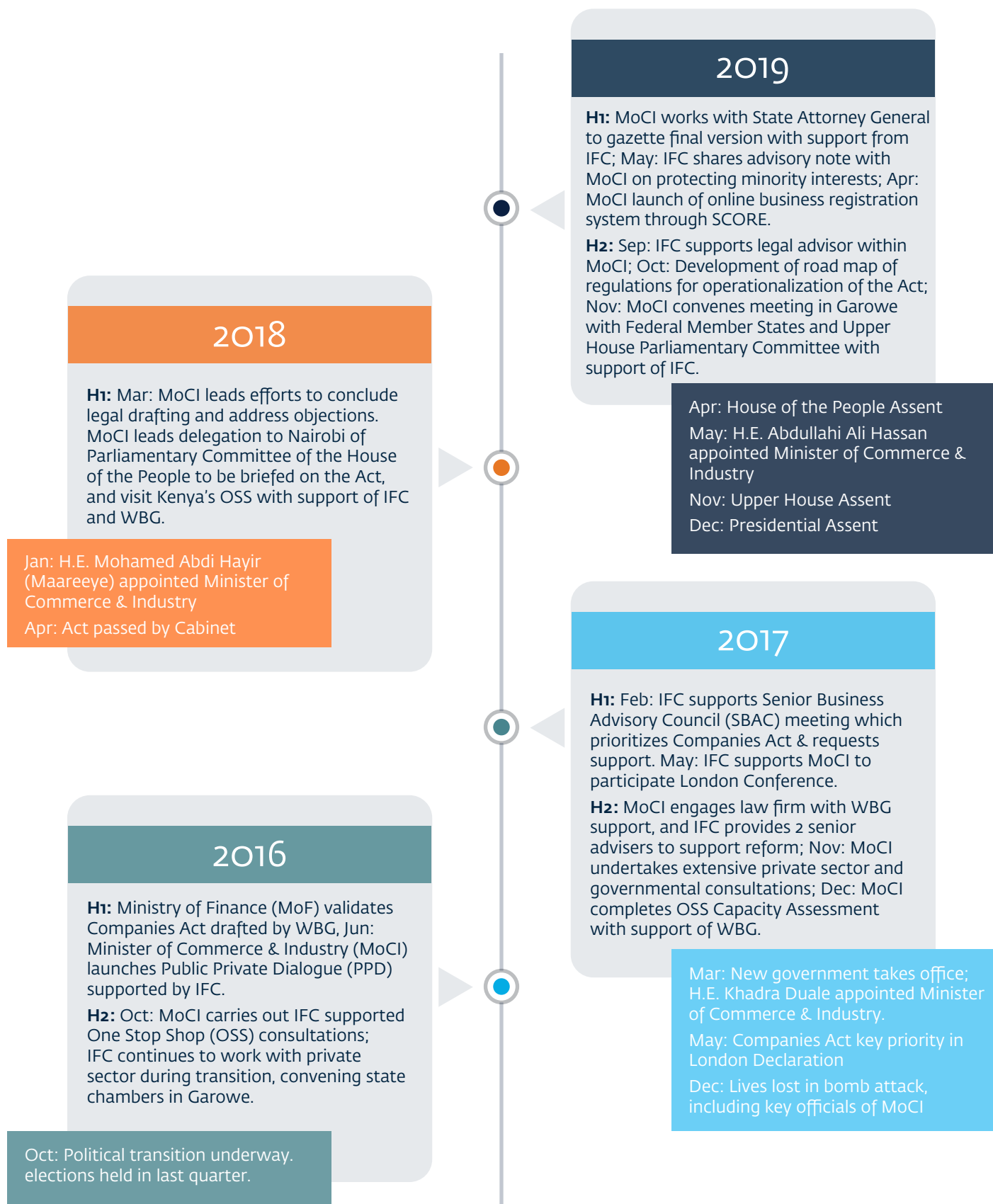
The new Somalia Companies Act provides the legal framework to protect creditors and shareholders, and enables entrepreneurs to limit their own liabilities. For some foreign investors it is a necessary precondition for investment. By enabling expanded access to finance to Somali small and medium entrepreneurs (SMEs), the law will also support their growth. Through easier registration, local companies will be able to access public procurement contracts and international supply chains. Government revenue will also increase as companies formalize and submit their annual returns.

<sup>1</sup> The registration procedure for businesses involved the transmission by the Notary of the company constitution to the office of the Regional Court. The Regional Court then initialed the documents and passed them on to the Attorney General for consideration and for making sure that the documents conform to the Somali law. The judge of the Regional Court would then order the entry of the Company in the Registry of Companies whereby the company was then accorded the status of a corporate body (Scoping document).

<sup>2</sup> Decree of the Minister of Industry and Commerce No. 204 of 26 Sept 1964 lays down the regulations governing the day to day operations of the Ministry: current registrations are issued subject to Article 1, Paragraphs 4-6 (Scoping document).

<sup>3</sup> Jos Meester Ana Uzela, Claire Elder, Transnational capital in Somalia, Clingendael Netherlands Institute of International Relations, June 2019.

# Timeline of passage of the Companies Act



# What were the lessons and challenges of the reform?

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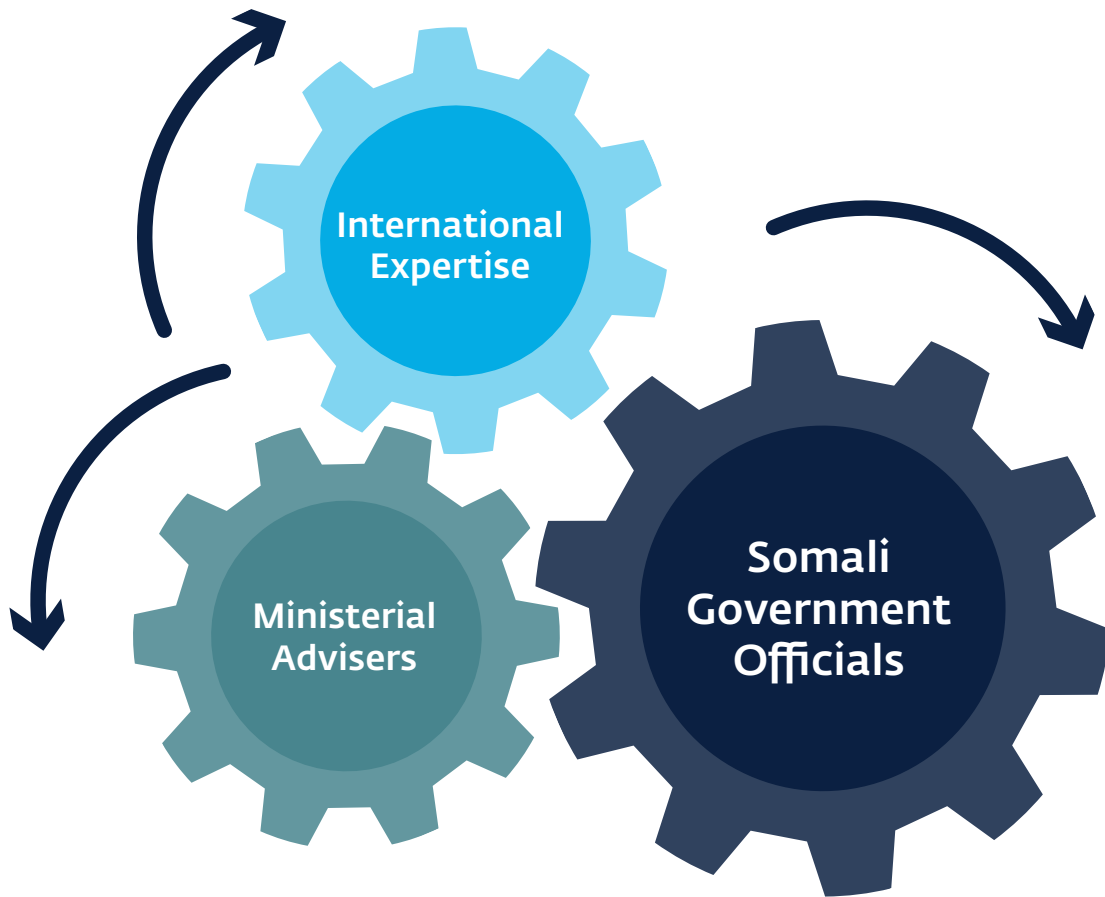
The timeline suggests the challenging process to bring the Act to law. Some of these challenges were external to the project and the process:

- 1. Somali Owned, Somali Led:** Since the civil war, the Somali private sector had adapted its activities to operate outside a formal regulatory environment. The Companies Act was a key first step in formalizing the sector. However, businesses were wary because the benefits were not clear and there were concerns that it might open up Somalia to foreign ownership. As a result, the Ministry of Commerce and Industry had to provide strong leadership to the reform process: they took the redrafting of the law in-house, which tailored the law to the Somali setting, and consulted with and addressed the concerns of all stakeholders including the private sector, federal member states, other line ministries, and the Parliamentary Committees. The law was fine-tuned at every stage. Their leadership, and extensive consultations, enabled the law to be passed and to be seen as 'Somali Owned and Somali Led'.
- 2. Lack of institutional capacity was a challenge:** The Ministry of Commerce and Industry (MoCI), the line ministry administering the law, is poorly funded. Restricted resources resulted in limited IT capacity and a difficult working business environment. Despite these challenges, the Ministry of Commerce and Industry worked consistently over several years to pass the act with the support of development partners. The World Bank Group (through the IFC Somalia Investment Climate Reform Program(SICRP) program, and the Somali Core Economic Institutions and Opportunities Program (SCORE)) provided capacity support to MoCI and this increased capacity also contributed to other priorities for the ministry.

**This capacity support sometimes created its own difficulties.** For example, IFC engaged a regional law firm to assess the institutional capacity of the related government institutions and support the legal redrafting process. IFC also provided global legal expertise through a consultant who commented on the act. However, language issues and the firm's lack of local representation created the perception that the Act was an international product, one not owned by the local ministry and government.

To address this problem, the MoCI requested senior advisors, which IFC provided, to lead the drafting of the Companies Act and reform process within the Ministry. Over time, the MoCI and WBG fine-tuned the way they supported capacity building in Somalia's fragile environment by linking global expertise with embedded advisers within the Ministry, who in turn supported local government officials and identified local needs.

- 3. Somalia's security environment presented its own challenges.** Travel in some areas (including parts of Mogadishu) is deemed as high risk and travel within Somalia is limited and controlled, making it difficult to hold meetings at the clients' workplace, or convene stakeholders. The World Bank Group cannot directly employ staff on the ground, but instead relied on inviting clients for capacity building and meetings outside Somalia, peer to peer learning, and embedding advisers within the Ministry.
- 4. The high turnover of champions** within the Ministry of Commerce and Industry and the accompanying loss of institutional memory, plus overstretched financial and human resources teams, also slowed progress. Ministerial changes led to further turnover among mid-level staff,



extra briefings for new officials and leadership, and changes in approach. The appointment of key advisers within the Ministry of Commerce and Industry, until the passage of the law, was an important stabilizing strategy.

5. **Language challenges slowed the passage of the law.** IFC engaged international contractors with global expertise on the Companies Act, but none were native Somali speakers. Moreover, the original law was drafted in English, which then had to be translated into Somali. The quality of the first translation did not meet the Ministry's standards and some stakeholders suggested that the zero draft should have been initiated within the Ministry rather than by an international institution. IFC appointed a legal adviser within the Ministry of Commerce and Industry to support the passage of the law and, going forward, the drafting of the subsidiary regulations. IFC also provided support on the translation of the law. Going forward, engaging a Somali lawyer who can work on the law with international experts will help overcome language issues and build local capacity.

6. **Low levels of trust and understanding slowed the process:** Some stakeholders raised concerns that formalizing the economy would increase taxes and allow the entry of more domestic and foreign investors (mostly diaspora). On the Government side, Federal Member States had to be engaged : they have a stake in the Companies Act because they all currently issue licenses to businesses at a state level, which is a key source of revenue. Supported by the IFC, public private dialogue (PPD) raised the profile of the Companies Act and engaged the private sector. The Chamber of Commerce were also involved, briefing their members on the importance of the reform. In the final year, as the PPD slowed, political support came from the Ministry and a broad-based consultation process involving the Federal Government of Somalia, Federal Member States, the House of the People and Upper House of Parliament. Engaging at the political and technical levels proved equally important: in the end, the leadership of the Ministry facilitated a law which was recognized as home grown and Somali.

# How did the WBG support the reform?

The FCI World Bank and IFC teams worked closely together to support the passage of the Act. The World Bank Somali Core Economic Institutions and Opportunities Program (SCORE) originally supported the drafting of the Companies Act on behalf of the federal government. The Act was validated by the Ministry of Finance in 2016. Through SCORE, the World Bank hired senior legal and IT experts to join the MoCI's business registration department to jointly design of a one-stop shop to operationalize the Companies Act. IFC's additionality included:

- The Somalia Companies Act was discussed within the IFC facilitated public-private dialogue process. The adoption of the reform as a priority within the declaration of the London Conference on Somalia in 2017 elevated its importance. The inclusion of Somalia in the World Bank Group's global Doing Business report further highlighted the importance of the Companies Act.
- The WBG provided technical inputs and extensive guidance and capacity building support via discussions with the Ministry and private sector. Encouraged by the World Bank, IFC provided additional advisors at the MoCI's request. These advisers helped the Ministry steer the reform through the Cabinet and both houses of Parliament.

“ This was our first Companies Act and we appreciated being able to draw on IFC's global experience and expertise. More important was growing our own expertise within the Ministry to steer the passage of the Act.

*Mr. Abdiaziz Ibrahim Adan,  
Director General Ministry of Commerce and Industry*

- The WBG (through the SCORE program and IFC's SICRP) provided support for logistics for consultations with the private sector, the Federal Member states, and with parliamentarians. The MoCI worked with Parliament to improve understanding of the Act, with IFC providing briefings and training to each Parliamentary Committee. IFC supported consultation processes in 2016 and 2017 with the Federal Member States. The final consultation event on the Company Law in Garowe in November 2019, which was led by the Upper House of Parliament with active participation from ministries from the Federal Government and the Federal Member States, led to the law's final approval by Parliament and its submission to the President.
- The law was also championed by the Senior Business Advisory Council (convened by IFC), and made a priority in the National Development Plan.

Partly as a result of these efforts, the Government identified passage of the Companies Act as a prior action to be addressed as part of the World Bank-supported debt clearance process. The link to debt clearance increased the Act's political importance, building momentum to pass it and as a result, the Somalia Companies Act was part of a package of legal reforms that the Government approved in the last quarter of 2019.





## What are the next steps?

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The Ministry of Commerce and Industry, supported by the WBG and other development partners, is working to make the Companies Act operational by:

- Implementing the online registration process and launching the one-stop shop. These are important steps that will ease the registration process, which is being supported by the World Bank with technical assistance from IFC. The first phase of online registration was scheduled to be launched in Mogadishu in 2020.
- Reviewing implementation timetables and adjusting accordingly in light of COVID-19 and its impact on economic activity.
- Rolling out the Act in a phased manner to enable country-wide standardization through a consultation process between the Federal Government and all the FMS. Currently company registration is subject to different practices across different Federal Member States (FMS).
- Reviewing and redrafting subsidiary implementing regulations (supported by the WBG) and developing standard company documentation to enable the operationalization of the law.
- Reaching out to the private sector to raise awareness of their rights and duties under the Act, and obtaining their feedback on the progress and benefits of the reform.
- Monitoring feedback on operationalizing the law and the use of the online system.
- Aligning FMS registration processes and agreeing a revenue sharing model, with WBG support. Federal Member States continue to have their own business licensing processes.

“ Our next step is to explain to the local economic operators the new opportunities that the law offers for corporate firms with the related rights and responsibilities.

*Mr. Abdulkadir Tahlil,  
Legal Adviser to Ministry of Commerce and Industry*

The case study was developed by Mr. Taneem Ahad and Ms Laura Watson and, in addition to those quoted, benefited from discussions with Mr. Ahmed Elmi Muhamad (Ministry of Commerce and Industry), Mr. Abdigani Jama (Office of the Prime Minister), Mr. Burhan Imaan (Ministry of Finance), Professor Issa Xalane (Somali Chamber of Commerce and Industry), Mr. Thilasoni Ben Musuku and Ms. Asta Bareiseite (IBRD), Ms. Elizabeth Kibaki and Mr. Abdirashid Mohamed Abdi (IFC).

The passage and operationalization of the Companies Act is supported by WBG's SCORE, Somalia Capacity Advancement, Livelihoods and Entrepreneurship, through Digital Uplift Project (SCALED-UP), and Somali Investment Climate Reform Program (SICRP) phase 1 & 2.

- World Bank's SCALED-UP project is also working to support the roll out of the Business Registration System and One Stop Shop. For more information on SCALED-UP please contact Thilasoni Ben Musuku at [tmusuku@worldbank.org](mailto:tmusuku@worldbank.org).
- SICRP 2 is working to improve prosperity in Somalia by unlocking private investment and facilitating trade and specifically to remove obstacles to doing business, enabling the public private dialogue, and facilitating trade. SICRP 2 is funded by the IFC PSD Trust Fund, which is supported by IFC, DFID, DANIDA and EU. For more information on IFC SICRP2, please contact Mr. Taneem Ahad [TAhad@ifc.org](mailto:TAhad@ifc.org)

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