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# The Legal Challenges Arising from Uncertainties Between International Standards and The Legal Framework for Determining Corporate Nationality in Tanzania

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**Abstract**

The determination of corporate nationality is an important aspect of international investment law because it establishes the legal identity of companies and determines their eligibility for investment protection under domestic and international legal frameworks. However, the absence of a universally accepted approach to determining corporate nationality has created considerable legal uncertainties, particularly where a company is incorporated in one country but owned, controlled or managed by persons from another country. In Tanzania, the determination of corporate nationality involves different legal approaches, particularly the incorporation theory and the control theory. Whereas company law generally recognizes the place of incorporation as the basis for establishing corporate identity, investment legislation considers foreign shareholding when determining whether a locally incorporated company qualifies as a foreign investor. This situation creates challenges concerning the classification of companies, indirect foreign ownership, access to investment incentives and eligibility for international investment protection. This article critically examines the legal challenges arising from uncertainties between international standards and Tanzania's domestic legal framework for determining corporate nationality. It argues that although the application of different nationality tests may be justified by different regulatory objectives, the absence of sufficient harmonization creates legal uncertainty and may undermine predictability in investment relations. The article recommends harmonization of corporate nationality rules, clarification of the applicable nationality tests and strengthening of beneficial ownership regulations to ensure consistency between domestic legislation and international investment standards.

**Keywords:** *Corporate Nationality, International Investment Law, Incorporation Theory, Control Theory, Foreign Investors, Beneficial Ownership, Investment Protection.*

## 1.0 Introduction

Corporate nationality is an important concept in international law, particularly in international investment law, private international law and international commercial transactions. It determines the legal connection between a company and a particular state and consequently influences the rights, obligations and protections available to that company under domestic and international legal frameworks. Unlike natural persons, whose nationality is generally determined through citizenship laws, corporate nationality is determined through different legal approaches, including the place of incorporation, registered office, principal place of business and nationality of shareholders or persons exercising effective control over the company.

In contemporary international investment relations, determining corporate nationality has become increasingly complicated due to the expansion of multinational corporations, foreign subsidiaries, holding companies and complex ownership structures. A company may be incorporated in one country, maintain its headquarters in another, conduct its principal business activities in a third country and be controlled by shareholders from several different jurisdictions. This situation creates legal uncertainties concerning the appropriate criteria for determining the nationality of such companies.

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In Tanzania, the determination of corporate nationality is particularly significant because the law distinguishes between domestic and foreign investors for purposes of investment registration, incentives, regulatory obligations and participation in particular economic activities. The Investment and Special Economic Zones Act, 2025 provides a definition of a foreign investor that considers both the place of incorporation and the nationality of shareholders. Under section 3, a company incorporated outside Tanzania making direct investment in the country qualifies as a foreign investor. Similarly, a company incorporated in Tanzania qualifies as a foreign investor where 50 per cent or more of its shares are held by a person who is not a Tanzanian citizen.[1]

Although this approach seeks to identify the foreign character of investments, it raises important questions concerning its relationship with international standards, particularly those that traditionally recognize the place of incorporation as the primary basis for determining corporate nationality. It also creates uncertainties concerning companies with mixed ownership, indirect foreign participation and foreign beneficial ownership.

Therefore, this article critically examines the legal challenges arising from uncertainties between international standards and the Tanzanian legal framework for determining corporate nationality. It argues that the coexistence of different nationality tests creates inconsistencies in determining corporate identity, access to investment protection and the treatment of companies operating in Tanzania.

## 2.0 International Standards Governing the Determination of Corporate Nationality

International law recognizes different approaches to determining corporate nationality. However, the incorporation theory remains particularly important in international investment law and diplomatic protection.

The incorporation theory determines corporate nationality according to the country under whose laws a company was established or incorporated.[2] Under this approach, a company incorporated in Tanzania is generally regarded as a Tanzanian-incorporated company irrespective of the nationality of its shareholders, directors or ultimate beneficial owners. This approach promotes legal certainty because the nationality of a company can be established through its certificate of incorporation and the applicable company legislation.

The importance of the incorporation theory was demonstrated in Barcelona Traction, Light and Power Company Limited (Belgium v Spain), where the International Court of Justice considered whether Belgium could exercise diplomatic protection on behalf of Belgian shareholders in a company incorporated in Canada. The Court emphasized the legal personality of the company and recognized Canada, rather than Belgium, as the state entitled to exercise diplomatic protection on behalf of the company.[3] This decision illustrates the distinction between corporate nationality and the nationality of shareholders. The commentaries also argued as follows: -

> "In the Barcelona Traction Case Belgium required to claim compensation on behalf of its subjects (Belgian shareholders) in a Canadian owned power generation company whose principal assets located in Catalonia. The Belgian claim was held disallowed on two major grounds. First, Belgium had no claim to make on the basis of domestic law analogies to rules of national company law which incorporated the rights of shareholders to the entity where an unlawful act was directed against the latter. Only where the corporation had ceased legally to exist could the subjects bring a claim in their own right. On the facts, the Barcelona Traction Company was still in existence and so the Belgian shareholders had no enforceable rights. Secondly, Belgium was not the State of nationality of the company and so could not bring a claim in the entity's name. Only Canada as the State of incorporation could do so"[4].

However, international law does not exclusively rely on incorporation. The control theory determines corporate nationality by examining the nationality of persons who own, control or exercise decisive influence over a company. Under this approach, a company may be regarded as foreign where its controlling shareholders or ultimate beneficial owners are foreign nationals, even if it is incorporated locally.

The importance of the control theory is reflected in Article 25(2)(b) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965. The provision permits a juridical person having the nationality of the host state to be treated as a national of another contracting state where, because of foreign control, the parties agree to treat it as such for purposes of the Convention.[5] This demonstrates that international investment law recognizes circumstances in which foreign control may justify treating a locally incorporated company as foreign as follows:-

> "In the existing case, Venezuela Holdings (Netherlands) owns 100 % of the portion capital of its two American subsidiaries, which in turn own 100 % of the part capital

[1] The Investment and Special Economic Zones Act, 2025, Act No. 6 of 2025, s 3. The Act commenced on 1 July 2025 and repealed the Tanzania Investment Act, 2022.

[2] DOLZER R, Kriebaum U and Schreuer C, Principles of International Investment Law (3rd edn, Oxford University Press 2022) page 63-65.

[3] Barcelona Traction, Light and Power Company Limited (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3, paras 70–71.

[4] MUCHLINSKI, Peter T (2014) Corporations in International Law Module: Max Planck Encyclopedia of Public International Law [MPEPIL] para 1,2

[5] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965), art 25(2)(b)

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of the two Bahamas subsidiaries. Thus the share capital of Venezuela Holdings (Netherlands) in those subsidiaries puts it possible for it to exercise control on them. The Tribunal does not have to focus whether or not such control was exercised in fact"[6].

"Legal persons not established under the law of that Contracting State party but controlled, directly or indirectly, by natural persons[7]".

Another approach is the real-seat theory, which determines corporate nationality by considering the location of a company's central administration, effective management or principal decision-making activities. This approach focuses on the actual economic and administrative connection between a company and a particular state rather than relying exclusively on formal incorporation. The theory is demonstrated by scholarly work as follows: -

"According to international law and practice, there are different possible standards to determine a legal person's nationality. The most commonly used is the place of incorporation or registered office. Alternatively, the place of the central administration or effective seat may also be taken into attention"[8].

Nevertheless, the application of different theories creates uncertainties where companies maintain different connections with several countries. Consequently, there is no single nationality test that automatically applies to every corporate relationship. The appropriate test depends on the relevant domestic legislation, international treaty and legal purpose for which corporate nationality is being determined.

## 3.0 The Legal Framework for Determining Corporate Nationality in Tanzania

The determination of corporate nationality in Tanzania is regulated through several legal instruments, particularly company legislation, investment legislation and sector-specific laws.

The Companies Act, Cap. 212, provides the principal framework for the incorporation and regulation of companies in Mainland Tanzania. It recognizes companies incorporated under Tanzanian law as well as foreign companies incorporated outside Tanzania but registered to operate in the country.[9] This demonstrates the importance of incorporation as a legal criterion for distinguishing Tanzanian-incorporated companies from foreign-incorporated companies.

However, the position becomes more complicated when corporate nationality is considered under investment legislation. The Investment and Special Economic Zones Act, 2025, which repealed the Tanzania Investment Act, 2022, introduced an approach that combines incorporation and foreign shareholding when determining whether a company qualifies as a foreign investor.[10]

Section 3 of the Act defines a foreign investor to include a natural person who is not a Tanzanian citizen, a company incorporated outside Tanzania making direct investment in the country and a company incorporated in Tanzania where 50 per cent or more of its shares are held by a person who is not a Tanzanian citizen. In the case of partnerships, the definition also considers whether the majority interest is owned by a non-Tanzanian citizen.

On the other hand, the same provision defines a domestic investor to include a Tanzanian citizen and a company registered under Tanzanian law in which the majority of shares are held by a Tanzanian citizen.

This approach demonstrates that Tanzania applies different connecting factors when determining the status of companies for investment purposes. Whereas incorporation establishes the legal identity of a company, foreign shareholding becomes relevant in determining whether that company qualifies as a foreign investor.

For example, where a company is incorporated in Tanzania but 70 per cent of its shares are owned by foreign nationals, it remains a company incorporated under Tanzanian law. Nevertheless, it qualifies as a foreign investor under section 3 of the Investment and Special Economic Zones Act, 2025.

This situation demonstrates that corporate nationality and investor nationality are not necessarily identical concepts. The distinction is important because a company may be Tanzanian by incorporation but foreign by ownership for purposes of investment regulation.

## 4.0 Legal Challenges Arising from Uncertainties Between International Standards and the Tanzanian Legal Framework

### 4.1 Inconsistency Between the Incorporation Theory and the Control Theory

One of the major legal challenges arising from the determination of corporate nationality in Tanzania is the coexistence of the incorporation theory and the control theory. The Companies Act recognizes the legal identity of a company through incorporation under Tanzanian law. However, section 3 of the Investment and Special Economic Zones Act, 2025 classifies a locally incorporated company as a foreign investor where 50 per cent or more of its shares are held by non-Tanzanian citizens. This creates a situation where a company may simultaneously be Tanzanian for purposes

[6] ACCONCI P. (2004), 'Determining the Internationally Relevant Link between a State and a Corporate Investor' (2004) 5 JWIT 139,140

[7] DOLZER R,Kriebaum U and Schreuer C (2022)Principles of International Investment Law,3ed,Oxford University Press page 66

[8] DOLZER R,Kriebaum U and Schreuer C (2022)Principles of International Investment Law,3ed,Oxford University Press page 66,67

[9] The Companies Act, Cap. 212, Revised Edition 2023. The discussion of this Act concerns Mainland Tanzania.

[10] The Investment and Special Economic Zones Act, 2025, Act No. 6 of 2025, ss 1–3.

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of incorporation and foreign for purposes of investment regulation. For instance, Company A may be incorporated under Tanzanian company law but have 80 per cent of its shares owned by foreign nationals. Under the incorporation theory, Company A is a company incorporated in Tanzania. However, under the Investment and Special Economic Zones Act, 2025, it qualifies as a foreign investor.

The legal challenge arises where different laws or administrative institutions use the expressions domestic company, local company and foreign investor without clearly distinguishing their legal meanings. Such inconsistencies may create disputes concerning eligibility for investment incentives, participation in particular economic activities and compliance with regulatory requirements.

Although the application of different nationality tests may be justified by different regulatory objectives, the absence of a comprehensive framework explaining their relationship creates uncertainty for investors and regulatory authorities.

### 4.2 Uncertainty Concerning Foreign-Controlled Locally Incorporated Companies

Another significant challenge concerns the treatment of companies incorporated in Tanzania but controlled by foreign investors through indirect ownership arrangements. Modern multinational corporations frequently operate through holding companies, subsidiaries and several layers of shareholding. Consequently, determining the actual nationality of shareholders and persons exercising ultimate control may become difficult. For example, Company A is incorporated in Tanzania, and its immediate shareholder is Company B, which is also incorporated in Tanzania. However, Company B is wholly owned by a company incorporated in the Netherlands. The question arises whether Company A should be regarded as a domestic or foreign investor under the Tanzanian investment framework. Although section 3 of the Investment and Special Economic Zones Act, 2025 considers the nationality of persons holding shares, the application of this provision to complex indirect ownership structures requires further clarification. A framework that focuses primarily on immediate shareholding may fail to identify the ultimate beneficial owners exercising actual economic control over a company. This may create opportunities for regulatory avoidance and inconsistent treatment of companies with similar ownership structures.

Therefore, the law should provide clearer rules on tracing indirect ownership and identifying ultimate beneficial owners when determining corporate nationality for investment purposes.

### 4.3 Uncertainty Arising from the Fifty Per Cent Shareholding Threshold

Another legal challenge concerns the 50 per cent shareholding threshold established under section 3 of the Investment and Special Economic Zones Act, 2025. The provision classifies a Tanzanian-incorporated company as a foreign investor where 50 per cent or more of its shares are held by a person who is not a Tanzanian citizen. However, the definition of a domestic investor requires majority shareholding by a Tanzanian citizen. This creates an interesting situation involving companies with equal foreign and domestic shareholding. For example, Company B is incorporated in Tanzania, with 50 per cent of its shares held by foreign nationals and 50 per cent held by Tanzanian citizens. Under the foreign-investor definition, the company qualifies as foreign because the foreign shareholding reaches the statutory threshold of 50 per cent. However, it does not satisfy the requirement of majority Tanzanian ownership under the definition of a domestic investor. Although the legislation classifies the company as a foreign investor under the relevant definition, the legal consequences of this classification should be clearly explained, particularly where other legislation uses different ownership thresholds.

Furthermore, shareholding does not always correspond with actual corporate control. A shareholder holding 40 per cent of shares may exercise significant control through voting arrangements, shareholder agreements or other corporate mechanisms.

Consequently, the law should distinguish between share ownership and effective decision-making control when determining the foreign character of companies.

### 4.4 Challenges Relating to the East African Community Common Market

The relationship between Tanzania's corporate nationality framework and the East African Community Common Market Protocol, 2009, presents another important legal challenge. Article 13 of the Protocol recognizes the right of establishment and requires partner states to remove restrictions based on the nationality of companies, firms and self-employed persons, subject to the permitted limitations under the Protocol. The provision also addresses the treatment of companies and firms established in accordance with the national laws of partner states and having their registered office, central administration or principal place of business and substantial economic activities within the relevant partner state.[11] This regional framework is particularly significant where companies are incorporated in one EAC partner state but owned by nationals of another partner state. For example, a company incorporated in Tanzania may have 80 per cent of its shares owned by Kenyan nationals. Under section 3 of the Investment and Special Economic Zones Act, 2025, the company qualifies as a foreign investor because the majority of its shares are held by non-Tanzanian citizens. However, the Kenyan shareholders are nationals of an EAC partner state, and the company may also rely on the regional rights of establishment where the applicable requirements of Article 13 are satisfied. The legal challenge is whether the domestic classification of such a company as foreign may result in restrictions inconsistent with Tanzania's regional obligations. It is important to recognize that the Common Market Protocol does not automatically classify every EAC-owned company as a domestic company for all purposes. Rather, Tanzania must ensure that the rights and conditions

[11] East African Community, Protocol on the Establishment of the East African Community Common Market (2009), art 13.

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provided under the Protocol are respected when applying its domestic investment regulations.

Therefore, the domestic framework should clearly distinguish between investors originating from EAC partner states and investors originating from outside the Community.

### 4.5 Inconsistency in The Definition of Corporate Nationality

The definition of corporate nationality under international investment law as well as domestic investment legal framework have led the legal difficulties to determining an investor nationality, classifying investors whether domestic investors as well as foreign investors, regulation of foreign investors to access to land and ensuring that the local investment legal regimes operate consistently with investment international standards. Under section 3 of the Act[12] provides the definition of foreign investor to include the company incorporated in the laws of other state other than Tanzania, whereby the law used the place of incorporation to decide the nationality of a foreign investor when make investment within the host country, the definition conforms to traditional international investment law.[13]The law provides the majority shareholding to determining corporate investor which is slightly conform to foreign control test under Article 25(2)(b) of the ICSID Convention.[14]The 50% threshold brings difficulties to the corporate investor especially to the allocation of land for investment purposes in which the land law under section 20(4) of the Act[15] do not conform to that requirements of 50% threshold, it also brings inconsistency under international investment standards which normally determine an investor through place of incorporation and administrative seat.[16]

### 4.6 Uncertainty Concerning the Relationship Between Incorporation, Ownership, and Control

Incorporation, Ownership, and Control bring difficulties to determine corporate nationality where the investment regime describe place of incorporation test as under international investment standards following the Autopista case[17].A company incorporated in Tanzania may have 30% minority shareholders from foreign investor without have effective control through voting agreements or contractual arrangements. Under Article 25(2)(b) of the ICSID Convention[18] requires the parties to the convention may make endeavors to treaty a locally incorporated company to be treated as a foreign investor in a contracting party in which the parties should apply two tests, that is to say through an agreement as well as foreign control test, where an agreement is regarded as subjective approach, and foreign control is regarded as objective approach. The foreign approach is regarded by the Convention that the locally incorporated company may be under foreign control even if the investor has minority shares to the company.

### 4.7 Uncertainty Concerning Indirect and Beneficial Owner

A locally company incorporated in Tanzania may have foreign corporate investor, which may itself be owned by another company of the third country to the basic investment treaty, which may render difficulties to discover indirect shareholder as well as ultimate beneficial ownership. Under international investment standards the determination of corporate nationality adheres to the rules of indirect and ultimate beneficial ownership, this was contemplated by the commentaries of scholarly work as follows-

> "The situation was complicated by a split in legal and beneficial ownership. Only the legal ownership led to the Dutch entity whereas the beneficial ownership ultimately led to a Marshall Islands entity" [19]

Under section 3 of the Act[20] does not provide the statutory requirements concerning indirect ownership and the ultimate beneficial ownership to determine corporate nationality which brings uncertainties and difficulties to the sustainable economic of the host state and security objectives within the host country as well as international community.

### 4.8 Potential Conflicts Between Domestic Investment Laws and International Investment Protection

International investment standards may protect foreign investment in the host country against specified forms of conduct or measures that lead the host state to breach international obligations. Tanzania is among the host countries which used its unilateral acts and measures against treaty obligations. A good practical case law is Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania[21] ,the question in this investment dispute was the contractual breaches by the respondent state as well as the breaches of international obligations arisen from the treaty between the parties. Both disputing parties introduced their argument through written as well as oral memorials and evidence. The investment dispute then conducted under ICSID Convention as well as its rules and regulations thereunder, in 2008 the tribunal decided in favour of the claimant. Doctrinal evidence comments that, this case is the benchmark of the Tanzania country to respect the investment made through its representations, assurances as well as guarantees

[12] The Investment and Special Economic Zones Act, 2025, Section 3
[13] Autopista v Venezuela, Decision on Jurisdiction, 27 September 2001, para 107.
[14] The Convention on The Settlement of Investment Disputes Between States and Nationals of Other States,1966
[15] The Land Act Cap 113 R.E 2023
[16] Autopista v Venezuela, Decision on Jurisdiction, 27 September 2001, para 107.
[17] Autopista v Venezuela, Decision on Jurisdiction, 27 September 2001, para 107.
[18] The Convention on The Settlement of Investment Disputes Between States and Nationals of Other States,1966
[19] Dolzer R,Kriebaum U and Schreuer C (2022)Principles of International Investment Law,3ed,Oxford University Press page 66
[20] The Investment and Special Economic Zones Act, 2025, Section 3
[21] ICSID Case No. ARB/05/22)

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provided by the host state like Tanzania prior a foreign investor of contracting state party establishes and makes an investment[22].

### 4.9 Challenges Concerning Access to International Investment Arbitration

Corporate nationality is also important in determining whether a company can institute international investment proceedings against a host state. Article 25 of the ICSID Convention establishes nationality requirements for juridical persons seeking access to the Centre's jurisdiction. Where a company is incorporated in the host state but controlled by foreign investors, Article 25(2)(b) permits it to be treated as a foreign national where the parties have agreed to do so because of foreign control. This creates a potential challenge where Tanzania classifies a company as foreign under domestic investment legislation, but the company does not satisfy the nationality requirements of the applicable international investment treaty. For instance, a company incorporated in Tanzania but 75 per cent owned by German nationals may qualify as a foreign investor under Tanzanian investment legislation. However, that classification does not automatically establish the company's eligibility to institute ICSID arbitration against Tanzania. The company must independently satisfy the jurisdictional requirements of Article 25 and the applicable investment treaty.

This distinction is illustrated in Tokios Tokelės v Ukraine, where the tribunal considered the nationality of a Lithuanian-incorporated company substantially owned by Ukrainian nationals. The tribunal generally relied on the place of incorporation when determining the company's nationality under the applicable framework.[23]

The decision demonstrates that the nationality of a company for international investment arbitration purposes may differ from its classification under domestic investment legislation. Consequently, Tanzania needs clearer distinctions between corporate nationality under company law, investor nationality under domestic investment legislation and nationality for purposes of international investment arbitration.

### 4.10 Challenges Relating to Beneficial Ownership and Corporate Transparency

The increasing use of complex corporate structures has made beneficial ownership an important consideration in determining corporate nationality. Beneficial ownership refers to the natural person or persons who ultimately own or exercise control over a company, even where ownership is formally registered in the names of other persons or corporate entities. Tanzania has introduced beneficial ownership disclosure requirements through the Companies (Beneficial Ownership) Regulations, 2023.[24] These regulations are important because they promote corporate transparency and assist regulatory authorities in identifying persons who ultimately own or control companies. However, beneficial ownership disclosure does not automatically resolve the question of corporate nationality.

For example, a company may be incorporated in Tanzania and have its shares registered in the names of Tanzanian shareholders while being effectively controlled by foreign beneficial owners through nominee arrangements or indirect ownership structures. The legal challenge therefore concerns how beneficial ownership information should be considered when determining whether a company qualifies as a domestic or foreign investor.

The absence of clear rules may create opportunities for foreign investors to structure their investments in ways that avoid the application of ownership-based investment regulations. Accordingly, Tanzania should strengthen the relationship between company registration, beneficial ownership disclosure and investment classification.

### 4.11 Uncertainty Arising from Multiple Corporate Nationalities

Another challenge arises where a company maintains substantial connections with several countries. A company may be incorporated in Tanzania, maintain its headquarters in Kenya and be controlled by shareholders from the United Kingdom. Under the incorporation theory, the company may be regarded as Tanzanian. Under the real-seat theory, its connection with Kenya may become relevant, while under the control theory, the nationality of its controlling shareholders may influence its classification. This situation creates uncertainty concerning applicable law, international investment protection, jurisdiction of courts and tribunals, recognition of judgments and regulatory obligations. The challenge demonstrates the importance of harmonizing domestic corporate legislation with international investment agreements.

It also emphasizes the need for clear rules identifying the appropriate connecting factor according to the particular legal purpose for which corporate nationality is being determined.

## 5.0 Judicial and International Jurisprudence on Corporate Nationality

International judicial and arbitral decisions provide important guidance on the determination of corporate nationality. In Barcelona Traction, Light and Power Company Limited (Belgium v Spain), the International Court of Justice emphasized the importance of incorporation and the separate legal personality of companies when determining nationality for purposes of diplomatic protection. The decision demonstrates that the nationality of shareholders does not automatically replace the nationality of the company itself.[25] Similarly, in Tokios Tokelės v Ukraine, the tribunal relied substantially on the incorporation of the claimant company in Lithuania despite the fact that most of its

[22] Japhet Simeo (June 2026) Tracing the Path from International Investment Disputes to Domestic Legal Reform: A Case Study of Tanzania, Vol 1, No 3, 91-111, African Journal of Law and Practice page 96

[23] Tokios Tokelės v Ukraine, ICSID Case No ARB/02/18, Decision on Jurisdiction, 29 April 2004.

[24] The Companies (Beneficial Ownership) Regulations, 2023, Government Notice No. 478 of 2023.

[25] Barcelona Traction, Light and Power Company Limited (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3.

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shareholders were Ukrainian nationals. The decision illustrates the importance of the incorporation theory in international investment arbitration. Furthermore, in Saluka Investments BV v Czech Republic, the tribunal considered the definition of an investor under the applicable bilateral investment treaty. The decision demonstrates that corporate nationality and access to investment protection must be determined by interpreting the particular treaty provisions governing the dispute.[26]

These decisions are relevant to Tanzania because they demonstrate that corporate nationality cannot be determined through a single approach without considering the legal framework governing the particular relationship.

They also establish an important distinction between corporate nationality under domestic company law and investor nationality under international investment agreements.

## 6.0 Recommendations for Addressing the Legal Challenges

In order to address the uncertainties arising from the coexistence of international standards and Tanzania's domestic legal framework, several legal reforms are necessary.

First, Tanzania should harmonize corporate nationality rules across company legislation, investment legislation and sector-specific laws. The law should clearly distinguish between corporate nationality for purposes of incorporation, investor nationality for investment regulation and nationality for purposes of international investment arbitration.

Second, the Investment and Special Economic Zones Act, 2025 should provide clearer guidance on the circumstances in which incorporation, shareholding and effective control become relevant. Such clarification would reduce uncertainty among investors and regulatory institutions.

Third, Tanzania should strengthen its compliance with the East African Community Common Market Protocol by ensuring that companies established in other EAC partner states receive the treatment required by Article 13 where its conditions are satisfied.

Fourth, the government should strengthen beneficial ownership regulation by ensuring that relevant authorities can identify the ultimate natural persons who own or exercise effective control over companies. This would reduce opportunities for regulatory avoidance through complex corporate structures.

Fifth, the law should expressly address indirect ownership through intermediary companies, holding companies and nominee shareholders. Clear rules should be established for tracing ownership and determining the ultimate controlling interests.

Finally, Tanzania should promote consistency in the definition of corporate investors under future bilateral and multilateral investment agreements. Such agreements should clearly identify whether corporate nationality is determined through incorporation, registered office, substantial business activities, ownership or effective control.

[26] Saluka Investments BV v Czech Republic, UNCITRAL, Partial Award, 17 March 2006.

## 7.0 Conclusion

The determination of corporate nationality is an important aspect of international investment law because it determines the legal identity of companies and their eligibility for domestic and international investment protection.

This article has demonstrated that international law recognizes different approaches to corporate nationality, particularly the incorporation theory, real-seat theory and control theory. Although the incorporation theory remains particularly important in international investment law and diplomatic protection, foreign control may also become relevant under specific treaty provisions.

In Tanzania, the Companies Act primarily recognizes the legal identity of companies through incorporation, whereas section 3 of the Investment and Special Economic Zones Act, 2025 combines incorporation and foreign shareholding when determining whether a company qualifies as a foreign investor.

Although the application of different nationality tests may be justified by different regulatory objectives, their coexistence creates legal uncertainties concerning the classification of companies, indirect foreign ownership, EAC regional establishment rights and access to international investment arbitration.

The analysis further demonstrates that domestic classification as a foreign investor does not automatically establish foreign nationality for purposes of international investment arbitration. The applicable treaty and international jurisdictional requirements must also be considered.

It is therefore argued that Tanzania requires a more coherent and transparent framework that harmonizes corporate nationality rules while respecting its international and regional obligations.

Ultimately, legal certainty in determining corporate nationality is essential for protecting legitimate investment interests, promoting regional economic integration and ensuring that Tanzania maintains an investment environment founded on predictability, fairness and the rule of law.

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