

THE UNITED REPUBLIC OF TANZANIA



No. 12 OF 1972

I ASSENT,

Julius K. Nyerere
President

11TH MAY, 1972

An Act to amend certain Financial Laws

[12TH MAY, 1972]

1. This Act may be cited as the Financial Laws (Miscellaneous Short title Amendments) Act, 1972.

2. The written laws set forth in the first and second columns of Amendment of certain the Schedule hereto are amended in the manner specified opposite written laws thereto in the third column.

3.—(1) The amendments to the Auctioneers Ordinance shall take Transitional and other effect only in respect of licences issued after the enactment of this Act. provisions Cap. 227 Cap. 294

(2) The amendments to the Exchange Control Ordinance which relate to offences, procedure in proceedings for offences, evidence in such proceedings and punishment for such offences shall apply to any act or omission which is an offence under the said Ordinance as amended by this Act, whether such act or omission took place prior to the enactment of this Act or subsequent to such enactment and whether or not such act or omission would have constituted an offence under the Ordinance as in force immediately preceding the enactment of this Act and whether or not any period for the institution of proceedings for the offence as prescribed by the said Ordinance as in force immediately preceding the enactment of this Act has elapsed.

SCHEDULE

COLUMN 1
Cap. 227

COLUMN 2
The Auctioneers Ordinance

COLUMN 3

The Second Schedule is deleted and replaced by the following:—

"SECOND SCHEDULE

									Shs. Cts.
A.	For a general licence—								
(a)	For one year ... ..	...	...	...	...	...	...	...	1,000 00
(b)	For half a year ... ..	...	...	...	...	...	...	...	600 00
									Shs. Cts.
B.	For a Local Licence—								
(a)	For one year ... ..	...	...	...	...	...	...	...	500 00
(b)	For half a year ... ..	...	...	...	...	...	...	...	275 00".

Cap. 294

The Exchange Control Ordinance

(A) Section 48 is amended by adding immediately below subsection (1A) the following new subsections:—

“(1B) References in this Act to buying or selling of foreign currency shall be construed as including references to any transaction whereby foreign currency is exchanged for any article (including any currency or notes which are legal tender in a country which is for the time being a scheduled territory), goods, services or other valuable consideration whatsoever.

(1C) The powers conferred upon or delegated to the Bank of Tanzania by or under this Ordinance may be exercised by the Governor of the Bank of Tanzania or any officer of the Bank authorized in that behalf by the Governor by writing under his hand."

(B) The Fifth Schedule is amended by deleting Parts I and II and substituting therefor the following:—

PART I

GENERAL PROVISIONS AS TO EVIDENCE AND INFORMATION

1.—(1) In this Part and Part II of this Schedule—

“Bank” means the Bank of Tanzania;

Interpretation

“the Governor” means the Governor of the Bank of Tanzania and includes, in relation to any function of the Governor, any officer of the Bank authorized in writing by the Governor to exercise such functions.

(2) In any proceedings under this Ordinance a certificate under the hand of the Governor to the effect that the person named therein was authorized by the Governor to perform the function described therein at the date specified in such certificate, shall be admissible in evidence and shall be *prima facie* evidence that such person was so authorized and that the signature to such certificate is genuine and that the person signing it held the office of Governor when he signed it.

2. Without prejudice to any specific provision contained in this Ordinance the Bank may—

Bank may call for information or declaration

- (a) by notice in writing, require any person in the United Republic, within such time and in such manner as may be specified in the notice, to furnish to the Bank, or to any person named in such notice, any information in his possession which the Bank or the person so named, as the case may be, may require for the purposes of securing compliance with, or detecting any evasion of, any of the provisions of this Ordinance or any order, notice, direction or other requirement, made, given or issued, under the provisions of this Ordinance;
- (b) by notice in writing require any person in the United Republic, within such time and in such manner and to such officers of the Bank as may be specified, to produce for inspection any relevant books, accounts or other documents;
- (c) by notice in writing require any person resident in the United Republic to make a declaration in such form as the Bank may specify disclosing all the assets and liabilities of such person, whether within or outside the United Republic and giving such particulars of such assets and liabilities as the Bank may require;
- (d) by notice in writing require any person resident in the United Republic to make a declaration as to whether or not such person has any bank account with any bank outside the United Republic or is entitled to operate such bank account and to give such particulars of any such account as the Bank may require:

Provided that no person who has acted as an advocate for any other person shall be required to disclose any privileged communication made to him by his client.

3.—(1) Where a magistrate, a police officer of or above the rank of an Assistant Superintendent of Police or an officer of the Bank or a police officer not below the rank of Inspector authorized in writing in that behalf by the Governor, is satisfied—

Search, arrest and detention

- (a) that there is a reasonable ground for suspecting that an offence under this Ordinance has been, or is being or is about to be committed by any person; or
- (b) that evidence of the commission of an offence under this Ordinance may be found at some premises or in any vehicle, vessel or aircraft; or
- (c) that any document or article which ought to have been produced pursuant to any notice given by the Bank and has not been produced, is to be found on a person or at some premises, or in a vehicle, vessel or aircraft,

he may arrest, detain and search the person or enter the premises or any premises upon which the vehicle, vessel or aircraft maybe, and search the premises or, as the case may be, the vehicle, vessel or aircraft.

(2) A person authorized by sub-paragraph (1) to search any vehicle, vessel or aircraft, may search every person who is found in, or who he has reasonable grounds to believe has recently left or is about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any document or article found on such person or in the premises or in the vehicle, vessel or aircraft, which he has reasonable grounds for believing to be evidence of the commission of any offence under this Act or of being a document or article to which paragraph (c) of sub-paragraph (1) applies.

(3) Where, by virtue of this paragraph, a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Notwithstanding the provisions of this paragraph, no female shall be searched save by another female.

(5) The provisions of Part III of the Criminal Procedure Code shall, in so far as they may be applicable, apply to arrest and detention of any person under this paragraph.

Retention of
article seized

4.—(1) Any article coming into the possession of a police officer or an officer of the Bank (whether in consequence of the seizure of the article under or by virtue of this Ordinance or otherwise) which the officer has reasonable ground for believing to be evidence of the commission of an offence under this Ordinance may be retained for a period of six months or, if within that period there are commenced proceedings in respect of such an offence in which the article is, or can properly be, adduced in evidence, until the final determination of those proceedings.

(2) For the purposes of this paragraph any proceedings shall be deemed not to have been finally determined so long as there is pending an appeal in the matter of the proceedings, and an appeal in that matter shall be deemed to be pending during the ordinary time within which such an appeal may be lodged and, if such an appeal is duly lodged, the appeal shall be deemed to be pending until it is decided or withdrawn.

(3) The powers conferred by this paragraph in relation to any article shall be in addition to, and not in derogation of, any powers otherwise exercisable in relation thereto.

Burden of
proof

5. In any proceeding for an offence under this Ordinance the burden to prove that—

- (a) the act or thing complained of was done with the permission of the Treasury or, as the case may be, of the Bank; or
 - (b) by virtue of any exemption granted under the provisions of this Ordinance the act or thing complained of does not constitute an offence; or
 - (c) he was not aware, and could not by the exercise of reasonable diligence have become aware, of the existence or contents of any direction given under this Ordinance; or
 - (d) that he is not resident in the scheduled territories,
- shall be on the person charged.

Evidence
Acts, 1967
No. 6

6. Notwithstanding any provision to the contrary in the Evidence Act, 1967, or in any other written law, in any proceedings under this Ordinance—

- (a) a confession made voluntarily by a person charged with an offence under this Ordinance to a police officer of or above the rank of Assistant Superintendent of Police or to an officer of the Bank, or where the person so charged is a body corporate, a confession so made by any director, manager or other officer or employee of the body corporate, or any agent of the body corporate, to a police officer of or above the rank of Assistant Superintendent of Police or to an officer of the Bank, may be proved as against the person so charged and any other person jointly charged with him;
- (b) documents and copies of documents found in the possession or control of a person charged with an offence under this Ordinance, or of his agent, shall be admissible in evidence as against the person so charged and any other person jointly charged with him;
- (c) any information, declaration, statement, or form, given, made or completed by or on behalf of a person charged with an offence under this Ordinance in pursuance of any notice or other requirement given or made under this Ordinance shall be admissible in evidence as against the person so charged and any other person jointly charged with him.

PART II

OFFENCES

Offences

1.—(1) Any person who contravenes any of the provisions of this Ordinance or who fails to comply with any direction, order, requirement or notice issued, made or given, under any of the provisions of this Ordinance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding fourteen years or to both such fine and imprisonment.

(2) In any proceedings under section 5 of the Ordinance if the court is satisfied that any payment to which that section applies was made as consideration for any goods imported into the United Republic and that the fair and reasonable value of such goods is less than the sum of money so paid, the payment shall, notwithstanding that it was made with the permission of the Treasury or the Bank, be deemed to have been made without such permission and the person who made such payment shall be guilty of contravening the provisions of the said section 5 unless he proves to the satisfaction of the court that—

- (a) he took all reasonable steps which a prudent man of business would have taken to ensure that the sum of money so paid was not more than the fair and reasonable value of such goods and that upon discovering that the goods imported did not conform to the description of the goods which he had contracted to import, he took all such reasonable steps which a prudent man of business would have taken to avert or minimise loss to himself; or
- (b) having regard to the quality of the goods imported, the country from which such goods originate and such other commercial considerations as the court may consider relevant, the difference between the sum of money so paid by him and the fair and reasonable value of the goods so imported is within the range which a prudent man of business would consider to be a reasonable commercial risk.

(3) Any person in the United Republic who exports any goods to any person outside the scheduled territories for a consideration the value of which is less than the fair and reasonable value of such goods shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding fourteen years or to both such fine and imprisonment:

Provided that in proceedings for an offence under this sub-paragraph it shall be a good defence for the accused if he proves to the satisfaction of the court—

- (a) that the goods were temporarily exported with the permission of the Bank and that they have been re-imported into the United Republic or will be so re-imported and that no condition imposed or direction given by the Bank has been contravened; or
 - (b) that the Bank having been advised of all the circumstances (including the value of the consideration and the fair and reasonable value of the goods) consented to the export; or
 - (c) that the difference between the fair and reasonable value of the goods and the value of the consideration so received by the accused is within the range which a prudent man of business would consider to be a reasonable commercial risk.
- (4) Any person who—
- (a) with intent to evade the provisions of this Ordinance, destroys, mutilates, alters, defaces, secretes or removes any document; or
 - (b) in furnishing any information for any of the purposes of this Ordinance or pursuant to any requirement made by the Bank, makes any statement which he knows or has reason to believe to be false in a material particular, or recklessly makes any statement which is false in a material particular; or
 - (c) obstructs any person in the exercise of any power conferred upon him by this Ordinance or in the exercise of any power which such person may lawfully exercise for the purpose of investigation or prevention of any offence under this Ordinance; or
 - (d) conspires or attempts, or aids, abets, counsels or procures any other person to commit any offence under this paragraph,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding fourteen years or to both such fine and imprisonment.

(5) For the purposes of sub-paragraphs (2) and (3) "fair and reasonable value of goods" means—

- (a) in relation to goods imported into a scheduled territory, the difference between the whole sale market value of such goods in Tanzania at the date when the agreement for import was entered into and the custom duties and sales tax, if any, payable in respect of such goods at such date;
- (b) in the case of goods exported from Tanzania, means the export price of such goods ruling in Tanzania at the date when the agreement was entered into or not less than ninety-five percentum of the maximum price which such goods would have realized if they had been exported to the United States of America or the United Kingdom on the date when the agreement for export was entered into, whichever be the greater,

and where it is alleged that the consideration paid or, as the case may be, received by the accused, included the cost of freight, insurance or other incidental charges, the court shall, in assessing the fair and reasonable value, take into account, the amount of the cost of freight, insurance and any other incidental charges which would reasonably have been payable in respect of the import or, as the case may be, the export of such goods at the time of such import or export.

(6) In proceedings to which sub-paragraph (2) applies or in proceedings for an offence under sub-paragraph (3), any document purporting to be a certificate under the hand of the Principal Secretary to the Ministry of Commerce and Industries to the effect that—

- (a) the wholesale price in Tanzania of any goods described in such certificate on the date specified in the certificate was the amount mentioned in the certificate; or
- (b) the customs duties and sales tax payable in respect of the goods described in the certificate on the date specified in the certificate was the amount mentioned in the certificate; or
- (c) the ruling export price of any goods specified in the certificate on the date specified in the certificate was the amount mentioned in the certificate; or
- (d) the price which the goods described in the certificate would have realized if exported to the United States of America or the United Kingdom on the date specified in the certificate would have been the amount mentioned in the certificate; or
- (e) the reasonable cost of insurance, freight and other charges specified in the certificate in respect of goods described in the certificate upon their import into Tanzania from any country mentioned in the certificate or upon their export from Tanzania to any place mentioned in the certificate, was, at the date specified in the certificate, the amount mentioned in the certificate,

shall be admissible in evidence and shall be *prima facie* evidence that the signature to such certificate is genuine and that the person signing it held the office which he purported to hold at the time when he signed it, and the court may presume the truth and correctness of the contents of the certificate.

(7) Where an offence under this paragraph relates to any foreign currency and the amount arrived at by multiplying the value of such foreign currency by ten is more than one hundred thousand shillings, sub-paragraphs (1), (3) and (4) shall take effect as if there were substituted for the words "one hundred thousand shillings" the words "an amount equal to ten times the value of the foreign currency to which the offence relates".

(8) Where any person is convicted of an offence under this Ordinance, the court shall order any foreign currency, security, gold or other property in respect of which the offence was committed to be forfeited to the Government unless the court is satisfied that a good reason exists for not making such order.

Being in possession of document evidencing possession of foreign currency

2.—(1) Where, in consequence of any investigation made or search conducted by a public officer or an officer of the Bank, any person is found to be in possession of, or to have control over, any document or article which may reasonably be suspected of being evidence of unlawful possession or ownership by such person of foreign currency, such person may be charged with being reasonably suspected of being unlawfully in possession of foreign currency, and if such person fails to satisfy the court that—

- (a) the document or article does not relate to any foreign currency; or
- (b) he does not possess, own or have control over the foreign currency to which the document or article relates; or
- (c) he lawfully possesses, owns or has control over the foreign currency to which the document or article relates,

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) In this paragraph "document" means any writing, paper or book containing any note or memorandum, cheque, cheque book, bank pay-in-slip or any other document whatsoever and includes a copy of any document.

(3) Where a person is charged with any offence under this Ordinance he may be convicted of an offence under this paragraph although he was not charged with such offence as if the offence under this paragraph were a minor offence within the meaning assigned to that term by section 181 of the Criminal Procedure Code.

Liability of directors, employers, etc.

3.—(1) Where an offence under this Ordinance is committed by a body corporate then, as well as the body corporate, any person who, at the time of the commission of the offence, was concerned, as a director or an officer, with the management of the affairs of such body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge, of the commission of the offence.

(2) Where any offence under this Ordinance is committed by a person as an agent or employee then, as well as the agent or employee, the principal or employer shall be liable to be proceeded against and punished accordingly unless he can prove to the satisfaction of the court that he had no knowledge, and could not by the exercise of reasonable diligence, have had knowledge of the commission of the offence.

4. Notwithstanding any provision to the contrary in the Criminal Procedure Code, Jurisdiction a subordinate court shall have jurisdiction to try and convict any person for an offence of courts under this Ordinance and where such court is presided over by a resident magistrate, Cap. 20 it may impose up to one-half of the maximum fine prescribed for such offence:

Provided that—

- (a) a subordinate court shall not, upon convicting any person for an offence under this Ordinance, pass a sentence of imprisonment, either a substantive sentence of imprisonment or a sentence of imprisonment in lieu of fine, save in accordance with the provisions of section 7 and section 12 of the Criminal Procedure Code;
- (b) a subordinate court not presided over by a resident magistrate shall not impose a fine in excess of the fine which it may lawfully impose under the Criminal Procedure Code;
- (c) nothing in this paragraph shall be construed as dispensing with the requirement of confirmation by the High Court of a sentence passed by a subordinate court and the provisions of section 7, section 10, section 11 and section 12 of the Criminal Procedure Code which relate to confirmation of sentence by the High Court shall apply to a sentence by a subordinate court under the provisions of this paragraph.

5. No person shall be prosecuted for an offence under this Ordinance save with the consent of the Director of Public Prosecutions: Consent of D.P.P.

Provided that nothing in this paragraph shall be construed as preventing the arrest and detention of any person in respect of an offence under this Ordinance or the remand in custody or on bail of any person charged with such an offence.

6.—(1) The Governor may, where he is satisfied that any person has committed an offence under this Ordinance, compound such offence by accepting from such person a sum of money and ordering the forfeiture to the Government of the foreign currency or other property in respect of which the offence was committed: Governor may compound offences

Provided that—

- (a) such sum of money shall not be less than five hundred shillings or more than ten thousand shillings;
- (b) the power conferred by this section shall only be exercised where the person admits in writing that he has committed the offence and by the same or any subsequent writing consents to the Governor proceeding under this paragraph;
- (c) the Governor shall give the person from whom he receives such sum of money a receipt therefor.

(2) The provisions of this paragraph shall not apply where the value of the foreign currency, if any, in respect of which the offence was committed exceeds two thousand shillings.

(3) Where any person is aggrieved by any order made under subsection (1), he may, within forty-five days of such order being made, appeal against such order to the High Court, and the provisions of Part X of the Criminal Procedure Code shall apply *mutatis mutandis* to every such appeal, as if it were an appeal against a sentence passed by a district court in the exercise of its original criminal jurisdiction.

(4) Where an offence under this Ordinance is compounded in accordance with the provisions of sub-paragraph (1), and proceedings are brought against the offender for the same offence, it shall be a good defence for such offender if he proves to the satisfaction of the court that the offence with which he is charged has been compounded under sub-paragraph (1):

Provided that the defence provided for in this sub-paragraph shall not be available to the offender where—

- (a) on an appeal under sub-paragraph (3) the High Court has set aside the composition and any sum of money received by the Governor under sub-paragraph (1) has been refunded to the offender; or
- (b) the Governor has, within thirty days from the date when he made the order under sub-paragraph (1), served a notice upon the offender setting aside the order and refunded to him the sum of money received by him under sub-paragraph (1)."

(C) The First Schedule is further amended in Part III by deleting paragraph 5 thereof and substituting therefor the following paragraph:—

"5. The provisions of this Schedule which relates to investigation for offences, proceedings for offences, evidence in such proceedings and punishment for offences shall apply to offences under this Part and also to investigation and proceedings for such offences."

COLUMN 1

Cap. 515

COLUMN 2

The Provisional Collection of
Taxes and Duties Act, 1963

COLUMN 3

In section 2, add immediately below subsection (2) the following subsections:—

"(3) Where an order under subsection (1) has been made in respect of any Bill and the Minister for the time being responsible for finance, by notice in the *Gazette*, signifies an intention to move an amendment to Bill during its introduction in the National Assembly, such order shall take effect as if the Bill were amended as provided for in such notice.

(4) Where an order under subsection (1) is made in respect of a Bill which, if it were passed into law, would confer upon a Minister or other authority a discretion to grant exemption from the tax or duty provided for therein or to otherwise limit the imposition of such tax or duty, the Minister or the authority may exercise such discretion in the manner provided for in the Bill as if the Bill had passed into law, and where such discretion is so exercised and any subsidiary legislation signifying the exercise of such discretion is published in the *Gazette*—

(a) the order under subsection (1) shall take effect subject to the exemption or limitation specified in such subsidiary legislation;

(b) the subsidiary legislation shall continue in effect, until revoked or replaced by another such subsidiary legislation made under the Bill after the Bill is passed into law, and shall, from the date on which the Bill is enacted as an Act of Parliament, have effect as subsidiary legislation made under the appropriate provision of such Act:

Provided that every subsidiary legislation published in the *Gazette* under this subsection shall expire and cease to have effect upon the expiry of the order made under subsection (1) otherwise than in circumstances specified in paragraph (d) of subsection (1) of section 3.

(5) For the purposes of this Act "tax" includes any fee, levy or other payment payable to the Government, the Community or a local authority."

Passed in the National Assembly on the twenty-fourth day of April, 1972.

Y. Suman
Clerk of the National Assembly