

Tanzania

## East African Community Mediation Agreement Act Chapter 232

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## Tanzania

# East African Community Mediation Agreement Act Chapter 232

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*[This is the version of this document at 31 July 2002.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[s. 1; Act No. 2 of 1987]*

### **An Act to give effect to certain provisions of the East African Community Mediation Agreement, 1984, and to provide for related matters.**

WHEREAS an Agreement for the Division of the Assets and Liabilities of the former East African Community, cited as "the East African Community Mediation Agreement, 1984", and set out in the First Schedule to this Act, was signed on the 14th May, 1984, on behalf of the Governments of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, at Arusha, Tanzania:

AND WHEREAS it is proper that provision be made for giving effect to certain provisions contained in the said Agreement:

NOW THEREFORE BE IT ENACTED by the Parliament of the United Republic of Tanzania as follows:

#### **1. Short title**

This Act may be cited as the East African Community Mediation Agreement Act.

#### **2. Application**

This Act applies to Mainland Tanzania as well as to Tanzania Zanzibar.

#### **3. Interpretation**

In this Act, unless the context requires otherwise—

"**Act of the Community**" means an Act of the former Community enacted in accordance with Article 59 of the Treaty;

"**the Agreement**" means the East African Community Mediation Agreement, 1984, signed by the Governments of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya, as from time to time amended under any of its provisions or modified in any other ways;

"**Community law**" means any law, whether or not subordinate legislation, enacted or made by or for the former Community under the provisions of the Treaty;

"**the former Community**" means the former East African Community established by Article 1 of the Treaty;

"**Contracting State**" means the United Republic of Tanzania or the Republic of Uganda or the Republic of Kenya;

"**common services**" means the Soroti Civil Flying School and the Inter-University Council for East Africa or any other common service which may be declared to be an East African common service pursuant to Article 14.02 of the Agreement;

"**the Corporations**" means the East African Railways Corporation, the East African Posts and Telecommunications Corporation, the East African Harbours Corporation, and their subsidiaries, collectively;

"**joint institution**" means the East African Development Bank or any institution which may be declared under this Act to be a joint East African institution pursuant to Article 14.02 of the Agreement;

"**Minister**" means the Minister for the time being responsible for finance;

"**specified institutions**" means the Soroti Flying School, the East African Development Bank and the Inter-University Council for East Africa;

"**the Treaty**" means the Treaty for East African Co-operation set out in the Schedule to the Treaty for East African Co-operation (Implementation) Act <sup>1</sup>.

#### 4. Application of the Agreement to Tanzania

Subject to the following provisions of this Act, the provisions of Articles 3, 4, 5, 7, 8, 9, 10, 11, 12, 14 and 15 of the Agreement shall have the force of law and shall apply to the United Republic in accordance with this Act.

#### 5. Transfer and vesting of assets in Tanzania

- (1) All the assets which, immediately before the commencement of this Act, were vested in the former Community by the Treaty and which were allocated to the United Republic under the Agreement are hereby vested in the Government of the United Republic.
- (2) The Minister shall, with the prior approval of the President, as soon as practicable and at any rate within not more than twelve months after the enactment of this Act take such measures, including legislation, as he may deem necessary or desirable to transfer or vest the assets vested in the Government by this section to such person, body of persons or public authority as he may deem fit for the effective assumption and operation of the assets and property concerned.
- (3) Notwithstanding subsection (2), the assets and property relative to the management of affairs, property and operations of each Corporation specified in the first column of the Second Schedule to this Act are hereby transferred and vested in the body corporate specified in the second column of that Schedule opposite to the Corporation in question.
- (4) The transfer to and vesting of any assets in any body corporate under this section shall be deemed to be subject to such terms and conditions as the Minister may determine, including the East African Community Mediation assumption by any body corporate of liabilities relating to the assets being transferred.

#### 6. Liability of the United Republic

- (1) The Government shall in respect of the assets referred to in [section 5](#) be subject to the liabilities of the Community to the extent provided in the Agreement.
- (2) For the purposes of this section, there shall be charged on and paid out of the Consolidated Fund without further appropriation other than this section, all such payments as are certified by the Minister to be payment required to be made in discharge of the liabilities of the United Republic under the Agreement.

<sup>1</sup>

## 7. Provisions relating to joint institutions and common services

- (1) Notwithstanding this Act or any other law, the specific institutions shall by virtue of this Act operate as joint East African institutions or common services, as the case may be.
- (2) The Minister may, by order published in the *Gazette*, declare such other institution or organisation as may be agreed to pursuant to Article 14.02 of the Agreement to be a joint institution or a common service.
- (3) Every joint institution or common service shall operate in accordance with such arrangements as may be agreed upon by the Contracting States pursuant to Article 14 of the Agreement.

## 8. Status, immunities and privileges of joint institutions

Every joint institution or common service shall be accorded such capacity, status, immunities and privileges as may be agreed upon by the Contracting States.

## 9. Immunities and privileges of employees

- (1) Persons employed in the service of a joint institution or common service as well as in its management—
  - (a) shall be immune from civil process with respect to acts performed by them in their official capacity; and
  - (b) shall be accorded such immunities from immigration restrictions or alien registration and, where they are not citizens of the United Republic, such facilities in relation to exchange regulations, as may be agreed upon by the Contracting States.
- (2) Experts or consultants rendering services to any joint institution or common services shall be accorded such immunities and privileges in the United Republic as may be agreed upon by the Contracting States.

## 10. Disapplication of Community laws

- (1) Subject to subsection (2), the laws of the Community previously applicable to the United Republic shall cease to have the force of law and to apply to the United Republic with effect from the date of the enactment of this Act.
- (2) The Community laws set out in the Third Schedule to this Act shall continue to have the force of law and to apply to the United Republic until such time as the Parliament of the United Republic shall disapply them or enact laws to replace them.

## 11. Amendment

*[Amends certain written laws]*

## 12. Interpretation

*[Interpretation of laws]*

## 13. Repeal of Act No. 42 of 1967

*[Repeals the Treaty for East African Co-operation (Implementation) Act]*

## First Schedule (Section 4)

### Article 3 – Net assets, equity shares, excess and shortfall

- 3.00 The amount of the net assets of the Corporations and of the GFS held in each of the States, the allocation of such amount as equity shares among the States, taking into account the geographic location of such assets and the common ownership interests by the States in such assets, and the resulting excess or shortfall of net assets are:

#### *Equity share*

	Shs. m	\$m	Kenya	Tanzania	Uganda
			32% Shs. m, \$m	32% Shs. m \$m	26% Shs. m \$m
Assets held	11,913	1,432.640	6,207.00	4,198.00	1,508.00
			746.445	504.845	181.350
Equity Shares			5,003.46	3,812.16	3,097.38
			601.709	458.445	372.486
			(42%)	(32%)	(26%)
Excess (Shortfall)			1,203.54	385.84	(1,589.38)
			144.736	46.400	(191.136)

### Article 4 – Compensation to Uganda for shortfall of net assets; interest payments

- 4.01 Kenya and Tanzania shall compensate Uganda for its shortfall of net assets as set forth in Article 3 hereinabove by one or more of the following methods.
- payments in convertible currencies;
  - the provision of goods;
  - the provision of services;
  - the financing of existing or new productive facilities;
  - the set-off, or compensation for mutually recognised claims; or

(f) a combination of any of these modes,

all on terms and conditions agreed between Kenya and Uganda, and between Tanzania and Uganda, as set forth in Annexes "C" and "D", respectively, to this Agreement.

- 4.02 Kenya and Tanzania shall pay interest at the rate of seven percent (7%) per annum from the date of signing of this Agreement on the outstanding amounts of compensation due to Uganda from time to time under this Article.

## Article 5 – Compensation for equipment and allocation of rolling stock to Uganda

- 5.01 Kenya shall pay to Uganda the amount of one million shillings (Shs. 1m) equivalent to one hundred and twenty thousand United States dollars (US\$120,000) being compensation for certain GFS equipment.
- 5.02 Kenya shall transfer to Uganda the number of coaches and wagons of the quality, size and specific as set forth in the Rolling Stock report.

## Article 7 – Allocation of long-term liabilities; Interim payments

- 7.01 The long-term liabilities of the Corporations and of the GFS as at the division dates, set out in Annex "A", are allocated to the States in the provision of forty-two percent (42%) to Kenya, thirty-two percent (32%) to Tanzania, and twenty-six percent (26%) to Uganda.

Table of division								
	Total		Kenya		Tanzania		Uganda	
			42%		32%		26%	
	Shs.m	\$m	Shs.m.	\$m	Shs.m.	\$m		
Long Term Liabilities	2,863.800	344.396	1,202.796	144,646	916.416	110.207	744,588	89.543

- 7.02 Payments made by each State in respect of the long-term liabilities from the division dates to 30th June, 1984, shared either in excess or short of the proportion allocate to a State in Sub-Article 7.01 are to be taken into account in calculating the amount of compensation due by or to that State under Article 4.

## Article 8 – Liability towards creditors

- 8.01 The creditors of the long-term liabilities and the States having agreed to the division of the liabilities pursuant to Article 7 and, where applicable, to the elimination of joint and several guarantees in respect of such liabilities, each State shall solely be responsible for such balance of liabilities allocated to it and as reflected in the separate Agreements between each State and each Creditor.
- 8.02 The repayment to local holders of loan stocks issued by the Corporations shall be the responsibility of the Government of the State in which the stockholders reside.

- 8.03 Each State hereby indemnifies the other States against all responsibilities for the liabilities it has assumed as provided in Sub-Articles 8.01 and 8.02 above.
- 8.04 Notwithstanding any other provision in the Agreement to the contrary, the effective date of Sub-Article 8.01 shall be 1st July, 1984.

### Article 9 – Claims

- 9.01 Claims, registered prior to 31st December, 1978, other than claims for pensions by former members of staff of the Community institutions, claims against E.A. Airways and long-term liabilities, shall be dealt with as follows:
- (a) Claims for amounts due in the currency of one of the States are assigned to and shall be dealt with by such State in accordance with its existing procedures;
  - (b) Claims for amounts due in foreign currency, not covered by Article 8, may be dealt with by *ad hoc* agreement between the States or, failing such agreement, by the Arbitration Tribunal referred to in Article 12 of this Agreement.
- 9.02 Claims against E.A. Airways registered prior to 31st December, 1978, not allowed as part of the long-term liabilities pursuant to Article 7, shall be dealt with by the State in which they were registered in accordance with that State's existing procedures.

### Article 10 – Pensions and Provident Funds

- 10.01 The assets of the Pension and Provident Funds of the Corporations and GFS consists of the value of the Pension and Provident Funds assets located in the States and those currently held and managed by the Crown Agents.
- 10.02 The Pension assets and liabilities of the Corporations and GFS shall be subject to an actual exercise which shall determine the value of the Pension assets and liabilities in each State and abroad for a decision by the States on the final division of the assets and the liabilities.
- 10.03 Pension and determination of the pension assets and liabilities for each State:
- (a) Pension and Provident Funds assets located in the States shall continue to be vested and managed by the States where they are so located;
  - (b)
    - (i) Pension and Provident Funds assets of the Community currently held and administered by the Crown Agents shall vest in and be managed and administered by a Board of Trustees consisting of the Governors of the Central Banks of the States.
    - (ii) The Board shall sit not later than one month after the signing of the Mediation Agreement and shall thereafter meet quarterly and submit its reports to the Ministers responsible for Finance in the States.
    - (iii) The Board shall function in accordance with the rules of procedure set forth in Annex "F" to this Agreement. If any question of procedure arises which is not covered by the said Annex, the Board shall decide the question;
    - (iv) The Board shall cease to exist upon a final division of the Pension and Provident Funds assets and other assets and liabilities as provided for in Sub-Articles 10.01, 10.02 and 11.03 of this Agreement.
  - (c) The Pension and Provident Funds assets of the Community now held and managed by the Crown Agents, consisted of the following as at 31st March, 1984:
    - (i) Pension Fund assets amounting to Pounds Sterling twenty million, five hundred and ninety-two thousand, four hundred and fifty (£20,592,450);

- (ii) Provident Fund assets amounting to Pounds Sterling one million, two hundred forty-eight thousand, nine hundred and seventy-seven (£1,248,977).
- 10.04 The value of the assets of the Pension Fund of E.A.P. & T other than those covered in Sub-Article 10.01 above, located in Uganda shall be ascertained and a decision made thereon by the States in the light of actuarial and other findings.
- 10.05 Each State shall:
- (a) pay its nationals, employed by the Corporations or GFS and retired from active service by the division date the pensions and other benefits due to them on account of such employment.
- (b) make provision for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and GFS at that date.
- 10.06 (a) Each State shall pay to members of staff formerly employed by the Corporations or GFS, other than its nationals and other than those covered by the Pensions Takeover Agreement with the United Kingdom whose last duty station was within its territory, and to their widows and orphans, the pensions and other benefits lawfully due to them on account of such employment.
- (b) The obligation referred to in paragraph (a) of this Sub-Article covers both members of staff retired from active service and those in active service at the division date.

### Article 11 – Other assets

- 11.01 Other assets of the Community held by the Crown Agents consist of—
- (a) Sinking Funds which amounts, as at 31st March, 1984, to Pounds Sterling four million, five hundred thirty-eight thousand, six hundred eighty-two (£4,538,682).
- (i) Out of this amount, a sum of Pounds Sterling five hundred thousand, seven hundred and sixty-seven (£500,767) is distributed to the States in the proportion of forty-two percent (42%) to Kenya, thirty-two percent (32%) to Tanzania and twenty-six percent (26%) to Uganda.
- (ii) The balance of Pounds Sterling four million, and thirty-seven thousand, nine hundred and fifteen (4,037,915) shall be used to redeem the following two loan stocks;
- 1957 East African High Commission (Railways and Harbours) 53/4% 1977-83;
  - 1956 East African High Commission (Railways and Harbours) 5½% 1980-84.
- any surplus will be divided among the States in accordance with the Mediation formula.
- (b) (i) Cash balances, which amounted to Pounds Sterling one million, one hundred twenty thousand, five hundred ninety (£1,120,590) at 31st March, 1984, are distributed to the States in proportion of forty-two percent (42%) to Kenya, thirty-two percent (32%) to Tanzania and twenty-six percent (26%) to Uganda.
- (ii) Out of this amount, the sum of £5,400 may be transferred to Pensions Fund.
- 11.02 The amount due from the United Kingdom to the Community arising out of the Pensions Take-over Agreement which is currently estimated at Pounds Sterling five hundred and sixty-four thousand (£564,000) shall be distributed to the States in the proportion of forty-two percent (42%) to Kenya, thirty-two percent (32%) to Tanzania and twenty-six percent (26%) to Uganda.
- 11.03 Any other assets not particularly provided for in this Agreement which after the signature of this Agreement are ascertained by the States, the Board of Trustees or any other person or body as belonging to the Community, shall automatically vest in the Board of Trustees which shall manage and administer the same until a decision is made by the States for the final disposal thereof.

## Article 12 – Settlement of disputes

- 12.01 Any dispute between two or more of the States and/or any claim by any one or more of them against any other of the States arising under this Agreement, including any question concerning its interpretation or implementation, which cannot be determined by agreement between the parties, shall be submitted for decision to an Arbitration Tribunal.
- 12.02 (a) The Tribunal shall consist of four members appointed as follows: each State shall appoint one member, the fourth member, who shall be the Chairman of the Tribunal and who shall not be a national of any of the States, shall be appointed by agreement of the States.
- (b) Notwithstanding the foregoing, in the event that one State shall fail to make an appointment within three months from the date of this Agreement the Tribunal shall be deemed to be properly constituted.
- (c) In case the States fail to agree on the appointment of a Chairman within three months from the date of this Agreement, the President of the World Bank shall make such appointment.
- 12.03 The Tribunal shall function in accordance with the Rules of Procedure set forth in Annex "E" to this Agreement. If any question of procedure arises which is not covered by the said Annex, the Tribunal shall decide the question.
- 12.04 Every decision of the Tribunal shall be taken by the majority of the members present at a sitting, and where the members are equally divided in their opinions, that of the Chairman shall prevail.
- 12.05 The decision of the Tribunal shall be in writing and shall be signed by each member present at the sitting.
- 12.06 The States shall, by mutual agreement, determine the terms and conditions of service of the Chairman of the Tribunal.
- 12.07 Each State shall pay the member of the Tribunal representing it allowances and other remuneration for attendance at sessions of the Tribunal. In addition each member will be reimbursed by the State which appointed him for expenses reasonably incurred by him in the course of his duties as a member of the Tribunal.
- 12.08 (a) There shall be a Registrar who shall be appointed by agreement of the States.
- (b) Until the States exercise their powers under Sub-Article 12.08(a) above, the Secretary of the East African Development Bank shall be the Registrar of the Tribunal.
- (c) The States shall make equal advance payments for the setting up of the Registry and thereafter make appropriate financial arrangements for the running thereof.
- 12.09 The Registry of the Tribunal shall be situated in Kampala, Uganda.
- 12.10 The Tribunal may in any particular case meet and exercise its jurisdiction at any place, within the States, it considers desirable.
- 12.11 The Tribunal shall cease to exist upon the full and final payment and settlement of all compensation, claims and disputes under this Agreement.

## Article 14 – Continuation of certain institutions and services: future co-operation

- 14.01 The States agree that the Soroti Civil Flying School, the East African Development Bank, the East African Inter-University Committee, the Eastern and Southern African Management Institute and the East African Community Library Services shall continue to function as joint East African Institutions or commons services, as the case may be, and agree to make appropriate arrangements for the financing and operation thereof.

14.02 The States agree to explore and identify further areas for future co-operation and to work out concrete arrangements for such co-operation.

### **Article 15 – Abrogation of the Treaty for East African Co-operation**

15.00 The Treaty for East African Co-operation, dated 6<sup>th</sup> June, 1967, is hereby abrogated.

### **Second Schedule (Section 5(3))**

#### **Transfer of assets and property of corporations to parastatals in Tanzania**

<b>First column</b>	<b>Second column</b>
The East African Harbours Corporation	Tanzania Harbours Authority
The East African Railways Corporation	Tanzania Railways Corporation
The East African Posts and Telecommunications Corporation	Tanzania Posts and Telecom Communications Corporation
The East African Airways Corporation	Air Tanzania Corporation

### **Third Schedule (Section 10(2))**

#### **Community laws continuing in operation**

1. The East African Customs and Transfer Tax Management Act.
2. The East African Excise Management Act.