

Tanzania

Foreign Exchange Act Chapter 271

Legislation as at 31 July 2002

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Tanzania

Foreign Exchange Act

Chapter 271

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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.]

[G.N. No. 37 of 1992; Acts Nos. 1 of 1992; 31 of 1997]

An Act to make provisions for the more efficient administration and management of dealings and other acts in relation to gold, foreign currency, securities, payments, debts, imports, exports, transfer or settlement of property and for related matters.

Part I – Preliminary provisions (ss. 1-3)

1. Short title

This Act may be cited as the Foreign Exchange Act.

2. Application

- (1) This Act applies to Tanzania Zanzibar as well as to Mainland Tanzania.
- (2) This Act shall bind the Government of United Republic as well as the branches or agencies of all foreign organisations registered or incorporated in the United Republic.

[s. 3]

3. Interpretation

In this Act, unless the context requires otherwise—

"**authorised dealer**" means in relation to gold or any foreign currency, a person for the time being authorised by the bank, to act, for the purposes of this Act, as an authorised dealer in relation to gold or as the case may be, to foreign currency;

"**bank**" means a bank within the meaning of section 3 of the Banking and Financial Institutions Act ¹;

"**the Bank**" means the Bank of Tanzania established by the Bank of Tanzania Act, 1995;

"**bureau de change**" means a business enterprise licensed by the Bank to carry on the business of buying and selling foreign currency;

"**foreign currency**" means any currency other than the currency of the United Republic;

"**foreign currency**" means any currency which is recognised by the Bank as being convertible;

"**foreign currency account**" means an account for the purpose of being credited exclusively with foreign currency and maintained with a bank which is an authorised dealer, or with any person authorised by the Bank to maintain a foreign currency account;

"**gold**" means gold coins and gold bullion;

"**Governor**" means the Governor of the Bank of Tanzania, appointed in accordance with the provisions of the Bank of Tanzania Act;

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

"**property**" includes both real and personal property of whatever kind or description;

"**raw gold**" means raw gold as defined in the Mining Act ²;

"**Regulations**" means the regulations made by the Governor under section 6 of this Act;

"**security**" means shares, stocks, bonds, notes (other than promissory notes) debentures, debentures stocks, units under a unit trust scheme, share in any royalty, any letter of rights, any warrant conferring an option to acquire a security, any deposit certificate in respect of securities, and any other document, other than a bill of exchange or a promissory note, whereby a person recognises the title of another person to securities issued or to be issued by the first-mentioned person.

[s. 4]

Part II – Foreign exchange administration (ss. 4-7)

4. Dealings in foreign currency and raw gold

Subject to such qualifications as may be provided for by regulations made under section 6—

- (a) the Bank may authorise the establishment of bureau de change for the purposes of carrying on the business of buying and selling foreign currency;
- (b) any person whether resident or not resident in the United Republic may,
 - (i) hold any amount of foreign currency and raw gold within the United Republic;
 - (ii) sell any amount of foreign currency to an authorised dealer or a bureau de change; or
 - (iii) open and maintain a foreign currency account with a bank which is an authorised dealer.

[s. 5]

5. Vesting of foreign exchange administration

- (1) Subject to other provisions of this Act and to such directions or instructions as the Minister may give in writing to the Bank, the Bank shall have and exercise or discharge all functions, powers and duties relating to the administration, control and management of all dealings and transactions in relation to gold and foreign exchange matters.
- (2) The exercise of any function or power and the performance under subsection (1) shall be subject to such conditions, limitations and qualifications as may be specified by the Minister by order or directions to the Bank in writing.

[s. 6]

6. Power to make regulations

- (1) Subject to section 5, the Governor may make regulations, rules, orders, or issue directions, as the case may be, relating to—
 - (a) gold, currency, securities and transactions relating to them;
 - (b) any foreign exchange transactions other than transactions referred to in paragraph (a);
 - (c) the regulation of—
 - (i) imports into and exports from the United Republic;
 - (ii) the transfer or settlement of property;
 - (iii) payments;
 - (iv) transactions in relation to debts;
 - (d) the administration of the property of a person who has left the United Republic, for the purpose, or apparent purpose, of defeating the ends of justice.
- (2) Without prejudice to the generality of the provisions of subsection (1), regulations made under this section may provide for—
 - (a) the dealings in or possession of gold, currency or securities;
 - (b) the control of imports into or exports from the United Republic;
 - (c) the acquisition by any person or assignment to any person or vesting in any person of any property (other than land) or any right thereto;
 - (d) dealing in or in relation to property with person resident outside the United Republic;
 - (e) requiring any person to make statements or produce documents for the purpose of the regulations;
 - (f) entering on any premises and the search of any premises or person for the purpose of giving effect to the Regulations.
- (3) Different regulations, orders, rules or directions may be made under this section for, or in relation to such persons, categories of persons, or circumstances and generally in relation to which provision is made in subsection (1) as may be necessary.
- (4) The Governor shall, in exercising his powers under subsection (1) in relation to matters pertaining to Tanzania Zanzibar shall, through the Minister, consult with the Minister responsible for finance of the Revolutionary Government of Zanzibar.

[s. 7]

7. Secrecy

- (1) Except for the purposes of this Act or when ordered to do so by a court, no person exercising any functions under this Act shall, whether within or outside the United Republic, disclose any information relating to any person, firm or business which came into his possession or knowledge in the exercise of these functions.
- (2) Any person who contravenes the provisions of subsection (1) commits an offence and is liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

[s. 8]

Part III – Offences, penalties and miscellaneous provisions (ss. 8-15)

8. Offences in relation to payments in Tanzania

- (1) Subject to subsection (2), it shall be an offence for any person, without the permission of the Governor—
 - (a) to make any payment in Tanzanian shillings to or for the credit of a person resident outside the United Republic; or
 - (b) to make any payment in Tanzanian shillings to or for the credit of a person resident in the United Republic by order or on behalf of a person resident outside the United Republic; or
 - (c) to place any sum in Tanzanian shillings to the credit of any person resident outside the United Republic.
- (2) Where a person resident outside the United Republic has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) of subsection (1) shall not be construed as prohibiting the acknowledgement or recording of the payment.

[s. 9]

9. Prohibition to export gold

Except with the permission of the Governor no person shall export from or cause to be exported from the United Republic any gold.

[s. 10]

10. Offences in relation to importation of currency notes, coins or gold

- (1) Subject to subsection (2), except with the permission of the Governor, no person shall import or cause to be imported into the United Republic any notes or coins which are or have at any time been legal tender in the United Republic.
- (2) Nothing in this section shall be construed as prohibiting the importation into the United Republic of any amount of gold, raw gold or any foreign currency in forms of notes, coins, travellers cheques, bank drafts, from any country.

[s. 11]

11. Withholding payment for exports

- (1) It shall be an offence for any person resident in the United Republic to do any act which involves or is in association with or is preparatory to, a delay or the withholding of any payment by a person resident outside the United Republic to a bank which is an authorised dealer which payment is due in respect of the exportation of goods for a period exceeding such period as may be specified in regulations made under section 6.
- (2) No authorised dealer shall—
 - (a) aid, abet or do any act which involves or is in association with or is preparatory to the contravention of or contravenes any provision of this Act; or
 - (b) delay or withhold collection of payments for exports; or
 - (c) [Repealed by Act No. 31 of 1997 Sch.]

[s. 12]

12. General provisions in relation to offences and penalties

- (1) For the purposes of this section the expression "any provision of this Act" means the provisions of this Act and of any regulations, rules, orders, and directions made under this Act.
- (2) Any person who, whether within or outside the United Republic—
 - (a) contravenes or fails to comply with any provision of this Act or the regulations made thereunder or the terms or conditions of any permit, authority, permission, direction, notice, order or any other instrument made or issued under or by virtue of this Act; or
 - (b) with intent to evade the provisions of this Act, destroys, mutilates, alters, defaces, secretes, removes any document; or
 - (c) for the purposes of this Act, makes any statement or produces any document which is false in any material particular; or
 - (d) obstructs any person in the exercise of any power conferred upon him by this Act or in the exercise of any power which such person may lawfully exercise for the purpose of investigation or prevention of an offence under this Act; or
 - (e) conspires or attempts or aids, abets, counsels or instigates, or procures any other person to commit any offence under this Act,

commits an offence and subject to subsection (3) and (4), is liable to upon conviction a fine not exceeding four million shillings or to imprisonment for a term not exceeding fourteen years, or to both such fine and imprisonment.

- (3) Where the offence committed relates to gold, currency, security, goods or any other property, a higher fine may be imposed not exceeding three times the amount or value of that gold, currency, security, goods or other property, and the Court may order such gold, currency, security, goods or other property to be forfeited to the Government.
- (4) Notwithstanding subsection (3), where an offence under this Act is committed by a body corporate the court may impose a fine not exceeding six times the amount or value of the gold, currency, security, goods or other property. and the gold, currency, security, goods or other property to be forfeited to the Government;
- (5) Any person who makes a false declaration in respect of any transaction provided for under this Act or the Regulations made thereunder with a view to—
 - (a) evading the disclosure of the actual foreign currency earned; or
 - (b) delaying the remittance of the foreign currency earned; or
 - (c) retaining any portion of the foreign currency payable outside the United Republic,

commits an offence and is liable, upon conviction, to a fine equivalent to a sum not exceeding three times the monetary value of the amount in respect of which he is convicted, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

[s. 13]

13. Liability of directors, officers, etc.

- (1) Where an offence under this Act is committed by a body corporate, any person who at the time of the commission of the offence was a director or an officer concerned with the management of the affairs of such body corporate, commits an 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 an offence under this Act is committed by a person as an agent or employee as the agent or the employee, the principal or employer 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.

[s. 14]

14. Consent of Director of Public Prosecutions

Where any person is brought before a court on a charge under any provisions of this Act, no further proceedings in respect of the charge shall be taken against him without the consent in writing of the Director of Public Prosecutions except such as may be necessary by remand to secure the due appearance of the person charged.

[s. 15]

15. Power of the Governor to compound offences

- (1) Subject to other provision of this section the Governor may, if he is satisfied that any person has committed an offence under this Act, 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.
- (2) For the purpose of compounding an offence under subsection (1)—
 - (a) the sum of money which the Governor may accept from any person for that purpose shall not be less than one hundred United States dollars or more than three thousand United States dollars, or the equivalent in Tanzania shillings;
 - (b) the power conferred by this section shall only be exercised where the person admits in writing that he has committed the offence by and the same writing or any subsequent writing consents to the Governor to have the offence compounded under this subsection;
 - (c) the Governor shall give the person from whom he accepts such a sum of money a receipt for it.
- (3) The provisions of this section shall not apply to any offence under this Act if the value of the foreign currency, involved in the offence alleged to have been committed exceeds five thousand United States dollars or its equivalent in other currencies.
- (4) Where any person is aggrieved by an order made under this subsection, he may, within forty five days of the order being made, appeal against that order to the High Court, and the provisions of Part X of the Criminal Procedure Act ⁵ or the relevant law applicable in Tanzania Zanzibar, shall apply *mutatis mutandis* to the appeal, as if it were an appeal against a sentence passed by a District Court in the exercise of its original criminal jurisdiction.
- (5) Subject to subsection (6), where an offence under this Act is compounded in accordance with the provisions of this section, and criminal 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 this section.
- (6) The provision of subsection (5) shall not apply to any proceedings against any person after compounding the offence against him where—
 - (a) on an appeal under subsection (4) the High Court has set aside the compounding and any sum of money received by the Governor under subsection (1) has been refunded to the offender; or

- (b) the Governor has within thirty days from the date when he made the order under subsection (1) served notice upon the offender setting aside the order and refunded to him the sum of money received by him under that subsection.

[s. 15]

Part IV – Repeal and transitional provisions (ss. 16-17)

16. Repeal of R.L. Cap. 294

[Repeals the Exchange Control Ordinance with savings]

[s. 17]

17. Transitional provisions

[Transitional provisions]

[s. 18]