

**THE COMPANIES (REGULATION OF DIVIDENDS AND  
SURPLUSES AND MISCELLANEOUS PROVISIONS) ACT, 1972**

**ARRANGEMENT OF SECTIONS**

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No. 22 OF 1972

I ASSENT,

  
.....  
President

17<sup>TH</sup> AUGUST, 1972

**An Act to regulate distribution of profits and uses of cash flow of certain bodies corporate and to make certain special provisions relating to companies**

[15<sup>TH</sup> JUNE, 1972]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Companies (Regulation of Dividends and Surpluses and Miscellaneous Provisions) Act, 1972 and shall be deemed to have come into operation on the fifteenth day of June, 1972.

Short title  
and com-  
mencement

2. In this Act, unless the context otherwise requires—

Interpreta-  
tion

“accounting period” in relation to a company, means the period for which the accounts of the company are made up;

“approved net worth” in relation to a company in respect of any financial year, means the aggregate of—

- (a) such company's net worth as appearing from the balance sheet for the financial year (hereinafter referred to as the “relevant financial year”) which was the last financial year preceding the effective date in respect of which a properly audited balance sheet exists; and
- (b) such portion of the profits which accrued to the company in the financial year or years subsequent to the close of the relevant financial year and prior to the commencement of the financial year in respect of which the company proposes to pay dividends, as the Minister is satisfied has been spent for all or any of the following purposes, that is to say—
  - (i) reduction of the amount of any loan advanced to the company by the National Bank of Commerce pursuant to any over-draft facility or otherwise;
  - (ii) investment in any bill, bond or stock issued under the the Local Loans Ordinance or in any other security issued by the Government;
  - (iii) investment in any authorized investment;

Cap. 397

Cap. 212

“authorized investment” means any investment declared to be an authorized investment by an order under section 3;

“cash flow” means the receipts and expenditures of sums of money;

“company” means a company incorporated under the Companies Ordinance and includes—

- (a) any body corporate established by or under any other written law and which has a share capital;
- (b) for the purposes of section 14 and section 15, a foreign company or a corporation specified in part II of the Schedule to this Act;

“corporation” means any body corporate established by or under any written law other than the Companies Ordinance;

“effective date” means—

- (a) in relation to any company which is specified in the Schedule to this Act on the date of its enactment, the fifteenth day of June, 1972;
- (b) in relation to any company which becomes a specified company by reason of any amendment, variation or replacement of the Schedule to this Act by an order made under section 4, the date which is specified in such order as being the effective date in relation to such company or, where no such date is so specified, the date on which such order comes into operation;

“financial year” in relation to any company, means such company’s accounting period and references to the financial year of any year shall be construed as references to the accounting period beginning on any date in such year, whether such period ends in the same year or any subsequent year;

“foreign company” means a company incorporated outside Tanganyika and to which Part XII of the Companies Ordinance applies;

“Minister” means the Minister for the time being responsible for finance;

“net worth” in relation to a company in respect of any financial year, means the sum of money which represents the difference between—

- (a) the value of all the assets of the company, whether movable or immovable and including book debts and other choses in action, subsisting at the close of the financial year; and
- (b) the value of all the liabilities of the company subsisting at the close of such financial year;

“par value” in respect of the paid up share capital of any company means the aggregate of the nominal value of the paid up share capital and the value of additional consideration, if any, received by the company in respect of such share capital;

“profits” in relation to any financial year means the profits which a company has made in such financial year after taking into account any tax paid or payable thereon;

“specified company” means a company specified in Part I of the Schedule to this Act and includes, for the purposes of section 3, section 4, section 11 and section 13, a corporation specified in Part II of the said Schedule.

3.—(1) The Minister may, from time to time, by order under his hand, specify investments which shall be authorized investments for the purposes of this Act either generally or in relation to the specified company to which the order relates. Authorized investments

(2) Where any investment has been specified as an authorized investment by an order under this section and by any subsequent order such investment is declared to have ceased to be an authorized investment for further investment, any investment made by a specified company in such investment prior to the date of such subsequent order shall be deemed to be investment in an authorized investment.

4.—(1) The Minister may, by order published in the *Gazette*, amend, add to, delete from, vary or replace the Schedule to this Act. Amendment of Schedule

(2) Where pursuant to any order made under subsection (1) any company ceases to be a specified company such company shall not thereby cease to be liable to comply with the provisions of this Act or any requirement made hereunder in respect of any matter or thing relating to the period when such company was a specified company.

5. No specified company shall cease to be a specified company by reason only of any change in its name. Change of name of specified company

6. Notwithstanding the provisions of any written law—

- (a) no court shall make an order for the winding up of any specified company; Restriction on winding up of specified company
- (b) no specified company shall resolve to be wound up, save with the consent in writing of the Minister:

Provided that this section shall not apply to dissolution of a subsidiary company under section 331C of the Companies Ordinance.

7.—(1) No company, whether or not a specified company, shall, in respect of any financial year, declare dividends the aggregate sum of money payable in respect of which— Limitation on dividends

- (a) exceeds the sum of money which when deducted from the company's net worth in respect of such financial year will have the effect of reducing such net worth to a sum of money which is less than one hundred and twenty-five per centum of the par value of the company's paid up share capital as at the close of such financial year; or
- (b) exceeds the largest of the following sums of money, namely—
  - (i) the average of the annual profits of such company during the three financial years immediately preceding such financial year; or
  - (ii) eighty per centum of the profits in the financial year immediately preceding such financial year;
  - (iii) where the company first commenced its business immediately before or during such financial year, eighty per centum of its profits in such financial year.

(2) Notwithstanding the provisions of subsection (1) the Minister may, with the prior approval of the National Assembly signified by a resolution, authorize a company to declare and pay, in respect of any financial year, dividends of a larger amount or at a higher rate than it could, but for such order, lawfully declare or pay:

Provided that where an order under this subsection is made, the company to which it applies shall not declare or pay dividends the aggregate sum of money payable in respect of which exceeds such sum of money as the Minister shall specify in such order.

Restriction  
on transfer  
of profits  
by foreign  
companies

8.—(1) No foreign company shall—

(a) transfer to the credit of any of its accounts maintained outside Tanganyika; or

(b) appropriate for distribution to its members,  
more than the prescribed portion of its local profits in any financial year.

(2) For the purposes of this section—

(a) “local profits” means the profits of a foreign company arising from or attributable to its business in the United Republic;

(b) “the prescribed portion of local profits” of a foreign company in relation to any financial year means such portion of the local profits accruing to the company during that financial year as does not exceed—

(i) the average of the annual local profits of the company during the three financial year immediately preceding such financial year; or

(ii) eighty per centum of the local profits in the financial year immediately preceding such financial year,

whichever be the larger sum of money; and where such company first established its place of business in Tanganyika during or immediately before the commencement of such financial year, the prescribed portion of its local profits during such financial year shall be eighty per centum of such profits.

Minister  
may impose  
further  
limitations  
on dividends  
by specified  
companies

9. In addition to the limitations on dividends imposed by section 7 the Minister may, if in his opinion it is in the national interest or in the interest of the shareholders desirable so to do, by order under his hand, require any specified company to further limit the dividends declared by it for the financial year or years specified in such order to an aggregate which shall not exceed such percentage of the company's approved net worth as may be prescribed in the order, and such company shall comply with every such requirement.

Minister  
may require  
specified  
company to  
declare  
dividends

10. The Minister may, if in his opinion it is in the national interest or in the interest of the shareholders desirable so to do, by order under his hand, require any specified company to declare and pay dividends for any financial year or years and may, by such or any subsequent order, require that such dividends shall not in the aggregate be less than such percentage of the company's approved net worth as may be prescribed therein, and such company shall comply with every such requirement:

Provided that no order under this section shall require or authorize a specified company to declare dividends in contravention of section 7.

11.—(1) Every specified company shall, not later than thirty days before the commencement of each financial year, submit to the Minister a cash flow budget setting out—

Provisions relating to cash flow of specified companies

- (a) the sums of money which it is estimated the company will receive during the ensuing financial year;
- (b) the sources from which such sums of money are expected;
- (c) particulars of the estimated expenditures of the company during the ensuing financial year.

(2) On receipt of a cash flow budget of a specified company the Minister may, if in his opinion it is in the national interest or in the interest of the shareholders desirable so to do, by order under his hand, require the company to invest, within such period as may be prescribed therein, such portion of its estimated receipts as may be prescribed in such order in such Government securities or other investments as may be specified therein, and the company shall comply with any such requirement.

(3) An order under subsection (2) may be made at any time before the commencement of the financial year to which it relates or within three months immediately following the receipt by the Minister of such cash flow budget.

(4) The Minister may at any time before the close of the financial year, by another order, modify an order made under subsection (2) so as to reduce the total amount which is required to be invested in Government securities or other investments.

(5) Where an order under subsection (2) is made, the specified company in respect of which it is made shall, within three months of the close of the financial year to which the order relates, submit to the Minister a statement of actual cash flow in such financial year.

(6) The provisions of this section shall apply, *mutatis mutandis*, to every corporation specified in Part II of the Schedule to this Act.

12.—(1) Where the Minister is satisfied that a foreign company is, through its branch in Tanganyika, carrying on a substantial business in Tanganyika and that it is in the national interest that such branch be incorporated under the Companies Ordinance, the Minister may, after consultation with the Minister for the time being responsible for legal affairs, by order under his hand require such foreign company, within such time as may be specified in the order, being not less than thirty days from the date of the order—

Incorporation of branch of foreign company

- (a) to cause a company to be incorporated under the Companies Ordinance; and
- (b) to transfer to such company all its local assets and local liabilities; and
- (c) to transfer to such company all its local business; and
- (d) to cease to carry on business in Tanganyika as a branch of a foreign company;

Provided that the Minister may, by writing under his hand, authorize a foreign company in respect of which an order under this section is made, to continue to carry on in Tanganyika such business as he may specify in such writing and may exempt from the provisions of this subsection such of the local assets and local liabilities of the foreign company as he may, in such writing, specify.

(2) It shall be lawful for a foreign company to be the sole member of a company incorporated pursuant to the requirements of an order made under subsection (1) and every provision in any written law providing for any consequence to follow, or requiring any act or thing to be done or entitling any person to do any act or thing or to take any action whatsoever, in the event of the number of members of a company being less than a certain number, shall be of no effect in relation to the company so incorporated.

(3) Where an order under subsection (1) has been made in relation to any foreign company and such company contravenes any of the requirements of subsection (1) or fails to comply with any such requirement within the time specified in such order, or such longer time as the Minister may, in any case, allow, the company shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding ten thousand shillings in respect of each day that the contravention or failure continues.

(4) In this section—

“local assets” means all real and personal property of every kind which are, or which are by law deemed to be, situate in Tanganyika;

“local business” in relation to any foreign company means the business carried on by such company in Tanganyika;

“local liabilities” means all the liabilities which are, or which are by law deemed to be, situate in Tanganyika.

**Regulations**

13.—(1) The Minister may make regulations for the better carrying out of, or giving effect to, the purposes and provisions of this Act; and without prejudice to the generality of the foregoing, may make regulations—

- (a) providing for submission of audited balance sheets and other records, returns and particulars by specified companies;
- (b) providing for submission of balance sheets and other records, returns and particulars by companies which are not specified companies;
- (c) regulating the maintenance and auditing of the accounts of specified companies.

(2) The Minister may annex to the breach of any regulation made under this section such penalty, not exceeding the maximum penalty prescribed for an offence under this Act, as he may think fit.

**Offences**

14. Any company which contravenes any of the provisions of this Act or fails to comply with any order or requirement made by the Minister pursuant to any provision of this Act shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings.

(2) In proceedings for an offence under this Act a certificate under the hand of the Principal Secretary to the Treasury to the effect that an order under any provision of this Act was served on the company specified in the certificate shall be admissible in evidence and shall be *prima facie* evidence—

- (a) that the signature to such certificate is genuine;
- (b) that the person signing the certificate held the office which he professed to hold at the time when he signed it;
- (c) that the contents of the certificate are true in that the order described in the certificate was made by the Minister and that such order was served upon, or otherwise brought to the notice of the company,

and where the court is satisfied that the order was published in *Gazette*, the court shall presume the authenticity of the order and shall also presume that the company to which the order relates had knowledge of the order.

15. Where any company commits an offence under this Act or under any regulation made under section 13 then, as well as the company, 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 company shall be guilty of the offence and shall be liable, on conviction, to a fine not exceeding the maximum fine provided for in this Act in respect of such offence and shall, in addition thereto or in lieu thereof, be liable to imprisonment for a term not exceeding five years, unless he proves to the satisfaction of the court that he had no knowledge, and could not by the exercise of a reasonable diligence have had knowledge, of the commission of the offence.

Liability of directors, officers, etc.

16. No person shall be prosecuted for an offence under this Act or under any regulation made under section 13 save with the consent of the Attorney-General.

Consent to prosecution

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SCHEDULE  
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PART I

Agip (Tanzania) Limited;  
Aluminium Africa Limited;  
Amboni Estates Limited;  
Anjari Soda Factory Limited;  
B.A.T. Tanzania Limited;  
Caltex Oil (Tanzania) Limited;  
Chandaria (Industries) Limited;  
Dar es Salaam Motor Transport Company Limited;  
D. T. Dobie and Company Limited;  
EMCO (Tanzania) Limited;  
Fiat Tanzania Limited;  
International Motor Mart Limited;  
Kilombero Sugar Company Limited;  
Mabati Limited;  
Metal Box Company of Tanzania Limited;  
Motor Mart (Tanganyika) Limited;

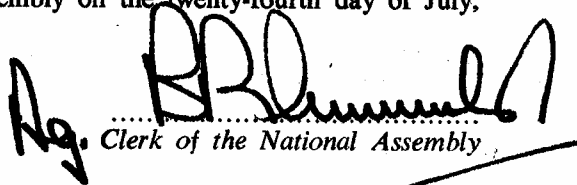


National Bank of Commerce;  
National Insurance Corporation of Tanzania Limited;  
National Milling Corporation;  
Paper Products Limited;  
Riddoch Motors Limited;  
Robbialac Paints Tanzania Limited;  
Ruaha Bottling Company Limited;  
Sadolins Paints (Tanzania) Limited;  
Shell and BP Tanzania Limited;  
Tanganyika Extract Company Limited;  
Tanganyika Packers Limited;  
Tanganyika Wattle Company Limited;  
Tanzania Bottlers Limited;  
Tanzania Breweries Limited;  
Tanzania Printers Limited;  
Tanzania Shoe Company Limited;  
Total Tanzania Limited;  
Transport Holdings Limited;  
Umoja Bottlers Limited;  
United Africa Company of Tanzania Limited.

## PART II

The Lint and Seed Marketing Board;  
The National Agricultural Products Board;  
The Tanganyika Tobacco Board (and, after the coming into operation of the Tobacco Industry Act, 1972, the Tobacco Authority of Tanzania);  
The Registrar of Buildings.

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

  
Clerk of the National Assembly