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Laws

Regulations

2007

Miscellaneous Amendments Act,2007

The United Republic of Tanzania

Ministry of Finance

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THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS)
ACT, 2007

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THE UNITED REPUBLIC OF TANZANIA



No. 15 of 2007

I ASSENT,
Jakaya Kikwete
 President
 30th March 2007

An Act to amend certain Written Laws.

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

- | | |
|--|-----------------------------------|
| 1. This Act may be cited as the Written Laws (Miscellaneous Amendments) Act, 2007. | Short title |
| 2. The written laws specified in various Parts of this Act are amended in a manner provided for in their respective Parts. | Amendment of certain written laws |

PART II

AMENDMENT OF THE PROCEEDS OF CRIME ACT

- | | |
|--|--------------------------|
| 3. This Part shall be read as one with the Proceeds of Crime Act, hereinafter referred to as the "principal Act". | Construction
Cap. 256 |
| 4. Section 3 of the principal Act is amended by— | Amendment of section 3 |
| (a) deleting the definitions of the words "bank", "financial institution", "money laundering offence", "narcotic or psychotropic substances", "proceeds of crime", "property" and "serious offence" and substituting for them the following: | |

- Act No.
5 of
2006
- "bank" has the meaning ascribed to it under the Banking and Financial Institutions Act, 2006;
- "financial institutions" has the meaning ascribed to it in the Banking and Financial Institutions Act, 2006;
- "money laundering offence" has the meaning ascribed to it in the Anti-Money Laundering Act, 2006;
- "narcotic or psychotropic substances" means-
- Cap. 95
- (a) a prohibited drug in terms of the Drugs and Prevention of Illicit Traffic in Drugs Act;
- (b) a substance declared by or under any written law to be a substance to which this definition applies;
- "proceeds of crime" means any property derived or realized directly or indirectly by any person out of the commission of a serious offence and includes—
- (a) at a proportional basis, property derived or realized directly from the commission of that offence or was later successively converted, transformed or intermingled into another property; and
- (b) capital, income or other economic gains derived or realized from such property.
- "property" means currency or monetary instruments and all other real or personal property of every description, whether situated in the United Republic or elsewhere and whether tangible or intangible, movable or immovable and includes an interest in any such property;
- "serious offence" means money laundering and includes a predicate offence;
- (b) by adding immediately after paragraph (e) in the definition of the words "financial transactions" the following paragraphs:
- "(f) receiving or making a monetary or financial gift;
- (g) selling and buying of gold, foreign currency and negotiable instruments".
- Amend-
ment of
Part II
- 5.** Part II of the principal Act is amended by deleting the sub-title and substituting for it the following:

"FORFEITURE AND CONFISCATION**Application for Forfeiture and Confiscation" Orders.**

- 6.** Section 10 of the principal Act is amended by inserting the—
- (a) words "within fourteen days" between the words "shall" and "give" appearing in subsection (1)(a).
- (b) words "who appear to have an interest in the property" between the words "persons" and "in" appearing in subsection (1)(c); and
- (c) words "within fourteen days" between the words "shall" and "give" appearing in subsection (2)(a).
- Amend-
ment of
section 10
- 7.** Section 11 of the principal Act is amended by—
- (a) inserting the words "within fourteen days" between the words "give" and "written" appearing in subsection (3)(a);
- (b) deleting subsection (4) and substituting for it the following provision—
- "(4) Where the Attorney General applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment has or would be to include an additional benefit in the application for the pecuniary penalty order, he shall within fourteen days, give that person a written notice of the application to amend."
- Amend-
ment of
section 11
- 8.** Section 13 of the principal Act is amended by inserting the word "to" between the words "order" and "the" appearing in the first line of subsection (2).
- Amend-
ment of
section 13
- 9.** Subsection (2) of section 17 of the principal Act is amended by deleting the phrase "as soon as practicable" which appears at the beginning of paragraph (a) and substituting for them the phrase "Within fourteen days".
- Amend-
ment of
section 17
- 10.** Subsection (2) of section 23 of the principal Act is amended by—
- (a) adding immediately after paragraph (a) the following new paragraph:
- "(b) any trust that has relationship to or interest in the property;"
- Amend-
ment of
section 23

(b) renaming paragraph (b) as paragraph (c).

Addition
of section
31A

11. The principal Act is amended by adding immediately after section 31 the following section—

"Freezing
of an
account

31A. Where the Inspector General of Police or the Director of Criminal Investigation suspects on reasonable grounds that any person has been involved in the commission of a serious offence, a predicate offence or money laundering he may authorize and direct a police officer of the rank of Assistant Superintendent of Police or above to freeze a bank account and seize any document from that bank or financial institution for seven days during which leave of the court for continued seizure shall be obtained."

Amend-
ment of
section
58

12. Section 58 of the principal Act is amended by—

(a) deleting subsection (5) and substituting for it the following provision—

—
"(5) An order for production of documents shall not be made unless the court is satisfied that there are reasonable grounds for making the order."

(b) deleting subsection (11).

Addition
of
sections
63A, 63B
and 63C

13. The principal Act is amended by adding immediately after section 63 the following sections—

"Investi-
gation of
a bank
account

63A.—(1) Notwithstanding the provisions of any other written law, the Inspector General of Police may, where he considers that any evidence of the commission of a serious offence, predicate offence or money laundering by a person is likely to be found in a bank account kept by that person, spouse or child or of any person reasonably believed to be a trustee or agent of such person, and that procedure for obtaining an order of the court is likely to defeat the course for investigation, authorize in writing, any police officer, of or above the rank of Assistant Superintendent of Police,

either alone or with any other officer, to investigate the bank account and such authorization shall be sufficient to warrant the production of the bank account for scrutiny by that police officer and such officer may take copies of any relevant entries from that account.

(2) Where in the course of investigation, it appears necessary that a bank account be held for a period exceeding seven days, the police officer referred to under subsection (1) shall be required to obtain leave of the court for continued holding of such bank account.

(3) Any person who, pursuant to the provisions of subsection (1), fails to produce a bank account when required to do so or obstruct a police officer from scrutinizing the bank account or take copies of any relevant entries from that bank account commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine of not less than one million shillings or to both.

(4) In this section—

"bank account" includes any ledger, log book, cash book, and any other document used in the ordinary course of business by any person carrying on, whether on his own behalf or as an agent for another, and whether exclusively or otherwise, any banking business whatsoever, whether or not such person is a bank within the meaning of the Banking and Financial Institutions Act, 2005.

Act No.
5 of
2005

63B. For the purposes of obtaining evidence in relation to serious offences, predicate offences or money laundering, a police officer of the rank of Assistant Superintendent of Police or above authorized as such by the Inspector General of Police or the Director of Criminal Investigations may, with leave of the court—

Placing
under
surveillance

(a) have access to computer data systems, networks and services;

- (b) place under surveillance means of preservation of information including facsimile machines, electronic transmission and communication facilities;
- (c) make audio or video recording of acts and behaviours or conversations; and
- (d) have access to notarial and private deeds, or financial institutions and commercial records.

Protection
of investi-
gators

63C. No punishment shall be imposed to any person investigating a serious offence, predicate offence or money laundering who, for the sole purpose of obtaining evidence, performs in the manner specified, acts which would rather be construed as elements constituting a serious offence, a predicate offence or money laundering or a conspiracy to commit a predicate offence or money laundering.

Leave of
the Court

63D. For purposes of obtaining leave of the court pursuant to the provisions of sections 63A and 63B, it shall be sufficient for the Inspector General of Police or the Director of Criminal Investigation to file Chamber application supported by affidavit whether or not there is a pending case in the court."

Repeal of
section
68

14. Section 68 of the principal Act is repealed.

Repeal of
section
69

15. Section 69 of the principal Act is repealed.

Repeal of
section
70

16. Section 70 of the principal Act is repealed.

Repeal of
section 71

17. Section 71 of the principal Act is hereby repealed and replaced by the following provisions—

"obstru-
ction of
justice
prohibited

71.—(1) Any person who uses physical force, threat, intimidation, promises, offers or gives an undue advantage in order to—

- (a) induce false testimony;

- (b) interfere with the giving of testimony or the production of evidence in a proceeding; or
- (c) interfere with the exercise of official duties by a magistrate, judge, public prosecutor, state attorney or any law enforcement official in relation to the commission of offences under this Act, commits an offence and shall, on conviction, be liable to imprisonment for a term of not less than five years."

PART III

AMENDMENT OF THE CRIMINAL PROCEDURE ACT

18. This Part shall be read as one with the Criminal Procedure Act, hereinafter referred to as the "principal Act".

Constru-
ction Cap.
20

19. Section 148 of the principal Act is amended in subsection (5) by deleting a "semicolon" and substituting for it a "full-stop" appearing in item (iii) of paragraph (a), and adding immediately thereafter the following:

Amend-
ment of
section
148

"(iv) money laundering contrary to the Anti-Money Laundering Act, 2006."

PART IV

AMENDMENT OF THE EXTRADITION ACT

20. The principal Act is amended—

(a) in section 17 by adding after subsection (4) the following provision:

Constru-
ction
Cap. 368

"(5) The provisions of subsections (1) and (2) shall not apply to—

- (a) any person who is accused of terrorism under the Prevention of Terrorism Act, 2002;
- (b) any person who is accused of money laundering under the Anti - Money Laundering Act, 2006."

(b) by adding in the Schedule, immediate after the offences appearing under the heading " Slave Dealing" the following:

"Money Laundering Offence
Offences relating to Money Laundering".

PART V

AMENDMENT OF THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

21. This Part shall be read as one with the Mutual Assistance in Criminal Matters Act, hereinafter referred to as the "principal Act".

Constru-
ction
Cap.254

22. The principal Act is amended by adding immediately after section 32 the following provision—

Addition
of section
32A

"Sharing
of
proceeds

32A.—(1) The Government may dispose of property confiscated within the United Republic upon a request by a foreign authority where there is an agreement concluded between the Government of the United Republic and the Government of the requesting foreign territory.

(2) The Attorney General may, where he considers it appropriate either for purposes of compliance with an international arrangement to which the United Republic is committed or for the interest of courtesy among states, order the property or any part of the property forfeited or the value of that property to be given out or remitted to the requesting Government."

PART VI

AMENDMENT OF THE BANKING AND FINANCIAL INSTITUTIONS ACT

23. This Part shall be read as one with the Banking and Financial Institutions Act, 2006 hereinafter referred to as the "principal Act".

Constru-
ction Act
No. 5 of
2006

24. The principal Act is amended in section 9, by inserting immediately after paragraph (d) of subsection (1) the following:

Amend-
ment of
section 9

"(e) the engagement in money laundering" and by renaming paragraphs (e), (f), and (g) as paragraphs (f), (g) and (h) respectively.

- 25.** Section 12 of the principal Act is amended by—
- (a) deleting the word "felony" appearing in paragraph (b) of subsection (1), and substituting for it the words "money laundering";
- (b) inserting immediately after subsection (3) the following:
- "(4) Any person who is convicted of serious offence shall be disqualified from holding any managerial position in any bank or financial institution."
- Delegation
of
function

PART VII

AMENDMENT OF THE GAMING ACT

- 26.** This Part shall be read as one with the Gaming Act, 2003 hereinafter referred to as the "principal Act".
- Constru-
tion Act
No. 4 of
2003
- 27.** The principal Act is amended in section 3, by inserting in its appropriate alphabetical order the following new definition:
- "FIU" has the meaning ascribed to it under the Anti-Money Laundering Act, 2006.
- Amend-
ment of
section 3
- 28.** Section 59 of the principal Act is amended by inserting the words "with the FIU" between the words "report" and "of" appearing in subsection (1).
- Amend-
ment of
section
59

PART VIII

AMENDMENT OF THE ECONOMIC AND ORGANISED CRIME CONTROL ACT

- 29.** This Part shall be read as one with the Economic and Organised Crime Control Act, 1984 hereinafter referred to as the "principal Act".
- Constru-
tion Cap.
200
- 30.** Section 2 of the principal Act is amended by deleting the definition of the word "bank".
- Amend-
ment of
section 2
- 31.** The principal Act is amended in the First Schedule by deleting paragraph "5".
- Amend-
ment of
the
Schedule

PART IX
AMENDMENT OF THE EVIDENCE ACT

32. This Part shall be read as one with the Evidence Act, hereinafter referred to as the "principal Act".

Constru-
ction
Cap.6

33. The principal Act is amended by adding immediately after section 40 the following new section—

Addition
of section
40A

"Evidence
obtained
under-
cover
operations

40A. In any criminal proceedings—

- (a) an information retrieved from computer systems, networks or servers; or
- (b) the records obtained through surveillance of means of preservation of information including facsimile machines, electronic transmission and communication facilities;
- (c) the audio or video recording of acts or behaviours or conversation of persons charged, shall be admissible in evidence.

34. The principal Act is amended by adding immediately after the definition of the word "bank", appearing in section 76, the following new definition -

Amend-
ment of
section 76

"Banker's books" include ledgers, cash books, account books and any other records used in the ordinary business of the bank or financial institution, whether the records are in written form or a data message or kept on an information system including, but not limited to computers and storage devices, magnetic tape, micro-film, video or computer display screen or any other form of mechanical or electronic data retrieval mechanism.'

35. The principal Act is amended by adding immediately after section 78 the following new section—

Addition
of section
78A

"Electronic
records

78A.—(1) A print out of any entry in the books of a bank on micro-film, computer, information system, magnetic tape or any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other

process which in itself ensures the accuracy of such print out, and when such print out is supported by a proof stipulated under subsection (2) of section 78 that it was made in the usual and ordinary course of business, and that the book is in the custody of the bank it shall be received in evidence under this Act.

(2) Any entry in any banker's book shall be deemed to be primary evidence of such entry and any such banker's book shall be deemed to be a "document" for the purposes of subsection (1) of section 64."

PART X

AMENDMENT OF THE MWALIMU NYERERE MEMORIAL ACADEMY ACT

36. This Part shall be read as one with the Mwalimu Nyerere Memorial Academy Act, 2005 hereinafter referred to as the "principal Act".

Constru-
tion
Act No.
6 of
2005

37. The principal Act is amended—

Amend-
ment of
section 6
and 11

(a) in section 6—

(i) by deleting paragraph (b) of subsection(1) and substituting for it the following provision:

"(b) the Director of Technical Education";

(ii) by deleting paragraph (j) of subsection (1);

(iii) by deleting the words "and the principal" appearing in subsection (2);

(b) in section 11 by adding after subsection (3) the following provision:

"(4) The Principal of the Academy shall be the Secretary to the Governing Board."

PART XI

AMENDMENT OF THE JUDICIAL SERVICE ACT

38. This Part shall be read as one with the Judicial Service Act, 2005 hereinafter referred to as the "principal Act".

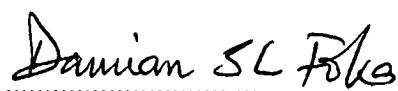
Constru-
tion Act
No. 2 of
2005

Amend-
ment of
section 8

39. The principal Act is amended in section 8 by deleting—

- (a) a side note and substituting for it the following side note: "Executive Secretary and other members of Staff of the Commission."
- (b) in subsection (1), the phrase "of the Commission, as the Commission shall determine" and substituting for it the phrase "appointed by the Commission as is necessary for the performance of its functions.";
- (c) a full-stop at the end of subsection (2) and inserting thereat the phrase "and shall, in relation therewith, be the Chief Executive Officer of the Commission."

Passed in the National Assembly on the 31st January, 2007.


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Clerk of the National Assembly