

Tanzania

Loans and Advances Realisation Trust Act Chapter 248

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Tanzania

Loans and Advances Realisation Trust Act Chapter 248

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[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. 21 of 1992; Acts Nos. 6 of 1991; 1 of 1993; 6 of 1994; 5 of 1995; 10 of 1996]

An Act to establish the Loans and Advances Realisation Trust and an expeditious machinery for the recovery of overdue debts of banks and financial institutions.

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

1. Short title

This Act may be cited as the Loans and Advances Realisation Trust Act.

2. Application

This Act shall extend to Tanzania Zanzibar as well as Mainland Tanzania.

3. Interpretation

In this Act, unless the context otherwise requires—

"assets" shall include—

- (a) receivables and other obligations due to the Owner, lease indemnity and other agreements together with all collateral security and other rights (including but not limited to rights in relation to shares or stock in a body corporate such as voting rights as well as rights to appoint directors of a body corporate or otherwise engage in the management thereof) granted to the Owner by contract or operation of law to secure or enforce the right of payment of such obligations;
- (b) real and personal property of any kind owned or held by the Owner including shares or stock of a body corporate obtained by the Owner whether directly or indirectly, through foreclosure or other means in settlement of such obligations;
- (c) shares or stock and other investments held by the Owner; and
- (d) the business of the Owner and where the Owner is a body corporate the Owner itself whether as parent or subsidiary body corporate;

"bank" means a financial institution authorised to receive money on current account subject to withdrawal by cheque;

"the Bank" means the Bank of Tanzania established under the Bank of Tanzania Act ¹;

"**Board**" means the Board of trustees of the trust established under [section 6](#);

"**financial institution**" means any person authorised by or under the law for the time being relating to banking to engage in banking business not involving the receipt of money on current account subject to withdrawal by cheque;

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

"**non-performing asset**" means—

- (a) loans and advances including—
 - (i) any advances in respect of which the principal or interest or its schedule instalment has remained overdue for any period specified by the Bank for the purposes of the Act;
 - (ii) any advance to a borrower who has subsequent to the granting of the advance gone into insolvency or whose industrial or commercial operation has remained unoperational for any period specified by the Bank for the purposes of this Act;
 - (iii) any overdraft in respect of which interest is due and unpaid or the overdraft is outstanding after the expiry of the authorisation or is consistently at or exceeding the credit limit for such period as the Bank may specify or in respect of which the credit limit is regularly increased by the bank or financial institution;
 - (iv) any advance, overdraft or guarantee for which the borrower is unable or unwilling to discharge his obligation to service the interest or principal repayment; or
- (b) investment in the nature of equity holdings, debentures or other commercial paper issued by a body corporate in the United Republic where—
 - (i) the body has suffered losses which in aggregate, exceeds its paid up capital, declared reserves and surpluses;
 - (ii) insolvency proceedings have been or could be initiated against the body corporate; or
 - (iii) the body corporate's commercial or industrial operations have remained unoperational for a period longer than a period specified by the Bank for the purposes of this Act, and the marketability or realisable value has been substantially impaired exposing the bank or financial institution concerned to risk of loss;

"**Owner**" means the borrower in respect of a non-performing asset;

"**Tribunal**" means the LART Loans Recovery Tribunal established by [section 18](#);

"**Trust**" means the Loans and Advances Realisation Trust established by [section 4](#).

Part II – The Trust (ss. 4-11)

4. Establishment of the Trust and its lifespan

- (1) There is hereby established a trust which shall be known as the Loans and Advances Realisation Trust.
- (2) The Trust shall be a body corporate with a common seal and may sue or be sued in its corporate name.
- (3) The Trust shall, for the purposes of discharging its functions under this Act have power to acquire, hold or dispose of any movable or immovable property or enter into any contract or transaction.
- (4) The common seal of the Trust shall be kept in the custody of the Administrator and shall not be affixed to an instrument or document except as authorised by the Board.

5. Objects and functions of the Trust

The objects and functions of the Trust shall, subject to such directions as the Minister may deem it suitable to give to the Trust be as follows—

- (a) to hold for and on behalf of the United Republic any non-performing asset of a bank or other financial institution which is transferred to the Trust under paragraph (a) and (b) of [section 13\(1\)](#);
- (b) to hold for and on behalf of a bank or financial institution any non-performing asset of such bank or financial institution which is transferred to the Trust under paragraph (c) of [section 13\(1\)](#);
- (c) to take such action as may be necessary—
 - (i) to recover all amounts outstanding in respect of all transferred non-performing assets; and
 - (ii) to advise, direct or facilitate the measures that have to be taken by or in respect of the debtors so as to enhance their capacity to repay the loans and advances transferred to the Trust under [section 13](#); and
- (d) to administer and manage the Non-Performing Assets Recovery Fund established by [section 12](#).

6. Board of Trustees

- (1) There shall be established a Board of Trustees of the Trust which shall be its governing body.
- (2) The Board shall consist of—
 - (a) a Chairman, to be appointed by the President, who shall be a person who is knowledgeable or experienced in corporate law or chartered accountancy; and
 - (b) not less than four nor more than six other members, to be appointed by the Minister from persons who, in his opinion have a sound knowledge or experience on matters pertaining to the objects of the Trust, one of whom shall be a person who hails from Tanzania Zanzibar.
- (3) The Minister shall appoint one of the members to be a Vice-Chairman of the Board.
- (4) The members, who shall work on part-time basis, shall hold office for a period of two years but may be reappointed for such further period as the Minister may determine.

7. Functions of the Board

The Board shall be responsible for the formulation of policies and the supervision of the management of the Trust and shall, subject to any general or specific directions given to it by the Minister, exercise all the powers conferred on the Trust under this Act.

8. Meetings of the Board

- (1) The Board shall meet for the discharge of business at such times and places as it may decide but shall meet at least once in each month.
- (2) The Chairman or, in his absence, the Vice-Chairman, shall preside at all meetings of the Board which he attends.
- (3) Decisions of the Board shall be made by a simple majority of members present and voting and in the event of an equality of votes the Chairman or other person presiding shall have a second or casting vote.
- (4) The quorum at any meeting of the Board shall be four, one of whom shall be the Chairman or, in his absence, the Vice-Chairman.
- (5) The Board may at any time co-opt any person to act as an advisor at its meetings, but such person shall not be entitled to vote at the meeting.

- (6) Any member who has any financial or other interest, whether direct or indirect, in any undertaking the subject matter of any decision before the Board, shall disclose in writing to the Board the nature of his interest and shall not participate in any discussion or decision of the Board relating to the matter.
- (7) Any member who fails or refuses to disclose his interest under subsection (6) of this section commits an offence and is liable, upon conviction, to be removed from the Board and to a fine of twenty thousand shillings or imprisonment for a term not exceeding twelve months.
- (8) Subject to the preceding provisions of this section, the Board shall regulate its own procedure.

9. Committees of the Board

The Board may on such terms and conditions as it may determine appoint such committees as it may consider necessary to perform such functions or advise the Board on such matters as the Board may direct.

10. The Administrator and other staff of the Trust

- (1) There shall be an Administrator of the Trust who shall be appointed by the Minister.
- (2) The Administrator shall be appointed on such terms and conditions as the Minister may determine.
- (3) The Administrator shall, subject to such directions as may be given by the Board be responsible for the day to day administration of the Trust and shall be accountable to the Board.
- (4) The Trust may from time to time engage such other employees, consultants and advisors as may be necessary for the proper and efficient performance of its functions on such terms and conditions as the Board may determine.
- (5) Persons employed in the service of the Government or a parastatal organisation may be transferred or seconded to the Trust.

11. Remuneration of members and staff

The members of the Board shall not be paid any salary, but the members of the Board and the staff of the Trust shall all be paid such allowances as the Board may, with the prior consent of the Minister, determine.

Part III – Powers and operations of the Trust (ss. 12-17)

12. Establishment of Non-Performing Assets Recovery Fund

There is hereby established a fund to be known as the Non-Performing Assets Recovery Fund into which shall be paid all monies provided by the Government or other sources to the Trust and proceeds from recoveries made on assets vested in the Trust, and out of which shall be paid such sums of money as may be required by the Trust under this Act.

13. Power to transfer non-performing assets

- (1) Notwithstanding any law or agreement to the contrary, the Trust may direct in writing any bank or financial institution, and that bank or financial institution shall, upon such direction, transfer to the Trust such of its non-performing assets—
 - (a) as are in existence at the commencement of this Act;
 - (b) as may exist as determined by the audited account of the bank or financial institution on the 31st of December, 1990,

Save that such loans and advances or equity investments were actually on the books of the bank or financial institution on the 30th day of June, 1988, even if not identified or determined at that time to be non-performing; or

- (c) as may be determined by a bank or financial institution in accordance with the Prudential Guidelines issued under the Banking and Financial Institutions Act ², and certified by the Bank as having become non-performing for the purpose of this Act.
- (2) The Minister may upon the recommendation of the Board, by order published in the *Gazette*, extend the date of 31st day of December, 1990 for a further period of one year.

14. Action by Trust after transferring and in respect of transferred assets

- (1) The Trust shall in respect of any non-performing asset transferred by a bank or financial institution under [section 13\(1\)\(a\)](#) and (b), where the Trust holds such non-performing asset on behalf of the United Republic, cause to be paid to the bank or financial institution for the transferred asset from the Fund established by [section 12](#) such sums as may be determined by the Trust at such rate, in such form and subject to such other forms and conditions as the Trust may determine.
- (2) The Trust may, after consultation with the Attorney-General, order that an investigation be carried out into the affairs and conduct of those institutions and of their chief or other executives which were clients of the bank or financial institution whose non-performing assets have been transferred to the Trust, for the purposes of determining whether or not there was any misappropriation of the resources of the institution.
- (3) Where the investigation reveals any misappropriation or any other offence in relation into any movable or immovable property connected with the non-performing assets transferred to the Trust, such property shall be clearly identified and seized by the Trust, and then dealt with according to law for the purposes of compensating the institution concerned.
- (4) The Trust may from time to time require by notice in writing, any debtor who is a client of the Bank or a financial institution whose non-performing assets have been transferred to the Trust, to furnish to the Trust, or to such other person as may be specified in the notice such information or provide such document as the Trust may specify in the notice for the purposes of this Act.

15. Vesting of transferred assets

- (1) All rights and obligations attached to a non-performing asset transferred by a bank or other financial institution under this Act which immediately before the date of the transfer, were held by the bank or financial institution shall, subject to such directions as the Minister may give in writing in that behalf, vest in the Trust.
- (2) All assets of the Owner shall, subject to any encumbrances attached thereto, vest in the Trust and shall, subject to such directions as the Minister may give in that behalf at the time of the transfer of the non-performing asset concerned, be dealt with the accordance with this Act.
- (3) The Trust may order and facilitate the conduct of an investigation into the expenditure and income patterns of the debtor institutions and may, when appropriate, order that any part of the income of that institution be paid to the Trust in order to reduce the value of the non-performing asset which is related to the institution and which has been transferred to the Trust.

16. Provisions relating to rehabilitation

- (1) The Minister shall, by rules published in the *Gazette*, provide for the rehabilitation process and procedures regarding the seizure and disposal of assets vested in the Trust by [section 15](#).

- (2) The rules made under subsection (1) may be amended by the Minister as he deems fit, and shall be complied with by all parties concerned, notwithstanding the provisions of any other law or practice to the contrary.

17. Protection of Trustees and employees of the Trust

No act of a member of the Board or an employee of the Trust shall, where such act was done *bona fide* in the course of his employment, subject such member, employee or any person acting under his direction, personally, to any action, liability or claim.

Part IV – The LART Loans Recovery Tribunal (ss. 18-25)

18. Establishment and composition of Tribunal

- (1) There is hereby established a tribunal which shall be known as the LART Loans Recovery Tribunal.
- (2) The Tribunal shall consist of—
 - (a) a Chairman and not more than three Vice-Chairmen who shall be persons holding or who have previously held or are qualified to hold high judicial office, and appointed by the Minister after consultations with the Chief Justice;
 - (b) not less than eight (8) members who shall be appointed by the Minister after consultations with the Attorney General.
- (3) Persons appointed to the Tribunal under subsection (2)(b) shall be from experts in law, accountancy, business or public affairs.
- (4) For the purposes of this section the expression "high judicial office" means the office of a Judge of the Court of Appeal, the High Court of the United Republic or of the High Court of Zanzibar.

19. Jurisdiction of the Tribunal

- (1) The Tribunal shall have exclusive jurisdiction to hear and determine all matters arising under this Act or relating to any non-performing asset transferred to the Trust under this Act.
- (2) The rules of procedure applicable to the High Court in relation to civil proceedings shall apply *mutatis mutandis* to the Tribunal.
- (3) Notwithstanding the provisions of subsection (2), the Minister may, by rules published in the *Gazette*, provide for the rules of procedure to be applied to any matter before the Tribunal and the civil procedure rules provided in subsection (2) shall cease to apply to any such matter filed thereafter.

20. Judgment of Tribunal and execution of judgment

- (1) A judgment or order of the Tribunal on any matter before it shall not be final; and shall be challenged in the Court of Appeal.
- (2) It shall not be lawful for any court to entertain any action or proceedings of any nature for the purpose of questioning any judgment, finding, ruling, order or proceeding of the Tribunal; and for the avoidance of doubt, it shall be lawful for any Court of Appeal to entertain any application for an order or writ in the nature of *habeas corpus*, *certiorari*, *mandamus*, prohibition, quo warranto, injunction or declaration in respect of a judgment, order, finding, ruling or proceeding of the Tribunal.

21. Procedure of Tribunal

- (1) The Tribunal shall in the exercise of its functions under this Act be guided by the rules of natural justice.
- (2) Without prejudice to the general effect of subsection (2) of section 19 of this Act, the Tribunal shall in the discharge of its functions under this Act have all the powers of the High Court in respect of—
 - (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compelling the production of documents; and
 - (c) the issue of a commission or request to examine witnesses abroad.
- (3) The Tribunal shall at any time be deemed to be duly constituted if the Chairman or Vice-Chairman and one other member are present.
- (4) Any decision shall be deemed to be a decision of the Tribunal if it is supported by a majority of the members.
- (5) A witness before the Tribunal shall have the immunities and privileges as if he were a witness before the High Court.

22. Proceedings pending in court of law to be transferred to the Tribunal

- (1) Notwithstanding the provisions of this Act any action or proceedings pending in any court in respect of any loan, advance or non-performing asset which is by this Act transferred to the Trust shall, on the commencement of this Act, cease to be conducted in that court and the Registrar of the High Court shall cause the action or proceedings to be transferred to the Tribunal.
- (2) The actions or proceedings transferred to the Tribunal under subsection (1) shall be heard and determined in accordance with the provisions of this Act.

[s. 21A]

23. Registrar and other staff of the Tribunal

The Minister shall after consultation with the Chief Justice appoint an officer to be known as the Registrar of the Tribunal, and shall provide to the Tribunal the services of such other officers as the Tribunal may reasonably require for carrying out its functions under this Act.

[s. 22]

24. Remuneration and allowances, etc.

The members of the Tribunal, the Registrar and staff of the Tribunal may be paid such remuneration and allowances as the Minister may determine.

[s. 23]

25. Obstruction of Tribunal

Any person who—

- (a) when summoned, fails or refuses to attend without reasonable excuse;
- (b) having attended as a witness refuses or fails to take an oath or make an affirmation as required by the Tribunal;

- (c) makes any statement before the Tribunal which he knows to be false or which he has no reason to believe to be true;
 - (d) omits or cancels any information required by the Tribunal in the discharge of its functions or relevant to the discharge of those functions; or
 - (e) in any manner misleads, obstructs, insults or disturbs the Tribunal,
- commits an offence, and on conviction is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

[s. 24]

Part V – Financial and miscellaneous provisions (ss. 26-30)

26. Financial year of Trust

The financial year of the Trust shall be the same as the financial year of the Government.

[s. 25]

27. Accounts and audit

- (1) The Trust shall keep books of account and maintain proper records in relation to them, and the books of account and records of the Trust shall be kept in accordance with accounting standards acceptable to the National Board of Accountants and Auditors.
- (2) The books of account of the Trust shall be audited by the Tanzania Audit Corporation established by the Tanzania Audit Corporation Act ³, at such times as the Board may determine but shall be audited at least at the end of each financial year.
- (3) The audited accounts shall be submitted to the Board not later than three months after the end of the financial year to which they relate.
- (4) It shall be the duty of the Board as soon as possible but in any case not later than one month upon receipt of the report of the auditors under this section to forward such report to the Bank and to the Minister.
- (5) A copy of the report shall be submitted by the Board to the Controller and Auditor-General.
- (6) The Board shall not later than four months after the end of each financial year submit to the Minister an annual report on the management of the Trust in respect of that financial year, including the balance sheet of the Trust in respect of that year, the audited accounts, and the auditors' report on the accounts, and the Minister shall submit the report together with his observations on it to the National Assembly.

[s. 26]

28. Tax relief

The Trust shall be exempted from the payment of all taxes, rates and duties.

[s. 27]

29. Regulations

- (1) The Minister may make such regulations as he deems necessary or convenient for the effective and full implementation of the purposes and provisions of this Act.
- (2) All regulations made under this section shall be published in the *Gazette*.

[s. 28]

30. Duration of this Act

- (1) This Act shall continue to be in force until the 30th day of June, 2000, and shall then expire, unless the Minister by notice published in the *Gazette* extends its duration for two periods of one year each.
- (2) Notwithstanding subsection (1), upon the expiration of the powers of extension by the Minister, the National Assembly may, by resolution, on recommendation by the Minister, extend the duration of the Act for such further period as it may determine.

[s. 29]