

CHAPTER 106

THE EMPLOYEES' TERMINAL BENEFITS SCHEMES (REGISTRATION AND REGULATION) ACT

[PRINCIPAL LEGISLATION]

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THE EMPLOYEES' TERMINAL BENEFITS SCHEMES (REGISTRATION AND REGULATION) ACT

An Act to provide for the registration and regulation of terminal benefits schemes operated by employers for the benefit of their employees.

[1st August, 1974]

[G.N. No. 158 of 1974]

Act No. 17 of 1973

G.Ns. Nos.

159 of 1974

201 of 1974

[PCh106s1]1. Short title

This Act may be cited as the Employees' Terminal Benefits Schemes (Registration and Regulation) Act.

[PCh106s2]2. Interpretation

(1) In this Act, unless the context requires otherwise—

"employee" means a person who—

(a) is employed in Tanzania under any contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and however paid, such contract not being one of employment as a member of the crew of any ship;

or

(b) is ordinarily resident in Tanzania and is employed under a contract of service or other agreement entered into in Tanzania as a member of the crew of any ship, the owners of which have a place of business, or have agents, in Tanzania; or

(c) is ordinarily resident in Tanzania and is employed outside Tanzania under a contract of service with an employer in Tanzania by whom he is paid;

"employees' terminal benefit scheme" means any pension, provident funds, gratuity, saving or insurance scheme, arrangement or undertaking established, set-up, settled, operated or undertaken by or on behalf of an employer for the benefit of employees in the employment of the employer under which any employee shall or may, upon the determination of his employment or upon the expiry of any specified period of employment, become entitled to receive a pension, a sum of money or other valuable benefit, whether or not that employee is required to make any contribution towards any fund established pursuant to the scheme;

"employer" in respect of any employee employed or engaged as a member of the crew of any ship means the owner or owners of the ship, or the agents in Mainland Tanzania of the ship, as the case may be, and in any other case, and subject to subsection (2) of this section, means the person with whom the employee entered into contract of service or apprenticeship and who is responsible for the payment of wages of the employee;

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

"Registrar" means the Registrar of Employees' Terminal Benefits Schemes.

(2) Where a contract of employment provides for services to be rendered to one person and the wages to be paid by another person and it is not clear from the contract which of the two persons is the employer, the employee shall, unless the Registrar otherwise determines, be deemed for the purposes of this Act to be in the employment of the person paying the wages.

(3) References in this Act to an employer in relation to any terminal benefits scheme for his employees include, where the scheme, or any fund established pursuant to the scheme, is administered by a trustee or a person other than the employer, references to the trustee or any other person administering the scheme or, as the case may be, the fund.

[PCh106s3]3. Registrar G.N. No. 159 of 1974

The Minister shall appoint a public officer to be the Registrar of Employees' Terminal Benefits Schemes.

[PCh106s4]4. Registration of schemes

(1) Every employer who operates or has established a terminal benefits scheme or on whose behalf a scheme is being operated or has been established shall, within—

(a) sixty days from the date on which this Act comes into operation; or

(b) sixty days from the date on which that scheme begins to operate,

whichever date last occurs, submit to the Registrar any particulars relating to the scheme which may be prescribed and upon receipt of the particulars the Registrar shall register the scheme and issue the employer with a certificate of registration in the prescribed form.

(2) Any employer who without lawful excuse fails to comply with the provisions of this section commits an offence.

(1) The Minister may, from time to time, by order, direct that the fund of any employees' terminal benefit scheme or any portion of that fund specified in the order, be invested in any investment or investments which the Minister may consider desirable having regard to the interests of the employers and the employees as well as the national economy.

(2) An order under subsection (1) may be made either generally in relation to all employees' terminal benefits schemes or in relation to any one or more scheme or schemes specified in the order.

(3) Where the whole or any portion of any fund has, pursuant to an order made under subsection (1), been invested in any investment that investment shall, for the purposes of the Trustees Investments Act *, be deemed to be an authorised investment:

Provided that this subsection shall not apply to any investment made after that order is revoked or ceases to continue in force.

(4) Where by reason of any investment made prior to an order under subsection (1) the employer is unable to comply with the requirements of the order, he may apply to the Minister for directions and the Minister shall give any directions in the matter which he deems appropriate.

(5) Any employer who without lawful excuse fails to comply with any order made under subsection (1) within the time specified in the order or, where the time has not been specified, within three months of the date of the order, shall, unless he satisfies the court

that he has applied for the directions under subsection (4) within the period aforesaid and that—

- (a) the directions have not yet been given; or
- (b) the directions have been given and have been or are being complied with,

commits an offence.

(6) Any employer to whom directions under subsection (4) have been given and who without lawful excuse fails to comply with the directions within the time specified in the directions or, where the time has not been so specified, within three months of the date of the directions, commits an offence.

[PCh106s6]6. Regulations G.N. No. 201 of 1974

The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing, may make regulations—

- (a) regulating administration of employees' terminal benefits schemes and prescribing the conditions to be complied with by the persons responsible for their administration, and prescribing their qualifications;
- (b) regulating the administration accounts and auditing of the funds established pursuant to employees' terminal benefits schemes;
- (c) requiring periodic returns relating to employees' terminal benefits schemes to be submitted to the Registrar;
- (d) prescribing anything which under the provisions of this Act may be prescribed;

- (e) prescribing forms in which particulars and returns shall be submitted.

[PCh106s7]7. Minister may regulate management of a terminal benefits scheme

(1) The Minister may, by order require any employees' terminal benefits scheme specified in the order to be re-organised as to its management or otherwise in the manner specified in the order.

(2) Where an order under subsection (1) is made and the employer without lawful excuse contravenes any of the provisions of the order he commits an offence.

(3) In the event of a contravention without lawful excuse by an employer of an order made under subsection (1) the Minister may, without prejudice to the provisions of section 8, transfer the management of the scheme to any person or persons whom he may specify.

(4) Where the management of an employees' benefits scheme is transferred by an order under subsection (3) the employer and every person who was, immediately before that order, responsible for the management of the scheme, shall do or cause to be done all acts and things which shall be necessary to effect the transfer and failure by the employer or any other person to comply with the provisions of this subsection shall be an offence.

[PCh106s8]8. Offences

Any employer who is convicted of any offence under this Act or under any regulations made under section 6 shall be liable to a fine not exceeding fifty thousand shillings.

[PCh106s9]9. Act not to apply to certain schemes

(1) The provisions of this Act shall not apply to any employees' terminal benefits scheme established by any written law.

(2) The Minister may, subject to the terms and conditions he determines, by order published in the Gazette, exempt any employees' terminal benefits scheme from the provisions of this Act.

[PCh106s10]10.-11. Omitted

[Spent.]

[PCh106s12]12. Omitted

[Superseded by R.L. Cap. 50.]