

CHAPTER 261

THE COMMODITY IMPORT SUPPORT REGULATION ACT

An Act to provide for the procedure, terms and conditions for the allocation of commodity import support to beneficiaries and for related matters.

[1st July, 1992]

[s. 1]

Acts Nos.

15 of 1992

13 of 1999

18 of 2002

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh261s1]1. Short title

This Act may be cited as the Commodity Import Support Regulation Act.

[PCh261s2]2. Interpretation Acts Nos. 13 of 1999 s. 3; 18 of 2002 s. 8

In this Act, unless the context otherwise requires—

"appointment notice" means a notice issued by the Commissioner for appointing an agent under section 11;

"beneficiary" means any person or institution within the United Republic who or which has been allocated a commodity import support facility;

"cash cover" means the sum of money in Tanzanian shillings which is equivalent to the value of the commodity import support facility allocated to a beneficiary;

"Commissioner" means the Commissioner for Income Tax;

"commodity import support facility" means any funds in foreign currency or any imports donated to the Government of the United Republic by a foreign donor which are intended to be allocated to a beneficiary other than by way of the open general licence facility on payment or on the undertaking to pay cash cover;

"guarantee" means a guarantee given by the beneficiary under section 6 to the Permanent Secretary;

"guarantor" means any person specified by the beneficiary under section 6 to be a guarantor;

"moneys" includes any debt, deposit or credit, any salary, wages, pensions payments and any other remuneration;

"Permanent Secretary" means the Permanent Secretary to the Treasury;

"principal" means a person in respect of whom an agent is appointed.

PART II

ALLOCATION AND REPAYMENT OF COMMODITY IMPORT SUPPORT FACILITY (ss 3-9)

[PCh261s3]3. Identification of prospective beneficiaries

The Government of the United Republic in collaboration with any foreign donor shall determine the priority category of possible beneficiaries in such manner as may appear appropriate.

[PCh261s4]4. Notification to potential beneficiaries Act No. 13 of 1999 s. 3

Where the prospective beneficiary has been determined in accordance with section 3, the Permanent Secretary shall issue a letter of notification informing the prospective beneficiary of the proposal to allocate a commodity import support facility and requiring the prospective beneficiary to submit a formal application within such time as may be specified.

[PCh261s5]5. Beneficiary to submit application Act No. 13 of 1999 s. 3

(1) The prospective beneficiary shall within the time specified under section 4 submit to the Permanent Secretary a formal application for allocation of commodity import support facility.

(2) Every application shall specify—

- (a) the name and address of the beneficiary;
- (b) the amount of foreign currency or in the case of imports, the quantity and value of the imports being applied for;
- (c) the type of goods intended to be imported;
- (d) the purpose for which the imports are required;
- (e) the name and address of the beneficiary's bankers.

[PCh261s6]6. Application to be accompanied by a declaration Act No. 13 of 1999 s. 5

(1) Every application shall be accompanied by—

(a) a declaration of the beneficiary that—

(i) cash cover would be paid in full; or

(ii) cash cover would be paid by instalments;

(b) a confirmation from the beneficiary's bankers that the beneficiary has the financial resources to pay the cash cover or the instalments as declared by the beneficiary;

(c) a detailed guarantee under which in default of payment of cash cover, instalments and interests thereof a specific guarantor shall be required to pay the debts.

(2) Notwithstanding paragraph (c) of subsection (1), the Permanent Secretary may, where he is satisfied with the properties secured by the applicant as the guarantee for payment of cash cover, instalment and interest, allow that applicant to guarantee him "self for payment of debt under this Act."

[PCh261s7]7. Permanent Secretary to issue letter of allocation Act No. 13 of 1999 ss. 3 and 6

(1) The Permanent Secretary shall issue a letter of allocation to a beneficiary who—

(a) has submitted an application which complies with the provisions of sections 5 and 6;

(b) has paid to the Treasury—

(i) cash cover; or

(ii) in the case of payment by instalments, has paid not less than thirty per centum of the cash cover and has undertaken in writing to repay the balance and interest within such time as the Permanent Secretary may specify.

(2) The Permanent Secretary shall, after the issuance of letter of allocation to the beneficiary under this section, inform the Commissioner in writing stating the particulars of the beneficiary, the amount of moneys extended to the beneficiary and the conditions or terms of allocations.

[PCh261s8]8. Payment by instalments Act No. 13 of 1999 ss. 3 and 7

(1) Payment by instalments shall be subject to the conditions that—

(a) all the instalments shall be paid within the time specified by the Permanent Secretary;

(b) interest shall be charged on the sum payable by instalments at the prevailing rate charged by the Bank of Tanzania on advances to the Government of the United Republic.

(2) Any interest charged under paragraph (b) of subsection (1) shall, for the purpose of the provisions of this Act relating to the collection and recovery of cash cover or instalments, be deemed to be a cash cover.

[PCh261s9]9. Unpaid instalments and interest to be recovered as debt

(1) Any unpaid instalments or interest due on any cash cover relating to any commodity import support facility whether granted to a beneficiary before or after the enactment of this Act, shall constitute a debt to the Government of the United Republic and may be recovered as a civil debt at the instance of the Commissioner of Income Tax

or any authorised public officer on behalf of the Commissioner of Income Tax in the manner provided in subsection (2).

(2) Where any cash cover, instalment or interest payable under this Act is due from any person and that person fails to pay the amount due and no proceedings are pending in any court in relation to that person's liability to pay the amount due or, if there has been any proceedings, such proceedings have been disposed of and the amount is payable in accordance with the decision of the court, the Commissioner of Income Tax may lodge in a court of the resident magistrate having jurisdiction over the area in which the person from whom the amount is due ordinarily resides or carries on business or works for gain, a certificate signed by him and stating—

(a) the name and address of the person from whom the cash cover, instalment or interest is due; and

(b) the amount of the cash cover, instalment or interest; and

(c) the fact that the amount of cash cover, instalment, interest or other payment is due,

and upon such certificate being lodged in that court, the certificate shall be deemed to be a decree passed by the court against the person named in the certificate for payment by him to the Government of the amount stated in the certificate and every such decree may be executed in the same manner as a decree passed by a court of a resident magistrate in a civil suit.

(3) The provisions of subsection (2) shall apply notwithstanding that the amount involved exceeds the pecuniary jurisdiction of a court of a resident magistrate.

(4) Every certificate filed pursuant to subsection (2) shall be conclusive evidence of the truth of the statement contained in it.

(5) The method for recovery of cash cover, instalments, interest or other payment due under this Act prescribed by subsection (2) shall be without prejudice to any other method available for the lawful recovery of such cash cover, instalment or interest.

PART III

PROCEDURE FOR RECOVERY AND COLLECTION OF UNPAID DEBTS(ss 10-18)

[PCh261s10]10. Unpaid instalments and interest to be recovered from a guarantor
Act No. 13 of 1999 s. 8

(1) Notwithstanding the provisions of this Act, the Commissioner may by notice in writing served upon any beneficiary, require that the whole of the cash cover facility extended to such beneficiary, or such part thereof as remains unpaid and the interest thereof be secured to the Commissioner's satisfaction.

(2) Where any security has been given under subsection (1), and such security consists of a form of guarantee under which in default of payment of cash cover, and interests thereof, a guarantor is obliged to pay such cash cover and such interest, the Commissioner shall, in default of such payment, by notice in writing served on the guarantor, require such guarantor to pay within ninety days of the notice, such amounts of the defaulted cash cover payments and interests as may be specified in the notice:

Provided that payments of defaulted cash cover and interests shall not exceed the amount guaranteed by the guarantor.

(3) The amount of instalments and interest specified in the notice issued under subsection (2) shall be recovered from a guarantor as if such amounts were debts payable by the guarantor.

(4) Where a guarantor fails to pay the defaulted cash cover, instalments and interests within ninety days as required under this section, the Commissioner shall by notice in writing order the distress of the guarantors properties as may be detailed under paragraph (b) of section 6 and the provisions of sections 13 and 14 regarding the execution of distress under this Act shall apply.

[PCh261s11]11. Appointment and duties of agents Act No. 13 of 1999 s. 8

(1) The Commissioner may, in his discretion and by written notice–

(a) appoint any person to be the agent of another person for the purposes of the collection and recovery of cash cover, instalments and interests due from such other person, and

(b) specify the amount of such cash cover, instalments and interest to be collected and recovered.

(2) An agent appointed under subsection (1) shall pay the cash cover, instalments and interest specified in his appointment notice out of any moneys which may at any time during twelve months following the date of notice be held by him for or become due from him to his principal.

(3) Where an agent claims to be, or to have become unable to comply with subsection (2) by reasons of lack of moneys held by him for, or due from him, he shall as

soon as may be practicable, notify the Commissioner accordingly in writing setting out the reasons for his inability so to comply.

(4) The Commissioner may, after receiving the notification from the agent under subsection (3)–

(a) accept the notification and cancel or amend the appointment notice accordingly; or

(b) Where he is not satisfied by the reasons set out in the notification, reject the notification.

(5) Where the agent has not given a notification to the Commissioner under subsection (3)–

(a) sufficient moneys for the payments of the cash cover, instalments and interest specified in his appointment notice shall be presumed to be held by him for or due from him to his principal; and

(b) in any proceedings for collection or recovery of such cash cover, instalments and interests, the agent shall be stopped from asserting the lack of such moneys

[PCh261s12]12. Limitation of time for payment of debts Act No. 13 of 1999 s. 8

(1) The Commissioner may at any time, by notice in writing, require any agent to furnish him within a reasonable time being not less than thirty days from the date of service of such notice, a return showing any moneys which is or may be held by such agent or which has become due to him by any other person from whom cash cover, instalments and interest is due.

(2) The Commissioner shall, after receiving a return from the agent under subsection(1), by notice in writing to the agent specify the amount of cash cover, instalments and interest to be paid by the agent within thirty days from the date of service of such notice.

(3) Where an agent fails to pay any amount specified in the notice within thirty days from the date of service of such notice or from the date on which any moneys came into his hands or become due by him to, his principal, and—

(a) he has not given a notification under subsection (3) of section 11; or

(b) he has given such notification which has been rejected by the Commissioner, under subsection (4) of section 11,

the provisions of this Act relating to the collection and recovery of cash cover, instalments and interest shall apply to the collection and recovery of such amount as if they were due and payable by the agent, the due date of payment of which was the date upon which such amounts should have been paid to the Commissioner under this section.

(4) Notwithstanding any provisions to the contrary in any written law, contract or agreement, an agent who has made any payment under this section shall, for all purposes be deemed to have acted with the authority of his principal and of all other persons concerned and shall be indemnified in respect of such payment against all proceedings, civil or criminal and all process, whether judicial or extrajudicial.

(5) For the purposes of section 11 and this section cases where moneys are held by an agent for or due by him to his principal shall include cases where the agent—

(a) owes or is about to pay or becomes liable to pay money to the principal; or

- (b) holds money for or on account of the principal; or
- (c) holds money on account of some other person for payment to the principal;

or

- (d) has authority from some other person to pay money to the principal.

[PCh261s13]13. Unpaid instalments and interest to be recovered by distress Act No. 13 of 1999 s. 8

(1) The Commissioner may, in any case in which cash cover, instalments and interest are recoverable in the manner provided for by section 9, instead of suing for such debts, recover the debts by distress and may, for that purpose by order under his hand authorise any public officer or an officer of a court to execute such distress upon the goods and chattels of the person from whom such debts are recoverable.

(2) Any officer authorised by the Commissioner under subsection (1) may, at the cost of the person from whom such debts are recoverable employ such servants or agents as he may think necessary to assist him in the execution of the distress.

(3) Where the full amount of the amounts due and payable are not recovered by distress executed under this section, the Commissioner may forthwith recover the difference in the manner provided for by section 9.

(4) Where the full amount due and payable have been paid after the issuance of an order under subsection (1) and before the execution of distress, any costs and expenses incurred by the Commissioner prior to the payment of such amount shall be deemed to be debts due and payable to the Government by the person in respect of whom the order was signed and may be recovered by the Commissioner as debts recoverable under this Act.

[PCh261s14]14. Procedure for execution of distress Act No. 13 of 1999 s. 8

(1) Any officer authorised under subsection (1) of section 13 together with such servants or agents as such officer may consider necessary to employ, may, for the purposes of executing any distress under this Act, break open in the day time any premises and shall require a police officer to be present while such distress is being executed.

(2) Goods and chattels recovered by distress executed under subsection (1) shall be kept for ten days either at the premises at which such distress was executed or at such other place as the authorised officer may consider appropriate at the cost of the person from whom cash cover, instalment and interest are recoverable.

(3) Where the person from whom the debts are recoverable by distress, does not pay such debts together with the costs of the distress within the period of ten days referred to in subsection (2), the goods and chattels distrained upon shall be sold by public auction for payment of the debts due and payable and all other costs relating to the executed distress.

(4) The proceeds of the sale under subsection (3) shall be applied first toward the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the debts due and payable and any remainder of such proceeds shall be restored to the owner of the property distrained.

[PCh261s15]15. Security of property for unpaid cash cover, instalments and interest Act No. 13 of 1999 s. 8

(1) Where any person being the owner of land or any premises situated in the United Republic, fails to make payment of cash cover, instalment or interest due by him on

the due dates specified under section 8 of this Act, the Commissioner may, by notice in writing, notify such person of his intention to apply to the Registrar of Titles for such land or premises to be the subject of security for the defaulted cash cover, instalments and interest specified in the notice.

(2) Where any person on whom a notice has been served under subsection (1), fails to make payment of the whole of the amounts specified in such notice within thirty days from the date of service of the notice, the Commissioner may, by notice published in the Gazette, direct the Registrar of Titles that the land or building to the extent of the interest of such person therein, be the subject of security for the defaulted cash cover, instalments and interest as may be specified in such notice.

(3) The Registrar of Titles shall, after the publication of the notice under subsection (2), register the direction of the Commissioner without fee as if it were an instrument of mortgage over or charge on such land or premises as the case may be and thereupon such registration shall, subject to any prior mortgage or charge, operate while it subsists in all respects as a legal mortgage over or charge on such land or premises to secure the amount of the defaulted cash cover instalments and interests.

(4) The Commissioner shall—

(a) after the registration of direction by the Registrar of Titles under subsection (3), by notice in writing require the beneficiary or the owner of the land to make payment of cash cover instalment and interest within ninety days from the date of service of notice; and

(b) upon payment of the whole of the cash cover, instalment and interest secured under subsection (2) cancel the direction made under this section, by notice in writing to the Registrar of Titles and the Registrar shall, without fee, record such cancellation and thereupon such direction shall cease to subsist.

(5) Where the beneficiary on whom the notice has been served under paragraph (a) of subsection (4) fails to make payments within ninety days, the Commissioner shall by notice published in the Gazette order the sale of the property secured under subsection (3) to recover the defaulted cash cover. instalments and interest.

(6) The proceeds of sale under subsection (5) shall be applied first towards the debts due and payable and the remainder of such proceeds if any shall be restored to the owner of the property.

(7) Where the proceeds: of sale are not sufficient enough to recover the debts the Commissioner shall continue to recover the debts under section 9 of this Act—

[PCh261s16]16. Appointment and duties of agents appointed by the Minister Act No. 18 of 2002 s. 9

(1) The Minister may, in his discretion and by a written notice appoint an agent or agents, preferably a bank or a financial institution, to administer the commodity import support facility in accordance with the Act.

(2) The agent appointed under subsection (1) shall enter into an agreement with the Ministry for the proper administration of the commodity import support facility.

(3) Notwithstanding the generality of the provisions of subsection (2) the duties of the agent appointed under this section shall include—

(a) to invite and scrutinise application of the Commodity Import Support Funds to the public;

(b) to check on records of outstanding balances in arrears, if any, and tax compliance of an applicant in consultation with the Tanzania Revenue Authority;

(c) to issue letters of award to successful applicants and give terms and conditions for procurement and repayment of the loans;

(d) to open a Commodity Import Support collection account whereby all proceeds from the loans shall be credited into that account;

(e) to collect and remit the proceeds of the Loans to Treasury on a monthly basis;

(f) to ensure that within one year all the outstanding loans shall have been remitted to Treasury;

(g) to facilitate all the required commercial transactions related to the Commodity Import Support programme so as to effect payment to suppliers;

(h) to report to Treasury on a half yearly basis on the utilisation of the Funds of the Commodity Import Support programme;

(i) to cause the accounts of the Commodity Import Support programme to be audited by an independent Auditor who shall be appointed by the Government;

(j) to attend to other duties and functions as may be required by the Minister from time to time.

[s. 15A]

[PCh261s17]17. Scrutiny of application Act No. 18 of 2002 s. 9

(1) In scrutinizing any application under subsection (3) of section 16, the agent shall ensure that the application falls within the priority sectors which include:

(a) agriculture, including purchase of fertilisers, agriculture machinery, tractors, farm implements, packaging materials;

(b) small scale industries, raw materials and light equipment;

(c) construction industry;

(d) energy sector;

(e) fishery, mainly gear and equipment;

(f) mining, mainly small scale mining equipment excluding explosives;

(g) transport, mainly trucks and passenger buses;

(h) education, health and other sectors with an impact on poverty.

(2) The agent shall, where he is satisfied that the application falls within the priority sectors under subsection (1), grant such import support loan applied for to the applicant under such terms and conditions as may be determined by the agent.

(3) Subject to subsections (1) and (2) the agent shall in granting the import support loan ensure that the import support loans are equitably distributed across the country.

[s. 15B]

[PCh261s18]18. Approval by the Minister Act No. 18 of 2002 s. 9

(1) Notwithstanding section 17, the agent shall before granting import support loans to applicants, consult the Minister.

(2) The Minister may, after being consulted by the agent under subsection (1), give other directives as may be appropriate to the agent who shall comply with such directives.

[s. 15C]

PART IV

MISCELLANEOUS PROVISIONS (ss 19-25)

[PCh261s19]19. Offences and penalty Act No. 13 of 1999 s. 8

(1) Any person who gives fraudulent information for the repayment of cash cover, instalments or interests or who, with intent to evade liability–

(a) makes a false application under this Act, by omitting therefrom or concealing therein any information which should have been stated therein;

(b) breaches agreement signed under this Act;

(c) gives any false information in relation to any matter or thing affecting his liability to cash cover, instalments or interest;

(d) falsifies or authorises falsification of documents relating to liability;

(e) fails to pay cash cover, instalments or interest under this Act;

(f) remits payment by false cheque; or

(g) fails to preserve any record or document as required by this Act,

commits an offence and shall, on conviction be liable 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.

(2) Any person, who in any way, obstructs or attempts to obstructs an officer in the performance of his duties or in the exercise of this powers under this Act, commits, an offence and upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years to both such fine and imprisonment.

(3) Any person, who commits an offence under this Act, and for which no other penalty is specifically provided, that person shall be liable on 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. 16]

[PCh261s20]20. Offences by principal or employer Act No. 13 of 1999 s. 8

Where any offence under this Act is committed by a person as an agent or employee then, that agent or employee as well as the principal or employer, commits an offence and on conviction 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. 17]

[PCh261s21]21. Offences by agents Act No. 13 of 1999 s. 8

Any agent who in giving notification to the Commissioner under subsection (3) of section 11 makes any false or misleading statement or conceals any material fact, commits an offence and shall upon conviction be liable 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. 18]

[PCh261s22]22. Burden of proof and payment of debts after conviction Act No. 13 of 1999 s. 8

(1) In any proceeding for an offence under this Act the burden to prove that—

(a) an application for allocation of commodity import support facility under this Act of particulars stated therein are true;

(b) any cash cover, instalment or interest has been paid;

(c) the accused is a person not liable to pay any cash cover, instalments or interest;

(d) any amount of cash cover, instalment or interest due under Part II was remitted to the Treasury in the time within which it is required to be so remitted, shall be on the person charged.

(2) For the avoidance of doubts, the amount of any cash cover, instalments or interest due and payable under this Act shall not be abated by reason only of the conviction or punishment of the person liable for the payment thereof under this Act.

[s. 19]

[PCh261s23]23. Publication of names of offenders Act No. 13 of 1999 s. 8

(1) The Commissioner may publish a notice in the Government Gazette or in any other newspaper circulating, in the United Republic a list of persons who—

- (a) fail to pay cash cover, instalments or interest under this Act;
- (b) have been convicted of any offence under this Act; or
- (c) have conducted themselves in a manner which amount to an offence under this Act.

(2) Every such list of names of persons published under subsection (1) shall specify:

- (a) the name and address of the offenders;
- (b) such particulars of offence as the Commissioner may think fit;
- (c) the amount of moneys or unpaid debts involved; and
- (d) the particulars of the fine or sentence imposed.

(3) Publication of list of names of offenders under subsection (1) shall be done after the completion of any appeal or review instituted in relation to the committed offence.

[s. 20]

[PCh261s24]24. Preservation of documents Act No. 13 of 1999 s. 8

Every person allocated with a commodity import support facility shall preserve every document relating to such facility until such times the liability thereto is fully liquidated, and he obtains a written certificate of clearance of such facility from the Commissioner.

[s. 21]

[PCh261s25]25. Regulations Act No. 13 of 1999 s. 8

(1) The Minister may, upon recommendations of the Commissioner, make regulations—

(a) prescribing the application forms and the manner in which the application forms shall be obtained;

(b) prescribing a form of standard contract or allocation agreements to be entered by beneficiaries under this Act;

(c) prescribing anything which under this Act is to be prescribed by the Regulations; and

(d) for the better carrying out of the objects and purposes of this Act;

(2) The Regulations made under this section shall be published in the Gazette.

[s. 22]