

## CHAPTER 384

### THE TRADITIONAL LIQUOR (CONTROL OF DISTILLATION) ACT

#### [PRINCIPAL LEGISLATION]

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## CHAPTER 384

### THE TRADITIONAL LIQUOR (CONTROL OF DISTILLATION) ACT

An Act to make provision for the licensing of the manufacture of traditional liquor and to regulate the sale and distillation of traditional liquor.

[1st January, 1969]

[G.N. No. 451 of 1968]

Acts Nos.

62 of 1966

11 of 1970

22 of 1981

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh384s1]1. Short title

This Act may be cited as the Traditional Liquor (Control of Distillation) Act.

[PCh384s2]2. Interpretation

In this Act, unless the context requires otherwise—

"buying post" means a buying post established by the Minister under section 15;

"distil" includes redistill;

"distiller" means a person holding a valid licence to manufacture spirits under this Act by distillation of traditional liquor; and "distillery" means his factory;

"licence" means any person who has been granted a licence under this Act to manufacture traditional liquor;

"licensing authority" means a local authority having the power to grant licences to manufacture traditional liquor;

"local authority" means where the area is a city the city council; where the area is a municipality the municipal council; where the area is a township the town council and where the area is that of a district council the district council;

"Minister" in Parts I, II, III and V means the Minister for the time being responsible for industries and in Part IV means the Minister for the time being responsible for finance;

"spirits" means any intoxicating Liquor in the nature of an abscessor abstract from any substance, obtained by distillation, and includes any liquor mixed with spirits;

"supervisor" means a person appointed as a supervisor under section 16;

"tax" means the tax on spirits payable in accordance with the provisions of Part IV;

"traditional liquor" means any spirits, notwithstanding the names by which they are known, which are distilled otherwise than in accordance with the term of a licence issued under section 19 of this Act, and includes spirits commonly known as moshi, machozi ya simba, gongo and umeme;

"wash" means the fermented liquor from which traditional liquor is manufactured by distillation.

## PART II

### MANUFACTURE AND SALE OF TRADITIONAL LIQUOR (ss 3-18)

#### [PCh384s3]3. Traditional liquor to be manufactured under licence

(1) No person shall manufacture Traditional liquor except under a licence granted to him by a licensing authority.

(2) Any person who contravenes the provisions of this section commits an offence and is liable upon conviction to imprisonment for a term not exceeding five years.

#### [PCh384s4]4. Minister's power to control manufacture of traditional liquor

- (1) The Minister may, by order published in the Gazette prescribe—
- (a) the area within which licences to manufacture traditional liquor may be granted;
  - (b) the number of licences which may be granted in any such area;
  - (c) the maximum quantity of traditional liquor which may be manufactured by any licensee in any such area; and
  - (d) the agricultural products which may be used in the preparation of the wash to be used in the manufacture of traditional liquor in any such area.

(2) Where the maximum quantity of traditional liquor which may be manufactured by a licensee in any area has been prescribed, the Minister may by order published in the Gazette prescribe a different maximum quantity for any licensee or class of licensees in any such area.

[PCh384s5]5. Licensing Authority

Where under the provisions of section 4 an area is prescribed to be an area within which licences for the manufacture of traditional liquor are granted, the licensing authority for such area shall be the local authority having jurisdiction in respect thereof.

[PCh384s6]6. Disqualification for obtaining licence

A licence to manufacture traditional liquor will not be granted to any person who—

- (a) has not attained the apparent age of twenty-one years; or
- (b) has been convicted of any offence under this Act; or
- (c) is an undischarged bankrupt having been adjudicated bankrupt by any court of competent jurisdiction in the United Republic or, in the case of a corporation, the corporation is in liquidation or has been wound up or in respect of which a winding up order made by any court of competent jurisdiction in the United Republic is subsisting.

[PCh384s7]7. Refusal to grant licence to be final

A licensing authority may refuse to grant a licence to manufacture traditional liquor to any person and such refusal shall be final and shall not be questioned in any court:

Provided that the person aggrieved by the refusal of a licensing authority to grant a licence may appeal to the Minister and the Minister may, where he is satisfied that such refusal was without sufficient cause, reverse the decision of the licensing authority and direct the licensing authority to grant a licence to such person.

[PCh384s8]8. Duration of licence

Every licence for the manufacture of traditional liquor shall expire on the thirty-first day of December next following the date of the grant of such licence.

[PCh384s9]9. Contents of a licence

Every licence to manufacture traditional liquor shall be in the prescribed form and shall specify—

- (a) the name and address of the person to whom it is granted;
- (b) the premises where traditional liquor may be manufactured;
- (c) the maximum quantity of traditional liquor which the holder of the licence shall be entitled to manufacture every month;
- (d) the agricultural products which the holder of the licence may use in the preparation of the wash;
- (e) the buying post at which the holder of the licence shall offer his traditional liquor for sale;
- (f) such other matters as may be prescribed.

[PCh384s10]10. Conditions to be observed by licensees

It shall be a condition of every licence that the holder thereof shall–

- (a) use such equipment for the manufacture of traditional liquor as may be prescribed;
- (b) not purchase or acquire in any way any quantity of traditional liquor from any other person;
- (c) not sell or otherwise dispose of any quantity of traditional liquor except to a distiller at the buying post specified in his licence;
- (d) not manufacture traditional liquor in any one month in excess of the quantity specified in his licence;
- (e) not, for the purpose of the manufacture of traditional liquor make use of any wash other than wash made from agricultural products specified in his licence;
- (f) not manufacture traditional liquor at any premises other than the premises specified in his licence;
- (g) keep such records of his manufacture and disposal of traditional liquor as may be prescribed.

[PCh384s11]11. Effect of breach of condition

Any licensee who fails to comply with any of the conditions of his licence specified in section 10 commits an offence.

[PCh384s12]12.       Restriction on access to premises of manufacture or storage

(1) A licensee shall not permit any person other than—

(a)     where the licensee is a natural person, the members of his family residing with him in the premises in respect of which the licence has been granted;

(b)     where the licensee is a corporation, any member of the corporation and the members of the family of any member of the corporation residing with such member in the premises in respect of which the licence has been granted;

(c)     any person authorised under this Act to enter upon any premises in which the traditional liquor may be manufactured grant,

access to any portion of the premises where the manufacture of traditional liquor may for the time being be taking place or where any traditional liquor may for the time being be stored.

(2) Any licensee who contravenes the provisions of subsection (1) commits an offence.

[PCh384s13]13.       Revocation of licence by licensing Authority

A licensing Authority may revoke a licence to manufacture traditional liquor granted to any licensee who is convicted of any offence under this Act or under any other written law, relating to the manufacture, sale or consumption of any liquor or spirit:

Provided that where such conviction is set aside by a superior court and a conviction for any other offence under this Act or a conviction for any other offence relating to the manufacture, sale or consumption of any liquor or spirit is not substituted therefor, the licensing Authority

may, subject to any direction to the contrary given by the Minister, restore the licence to the licensee if the period of the validity of the licence has not in the meantime expired.

[PCh384s14]14.       Revocation of licence by Minister

(1) The Minister may at any time, and without assigning any reason for doing so, revoke a licence to manufacture traditional liquor granted to any licensee if in his opinion such revocation is in the public interest.

(2) Where the Minister revokes a licence under subsection (1) such revocation shall be final and shall not be questioned in any court.

(3) Where the Minister has revoked a licence under subsection (1), the person to whom such licence was granted shall not be granted another licence to manufacture traditional liquor without the prior consent of the Minister.

[PCh384s15]15.       Buying posts

(1) The Minister may, by notice in the Gazette, declare such places as he deems fit to be the buying posts where traditional liquor manufactured by licensees may be offered for sale to distillers.

(2) No licensee shall sell, offer for sale or expose for sale any quantity of traditional liquor at any place other than at a buying post.

(3) No distiller shall purchase or offer to purchase any quantity of traditional liquor except at a buying post.

(4) Any person who contravenes the provisions of subsection (2) or subsection (3) commits an offence.

[PCh384s16]16. Supervisors

The Minister shall appoint public officers to act as supervisors at buying posts.

[PCh384s17]17. Procedure at sale of traditional liquor

The following procedure shall be followed at every buying post when any quantity of traditional liquor is offered for sale by a licensee—

- (a) the supervisor shall measure the alcoholic content of the traditional liquor;
- (b) if the alcoholic content of the traditional liquor is below the minimum prescribed rate, the supervisor shall forthwith confiscate and destroy the traditional liquor in the prescribed manner;
- (c) in any other case, the supervisor shall assess the minimum price of the traditional liquor in accordance with the prescribed minimum rates;
- (d) the distiller shall buy all the traditional liquor offered for sale and which has not been confiscated under paragraph (b) and shall pay therefor a price not less than the minimum price declared by the supervisor;
- (e) the distiller shall, at the close of the sale at the buying post, make arrangements for the immediate removal of all the traditional liquor purchased by him.

[PCh384s18]18. No compensation payable for confiscated traditional liquor

A licensee shall not be entitled to any compensation for any quantity of traditional liquor confiscated by a supervisor under section 17.

### PART III

#### DISTILLATION OF TRADITIONAL LIQUOR (ss 19-23)

##### [PCh384s19]19. Licence to distil traditional liquor

The Minister may grant any person a licence to manufacture spirits by distillation of traditional liquor.

##### [PCh384s20]20. Conditions of distiller's licence

It shall be a condition of every distiller's licence granted under section 19 that—

- (a) the distiller shall purchase traditional liquor from licensees only and in accordance with the provisions of this Act;
- (b) the distiller shall not refuse to purchase any quantity of traditional liquor offered for sale by a licensee at a buying post and not confiscated by a supervisor under section 17;
- (c) the distiller shall pay a licensee for the traditional liquor purchased from him a price not less than the minimum price prescribed for traditional liquor of that quality;
- (d) the distiller shall not manufacture spirits from any material other than traditional liquor acquired in accordance with the provisions of this Act;
- (e) the spirits produced by the distiller shall conform to the prescribed standards;

(f) the distiller shall comply with all such requirements relating to the manufacture, bottling and sale of spirits as may be prescribed;

(g) the distiller shall pay such taxes on the spirits manufactured and sold or otherwise supplied by him to any person as are provided for in Part IV.

[PCh384s21]21. Effect of breach of condition

Any distiller who fails to comply with any of the conditions of his licence specified in section 20 commits an offence.

[PCh384s22]22. Duration of licence

A distiller's licence shall remain valid until revoked in accordance with the provisions of section 23.

[PCh384s23]23. Revocation of distiller's licence

The Minister may revoke a distiller's licence if—

- (a) the distiller is convicted of an offence under this Act; or
- (b) the Minister is satisfied that it is in the public interest to revoke the licence:

Provided that a distiller's licence shall not be revoked on the ground only of the Public interest for a period of five years from the date of its grant.

## PART IV

### TAX PROVISIONS (ss 24-28)

[PCh384s24]24. Tax on spirits

Subject to the provisions of this Part a tax shall be charged, levied and paid on spirits manufactured by a distiller and sold or otherwise supplied to any person.

[PCh384s25]25. Rate of tax

The Minister may, by order published in the Gazette, specify the rate of tax to be charged, levied and paid under this Part and any such order may specify different rates in respect of different categories of spirits.

[PCh384s26]26. Tax to be debt due to the Republic

The tax payable under this Part shall be a debt due to the Republic.

[PCh384s27]27. Exemptions

The Minister may by order published in the Gazette exempt from payment of the tax under this Part—

- (a) any category of spirits;
- (b) the spirits or any category of spirits sold or supplied to any specified person or class of persons.

[PCh384s28]28. Regulations relating to tax

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

- (a) for the assessment and collection of the tax;
- (b) for the appointment of public officers responsible for the collection of the tax;
- (c) for the submission of returns of the production and sale of spirits;
- (d) providing for the storage of all spirits manufactured in a distillery and prescribing measures to ensure that no quantity of any spirit is removed from a distillery or warehouse for the purpose of sale or supply to any person without the tax having been first paid in respect thereof.

## PART V

### GENERAL PROVISIONS (ss 29-41)

#### [PCh384s29]29. Unlawful sale of traditional liquor

Any person who sells or offers or exposes for sale any traditional liquor commits an offence and is liable upon conviction to imprisonment for a term not exceeding five years:

Provided that this section shall not apply to any sale or offer or exposure for sale of traditional liquor by a licensee to a distiller.

#### [PCh384s30]30. Unlawful possession of traditional liquor

Any person, other than a licensee or a distiller, who has traditional liquor in his possession commits an offence and is liable upon conviction to imprisonment for a term not exceeding five years.

[PCh384s31]31. Unlawful consumption of traditional liquor

Any person who consumes traditional liquor commits an offence and is liable upon conviction to imprisonment for a term not exceeding five years.

[PCh384s32]32. Power to enter and inspect licensed premises

(1) It shall be lawful for any police officer not below the rank of Inspector or any officer of a licensing authority duly authorised by the licensing authority in that behalf to enter on and inspect any premises in respect of which a licence to manufacture traditional liquor has been granted, for the purpose of preventing or detecting an offence or observing the state of repair and sanitary condition of the premises or distillery and the general conduct of the business therein.

(2) Any licensee or distiller who refuses to admit any such police officer or officer of a licensing authority to such premises or distillery, as the case may be, commits an offence.

[PCh384s33]33. Search warrant for detection of traditional liquor sold or kept contrary to law

(1) Any magistrate may, if satisfied on oath that there is reasonable ground to believe that a traditional liquor is being unlawfully manufactured, sold, exposed or offered for sale, or stored or is present at any place within his jurisdiction; grant a warrant under his hand whereby it shall be lawful for any police officer, not below the rank of Inspector, at any time or times within one

month from the date of the warrant, to enter, if need by force, the place named in the warrant, and every part thereof, and examine and search the same for traditional liquor, and seize and remove and take before a magistrate any traditional liquor found therein which there is reasonable ground to suppose is in the place for the purposes of unlawful sale at that or any other place, or has been unlawfully manufactured, or is unlawfully stored or possessed, and the vessels containing traditional liquor.

(2) This section shall apply to traditional liquor in the process of manufacture and to material and implements used or intended to be used for the manufacture of traditional liquor in the like manner as it applies to traditional liquor.

[PCh384s34]34.       General penalty

(1) Any person who commits an offence under this Act, shall, unless some other penalty has been prescribed, be liable upon conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) All offences under this Act are hereby declared to be cognizable offences.

[PCh384s35]35.       Forfeiture

Where any person is convicted of any offence under this Act the court may order that the traditional liquor in respect of which the offence was committed together with the vessels which contained the traditional liquor and, in the case of conviction for unlawful manufacture of traditional liquor the materials and implements used for the manufacture of traditional liquor shall be forfeited to the Government.

[PCh384s36]36. Burden of proof

In any proceedings under this Act the burden of proving that the manufacture, sale, supply, offer or exposure for sale, or possession of traditional liquor was lawful shall be on the person alleging the same.

[PCh384s37]37. Regulations

The Minister may make regulations for the better carrying out of the provisions and purposes of this Act except Part IV thereof and without prejudice to the generality of the foregoing may make regulations—

- (a) prescribing the fees to be charged for licences granted under this Act;
- (b) prescribing forms for applications for a licence to manufacture traditional liquor and a licence to distil traditional liquor;
- (c) providing for the maintenance and condition of premises where traditional liquor is being manufactured or stored;
- (d) prescribing anything which under the provisions of this Act may be prescribed.

[PCh384s38]38. Exemption from the East African Excise Management Act E.A.C.S.O Act No. 13 of 1952

The provisions of the East African Excise Management Act of the Common Services Organisation shall not apply—

(a) to the manufacture of traditional liquor or distillation of traditional liquor under a licence granted under this Act;

(b) to any distillery at which only traditional liquor is distilled under a licence granted under this Act;

(c) to any traditional liquor or spirit manufacture under a licence granted under this Act.

[PCh384s39]39. Amendment of R.L. Cap. 77 Supp.

[Amends the Local Liquor (Moshi) Order.]

[PCh384s40]40. Revocation of R.L. Cap. 77

[Revokes the Local Liquor (Moshi) Order.]

[PCh384s41]41. Amendment of R.L. Cap. 332

[Amends of the Excise Tariff Ordinance.]