

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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NO. 8 OF 2006

I ASSENT,

JAKAYA MRISHO KIKWETE

President

5th January, 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, 2006. Short title

PART II

AMENDMENT OF CERTAIN WRITTEN LAWS

2. The various laws set forth in the First and Second Columns to this Act are hereby amended in the manner specified in the Third Column. Amend-
ment of
certain
written
laws

SCHEDULE

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Cap. 16	The Penal Code	The Act is amended by adding immediately after section 171 the following sections: "Prohibition of pyramid and other similar schemes 171A -(1) A person who conducts or manages the pyramid scheme commits an offence. (2) A "pyramid scheme" means an operation or contrivance whereby a person: (a) holds out a promise to another person or persons that upon - (i) the payment of a specific sum of money; (ii) giving a certain amount of valuable security; or (iii) obliging another person or persons to pay the specific amount of money or to give a certain amount of valuable security, that person shall become entitled to receive a sum of money or an amount of valuable security which, given all commercial considerations, is greater than the money or valuable security given or a return on the investment of the money or valuable security so given; (b) makes any payment to or for the benefit of the promoter or to any of the promoters, or for the benefit of a participant in the scheme.

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(3) A person who contravenes subsection (1), shall upon conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years.

(4) This section shall apply to any of such scheme whereby -

(a) the prospect is held out to participants in the scheme receiving payments or other benefit in respect of any of the following -

(i) the introduction by any person or other person who becomes participants in the scheme;

(ii) the continued participation by participants in the scheme;

(iii) the promotion, transfer or other change of status of participants in the scheme;

(iv) the supply of goods or services by any person to or for other persons;

(v) the acquisition of goods or services by any person;

(b) goods or services or both, are to be -

(i) provided by the person promoting the scheme or, in the case of a scheme promoted by two or more persons acting in concert, by one or more of those persons;

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		(ii) provided to or for other persons under a transaction effected by the participant, whether in the capacity as an agent of the promoter or one of the promoters or in any other capacity; (iii) used for the purpose of any supply of goods or services to or for other persons under the scheme; (iv) supplied by the promoter or any of the promoters to or for persons introduced to him or any of the other promoters (or an employee or agent of his or theirs) by participants. (5) For the purpose of subsection (2), a prospect shall be deemed to have been held out to a participant whether it is held out so as to confer on that participant a legally enforceable right or not. (6) This section shall not apply to any scheme - (a) under which the promoter or any of the promoters or participants is to carry on or is purported to carry on investment business in the United Republic in accordance with any written law; or

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Prohibition
against
inducement

(b) which otherwise falls within a description of exempted scheme.

(7) The Minister may, by order published in the Gazette, exempt any scheme of a kind specified in the order, from the operation of this section.

171B.—(1) Any person who induces or attempts to induce any person to -

- (a) make any payment to or for the benefit of the promoter or any of the promoters or, to or for the benefit of any participant in a scheme; or
- (b) become a participant and to make any payment to or for the benefit of the promoter or, to or for the benefit of any participant in a scheme,

commits an offence and shall upon conviction be liable to a fine of not exceeding five million shillings or to imprisonment for a term not exceeding five years.

(2) In determining whether an inducement or attempt to induce is made by holding out a prospect, it shall be sufficient if the prospect constitutes or would constitute a substantial part of the inducement.

(3) Where an offence has been committed by any participant, every promoter of the scheme shall strictly be held liable for such commission of the offence.

(4) Where a person is charged with an offence in

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respect of an advertisement, it shall be a defence for that person to prove that, he is a person whose business is to publish or arrange for the publication in the advertisements, and that he received the advertisement for publication in the ordinary cause of business and did not know, and had no reason to suspect that the publication would amount to an offence.

(5) Where a promoter is charged by reason of commission of an offence by another person pursuant to subsection (4), it shall be a defence for that promoter to prove that the act constituting an offence was committed without his consent.

Interpreta-
tion

171C.—(1) For the purposes of sections 171A and 171B, unless the context requires otherwise -

“goods” includes property of any description and a right to or interest in any property;

“participants” in relation to a scheme, means a person other than a promoter or any of the promoters who participated in the scheme;

“scheme” means any arrangement made in connection with the carrying on of a business whether such arrangement is made or recorded wholly or partly in writing or not.

(2) Any reference to the provision or supply of goods shall be construed as including a reference to

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Cap. 391

The Commission for Human Rights and Good Governance Act

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the grant or transfer of a right or interest.”

The Act is amended:

- (a) by inserting immediately after section 28 the following section:

“Matters relating to Tanzania Zanzibar. **28A.-(1)** Where the investigation under section 28 relates to appropriate authority in Zanzibar, the Commission shall submit the report of its decision, recommendation and reasons to the Minister responsible for Human Rights and Good Governance of the Revolutionary Government of Zanzibar.

(2) The Minister responsible for Human Rights and Good Governance of the Revolutionary Government of Zanzibar shall within twenty one days after receiving the report as provided for under subsection (1), refer the report to the appropriate authority concerned in the Revolutionary Government of Zanzibar.

(3) The appropriate authority concerned in Zanzibar shall within

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such time not exceeding three months from the date of the report or as the Minister responsible for Human Rights and Good Governance of the Revolutionary Government of Zanzibar may prescribe, submit the report to Minister responsible for Human Rights of the Revolutionary Government of Zanzibar with details of any action taken by such authority to redress the impugned fundamental rights or acts of maladministration.

(4) The Minister responsible for Human Rights and Good Governance of the Revolutionary Government of Zanzibar shall, within twenty one days after receiving the report from appropriate authority forward the report to the Commission.

(5) The Commission shall, after receiving the report take measures as stipulated under subsections (3) and (4) of section 28.”;

- (b) in paragraph (b) of section 35, by inserting the phrase “House of Representatives of Zanzibar” between the phrase “the National Assembly” and the word “or”;

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Cap 258	The Political Parties Act
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Cap. 343	The Elections Act
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- (c) in section 38, by inserting immediately after the word "Minister" the following phrase -

"in consultation with the Minister responsible for Human Rights and Good Governance of the Revolutionary Government of Zanzibar."

The Act is amended in subsection (2) of section 22 by:

- (a) inserting immediately after paragraph (g) the following paragraph:

"(h) after consultation with the political parties prescribing the ethical conduct of political parties;"

- (b) designating the current paragraph "(h)" as paragraph "(i)".

The Act is amended in section 37 by -

- (a) deleting paragraph (b) of the proviso to subsection (1) and substituting for it the following -

"(b) where a by-election is to be held, the nomination day shall not be less than twenty days and not more than fifty days after the occurrence of the event by reason of which the election is to be held;"

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Act No. 7 of 2006	The Labour Institutions, Act 2004	(b) deleting subsection (2) and substituting for it the following: “(2) Subject to paragraph (b) of subsection (1), the Chairman of the Commission shall, in writing, notify the public and all political parties about the date set for the conduct of the by- election.” The Act is amended as follows – (a) in section 20 - (i) by deleting subsection (2) and substituting for it the following - “(2) Witness fees to a person who appears before a mediator or an arbitrator in response to a summons issued in terms of this section shall be borne out by a party who calls that witness.” (ii) by inserting immediately after subsection (2) the following subsections - “(3) Where a witness is summoned by the Commission on its own motion, the cost for that witness shall be borne out by the Director of the Commission. (4) Notwithstanding the provisions of subsection (2), in a fitting case, the Commission may order the cost for the witness be paid by the Director of the Commission.”.

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(b) in section 35 by-

(a) deleting subsection (3) and substituting for it the following subsection;

“3” The Wage Board shall consist of the following members appointed by the Minister-

(a) the Chairman;

(b) two members recommended by the Council to represent interests of employees;

(c) two members recommended by the Council to represent interests of the employers;

(d) two members recommended by the Council to represent interests of the Government;

(e) a member nominated by the Minister by virtue of his profession.”;

(b) by re-designating paragraphs (b), (c), (d), (e), (f) and (g) as paragraphs (c), (d), (e) (f), (g), and (h) respectively.

(c) in section 50 –

(i) by adding in subsection (2) immediately after the word “necessary” the following words “one of whom shall be designated by Chief Justice as “ Judge In-Charge” who shall head the Labour Court and shall designate any Judge to be in charge of any court zonal centre”;

- (ii) in paragraph (c) of subsection (3), by deleting the word "resolution" appearing in between the words "expeditions" and "of" and substituting for them the word "determination";
- (iii) in subsection (6), by inserting the words "payment of costs or interest of any kind" immediately after the words "filing fees";
- (d) in section 51 by adding immediately after the word "laws" the following "and over any employment matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court;"
- (e) in section 52, by deleting the whole of subsection (1) and substituting for it the following:

52.-(1) In the performance of its functions, the Labour Court shall have all the powers of the High Court save that in making a judgment, ruling, decision, order or decree in so far as it is relevant, the Court may take into account or consider the need:

 - (a) to maintain a high level of domestic capital accumulation with a view to increasing the rate of economic growth and to provide greater employment opportunities;

"Powers
of the
Labour
Court

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- (b) to maintain and expand the level of employment;
- (c) to develop payment – by- result schemes, or other wage incentive structures, which will induce an employee to make greater effort and relate increases in labour productivity;
- (d) to prevent gains in the wages of the employees from being affected adversely by unnecessary and unjustified price increases;
- (e) to preserve and promote the competitive position of local products in the domestic market as well as in global market;
- (f) to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility;
- (g) for the United Republic, to maintain a favourable balance of trade and balance of payments;
- (h) to ensure the continued ability of Government to finance development programmes and recurrent expenditure in the public sector;
- (i) to maintain a fair relation between the incomes of different sectors of the community; or
- (j) for any scientific or social matter of great importance which the Court may deem necessary and just to take into account or consider.”;

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(f) in section 53:

- (i) by deleting the opening words of subsection (1) and substituting for them the following:

“The panel of assessors referred to in section 50(2)(b) shall be constituted as follows:”;

- (ii) by deleting subsection (2) and substituting for it the following:

“(2) The Judge Resident may remove a person from a panel of assessors:

- (a) if that person has resigned in writing and delivered the resignation to the Registrar of the Labour Court;
- (b) for misconduct inconsistent with the ethics of an assessor;
- (c) for inability to perform the functions of an assessor due to illness or any other reason;
- (d) if that person fails to attend a hearing without permission of the Judge;
- (e) if that person is declared bankrupt;
- (f) if that person is convicted of a criminal offence and sentenced to imprisonment.”

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- (g) in section 54, by deleting it and substituting for it with the following:

“Registrar of the Labour Court 54.-(1) There shall be a Registrar of the Labour Court appointed by the Chief Justice who shall be the Chief Executive Officer of the Labour Court and who shall, subject to this Act, be answerable to the Judge In-Charge.

(2) There shall be Deputy Registrars of such number as shall be determined and appointed by the Chief Justice.”;

- (h) in section 63:

- (i) by deleting subsection (1) and substituting for it the following:

“(1) It shall be an offence to contravene sections 36,49,59 or any other section of or rules made under this Act.”;

- (ii) by deleting the full stop at the end of paragraph (e) of subsection (2) and substituting it with “semicolon”;

- (iii) by adding immediately after paragraph (e) the following paragraph.

“(f) disobeys or willfully acts under any

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Act No. 6 of
2004

The Employment and Labour Relations Act

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lawful order or direction issued or made by
the Labour Court or under this Act.”

This Act is amended as follows:

- (a) in subsection (7) of section 71, by
inserting immediately after the word
“Commissioner” the following words:

“failure of which shall constitute an offence”;

- (b) in subsection (6) of section 86 by -

- (i) deleting the full stop after the word
“advocate” appearing in paragraph (b)
and substituting for it “semicolon”;

- (ii) adding paragraph (c) as follows -

“(c) a personal representative of the
party’s own choice.”

- (c) in section 88:

- (i) by deleting subparagraph (ii) of
subsection (1)(b) and substituting for it
the following:

“(ii) any other contravention of this Act
or any other labour law or breach of

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contract or any employment or labour matter falling under common law, tortious liability and vicarious liability in which the amount claimed is below the pecuniary jurisdictions of the High Court”;

(ii) subsection (7)(b), by deleting full stop appearing after the words “advocate” and substituting for it “semi-colon”;

(iii) by adding immediately after paragraph (b) of subsection (7) the new paragraph (c) as follows:

“(c) a personal representative of the party’s own choice.”

(d) in section 94 by inserting in subsection (1) the fourth line immediately after the word “Act” the following words:

“and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court”;

(e) in subsection (3) of section 95 by:

(i) deleting it and substituting for it the following:

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“(3) A person bound by a collective agreement prescribed in this section may not refer a dispute to the Commission for mediation and arbitration under the provisions of this Part:

Provided that, any dispute which is not resolved shall be referred by any party to the dispute or the mediator or arbitrator to the Labour Court for adjudication, decision and execution.”

- (ii) by adding immediately after subsection (3) the following provision:

“(4) Subject to the Provisions of subsection (3), any resolution made or award passed by the mediator or arbitrator respectively, shall be binding on the parties and shall be executed as a decree of the Labour Court.”

Passed in the National Assembly on the 1st November, 2006

DAMIAN S. L. FOKA,
Clerk of the National Assembly