

THE SHIPPING AGENCY ACT, 2002

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

<i>Section</i>	<i>Title</i>
1.	Short title and commencement.
2.	Interpretation.

PART II

SHIPPING AGENCY SERVICES

3.	Services of a shipping agent.
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PART III

ADMINISTRATION

4.	Functions of the Divisional Director.
5.	Functions and duties of Authority.
6.	Exclusive rights.

PART IV

CAPITAL AND OTHER REQUIREMENTS FOR SHIPPING AGENTS

7.	Qualifications for registration and licensing.
8.	Capital requirements.
9.	Margin of solvency.
10.	Restriction on transfer of shares.

PART V

LICENSING PROCEDURES

11.	Application of licence.
12.	Licence not transferable.
13.	Suspension or cancellation.

- 14. Effect of suspension or cancellation of an order.
- 15. Communication to be deemed complete.
- 16. No compensation for loss.

PART VI

OFFENCES AND PENALTIES

- 17. Liability of body corporate.
- 18. Liability of employee or servant of shipping agent.
- 19. Offences and penalties.

PART VII

GENERAL PROVISIONS

- 20. Power to issue directions.
- 21. Power of entry and inspection.
- 22. Maintenance of records.
- 23. Regulations.

THE UNITED REPUBLIC OF TANZANIA



I ASSENT,

No. 13 OF 2002

27th May, 2002

An Act to provide for the regulation and control of the business of shipping agency and for matters connected therewith

[.....]

ENACTED by the Parliament of the United Republic..

PRELIMINARY PROVISIONS

1. This Act may be cited as the Shipping Agency Act, 2002 and shall come into operation on such date as the Minister may, by notice in the *Gazette* appoint.

Short title and commencement

2. In this Act unless the context otherwise requires: -
"Authority" means the Surface and Marine Transport Regulatory Authority;
"Divisional Director" means the Divisional Director of the Authority responsible for shipping agency matters;
"Director General" means the Director General of the Authority;
"licence" means a licence to carry on business of shipping agency issued under this Act;
"Minister" means the Minister responsible for shipping matters;
"Ministry" means the Ministry responsible for shipping agency matters;

Interpretation

- Act No.
12 of
1977
- "principal" means a person for whom another person acts on his behalf as an agent in the business of shipping agency;
- "prescribed" means prescribed by regulations made under this Act;
- "port services or facilities" shall have the meaning assigned to them in the Tanzania Harbours Authority Act, 1977;
- "shipping agent" means any person or company engaged in providing shipping agency services on behalf of the principal.

PART II

SHIPPING AGENCY SERVICES

Services
of a
shipping
agent,

3. The shipping agency services shall include but not limited to the following-
- (a) arrangements for the arrival or departure of ship;
 - (b) arrangements for the provision of port services through port operators, Customs and other Government or semi-governmental institutions, firms or private individuals;
 - (c) arrangements for cargo documentation and forwarding of cargo;
 - (d) arrangements for procuring and processing of documents and performing activities required for dispatch of cargo;
 - (e) arrangements for the provision of services pertaining to crew matters; and
 - (f) arrangements for the provision of ship stores, supplies, ship repairing and any other related services.

PART III

ADMINISTRATION

Functions
of the
Divisional
Director

4. Functions of the Divisional Director in relation to shipping agency matters, shall include-
- (a) to provide assistance and advice to the Director General in the regulation and control of the business of shipping agency;
 - (b) to advise the Director General in the performance of his functions and duties under this Act;

- (c) to advise the Director General on matters related to licensing and for any other matter submitted to the Division by the Director General or the Minister; and
- (d) to advise the Director General on any measures to be taken against any contravention made under this Act or regulations made under this Act.

5-(1) Notwithstanding the functions set out under section 6 of the Surface and Marine Transport Regulatory Authority Act, 2001, the additional functions and duties of the Authority shall be-

Functions
and
duties of
Authority
Act No. 9
of 2001

- (a) to licence and register shipping agents;
- (b) to superintend the conduct of shipping agents;
- (c) to formulate and enforce the standards required of the conduct of the business of shipping agency;

A to afford guidance to shipping agents on-

- (i) the standardisation of shipping agency contracts;
- (ii) the amendment of the terms and conditions in shipping agency contracts; which are obscure or are unfair to the shipping agents; and
- (iii) the simplification or clarification of terms and conditions in shipping agency contracts.

(2) Before coming into operation of the Surface and Marine Transport Regulatory Authority Act, 2001 or the Authority, the Minister shall assume all functions and duties of the Authority relating to shipping agency business under the Surface and Marine Transport Regulatory Authority Act, 2001.

6. -(1) Every person who immediately before the commencement of this Act, was a holder of a licence authorising him to carry on business of shipping agency is, upon payment of prescribed licence fees, authorised to continue carrying on such business for a period of six months from the date of commencement of this Act.

Continu-
ation of
business
after
operation
of the Act

(2) At any time within six months from the date of commencement of this Act, any person carrying on business of shipping agency pursuant to

subsection (1), may apply for, and upon satisfying the requirements of sections 7 and I I be entitled to the grant of a licence under this Act.

(3) Any person carrying on business of shipping agency pursuant to subsection (1), who elects not to apply for a licence or who having applied for a licence has not satisfied the requirements of sections 7 and I 1, shall cease to carry on business of shipping agency on expiration of the period referred to in subsection.

PART IV

CAPITAL AND OTHER REQUIREMENTS FOR SHIPPING AGENTS

Qualifica-
tions for
registration
and
licensing
Cap. 212

7. No person shall, after coming into operation of this Act, be registered and licensed as a shipping agent unless that person-

- (a) is a citizen of Tanzania;
- (b) is a body corporate incorporated under the Companies Ordinance in which more than fifty per cent of the share capital is held directly or indirectly by a citizen of Tanzania.

Capital
require-
ments

8-41) The Minister shall, upon consultation with the Authority by order published in the *Gazette*, prescribe the minimum paid up share capital to be maintained by a shipping agent.

(2) The Minister may, from time to time, by order published in the *Gazette*, vary the minimum paid up share capital prescribed under subsection (1).

Margin of
solvency

9.-(1) Any person or company carrying on business as a shipping agent shall, at all time while carrying on such business, maintain of solvency of not less than the amount which the Minister shall by regulations published in the *Gazette* prescribe.

(2) The regulations made under subsection (1) shall prescribe the method of calculating the assets and liabilities of a shipping agent for the purposes of this section.

(3) Any shipping agent acting in contravention of this section commits an offence.

10-(1) No shipping agent shall at any time declare, credit or pay any dividend or make any other transfer from profit if the payment or transfer results in the shipping agent not meeting the margin of solvency requirement provided in section 9.

Restriction
on transfer
of shares

(2) If any shipping agent contravenes the provisions of this section, the shipping agent commits an offence.

PART V

LICENSING PROCEDURES

11.-(1) Any person intending to carry on the business of shipping agency shall make an application to the Authority on the prescribed form and pay the prescribed fee.

Applica-
tion of
licence

(2) Where the Authority approves an application made under subsection (1), the Authority shall issue a licence to the applicant.

(3) The Authority shall not issue a licence to any applicant if-

- (a) the applicant is a ship owner, an operator or a charterer;
- (b) the applicant does not possess the prescribed qualifications for the proper carrying on of the business of shipping agency;
- (c) the applicant has a known criminal record inside or outside the country or
- (d) the provisions of this Act or regulations made under this Act have not been complied with.

12. No licence issued under this Act shall be transferable to any other person.

Licence not
transfera-
ble

13.(1) Subject to subsections (2) and (3) if the Authority is of the opinion that any person to whom a licence has been issued is unfit to carry on the business of shipping agency, the Authority may by notice in writing suspend the licence for any period specified in the notice, or cancel the licence.

Suspension
or cancelia-
tion

(2) No notice made under subsection (1) shall be made against a shipping agent without a written notice requiring the shipping agent to show cause within a period specified in the notice on why such notice should not be made.

(3) The notice issued pursuant to subsection (2) shall be for a period of thirty days during which, if the shipping agent to whom a notice was issued has failed to demonstrate that he is a fit and proper person to carry on the business as authorized, the Authority shall proceed to suspend the licence.

(4) Notwithstanding the provisions of subsections (2) and (3), the Authority shall have power to suspend any licence issued under this Act if it is of the opinion that the agent no longer satisfies the requirements or has lost qualifications with regard to which a licence was issued.

Effect of
suspension
or
cancellation
of an order

14. An order made under subsection (1) of section 13 to a shipping agent shall come into force on the date on which that order was communicated by the Authority to the shipping agent, and shall continue to be in force notwithstanding that an appeal against that order has been referred to the Fair Competition Tribunal.

Communi-
cation to be
deemed
complete

15. Any notice or order required to be communicated to any shipping agent under this Act, shall be deemed to be communicated after the expiry of seven days from the date of dispatch of that notice or order by whatever means.

No
compensa-
tion for
loss

16. No shipping agent who, prior to the coming into operation of this Act, was carrying on business as a shipping agent shall be entitled to compensation for any loss incurred by way of business or otherwise or by reason of him not being issued a licence under this Act.

PART VI

OFFENCES AND PENALTIES

Liability of
body
corporate

17.-(1) Where an offence is committed by a body of persons, if that body of persons is a body corporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of that body corporate shall be deemed to have committed that offence unless that person proves that the offence was committed without his knowledge or connivance and that he exercised all due diligence to prevent the commission of the offence having regard to the nature of his functions and all other circumstances.

18. Where an offence is committed by any employee or servant of a shipping agent while engaged in the business of that shipping agent, that offence shall be deemed to have been committed by that shipping agent unless the shipping agent proves that the offence was committed without his knowledge.

Liability of
employee
or servant
of shipping
agent

19. Any person who-

- (a) furnished any return, written information or explanation containing any particulars which to his knowledge are false or incorrect; or
- (b) acts in contravention of any provision of this Act or any regulations made under this Act commits an offence and on conviction is liable subject to a penalty prescribed by the Regulations regarding a specific offence, to fine of not more than US \$20,000 or its equivalent in Tanzania Shillings or to imprisonment for a term of not more than five years or to both.

Offences
and
penalties

PART VIII

GENERAL PROVISIONS

20. The Divisional Directors may issue to any shipping agent any direction necessary for the purpose of efficient implementation of the provisions of this Act or any regulations made under this Act.

Power to
issue
directions

21. The Divisional Director or any prescribed officer, may-

- (a) enter and inspect at all reasonable hours of the day the premises in which the business of shipping agency is carried on; or
 - (b) inspect and take copies of any records required under this Act to be kept in respect of the business of shipping agency or any other records relating to such business,
- for the purpose of ascertaining whether the provisions of this Act or regulations made under this Act are being complied with.

Power of
entry and
inspection

(2) Any person who hinders or obstructs the Divisional Director or any prescribed officer in the performance of his duties under this Act, commits an offence.

22. Every shipping agent shall maintain such records as may be prescribed.

Mainte-
nance of
records

Exemption
from
application
of certain
Provisions
Of the Act

23.-(1) Notwithstanding any of the provisions of this Act, the Minister may, by order published in the *Gazette*, exempt any Parastatal organisation carrying on business of shipping agency from application of any or all Provisions of this Act.

(2) An order made pursuant to subsection (1) shall set out the terms and conditions attached to the exemption and state the time during which that order shall remain in force.

Regula-
tions

24.-(1) The Minister may, after consultation with the Authority, make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred under subsection (1), the Minister may make regulations in respect of-

- (a) the period for which and the terms and conditions subject to which licences may be granted;
- (b) the furnishing of all such statements, declarations or records relating to the business of shipping agency as may be necessary for ensuring efficient administration of the provisions of this Act or regulations made hereunder;
- (c) the standards to be observed by shipping agents and the prohibition of acts or omission in contravention of such standards;
- (d) a penalty that may be imposed on conviction for an offence against this Act;
- (e) any other matter required by this Act or regulations to be prescribed.

(3) The regulations made under this section shall be published in the *Gazette*.

Passed in the National Assembly on the 22nd April 2002

Clerk of the National Assembly