



REPUBLIC OF SOMALILAND

INVESTIGATION AND SUPPRESSION OF VIOLATIONS OF FINANCIAL ACTS THE PRESIDENT OF SOMALILAND

HAVING READ : The Somaliland Charter of may 1993
HAVING HEARD : The Council of Ministers on the proposal of the Minister of Finance

TAKING NOTE OF THE APPROVAL OF THE NATIONAL ASSEMBLY HEREBY
PROMULGATES THE FOLLOWING LAW:

GENERAL PROVISIONS

Article 1

SCOPE OF THE LAW

1. This law lays down the general provisions relating to the investigation and suppression of violations of financial laws relating to State and local taxations as well as customs and foreign exchange.
2. The provisions of this law may not be abrogated or modified by subsequent act, except where it is expressly so stated therein, or where they are manifestly inconsistent with provisions of subsequent acts.

Article 2

Applicability of Sanction after abrogation or Amendment of law.

Notwithstanding the abrogation or amendment, by subsequent acts, of any provision of financial acts prescribing sections of any kind, such provision shall be applied to acts committed when they were in force, unless it is expressly provided that such abrogation of amendment has retroactive effect.

Article 3

Definition of Financial Offence.

The violation of a provision contained in financial acts for which punishment for a crime or for a contraventions is prescribed by the penal code shall constitute a financial offence.

Article 4

Definition Of Administrative Violations

The violation of a provision contained a financial act, which does not constitute financial offence and for which the payment of a sum of money to the State of Local authority is prescribed shall constitute an administrative violation.

Article 5
DEFINITION OF RESPONSIBLE IN RESPECT OF FINANCIAL VIOLATIONS.

For the purpose of this act, the term 'person responsible' shall mean:

- A. The physical person who committed the offence, or the physical or juridical person who is civilly liable to pay the pecuniary punishment and the surtax, if any, in the case of a financial violation which constitutes a financial offence;
- B. The physical or juridical person civilly liable to pay the administrative penalty and the surtax, if any, in the administrative violation.

Article 6
PENAL PUNISHMENT

1. The violations of financial laws which constitute financial offences shall be punished with:
 - A. Imprisonment for a crime or fine for a crime, both, in the case of a crime;
 - B. Imprisonment for a contravention, or both, in the case of a contravention.
2. The minimum and the maximum limits of the above punishments shall be fixed by act.
3. In applying the punishment the court shall evaluate the gravity of the offence, taking into account the elements specified in Article 110 of the penal Code.

Article 7
ADMINISTRATIVE PENALTY.

1. The minimum and maximum limits of administrative penalties shall be fixed by act.
2. In applying an administrative penalty, the gravity of the violation and the character of the person responsible shall be taken into account. The character of the person responsible shall be evaluated the light of his criminal record and, in general, of his past conduct in matters concerning taxation, customs and foreign exchange.
3. The obligation to pay an administrative penalty shall be a civil imposed only on the taxpayer, except as otherwise provided in this act or in the individual financial acts.

Article 8
SURTAX

1. In matters of taxation, the acts may prescribe the obligation to pay a surtax in addition to the penal punishment or administrative penalty provided for in the preceding articles.
2. The amount of the surtax shall be equal to the whole, a fraction, or multiple of the amount of the tax.
3. The obligation to pay the surtax shall be a civil obligation.

Article 9
CLOSING OF LICENSED PREMISES

1. In addition to the penal punishment or administrative penalty referred to in the preceding articles, Financial acts may prescribe the closing of licensed premises.
2. The order to close licensed premises may be issued :-

- a) In the case of financial offence, by the judicial Authority having Jurisdiction over the offence.
- b) In the case of an administrative violation, by the Administrative Authority competent to issue the licence, on the request of the Financial Authority which has initiated proceeding.

Article 10

CONCURRENCE OF FINANCIAL OFFENCE.

Whoever, by more than one act or omission done with the same intent, commits, at the same time or at different times, more than one violation of the same provision of act shall be liable for each of the offences committed.

Article 11

CONTINUING FINANCIAL OFFENCE

Whoever, by more than one act or omission done with the same intent, commits, at the same time or at different times, more than one violation of the same provision of act of the same provision of act of the same or of different gravity, shall be guilty of continuing offence. In a such case, the punishment shall be that imposed in respect of the most serious of the violations committed, increased up to threefold, taking into account the circumstances of the offence and the character of the offender.

Article 12

RIGHT TO COLLECT TAX PENDING JUDGMENT

Where the person responsible is liable not only for the offence, but also for the payment of a tax, the Financial Administrative shall, pending decision of the penal proceedings, be entitled to collect the tax.

Article 13

SECURITY

1. The State or the local Administration shall be entitled to legal mortgage over the properties of the person responsible as a security towards the payment of the pecuniary punishment, administrative penalty and surtax.
2. Where there are reasonable grounds to believe that there is not security or that the security is insufficient to cover the payment of the obligation for which a legal mortgage is allowed, the property of the person responsible may be ordered to be sequestered.
3. Legal mortgage and sequestration shall be terminated by a final judgement of acquittal, or by the decision of the administrative authority concerned that no administrative violation was committed or that the administrative penalty is no applicable.
4. Where the person responsible offers a bond or other adequate security, the State or Local Administration shall not be required to resort to legal mortgage or sequestration.

PART II

CIVIL LIABILITY

Article 14

1. Where a financial offence has been committed by a person who is placed under the authority, direction or supervision of another person. The latter shall, in case of insolvency of the person convicted, the person convicted, be civilly liable to pay a sum equal to the amount of the fine for a crime or fine for a contravention imposed on the offender, provided that the provision violated

- was one which the person exercising authority, direction or supervision was bound to cause his subordinate to observe and that the violation was not clearly committed against his express will.
2. The financial acts may, in addition to or derogation of the provisions of civil and commercial acts, specify which persons exercising authority, direction or supervision are bound to have the provision of such laws and regulations observed by their subordinates.
 3. Where the person who is civilly liable for payment is also insolvent, the pecuniary punishment against the person convicted shall be converted as provided in Articles 113 of the Penal Code.

Article 15

CIVIL LIABILITY OF CERTAIN LEGAL PERSONS.

Where a representative or employee of a juridical person other than a public corporation is convicted of financial offence in connection with taxes due by the said juridical person, the latter shall, in case of insolvency of the offender, be civilly liable to pay a sum equal to the amount of the fine for a crime or fine for a contravention, except where the violation was manifestly committed against its express will.

Article 16

JOINT AND SEVERELY LIABILITY TO PAY SURTAX.

In the cases referred to in Article 14 and 15 of this act, where financial act also prescribes the payment of a surtax, the person exercising authority, direction or supervision, or the juridical person other than a public corporation, shall be jointly and severally liable with the offender to pay such surtax, except where the violations was manifestly committed against his or its express will.

Article 17

JOINT AND SEVERAL LIABILITY WHERE MORE THAN ONE HAVE COMMITTED AND ADMINISTRATIVE VIOLATION.

Where more than one person have committed and administrative violation, they shall be jointly, and severally liable to pay the administrative penalty as well as the surtax, if any.

Article 18

JOINT AND SEVERAL LIABILITY IN CASE OF TRANSFER OF ENTERPRISES OF IMMOVALBE PROPERTY.

1. Whoever, by transfer inter vivos, acquires title to an enterprise, shall be jointly and severally liable together with transfer or, to pay the tax as well as the administrative penalty and the surtax, if any, which are due by the transfer in respect of the year in which the transfer took place and of the two preceding years.
2. This provision shall apply also in respect of transfers inter vivos of immovable property

PART III

Article 19

ADMINISTRATIVE SETTLEMENT OF FINANCIAL OFFICES

1. A person reasonable for a financial offence punishable exclusively or alternatively with a fine for a crime or fine for a contravention, shall be permitted to pay to the State, within fifteen days after he has been notified by the Administration of the offence committed by him, and amount equal to one sixth of the maximum pecuniary punishment prescribed by act in addition to the amount of tax and the surtax, if any.
2. Where the Financial act also provides for the confiscation of goods or securities, the necessary action shall be taken by the Administrative authority concerned, which shall issue an order to this effect, stating the reasons therefore, at the time of the payment referred to in the preceding paragraph.
3. A record of the administrative settlement shall be made and signed by the administrative authority and the party concerned.
4. The administrative settlement shall extinguish the offence and bar the institution of judicial proceedings.

Article 20

COMPOUNDING OF FINANCIAL OFFICES.

1. In the case referred to in Article 19 above, where the person responsible has not available himself in time of his right to settle the offence under the said article, he shall be permitted to pay, prior to the hearing of the case, a sum equal to one third of the maximum pecuniary punishment prescribing the tax and the surtax, if any, as well as the court costs.
2. The provisions of paragraph 2 and 3 of article 19, shall also apply.
3. The compounding shall extinguish the offence.

Article 21

SETTLEMENT OF ADMINISTRATIVE VIOLATION.

1. The person responsible for an administrative violation which does not constitute an offence, shall be permitted to pay, within fifteen days after he has been notified of the act committed, an amount equal to one sixth of the maximum administrative penalty, in addition to the tax and the surtax, if any.
2. A record of the administrative settlement shall be made and signed by the administrative authority and the party concerned.
3. The administrative settlement shall extinguish the liability.

Article 22

PROCEDURES FOR ADMINISTRATIVE SETTLEMENT AND COMPOUNDING.

1. The administrative authority concerned shall inform the person responsible of his right, to settle or compound the offence or administrative violation, in accordance with this act.
2. The amounts due shall be paid, within the prescribed time-limits, to the competent financial office or, where there is no such office, to the office of the District Commissioner within whose jurisdiction the violation was ascertained any regular receipt shall be issued therefore.

PART IV
PROCEDURE
Chapter 1
ASCERTAINMENT OF FINANCIAL VIOLATIONS
Article 23
Ascertainment of Violation.

The violation of any provision of the financial acts shall be ascertained and recorded by the authorities specified in the following articles of this law

Article 24

AUTHORITIES RESPONSIBLE FOR ASCERTAINING FINANCIAL OFFENSES.

1. The officers and guards of the Fiscal Police and the other organs of the Financial Administration specified in the respective laws shall have primary responsibility for ascertaining violation of financial provisions constituting an offence.
2. The subsidiary responsibility for investigating and ascertaining fiscal offence and finding the evidence thereof, shall rest on police force or Organisations and State civil organisation, in conformity with the respective functions attributed to them by act.

Article 25

AUTHORITIES RESPONSIBLE FOR ASCERTAINING ADMINISTRATIVE VIOLATIONS

The officers and guards of fiscal Police and the organs of the Financial Administration specified in the respective laws shall be responsible for ascertaining violation of financial provisions constituting and administrative violations.

Article 26

OFFICER AND GUARDS OF THE FISCAL POLICE.

1. The officers and non-commissioned officers of the Police shall be deemed to be officers of the Fiscal Police.
2. The other members of the Police shall be deemed to be guards of the Fiscal Police.
3. Where, in special circumstances, the responsibility for ascertaining, financial offence is given, by a financial act to officers of the Administration, such officers shall, in respect of the duties assigned to them and of the powers vested in them by act be deemed to be officers of the Fiscal Police. In such cases the Administration shall issue them special identification cards.

Article 27

POWERS OF THE FISCAL POLICE AND POLICE.

1. Where any organ referred to in Article 24 para- 2 has information of the commission of a financial offence, it shall inform the fiscal police of this fact and shall at the same time ensure that the state of things remain uncharged.

2. Where, however, circumstance do not permit the immediate intervention of the organs of the fiscal police and where there are grounds to believe that the evidence relating to the offence may be altered or lost, the organs referred to in Art. 24 para- 2, shall themselves take the necessary action and inform the organs of the fiscal police.
3. The organs referred to in Art. 24 para. 2, whenever so requested, shall cooperate with the fiscal police in ascertaining the offence referred to in the financial acts.

Article 28
SEARCH

1. Save as otherwise provided I the Criminal Procedure Code, in cases of urgent necessity an officer of the fiscal police may, without a warrant, search a house or premises, whenever he has information, or has grounds to believe, that a violation of financial act constituting an offence has been committed.
2. In such cases, the officer of the Fiscal police shall forth with inform the president of the competent Regional Court for confirmation of the search carried out him, stating the reasons therefore as well as the results of such search.

Article 29
RIGHT OF ENTRY

1. The officers and guards of the Fiscal Police shall have the right to enter any licensed premises or the premises of any other business concern for purposes or verification or making inquiries in order to ascertain that the provisions of the financial acts are complied with.
2. In case of urgent necessity, the right of entry referred to in the preceding paragraph may be exercised also during the closing hours of the licensed premises or business concerns.

Article 30
PROHIBITION TO SEIZE BOOKS.

1. Except as otherwise provided in the respective Financial acts, it is forbidden to seize books required to be kept by act, or any other book which, according to custom, is used in the exercise of commercial or industrial activities.
2. The provisions of the preceding paragraph shall not apply to the ascertainment of violations of the financial acts constituting a financial offence.
3. The financial Authority concerned may, however, make a copy of the books or sign or initial and affix the stamp of the off ice together with the state, on the parts of the books which the ascertainment relates, the authority shall also take the necessary precautions to ensure that the books are not altered or removed.
4. Whoever, fails to comply with the lawful orders of financial authority concerned relating to the preservation of the books shall be punished in accordance with Article 505 of the Pena; Code, with imprisonment for a conservation up to three months or with fine for contravention up to Sh.Sl. 90,000/-

CHAPTER II
JUDICIAL PRODEDURE
Article 31
REPORTING OF FINANCIAL OFFENCES.

After the expiry of the time-limit prescribed in Article 19 for the Administrative settlement of financial offences, the competent authority shall report the financial offence to the judicial authority in the manner laid down in the Criminal Procedure Code.

Article 32
PENAL JURISDICTION

1. The Regional Court shall have exclusive jurisdiction over financial offence ascertained within their territorial jurisdiction.
2. As regard offences provided for in the acts on direct taxation, criminal Proceeding shall be initiated after the tax has been finally assessed and the obligation to pay such tax has been established.

Article 33
**INCIDENTAL JURISDICTION OF CRIMINAL COURT
IN MATTERS CONCERNING TAXATION.**

1. Subject to the provision of article 32, paragraph (2), where the existence of an offence depends on the decision on a dispute relating to a tax, the court having jurisdiction over the offence shall decide on the dispute relating to the tax in the judgement relating to the criminal proceedings.

CHAPTER III
ADMINISTRATION OF ADMINISTRATIVE PENALTY
Article 34
APPLICATION OF ADMINISTRATIVE PENALTY

1. The office within whose territorial jurisdiction an administrative violation was ascertained, shall notify the person responsible by transmitting to him a copy of record relating to the violation, and shall request him to settle relating to the violation, and shall request him to settle it under Article 21 of this act or to file this objection within fifteen days from the date for the notification.
2. After the expiry of such time-limit, the competent office, having examined the contentions of the person responsible, shall stating the reason thereof, order the amount of the administrative penalty to be paid, or declare that no violation was committed, or that the penalty is not applicable.
3. Such decision shall be notified to the person responsible and shall become enforceable, if not appealed against in the manner provide in the following article.

Article 35
ADMINISTRATIVE APPEAL

1. The person responsible, or his legal representative, may, within thirty days from the date of the notification of the decision, submit and appeal against such decision to the Minister of Finance.
2. The appeal shall operate as stay of execution of the decision.

3. The appeal, stating the ground therefore, shall be delivered or sent by registered mail to the financial office or, where there is no such office, to the office of the District Commissioner territorially competent, and a receipt shall be issued therefore.

Article 36

DECREE OF THE MINISTER OF FINANCE

1. The Minister of Finance shall decide on the appeal and issue a decree thereof, his decision shall be final.
2. The decree of the Minister of Finance shall be enforceable. The financial office concerned shall take steps for its enforcement.

CHAPTER IV

PROCEDURE CONCERNING GUARANTEES

Article 37

LEGAL MORTGAGE

1. In the case of a financial offence, the office of the attorney General may request the President of the Court having jurisdiction over the criminal proceedings to order the imposition of a legal mortgage referred to in Article 13, paragraph 1, of this act.
2. In the case of an administrative violation, the authority concerned may request, the President of the Court having jurisdiction over the property concerned, to order the imposition of a legal mortgage.

Article 38

SEQUESTRATION

1. The procedure laid down in paragraph 1 and 2 of the preceding article shall also apply in the case of a request for sequestration, provided for in Article 13, paragraph 11, of this act.
2. Sequestration shall be carried out by the court officer in the manner prescribed by act.

Article 39

APPEAL AGAINST THE IMPOSITION OF A LEGAL

Mortgage or an order of Sequestration

1. An appeal against the imposition of a legal mortgage or an order of sequestration may be filed before the competent Court of Appeal by any party having an interest.
2. The relevant provisions of the Civil and Criminal Procedure Codes shall apply to the procedure for such appeals.

PART V

FINAL PROVISIONS

Article 40

Disposal of fines, Administrative penalties and Surtax.

1. Except as otherwise provided, 70% of the proceeds of fines, administrative penalties and surtax provided for by fiscal and exchange laws shall accrue to the State; the remaining 30% shall accrue to persons who participated in the repression of the violation and to Reward Fund of police force.

2. As laid down in the preceding paragraph, 30% of proceeds of fines, administrative penalties, and surtaxes collected in connection with financial offences, shall be disposed of as follows:-
 - a) Informer or person ascertaining the offence -----15%
 - b) Person recording offence -----5%
 - c) Head of the competent financial office and officer compounding the offence -----5%
 - d) Reward fund of the Police Force -----5%
3. For the purpose of the disposal of fines, administrative penalties and surtaxes referred to in the previous paragraph, informers shall always be persons not belonging to the Police Force or the Financial Administration, persons ascertaining the offences shall always belong to the offices responsible for ascertaining financial offences referred to in Article 24 of this law. Where both informers and person ascertaining the offence participated in the repression of the same violation, the former shall be entitled to the entire share provided for under sub- paragraph a) of the previous paragraph and latter shall participate in the division of the share provided for under sub-paragraph b)
4. The competent offices shall be authorized to deduct from the amounts collected a sum equal to 30% of such amounts, to be disposed of as in dated above, and shall issue a receipt thereof to be attached the monthly returns.

Article 41

CRIME CONNECTED WITH FINANCIAL OFFENCES.

1. Where a crime referred to in Chapter 1 of Book 11, part I I of the penal Code is connected with a financial offence, the judge shall impose the maximum punishment provided for that crime.
2. For the purposes of the previous paragraph, there is connection where the crime has been committed in order to commit financial offence or facilitate the commission of such offence by another, or to obtain or secure for the offender or another the benefit, price, proceeds of, or immunity from such financial offence.
3. The crimes referred to above shall always be within the jurisdiction in respect to the financial offence.

Article 42

ABROGATION

Any provision contrary to or inconsistent with this law is hereby abrogated.

Article 43

ENTRY INTO FORCE

This legislative law shall enter into force on the day following the date enacted by the National Assembly. This legislative act shall be included the official compilation of the laws and decrees of the Somaliland Republic.

All persons shall be required to observe it and cause others to observe it as a law of the Republic.