

Legal Notice No. _____

THE TAX PROCEDURES ACT

(CAP. 469B)

IN EXERCISE of the powers conferred by Section 112 of the Tax Procedures Act (CAP. 469B), the Cabinet Secretary for the National Treasury and Economic Planning makes the following Rules –

THE TAX PROCEDURES (DISTRRAINT) RULES, 2024

Citation	1. These Rules may be cited as the Tax Procedures (Distraint) Rules, 2024.
Interpretation	2. In these Rules, unless the context otherwise requires- "distrainee" means the debtor named in an order; "distraint agent" means any person appointed as a distraint agent under rule 3 of these Rules; "distress" means a distress levied pursuant to an order "distress debt" means the amount of any unpaid tax specified in an order; "distraintor" means the Commissioner or an authorised officer issuing a distress order; "goods" means all movable property of a distrainee which is liable for distress; "order" means an order issued by the Commissioner under section 41 of the Act; "sale" refers to sale by way of public auction or private treaty.
Distraint Agent	3. The Commissioner may appoint a distraint agent to assist the Commissioner in the execution of orders: Provided that no person shall be appointed as a distraint agent unless the Commissioner is satisfied that the person – (a) is of good repute and financial standing; (b) is a licensed auctioneer under the Auctioneers Act (Cap. 526); and (c) has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of any goods which may be placed under the custody of the

	<p>person by reason of the performance of the duties as a distraint agent.</p>
Distraint agent to furnish security	<p>4. (1) Every distraint agent shall, on appointment, furnish the Commissioner with security, in such sum and manner as the Commissioner may require and such security shall be refunded, forfeited or cancelled on the termination of appointment.</p> <p>(2) The security in sub rule (1) shall be forfeited where the distraint agent fails to perform the duty of an agent under these rules or where such forfeiture is ordered by the court or under any other written law.</p>
Execution of order	<p>5. (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by rule 6 of these Rules.</p> <p>(2) An order shall be executed by attachment of such goods of the distrainees as, in the opinion of the distrainor, are of a value which, on sale, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distrainor.</p>
Service of order	<p>6. Every order shall be issued by the Commissioner or an authorised officer and the service thereof shall be in accordance with section 74 of the Act.</p>
Steps subsequent to attachment	<p>7. As soon as practicable after the attachment of any goods under these Rules, the distrainor or distraint agent shall—</p> <p>(a) issue a receipt in respect thereof to the distrainee;</p> <p>(b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainor or distraint agent, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale of the goods on the expiration of ten days from the date of attachment.</p>
Limitation on sale of attached goods	<p>8. On the sale of any goods attached under these Rules the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.</p>

Return on completion of sale	<p>9. (1) Within 48 hours after the completion of a sale of goods attached under these Rules, the distraint agent shall make a return to the Commissioner specifying the items which have been sold and the amounts realized by the sale.</p> <p>(2) Where the distraint agent fails to submit the return as specified in sub rule (1), the security furnished by the distraint agent shall be forfeited to the Commissioner</p> <p>(3) The Commissioner shall maintain a record of the proceeds of the sale and the manner in which the proceeds were applied.</p>
Restoration of attached goods on payment.	<p>10. (1) Where a distrainee has, within ten days of attachment of the goods under these Rules, paid or given security accepted by the Commissioner for the whole of the tax due together with the whole of the costs and expenses incurred by the distrainor in executing the distress, the distrainor shall at the cost of the distrainee, without unreasonable delay, restore the attached goods to the distrainee and the Commissioner shall cancel the order.</p> <p>(2) Any sum paid by a distrainee under this rule shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance, if any, in settlement of the distress debt or such part thereof as the Commissioner shall direct.</p>
Livestock	<p>11. Where any goods attached under these Rules comprise or include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding of such livestock and any costs and expenses incurred thereby shall be recoverable from the distrainee.</p>
Costs for levying distress	<p>12. A claim for any other costs and expenses which may be incurred by the Commissioner or the distrainor in levying any distress under these Rules there may be claimed by the distrainor and recovered under rule 8 or 10 of these Rules, as the case may be, costs at the rate specified in the Auctioneers Act (Cap. 526).</p>
13. Fees of distraint agent and a distrainor	<p>13. The fees of the distraint agent shall be guided by the provisions of the Auctioneers Act, Cap. 526.</p>
Revocation LN 6 of 1974	<p>The Income Tax (Distraint) Rules are revoked.</p>

Dated the _____, 2024.

JOHN MBADI NG'ONGO,
*Cabinet Secretary for the
National Treasury and Economic Planning*

DRAFT