



BERMUDA

EXCHANGE CONTROL ACT 1972

1972 : 109

TABLE OF CONTENTS

| | |
|---|--|
| 1 | Interpretation |
| 2 | Minister of Finance may make regulation for exchange control |
| 3 | Search warrants |
| 4 | Power to detain evidence |
| 5 | Obstruction |
| 6 | Consent of Director of Public Prosecutions |
| 7 | Defence (Finance) Regulations 1940 |
| 8 | Amendment <i>[repealed]</i> |
| 9 | Commencement <i>[omitted]</i> |
| | SCHEDULE |

[preamble and words of enactment omitted]

Interpretation

- 1 In this Act, unless the context otherwise requires—
- “authorised dealer” means, in relation to gold or any foreign currency, a person for the time being authorised by or under the regulations to act for the purposes of the regulations in relation to gold or, as the case may be, that foreign currency;
- “bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;
- “beneficial owner” shall have such meaning as may be prescribed;
- “Bermuda area currency” means any currency of Bermuda and any prescribed currency;

EXCHANGE CONTROL ACT 1972

“blocked account” means an account opened as a blocked account at an office or branch in Bermuda in favour of any person by a banker authorised by the Minister to open blocked accounts;

“certificate of title to securities” means any document of title whereby a person recognises the title of another to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

“Controller of Foreign Exchange” means such officer of the Bermuda Monetary Authority as constituted by the Bermuda Monetary Authority Act 1969 [*title 16 item 11*] as the Bermuda Monetary Authority shall, with the approval of the Minister, designate Controller of Foreign Exchange;

“foreign currency” includes any currency, other than Bermuda currency or any prescribed currency, and any notes of a class which are or have at any time been legal tender in any territory outside Bermuda, and any reference to foreign currency includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank;

“gold” means gold coins or gold bullion;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

“policy of assurance” means any policy securing the payment of a capital sum or annuity on the occurrence of a specified event which is certain to happen and includes—

(a) any policy by which the payment of money is assured on death (except death by accident only) or on the happening of any contingency dependent on human life; and

(b) any policy securing the payment of an immediate annuity,

and the reference in this definition to the occurrence of a specified event which is certain to happen shall include the occurrence, which is certain to happen, of one of specified events none of which by itself is certain to happen;

“prescribed” means prescribed by regulations under section 2;

“securities” means shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and shares in an oil royalty;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

EXCHANGE CONTROL ACT 1972

“unit” means, in relation to a unit trust scheme, a right or interest (whether described as a unit, as a sub-unit or otherwise) which may be acquired under the scheme.

[Section 1 "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; Section 1 "beneficial owner" and "prescribed" inserted by 2018 : 2 s. 2 effective 23 March 2018]

Minister of Finance may make regulation for exchange control

2 (1) The Minister may make regulations providing for all or any of the following matters—

- (a) controlling dealings in gold and foreign currency;
- (b) requiring the surrender to authorised dealers of gold and foreign currency;
- (c) controlling payments to or for the credit of persons resident outside Bermuda and the placing of sums to the credit of such persons, including sums required to be paid by any judgment or order of any court or by any award;
- (d) controlling the issue and transfer of securities to or to the nominees of persons resident outside Bermuda, and other dealings in or with or in relation to securities or capital monies payable thereon;
- (e) controlling the issue of bearer certificates and coupons;
- (f) controlling the importation and exportation of gold, currency notes, bills, certificates of title to securities and other documents and of any article;
- (g) controlling payment for goods exported from Bermuda;
- (h) imposing obligations on persons entitled to receive any foreign currency or a payment in any foreign currency and on persons entitled to sell or procure the sale of goods;
- (i) controlling the transfer of policies of assurance and annuities;
- (j) controlling the settlement of property on persons resident outside Bermuda;
- (k) imposing duties on persons in relation to the acts of foreign companies;
- (l) requiring monies to be paid to blocked accounts only;
- (m) implying conditions in contracts;
- (n) empowering the Controller of Foreign Exchange to give directions or notices for the purpose of the due administration and enforcement of the regulations;
- (na) respecting the power of the Controller of Foreign Exchange to obtain information from any person to which this Act applies including, but not limited to, information relating to beneficial owners;

EXCHANGE CONTROL ACT 1972

- (nb) prescribing civil penalties, the procedure for the imposition thereof and for appeals;
 - (nc) providing for savings and transitional matters;
 - (o) the declarations to be made on any occasion, the persons by whom such declarations shall be made and the manner in which the same shall be verified;
 - (p) prescribing anything which is to be or may be prescribed;
 - (q) any other matter connected with exchange control; and
 - (r) generally for the better carrying out of the purposes of this Act.
- (2) Regulations made under this section may provide—
- (a) that a contravention or breach thereof shall be an offence and for the punishment of persons convicted of any such offence, so, however, that, save as provided in paragraph (b)—
 - (i) the punishment so provided on summary conviction shall not exceed a fine of one thousand dollars or imprisonment for three months or both such fine and imprisonment;
 - (ii) the punishment so provided on conviction on indictment shall not exceed a fine of five thousand dollars or imprisonment for two years or both such fine and imprisonment;
 - (b) in the case of an offence which is concerned with any currency, security, payment, gold, goods or other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required to do so by or under the regulations, for the punishment of persons convicted of such offence, whether summarily or on indictment by a larger fine not exceeding three times the amount or value of the currency, security, payment, gold, goods or property;
 - (ba) that a contravention or breach thereof shall be subject to the imposition of such civil penalty not exceeding \$25,000 as may be prescribed; and
 - (c) for the forfeiture of any currency, security, gold, goods or other property with which an offence under the regulations is concerned.
- (3) Regulations made under this section may also provide that the obligations and prohibitions imposed thereby shall apply to all persons, notwithstanding that they are not in Bermuda and are not Commonwealth citizens.
- (4) The negative resolution procedure shall apply to regulations made under this section.

[Section 2 subsections (1) and (2) amended by 2018 : 2 s. 3 effective 23 March 2018]

EXCHANGE CONTROL ACT 1972

Search warrants

3 (1) If a magistrate is satisfied by information on oath given by a person authorised by the Controller of Foreign Exchange to act for the purposes of this section either—

- (a) that there is reasonable ground for suspecting that an offence against the regulations made under this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) that any documents which ought to have been produced pursuant to directions given under regulations made under this Act, and have not been produced, are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may issue a search warrant authorising any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises, or, as the case may be, the vehicle, vessel or aircraft.

(2) A person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in, or whom he has reasonable ground to suspect to have recently left or to be about to enter, those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any article found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for suspecting to be evidence of the commission of any offence against the regulations made under this Act or any document which he has reasonable ground for suspecting ought to have been produced pursuant to directions given under the regulations, made under this Act.

(3) No female shall, in pursuance of any such warrant, be searched except by a female.

[Section 3 subsection (2) amended by 2009:52 s.5 effective 4 January 2010]

Power to detain evidence

4 (1) Any article coming into the possession of an executive authority (whether in consequence of the seizure of the article under or by virtue of this Act or otherwise) which the authority has reasonable ground for believing to be evidence of the commission of an offence against the regulations made under this Act may be retained for a period of three months or, if within that period there are commenced proceedings in respect of such an offence in which the article is, or can properly be, adduced in evidence, until the final determination of those proceedings.

(2) For the purposes of subsection (1)—

- (a) any person to whom any powers of the Minister or the Controller of Foreign Exchange under the regulations made under this Act are delegated or on

EXCHANGE CONTROL ACT 1972

whom any functions are conferred by or by virtue of such regulations, including any police officer, shall be deemed to be an executive authority;

- (b) any proceedings shall be deemed not to have been finally determined so long as there is pending any appeal in the matter of the proceedings, and an appeal in that matter shall be deemed to be pending during the ordinary time within which such an appeal may be lodged, and, if such an appeal is duly lodged, the appeal shall be deemed to be pending until it is decided or withdrawn.

(3) The powers conferred by subsection (1) in relation to any article shall be in addition to, and not in derogation of, any powers otherwise exercisable in relation thereto.

Obstruction

5 Any person who obstructs any person in the exercise of any powers conferred on him by virtue of section 3 or 4 commits an offence:

Punishment on summary conviction: imprisonment for 3 months or a fine of \$1,000 or both such imprisonment and fine.

Consent of Director of Public Prosecutions

6 No proceedings for an offence against this Act or the regulations made thereunder shall be instituted except by or with the consent of the Director of Public Prosecutions:

Provided that nothing in this section shall prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.

[Section 6 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Defence (Finance) Regulations 1940

- 7 (1) *[repealed by 1974:2]*
(2) *[repealed by 1974:2]*
(3) *[omitted][spent]*

Amendment

8 *[repealed by 1974:2]*

Commencement

9 *[omitted]*

[This Act was brought into operation on 30 June 1972]

EXCHANGE CONTROL ACT 1972

SCHEDULE

[Repealed by 1974:2]

[Assent Date: 30 June 1972]

[Amended by:

1974 : 2

1977 : 35

1999 : 8

2009 : 52

BR 5 / 2011

2018 : 2]