EXCHANGE CONTROL

CHAPTER 45:01

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CHAPTER 45:01
EXCHANGE CONTROL
ARRANGEMENT OF SECTIONS

An Act to provide for exchange control and for matters incidental thereto, and to repeal the Exchange Control Act. 17 of 1984 G.N. 84/1984 79/1985

[1ST NOVEMBER, 1984]

1. This Act may be cited as the Exchange Control Act. Short title

2.—(1) In this Act, unless the context otherwise requires— Interpretation

"bullion" means gold and includes any metal or coins declared under subsection (2) to be bullion for the purposes of this Act;

"currency" includes coins, currency notes, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes;

"foreign currency" means any currency that is not, or is payable or expressed otherwise than in, Malaŵi currency;

"foreign exchange" means foreign currency and foreign securities;

"foreign securities" includes—

(*a*) any securities the principal of or interest from which is repayable or payable in any country other than Malaŵi or in a foreign currency;

(*b*) any securities in respect of which the funds necessary for the repayment of the principal or the payment of the interest are provided from any country other than Malaŵi;

(*c*) any securities that are registered outside Malaŵi;

(*d*) any security, debt or right which may be prescribed under section 3 for the purposes of this definition;

"gold" means gold coin or gold bullion;

"Malaŵi currency" means any currency that is, or is payable or expressed in currency that is, legal tender in Malaŵi;

"the Regulations" means regulations made under section 3;

"securities" includes stocks, shares, bonds, debentures, debenture stock, unsecured notes transferable or negotiable deposits, treasury bills, units or sub-units of a unit trust and policies of life or endowment assurance, and also includes deposit receipts in respect of the deposit of any such securities and documents of title to any such securities.

(2) The Minister may, by Order published in the *Gazette*, declare any metal or coins to be bullion for the purposes of the definition of that word in subsection (1).

Regulations

3.—(1) The Minister may make regulations for the purpose of the control of foreign exchange, bullion and Malaŵi currency.

(2) In particular and without limiting the generality of subsection (1), the Regulations may relate to—

(*a*) the powers, rights, duties and responsibilities of authorized dealers in bullion or foreign exchange and the rates at which they may enter into transactions in foreign exchange or bullion;

(*b*) the buying, selling, borrowing, lending or exchange of foreign currency or bullion;

(*c*) any dealing or transaction having the effect of a purchase, sale, borrowing, loan, or exchange of foreign currency or bullion;

(*d*) the taking of or sending out of Malaŵi, Malaŵi Currency, foreign currency or bullion;

(*e*) transactions in Malaŵi Currency with or on behalf of persons resident outside Malaŵi;

(*f*) a requirement that any person who has power to sell, or to procure the sale of, any foreign currency or bullion, shall sell or procure the sale of the currency or bullion in accordance with the Regulations;

(*g*) the taking, sending, transmission or transfer out of Malaŵi of securities prescribed in the Regulations, and other dealings with or transactions in securities so prescribed;

(*h*) the imposition by the Minister of restrictions and conditions on authorized dealers in bullion or foreign exchange;

(*i*) the imposition of any prohibition, restriction, or requirement on the import or export of moveable property;

(*j*) the appointment of persons to perform any prescribed functions for the purposes of the Regulations.

(3) The Regulations may—

(*a*) regulate or prohibit the carrying on of any dealings or transactions or the doing of any act;

(*b*) constitute offences and prescribe penalties therefor, in the case of an individual, not exceeding a fine of K100,000 and imprisonment for five years, and in the case of a body corporate a fine without limit;

(*c*) provide for the prosecution and punishment of the officers of bodies corporate convicted of an offence against the Regulations;

(*d*) empower a court to order the forfeiture of Malaŵi Currency, foreign currency, securities, bullion or goods in respect of which an offence has been committed against the Regulations;

(*e*) empower a court to order the sale to, or the vesting in, the Administrator General, of Malaŵi currency, foreign currency, securities, bullion or property, retained, obtained or dealt with in contravention of the Regulations.

(4) The Regulations may create offences with respect to acts done, or dealings or transactions carried out, in or outside Malaŵi or partly in and partly outside Malaŵi.

(5) The power under this section to make the Regulations may be exercised—

(*a*) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(*b*) so as to make, as respects the cases in relation to which it is exercised, —

(i) the same provision for all those cases, or different provisions as respects the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

Evidence and presumption

4.—(1) Any document purporting to be an authority, permission, direction, notice or other instrument made or issued by or on behalf of any person in pursuance of any provision of this Act or the Regulations, and purporting to be signed by or on behalf of any such person, shall be received in evidence and shall, until the contrary is proved, be deemed to be such an instrument so made or issued and signed.

(2) Any person charged with any act or omission which is an offence under this Act or the Regulations if done or omitted to be done without an exemption, permission or other authorization, shall be presumed to have done or to have omitted to do such act without such exemption, permission or other authorization, as the case may be, unless it is proved that he was in possession of such exemption, permission or other authorization, as the case may be, when he performed or omitted to perform the act in question.

Financial provision

5. Any expense incurred under or by virtue of this Act or the Regulations by the Government or any department thereof shall be paid out of moneys provided for the purpose by Parliament.

Application *to the* Government

6. This Act and the Regulations bind the Government and apply to transactions by a Ministry or a department or other person acting on behalf of the Government, and the Minister shall not, by virtue of any contract made by them or on their behalf in relation to any bullion, currency or securities, be under any obligation to grant any permission or exemption under the Regulations.

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under s. 3

G.N. 89/1984
79/1985
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PART I

PRELIMINARY

1. These Regulations may be cited as the Exchange Control Regulations. Citation

2.—(1) In these Regulations— Interpretation

"authorized dealer", in relation to any particular regulation, means a person appointed pursuant to regulation 4 for the purpose of that particular regulation;

"the Bank" means the Reserve Bank of Malaŵi established under section 3 of the Reserve Bank of Malaŵi Act. Cap. 44:02

(2) For the purposes of these Regulations, a personal representative of a deceased person shall, unless the Minister otherwise directs, be treated as resident where the deceased person was resident at the time of his death so far as relates to any matter in which the personal representative is concerned solely in that capacity.

(3) Notwithstanding any rule to the contrary, the Minister may give directions declaring that for all or any of the purposes of these Regulations a person is to be treated as resident or not resident in Malaŵi or any other territory, and the person shall

be treated for the purposes of these Regulations as being so resident or, as the case may be, not so resident.

(4) Any permission under these Regulations—

(*a*) may be either general or specific;

(*b*) may be revoked or varied by the person giving the permission;

(*c*) may be absolute or conditional;

(*d*) may be limited to expire on a specified date, unless renewed; and

(*e*) shall be published in such a way as, in the opinion of the person giving the permission, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in his opinion publication is not necessary for that purpose.

(5) Where the doing of an act by any person who has a particular attribute or stands in a specified relation to any property is prohibited by these Regulations, the doing of that act by two or more persons is likewise prohibited notwitstanding that only one or some of those persons have that attribute or stand in that relationship.

Authorized dealers

3. The Minister may appoint any person to be an authorized dealer for the purposes of any regulation, and may revoke or vary any such appointment.

Directions

4. The Minister may give—

(*a*) general directions indicating the considerations to which authorized dealers or the Bank should have particular regard in carrying out functions under these Regulations; or

(*b*) specific directions to an authorized dealer or the Bank with respect to the carrying out of any of those functions,

and an authorized dealer and the Bank shall comply with any such direction so given.

Exemptions

5.—(1) The Minister may, by Order published in the *Gazette*, exempt from the operation of any regulation any act or transaction, or any class of acts or transactions, either unconditionally or subject to such conditions as are specified in the Order.

(2) The Minister may, by Order published in the *Gazette*, vary or revoke any Order made under subregulation (1).

Power to obtain information

6.—(1) The Minister may, by notice in writing to any person, require that person to furnish within the period specified in the notice such information as the Minister requires with respect to any act, transaction, matter or thing to which any provision of these Regulations applies, and to produce books, documents or other records, relating to it, in his custody or under his control.

PART II

BULLION

7.—(1) In this regulation, "wrought gold" means gold and gold alloys which, on sight, appear to have been worked or manufactured for professional or trade puposes. Application of Part

(2) This Part does not apply to wrought gold unless it is worked or manufactured in contravention of these Regulations.

8.—(1) Subject to subregulation (2), a person who takes or sends, or attempts to take or send, bullion out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years. Transfer of bullion out of Malaŵi

(2) The Minister may give permission to a person to take or send bullion out of Malaŵi and, if he does so, subregulation (1) does not apply in relation to a thing done or transaction entered into in accordance with the permission.

9.—(1) Subject to subregulation (2), a person, other than the Bank or an authorized dealer— Limitation on purchase of bullion, etc.

(*a*) who buys or otherwise obtains bullion from any person; or

(*b*) resident in Malaŵi who outside Malaŵi buys or otherwise obtains bullion from any person, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) A person may buy bullion for the purpose of its being worked or used by him in connexion with his profession or trade if the bullion is purchased from—

(*a*) the Bank;

(*b*) an authorized dealer; or

(*c*) a person resident outside Malaŵi,

with the consent of the Minister.

(3) A person who, in Malaŵi, works or uses in manufacture any bullion, not being bullion lawfully in his possession for the purposes of being worked or used by him in connexion with his profession or trade, is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

PART III

MONETARY CONTROL

10.—(1) Subject to subregulation (3), a person, other than the Bank, who except with the permission of the Minister, in Malaŵi— Dealings in foreign currency

(*a*) buys or borrows any foreign currency from a person other than the Bank;

(*b*) sells or lends any foreign currency to a person other than the Bank; or

(*c*) exchanges any foreign currency with a person other than the Bank,

is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(2) Subject to subregulation (3), a person, other than the Bank, who except with the permission of the Minister is a party to a transaction having the effect of a transaction prohibited by subregulation (1) is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(3) The Minister may give permission to an authorized dealer to do anything in relation to or be a party to any transaction referred to in subregulation (1) or (2), and if permission is so given then, in relation to the thing done or transaction entered into in accordance with the permission, subregulation (1) or, as the case may be, subregulation (2) does not apply.

(4) Where foreign currency is made available to any person by the Bank or by an authorized dealer for use for a specified purpose or subject to any condition, then if that person—

(*a*) uses the foreign currency otherwise than for that purpose; or

(*b*) as the case may be, fails or refuses to comply with those conditions,

he is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Transfer of foreign currency out of Malaŵi

11.—(1) Subject to subregulations (2), (3) and (4), a person, other than the Bank, who takes or sends, or attempts to take or send, any foreign currency out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) Where, pursuant to regulation 11, foreign exchange is made available to any person, subregulation (1) does not apply in relation to the taking or sending, or the attempted taking or sending, out of Malaŵi of that currency, but without prejudice to the operation of regulation 11 (4).

(3) Subregulation (1) does not apply in relation to a person—

(*a*) who is not resident in Malaŵi; and

(*b*) who takes or sends, or attempts to take or send, out of Malaŵi an amount of foreign exchange which is not in excess of the amount of foreign currency brought or sent by him into Malaŵi.

(4) The Minister or the Bank may give to any person permission to take or send foreign currency out of Malaŵi, and if permission is so given then, in relation to foreign currency taken or sent out

(*b*) sells or lends any foreign currency to a person other than the Bank; or

(*c*) exchanges any foreign currency with a person other than the Bank,

is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(2) Subject to subregulation (3), a person, other than the Bank, who except with the permission of the Minister is a party to a transaction having the effect of a transaction prohibited by subregulation (1) is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(3) The Minister may give permission to an authorized dealer to do anything in relation to or be a party to any transaction referred to in subregulation (1) or (2), and if permission is so given then, in relation to the thing done or transaction entered into in accordance with the permission, subregulation (1) or, as the case may be, subregulation (2) does not apply.

(4) Where foreign currency is made available to any person by the Bank or by an authorized dealer for use for a specified purpose or subject to any condition, then if that person—

(*a*) uses the foreign currency otherwise than for that purpose; or

(*b*) as the case may be, fails or refuses to comply with those conditions,

he is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Transfer of foreign currency out of Malaŵi

11.—(1) Subject to subregulations (2), (3) and (4), a person, other than the Bank, who takes or sends, or attempts to take or send, any foreign currency out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) Where, pursuant to regulation 11, foreign exchange is made available to any person, subregulation (1) does not apply in relation to the taking or sending, or the attempted taking or sending, out of Malaŵi of that currency, but without prejudice to the operation of regulation 11 (4).

(3) Subregulation (1) does not apply in relation to a person—

(*a*) who is not resident in Malaŵi; and

(*b*) who takes or sends, or attempts to take or send, out of Malaŵi an amount of foreign exchange which is not in excess of the amount of foreign currency brought or sent by him into Malaŵi.

(4) The Minister or the Bank may give to any person permission to take or send foreign currency out of Malaŵi, and if permission is so given then, in relation to foreign currency taken or sent out

of Malaŵi in accordance with the permission, subregulation (1) does not apply.

12.—(1) Subject to subregulation (2), a person, other than the Bank, who takes or send, or attempts to take or send, any Malaŵi currency out of Malaŵi is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years. **Transfer of Malaŵi currency out of Malaŵi**

(2) The Minister or the Bank may give to any person permission to take or send Malaŵi currency out of Malaŵi, and if permission is so given then, in relation to Malaŵi currency taken or sent out of Malaŵi in accordance with the permission, subregulation (1) does not apply.

PART IV

CONTROL OF CERTAIN PAYMENTS, ETC.

13. Nothing in regulation 15, 16 or 17 prevents the making of any payment associated with an act permitted or authorized under regulation 11, 12 or 13. **Exception**

14.—(1) Subject to subregulation (2), a person who, except with the permission of the Minister or the Bank, in Malaŵi— **Control of certain payments in Malaŵi**

(*a*) makes any payment to or for the credit of a non-resident of Malaŵi;

(*b*) makes any payment to or for the credit of a resident of Malaŵi by order or on behalf of a non-resident of Malaŵi; or

(*c*) places any sum to the credit of a non-resident of Malaŵi,

is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

(2) Where a non-resident of Malaŵi has paid a sum in or towards the satisfaction of a debt due from him, subregulation (1) (*c*) does not prohibit the acknowledgement or recording of the payment.

15. A person who, being a resident of Malaŵi, without the permission of the Minister or the Bank, makes outside Malaŵi any payment to or for the credit of a non-resident of Malaŵi is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years. **Control of certain payments outside Malaŵi**

16. A person who— **Control of certain transactions**

(*a*) in Malaŵi; or

(*b*) being a resident of Malaŵi, outside Malaŵi,

without the permission of the Minister or the Bank, makes any payment to or for the credit of a non-resident of Malaŵi as consideration for or in association with—

(*c*) the receipt by any person of a payment made outside Malaŵi;

(*d*) the acquisition by any person of property which is outside Malaŵi;

(*e*) the transfer to any person, or the creation in favour of any person of a right (whether present or future and whether vested or contingent) to receive a payment outside Malaŵi; or

(*f*) the transfer to any person, or the creation in favour of any person, of a right (whether present or future and whether vested or contingent) to acquire property which is outside Malaŵi,

is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Certain loans prohibited

17. Without prejudice to regulation 25, a person who, being a resident of Malaŵi, without the permission of the Minister, lends Malaŵi currency to a non-resident of Malaŵi is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

PART V

SECURITIES AND FOREIGN SECURITIES CONTROL

Issue, etc. or securities

18.—(1) A person who, without the permission of the Minister, in Malaŵi—

(*a*) allots, issues, transmits or transfers any securities to a non-resident of Malaŵi; or

(*b*) makes an entry in a register that recognizes or gives effect to the allotment, issue, transmission or transfer of any securities to a non-resident of Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

(2) In subregulation (1), "transfer" includes transfer by way of loan or security.

Taking, etc., securities out of Malaŵi

19.—(1) A person who, without the permission of the Minister—

(*a*) takes or sends, or attempts to take or send, any securities out of Malaŵi;

(*b*) transmits or transfers any securities from a register in Malaŵi to a register outside Malaŵi; or

(*c*) makes an entry in a register that recognizes or gives effects to the transmission or transfer of securities from a register in Malaŵi to a register outside Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

20.—(1) Subject to subregulation (2), a person other than the Bank or an authorized dealer who, without the permission of the Minister, acquires, disposes of or otherwise deals with any foreign securities, whether within or outside Malaŵi, is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years. Foreign securities

(2) Subregulation (1) does not apply to the acquisition of foreign securities otherwise than for valuable consideration.

PART VI

COMPANIES

21.—(1) For the purposes of this Part, "foreign company" means a body corporate (not incorporated under the law of Malaŵi) in the case of which any of the following conditions is fulfilled namely— Interpretation

(*a*) that it is by any means controlled (whether directly or indirectly) by residents of Malaŵi;

(*b*) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital would be receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi;

(*c*) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors would be receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi; or

(*d*) that more than one-half—

(i) of the interest payable on its loans and loan capital, if any;

(ii) of the dividends payable on its preference share capital, if any; or

(iii) of the dividends payable on its share capital, if any, not being preference share capital,

is receivable (whether directly or indirectly) by or for the benefit of residents of Malaŵi.

(2) Where the identity of the persons by whom or for whose benefit any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by a resident of Malaŵi of a power of appointment or similar power, the sum, assets, interest or dividends shall, for the purposes of this Part, be declared to be receivable directly or indirectly by or for the benefit of residents of Malaŵi.

(3) For the purposes of this Part, residents or non-residents of Malaŵi, as the case may be, shall be deemed to control a body corporate notwithstanding that other persons are associated with them in the control thereof if they can together override those other persons.

Foreign companies

22.—(1) Where there is served on any resident of Malaŵi a notice in writing that the Bank wishes any requirements of the kind referred to in subregulation (2) to be complied with by any foreign company, and that person can, by doing or refraining from doing any act—

(*a*) cause the foreign company to comply with any of those requirements;

(*b*) remove any obstacle to the foreign company complying with any of those requirements; or

(*c*) render it in any respect more probable that the foreign company will comply with any of those requirements,

then, except so far as permission to the contrary may be given by the Minister, that person shall do or, as the case may be, shall refrain from doing that act.

(2) The requirements with respect to which a notice under subregulation (1) may be given are as follows, that is to say, that the foreign company shall—

(*a*) furnish to the Minister such particulars as to its assets and business as may be mentioned in the notice;

(*b*) sell or procure the sale to an authorized dealer of any bullion or foreign currency which it is entitled to sell or of which it is entitled to procure the sale;

(*c*) declare and pay such dividend as may be mentioned in the notice;

(*d*) realize any of its assets mentioned in the notice is such manner as may be so mentioned;

(*e*) refrain from selling, transferring, or doing anything that affects its rights or powers in relation to, any such securities as may be mentioned in the notice.

Transfer of control of body corporate

23.—(1) Subject to subregulation (2), no resident of Malaŵi shall, without the permission of the Minister, do any act whereby a body corporate which is by any means controlled (whether directly or indirectly) by residents of Malaŵi ceases to be so controlled.

(2) A person who has sought and has obtained the Minister's permission to offer a body corporate's securities and obligations for sale on an approved stock exchange shall, if the permission includes all the body corporate's securities and obligations, be deemed to be exempt from the provisions of subregulation (1) where such change in control derives from the acquisition of such securities.

(3) A person, being a resident of Malaŵi, who contravenes subregulation (1) shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

24.—(1) Subject to subregulation (2), no resident of Malaŵi shall, without the permission of the Minister, lend any money or securities to a body corporate that is a non-resident of Malaŵi and which is by any means controlled (whether directly or indirectly) by persons who are non-residents of Malaŵi. Loans to bodies corporate

(2) Subregulation (1) does not apply in the case of a lender who, after making such inquiries as are reasonable in the circumstances of the case, does not know and has no reason to suspect that the body corporate concerned is controlled as provided in subregulation (1).

(3) A person who, being a resident of Malaŵi, without the permission of the Minister, lends any money or securities in contravention of subregulation (1) is guilty of an offence and liable to a fine of K25,000 and to imprisonment for three years.

25.—(1) A person shall not, without the permission of the Minister, be in possession in Malaŵi of foreign currency. Possession of foreign currency prohibited

(2) Unless in possession with the permission of the Minister, a person in possession in Malaŵi of foreign currency shall offer such foreign currency, or cause it to be offered, for sale to an authorized dealer.

(3) In any proceedings in respect of a contravention of subregulation (2) the burden is upon the accused person to prove that the foreign currency in question has been offered for sale to an authorized dealer.

(4) A person shall be deemed to be in contravention of subregulation (2) if the offer made or caused to be made by him is at a price exceeding that authorized by the Minister or is without payment of any usual and proper charges of the authorized dealer or is otherwise on any unusual terms.

(5) Any person who contravenes subregulation (1) or (2) is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

(6) This regulation does not apply to—

(*a*) a person who is not ordinarily resident in Malaŵi;

(*b*) any authorized dealer;

(*c*) a person who under any written law or contract is for the time being lawfully exempted from the requirements of subregulations (1) and (2) either expressly or by necessary implication.

PART VII

MISCELLANEOUS

Blocked accounts

26.—(1) In this regulation, "blocked account" means an account conducted with the Bank, or with an authorized dealer, declared by the Minister to be a blocked account, but does not include an account which the Minister declares shall no longer be a blocked account.

(2) Where under any provision of these Regulations permission is required for the making of a payment to, or the placing of a sum to the credit of, a person who is a non-resident of Malaŵi, the Minister may direct that the sum be paid or credited to a blocked account and, in that event, such payment or credit shall be made accordingly.

(3) When the Minister directs that any sum be paid or credited to a blocked account, the sum may with the consent of the person to whom it is to be paid or credited and subject to these Regulations, be invested instead in the purchase for that person of any such investment as may be approved by the Minister for the purposes of this regulation; and where investments are so purchased nothing in this regulation restricts the manner in which the investment may be dealt with.

(4) Subject to subregulation (5), where the Minister directs that a sum be paid or credited to a blocked account, compliance, to the extent of the sum paid or credited, is a good discharge to the person making the payment or credit.

(5) In the case of a sum due under a contract subregulation (4) does not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply.

(6) Subject to subregulation (3), a person who, without the permission of the Bank—

(*a*) makes any payment out of, or is a party to any transaction having the effect of making a payment out of, a blocked account;

(*b*) assigns or charges any money standing to the credit of a blocked account; or

(*c*) makes any change in the name in which a blocked account stands,

is guilty of an offence and liable to a fine of K10,000 and to imprisonment for two years.

Travellers

27.—(1) In this regulation—

"officer" means an officer within the meaning of that word in the Customs and Excise Act or a member of the Malaŵi Police Force and includes a person authorized by the Minister to act as an officer for the purposes of this regulation; (Cap. 42:01)

"traveller" means a person who is about to leave Malaŵi.

(2) A traveller shall, if requested to do so by an officer—

(*a*) declare whether or not he has any bullion, foreign currency, Malaŵi currency or securities with him;

(*b*) declare, whether or not he has with him anything prohibited by these Regulations to be exported from Malaŵi; and

(*c*) produce any such bullion, foreign currency, Malaŵi currency, securities and thing which he has with him.

(3) Subject to regulation (4), an officer and any person acting under the directions of an officer may search the traveller and examine and search any article which the traveller has with him, for the purpose of ascertaining whether he is conveying or has in his possession anything of the kind referred to in subregulation (2) (*a*) or (*b*).

(4) A person shall not be searched under subregulation (3) except by an officer or person of the same sex.

(5) An officer and any person acting under the directions of an officer may go on board or enter any aircraft, vehicle or vessel for the purpose of exercising the powers conferred on him by this regulation, and may examine or search the aircraft, vehicle or vessel and anything found on or in it, for the purpose of ascertaining whether there is anything of the kind referred to in subregulation (2) (*a*) or (*b*) on or in it to be taken or sent out of, or exported from, Malaŵi in contravention of these Regulations.

(6) An officer may seize anything found upon such examination or search which, in his opinion, is in the possession of any traveller, or on board or in any aircraft, vehicle or vessel, to be taken or sent out of, or exported from, Malaŵi in contravention of these Regulations.

(7) For the purposes of subregulations (5) and (6), the words "aircraft", "vehicle" and "vessel" have the same meaning as is respectively assigned thereto by section 2 (1) of the Customs and Excise Act. Cap. 42:01

Residents leaving Malaŵi

28.—(1) Where a resident of Malaŵi leaves Malaŵi for a destination outside Malaŵi (whether immediate or ultimate) the Minister may direct that, for such period as may be specified in the direction, payments by him or on his behalf and to him or his credit, and transactions in or in relation to securities in which he is in any way concerned, shall, whether or not he continues to be a resident of Malaŵi, be subject to such restrictions as may be specified in the direction.

(2) A direction given under subregulation (1)—

(*a*) may be either general or specific;

(*b*) may be given in relation to a resident about to leave or after he has left for a destination outside Malaŵi; or

(*c*) may be revoked or varied by a subsequent direction given by the Minister.

Payments for export of moveable property, etc. G.N. 26/1987

29.—(1) Except with the permission of the Minister, no person shall export moveable property of a value exceeding, in aggregate, K100 unless the Controller of Customs and Excise is satisfied that—

G.N. 26/1987

(*a*) payment in respect of the property has been made to a person resident in Malaŵi in accordance with the permission of the Minister or is to be so made within five working days after payment for the exports is made; and

(*b*) the amount of the payment that has been made or is to be made is such as to represent a return for the property that, in all the circumstances, is satisfactory in the interests of Malaŵi:

G.N. 26/1987

Provided that the Minister may direct that paragraph (*a*) shall have effect in any particular cases or class of cases as if for the reference to five working days there were substituted a reference to such longer or shorter period as may be specified in the direction.

(2) The Controller of Customs and Excise, for the purpose of satisfying himself with respect to the matters specified in subregulation (1), may require the person making entry of the property for export to deliver to him, together with the entry, such declaration signed by such person as the Controller may require; and where such declaration has been required the property shall not be exported until the declaration has been delivered.

(3) If, with respect to any of the matters specified in subregulation (1) (*b*), the Controller of Customs and Excise is not satisfied, he shall give his reason to the person making entry of the property for export and shall take into consideration any representation made to him by that person.

(4) If payment in respect of any property exported is not made within the period within which it ought to be made under subregulation (1) the Minister may—

(*a*) give such directions as he deems expedient to any person for the purpose of obtaining or expediting the receipt of such payment; or

(*b*) if the property has not been sold, give such directions as he deems expedient as to how the property shall be dealt with, including if he thinks fit a direction that the property shall be assigned to the Minister or to such other person as may be specified therein to be dealt with in such manner as the Minister thinks fit.

30.—(1) Every person— Provisions relating to the import of moveable property G.N. 86/1986

(*a*) to whom permission has been given under these Regulations subject to a condition providing that, or on the faith of an application stating an intention that, any moveable property will be imported; or

(*b*) by whom any currency has been obtained in Malaŵi on the faith of an application stating an intention that any moveable property will be imported,

shall, if the property is not imported within three months of the date; when the permission was given or, as the case may be, when the currency was obtained, notify in writing all the material particulars with respect to such property to an authorized dealer, and the notification shall be given within the period of 7 days, immediately following the date of expiry of the three months.

(2) Where in any such case as is specified in paragraph (*a*) of subregulation (1) the moveable property concerned has not been imported within three months as aforesaid, the Minister may give to any person who appears to the Minister to be in a position to give effect thereto such directions as appear to the Minister to be expedient as to the manner in which the property is to be dealt with.

(3) Without prejudice to the generality of subregulation (2), the power thereby conferred on the Minister extends to the giving of a direction that the property shall be assigned to the Minister or to such other person as may be specified in the direction.

PART VIII

LEGAL PROVISIONS AND OFFENCES

31.—(1) The application of any of the provisions of Part III in relation to any sum is not affected by the fact— Legal proceedings

(*a*) that the sum is required to be paid by a judgment or order of a court or by an award; or

(*b*) that the sum is paid out of a court, whether by order of the court or otherwise.

(2) Without prejudice to the provisions of any written law relating to the making of rules of court, rules of court may be made (as respects the High Court or any other court) by the Chief Justice—

(*a*) enabling any person who is required by any judgment, order or award to pay any sum, if he apprehends that the payment of that sum is unlawful under these Regulations except with the permission of the Minister, to pay that sum into court;

(*b*) declaring that payment of a sum into a court by virtue of rules made under subparagraph (*a*) together with the delivery to the other party concerned of such evidence of the payment as may be prescribed by the rules shall, to be extent of the payment, be a good discharge to the person making the payment; and

(*c*) so regulating the process of executions which may arise in respect of any sum required to be paid by any judgment, order or award as to secure that, unless it is shown, in such manner that the permission of the Minister for the payment of the sum is not required under these Regulations or has been given without conditions, the proceeds of the execution will be paid into court and, so far as necessary for that purpose, varying the form of any writ of execution or other similar document or the duties of the person to whom any such writ or other document is directed.

(3) In any proceedings in a court or tribunal, a claim for the recovery of a debt shall not be defeated by reason only of the debt not being payable without permission of the Minister and of that permission not having been given or having been revoked.

(4) Where any bankruptcy, winding up of a company, or administration of the estate of a deceased person, is carried on under the law of Malaŵi, a claim for a sum not payable without the permission of the Minister shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if it had been given and not been revoked, but without prejudice to the application of any of the provisions of Part III or IV to the payment of any sum pursuant to such a claim.

(5) A debt for the payment of which the permission of the Minister is required under these Regulations shall, if in other respects it is not to be precluded from being so under the provisions of any written law relating to bankruptcy for the time being in force in Malaŵi, be allowed to be a good petitioning creditor's debt notwithstanding that requirement if, and to the extent that, the debt can be satisfied either by a payment into court or to a blocked account so declared by the Minister in pursuance of regulation 27 (1).

Contracts, etc.

32.—(1) Subject to subregulation (2), it shall be an implied condition in any contract that where, by virtue of these Regulations, the permission of the Minister is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission is given or not required.

(2) Subregulation (1) does not apply in any case where it is shown to be inconsistent with the intention of the parties that it should apply, whether by reason of their having contemplated

the performance of that term notwithstanding the provisions of these Regulations, or for any other reasons.

(3) Notwithstanding anything in the Bills of Exchange Act, neither the provisions of these Regulations nor any conditions whether expressing or to be implied having regard to those provisions, that any payment shall not be made without the permission of the Minister under these Regulations, shall operate to prevent any instrument being a bill of exchange or a promissory note. Cap. 48:02

False statements

33. A person who makes—

(*a*) to an officer within the meaning of regulation 28 (1);

(*b*) to an officer of the Bank; or

(*c*) to an authorized dealer,

any statement, whether oral or in writing, in pursuance of these Regulations or relating to any act, transaction, matter or thing to which any provision of these Regulations applies, which he knows to be untrue or which is misleading in any particular or which is made by him without his having first made proper inquiries to ascertain its truth, is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Evasion of Regulations

34. A person who makes or enters into any arrangements, whether oral or in writing, for the purpose of, or which have the effect of, in any way, whether directly or indirectly, defeating, evading or avoiding, or preventing the operation of, these Regulations in any respect is guilty of an offence and liable to a fine of K5,000 and to imprisonment for two years.

Restrictions on disclosure of information

35.—(1) Any person who discloses information obtained by virtue of the provisions of these Regulations otherwise—

(*a*) than in the proper discharge of his functions;

(*b*) than for the purpose of any criminal proceedings;

(*c*) than when required to do so for the pruposes of a statistical inquiry being conducted or directed under section 5 of the Statistics Act; Cap. 27:01

(*d*) than when ordered to do so by a court; or

(*e*) than for a specific purpose approved in writing by the Minister,

is guilty of an offence and liable to a fine of K2,000 and to imprisonment for two years.

Forfeiture, etc.

36.—(1) When a person is convicted of an offence against these Regulations the court, if it thinks fit, may in addition to any other punishment order the forfeiture of any bullion, foreign currency or foreign exchange in respect of which the offence has been committed, whether the person convicted or some other person is the owner thereof.

(2) When a person convicted of an offence under these Regulations has acquired, whether directly or indirectly, any property by reason of his contravention of any of the provisions of these Regulations, including non-compliance with the terms and conditions of any permission under these Regulations, the court may, in addition to any other penalty, direct that person to sell, or procure the sale of, the property and may, by the same or a subsequent direction, specify the manner in which, the person to whom, and the terms on which, the property shall be sold.

(3) Where a person fails or refuses to comply with a direction given under subregulation (2), the court may direct that the property vest in the Administrator General, subject to subregulation (4).

(4) Where, under subregulation (3), a court directs that any property vest in the Administrator General, it vests in the Administrator General free from any mortgage, pledge or charge, and the Administrator General may deal with it as he thinks fit, but he shall pay to any person, other than the person convicted, who would but for the vesting be entitled to the property, a sum in Malaŵi currency fixed by the court (or in the case of a non-resident person an equivalent sum in foreign currency) not being less than ninety *per centum* of the amount that, in the opinion of the court, represents the value of the property in the country in which he is resident at the time when the vesting occurred.

Offences by body corporate

37.—(1) Where an offence against these Regulations is proved to have been committed by a body corporate with the consent or connivance of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything to the contrary contained in these Regulations, where an offence against these Regulations is proved to have been committed by a body corporate there is no limit to the fine which may be imposed in respect thereof.

DECIMAL CURRENCY

CHAPTER 45:02

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CHAPTER 45:02

DECIMAL CURRENCY

ARRANGEMENT OF SECTIONS

An Act to provide for the introduction of and conversion to the decimal currency system and for matters connected therewith and incidental thereto 30 of 1970 G.N. 193/1970

[PARTS I AND II—15TH SEPTEMBER, 1970,

PART III—15TH FEBRUARY, 1971]

PART I

PRELIMINARY

1. This Act may be cited as the Decimal Currency Act. Short title

2. In this Act, unless the context otherwise requires— Interpretation

"Board" means the Decimal Currency Board established by section 3;

"Chairman" means the Chairman of the Board;

"decimal currency system" means the system of currency provided for by Part III;

"Deputy Chairman" means the Deputy Chairman of the Board;

"existing currency system" means the system of currency in force in Malaŵi immediately before the date of commencement of Part III;

"former currency" means currency expressed in pounds, shillings and pence in accordance with the existing currency system;

"member" means a member of the Board;

"new currency" means currency expressed in Kwacha and tambala in accordance with the decimal currency system;

"prescribed machine" means a machine or instrument, designed to be used in connexion with the existing currency system or any similar system of currency, and used or intended for use solely or principally for the purpose of calculating or recording amounts of money (including an accounting machine, an adding machine or any similar machine, a machine for franking postal articles, a cash register, a price-computing scale and a price-computing petrol pump), which is declared by the Minister, by notice published in the *Gazette*, to be a prescribed machine for the purposes of this Act.

PART II

DECIMAL CURRENCY BOARD

Establishment of Board

3.—(1) There is hereby established a Board, to be known as the Decimal Currency Board, which shall be a body corporate with perpetual succession and a common seal, with power to acquire, hold, charge and dispose of property, movable and immovable, to borrow money and to do or perform all such things and acts for the purpose of carrying out its functions as a body corporate may lawfully do.

(2) The Board may sue and be sued in its corporate name and may for all purposes be described by such name.

Constitution of Board

4.—(1) The Board shall consist of not more than eight members appointed by the Minister and holding office during the Minister's pleasure.

(2) The Minister shall appoint one of the members of the Board to be Chairman and the members of the Board shall elect one of their number to be Deputy Chairman.

(3) Any member who is absent for more than three successive meeting of the Board without permission from the Chairman, or who, in the opinion of the Chairman, is for any cause incapacitated so as to be unable to take a proper part in the affairs of the Board, may have his membership of the Board terminated by the Minister.

(4) Any member may, by notice under his hand addressed to the Chairman, resign from his membership of the Board and such resignation shall be effective from the date specified therein or 7 days after receipt of the notice by the Chairman, whichever is later.

(5) Members shall be entitled to such fees and allowances, if any, as the Board may, with the approval of the Minister, determine.

Secretary and officers

5. The Board shall on such terms and conditions as it thinks fit and with the approval of the Minister appoint a Secretary who shall be the chief executive officer of the Board, and may similarly appoint or employ such other officers or persons as may be necessary for the efficient performance of its functions.

Meetings and procedure

6.—(1) The Board shall meet at such times and places as may be necessary or expedient for the transaction of the business of the Board.

(2) Meetings shall be convened by the Chairman, or in the event of his absence or of a vacancy in his office, by the Deputy Chairman.

(3) The Chairman shall preside at all meetings of the Board at which he is present, but in the event of his absence from a meeting the Deputy Chairman shall preside at that meeting and in the absence of both the Chairman and the Deputy Chairman from any meeting, the members present and forming a quorum shall appoint one of their number to preside at that meeting.

(4) At any meeting of the Board, three members shall constitute a quorum.

(5) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and, for this purpose, the member presiding shall be entitled to a deliberative vote and also, in the event of an equality of votes, to a casting vote.

(6) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman, speak but shall have no power to vote at that meeting.

(7) Minutes in proper form of each meeting of the Board shall be kept, and shall be confirmed by the Board at its next meeting and signed by the person presiding at that meeting.

(8) Subject to the foregoing provisions the Board shall regulate its own procedure.

Powers of the Board

7.—(1) The Board may do such things, make such arrangements and enter into such agreements as it considers necessary for the purpose of facilitating the transition from the existing currency system to the decimal currency system.

(2) Without prejudice to the generality of subsection (1), the Board may make such arrangements or enter into such agreements as it thinks fit for or in relation to the conversion, adaptation or replacement, for use in connexion with the decimal currency system, of all such prescribed machines as it thinks fit:

Provided that any such arrangement or agreement shall require owners of the machines concerned to bear the costs involved in the conversion, adaptation or replacement of the said machines.

Delegation

8.—(1) With the approval of the Minister, the Board may, either generally or in relation to any particular matter or class of matters, by writing under its common seal, delegate to any of its members or the Secretary all or any of its powers under this Act, except this power of delegation.

(2) A delegation of any power made under the provisions of this section may be revoked by the Board at any time and shall not prevent the exercise by the Board of any of its powers, whether delegated under the provisions of this section or not.

Committees

9.—(1) The Board may appoint such advisory or technical committees, whether from its own members or not, as it thinks fit for the purpose of assisting the Board in carrying out its functions.

(2) A member of any committee appointed under this section who is not a member of the Board or a public officer shall be paid such remuneration and allowances as the Board, with the approval of the Minister, may determine in each case.

Disclosure of interest in agreements etc.

10.—(1) Any member of the Board or of any committee appointed by the Board who, otherwise than as such member, is directly or indirectly interested in an arrangement or agreement made or entered into, or proposed to be made or entered into, by the Board, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Board or the committee as the case may be.

(2) Every disclosure made under the provisions of the last preceding subsection shall be recorded in the minutes of the Board or committee, and the member concerned—

(*a*) shall not take part after the disclosure in any deliberation or decision of the Board or committee relating to the arrangement, agreement or approval; and

(*b*) shall be disregarded for the purpose of constituting a quorum of the Board or committee for any such deliberation or decision.

(3) For the purpose of subsection (1) of this section, a member shall not be regarded as being interested in any arrangement or agreement made or entered into, or proposed to be made or entered into, by the Board with another person by reason only that he is the owner of a prescribed machine involved in such arrangement or agreement.

11.—(1) The expenses incurred by the Board in the performance of its functions under this Act shall be funded by the Reserve Bank of Malaŵi. Finance

(2) For the purposes of the preceding subsection the Board shall open an account with the Reserve Bank of Malaŵi.

12.—(1) The Board shall cause to be kept proper accounts and other records relating to its operations including such particular accounts and records as the Minister may direct. Accounts and returns

(2) Subject to any direction made by the Minister for the time being responsible for finance under section 45 of the Finance and Audit Act, the accounts of the Board shall be audited by auditors approved by the Minister. Cap. 37:01

13.—(1) Whenever the Minister is satisfied that the Board has achieved its purpose or that the transition from the existing currency system to the decimal currency system has proceeded to a stage at which the further supervision of the Board is no longer necessary, he may, by notice published in the *Gazette*, dissolve the Board. Abolition of Board

(2) As from the date on which the Board is dissolved under subsection (1) all the powers, functions, duties, assets, liabilities, rights and obligations of the Board shall vest in the Minister or in such person or authority as the Minister may appoint and accordingly any reference in this Act or in any document or otherwise to the Board shall thereafter be construed as a reference to the Minister or to the appointed person or authority.

14. The Minister may make regulations for the better carrying out of the provisions or the purposes of this Act. Regulations

PART III

CONVERSION TO THE DECIMAL CURRENCY SYSTEM

15.—(1) From the date on which this Part comes into operation, hereinafter referred to as the prescribed date, any reference in a written law, bill of exchange, promissory note, security for money, bond, contract or agreement (whether in writing or not), deed or other instrument, or in any other manner whatsoever, to an amount of money in the former currency shall, unless the context is such that it would be inappropriate, or the contrary intention appears, be construed as a reference to a corresponding amount of money in the new currency. Reference to former currency after prescribed date

(2) Where such a reference as is mentioned in subsection (1) is to a percentage or other proportion expressed in terms of money, the reference shall be construed as a reference to an equivalent percentage or proportion expressed in terms of money in the new currency.

(3) For the purpose of this section conversion from the former currency to the new currency shall be calculated on the basis that one pound and one shilling is the equivalent of two Kwacha (K2) and ten tambala (10t) respectively, and pence shall be converted proportionately.

Payments made after prescribed date

16.—(1) Every payment made in Malaŵi on or after the prescribed date shall, unless made according to the currency of any other country, be made according to the new currency.

(2) Where notes and coins of the former currency are used for the purpose of making payments after the prescribed date, the face value of such notes and coins shall be taken to be the equivalent in notes or coins of the new currency respectively shown in the tables hereunder.

TABLE 1

First Column *Notes in the former currency*	Second Column *Notes in the new currency*
Five pounds (£5)	Ten Kwacha (K10)
One pound (£1)	Two Kwacha (K2)
Ten shillings (10s)	One Kwacha (K1)
Five shillings (5s)	Fifty tambala (50t)

TABLE 2

First Column *Coins in the former currency*	Second Column *Coins in the new currency*
Half Crown (2s–6d)	Twenty-five tambala (25t)
Florin (2s)	Twenty tambala (20t)
One shilling (1s)	Ten tambala (10t)
Six pence (6d)	Five tambala (5t)
Three pence (3d)	Two and one half tambala ($2\frac{1}{2}$t)
Several coins of the denominations of halfpenny, penny or three pence, or any combination thereof, to a total aggregate value of six pence	Five tambala (5t)

Conversion in respect of several amounts etc.

17. Where conversion for the purpose of section 15 or section 16 is in respect of the total of a number of individual amounts expressed in, or a product to be calculated in or by reference to, the former currency, the calculations specified in those sections shall be applied to that total or product, and not to the individual amounts or the rate by reference to which such product is to be calculated.