

THE EXCHANGE CONTROL ORDER, 1974

Date of commencement: 30th December, 1974.

Date of assent: 6th November, 1974.

A King's Order-in-Council to permit the regulation of the purchase, sale and loan of foreign currency, gold and securities.

Short title.

1. This King's Order-in-Council may be cited as The Exchange Control Order, 1974.

Interpretation.

2. In this Order, unless the context otherwise requires —

“foreign currency” means any currency other than currency which is legal tender in Swaziland;

“Minister” means the Minister for Finance and Economic Planning;

“security” means shares, stock, bonds, debentures, debenture stock, unit certificates and includes any letter or other document conferring or containing any evidence of rights in respect of any security.

Regulations.

3. (1) The Minister may in consultation with the Central Bank of Swaziland, make regulations in regard to any matter directly or indirectly relating to the control of the purchase, sale and loan of foreign currency, gold and securities.

(2) Such regulations may provide that the Minister may apply any sanctions therein set forth which he thinks fit to impose, whether civil or criminal.

(3) The Minister may exempt from stamp duty any document made for the sole purpose of complying with any such regulation.

(4) The Minister shall cause a copy of every regulation made under this section to be laid before the legislative body of Swaziland as soon as is practical, but his failure or neglect to do so timeously shall not affect the validity of such regulation.

Repeal.

4. The Exchange Control Act, No. 98 of 1949 is hereby repealed.

EXPLANATORY NOTE TO THE EXCHANGE CONTROL REGULATIONS, 1975

(This note is not part of the King's Order-in-Council or the Regulations made thereunder.)

These Regulations, made under the Exchange Control Order, 1974, together with that Order, replace the Exchange Control Act, No. 98 of 1949, as amended in 1950 and 1959.

Although certain changes were necessitated by the independence of Swaziland (in 1968), by the Customs Union Agreement (1969), by the introduction of the new currency, Emalangeni (in 1974), by the Rand Monetary Agreement (in 1974), and by Swaziland's withdrawal from the Sterling Area, the new Regulations are basically the same as the previous ones. In some cases the changes are more liberal in their effect on exchange transactions; and in no instance are any changes more restrictive in character. Further, there is no change in exchange control policy; under the Central Bank of Swaziland Order, 1974, the Central Bank will continue to act as agent for Government in the administration of exchange controls in accordance with such regulations, instructions and directives as the Minister of Finance and Economic Planning may issue from time to time.

The attached Order and Regulations are the basic, or enabling legislation in the exchange control field. The detailed, day-to-day policies are, as before, contained in *The Manual of Exchange Control Rulings*, copies of which have been issued to the authorised dealers in foreign exchange. *The Manual* lists the guidelines and exemptions relating to all aspects of exchange control, e.g. repatriation of dividends, interest, and capital; the limits on the amount of local currency which can be freely brought into and taken out of the Rand Monetary Area; the exchange control facilities available to temporary residents, etc. There is, of course, completely free movement of goods, money and capital among the countries of the Rand Monetary Area.

Information about exchange control can be acquired from any of the authorised dealers, which, at the time of the publication of the new Order, are the following banks: Barclays Bank of Swaziland, Standard Bank Swaziland and the Swaziland Development and Savings Bank.

EXCHANGE CONTROL REGULATIONS, 1975
(Under section 3 of the Order)

Date of Commencement: 24th January, 1975.

Arrangement of Regulations

1. Citation.
2. Interpretation.
- ③ Restriction on purchase, sale and loan of foreign currency and gold.
- ④ Restriction on the export of currency, gold, securities, etc, and the import of local currency bank notes.
5. Blocked accounts.
6. Acquisition of gold by the Minister.
- ⑦ Acquisition of foreign currency by the Minister.
8. Declaration of foreign assets and liabilities.
9. Power to prescribe currencies in respect of certain transactions.
10. Limitation of optional ports of destination.
11. Restriction on export of capital.
12. Assignment to Minister of right to exported goods.
13. Goods purchased outside the Rand Monetary Area.
14. Restriction on dealings in securities belonging to non-residents.
15. Prohibition of dealings in bearer securities and bearer options.
16. Control of capital issues.
17. Business controlled by persons outside Swaziland.
18. Provision of security.
19. Furnishing information.
20. Exemption from Stamp Duty.
21. Forms.
22. Advice, information, permits or forms relating to exchange control or currency matters.
23. Penalties.

Citation.

1. These regulations may be cited as the Exchange Control Regulations, 1975.

Interpretation.

2. In these regulations, unless the context otherwise requires —

“appropriate officer” means any officer of customs or excise, any immigration officer, any member of the Royal Swaziland Police or any person authorised by the Minister to act as such;

“authorised dealer” means, in relation to any transaction in respect of gold, a person authorised by the Minister, by notice in the Gazette, to deal in gold, and in relation to any transaction in respect of foreign exchange, a person authorised by the Minister, by notice in the Gazette, to deal in foreign exchange;

“bond” includes any mortgage bond or notarial bond registered or registrable in any registration office in Swaziland;

“foreign currency” means any currency other than local currency provided that the Minister may by notice in the Gazette declare any currency not to be foreign currency for purposes of these regulations;

“gold” means gold in any form except in regulations 3 and 6 in which “gold” means any gold other than wrought gold;

“local currency” means any currency which is legal tender in Swaziland;

“Minister” means Minister of Finance and Economic Planning;

“owner” in respect of any security, includes any person who has the right to dispose of or transfer that security, or who has the custody thereof, or who receives or has the right to receive, whether on his own behalf or on behalf of any other person, dividends or interest thereon, or who has any other interest therein;

“Rand Monetary Area” means the area in which Rand currency is legal tender;

“security” means any share, stock, bond, debenture, debenture stock, unit certificate and includes any letter or other document conferring or containing any evidence of right in respect of any security;

“transfer” includes transfer by way of loan or security, and for the purposes of these regulations a person shall be deemed to transfer securities from the Rand Monetary Area elsewhere if he transfers securities from a register in the Rand Monetary Area to a register outside the Rand Monetary Area.

Restriction on purchase, sale and loan of foreign currency and gold.

3. (1) Except with permission granted by the Minister and in accordance with such conditions as the Minister may impose, no person other than an authorised dealer shall buy or

borrow any foreign currency or any gold from, or sell or lend any foreign currency or any gold to any person not being an authorised dealer.

(2) No authorised dealer shall buy, borrow or receive or sell, lend or deliver any foreign currency or gold except for such purposes or on such conditions as the Minister may determine.

(3) The Minister may, in his discretion, by order prohibit any authorised dealer from —

- (a) selling, lending or delivering to, or buying, borrowing or receiving from, any specified person, fund or foreign government any foreign currency or gold; or
- (b) selling, lending, delivering, buying, borrowing or receiving any foreign currency or gold for any specified purpose or except for such purpose or on such conditions as the Minister may determine.

(4) Any person other than an authorised dealer, desiring to buy, sell, borrow or lend foreign currency or gold shall make application to an authorised dealer and shall furnish such information and submit such documents as the authorised dealer may require for the purpose of ensuring compliance with any conditions determined under paragraph (2) or (3).

(5) No person other than an authorised dealer shall —

- (a) use or apply any foreign currency or gold acquired from an authorised dealer for or to any purpose other than that stated in his application to be the purpose for which it was required; or
- (b) do any act calculated to lead to the use or application of such foreign currency or gold for or to any purpose other than that so stated.

(6) If a person has, as a result of any application in terms of paragraph (4), obtained from an authorised dealer any gold or foreign currency and no longer requires all or any part of such gold or foreign currency for the purpose stated in his application, he shall forthwith offer for sale to the Minister or an authorised dealer such gold or foreign currency which may be repurchased by the Minister or the authorised dealer at the price at which it was sold to such person or such other price as the Minister may determine.

Restriction on the export of currency, gold, securities, etc. and the import of local currency bank notes.

4. (1) Subject to any exemption which may be granted by the Minister or a person authorised by him, no person shall, without permission granted by the Minister or person authorised by him and in accordance with such conditions as the Minister or such authorised person may impose —

- (a) take or send out of the Rand Monetary Area any bank-notes, gold, securities or foreign currency, or transfer any securities from the Rand Monetary Area elsewhere;
- (b) send, consign or deliver any bank-notes, gold, securities or foreign currency to any person for the purpose of taking, sending or transferring such bank-notes, gold, securities or foreign currency out of the Rand Monetary Area;
- (c) take any local currency bank-notes into the Rand Monetary Area or send or consign any such notes to the Rand Monetary Area;

- (d) make any payment to, or in favour, or on behalf of any person resident outside the Rand Monetary Area, or place any sum to the credit of such person;
 - (e) draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) on the part of such person or any other person to receive a payment in the Rand Monetary Area is created or transferred as consideration for —
 - (i) the receiving by such person or any other person of a payment or the acquisition by such person or any other person of property outside the Rand Monetary Area;
 - (ii) a right (whether actual or contingent) on the part of such person or any other person to receive a payment or acquire property outside the Rand Monetary Area;
 - (iii) make or receive any payment as such consideration;
 - (f) make a loan or grant credit to any person in the Rand Monetary Area or guarantee such loan or credit, if as security for the repayment of the loan or credit, the lender or guarantor relies on any security, guarantee or undertaking, explicit or implied, furnished by a person or persons resident outside the Rand Monetary Area; or
 - (g) make a loan or grant credit to any person in the Rand Monetary Area if such person is —
 - (i) not resident in the Rand Monetary Area; or
 - (ii) a legal person operating in the Rand Monetary Area and 25 percent or more of its voting securities, capital or earnings is held or controlled, directly or indirectly, by a person resident outside the Rand Monetary Area.
- (2) Nothing in paragraph (1) shall prohibit a person authorised by the Minister from doing anything within the scope of his authority.
- (3) Any person who is about to leave Swaziland for a destination outside the Rand Monetary Area, and any person in any port or other place recognised as a place of departure from Swaziland for destinations outside the Rand Monetary Area, who is requested to do so by the appropriate officer shall —
- (a) declare whether or not he has with him any bank-notes, gold, securities or foreign currency; and
 - (b) produce any bank-notes, gold, securities or foreign currency which he has with him.
- (4) The appropriate officer and any person acting under his directions may search any person referred to in paragraph (3) and examine any article which such person has with him, for the purpose of ascertaining whether he has with him any bank-notes, gold, securities or foreign currency, and may seize any bank-notes, gold, securities or foreign currency produced or found upon such examination or search unless either —
- (a) the appropriate officer is satisfied that such person is, in respect of any bank-notes, gold, securities or foreign currency which he has with him, exempt from the prohibition imposed by paragraph (1); or

(b) such person produces to the appropriate officer a certificate granted by the Minister which shows that the export by such person of any bank-notes, gold, securities or foreign currency which he has with him does not involve a contravention of such paragraph.

(5) The appropriate officer and any person acting under his directions may examine or search any goods consigned or letters or parcels sent from Swaziland to a destination outside the Rand Monetary Area for the purpose of ascertaining whether there are being sent therewith any bank-notes, gold, securities or foreign currency, and may seize any bank-notes, gold, securities or foreign currency found upon such examination or search unless the appropriate officer is satisfied that the Minister has granted a certificate which shows that such sending of the bank-notes, gold, securities or foreign currency does not involve a contravention of paragraph (1), and that such certificate was not granted in reliance on any incorrect statement.

(6) All bank-notes, gold, securities or foreign currency seized under paragraph (4) or (5) shall be forfeited and paid into the Consolidated Fund:

Provided that the Minister may direct that any bank-notes, gold, securities or foreign currency so seized, be refunded or returned, in whole or in part, to the person from whom they were taken, or who was entitled to have the custody or possession of them at the time they were seized.

(7) Any person coming from outside the Rand Monetary Area, who is about to enter Swaziland and any person in any port or other place recognised as a place of arrival from outside the Rand Monetary Area to Swaziland, who is requested to do so by the appropriate officer shall —

- (a) declare whether or not he has with him any local currency bank-notes; and
- (b) produce any such bank-notes which he has with him.

(8) The appropriate officer and any person acting under his directions may search any person referred to in paragraph (7) and examine or search any article which such person has with him for the purpose of ascertaining whether he has with him any local currency bank-notes, and may seize such bank-notes produced or found upon such examination or search unless either —

- (a) the appropriate officer is satisfied that such person is, in respect of any local currency bank-notes which he has with him, exempt from the prohibition imposed by paragraph (1)(c); or
- (b) such person produces to the appropriate officer a certificate granted by the Minister which shows that the import by such person of any local currency bank-notes which he has with him does not involve a contravention of that paragraph.

(9) The appropriate officer and any person acting under his directions may examine or search any goods consigned or letters or parcels sent to Swaziland from a place outside the Rand Monetary Area for the purpose of ascertaining whether there are being sent therewith any local currency bank-notes and may seize such bank-notes found upon such examination or search, unless the appropriate officer is satisfied that the Minister has granted a certificate which shows that such sending of such bank-notes does not involve a contravention of paragraph (1)(c), and that such certificate was not granted in reliance on any incorrect statement.

(10) All local currency bank-notes seized under paragraphs (8) and (9) shall be paid into the Consolidated Fund:

Provided that the Minister may direct that any notes so seized, be refunded or returned, in whole or in part, to the person from whom they were taken, or who was entitled to have the custody or possession of them at the time they were so seized.

(11) No person shall be searched pursuant to this regulation except by a person of the same sex as the person so searched.

(12) For the purpose of this regulation, any bills of exchange or promissory notes payable otherwise than in local currency shall be deemed to be foreign currency, and for the purpose of paragraph (1)(a), documents of title relating to securities shall be deemed to be securities, and reference to securities in paragraphs (3), (4), (5) and (6) shall be construed as including a reference to such documents of title.

Blocked accounts.

5. (1) In this regulation "blocked account" means an account opened with an authorised dealer for the purpose specified in this regulation.

(2) If a person in Swaziland is under a legal obligation to make a payment to a person outside the Rand Monetary Area, but is precluded from effecting such payment as a result of any restrictions imposed by or under these regulations, the Minister may order such person to make the payment to a blocked account.

(3) The Minister may by notice in the Gazette direct that any sum due to any person referred to in sub-paragraph (a) or (b) hereof (hereinafter referred to as a "creditor") be paid into a blocked account, if such creditor is —

(a) resident in a particular country; or

(b) a person who the Minister has reasonable grounds of suspecting of having contravened any provision of these regulations relating to foreign exchange.

(4) If a direction as provided for in paragraph (3) has been given —

(a) any person who holds or may thereafter hold moneys on behalf of any creditor or who is or may thereafter become indebted to such creditor, shall forthwith, or as the case may be, on the date upon which such moneys become due or such debt becomes payable, pay such moneys or the sum representing such debt into such blocked account;

(b) no person shall, without the permission of the Minister and in accordance with such conditions as he may impose, make any payment on behalf of any creditor;

(c) any person who owes money to such creditor but is not under legal obligation to make a payment, unless called upon by his creditor to do so, shall forthwith report the amount of his indebtedness to the said creditor as well as the conditions on which the amount will become payable to the Minister in writing, and the Minister may thereupon, if the amount is payable at call, order such person forthwith to pay the amount into a blocked account, or, if the amount is payable within a specified period after notice, order him to pay it into a blocked account within such period;

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(d) no person shall, without the permission of the Minister and in accordance with such conditions as he may impose, undertake any transaction in respect of property or assets belonging to or directly or indirectly controlled by any creditor or take any action whereby any moneys which would otherwise have accrued to such creditor, cease to become due to him or whereby any obligation resting upon such person to pay any moneys due or payable to such creditor into a blocked account would otherwise be evaded.

(5) Subject to the proviso to paragraph (8) any payment made to a blocked account in terms of this regulation shall, to the extent of the sum paid, operate as a valid discharge to the person making payment.

(6) If the liability to make the payment is a liability to make the payment in foreign currency, the amount of the liability in local currency and the extent of the discharge shall be ascertained by converting the amount into local currency at a rate fixed by the Minister.

(7) No sum standing to the credit of a blocked account shall be dealt with in any way except with permission granted by the Minister or a person authorised by him and in accordance with such conditions as he or such authorised person may impose.

(8) The Minister may grant any exemption from this regulation and may authorise the refund to any person of such money paid by him into a blocked account:

Provided that payment shall be deemed to have been made for the purpose of paragraph (5) to the extent of such refund.

Acquisition of gold by the Minister.

6. (1) Subject to paragraph (2) hereof any person resident in Swaziland who becomes entitled to sell or to procure the sale of any gold shall, within thirty days after becoming so entitled, offer that gold or cause it to be offered for sale to the Minister or to a person authorised by him to act under this regulation at such price as the Minister may fix, being a price which, in the opinion of the Minister, is not less than the market value of the gold on the day of such purchase.

(2) Paragraph (1) shall not impose upon any person an obligation to offer any gold for sale or to cause any gold to be offered for sale, if he is, in respect of that gold, exempted from this regulation by the Minister or by a person so authorised:

Provided that the Minister or a person so authorised may withdraw any exemption granted in terms of this paragraph.

(3) In any criminal proceedings against any person for failure to comply with paragraph (1) —

- (a) if there is produced to the court any document signed or issued by or on behalf of any person containing a statement to the effect that any gold is held by him or on his behalf or in his name, it shall be presumed, until the contrary is proved, that such person is entitled to sell or to procure the sale of the gold in question;
- (b) if it is proved that such person is entitled to sell or to procure the sale of any gold it shall be presumed, until the contrary is proved, that such gold has not been offered for sale to the Minister or to a person authorised by the Minister within the period required by paragraph (1).

Acquisition of foreign currency by the Minister.

7. (1) Any person resident in Swaziland who becomes entitled to sell or to procure the sale of any foreign currency, shall within seven days after becoming so entitled, make or cause to be made, a declaration in writing of such foreign currency to the Minister or to an authorised dealer. (Amended L.N.52/1976.)

(2) Any person resident in Swaziland who becomes entitled to assign or to procure the assignment of any right to receive outside the Rand Monetary Area, in respect of any credit or of any balance at a bank, payment of any amount in a foreign currency shall, within seven days after becoming so entitled, make or cause to be made a declaration in writing of such assignment to the Minister or to an authorised dealer. (Amended L.N.52/1976.)

(3) Any person who has in terms of paragraph (1) or (2) made a declaration in writing to the Minister or to an authorised dealer, shall be deemed to have offered such foreign currency or such right, as the case may be, for sale to the Minister or to such authorised dealer, and the Minister or such authorised dealer, may purchase such foreign currency or such right at a price which, in the case of foreign currency, shall not be less than the market value of such currency on the day of purchase and, in the case of a right, shall be such as the Minister may fix.

(4) Any person from whom the Minister or an authorised dealer purchases foreign currency or a right in terms of this regulation shall do all things necessary for the purpose of transferring such foreign currency or assigning such right to the Minister or to such authorised dealer.

(5) No person who is entitled (whether actually or contingently) to receive a payment in a foreign currency shall, except with permission granted by or on behalf of the Minister and in accordance with such conditions as may be imposed by the Minister or on his behalf, do, or refrain from doing, any act with intent to secure that —

- (a) the receipt by him of the whole or any part of the payment in such currency is delayed;
- (b) the payment ceases, in whole or in part, to be receivable by him or receivable in such currency; or
- (c) the contingency on which the right to receive such payment is dependent (including the declaration of a dividend or profit by a company in which such person has an interest), does not eventuate.

(6) Any foreign currency or any right in respect of which a declaration has been made in terms of paragraph (1) or (2), but which has not been purchased by the Minister or by a person authorised by him to act under this regulation, shall not be sold, transferred or otherwise disposed of without the permission of the Minister and in accordance with such conditions as he may impose.

(7) Paragraphs (3), (4) and (6) shall not impose an obligation upon any person in respect of any foreign currency or any right if he is, in respect of such currency or such right, as the case may be, exempted from this regulation by the Minister:

Provided that the Minister may withdraw any exemption granted in terms of this paragraph.

(8) For the purposes of this regulation any person who has at any time since the commencement of these regulations been in Swaziland shall be deemed, until the contrary is proved, to have been and still to be resident in Swaziland.

(9) Subject to any exemption which may be granted by the Minister, no person shall export from the Rand Monetary Area goods which exceed in value twenty emalangeni or such greater amount as the Minister may determine, unless the relative bill of entry/export in respect of such goods is accompanied by a declaration in such form as may be prescribed by the Minister, duly completed and signed by the consignor or a person duly authorised by him and attested by an authorised dealer:

Provided that —

- (a) if the goods are forwarded through the post, a declaration in such form so completed, signed and attested, shall be furnished to the post-master at the time the parcel containing such goods is handed in at the post office; and
- (b) if goods are exported to countries outside the Rand Monetary Area from stations where there are no customs officers, a copy of the relative declaration is handed to the attesting authorised dealer for submission to the Minister; and

Provided further that the Minister may direct that such declaration shall be completed in respect of any commodity or article, irrespective of its value.

(10) For the purpose of paragraph (9) "value" means —

- (a) for customs purposes, the value as defined in section 72 of the Customs, Excise and Sales Duty Act, No. 21 of 1971; and
- (b) for the purposes of an authorised dealer, the full proceeds of the goods exported.

(11) If in any criminal proceedings against any person for a contravention of paragraph (1) there is produced to the court any document signed or issued by or on behalf of any person containing a statement to the effect that any foreign currency is held by him or in his name or on his behalf, it shall be presumed, until the contrary is proved, that such person is entitled to sell or to procure the sale of the foreign currency in question.

(12) If in criminal proceedings against any person for a contravention of paragraph (2) there is produced to the court any document signed or issued by or on behalf of such person containing a statement to the effect that any amount is standing to such person's credit outside the Rand Monetary Area or that he has any balance at a bank outside the Rand Monetary Area, it shall be presumed, until the contrary is proved, that such person is entitled to assign or to procure the assignment of such a right as is referred to in paragraph (2).

(13) If in any criminal proceedings against any person for a contravention of paragraph (1) or (2), it is proved that such person is entitled to sell or procure the sale of or to assign or to procure the assignment of any foreign currency, it shall be presumed, until the contrary is proved, that a declaration in writing has not been made to the Minister or to an authorised dealer within the period required by paragraph (1) or (2), as the case may be.

Declaration of foreign assets and liabilities.

8. (1) Any person resident in Swaziland who is, or becomes, entitled to sell or to procure the sale of any foreign asset, shall within thirty days after becoming so entitled, make or cause

to be made, a declaration in writing in the form prescribed by the Minister, of such foreign asset to the Minister or to an authorised dealer.

(2) A declaration referred to in paragraph (1) shall state when and how such foreign asset was acquired, where it is held, and whether and to what extent it is held in cover for or in respect of any foreign liability.

(3) Any foreign asset in respect of which a declaration has been made in terms of paragraph (1) shall not be sold, transferred or otherwise disposed of without the written permission of the Minister and in accordance with such conditions as he may impose.

(4) Paragraph (2) shall not impose upon any person an obligation in respect of any foreign asset if he is, in respect of such asset, exempted from this regulation by the Minister:

Provided that the Minister may withdraw any exemption granted in terms of this paragraph.

(5) For the purpose of this regulation any person who has at any time since the date of publication thereof been in Swaziland shall be deemed, until the contrary is proved, to have been, and still to be, resident in Swaziland.

Power to prescribe currencies in respect of certain transactions.

9. (1) The Minister may from time to time by notice in the Gazette or by instructions to authorised dealers, prescribe the currency or currencies or the manner in which payment may or may not be made in connection with imports or exports or other transactions involving payments between persons in Swaziland and persons outside the Rand Monetary Area and no person shall, except with the permission of the Minister or an authorised dealer, and in accordance with such conditions as the Minister or authorised dealer may impose, make or receive payment otherwise than in the currency, or currencies or in the manner so prescribed.

(2) Without prejudice to the generality of the provisions of paragraph (1), any notice and any instructions under such paragraph may relate to any payment in connection with the import or export of any commodity specified in the notice or instructions to or from all countries, to or from all countries except any country specified in the notice or instructions or to or from any country so specified, or in connection with any particular transaction.

(3) No person shall, without permission granted by the minister or a person authorised by the Minister, receive local currency in payment for goods exported from the Rand Monetary Area.

(4) The provisions of regulation 7(9) shall apply *mutatis mutandis* to the export from Swaziland of any commodity to a country in connection with the export of which commodity to such country the Minister has in terms of paragraph (2) hereof prescribed the currency or currencies or the manner in which payment may or may not be made.

Limitation of optional ports of destination.

10. (1) No person may, except with permission granted by the Minister or by an authorised dealer and in accordance with such conditions as he or any authorised dealer may impose, consign any goods to any destination other than that specified in the declaration in regard to foreign exchange proceeds of exports prescribed in terms of regulation 7(9), unless the other destination is in the same monetary area, or give or accept instructions after the despatch of

the goods for the diversion thereof to any other destination unless such other destination is in the same monetary area.

(2) If in any criminal proceedings under this regulation it is proved that goods have been diverted to a country other than that designated as the destination of such goods on the prescribed documents submitted to and accepted by the Swaziland authorities to cover the outward consignment of such goods, then it shall be presumed, until the contrary is proved, that such goods were consigned to and received in such other country and not the country described on such documents.

Restriction on export of capital.

11. (1) No person shall, except with permission granted by the Minister or by an authorised dealer and in accordance with such conditions as the Minister or the authorised dealer may impose —

- (a) export directly or indirectly from Swaziland to countries outside the Rand Monetary Area during any period of twelve months a total quantity of goods which exceeds in value twenty emalangeni or such greater amount as the Minister may determine, if —
 - (i) no payment for such goods has been or is to be received in the Rand Monetary Area from a person outside the Rand Monetary Area;
 - (ii) such goods are exported at a price which is less than the value thereof; or
 - (iii) the period within which payment for such goods is to be made exceeds six months from the date of shipment from Swaziland or such shorter period as an authorised dealer may determine in respect of such goods;
- (b) take out directly or indirectly from Swaziland to countries outside the Rand Monetary Area goods, including personal apparel, household effects, and jewellery which have a value in excess of six hundred emalangeni or of such greater amount as the Minister may determine; or
- (c) enter into any transaction whereby capital or any right to capital is directly or indirectly exported from Swaziland to outside the Rand Monetary Area.

(2) Regulation 4(3), (4), (5) and (6) shall apply *mutatis mutandis* to goods referred to in paragraph (1)(b) hereof.

(3) For the purpose of this regulation "value" for customs purposes means the value as defined in section 72 of the Customs, Excise and Sales Duty Act, No. 21 of 1971.

Assignment to Minister of right to exported goods.

12. (1) If a person has exported goods from Swaziland to outside the Rand Monetary Area and has failed to sell such goods within six months from the date of shipment from Swaziland, or within such shorter period as may have been determined in terms of regulation 11(1)(a)(iii), without having permission in terms of regulation 11(1) to export such goods without sale, or without payment within the period mentioned in regulation 11(1)(a)(iii), such person shall within fourteen days from the date of expiry of such period report in writing to the Minister or to an authorised dealer that such goods have not been sold, and the Minister

may thereupon order such person to assign to the Minister or to a person authorised by the Minister his right to such goods.

(2) The sum payable as consideration for any assignment in terms of this regulation shall be such sum as may be determined by or on behalf of the Minister, but shall not be less than the amount realised by the Minister after deduction of the cost of realisation.

(3) After the date on which this regulation comes into force, no person shall export any goods on conditions which would preclude him from giving effect to an order issued in terms of paragraph (1).

Goods purchased outside the Rand Monetary Area.

13. (1) If any person in Swaziland has purchased goods in any country outside the Rand Monetary Area and has paid for or made a payment on account of such goods, but such goods have not been consigned to Swaziland within four months from the date on which such payment was made, such person shall within fourteen days from the date of expiry of such period report in writing to the Minister or to an authorised dealer that the goods have not been consigned to Swaziland, and the Minister may thereupon order such person to assign to the Minister or to a person authorised by the Minister his right to the said goods.

(2) The sum payable in consideration for any assignment made in accordance with this regulation shall be such as the Minister may fix but shall not be less than the amount realised by the Minister after deduction of the cost of realisation.

(3) After the date on which this regulation comes into force no person shall purchase any goods on conditions which would preclude him from giving effect to an order issued in terms of paragraph (1).

(4) If in criminal proceedings against any person for failure to make a report to the Minister or to an authorised dealer as required by paragraph (1), it is proved that such person was unable, after the expiry of a period of six months from the date upon which any payment referred to in such paragraph was made by him to produce a bill of entry/import in respect of such goods after having been called upon to do so by the Minister or by an authorised dealer, it shall be presumed, until the contrary is proved, that the goods in question were not consigned to Swaziland within four months from such date.

(5) No person in Swaziland who has purchased any means of transport outside the Rand Monetary Area shall, after such means of transport have been consigned and brought to Swaziland, permit such means of transport to leave the Rand Monetary Area for the conveyance of any persons or goods for reward outside the Rand Monetary Area except with the consent of the Minister and subject to such conditions as he may impose.

(6) For the purpose of paragraph (5) "means of transport" includes any ship, aircraft, motor vehicle, tractor or roller.

Restrictions on dealings in securities belonging to non-residents.

14. (1) No person shall, without written permission granted by the Minister or a person authorised by the Minister and in accordance with such conditions as the Minister or such authorised person may impose —

(a) acquire or dispose of in any way any controlled securities;

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- (b) act as nominee for a non-resident or appoint a non-resident as nominee in respect of any dealings in securities;
- (c) make any entry in a security register which involves the transfer of securities into or out of the name of a non-resident;
- (d) change an address of a non-resident in any security register except a change to an address in the same monetary area as that currently recorded in the register;
- (e) enter in a security register or do any act with intent to secure the entry in such register of an address in the Rand Monetary Area if he knows or has reason to believe that the purchaser of the securities is a non-resident or that a non-resident has an interest in the securities; or
- (f) transfer a security owned by a non-resident or in which a non-resident has an interest from a foreign register to a Rand Monetary Area register or section of a Rand Monetary Area register.

(2) Any person who holds, possesses or has in his custody any controlled securities shall submit such securities to an authorised dealer within thirty days from the date of commencement of these regulations or within thirty days from the date on which he becomes the holder of such securities or on which such securities come into his possession or are placed in his custody, whichever is the later date.

(3) The securities submitted in terms of paragraph (2) shall be accompanied by a list giving the following particulars —

- (a) the full name and country of residence of the owner or person interested in the securities, together with a signed declaration by the holder that to the best of his knowledge, the owner or such interested person is actually resident in the country stated;
- (b) the name of the company or body which issued the securities;
- (c) the total number of securities; and
- (d) the full name and residential address of the person in possession of the securities or who has the securities in his custody.

(4) For the purpose of facilitating identification of controlled securities the Minister may direct authorised dealers to affix to the securities so submitted to them their stamp together with such endorsement as he may determine.

(5) For the purpose of this regulation —

- (a) "controlled securities" means —
 - (i) any security which is registered in the name of a non-resident, or of which a non-resident is the owner, or in which a non-resident has an interest; or
 - (ii) any security acquired from a non-resident or acquired outside the Rand Monetary Area by any person, irrespective of the residence of such person;
- (b) "non-resident" means a person resident outside the Rand Monetary Area;
- (c) "nominee" means a person through whose agency all or any of the rights of the owner of securities are exercised.

Prohibition of dealings in bearer securities and bearer options.

15. (1) No person shall pay any dividend or interest coupon issued in respect of any bearer security irrespective of whether such coupon became payable before or becomes payable after the commencement of these regulations.

(2) No person shall issue any bearer option or extend the currency period of any existing bearer option.

(3) No person shall dispose of, acquire or otherwise deal in any bearer security or any bearer option issued after the date of commencement of these regulations.

(4) The owner of any bearer security may with the permission of the Minister and in accordance with such conditions as he may impose, convert such security into a registered security.

(5) Applications for permission to convert any bearer security into any registered security shall be accompanied by a sworn declaration in such form as the Minister may prescribe duly completed by the owner of the security or his authorised agent.

(6) The Minister or a person authorised by the Minister may grant exemption from the provisions of paragraphs (1), (2) and (3).

(7) Paragraph (5) shall apply *mutatis mutandis* in respect of applications for exemption under paragraph (6) relating to bearer securities or to dividend or interest coupons issued in respect of such bearer securities.

(8) This regulation shall apply in respect of all bearer securities and bearer options irrespective of whether such securities or options were or are issued inside or outside Swaziland.

(9) For the purposes of this regulation, "option" means the right to subscribe for or take up the whole or any part of an issue of capital.

Control of capital issues.

16. (1) Except with the consent of the Minister and in accordance with such conditions as he may impose, no person shall during any period of twelve months —

(a) make in Swaziland an issue or issues of capital which amount in the aggregate to more than one hundred thousand emalangeni; or

(b) renew or postpone the date of maturity of securities maturing for repayment in Swaziland which amount in the aggregate to more than one hundred thousand emalangeni.

(2) The Minister may from time to time by notice in the Gazette —

(a) exempt particular classes of issues of capital, either generally, or in respect of particular classes of issues of capital, from the operation of paragraph (1); or

(b) increase, either generally or in respect of particular classes of issues or issues of capital, the aggregate exemption limit of one hundred thousand emalangeni prescribed in paragraph (1);

and may by similar notice withdraw any such aforementioned notice or reduce to not less than one hundred thousand emalangeni any exemption limit prescribed in any such notice, as the case may be.

(3) For the purpose of this regulation —

(a) a person shall be deemed to make an issue of capital who —

- (i) raises capital in Swaziland by the issue, whether within or outside Swaziland, of any securities or who issues any securities whether for cash or otherwise; or
- (ii) receives any money on loan on the terms or in the expectation that the loan will or may be repaid wholly, or partly by the issue of securities or by the transfer of any securities issued after the making of the loan;

(b) the amount of capital issued or to be issued shall be deemed to be the amount to be raised by the issue or the total nominal value of the securities whichever is the greater.

(4) The raising of any loan by any local authority shall be deemed to constitute an issue of capital whether or not securities are issued or transferred in connection with such loan.

(5) Notwithstanding any other law, no local authority shall without the written consent of the Minister raise any loan outside Swaziland.

(6) If in any advertisement, prospectus or other document which offers for subscription any securities there be included any statement intimating or purporting to convey that the Minister has approved or consented to the issue of the securities, such statement shall be included only at the top or commencement of the advertisement, prospectus or other document and shall be made and qualified in the following words —

“The Minister has consented under Exchange Control Regulation 16 to the issue of the securities referred to hereunder, but that consent does not imply that the Minister has investigated or is responsible in any way for the soundness of the proposals involved or for the correctness of any statements made or opinions or estimates given in connection with such proposals.”

Business controlled by persons outside Swaziland.

17. (1) If the control of any business is established outside Swaziland, any transactions with a branch or subsidiary of such business in Swaziland shall be treated as if such branch or subsidiary were a separate person.

(2) The manager or controller of such branch or subsidiary in Swaziland shall assume the same obligations under these regulations as he would have been required to assume if such branch or subsidiary was independent of control from outside Swaziland.

Provision of security.

18. (1) The Minister or a person authorised by him, may order any person to provide security in such form and in such amount as the Minister may determine that such person will comply, either generally or in respect of any particular transaction, with the provisions of any of these regulations specified by the Minister or by a person authorised by the Minister.

(2) If any person who has provided security in terms of this regulation, has failed to comply with the regulations in respect of which the security has been provided, the Minister may direct that such security shall be forfeited and paid into the Consolidated Fund.

(3) The forfeiture of such security shall not prevent any other action against the person concerned for his failure to comply with the provisions of these regulations.

Furnishing of information.

19. (1) The Minister, or any person authorised by him, may order any person to furnish any information at such person's disposal which the Minister or such authorised person deems necessary for the purposes of these regulations, and any person generally or specifically appointed by the Minister for such purposes, may enter the residential or business premises of a person so ordered and may inspect books or documents belonging to, or under the control of, such person.

(2) If any person makes any statement in any information furnished in compliance with such an order which is in conflict with any other statement previously made by him in giving information required in connection with the subject matter of such order, he shall be deemed to have made an incorrect statement in terms of regulation 23 and may, on an indictment, summons or charge alleging that he made the two conflicting statements, be convicted of making an incorrect statement in contravention of such regulation upon proof of the two statements in question and without proof as to which of such statements was incorrect, unless he proves that when he made each statement he believed it to be true.

Exemption from stamp duty.

20. No stamp duty shall be chargeable on any document made for the sole purpose of meeting the requirements of these regulations.

Forms.

21. The Minister may prescribe such forms for the purposes of these regulations as he may think expedient.

Advice, information, permits or forms relating to exchange control or currency matters.

22. (1) Any person who desires any information or advice on exchange or currency matters or who requires approval or permission in respect thereof may apply to any authorised dealer in Swaziland therefor.

(2) Every authorised dealer shall have in its possession such forms as are prescribed by the Minister and shall make them available to any person applying therefor.

Penalties.

23. Every person who contravenes or fails to comply with the provisions of any of these regulations, or contravenes or fails to comply with the terms of any notice or order or direction issued or any permission or exemption granted under these regulations, or who obstructs any person in the execution of any power or function assigned to him by or under these regulations, or who makes any incorrect statement in any declaration made or return rendered for the purposes of these regulations (unless he proves that he did not know, and could not by the exercise of a reasonable degree of care have ascertained, that the statement was incorrect) or refuses or neglects to furnish any information which he is required to furnish under these

regulations, shall be guilty of an offence and liable upon conviction to a fine not exceeding ten thousand emalangeni or imprisonment not exceeding five years or to both:

Provided that if any person is convicted of an offence against any of these regulations in relation to any security, foreign currency, gold, bank-note, cheque, postal order, bill, note, debt, payment or goods, the fine which may be imposed on him shall not exceed ten thousand emalangeni, or a sum equal to the value of the security, foreign currency, gold, bank-note, postal order, bill, note, debt, payment or goods, whichever shall be greater.