

ACTS

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ACTS SUPPLEMENT

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Act 5

Foreign Exchange Act 2004

THE FOREIGN EXCHANGE ACT, 2004.

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THE FOREIGN EXCHANGE ACT, 2004.

An Act to amend and consolidate the law relating to foreign exchange in Uganda; to provide for the exchange of foreign currencies in Uganda and the making of international payments and transfers of foreign exchange; and for other related and incidental matters.

DATE OF ASSENT: 13th November, 2004.

Date of commencement: 13th November, 2004.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY.

1. Short title.

This Act may be cited as the Foreign Exchange Act, 2004.

2. Commencement.

This Act shall come into force on the date of assent.

3. Interpretation.

In this Act, unless the context otherwise requires—

“bank” has the meaning assigned to it in the Financial Institutions Act, 2004;

“business” means either one or both of the following—

(a) a series of two or more transactions;

(b) a transaction or transactions in excess of an amount prescribed by regulations;

“currency” means the currency of Uganda or foreign currency;

“currency of Uganda” means—

(a) banknotes and coins issued by the Bank of Uganda; and

(b) any right to receive such banknotes or coins in respect of any balance at a financial institution located within or outside Uganda;

“currency point” has the meaning assigned to it in the Schedule to this Act;

“designated resident enterprise” means a person holding a licence issued by the Bank of Uganda to engage in the activities specified in section 5;

“financial institution” has the meaning assigned to it in the Financial Institutions Act, 2004;

“foreign currency” means a currency other than the legal tender of Uganda;

“foreign exchange” includes—

(a) banknotes, coins or electronic units of payment in any currency other than the currency of Uganda which are or have been legal tender outside Uganda;

(b) financial instruments denominated in foreign currency; and

(c) any right to receive such banknotes or coins in respect of any balance at a financial institution located within or outside Uganda;

“foreign exchange bureau” means a person holding a licence issued by the Bank of Uganda to engage in the activities specified in subsection (2) of section 5;

“foreign exchange business” means the business of buying, selling, borrowing or lending of foreign currency;

“Governor” means the Governor of the Bank of Uganda;

“Minister” means the Minister responsible for finance;

“non-resident” means any person other than a resident;

“payment” means a transfer of currency or traveller’s cheques made for the purpose of—

(a) discharging a liability;

(b) making a gift or donation; or

(c) creating a balance at a financial institution that can be drawn upon;

“person” includes any company or association or body of persons corporate or unincorporated;

“prescribed authority” means a court, a police officer or other public officer or a security agency of the State or any person authorised by any such agency; and includes any person on whom any functions are conferred by or under this Act;

“resident” means—

(a) an individual who is ordinarily resident in Uganda for one year or more;

(b) the Government of Uganda and any of its diplomatic representations located outside Uganda;

(c) a company, firm or enterprise whose principal place of business or centre of control and management is located in Uganda;

(d) a branch located within Uganda of a company, firm or other enterprise whose principal place of business is located outside Uganda; and

(e) a corporation, firm or enterprise incorporated or formed under the laws of Uganda;

except, that “resident” does not include a foreign diplomatic representation or an accredited official of such a representation located within Uganda, an office of an organisation established by international treaty located within Uganda, or a branch located outside Uganda of a company, firm, or enterprise whose principal place of business is located in Uganda;

“security” means a share, stock, bond or note, other than a cheque or traveller’s cheque or a debenture denominated in the currency of Uganda or in foreign currency;

“traveller’s cheque” means an instrument issued by a bank or similar institution which is intended to enable the person to whom it is issued to obtain bank notes or coins in the currency of Uganda or in foreign currency from another person on the credit of the issuer.

PART II—AUTHORITY OF BANK OF UGANDA AND LICENSING.

4. Authority of Bank of Uganda.

(1) The Bank of Uganda shall be the regulatory authority for the purposes of giving effect to this Act.

(2) The Bank of Uganda, may require any person resident or conducting business in Uganda, whether or not that person is carrying on business licensed under this Act, to furnish details of any or all of his or her foreign exchange transactions or provide returns in a format prescribed by the Bank of Uganda, giving details of that person’s foreign exchange transactions.

(3) The Bank of Uganda may, to such extent and subject to such conditions as it may think proper, delegate to any person or class of persons the performance of any of the powers conferred upon the Bank of Uganda under this Act, other than the powers set out in section 10.

(4) Subject to the provisions of this Act, the Governor shall be responsible for the implementation of this Act and may do all such things as may be necessary for the proper carrying out of the objectives of this Act.

(5) In the exercise of the powers conferred on the Governor by subsection (4), the Governor may issue guidelines, manuals, and circulars and may request for information for ensuring the execution of the provisions of this Act and the regulations made under this Act .

5. Licensing.

(1) Except as permitted by any other law, no person shall engage in the business of dealing in foreign exchange without a licence issued under this Act.

(2) The Bank of Uganda may, for a fee of fifty currency points, issue a licence under this Act to any person to engage in the business of dealing in foreign exchange.

(3) The minimum paid up share capital to carry out the business of dealing in foreign exchange shall be one thousand currency points.

(4) The minimum paid up share capital for a person to carry out the business of money transfers shall be two thousand five hundred currency points.

(5) The Bank of Uganda may issue or renew a licence issued under subsection (2) to

a person to engage in the business of buying and selling bank notes, coins and traveller's cheques in foreign currency or such activities as may be specified by the Bank of Uganda.

(6) A licence issued or renewed under this section shall expire one year after the date of issue unless the licence has been renewed, extended, or revoked by the Bank of Uganda.

(7) In considering an application for the renewal of a licence, the Bank of Uganda may, subject to such conditions or restrictions as the Bank of Uganda considers appropriate, extend the period of application of the licence holder's existing licence for a period not more than three months so as to permit the licence holder to take such action as the Bank of Uganda considers necessary to enable the licence holder to comply with this Act and the regulations, permissions, instructions and directions issued under this Act.

(8) When issuing or renewing a licence under this section, the Bank of Uganda may impose upon the licence such conditions or restrictions as the Bank of Uganda considers appropriate.

(9) Only a body incorporated under the Companies Act or under any other Act shall qualify to be issued a licence under this section.

6. Suspension and revocation of licence.

(1) The Bank of Uganda may revoke or suspend a licence, if it has reasonable cause to believe that the licence holder has infringed the provisions of this Act or any regulations made under this Act.

(2) Subject to subsection (1), the Bank of Uganda may at any time suspend, vary any condition or restriction or impose further conditions or restrictions upon a licence that has been issued, extended, or renewed under section 5.

(3) Subject to subsection (1), the Bank of Uganda may revoke a licence that has been issued, extended or renewed under section 5 if it finds that the licence holder—

- (a) has not commenced the operations permitted under the licence within three months after the date of issue of the licence;
- (b) has, in the course of its application for the issue, extension, or renewal of a licence under section 5 failed to disclose to the Bank of Uganda material information of which the licence holder was aware, or should, with the exercise of such diligence as could reasonably have been expected in the circumstances, have been aware;
- (c) has provided information material to the application which is found to be untrue or false;
- (d) has contravened any provision of this Act or any regulation, permission, instruction or direction issued under this Act;
- (e) has, since the issue of the licence, ceased to qualify for the licence;
- (f) is guilty of malpractice or irregularity in the management of its affairs; or

(g) is placed under liquidation or receivership or is adjudged bankrupt.

(4) Where the Bank of Uganda has made a finding under subsection (3), the Bank of Uganda may, instead of revoking the licence, suspend the licence for a specific period or impose conditions or restrictions on the licence.

(5) Except where the circumstances render it impossible to do so, before the Bank of Uganda suspends or revokes a licence or imposes further conditions or restrictions in respect of a licence under this section, the Bank of Uganda shall give the holder of the licence fourteen days to show cause why the proposed action should not be taken.

7. Appeals.

(1) Any person aggrieved by a decision of the Bank of Uganda under sections 5 or 6 may appeal to the High Court against the decision of the Bank of Uganda within thirty days after being notified of the decision, and the High Court may confirm or set aside the decision.

(2) On an appeal under subsection (1), the question for determination by the High Court shall be whether, for reasons stated by the appellant, the decision appealed against was unlawful or not justified by the evidence on which it was based.

(3) Where the High Court sets aside a decision of the Bank of Uganda under subsection (1), the High Court shall direct the Bank of Uganda to reconsider its decision.

8. Restrictions on importation and exportation of banknotes, coins, travellers cheques and securities.

The Bank of Uganda may, by regulations, impose restrictions on the importation into or exportation from Uganda of banknotes, coins, traveller's cheques and securities denominated in the currency of Uganda or in foreign currency.

PART III—RESTRICTIONS ON CARRYING ON FOREIGN EXCHANGE BUSINESS.

9. Foreign exchange business and international payments.

(1) Except with the prior permission of the Bank of Uganda, no person shall engage in foreign exchange business.

(2) All payments in foreign currency, to or from Uganda, between residents and non residents, or between non residents, shall be made through a bank.

(3) Every transfer of foreign exchange to or from Uganda shall be through a person licensed to carry out the business of money transfers.

(4) Where the Bank of Uganda has reason to believe that an offence is about to be or has been committed, the Bank of Uganda may require a bank to obtain the permission of the Bank of Uganda before executing any payment referred to in subsection (2), and the permission shall be granted solely on the basis of a determination by the Bank of Uganda that the payment is consistent with the laws of Uganda.

(5) The Bank of Uganda may, by statutory instrument, make regulations prescribing

information to be provided to the Bank of Uganda by a person licensed to carry out foreign exchange business or foreign exchange transfers, residents and non-residents in connection with the conclusion of any transaction involving foreign currency, the maintenance of bank accounts in Uganda or outside Uganda, and the settling of any payment by a resident or non-resident.

(6) The Bank of Uganda, in consultation with the Minister, may by statutory instrument prescribe the conditions for carrying out the business of foreign exchange transfers.

10. Imposition of temporary restrictions.

(1) Where the Governor is satisfied that Uganda has experienced a severe deterioration in its balance of payments that makes necessary the temporary imposition of exchange controls beyond those provided for in section 8, the Governor may, in consultation with the Minister, make regulations restricting—

- (a) in Uganda, payments between residents and non-residents; or between non-residents;
- (b) payments to or from Uganda;
- (c) in Uganda, the acquisition, holding, and use in Uganda of foreign currency or traveller's cheques in foreign currency by persons;
- (d) the acquisition, holding and use in Uganda of foreign currency or traveller's cheques in foreign currency by residents; and
- (e) the rate at which the purchase and sale of foreign exchange may take place in Uganda.

(2) Subject to subsection (1), regulations made under this section shall remain in force for a period not exceeding three months; except that, with the written consent of the Minister, the Bank of Uganda may extend the period of operation of the regulations for a further period not exceeding three months, and, thereafter, for such further period as may be authorised by Parliament by resolution.

(3) If the period of operation of any regulations extended under subsection (2) expires when Parliament is not in session, the Bank of Uganda may extend the period of operation until the twenty-eighth day following the commencement of the next session of Parliament.

(4) Within fourteen days after any regulations are made under subsection (1) the Governor shall cause to be published in the *Gazette* the reasons justifying any restrictions imposed under subsection (1).

PART IV—ENFORCEMENT OF COMPLIANCE.

11. Provision of information.

(1) The Bank of Uganda may, by writing, give to any resident or to any person in Uganda, directions requiring him or her, within such time and in such manner as may be specified in the directions, to furnish to the Bank of Uganda, or to any person designated

in the directions as a person authorised to require it, any information in his or her possession or control which the Bank of Uganda or the person authorised, as the case may be, may require for the purpose of securing compliance with or detecting evasion of the provisions of this Act.

(2) A person required by any directions under subsection (1) to furnish information which is stored in a computer or any other electronic media shall also produce such books, accounts or other documents in his or her possession or control as may be required for that purpose by the Bank of Uganda or by the person authorised to require the information.

(3) Where a person is convicted for failing to give information or produce any document when required to do so under this section, the court may make an order requiring the offender, within such period as may be specified in the order, to comply with the requirement to give the information or to produce the document.

(4) Any information or document obtained under this section is admissible in evidence in a prosecution for an offence under this Act of any person from whom it was obtained or of any body corporate for which that person at the time of the commission of the offence was or was purporting to act as director, general manager, secretary or other similar officer of the body corporate.

12. Search and seizure.

(1) If court is satisfied by information given under oath by a person authorised by the Bank of Uganda to act for the purpose of this section, either—

(a) that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel, or aircraft so specified; or

(b) that any document which ought to have been produced under section 11 and has not been produced is to be found at any premises or in any vehicle, vessel or aircraft referred to in paragraph (a),

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

(2) A person authorised by a warrant issued under subsection (1) to search any premises or any vehicle, vessel or aircraft may—

(a) search any person who is found in, or who the authorised person has reasonable ground to believe has recently left or is about to enter, those premises or that vehicle, vessel or aircraft; and

(b) seize any property found on that person or on the premises or in the vehicle, vessel or aircraft, which he or she has reasonable ground for believing to

be evidence of, or to have been used in connection with, the commission of an offence under this Act or any documents which he or she has reasonable grounds to believe ought to have been produced under section.

(3) Where, by virtue of this section, a person has any power to enter any premises, vehicle, vessel, or aircraft, that person may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Where there is reasonable ground for suspecting that a person has committed an offence under this Act, a police officer may seize any property in that person's possession or under his or her control which appears to the police officer to be evidence of, or to have been used in connection with, the commission of the offence.

13. Notice.

(1) Where any property has been seized under section 12, the person effecting the seizure shall, within one month after the seizure, give notice in writing of the seizure and the reasons for the seizure to the owner.

(2) The giving of notice shall not be required under subsection (1) where—

(a) the property was seized in the presence of the owner;

(b) the owner of the property cannot be identified; or

(c) a person is, within one month after the seizure, charged with the offence by reason of which the property has been seized.

(3) Where any property has come into the possession of a prescribed authority under section 12, and a period of one month has elapsed from—

(a) the date of seizure, or

(b) the date of notice if the notice has been given under subsection (1),

the property shall, by order of court, be forfeited to the State unless, within that period, the owner has claimed the property by giving notice in writing to the Bank of Uganda.

(4) Where the Bank of Uganda has received a notice of claim under subsection (3), and a period of two months has elapsed from the date of receipt of the notice, the property shall be released to the owner unless, within that period, the Bank of Uganda has either—

(a) by notice in writing to the owner, required the owner to institute proceedings in a court for the recovery of the property; or

(b) instituted proceedings in a court for the forfeiture of the property.

(5) Where the Bank of Uganda has given an owner notice to institute proceedings under subsection (4) and a period of two months has elapsed from the date of receipt of the notice by the owner, the property shall by order of court, be forfeited to the State unless, within that period, the owner has instituted the proceedings.

14. Recovery or forfeiture.

(1) Where proceedings for the recovery or forfeiture of property have been instituted in a court under section 13, the court may order the property to be forfeited to the State if the court finds that the property was used in connection with the commission of an offence under this Act.

(2) Where any property has come into the possession of a prescribed authority, whether in consequence of the seizure of the property under this section or otherwise, the liability of the property to forfeiture shall not be affected by the fact that the owner of the property was in no way concerned with the act or omission which rendered the property liable to forfeiture.

(3) Where any property is forfeited under this section—

(a) the forfeiture shall be deemed to have taken effect at the time when the liability to forfeiture arose; and

(b) the forfeiture shall, subject to any appeal in any proceedings which resulted in the forfeiture, be final and no application or proceedings for restitution or in detinue by any person, shall lie.

15. Retention of seized property.

(1) Notwithstanding any other provision of this Act, where property has come into the possession of a prescribed authority, whether in consequence of the seizure of the property under this Act or otherwise, and the prescribed authority is satisfied that there is reasonable ground for suspecting the property to be evidence of the commission of an offence under this Act, the prescribed authority may retain the property for a period of twelve months from the date it came into its possession and, if any person is, within that period, prosecuted for an offence under this Act in which the property is or can properly be adduced in evidence, the property shall be retained until the prosecution has been determined.

(2) For the purposes of subsection (1), any person to whom any powers of the Bank of Uganda under this Act are delegated or on whom any functions are conferred by or under this Act, including a police officer, shall be deemed to be a prescribed authority for the purposes of the definition of that expression in section 3 of this Act.

(3) For purposes of subsection (1) proceedings shall be deemed not to have been finally determined so long as there is pending an appeal in the matter; and an appeal in that matter shall be deemed to be pending during the ordinary time within which an appeal may be lodged, and if an appeal is duly lodged, it shall be deemed to be pending until it is decided or withdrawn.

(4) The powers conferred by this section in relation to any property shall be in addition to, and not in derogation from, any powers otherwise exercisable in relation to that property.

PART V—MISCELLANEOUS.

16. General prohibitions.

No person in Uganda shall, with intent to evade any provision of this Act—

- (a) destroy, mutilate, deface or remove any document;
- (b) make any declaration which is false in any material particular;
- (c) in furnishing any information for any of the purposes of this Act, make any statement which he or she knows to be false in a material particular, or recklessly make any statement which is false in a material particular.
- (d) counterfeit or in any way falsify any document or knowingly use a document which is counterfeit or false; or
- (e) obstruct any person in the exercise of any powers conferred upon him or her by or under this Act.

17. Offences.

(1) Any person who—

- (a) engages in the business of dealing in foreign exchange without a licence issued under section 5;
- (b) contravenes any restriction imposed under section 5;
- (c) contravenes any restriction imposed under section 8;
- (d) fails to provide information required under section 11;
- (e) contravenes section 16,

commits an offence and is liable, on conviction, to a fine not exceeding two hundred currency points or imprisonment not exceeding two years or both such fine and imprisonment.

(2) Where a person is convicted of an offence under subsection (1) and the offence is concerned with any property, the court shall order the property to be forfeited to the State unless it sees good reason not to do so.

(3) Where a body corporate commits an offence under this Act or under regulations made under this Act, any director, general manager, secretary or other similar officer of the body corporate or other person purporting to act in any such capacity, shall also be taken to have committed the offence if any act or omission of that person is proved to have given rise to the contravention which constituted the offence.

(4) A person shall not be taken to have committed an offence under subsection (3) if he or she proves that the contravention was committed without his or her consent or connivance and that he or she exercised all due diligence to prevent the commission of the offence, having regard to all circumstances.

18. Regulations.

(1) The Bank of Uganda may by statutory instrument, make regulations generally for the purpose of carrying out the provisions of this Act.

(2) Regulations made under this section may prescribe, for any contravention of the regulations—

(a) a fine not exceeding two hundred currency points or imprisonment not exceeding two years or both;

(b) an additional fine not exceeding five currency points in respect of each day on which the contravention continues;

(c) the requirement that the court convicting the offender shall forfeit to the State any property in connection with which the contravention was committed.

(3) Statutory instruments, made under this law shall be laid before Parliament by the respective Minister within a period of thirty days.

(4) Where a statutory instrument is not laid before Parliament in accordance with subsection (3), the statutory instrument shall automatically lapse.

19. Minister's power to amend Schedule.

The Minister may, with the approval of the Cabinet, by statutory instrument, amend the Schedule to this Act.

20. Repeal of Exchange Control Act Cap. 171.

(1) The Exchange Control Act, is repealed.

(2) Notwithstanding the repeal effected by subsection (1), the Exchange Control (Forex Bureau) Order, 1991 shall continue in force until revoked or amended by regulations made under section 18.

21. Precedence of this Act.

This Act shall take precedence over all other existing legislation relating to foreign exchange and any contradiction in any other law is modified to the extent of the contradiction.

SCHEDULE.

CURRENCY POINT.

SECTIONS 3, 19.

A currency point is equivalent to twenty thousand shillings.

Cross References

Companies Act, Cap. 110.

Financial Institutions Act, Act No. 2 of 2004.