



Tuvalu

EXCHANGE CONTROL REGULATIONS

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Tuvalu

EXCHANGE CONTROL REGULATIONS

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Tuvalu

EXCHANGE CONTROL REGULATIONS

MADE UNDER SECTION 4 OF THE EXCHANGE CONTROL ACT¹

Commencement [1st April 1983]

PART I - PRELIMINARY

1 Citation

These regulations may be cited as the Exchange Control Regulations.

2 Commencement

- (1) These regulations shall come into operation upon such date as the Minister may, by notice, appoint.
- (2) The Minister may, pursuant to sub-regulation (1), from time to time appoint different dates for the coming into operation of different parts of different provisions of these regulations.

3 Interpretation

- (1) In these regulations —

“**authorized dealer**” in relation to any particular regulation, means a person appointed pursuant to regulation 4 for the purposes of that particular regulation;

“**the Bank**” means the National Bank of Tuvalu established by the National Bank of Tuvalu Act;²

“**the current Australian dollar value**” of any foreign currency means the amount that the foreign currency would have been worth when exchanged for Australian dollars at the mid-rate prevailing at the Bank at the time when any act is done or situation arises when the current Australian dollar value is relevant for the purposes of these regulations.

- (2) Expressions which are defined in section 3 of the Exchange Control Act³ have, when used in these regulations, the same respective meanings as assigned by that section.
- (3) 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 but not in relation to any matter in which the personal representative is not concerned solely in that capacity.
- (4) Notwithstanding any rule to the contrary and the definition in sub-regulation (1), 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 Tuvalu, and the person shall be treated for the purposes of those Regulations as being so resident or, as the case may be, not so resident:

Provided that the Minister shall only make such a direction if such direction is necessary and reasonable for the purposes of ensuring compliance with these regulations.

- (5) 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, in the opinion of the person giving the permission, as to give any person entitled to the benefit of it an adequate opportunity of getting to know it, unless in his opinion publication is not necessary for that purpose.

4 Authorized dealer

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.

5 Directions

The Minister may give —

- (a) general directions in writing indicating the considerations to which authorized dealers or the Bank should have particular regard in exercising any powers under these regulations;
- (b) specific directions in writing to an authorized dealer or the Bank with respect to the carrying out of those functions,

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

6 Exemptions

The Minister may, by notice, exempt from the operation of any regulation any class of persons, acts or transactions, either unconditionally or subject to such conditions as are specified in the notice of exemption.⁴

7 Power to obtain information

- (1) The Minister may, by notice in writing addressed 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 in his custody or under his control which relate to any such act, transaction, matter or thing.
- (2) A person who without reasonable excuse fails or refuses to furnish the information or produce any book document or other record required under subregulation (1) is guilty of an offence and liable on conviction to a fine of \$500.
- (3) A person who, with intent to evade any of the provisions of these regulations, destroys, mutilates, alters, hides, or removes any book, document, or other record is guilty of an offence and liable on conviction to imprisonment for 6 months and a fine of \$500.
- (4) A person may not refuse to furnish information or to produce a book, document or record, when required to do so under this regulation on the ground that it might tend to incriminate him or to make him liable to a penalty, but the information, book, document, or record is not admissible in any proceedings against him other than proceedings under these regulations:

Provided that this subregulation shall not render inadmissible any information, book, document, or record which came to the knowledge of or into the possession of the person seeking to adduce such evidence other than as a result of the operation of this regulation.

PART II - BULLION

8 Application of this Part

- (1) In this regulation, “**wrought gold**” means gold and gold alloys which have apparently been worked or manufactured for professional or trade purposes and includes waste products arising from the working or manufacturing of gold alloys for professional or trade purposes.
- (2) This Part does not apply to wrought gold unless it is worked or manufactured in contravention of these regulations.
- (3) This Part shall not apply to Tuvalu gold commemorative or to items of personal adornment of a value not exceeding \$1,000.

9 Transfer of bullion out of Tuvalu

- (1) Subject to subregulation (2), a person who takes or sends bullion out of Tuvalu is guilty of an offence and liable on conviction to imprisonment for 12 months and to a fine of \$2,000.
- (2) The Minister or the Bank may give permission to a person to take or send bullion out of Tuvalu and, if he does so, subregulation (1) shall not apply in relation to a thing done or transaction entered into in accordance with the permission.

10 Limitation on purchase of bullion etc.

- (1) Subject to subregulation (2), a person, other than the Bank or an authorized dealer —
 - (a) who buys or otherwise obtains bullion from any person; or
 - (b) being resident in Tuvalu who outside Tuvalu buys or otherwise obtains bullion from any person, is guilty of an offence and liable on conviction to a fine of \$2,000 or to imprisonment for 12 months.
- (2) A person may buy bullion for the purpose of its being worked or used by him in connection with his profession or trade, if the bullion is purchased from —
 - (a) the Bank;
 - (b) an authorized dealer;
 - (c) a person resident outside Tuvalu, with the consent of the Minister.

PART III - MONETARY CONTROL

11 Dealings in foreign currency

- (1) Subject to subregulation (3), a person, other than the Bank or an authorized dealer, who, except with the permission of the Minister, in Tuvalu —
 - (a) buys or borrows any foreign currency from a person other than the Bank or an authorized dealer;
 - (b) sells or lends any foreign currency to a person other than the Bank or an authorized dealer; or
 - (c) exchanges any foreign currency with a person other than the Bank or an authorised dealer,

is guilty of an offence and liable on conviction to a fine of \$500.

- (2) 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) fails or refuses to comply with those conditions,

he is guilty of an offence and liable on conviction to imprisonment for 12 months or a fine of \$2,000.

- (3) The provisions of subregulation (1) shall not apply to any transaction where the current Australian dollar value of the foreign currency involved in that transaction, or if that transaction is part of a series of transactions the series of transactions, does not exceed \$200.

12 Transfer of foreign currency out of Tuvalu

- (1) Subject to subregulations (2), (3) and (4), and regulation 15(2) a person, other than the Bank, who in any one year takes or lends, or attempts to take or lend, any foreign currency where the current Australian dollar value of that foreign currency exceeds \$200 out of Tuvalu is guilty of an offence and liable on conviction to imprisonment for 12 months or a fine of \$2,000.
- (2) Where, pursuant to regulation 11, foreign currency is made available to any person, subregulation (1) does not apply in relation to the taking or lending, or the attempted taking or lending, out of Tuvalu of that currency but without prejudice to the operation of regulation 11(2).
- (3) Subregulation (1) does not apply in relation to a person who takes or lends or attempts to take or lend, out of Tuvalu an amount of foreign currency which is not in excess of the amount of foreign currency brought or lent by him into Tuvalu:

Provided that —

- (i) the onus of proving what currency any person brought or lent into Tuvalu shall be on that person; and
 - (ii) prior to the taking, lending or attempting to take or lend such foreign currency out of Tuvalu such person reported his intention to do so in writing to the Bank.
- (4) The Minister or the Bank may give to any person permission to take or send foreign currency out of Tuvalu, and if permission is so given then, in relation to foreign currency taken or lent out of Tuvalu in accordance with the permission, subregulation (1) does not apply.

13 Transfer of Tuvalu currency out of Tuvalu

- (1) Subject to subregulation (2) and (3) and to subregulation 15(2), a person, other than the Bank, who takes or lends or attempts to take or send, any Tuvalu currency out of Tuvalu is guilty of an offence and liable on conviction to a fine of \$500.
- (2) The Minister or the Bank may give any person permission to take or lend Tuvalu currency out of Tuvalu, and if permission is so given then, in relation to the Tuvalu currency taken or lent out of Tuvalu in accordance with the permission, subregulation (1) does not apply.
- (3) This regulation shall not apply to any person taking Tuvaluan currency up to a maximum of \$200 where that person has prior to such taking reported his intention to do so, in writing, to the Bank.

14 Holding of foreign currency notes in Tuvalu

- (1) For the purpose of this section “foreign currency” excludes all currency except Fiji dollars, New Zealand dollars, pounds sterling and United States dollars.
- (2) Subject to subregulation (3) and (4) any person other than the Bank or any authorized dealer who without the permission of the Minister or the Bank holds or keeps any note or notes of foreign currency within Tuvalu is guilty of an offence and shall be liable to a fine of \$100 or two times the amount of foreign currency notes held, whichever is the greater.
- (3) Subregulation (1) shall not apply to any note of foreign currency where the total holding of that currency in notes by that person does not exceed the current Australian dollar value of \$100.
- (4) Subregulation (1) shall not apply to any note obtained by a person from the Bank or from an authorised dealer in anticipation of that person going out of Tuvalu where such note has not been held by that person for a period in excess of 1 month.

15 Visitors

- (1) A “**Visitor**” for the purpose of this regulation means a person who is not resident in Tuvalu and who visits Tuvalu for a period not in excess of one month.
- (2) Notwithstanding the provisions of these regulations a visitor shall be entitled to hold or keep any note of foreign currency and to take out of Tuvalu when he leaves any sum in Tuvalu currency or in foreign currency which does not exceed the sum in Tuvalu currency and foreign currency respectively that the visitor brought into Tuvalu on his arrival.

PART IV - CONTROL OF CERTAIN PAYMENTS, ETC.**16 Exception**

Nothing in regulation 17, 18 or 19 prevents the making of any payment associated with an act permitted or authorized under regulation 11, 12, 13 or 14.

17 Control of certain payments in Tuvalu

- (1) Subject to subregulations (2) and (3) a person who, except with the permission of the Minister or the Bank, in Tuvalu —
 - (a) makes any payment to or for the credit of a non-resident of Tuvalu;
 - (b) makes any payment to or for the credit of a resident of Tuvalu by order or on behalf of a non-resident of Tuvalu; or
 - (c) places any sum to the credit of a non-resident of Tuvalu,is guilty of an offence and liable on conviction to a fine of \$500.
- (2) Where a non-resident of Tuvalu 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.
- (3) This regulation shall not apply to any payment or series of connected payments where the payment, or the sum of the series of payments does not exceed \$200 or if the payment or series of payments is in foreign currency the current Australian dollar value of such payment or such series of payments does not exceed \$200.

18 Control of certain transactions

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

- (a) the receipt by any person of a payment made outside Tuvalu; or
- (b) the acquisition by any person of property which is outside Tuvalu; or
- (c) 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 Tuvalu; or
- (d) 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 Tuvalu,

is guilty of an offence and is liable on conviction to imprisonment for 12 months and to a fine of \$1,000.

PART V - SECURITIES AND FOREIGN SECURITIES CONTROL

19 Taking, etc. securities out of Tuvalu

A person who, without the permission of the Minister or the Bank —

- (a) takes or sends, or attempts to take or send, any securities registered in Tuvalu out of Tuvalu;
- (b) transmits or transfers any securities from a register in Tuvalu to a register outside Tuvalu; or
- (c) makes an entry in a register that recognises or gives effect to the transmission or transfer of securities from a register outside Tuvalu to a register in Tuvalu,

is guilty of an offence and is liable on conviction to imprisonment for 12 months and to a fine of \$1,000.

PART VI - MISCELLANEOUS

20 Blocked Accounts

- (1) In this regulation, “**blocked account**” means an account conducted with the Bank, or with an authorised dealer, declared by the Minister to be a blocked account but does not include an account which the Minister declares to be no longer 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 Tuvalu, the Minister may direct that the sum be paid or

credited to a blocked account, and in that event any 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 vested instead in the purchase for the person of any such investments 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, subparagraph (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 Minister or 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 on conviction to a fine of \$1,000.

21 Travellers

- (1) In this regulation —

“**officer**” means an officer within the meaning of the Customs Act⁵ and includes a person authorized by the Minister to act as an officer for the purposes of this regulation;

“**leaving traveller**” means a person who is about to leave Tuvalu; “**arriving traveller**” means a person who is arriving at Tuvalu.
- (2) A leaving traveller shall, if requested to do so by an officer —
 - (a) declare whether or not he has any bullion, foreign currency, Tuvalu currency, or securities with him;
 - (b) declare whether or not he has with him anything prohibited by these regulations from being exported from Tuvalu; and
 - (c) produce any such bullion, foreign currency, Tuvalu currency, securities, or thing prohibited by these regulations from being exported from Tuvalu which he has with him.

- (3) An arriving traveller shall declare whether he has any Tuvalu currency or foreign currency with him.
- (4) The declaration required in subregulations (2) or (3) may be made by the completion of a form provided for that purpose.

PART VII - LEGAL PROVISIONS AND OFFENCES

22 Legal proceedings

- (1) The application of any of the provisions of Part III in relation to any sum is not affected by the fact —
 - (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 enactment relating to the making of rules of court, rules of court —
 - (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 court by virtue of 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 the extent of the payment, be a good discharge to the person making the payment; and
 - (c) so regulating the process of execution which may arise in respect of any sum required to be paid by any judgement, order or award as to secure that, unless it is shown 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 is necessary for that purpose, varying the form of any writ of execution or other similar document or the duties of any officer to whom any such writ or other similar document is directed, may be made, as respects any court of Tuvalu, by the Chief Justice.
- (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 or the Bank 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 Tuvalu, a claim for a sum not payable without the permission of the Minister shall, notwithstanding that the permission has not been given and not been revoked be accepted as proof as if it has been given and not been revoked; but without prejudice to the application of any of the provisions of Part III 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 enactment relating to bankruptcy in force in Tuvalu, 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.

23 Contracts etc

- (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) shall 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 reason.
- (3) Notwithstanding anything in the Laws of Tuvalu neither the provisions of these regulations nor any conditions, whether express or to be implied having regard to these 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 promissory note.

24 False statements

A person who makes —

- (a) to an officer within the meaning of regulation 21;
- (b) to an officer of the Bank; or
- (c) to an authorised dealer,

any statement, whether oral or in writing, under 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 to be 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 on conviction to a fine of \$500.

25 Evasion of regulations

A person who makes or enters into any arrangements, whether oral or in writing, which is intended by that person to 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 on conviction to imprisonment for one year and a fine of \$1,000.

26 Restrictions on disclosure

- (1) Any person who discloses information obtained by virtue of the provisions of these regulations otherwise —
 - (a) than in the discharge of his functions;
 - (b) than for the purpose of any criminal proceedings; or
 - (c) than for a purpose approved by the Minister,is guilty of an offence and liable on conviction to imprisonment for 6 months or a fine of \$500.
- (2) Nothing in subregulation (1) applies to information obtained by a member of the public in the course of the transaction in which he is involved.

27 Forfeiture, etc.

- (1) When a person is convicted of an offence against these regulations, the court may, in addition to any other punishment, if it thinks fit, order the forfeiture of any bullion, foreign currency or foreign exchange in respect of which the offence has been committed, whether the person who committed the offence or another person is the owner of the bullion, foreign currency or foreign exchange concerned.
- (2) Subject to this regulation, where a person has acquired, directly or indirectly, any property by reason of a contravention of any of the provisions of these regulations, including non-compliance with the terms or conditions of any permission under these regulations, a 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.

28 Officers in corporate bodies

Where any offence is committed by any person being a body corporate and it is proved that the offence is committed with the consent or knowledge of any officer of that company and active participation then that officer is guilty of the offence.

ENDNOTES

¹ LN 3/1983

² Cap. 30.30

³ Cap. 38.15

⁴ by GN 9/87 it was provided that all dealings or transactions by or relating to the Tuvalu Trust Fund are exempt from the operation of the Exchange Control Regulations.

⁵ Cap. 26.04