



Supplement No. 2
to Gazette No. 47 of 23rd October, 1987

Exchange Control Order, 1987

Order No. 11 of 1987

Published by the Authority of His Majesty the King
on the advice of the Military Council

Price: 15 Lisente

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ORDER

To consolidate and amend the law relating to the control of dealings in gold, goods, currency and securities, to provide for matters directly or indirectly relating or having a bearing thereon, and for other matters incidental thereto.

Short title and Commencement

1. This Order may be cited as the Exchange Control Order, 1987 and is deemed to have come into operation on 20th January, 1986.

Interpretation

2. In this Order, unless the context otherwise requires, "currency" means notes and coins of a class which are legal tender in any country;

"gold" means gold in any form whether manufactured or not manufactured;

"goods" includes any immovable goods or security;

"Governor" means the Governor of the Central Bank appointed under section 11 of the Central Bank of Lesotho Act, 1978;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"money" includes foreign currency or any bill of exchange or other negotiable instrument;

"securities" 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;

"this Act" includes any regulations made under section 3.

A. 13 of Central Bank 1978

Foreign Exchange

Power to make regulations

3. (1) The Minister may make regulations in regard to any matter directly or indirectly relating to or affecting or having a bearing upon currency, banking or exchanges and prohibition or restricting dealings in or possession of gold, goods, currency or securities and for purposes incidental thereto or connected therewith.

(2) Without prejudice to the generality of subsection (1), the regulations may,

- (a) require any person to make statements or produce documents for the purposes of the regulations;
- (b) provide for the entry of any premises and the search of any premises or persons and the seizure of any document or thing for the purpose of giving effect to any of the regulations;
- (c) empower such authorities or persons as may be specified in the regulations to make orders, rules or to give directives for giving effect to any of the regulations;

- (d) prescribe the form of any document required for the purpose of giving effect to the regulations or rules; and
 - (e) generally provide for all matters which the Minister considers necessary or expedient for giving effect to the objects of this Order.
- (3) Different regulations, orders, rules or directives may be made under this section for, or in relation to,
- (a) different classes of persons, gold, goods, currency or securities;
 - (b) different countries; or
 - (c) generally in relation to anything in respect of which provision is made under this section.

4. The Minister may, in terms of section 48 of the Central Bank Act, 1978, and subject to this Order, give directions of a general or specific nature relating to exchange control, to the Central Bank and the Central Bank shall be bound to comply with any such directions.

Minister's power of direction A. 13 of 1978

5. (1) Regulations made under section 3 may provide for acts or omissions which constitute criminal offences relating to or arising from dealings or transactions in or possession of gold, goods, currency or securities and prescribe penalties therefor.

Offences and penalties; etc.

(2) Regulations contemplated in subsection (1) may provide for,

- (a) the blocking, attachment and obtaining of interdicts for a period not exceeding 12 months by the Minister and the forfeiture and disposal by the Minister of any money or goods referred to or defined in the regulations or determined in terms of the regulations or any money or goods into which such money or goods have been transformed by any person and,
 - (i) which are suspected by the Minister on reasonable grounds to be involved in an offence or suspected offence against any regulation referred to in this section, or in respect of which such offence has been committed or so suspected to have been committed;
 - (ii) which are in the possession of the offender, suspected offender or any other person or which have been obtained by any such person or are due to any such person and which would not have been in such possession or so obtained or due if such offence or suspected offence had not been committed; or
 - (iii) by which the offender, suspected offender or any other person has been benefited or enriched as a result of such offence or suspected offence:

Provided that, in the case of any person other than offender or suspected offender, no such money or goods shall be blocked, attached, interdicted, forfeited and disposed of if that person proves to the satisfaction of the court that such money or goods were acquired by such person *bona fide* for reasonable consideration as a result of a transaction in the ordinary course of business and not in contravention of the regulations; and

- (b) in general, any matter which the Minister deems necessary for the fulfilment of the objectives and purposes referred to in paragraph (a), including the blocking, attachment, interdicting, forfeiture and disposal of money or goods belonging to the offender, suspected offender or any other person in order to recover an amount equal to the value of the money or goods recoverable in terms of the regulations referred to in paragraph (a), but which can for any reason not be so recovered.
- (3) Any regulation contemplated in subsection (1) may authorize any person who is vested with any power or who shall fulfil any duty in terms of the regulation, to delegate such power or to assign such duty, as the case may be, to any other person.
- (4) Any regulation contemplated in subsection (1) shall provide —
- (a) that any person who feels aggrieved by any decision made or action taken by any person in exercise of his powers under a regulation referred to in subsection (2) which has the effect of blocking, attaching or interdicting and money or goods, may lodge an application in High Court for the review of such decision or action or for any other relief, and the court shall not set aside such decision or action or grant such other relief unless it is satisfied —
- (i) that the person who made such decision or took such action did not act in accordance with the relevant provisions of the regulation;
- (ii) that such person did not have reasonable grounds to make such decision or to take such action;
- (iii) that such grounds for the making of such decision or the taking of such action no longer exist;
- (b) that the Minister shall cause a notice to be published in the Gazette of any decision to forfeit and dispose of any money or goods blocked, attached or interdicted in terms of the regulations referred to in subsection (2), and that a notice of such decision shall be sent simultaneously with publication thereof in the gazette by registered mail to any person who is, in the opinion of the Minister, affected by such decision or, if no

address of such person is available, that such notice shall be so sent to the last known address of such person; and

- (c) that any person who feels aggrieved by any decision to forfeit and dispose of such money or goods may, within a period prescribed by the regulations, which shall not be less than 90 days after the date of the notice published in the gazette and referred to in paragraph (b), institute legal proceedings in the High Court for the setting aside of such decision, and the court shall not set aside such decision, unless it is satisfied —
 - (i) that the person who made such decision did not act in accordance with relevant provisions of the regulation; or
 - (ii) that such person did not have grounds to make such decision; or
 - (iii) that the grounds for making of such decision no longer exist.

(5) Any regulations contemplated in subsection (1) may be made with retrospective effect, and if so made, such regulations shall also apply to any matter, dealings or transactions directly or indirectly relating to or affecting or having a bearing upon currency, banking or exchanges and prohibiting or restricting dealings in or possession of gold, goods, currency or securities and for purposes incidental thereto and connected therewith, which were commenced prior to the promulgation of such regulations and also to such matter, dealings or transactions which were commenced and finalized prior to the promulgation thereof.

(6) Subsection (5) shall have effect notwithstanding the provisions of the Interpretation Act 1977, the Human Rights Act, 1983 or any other enactment.

A. 19 of 1977
A. 24 of 1983

(7) Where an offence is committed by a body corporate, every director and every officer of that body corporate concerned in the management of the body corporate and any person who is directly or indirectly connected with any transaction affecting or having a bearing upon the gold, goods, currency and securities relating to the offence shall be liable to be convicted of that offence, unless he proves to the satisfaction of the court that,

- (a) the offence was committed without his knowledge or consent; or
- (b) he took all reasonable steps to prevent the commission of that offence.

6. (1) Subject to subsection (2), if a person has, in the opinion of the Governor, contravened any provision of this Order or failed to comply with any such provision with which it was his duty to comply; and Admission of guilt

Section 38 of Interpretation

- (a) agrees to abide by the decision of the Governor; and
- (b) deposits with the Governor such sum as the Governor may require of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question or makes such arrangements or complies with such conditions with regard to securing the payment of such sum as the Governor may require,

the Governor may, after such inquiry as he deems necessary determine the matter summarily and may, without legal proceedings, order the forfeiture by way of penalty of the whole or any part of the amount so deposited or secured.

(2) Subsection (1) shall apply only where the sum involved in the contravention or failure to comply with any provision of this Order does not exceed M10.000.

(3) Anything done for the purposes of subsection (1) by any agent generally or specially authorised thereto by any person, shall be deemed to have been duly done by that person in terms of that subsection.

(4) The imposition of a penalty under subsection (1) shall not be regarded as a conviction in respect of a criminal offence, but no prosecution for the relevant offence shall thereafter be competent.

Recovery of debts

7. Where a person who is required to pay a fine or a penalty under section 6 fails to do so, the Governor may file with the clerk or registrar of any court of competent jurisdiction a statement certified by him as correct and setting forth the amount so due or payable by that person, and such statement shall, thereupon, have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Governor for a liquid debt of the amount specified in the statement.

Payment and disposal of fines and penalties

8. Any fine or penalty recovered under section 6 shall be paid into the Central Bank and the proceeds of sale of anything forfeited thereunder shall also be paid into the Central Bank.

Repeals and Savings
A. 2 of 1975

9. (1) The Exchange Control Act, 1975 is repealed.

(2) Notwithstanding subsection (1), any order, directions or other acts lawfully made or done or purported to have been made or done under the Act repealed by this Order and any regulations made thereunder, and in force immediately before commencement of this Order shall be deemed to have been or done under the corresponding provision of this Order and shall continue to have effect accordingly.

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