

CHAPTER 22:05

EXCHANGE CONTROL ACT

Acts 62/1964, 8/1967, 15/1970, 43/1975, 42/1977 (s. 3), 22/2001 (s. 4), 14/2002 (s.29) 16/2004 (s. 10), 6/2005 (s 29), 3/2009; R.G.N 1135/1975; S.I. 14/2004.

AN ACT to confer powers and impose duties and restrictions in relation to gold, currency, securities, exchange transactions, payments and debts, and the import, export, transfer and settlement of property, and for purposes connected with the matters aforesaid.

[Date of commencement: 1st June, 1965.]

1 Short title

This Act may be cited as the Exchange Control Act [*Chapter 22:05*].

2 Regulatory powers of the President

(1) Notwithstanding anything to the contrary contained in any enactment, the President may make such regulations relating directly or indirectly to—

- (a) gold, currency and securities and transactions relating thereto; and
- (b) exchange transactions; and (c) the control of—
 - (i) imports into and exports from Zimbabwe; and
 - (ii) the transfer or settlement of property; and
 - (iii) payments; and
 - (iv) transactions in relation to debts;

as he deems fit.

(2) Regulations made under subsection (1) may provide for—

- (a) the prohibition or restriction of dealings in or possession of any gold, currency or securities;
- (b) the prohibition or restriction of the importation into and exportation from Zimbabwe of any property;
- (c) the acquisition by any person or assignment to any person or vesting in any person of any property, other than land, or any right thereto and for the determination of compensation in respect thereof;
- (d) the prohibition or restriction of any dealing in or in relation to any property with persons resident outside Zimbabwe;
- (e) requiring any person to make statements or produce documents for the purposes of such regulations;
- (f) entering on any premises and the search of any premises or person for the purpose of giving effect to any such regulation;
- (g) empowering such authorities, persons or classes of persons as may be specified in the regulations—
 - (i) to make orders, rules or directions for any of the purposes for which regulations may be made under this Act;
 - (ii) to confer the power to make such orders, rules or directions on any other authority, person or class of persons;
- (h) the registration or licensing of persons who carry on any business of dealing in currency, and the fees payable in respect of the application for, and issue and renewal of, registration certificates or licences.

[Paragraph inserted by section 29 of Act 14 of 2002]

(3) Different regulations, orders, rules or directions may be made under this section for, or in relation to, different persons or classes of persons, countries, and generally, in relation to anything with respect to which provision is made in subsection (1).

(4) The power to make regulations, orders, rules or directions under this section shall extend to the making of regulations, orders, rules or directions having extra-territorial operation.

(5) Regulations, orders, rules or directions under this section that provide penalties for contraventions thereof may impose upon any person charged with a criminal offence the burden of proving particular facts.

[Subsection inserted by Act 3 of 2009]

3 Evidence and presumptions

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

(2) *Prima facie* evidence of a document referred to in subsection (1) may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed in regulations made in terms of section *two*.

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

(4) Any person who is required by or in terms of this Act to furnish to any person any information or to produce any books, accounts, documents or any other records shall be presumed to be in possession or control of, or to have access to, such information or books, accounts, documents or other records unless the contrary is proved.

4 Financial provisions

Any expenses incurred under or by virtue of this Act by the State or any department thereof shall be paid out of moneys appropriated for the purpose by Act of Parliament.

5 Offences and penalties

(1) Subject to subsection (2), a person who, either within or outside Zimbabwe— (a) contravenes or fails to comply with—

- (i) any provision of this Act other than section *eight*; or
- (ii) the terms or conditions of any permit, authority, permission, direction, notice, order or other instrument made or issued under or by virtue of this Act;

or

(b) for the purposes of this Act, makes any statement or produces any document which is false in any material particular; shall be guilty of an offence.

(2) It shall be a good defence to any proceedings against a person in respect of an offence in terms of paragraph (b) of subsection (1) to prove that at the time when the statement was made or the document was produced, as the case may be, he had no knowledge of the falsity thereof.

(3) Subject to this section, a person convicted of an offence in terms of subsection (1) shall be liable to such fine or to imprisonment for such period as the court deems fit or to both such fine and such imprisonment.

(4) Subject to subsections (4a), (4b), (4c) and (4d), where a person is convicted of an offence in terms of—

- (a) paragraph (a) of subsection (1) which involves gold, currency, security, goods or any other property whatsoever; or
- (b) paragraph (b) of subsection (1) and the statement was made or the document was produced for the purpose of or in connection with the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of the provisions of this Act; the court shall, whether or not it imposes any sentence of imprisonment, impose a fine of not less than the value of the gold, currency, security, goods or other property concerned unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

[Subsection amended by Act 3 of 2009]

(4a) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the exportation, externalisation or expatriation from Zimbabwe of any foreign currency, gold or precious stone that originated from Zimbabwe or is the proceeds of any trade, business or other gainful occupation or activity carried on by him or her in Zimbabwe, the court shall—

(a) impose—

- A. a fine not exceeding than the value of the currency, gold or precious stone concerned; and
- B. a sentence of imprisonment not exceeding ten years, the whole of which shall be suspended on condition that the currency, gold or precious stone concerned is repatriated to Zimbabwe within a period specified by the court;

and

- (b) in addition to the penalty specified in paragraph (a), impose a fine of three times the value of the currency, gold or precious stone concerned, unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

[Subsection inserted by Act 3 of 2009]

(4b) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the failure or undue delay by a Zimbabwean resident who has the right to receive foreign currency outside Zimbabwe that was acquired by him or her by virtue of a trade, business or other gainful occupation or activity carried on by him or her in Zimbabwe—

- (a) to secure the receipt by him or her in Zimbabwe of the whole or part of the foreign currency receivable by him or her in Zimbabwe; and

- (b) to cause the foreign currency to be offered for sale to an authorized dealer or paid into a foreign currency account as soon as is reasonably possible in the circumstances; the court shall— (c) impose—
- (i) a fine not exceeding the value of the foreign currency concerned; and
 - (ii) a sentence of imprisonment not exceeding ten years, the whole of which shall be suspended on condition that the currency concerned is received in Zimbabwe offered for sale to an authorized dealer or paid into a foreign currency account within a period specified by the court;

and

- (d) in addition to the penalty specified in paragraph (c), impose a fine of three times the value of the currency concerned, unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

[Subsection inserted by Act 3 of 2009]

(4c) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the unlawful exportation of any of the following items—

- (a) any Zimbabwean currency, foreign currency or any postal order or money order; or (b) any—

- (i) certificate of title to any security; or
- (ii) coupon; or
- (iii) bill or exchange or promissory note; or
- (iv) insurance policy; including any such document which has been cancelled and any document certifying the destruction, loss or cancellation of any such document or of any foreign currency document; or

- (c) any gold, silver or platinum or any article manufactured from or containing gold, silver or platinum; or

- (d) any precious or semiprecious stone or pearl whose value exceeds such amount as is prescribed in an order made by the Reserve Bank, or any article mounted or set with a precious or semiprecious stone or pearl whose value exceeds such amount as is so prescribed; the court shall—

- (e) impose—

- (i) a fine not exceeding the value of the item concerned; and
- (ii) a sentence of imprisonment not exceeding ten years, the whole of which shall be suspended on condition that the item concerned be repatriated to Zimbabwe within a period specified by the court;

and

- (f) in addition to the penalty specified in paragraph (e), impose a fine of three times the value of the item concerned, unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

For the purposes of this subsection, “unlawful” means contrary to the conditions, or outside the scope of any exceptions, prescribed in regulations made in terms of section 2(1).

(4d) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the sale within Zimbabwe by a specified registered operator of any commodity in foreign currency without being licensed to so by the Reserve Bank, the court shall impose a fine of up to level fourteen or five times the value of the commodity concerned, whichever is the higher.

For the purposes of this subsection, “specified registered operator” means a corporate entity that is the operator of—

- (a) a retail shop; or
- (b) a petroleum undertaking; or
- (c) any other class of undertaking specified by order of the Reserve Bank.

[Subsection inserted by Act 3 of 2009]

(5) Where an individual is convicted of an offence in terms of—

- (a) subsection (1) which involves a failure— (i) to furnish to any person any information; or

- (ii) to produce any books, accounts or documents or any other records;

or

(b) subsection (1) and he has previously been convicted of an offence, whether similar in nature or not, in terms of subsection (1); the court shall, in addition to any fine which it might be required by subsection (4) to impose or which it otherwise deems fit, impose a sentence of imprisonment for such period as it deems fit.

(6) Where a person—

- (a) is convicted of an offence in terms of—

- (i) paragraph (a) of subsection (1) which involves the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of this Act; or

- (ii) paragraph (b) of subsection (1) and the statement was made or the document was produced for the purposes of or in connection with the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of this Act;

and

(b) does not satisfy the court that—

- (i) foreign currency in an amount of not less than the value of such property which has been exported from, or acquired outside, Zimbabwe has been received in Zimbabwe; or
- (ii) where the offence involves the exportation from Zimbabwe of such property, such property has been returned to Zimbabwe;

the court may, before passing sentence, adjourn the proceedings for such period not exceeding three months as the court deems fit in order to give the convicted person an opportunity of so satisfying the court on the resumption of the proceedings.

(7) Where a person convicted of an offence referred to in paragraph (a) of subsection (4) does not satisfy the court as to one or other of the requirements mentioned in subparagraphs (i) and (ii) of paragraph (b) of subsection (6), the court shall—

- (a) in all cases have regard to that fact as a factor in aggravation of sentence; and
- (b) if the convicted person is an individual and the value of the property concerned exceeds the amount of a fine of level eight, impose a sentence of imprisonment for such period as the court deems fit in addition to any fine required by subsection (4).

[Subsection as amended by section 4 of Act 22 of 2001]

(8) For the purposes of subsection (4), the fact that a person is not able to pay the minimum fine required by that subsection shall not be regarded as a special reason why such fine should not be imposed.

(9) Where any gold, currency, security, goods or other property whatsoever has been exported from, or acquired outside, Zimbabwe in accordance with—

- (a) regulations made under this Act and the person concerned contravenes any requirement contained in such regulations; or
- (b) a permit, authority, permission, direction, notice, order or other instrument made or issued under or by virtue of this Act and the person concerned fails to comply with any term or condition thereof;

he shall be deemed, for the purposes of this section, to have exported the property from Zimbabwe or to have acquired the property outside Zimbabwe, as the case may be, in contravention of this Act.

(10) Notwithstanding anything contained in this Act, section 41 of the Reserve Bank of Zimbabwe Act [Chapter 22:15] or any other enactment, but subject to subsection (11), a fine payable in terms of subsection (3), (4), (4a), (4b), (4c) and (4d) shall only be payable in United States dollars, euros, British pounds, South African rand or Botswana pula, or any combination of the foregoing as the court may allow:

Provided that where the court denominates the fine in any one of the currencies specified in this subsection, the person required to pay the fine has the option of paying it in any one of the other currencies specified in this subsection at the international cross rate of exchange of the first-mentioned currency for second-mentioned currency prevailing on the day the fine is imposed by the court.

[Subsection inserted by Act 3 of 2009]

(11) A fine payable in terms of subsection (4a)(b), (4b)(d) or (4c)(f) shall, at the option of the person required to pay the fine, be payable in Zimbabwean or foreign currency

[Subsection inserted by Act 3 of 2009]

6 Special jurisdiction of magistrates

Notwithstanding anything contained in the Magistrates Court Act [Chapter 7:10] or in any other enactment—

- (a) a court of a regional magistrate shall have special jurisdiction to impose a fine not exceeding level twelve or imprisonment for a period not exceeding seven years or both such fine and such imprisonment;
- (a1) a court of a provincial or senior magistrate shall have special jurisdiction on summary trial or on remittal by the Attorney-General, to impose a fine not exceeding level twelve or imprisonment for a period not exceeding five years or both such fine and such imprisonment;
- (b) a court of a magistrate other than a regional, provincial or senior magistrate shall have special jurisdiction, on summary trial or on remittal by the Attorney-General of the case for trial or sentence, to impose a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and such imprisonment; in respect of an offence in terms of this Act:

Provided that if the court is required by subsection (4) of section *five* to impose a fine which exceeds the amount specified in paragraph (a), (a1) or (b), the court may impose such fine.

[Section as amended by section 4 of Act 22 of 2001 and by section 29 of Act 6 of 2005]

7 Forfeitures

(1) Where a person is convicted of an offence in terms of section *five* which was committed by means of or in respect of any gold, currency, security, goods or other property whatsoever, the court shall, unless the convicted person satisfies it that there are special reasons in the particular case, which shall be recorded by the court, why forfeiture to the State should not take place, declare such property or the rights of the convicted person thereto to be forfeited to the State:

Provided that such declaration shall not affect any rights which any person, other than the convicted person, may have to the property in question if it is proved that he was— (a) unaware that the offence was being or would be committed; or (b) unable to prevent the commission of the offence.

(2) Subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, where a declaration is made in terms of subsection (1).

8 Secrecy

(1) Except for the purposes of this Act or the compilation of statistics or when ordered to do so by a court, no person exercising any functions under this Act shall either within or outside Zimbabwe disclose any information relating to any person, firm or business, acquired in the exercise of such functions.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

9. Use of information for private gain

(1) No person exercising any functions under this Act shall, for his personal gain, make use of any information which has come to his knowledge in the exercise of those functions.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to

(a) a fine not exceeding level ten or double the amount of the gain, whichever is the greater; or

(b) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.

[Section inserted by section 4 of Act 22 of 2001]

10 Recovered Foreign Currency Fund and reward for information

(1) In this section “Reserve Bank” means the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

(2) There is hereby established for the purposes of subsection (6) a fund, called the Recovered Foreign Currency Fund, which shall be administered by the Board of the Reserve Bank.

(3) The moneys of the Recovered Foreign Currency Fund shall consist of

(a) all convertible foreign currency that is declared to be forfeited to the State in terms of section *seven*; and

(b) convertible foreign currency purchased by the Reserve Bank for the purposes of the Recovered Foreign Currency Fund.

(4) The financial year of the Recovered Foreign Currency Fund shall be a period of twelve months ending on the 31st December.

(5) Section 30 of the Audit and Exchequer Act [*Chapter 22:03*] shall apply to the Recovered Foreign Currency Fund.

(6) The Board of the Reserve Bank shall award to any person a monetary reward for information provided or any measure taken

(a) which results in detection and prosecution of an offence in terms of section *five* and the consequent recovery of convertible foreign currency that is declared to be forfeited to the State in terms of section *seven*; or

(b) which results in the recovery of convertible foreign currency, notwithstanding that no prosecution of an offence in terms of section *five* is instituted.

(7) Any amount to be awarded in terms of subsection (6) shall be at the rate of ten *per centum* of the convertible foreign currency that is

(a) declared to be forfeited in terms of paragraph (a) of section *seven*; or

(b) recovered in terms of paragraph (b) of section *seven*; as the case may be.

(8) At the end of the financial year of the Recovered Foreign Currency Fund, the balance of the total amount of convertible foreign currency remaining in the Fund after the payment of the amounts awarded during that financial year in terms of subsection (6) shall form part of the Consolidated Revenue Fund.

[Section inserted by section 9 of Act 16 of 2004]