

Malawi

## Exchange Control Act Chapter 45:01

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# Malawi

## Exchange Control Act Chapter 45:01

Assented to on 17 April 1984

Commenced on 1 November 1984

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

### An Act to provide for exchange control and for matters incidental thereto, and to repeal the Exchange Control Act.

#### 1. Short title

This Act may be cited as the Exchange Control Act.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**bullion**” means gold and includes any metal or coins declared under subsection (2) to be bullion for the purposes of this Act;

“**currency**” includes coins, currency notes, drafts, travelers’ cheques, letters of credit, bills of exchange and promissory notes;

“**foreign currency**” means any currency that is not, or is payable or expressed otherwise than in, Malawi currency;

“**foreign exchange**” means foreign currency and foreign securities;

“**foreign securities**” includes—

- (a) any securities the principal of or interest from which is repayable or payable in any country other than Malawi or in a foreign currency;
- (b) any securities in respect of which the funds necessary for the repayment of the principal or the payment of the interest are provided from any country other than Malawi;
- (c) any securities that are registered outside Malawi;
- (d) any security, debt or right which may be prescribed under [section 3](#) for the purposes of this definition;

“**gold**” means gold coin or gold bullion;

“**Malawi currency**” means any currency that is, or is payable or expressed in currency that is, legal tender in Malawi;

“**the Regulations**” means regulations made under [section 3](#);

“**securities**” includes stocks, shares, bonds, debentures, debenture stock, unsecured notes transferable or negotiable deposits, treasury bills, units or sub-units of a unit trust and policies of life or endowment assurance, and also includes deposit receipts in respect of the deposit of any such securities and documents of title to any such securities.

- (2) The Minister may, by Order published in the *Gazette*, declare any metal or coins to be bullion for the purposes of the definition of that word in subsection (1).

### 3. Regulations

- (1) The Minister may make regulations for the purpose of the control of foreign exchange, bullion and Malawi currency.
- (2) In particular and without limiting the generality of sub-section (1), the Regulations may relate to—
  - (a) the powers, rights, duties and responsibilities of authorized dealers in bullion or foreign exchange and the rates at which they may enter into transactions in foreign exchange or bullion;
  - (b) the buying, selling, borrowing, lending or exchange of foreign currency or bullion;
  - (c) any dealing or transaction having the effect of a purchase, sale, borrowing, loan, or exchange of foreign currency or bullion;
  - (d) the taking of or sending out of Malawi, Malawi Currency, foreign currency or bullion;
  - (e) transactions in Malawi Currency with or on behalf of persons resident outside Malawi;
  - (f) a requirement that any person who has power to sell, or to procure the sale of, any foreign currency or bullion, shall sell or procure the sale of the currency or bullion in accordance with the Regulations;
  - (g) the taking, sending, transmission or transfer out of Malawi of securities prescribed in the Regulations, and other dealings with or transactions in securities so prescribed;
  - (h) the imposition by the Minister of restrictions and conditions on authorized dealers in bullion or foreign exchange;
  - (i) the imposition of any prohibition, restriction, or requirement on the import or export of moveable property;
  - (j) the appointment of persons to perform any prescribed functions for the purposes of the Regulations.
- (3) The Regulations may—
  - (a) regulate or prohibit the carrying on of any dealings or transactions or the doing of any act;
  - (b) constitute offences and prescribe penalties therefor, in the case of an individual, not exceeding a fine of K100,000 and imprisonment for five years, and in the case of a body corporate a fine without limit;
  - (c) provide for the prosecution and punishment of the officers of bodies corporate convicted of an offence against the Regulations;
  - (d) empower a court to order the forfeiture of Malawi Currency, foreign currency, securities, bullion or goods in respect of which an offence has been committed against the Regulations;
  - (e) empower a court to order the sale to, or the vesting in, the Administrator General, of Malawi currency, foreign currency, securities, bullion or property, retained, obtained or dealt with in contravention of the Regulations.
- (4) The Regulations may create offences with respect to acts done, or dealings or transactions carried out, in or outside Malawi or partly in and partly outside Malawi.
- (5) The power under this section to make the Regulations may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to all of those cases subject to specified exceptions, or in relation to any specified case or class of case; and

- (b) so as to make, as respects the cases in relation to which it is exercised,—
  - (i) the same provision for all those cases, or different provisions as respects the same case or class of case for different purposes; or
  - (ii) any such provision either unconditionally or subject to any specified condition.

#### **4. Evidence and presumption**

- (1) Any document purporting to be an authority, permission, direction, notice or other instrument made or issued by or on behalf of any person in pursuance of any provision of this Act or the Regulations, and purporting to be signed by or on behalf of any such person, shall be received in evidence and shall, until the contrary is proved, be deemed to be such an instrument so made or issued and signed.
- (2) Any person charged with any act or omission which is an offence under this Act or the Regulations if done or omitted to be done without an exemption, permission or other authorization, shall be presumed to have done or to have omitted to do such act without such exemption, permission or other authorization, as the case may be, unless it is proved that he was in possession of such exemption, permission or other authorization, as the case may be, when he performed or omitted to perform the act in question.

#### **5. Financial provision**

Any expense incurred under or by virtue of this Act or the Regulations by the Government or any department thereof shall be paid out of moneys provided for the purpose by Parliament.

#### **6. Application to the Government**

This Act and the Regulations bind the Government and apply to transactions by a Ministry or a department or other person acting on behalf of the Government, and the Minister shall not, by virtue of any contract made by them or on their behalf in relation to any bullion, currency or securities, be under any obligation to grant any permission or exemption under the Regulations.