



BERMUDA

EXCHANGE CONTROL REGULATIONS 1973

SR&O 21 / 1973

[made under section 2 of the Exchange Control Act 1972 and brought into operation on 1 May 1973]

TABLE OF CONTENTS

PART I
INTRODUCTORY

- 1 Citation
- 2 Interpretation
- 3 Meaning of resident
- 4 Manner in which discretion to be exercised

PART II
GOLD AND FOREIGN CURRENCY

- 5 Dealings in gold and foreign currency
- 6 Surrender of gold and foreign currency
- 7 Travellers' cheques, etc.

PART III
PAYMENTS

- 8 Payments in Bermuda
- 9 Restrictions on transactions involving payment
- 10 Payments outside Bermuda
- 11 Compensation deals

PART IV
SECURITIES

- 12 Issue of securities
- 13 Transfer of securities registered in Bermuda or in Bermuda
- 13A Transfer of beneficial ownership in permit companies

EXCHANGE CONTROL REGULATIONS 1973

- 13B Duty to update beneficial ownership information
- 14 Transfer of coupons
- 15 Transfer of coupons
- 16 Issue of bearer certificates and coupons
- 17 Substitution of securities and certificates outside Bermuda
- 18 Payment of capital moneys outside Bermuda
- 19 Duties of persons keeping registers
- 20 Additional provisions as to nominee holdings
- 21 Provision as to deposit of certain securities
- 22 Special provisions as to dealing in certain securities
- 23 Validation of certain transfers
- 24 Application of Part IV to secondary securities
- 25 Interpretation of Part IV
- 25A Company engaging corporate service provider *[revoked]*

PART V IMPORT AND EXPORT

- 26 Restrictions on import
- 27 General restrictions on export
- 28 Payments for exports

PART VI MISCELLANEOUS

- 29 Duty to collect certain debts
- 30 Duty not to delay sale or importation of goods
- 31 Transfer of annuities, policies, etc.
- 32 Settlements
- 33 Foreign companies
- 34 Bermudian controlled companies
- 35 Foreign controlled companies
- 36 Interpretation

PART VII SUPPLEMENTAL

- 37 Exemptions
- 38 Blocked accounts
- 39 Contracts, legal proceedings, etc.
- 40 Bankers and others to comply with directions
- 41 Other powers
- 42 Evidence of permission, authority, etc.
- 42A Filing information when dealing in securities where permission, consent, etc. is received
- 43 Branches
- 44 Persons leaving the Bermuda exchange control area
- 45 Acts of two or more persons
- 46 Regulations to apply to persons who are not British subjects
- 46A Request for information

EXCHANGE CONTROL REGULATIONS 1973

PART VIII
ENFORCEMENT AND TRANSITIONAL

- 47 Power to obtain information
- 47A Supplementary directions in relation to exempted and permit companies
- 47B Supplementary directions in relation to exempted company employees
- 48 Mutilating documents, supplying false information, etc.
- 49 Persons leaving or arriving in Bermuda
- 49A Power to impose civil penalties
- 49B Procedure for imposing civil penalties
- 49C Appeals: penalties
- 50 Contravention of Regulations an offence: penalties
- 51 Offences by bodies corporate
- 52 Commencement and transitional *[omitted]*

FIRST SCHEDULE
BERMUDA EXCHANGE CONTROL AREA

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE
REVOCATIONS

FIFTH SCHEDULE
LEGAL PROCEEDINGS, ETC.

PART I
INTRODUCTORY

Citation

- 1 These Regulations may be cited as the Exchange Control Regulations 1973 *[commencement omitted]*.

Interpretation

- 2 In these Regulations, unless the context otherwise requires,—
 - “authorized” in relation to an authorized dealer or authorized depository means authorized as a dealer or depository, as the case may be, by the Minister by notice in the Gazette;
 - “beneficial owner” means any individual who ultimately owns 10% or more of the shares, voting rights or interests in the company through direct or indirect ownership thereof;
 - “Bermuda exchange control area” means the territories specified in the First Schedule;

EXCHANGE CONTROL REGULATIONS 1973

“Bermudian status” means Bermudian status for the purposes of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*];

“Controller” means the Controller of Foreign Exchange;

“coupon” means a coupon representing dividends or interest on a security;

“exempted company” has the meaning given in section 2(1) of the Companies Act 1981 [*title 17 item 5*];

“individual” means a natural person;

“official exchange rate” means the official exchange rate as fixed under Regulation 6(4);

“permit company” means a company holding a permit which either—

- (a) is valid within section 133(2) of the Companies Act 1981 [*title 17 item 5*];
or
- (b) has been issued under section 134 of that Act;

“resident” and “non-resident” shall be construed in accordance with Regulation 3;

“secondary security” has the meaning ascribed to it by Regulation 24.

[Regulation 2 definitions "beneficial owner" and "individual" inserted by BR 73 / 2018 reg. 2 effective 25 July 2018]

Meaning of resident

3 (1) Subject to paragraphs (2) to (10) for the purposes of these Regulations any person—

- (a) ordinarily resident in Bermuda or, in the case of a natural person, the spouse or dependant of such person; or
- (b) employed in Bermuda or, in the case of a natural person, the spouse or dependant of such person; or
- (c) who has a place of business in Bermuda,

shall be deemed to be resident in Bermuda.

(2) Subject to anything to the contrary in this regulation, an exempted company shall be deemed not to be resident in Bermuda.

(2B) Subject to anything to the contrary in this regulation, every employee of an exempted company who does not possess Bermudian status shall be deemed not to be resident in Bermuda.

(2C) If eighty per cent or more of the total issued share capital of an exempted company is beneficially owned by Bermudians (as defined in section 113 of the Companies Act 1981 [*title 17 item 5*]), the company shall be deemed to be resident in Bermuda, paragraph (2) notwithstanding.

EXCHANGE CONTROL REGULATIONS 1973

(2D) If eighty per cent or more of the total issued share capital of an exempted company is beneficially owned by Bermudians (as defined in section 113 of the Companies Act 1981 [*title 17 item 5*]), every employee of the company working for the company in Bermuda shall be deemed to be resident in Bermuda, anything in paragraph (2B) notwithstanding.

(2E) Where an exempted company is licensed under section 129A of the Companies Act 1981 [*title 17 item 5*] to carry on a business or activity in Bermuda, then the Controller may direct—

- (a) that the company shall, as respects the company's carrying on of that business or activity in Bermuda, be treated as if it were resident in Bermuda, paragraph (2) notwithstanding;
- (b) that any employee of the company engaging in that business or activity for the company in Bermuda shall, as respects his engagement in that business or activity in Bermuda, be treated as if he were resident in Bermuda, anything in paragraph (2B) notwithstanding;

and, upon such direction being given, these Regulations shall have effect accordingly in relation to the company or that employee, as the case may be.

(3) Subject to paragraph (3A), a permit company shall not be deemed to be resident in Bermuda.

(3A) Where a permit company engages in or carries on a trade or business in Bermuda in circumstances such that, if the company were an exempted company, it would require to be licensed under section 129A of the Companies Act 1981 [*title 17 item 5*] for the purpose, then the Controller may direct that the company shall, as respects the company's engaging in or carrying on that trade or business in Bermuda, be treated as if the company were resident in Bermuda, paragraph (3) notwithstanding; and, upon such a direction being given, these Regulations shall have effect accordingly in relation to the company.

(4) An exempted partnership as defined in the Exempted Partnerships Act 1958 [*title 17 item 26*] and employees thereof who do not possess Bermudian status, shall be deemed not to be resident in Bermuda unless one half or more of the partners are resident in Bermuda.

(5) The trustees of a trust or settlement established or made by a person who is not resident in Bermuda shall, in their capacity as such, be deemed not to be resident in Bermuda and the moneys comprised in any such trust or settlement shall be deemed to be held to the account of a person who is not resident in Bermuda.

(6) A person—

- (a) in the naval, military or air force of any territory other than Bermuda while resident in Bermuda as a member of such force together with any dependant of his, including his wife, who is not employed in Bermuda other than by such forces;

EXCHANGE CONTROL REGULATIONS 1973

- (b) entitled to privileges under the Consular Relations Act 1971 [*title 6 item 1*], unless he is a person to whom Article 71 of the Vienna Convention on Consular Relations [*title 6 item 1*] applies,

shall be deemed not to be resident in Bermuda.

(7) The personal representative of a deceased person shall be treated as resident in the territory where the deceased person was resident at the time of his death so far as relates to any matters in which the personal representative is concerned solely in his capacity as such.

(8) A person who has not Bermudian status for the purposes of the Bermuda Immigration and Protection Act 1956 [*title 5 item 16*], who has retired to Bermuda after employment elsewhere and whose income is derived from sources outside Bermuda, together with any dependant of his, including his wife, who is not employed in Bermuda, shall be deemed not to be resident in Bermuda.

(9) Any bank account or property held by or at the direction of a resident of Bermuda and by or at the direction of another person shall be deemed to be held by a resident of Bermuda.

(10) The Controller may direct that any person or category of persons shall notwithstanding anything to the contrary in this Regulation, be deemed to be resident in Bermuda, or shall not be deemed to be resident in Bermuda, as the case may be.

Manner in which discretion to be exercised

4 Where a discretion is, under these Regulations, vested in the Minister or the Controller, such discretion shall be exercised with the object of protecting the foreign exchange reserves of Bermuda, promoting its economic welfare or ensuring compliance with these Regulations or other provision of law.

PART II

GOLD AND FOREIGN CURRENCY

Dealings in gold and foreign currency

5 (1) Except with the permission of the Controller no person, other than an authorized dealer, shall in Bermuda buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorized dealer.

(2) Except with the permission of the Controller no person resident in Bermuda, other than an authorized dealer, shall, outside Bermuda, buy or borrow any gold or foreign currency from or sell or lend any gold or foreign currency to, any person other than an authorized dealer.

(3) Where a person—

- (a) buys or borrows any gold or foreign currency in Bermuda; or

EXCHANGE CONTROL REGULATIONS 1973

- (b) being a person resident in Bermuda buys or borrows any gold or foreign currency outside Bermuda,

he shall comply with such conditions as to the use to which it may be put or the period for which it may be retained as the Controller may direct.

- (4) In this regulation "gold" shall not include gold coin.

Surrender of gold and foreign currency

6 (1) Every person resident in Bermuda who is entitled to sell or to procure the sale of, any gold or any foreign currency, and is not an authorized dealer, shall offer it, or cause it to be offered for sale to an authorized dealer, unless the Controller consents to such person's retention and use thereof, or such person disposes thereof to any other person with the permission of the Controller.

(2) If a person who has obtained the consent of the Controller to his retention and use of any gold or foreign currency, and has stated in an application for the consent that he requires it for a particular purpose, no longer requires the gold or currency for that purpose, paragraph (1) shall thereupon apply to him in relation to that gold or currency as if he had not obtained such consent.

(3) Where a person acquires any gold or foreign currency from an authorized dealer—

- (a) the Controller shall for the purposes of paragraph (1) be deemed to have given his consent to the retention and use of that gold or currency by such person, subject to such conditions as to the use to which it may be put or the period for which it may be retained as the Controller may direct; and
- (b) the application to the authorized dealer for such gold or currency shall be deemed an application for the consent of the Controller for the purposes of paragraph (2).

(4) A person required under this Regulation to offer or cause to be offered any gold or foreign currency for sale to an authorized dealer, shall not comply with that requirement by any offer made or caused to be made by him if the offer is an offer to sell foreign currency at a price exceeding the official exchange rate as fixed from day to day by the authorized dealers, with the approval of the Minister, for the purchase of foreign currency, or sell gold at a price exceeding the current market price, or without payment of any usual and proper charges of the authorized dealer, or otherwise on any unusual terms.

(5) The official exchange rate shall be specified by public notice at the premises of the authorized dealers as regards sterling and United States and Canadian dollars.

(6) Where a person is required under this Regulation to offer or cause to be offered any gold or foreign currency for sale to an authorized dealer and has not complied with that requirement, the Minister may by order under his hand direct that that gold or currency shall vest in the Crown and it shall vest in the Crown accordingly free from any mortgage, pledge or charge.

EXCHANGE CONTROL REGULATIONS 1973

(7) There shall be paid by the Government to the person who would but for the direction under paragraph (6) be entitled to the gold or currency such sum as he would have received therefor if he had sold it to an authorized dealer in pursuance of an offer made under this Regulation at the time when the vesting occurred.

(8) In any proceedings in respect of a failure to comply with this Regulation, it shall be presumed, until the contrary is shown, that the gold or currency in question has not been offered for sale to an authorized dealer.

(9) Within fourteen days of being notified of the making of an order under paragraph (6), any person aggrieved thereby may on notice to the Minister make application to the Supreme Court for the determination of his interest or right in the gold or currency which vests in the Crown under that paragraph, the legality of the acquisition by the Crown of the gold or currency, and the amount of compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and the Supreme Court may make such order in the matter as it thinks fit.

(10) Any party to the proceedings in the Supreme Court under paragraph (9) shall have the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(11) In this Regulation "gold" shall not include gold coin.

Travellers' cheques, etc.

7 (1) This Regulation shall apply to any document intended to enable the person to whom the document is issued to obtain foreign currency from some other person on the credit of the person issuing it and, in particular, to any travellers' cheque or other draft or letter of credit so intended.

(2) For the purposes of these Regulations, the person issuing a document to which this Regulation applies, and the person to whom it is issued, shall be deemed respectively to sell and buy foreign currency and, where foreign currency is obtained by means of the document, to sell and buy that foreign currency.

(3) Every document to which this Regulation applies not expressed in terms of Bermuda dollars shall, if it is intended to enable the person to whom it is issued to obtain any foreign currency, be treated also for the purposes of these Regulations as itself being foreign currency.

(4) No person shall encash or cause to be encashed a document to which this Regulation applies and which is expressed in terms of Bermuda dollars elsewhere than in the Bermuda exchange control area except in accordance with the permission of the Controller, and such permission may be given through an authorized dealer acting in accordance with any direction of the Controller to him.

EXCHANGE CONTROL REGULATIONS 1973

PART III PAYMENTS

Payments in Bermuda

- 8 (1) Except with the permission of the Controller, no person shall in Bermuda—
- (a) make any payment to or for the credit of a person resident outside the Bermuda exchange control area; or
 - (b) make any payment to or for the credit of a person resident in the Bermuda exchange control area by order or on behalf of a person resident outside the Bermuda exchange control area; or
 - (c) place any sum to the credit of any person resident outside the Bermuda exchange control area.
- (2) Where a person resident outside the Bermuda exchange control area has paid a sum in or towards the satisfaction of a debt due from him, paragraph (1)(c) shall not prohibit the acknowledgement or recording of the payment.

Restrictions on transactions involving payment

- 9 (1) In every transaction involving a payment in Bermuda to a person resident in the Bermuda exchange control area
- (a) the person to whom the payment is to be made shall quote or express in Bermuda area currency the amount to be paid;
 - (b) if payment of the amount so quoted or expressed in Bermuda area currency is made in a foreign currency, then the rate of exchange shall be the official exchange rate with respect to that foreign currency, and no person shall accept any payment in that foreign currency except at the official exchange rate; and
 - (c) If the amount tendered in payment requires the giving of change, change shall be given in Bermuda area currency.
- (2) Every hotel within the meaning of the Hotels (Licensing and Control) Act 1969 [*title 17 item 2*] which is licensed under that Act shall, while so licensed, be exempt from paragraph (1)(a) and (c) in respect of goods and services supplied or provided by such hotel, other than goods and services provided in any shop, cycle livery, travel agent, hairdressing establishment, beauty salon or other similar ancillary business.
- (3) Every passenger ship within the meaning of the Passenger Ships Act 1972 [*title 22 item 2*], bona fide carrying passengers for reward, shall, while within the territorial waters of Bermuda, be exempt from paragraph (1)(a) and (c), in respect of goods and services supplied or provided on such passenger ship to bona fide passengers and members of the ship's company.
- (4) In this Regulation "transaction involving a payment" includes any sale, lease, the rendering of services for payment, and any other transaction, whether of the same kind

EXCHANGE CONTROL REGULATIONS 1973

as those hereinbefore mentioned or not, that involves the payment of consideration in money by one person to another person.

Payments outside Bermuda

10 (1) Except with the permission of the Controller, no person resident in Bermuda shall make any payment outside Bermuda to or for the credit of a person resident outside the Bermuda exchange control area.

(2) Nothing in this Regulation shall prohibit the doing of anything otherwise lawful by any person with any foreign currency obtained by him in accordance with Part II or retained by him with the consent of the Controller.

Compensation deals

11 (1) Except with the permission of the Controller, no person shall in Bermuda, and no person resident in Bermuda shall outside Bermuda, make any payment to or for the credit of a person resident in the Bermuda exchange control area as consideration for or in association with—

- (a) the receipt by any person of a payment made outside the Bermuda exchange control area, or the acquisition by any person of property which is outside the Bermuda exchange control area; or
- (b) 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 the Bermuda exchange control area or to acquire property which is outside the Bermuda exchange control area.

(2) Nothing in this Regulation shall prohibit the making of any payment in accordance with the terms of a permission or consent granted under these Regulations.

PART IV SECURITIES

Issue of securities

12 (1) Except with the permission of the Controller, no person shall in Bermuda issue any security or, whether in Bermuda or elsewhere, issue any security which is registered or to be registered in Bermuda, unless—

- (a) neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee is resident outside the Bermuda exchange control area; and
- (b) evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued and that of the person, if any, for whom he is to be a nominee.

EXCHANGE CONTROL REGULATIONS 1973

(1A) For the avoidance of doubt, a request for permission of the Controller under paragraph (1) shall be made in such form and include such information as the Controller may direct.

(2) For the purposes of paragraph (1), the subscription of the memorandum of association of a company to be formed in Bermuda under a private Act or under the Companies Act 1981 [*title 17 item 5*] or other law for the time being in force relating to the formation of companies in Bermuda, by a person resident outside the Bermuda exchange control area, or by a nominee for another person so resident, shall be deemed to be the issue of a security if such subscription has the effect of making such person a member of or shareholder in the company upon the registration of filing of the memorandum.

(3) For the purposes of paragraph (1), where—

- (a) an amalgamated company is registered under section 108(1) of the Companies Act 1981 or other enactment relating to the registration of amalgamated companies in Bermuda; and
- (b) one or more of the amalgamating companies was a body incorporated outside of Bermuda,

the registration shall be deemed to be an issue of a security to each person who held a security in that incorporated body and each such person will, as a result of such registration, be deemed to hold a security in the amalgamated company.

(4) For the purposes of paragraph (1), the registration of the memorandum of continuance under section 132C(4) of the Companies Act 1981 or other enactment relating to registering the continuation of companies in Bermuda shall be deemed to be the issue of a security to each person who will, as a result of such registration, hold a security in the continued company.

[Regulation 12 paragraphs (3) and (4) inserted by BR 77/1998 effective 4 December 1998; Regulation 12 paragraph (1A) inserted by BR 73 / 2018 reg. 3 effective 25 July 2018]

Transfer of securities registered in Bermuda or in Bermuda

13 (1) A security—

- (a) registered in Bermuda may be transferred;
- (b) not registered in Bermuda may be transferred in Bermuda, in the following circumstances—
 - (i) if neither the transferor nor the person, if any, for whom he is a nominee is resident outside the Bermuda exchange control area; and
 - (ii) if neither the transferee nor the person, if any, for whom he is to be a nominee is resident outside the Bermuda exchange control area,

but shall not otherwise be transferred without the permission of the Controller.

(1A) For the avoidance of doubt, a request for permission of the Controller under paragraph (1) shall be made in such form and include such information as the Controller may direct.

EXCHANGE CONTROL REGULATIONS 1973

(2) Neither the transferee nor his agent shall commit an offence by reason only that the requirements of paragraph (1)(i) were not fulfilled unless the transferee or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

(3) Neither the transferor nor his agent shall commit an offence by reason only that the requirements of paragraph (1)(ii) were not fulfilled unless the transferor or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

[Regulation 13 paragraph (1A) inserted by BR 73 / 2018 reg. 4 effective 25 July 2018]

Transfer of beneficial ownership in permit companies

13A (1) Subject to paragraph (2), where due to a transfer of beneficial ownership a beneficial owner reaches the beneficial ownership threshold of 10% or more of a permit company, such permit company shall, within 14 days of such change, inform the Controller.

(2) Paragraph (1) shall not apply where—

- (a) a permit company has appointed a principal representative under section 136A of the Companies Act 1981 and such principal representative is licensed as a corporate service provider under section 11 of the Corporate Service Provider Business Act 2012; or
- (b) the shares of a permit company or the shares of any holding company of the permit company are listed on a recognized stock exchange.

(3) In this regulation “recognized stock exchange” means any stock exchange that is a member of the World Federation of Exchanges.

[Regulation 13A inserted by BR 75 / 2012 reg. 2 effective 17 October 2012; paragraph (1) revoked and substituted by 2014 : 3 s. 6 effective 30 June 2016]

Duty to update beneficial ownership information

13B Where there is a change in any information relating to the beneficial owners of a company the shares of which are registered in Bermuda or a change to any information that has been provided to the Controller in accordance with regulation 12(1A) or regulation 13(1A), the company shall in such form as the Controller may direct—

- (a) notify the Controller of the change; and
- (b) file updated, accurate and current details of such change with the Controller,

as soon as practicable after the company becomes aware of or is notified thereof, but not later than 14 days thereafter.

[Regulation 13B inserted by BR 73 / 2018 reg. 5 effective 25 July 2018]

Transfer of coupons

14 Except with the permission of the Controller, a security not registered in Bermuda shall not be transferred outside Bermuda if either the transferor or the transferee, or the person, if any, for whom the transferor or transferee is or is to be nominee, is resident in Bermuda.

EXCHANGE CONTROL REGULATIONS 1973

Transfer of coupons

- 15 Except with the permission of the Controller no coupon shall be transferred—
- (a) in Bermuda, if either the transferee or the person, if any, for whom he is to be nominee is resident outside the Bermuda exchange control area; or
 - (b) outside Bermuda, if either the transferor or transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Bermuda.

Issue of bearer certificates and coupons

- 16 Except with the permission of the Controller, no person shall, in Bermuda, and no person resident in Bermuda shall outside Bermuda issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.

Substitution of securities and certificates outside Bermuda

- 17 Except with the permission of the Controller no person in or resident in Bermuda shall do any act with intent to secure—
- (a) that a security which is—
 - (i) registered in Bermuda; or
 - (ii) transferable by means of a bearer certificate in Bermuda, becomes, or is replaced by, a security registered outside Bermuda or a security transferable by means of a bearer certificate outside Bermuda; or
 - (b) that a certificate of title to any other security, is issued outside Bermuda in substitution for or in addition to a certificate of title thereto which is in, or is or has been lost or destroyed in, Bermuda.

Payment of capital moneys outside Bermuda

- 18 Except with the permission of the Controller no person resident in Bermuda shall do any act with intent to secure that capital moneys payable on a security registered in Bermuda are paid outside Bermuda, or that, where the certificate of title to a security is in Bermuda, capital moneys payable on the security are paid outside Bermuda without production of the certificate to the person making the payment.

Duties of persons keeping registers

- 19 Except with the permission of the Controller, no person concerned with the keeping of any register in Bermuda shall—
- (a) enter in the register, in respect of any security, an address outside the Bermuda exchange control area, except for the purpose of any transaction for which the permission of the Controller has been granted with the knowledge that it involves the entry of that address; or
 - (b) do any act in relation to the register which recognises or gives effect to any act appearing to him to have been done with such intent as is mentioned

EXCHANGE CONTROL REGULATIONS 1973

in Regulations 17 and 18, whether done by a person in or resident in Bermuda or not.

Additional provisions as to nominee holdings

20 (1) Where—

- (a) the holder of a security is a nominee and the person for whom he is a nominee is resident outside the Bermuda exchange control area; or
- (b) the holder of a security is not a nominee and is resident outside the Bermuda exchange control area,

then, except with the permission of the Controller, no person resident in Bermuda shall do any act whereby the holder becomes his nominee in respect of the security.

(2) Except with the permission of the Controller, a person resident in Bermuda for whom the holder of a security is a nominee shall not do any act whereby—

- (a) the holder, being a person resident outside the Bermuda exchange control area, holds the security otherwise than as his nominee; or
- (b) the holder, not being a person resident outside the Bermuda exchange control area, holds the security as nominee for a person resident outside the Bermuda exchange control area.

(3) Where the holder of a security is a nominee, then, except with the permission of the Controller, neither he, if he is resident in Bermuda, nor any person resident in Bermuda through whose agency the exercise of all or any of the holder's rights in respect of the security are controlled, shall—

- (a) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives his instructions unless both the person previously instructing him and the person substituted for that person were, immediately before the substitution, resident in the Bermuda exchange control area and not elsewhere; or
- (b) do any act whereby he ceases to be a person bound to give effect to the instructions of another person in relation to the security, unless the person who theretofore instructed him is resident in the Bermuda exchange control area and not elsewhere.

(4) Where the holder of a security is not a nominee and is resident in Bermuda, then, except with the permission of the Controller, he shall not do any act whereby he becomes the nominee of another person in respect of the security, unless that other person is resident in the Bermuda exchange control area and not elsewhere.

Provision as to deposit of certain securities

21 (1) It shall be the duty of every person resident in Bermuda by whom or to whose order (whether directly or indirectly) a certificate of title to a security to which this Regulation applies, is held in or outside Bermuda shall cause such certificate of title to be

EXCHANGE CONTROL REGULATIONS 1973

kept at all times, except with the permission of the Controller, in the custody of an authorized depository, upon such terms and conditions as the Controller may direct.

(2) Nothing in this Part shall prohibit the doing of anything for the purpose of complying with this Regulation.

(3) Except with the permission of the Controller, an authorized depository shall not part with any certificate of title required under this Regulation to be in the custody of an authorized depository:

Provided that this paragraph shall not prohibit an authorized depository from parting with a certificate of title—

- (a) to or to the order of another authorized depository, where the person from whom the other authorized depository is to receive instructions in relation thereto is to be the same person from whom he receives instructions;
- (b) for the purpose of obtaining payment of capital moneys payable on the security, to the person entrusted with payment thereof.

(4) Where a certificate of title which under this Regulation should for the time being be in the custody of an authorized depository is not in the custody of an authorized depository, then, except with the permission of the Controller, no person shall in Bermuda, and no person resident in Bermuda shall outside Bermuda, buy, sell, transfer, or do anything which affects his rights or powers in relation to, the security.

(5) This Regulation shall apply to any security on which capital moneys, dividends or interest are payable in a foreign currency or as respects which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a foreign currency.

Special provisions as to dealing in certain securities

22 (1) Except with the permission of the Controller, no person shall, in Bermuda, and no person resident in Bermuda shall, outside Bermuda, transfer or do anything which affects his rights or powers in relation to, any security to which this Regulation applies.

(2) This Regulation shall apply to any security on which capital moneys, dividends or interest are payable in a foreign currency or in respect to which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a foreign currency.

Validation of certain transfers

23 (1) The title of any person to a security for which he has given value on a transfer thereof, and the title of all persons claiming through or under him, shall notwithstanding that the transfer, or any previous transfer, or the issue of the security, was by reason of the residence of any person concerned other than the first-mentioned person prohibited by the provisions of these Regulations relating to the transfer or issue of securities, be valid unless the first-mentioned person had notice of the facts by reason of which it was prohibited.

(2) [Revoked by 2017 : 41 s. 19]

EXCHANGE CONTROL REGULATIONS 1973

(3) Nothing in this Regulation shall affect the liability of any person to prosecution for any offence against these Regulations.

[Regulation 23 paragraph (2) revoked and substituted by BR 50 / 2017 reg. 2 effective 12 May 2017; Regulation 23 paragraph (2) revoked by 2017 : 41 s. 19 effective 23 March 2018]

Application of Part IV to secondary securities

24 (1) This Part shall apply with such modifications (if any) as the Controller may, by order in the Gazette direct, in relation to any such document as is mentioned in paragraph (2), as if the document created, and were the certificate of title to a security (hereafter in these Regulations referred to as a "secondary security").

(2) The documents referred to in paragraph (1) are any letter of allotment which may be renounced, any letter of rights, any warrant conferring an option to acquire a security, any deposit certificate in respect of securities, any letter of allotment which may not be renounced, any renounceable certificate, any scrip certificate, any rights coupon, any bond mandate and such other documents conferring, or containing evidence of, rights, as may be prescribed in the order.

Interpretation of Part IV

25 (1) In this Part—

"registered" includes inscribed;

"registered in Bermuda" and "registered outside Bermuda" mean respectively, registered in a register in, and registered in a register outside Bermuda;

"a register" includes any book, file or index in which securities are registered;

"holder" in relation to a security—

- (a) transferable by means of a bearer certificate or in relation to a coupon, includes the person holding the certificate or coupon; and
- (b) which is registered in the name of a deceased person, or of any person who, by reason of bankruptcy, unsoundness of mind or any other disability is incapable of transferring the security, means the personal representative, trustee in bankruptcy or other person entitled to transfer the security.

(2) For the purpose of any provision of this Part prohibiting the transfer of securities, a person shall be deemed to transfer a security if he executes any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

(3) References in this Part to the person holding a certificate of title or coupon shall be construed as reference to the person having physical custody of the certificate of title or coupon:

Provided that where the certificate of title or coupon is deposited with any person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person, that other person shall be deemed for the purposes of this provision to have the physical custody thereof.

EXCHANGE CONTROL REGULATIONS 1973

(4) The holder of a security or coupon shall be deemed for the purposes of this Part to be a nominee in respect thereof if, as respects the exercise of any rights in respect thereof, he is not entitled to exercise those rights except in accordance with instructions given by some other person.

(5) References in this Part to the person for whom the holder of a security or coupon is a nominee shall be construed as references to the person who is entitled to give instructions either directly or through the agency of one or more persons, as to the exercise of any rights in respect of the security or coupon and is not in so doing himself under a duty to comply with instructions given by some other person:

Provided that—

- (a) a person shall not by reason only that he has a controlling interest in a body corporate be deemed for the purposes of paragraph (5) to be entitled to give instructions to that body corporate as to the exercise of rights in respect of any security or coupon of which it is the holder; and
- (b) a person shall not be deemed to hold a security or coupon as a nominee by reason only that he holds it as trustee if he is entitled to transfer the security or coupon without permission from any other person.

Company engaging corporate service provider

25A *[Revoked by BR 73 / 2018 reg. 6]*

[Regulation 25A amended by BR 50 / 2017 reg. 3 effective 12 May 2017; Regulation 25A revoked by BR 73 / 2018 reg. 6 effective 25 July 2018]

PART V

IMPORT AND EXPORT

Restrictions on import

26 (1) No person shall, without the permission of the Controller, import into Bermuda otherwise than through an authorized dealer—

- (a) any such notes as the Controller may direct being notes issued by a bank or notes of a class which are or have at any time been legal tender in any territory; and
- (b) any certificate of title to any security, including any such certificate which has been cancelled, and any document certifying the destruction, loss or cancellation of any certificate of title to a security.

(2) This Regulation shall not prohibit the importation into Bermuda otherwise than through an authorized dealer or depositary of certificates of title to securities on which capital moneys, dividends or interest are payable solely in Bermuda area currency.

(3) In this Regulation the expression “note” includes part of a note and the expression “security” includes a secondary security.

EXCHANGE CONTROL REGULATIONS 1973

General restrictions on export

27 (1) No person shall, without the permission of the Controller, export or attempt to export from Bermuda—

- (a) any notes of a class which are legal tender in Bermuda;
- (b) foreign currency notes;
- (c) any postal orders;
- (d) any gold; and
- (e) any of the following documents (including any such document which has been cancelled)—
 - (i) any certificate of title to a security and any coupon;
 - (ii) any policy of assurance;
 - (iii) any bill of exchange or promissory note expressed in terms of a currency other than Bermuda area currency;
 - (iv) any document to which Regulation 7 applies not issued by an authorized dealer or in pursuance of a permission granted by the Controller;

and any document certifying the destruction, loss or cancellation of any of the documents aforesaid.

(2) This Regulation shall not prohibit the exportation from Bermuda—

- (a) by any traveller on his person or in his baggage of notes of a class which are legal tender in Bermuda not exceeding in aggregate the sum of two hundred and fifty Bermuda dollars in value;
- (b) by any traveller on his person or in his baggage of foreign currency notes purchased from an authorized dealer or in pursuance of permission granted by the Controller;
- (c) of certificates of title to securities on which capital moneys, dividends or interest are payable solely in Bermuda area currency;
- (d) of any bill of exchange or promissory note expressed in terms of a currency other than Bermuda area currency and issued by an authorized dealer or in pursuance of a permission granted by the Controller; and
- (e) by any bona fide visitor to Bermuda on his person or in his baggage of any travellers' cheque or letter of credit which has been imported by that traveller.

(3) In this Regulation, "note" includes part of a note, "security" includes a secondary security and "coupon" shall be construed in accordance with the meaning of "security".

EXCHANGE CONTROL REGULATIONS 1973

Payments for exports

28 (1) Goods of any class or description may be exported from Bermuda to a destination outside the Bermuda exchange control area if—

- (a) payment for the goods has been made to a person resident in Bermuda in foreign currency or is to be so made, not later than six months after the date of exportation; and
- (b) the amount of the payment that has been made, or is to be made, is such as to represent their reasonable market value, in all the circumstances of the transaction,

but shall not otherwise be exported without the permission of the Controller.

(2) The Controller may direct that, in cases to which the direction applies, sub-paragraph (a) shall have effect as if for the reference to six months there were substituted a reference to such longer or shorter period as may be specified in the direction, or as if the words "or is to be so made not later than six months after the date of exportation" were omitted.

PART VI MISCELLANEOUS

Duty to collect certain debts

29 (1) Except with the permission of the Controller, no person resident in Bermuda who has a right (whether present or future and whether vested or contingent) to receive any foreign currency, or to receive from a person resident outside the Bermuda exchange control area a payment in Bermuda area currency shall do, or refrain from doing, any act with intent to secure—

- (a) that the receipt by him of the whole or part of that currency or, as the case may be, of that payment in Bermuda area, currency is delayed; or
- (b) that the currency or payment, ceases, in whole or in part, to be receivable by him:

Provided that nothing in this sub-paragraph—

- (i) shall, unless the Controller otherwise directs, impose on any person any obligation, in relation to any debt arising in the carrying on of any trade or business, to procure the payment thereof at an earlier time than is customary in the course of that trade or business, or
- (ii) shall, unless the Controller otherwise directs, prohibit any transfer to a person resident in Bermuda and not elsewhere of any right to receive any foreign currency or payment in Bermuda area currency.

(2) Where a person has contravened paragraph (1) in relation to any foreign currency or payment in Bermuda area currency, the Controller may give to him or to any other person who appears to the Controller to be in a position to give effect thereto (being

EXCHANGE CONTROL REGULATIONS 1973

a person in or resident in Bermuda) such directions as appear to the Controller to be expedient for the purpose of obtaining or expediting the receipt of the currency or payment in question.

Duty not to delay sale or importation of goods

30 (1) Where—

- (a) any permission or consent has been granted under these Regulations or under any corresponding provision of the law in force in any territory comprised in the Bermuda exchange control area, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be sold outside the Bermuda exchange control area; or
- (b) any statement or declaration has been made under any provision of these Regulations or any such corresponding provision as aforesaid that any goods are to be sold outside the Bermuda exchange control area; or
- (c) any currency has been obtained in, or by any person resident in, the Bermuda exchange control area on the faith of an application stating an intention that any goods should be sold outside the Bermuda exchange control area,

then except with the permission of the Controller, no person resident in Bermuda who is entitled to sell or procure the sale of the said goods shall do, or refrain from doing, any act with intent to secure—

- (i) that the said sale is delayed to an extent which is unreasonable having regard to the ordinary course of trade; or
- (ii) that, on the said sale, any payment made for the goods is not made in the manner indicated by the condition, statement, or declaration, as the case may be.

(2) Where—

- (a) any permission or consent has been granted under these Regulations, or under any corresponding provisions of the law in force in any territory comprised in the Bermuda exchange control area, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be imported from outside the Bermuda exchange control area into any part of the Bermuda exchange control area; or
- (b) any currency has been obtained in, or by any person resident in, the Bermuda exchange control area on the faith of an application stating an intention that an goods should be so imported,

then except with the permission of the Controller, no person resident in Bermuda who is entitled to procure the importation of the said goods shall do, or refrain from doing, any act with intent to secure that the importation thereof is delayed to an extent which is unreasonable having regard to the ordinary course of trade.

EXCHANGE CONTROL REGULATIONS 1973

(3) Where in any such case as is specified in paragraph (1)(a),(b) or (c) or paragraph (2)(a) or (b)—

- (a) the goods have not been sold or imported as indicated by the condition, statement or declaration within the time thereby indicated or, if no time is thereby indicated, a reasonable time or (in either case) within such further time as may be allowed by the Controller; or
- (b) it appears to the Controller that the goods cannot be sold or imported as indicated by the condition, statement or declaration,

the Controller may give to any person resident in Bermuda who appears to the Controller to be in a position to give effect thereto such direction as appears to the Controller to be expedient as to the manner in which the goods are to be dealt with.

(4) The powers conferred by paragraph (3) in relation to any goods shall extend to the giving of directions with respect to any goods produced or manufactured therefrom, and, where goods to be sold outside the Bermuda exchange control area or to be imported were to be produced or manufactured from other goods, to the giving of directions with respect to those other goods and any goods produced or manufactured from those other goods.

Transfer of annuities, policies, etc.

31 (1) Except with the permission of the Controller, no person resident in Bermuda shall transfer to a person resident outside the Bermuda exchange control area, or who is to be a nominee for a person resident outside the Bermuda exchange control area, any right to the sums assured by any policy of assurance, so, however, that where the person liable for the sums so assured makes any payment thereof to a person resident in the Bermuda exchange control area and not elsewhere, or makes, with the permission of the Controller, any payment thereof to any other person—

- (a) he shall not be bound to inquire as to the residence of any person other than the person to whom, and (if it is not the same person) the person to whose order the payment is made; and
- (b) the payment shall, to the extent of the sums paid, discharge him from his liability under the policy, notwithstanding that the payment is made to or to the order of a person who was not entitled thereto otherwise than by virtue of a transfer prohibited by this paragraph.

(2) Regulation 23(2) and (3) shall apply in relation to any transfer prohibited by this Regulation as they apply in relation to a transfer of a security prohibited by these Regulations.

(3) In this Regulation, “nominee” has, in relation to any policy, annuity or insurance, the same meaning as it has in Part IV in relation to a security.

Settlements

32 (1) Except with the permission of the Controller, no person resident in Bermuda shall settle any property, otherwise than by will, so as to confer an interest in the property on a person who, at the time of the settlement, is resident outside the Bermuda exchange

EXCHANGE CONTROL REGULATIONS 1973

control area, or shall exercise, otherwise than by will, any power of appointment, whether created by will or otherwise, in favour of a person who, at the time of the exercise of the power, is resident outside the Bermuda exchange control area.

(2) A settlement or exercise of a power of appointment shall not be invalid by reason that it is prohibited by this Regulation, except so far as it purports to confer any interest on any person who, at the time of the settlement or the exercise of the power, is resident outside the Bermuda exchange control area.

(3) Regulation 23(2) and (3) shall apply in relation to a settlement or the exercise of a power of appointment prohibited by this Regulation as they apply in relation to a transfer of a security prohibited by these Regulations.

(4) For the purpose of this Regulation—

- (a) any reference to settling property includes a reference to the making of any disposition, covenant, agreement or arrangement whereby the property becomes subject to a trust or (in the case of a resettlement) to a different trust;
- (b) a person shall be deemed to have an interest in property if he has any beneficial interest therein, whether present or future, and whether vested or contingent or falls within a limited class of persons in whose favour a discretion or power in respect of the property is exercisable; and
- (c) “will” includes any testamentary disposition.

Foreign companies

33 (1) Where there is served on any person resident in Bermuda a notice in writing that the Controller directs that any such requirements as mentioned in paragraph (2) shall be complied with by any such body corporate as is specified in the Second Schedule (in this paragraph referred to as a “foreign company”), and that person can, by doing or refraining from doing any act—

- (a) cause the foreign company to comply with any of the requirements; or
- (b) remove any obstacle to the foreign company complying with any of the requirements; or
- (c) render it in any respect more probable that the foreign company will comply with any of the requirements,

then, except so far as permission to the contrary may be given by the Controller, that person shall do, or, as the case may be, refrain from doing, that act.

(2) The requirements with respect to which a notice under paragraph (1) may be given are that the foreign company shall—

- (a) furnish to the Controller such particulars as to its assets and business as may be mentioned in the notice;

EXCHANGE CONTROL REGULATIONS 1973

- (b) sell or procure the sale to an authorized dealer of any gold or foreign currency mentioned in the notice, being gold or foreign currency which it is entitled to sell or of which it is entitled to procure the sale;
- (c) declare and pay such dividends as may be mentioned in the notice;
- (d) realise any of its assets mentioned in the notice in such manner as may be so mentioned; and
- (e) refrain from selling, transferring, or doing anything which affects its rights or powers in relation to, any such securities as may be mentioned in the notice.

Bermudian controlled companies

34 Except with the permission of the Controller, no person resident in Bermuda shall do any act whereby a body corporate which is by any means controlled (whether directly or indirectly) by persons resident in Bermuda ceases to be controlled by persons resident in Bermuda:

Provided that this Regulation shall not prohibit any person from selling any securities authorized to be dealt in on the Stock Exchange in Bermuda if the sale takes place in pursuance of an agreement entered into in the ordinary course of business on that Exchange.

Foreign controlled companies

35 Except with the permission of the Controller, no person resident in Bermuda shall lend any money or securities to any body corporate resident in the Bermuda exchange control area which is by any means controlled (whether directly or indirectly) by persons resident outside the Bermuda exchange control area:

Provided that this Regulation shall not apply where the lender after making such inquiries as are reasonable in the circumstances of the case does not know and has no reason to suspect that the body corporate is controlled as aforesaid.

Interpretation

36 (1) For the purposes of Regulations 33, 34 and 35 and of the Second Schedule, persons resident in Bermuda or outside the Bermuda exchange control area shall be deemed to control a body corporate notwithstanding that other persons are associated with them in the control thereof if they can together override those other persons.

(2) In Regulations 33, 34 and 35 "security" includes a secondary security.

PART VII
SUPPLEMENTAL

Exemptions

37 Any provision of these Regulations imposing any obligation or prohibition shall have effect subject to such exemptions as the Controller may direct and any such exemption may be either absolute or conditional.

Blocked accounts

38 Where—

- (a) under any provision contained in Part III the permission of the Controller is required for the making of a payment or the placing of any sum to the credit of any person resident outside the Bermuda exchange control area; or
- (b) any payment falls to be made by an authorized dealer on the sale of any gold or foreign currency by any foreign company within the meaning of Regulation 33, being a sale made to comply with any direction under that Regulation,

the Controller may direct that the sum payable or to be credited shall be paid or credited to a blocked account only, and, where such a direction is given, the Third Schedule shall have effect in relation to the payment or crediting of the sum.

Contracts, legal proceedings, etc.

39 (1) It shall be an implied condition in any contract that, where by virtue of these Regulations, the permission or consent of the Controller 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 or consent is given or is not required:

Provided that this paragraph shall not apply in so far as 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 in despite of these Regulations or for any other reason.

(2) Notwithstanding anything in the Bills of Exchange Act 1934 [*title 17 item 21*], neither these Regulations, nor any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without the permission of the Controller under these Regulations, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

(3) The provisions of the Fifth Schedule shall have effect with respect to legal proceedings, arbitrations, bankruptcy proceedings, the administration of estates of deceased persons, the winding up of companies and proceedings under deeds of arrangements or trust deeds for the benefit of creditors.

EXCHANGE CONTROL REGULATIONS 1973

Bankers and others to comply with directions

40 The following persons—

- (a) bankers;
- (b) authorized dealers and authorized depositaries;
- (c) persons concerned with the keeping of any register in Bermuda; and
- (d) persons entrusted with the payment of capital moneys, dividends, or interest in Bermuda,

shall comply with such directions as may be given to them respectively by the Controller, being—

- (i) in the case of any such persons, directions as respects the exercise of any functions exercisable by them by virtue of, or by virtue of anything done under, any provisions of these Regulations; or
- (ii) in the case of authorized dealers, such directions as aforesaid or directions as to the terms on which they are to accept gold or foreign currency or directions requiring them to offer their gold or specified currency for sale in such manner as may be prescribed on such terms as may be specified in any such directions.

Other powers

41 (1) Any permission, consent or authority under these Regulations—

- (a) may be either general or special;
- (b) may be revoked;
- (c) may be absolute or conditional; and
- (d) may be limited so as to expire on a specified date, unless renewed.

(2) Any directions given under any provision of these Regulations, whether by order or otherwise—

- (a) may be either general or special;
- (b) may be revoked or varied by subsequent directions; and
- (c) shall be given to such persons and in such manner as the competent authority thinks appropriate, unless the Regulations otherwise provide, and if so given shall be valid for all purposes.

(3) Notwithstanding paragraph (2)(c), a person shall not by virtue of any direction given by the Controller under these Regulations, be convicted of an offence against these Regulations, unless—

- (a) the direction has been published in the Gazette; or
- (b) the direction was served on him or he knew, or avoided getting to know, of the giving thereof:

EXCHANGE CONTROL REGULATIONS 1973

Provided that, where reasonable steps were taken for the purpose of bringing the purport of the direction to his notice, it shall be for him to show that he neither knew nor avoided getting to know of the giving thereof.

Evidence of permission, authority, etc.

42 A document stating that any permission, consent, authority or direction is given under any of the provisions of these Regulations by the Controller and purporting to be signed on his behalf, shall be prima facie evidence of the facts stated in the document.

Filing information when dealing in securities where permission, consent, etc. is received

42A [Revoked by 2017 : 41 s. 19]

[Regulation 42A inserted by BR 50 / 2017 reg. 4 effective 12 May 2017; Regulation 42A revoked by BR 2017 : 41 s. 19 effective 23 March 2018]

Branches

43 (1) The Controller may direct that, for such of the purposes of these Regulations as may be specified in the direction—

- (a) any transaction with or by a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;
- (b) the making of any book entry or other statement recording a debit against a branch of any business in favour of any other branch of that business, shall be treated as a payment to that other branch; and
- (c) any property held by or on behalf of the person carrying on the business shall be deemed to be held by such of the branches of the business as may be determined in accordance with the direction,

and any such direction which makes, for any of the purposes of Part IV, such provision as is mentioned in sub-paragraph (c) of this paragraph may contain provisions declaring the circumstances in which a branch is to be treated as nominee for any other branch.

(2) Any reference in paragraph (1) to a branch of a business shall be deemed to include a reference to the head office of that business.

(3) Paragraphs (1) and (2) shall apply in relation to any body of persons (whether corporate or unincorporated) carrying on any activity, whether for the purpose of profit or not, as they apply in relation to a business.

Persons leaving the Bermuda exchange control area

44 Where a person resident in Bermuda leaves the Bermuda exchange control area, the Controller may, before, at or after the time that person leaves the Bermuda exchange control area, direct that, for such period as may be specified in the direction, payments by that person on his behalf and to him or to his credit and transactions in or in relation to securities or secondary securities in which he is in any way concerned shall, whether or not

EXCHANGE CONTROL REGULATIONS 1973

he continues to be resident in Bermuda, be subject to such restrictions as may be specified in the direction.

Acts of two or more persons

45 (1) Any provision of these Regulations (however worded) the effect of which is to prohibit the doing of any act where a person to or by whom the act is to be done or who stands in a specified relation to any property possesses any specified attribute as to residence or otherwise shall, where the act is done to or by two or more persons or as the case may be where two or more persons stand jointly in that relation to the property, operate to prohibit the doing of that act if any of those persons possess that attribute.

(2) Any provision of these Regulations imposing an obligation on any person to do an act if he possesses any specified attribute as to residence or otherwise shall, in relation to any act which can only be done by two or more persons, jointly—

- (a) where all those persons possess that attribute, operate to impose a joint obligation on all of them to do the act; and
- (b) where some only of them possess that attribute, operate to impose a separate obligation on each one of them who possesses that attribute to do all he can to secure the doing of the act.

Regulations to apply to persons who are not British subjects

46 The obligations and prohibitions imposed by these Regulations shall, subject to the express limitations contained therein, apply to all persons, notwithstanding that they are not in Bermuda and are not British subjects.

Request for information

46A Notwithstanding regulations 47, 47A and 47B, the Controller may by notice in writing served on any person who has information about the ownership of securities registered in Bermuda, including beneficial owners, require the person—

- (a) to provide the Controller (or such person acting on behalf of the Controller as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Controller may reasonably require for the performance of his functions under these Regulations;
- (b) to provide the Controller with a report, in such form as may be specified in the notice, of any matter about which the Controller has required or could require that person to provide information under these Regulations.

[Regulation 46A inserted by BR 73 / 2018 reg. 8 effective 25 July 2018]

PART VIII
ENFORCEMENT AND TRANSITIONAL

Power to obtain information

47 (1) The Controller may give to any person in or resident in Bermuda directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to him, or to any person designated in the directions as a person authorized to require it, any information in his possession or control which the Controller or the person so authorized, as the case may be, may require for the purpose of securing compliance with or detecting evasion of these Regulations.

(2) A person required by any such directions as aforesaid to furnish information shall also produce such books, accounts or other documents (in this Part referred to as "documents") in his possession or control as may be required for the said purpose by the Controller or by the person authorized to require the information as the case may be.

(3) A person shall not be punished for refusing to furnish any information or to produce any document in contravention of this Regulation if he could not be required to furnish such information or produce such document in proceedings before a court of law in Bermuda on the grounds that the information or document is privileged against disclosure.

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

Supplementary directions in relation to exempted and permit companies

47A (1) The Controller may give to any company to which this regulation applies supplementary directions under this paragraph requiring the company—

- (a) to prepare and keep separately in Bermuda, in the case of an exempted company either at the company's registered office or at some other place of business of the company, being a place approved by the Controller for the purposes of this regulation, and in the case of a permit company at its principal place of business, such books and statements, and such other information, or other information of such a kind, being books, statements and information relating to the company's Bermuda business or to its staff's Bermuda activities, as may be specified in the directions; and
- (b) to produce any such book, statement or information to such person or persons as may be so specified.

(2) The Controller may give to any officer or employee of a company to which this regulation applies supplementary directions under this paragraph requiring him to produce to such person or persons as may be specified in the supplementary directions such information, or information of such a kind, as may be so specified, being information—

EXCHANGE CONTROL REGULATIONS 1973

- (a) which relates to the company's Bermuda business or to its staff's Bermuda activities; and
 - (b) to which that officer or employee has access.
- (3) Without prejudice to the generality of paragraph (1), directions given under that paragraph may—
- (a) specify the manner in which any book, statement or information mentioned in the directions is to be prepared and kept;
 - (b) require that any such book, statement or information shall be audited by an auditor acceptable to the Controller; and
 - (c) specify the matters as to which such an auditor is to furnish to the Controller a certificate or opinion.
- (4) Directions given under paragraph (1)(b) or under paragraph (2) shall specify the time or times when, or the time within which, anything is to be produced whose production the directions require.
- (5) This regulation applies to any company in relation to which the Controller has given a direction under paragraph (2E)(a), or under paragraph (3A), or regulation 3.
- (6) In this regulation—
- “Bermuda business”, in relation to a company, means any business, trade, activity, matter or thing done, carried on or suffered by the company in Bermuda; and
 - “staff's Bermuda activities”, in relation to a company, means anything done or suffered by any employee of the company in the course or furtherance of the company's Bermuda business.

Supplementary directions in relation to exempted company employees

47B (1) Where the Controller has given a direction in relation to an employee of an exempted company under regulation 3(2E)(b), the Controller may give supplementary directions in relation to that employee (“the employee in question”) under this regulation.

(2) Supplementary directions referred to in paragraph (1) are directions requiring relevant information either—

- (a) to be prepared and kept by the company separately in Bermuda (whether at the company's registered office or at some other place of business of the company, being a place approved by the Controller for the purposes of this regulation) in respect of the employee in question; or
 - (b) to be produced by any employee of the company (including the employee in question), or by any officer of the company, or by the company itself, to such person or persons as may be specified in the directions.
- (3) In paragraph (2) “relevant information” means information—

EXCHANGE CONTROL REGULATIONS 1973

- (a) which relates to anything done or suffered by the employee in question in the course or furtherance of any business, trade, activity, matter or thing carried on or suffered by the company in Bermuda; and
- (b) to which the employee or officer to whom the directions are given, or, where it is the company itself to which the directions are given, the company, has access.

Mutilating documents, supplying false information, etc.

48 No person in or resident in Bermuda shall—

- (a) with intent to evade the provisions of these Regulations, destroy, mutilate, deface, secrete or remove any documents; or
- (b) in furnishing any information for any of the purposes of these Regulations, make any statement which he knows to be false in a material particular, or recklessly make any statement which is false in a material particular.

Persons leaving or arriving in Bermuda

49 Any person who, on any occasion, is about to leave Bermuda or arrives in Bermuda (which person is hereafter in this paragraph referred to as “the traveller”) shall, if on that occasion he is required so to do by an officer of customs, immigration officer or by an officer of the Bermuda Police not below the rank of Sergeant—

- (a) declare whether or not he has with him anything prohibited to be imported or exported by any of the provisions of Part V except with the permission of the Controller; and
- (b) produce any such thing as aforesaid which he has with him,

and the officer may examine or search an article which the traveller has with him for the purpose of ascertaining whether he is conveying or has in his possession any such thing, and, if the officer has reasonable grounds for suspecting that the traveller has about his person any such thing, search him, and may seize anything produced as aforesaid or found upon such examination or search as aforesaid as to which the officer has grounds for suspecting that it is prohibited to be imported or exported by any of the provisions of Part V except with permission of the Controller:

Provided that no female shall be searched in accordance with paragraph (1) except by a female.

Power to impose civil penalties

49A (1) The Controller may impose a civil penalty on a company which fails to comply with any filing or notification requirement of Part IV, or fails to provide the information in accordance with regulation 46A of these Regulations.

(2) The amount of the civil penalty that may be imposed under paragraph (1) is such amount not exceeding \$25,000 as the Controller considers appropriate.

EXCHANGE CONTROL REGULATIONS 1973

(3) For the purposes of paragraph (2), “appropriate” means effective, proportionate and dissuasive.

(4) The Controller shall not impose a civil penalty where there are reasonable grounds for him to be satisfied that the company took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(5) In deciding whether a company has failed to comply with a requirement, the Controller shall consider whether the company followed any relevant guidance which was at the time issued and published in the Gazette.

(6) For the purposes of paragraphs (4) and (5), “requirement” means a filing and notification requirement under Part IV.

[Regulation 49A inserted by BR 73 / 2018 reg. 9 effective 25 July 2018]

Procedure for imposing civil penalties

49B (1) Where the Controller proposes to impose a civil penalty, he shall give the company notice (a “warning notice”) of—

- (a) his proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the company’s right to make representations to the Controller within a specified period which may not be less than 28 days.

(2) After considering any representations made by the company, the Controller shall decide, within three months from the end of the period specified in paragraph (1)(c), whether to impose a civil penalty.

(3) The Controller shall give the company notice (a “decision notice”) of—

- (a) his decision not to impose a penalty; or
- (b) his decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for his decision; and
 - (iii) the right to appeal the decision.

[Regulation 49B inserted by BR 73 / 2018 reg. 9 effective 25 July 2018]

Appeals: penalties

49C (1) Any person aggrieved by a decision of the Controller to impose a civil penalty may appeal to the Supreme Court against that decision and on such an appeal the Court may—

- (a) set aside or affirm the civil penalty in whole or in part; and
- (b) give such directions as the Court thinks fit.

(2) A decision of the Controller under regulation 49B shall not have effect—

EXCHANGE CONTROL REGULATIONS 1973

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

[Regulation 49C inserted by BR 73 / 2018 reg. 9 effective 25 July 2018]

Contravention of Regulations an offence: penalties

50 (1) A contravention or breach of these Regulations (including any direction hereunder) shall be an offence which may be tried either summarily or on indictment.

(2) Where a person is convicted by a court of summary jurisdiction of an offence against these Regulations he shall be liable to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

(3) Where a person is convicted upon indictment of an offence against these Regulations he shall be liable to a fine not exceeding \$25,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Notwithstanding paragraphs (2) and (3), in the case of an offence against these Regulations which is concerned with any currency, security, payment, gold, goods or other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required to do so by or under these Regulations, the court convicting any person of that offence whether summarily or on indictment may impose a larger fine than that permitted in those paragraphs not exceeding three times the amount or value of the currency, security, payment, gold, goods or property.

(5) Upon the conviction of any person of an offence against these Regulations the court so convicting shall, in addition to any other penalty imposed upon him, order that any currency, security, gold, goods, or other property with which that offence is concerned shall be forfeited to the Crown:

Provided that the court may, upon special circumstances being shown to its satisfaction by the person so convicted, order that all or some of the said currency, gold, goods or other property be not so forfeited.

[Regulation 50 paragraphs (2) and (3) amended by 2011 : 20 s. 9 effective 28 June 2011; Regulation 50 amended by BR 73 / 2018 reg. 10 effective 25 July 2018]

Offences by bodies corporate

51 Where an offence punishable under this Part has been committed by a body corporate, any person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the contravention was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

EXCHANGE CONTROL REGULATIONS 1973

Commencement and transitional
52 *[omitted]*

EXCHANGE CONTROL REGULATIONS 1973

FIRST SCHEDULE

(Regulation 2)

BERMUDA EXCHANGE CONTROL AREA

Bermuda.

SECOND SCHEDULE

(Regulation 33)

FOREIGN COMPANIES

1 The bodies corporate to which Regulation 33 applies are bodies corporate not incorporated under the law of Bermuda in the case of which any of the following conditions is fulfilled—

- (a) that the body corporate is by any means controlled (whether directly or indirectly) by persons resident in Bermuda; or
- (b) that more than one-half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital would be receivable directly or indirectly by or for the benefit of persons resident in Bermuda; or
- (c) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors would be receivable directly or indirectly by or for the benefit of persons resident in Bermuda; or
- (d) that more than one-half—
 - (i) of the interest payable on its loans and loan capital, if any; or
 - (ii) of the dividends payable on its preference share capital, if any; or
 - (iii) of the dividends payable on its share capital, if any, not being preference share capital,is receivable, directly or indirectly, by or for the benefit of persons resident in Bermuda.

2 Where the identity of the person by whom or for whose benefit any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by a person resident in Bermuda of a power of appointment or similar power, the sum, assets, interests or dividends shall for the purpose of this Schedule, be deemed to be receivable directly or indirectly by or for the benefit of persons resident in Bermuda.

THIRD SCHEDULE

(Regulation 38)

BLOCKED ACCOUNTS

1 In this Schedule, "a blocked account" means an account opened as a blocked account at an office or branch in Bermuda in favour of any person by a banker authorized by the Controller to open blocked accounts, and "the banker" means, in relation to any person, a banker who opens a blocked account in favour of that person.

2 Where a direction is given that a payment is to be made to a blocked account only, then, subject to paragraph (3)—

(a) the manner in which the payment may be made shall be either—

(i) to the banker, with a direction that it is to be credited to a blocked account of that person (which direction may, in the case of a payment by means of a cheque or warrant, be made by marking the cheque or warrant with the words "blocked account of" (naming the person in question) or words to the same effect); or

(ii) by a crossed cheque or warrant drawn in favour of that person, marked with the words "payable only to blocked account of payee" or words to the same effect,

and

(b) the sum collected shall be credited by the banker to a blocked account of that person.

3 Where a direction is given that a sum is to be paid or credited to a blocked account only, then, notwithstanding the direction, the sum may, with the consent of the person to whom it is to be paid or credited, and subject to the requirements of Part IV, be invested instead in the purchase for that person of any such investments as the Controller may direct for the purposes of the provision of paragraph 4.

4 Any sum standing to the credit of a blocked account shall not be dealt with except with the permission of the Controller:

Provided that subject to compliance with the requirements of Part IV—

(a) the whole or any part of any such sum may, at the request of the person in whose name the account stands, be invested through the banker in such investments as the Controller may direct; and

(b) nothing in this Schedule shall restrict the manner in which the investments acquired may be dealt with.

EXCHANGE CONTROL REGULATIONS 1973

5 Where a person in whose name a blocked account is standing becomes bankrupt in Bermuda or dies, the banker may, notwithstanding anything in paragraph 4, transfer the account to the name of the trustee in bankruptcy, or personal representative, but save as aforesaid, no change shall, except with the permission of the Controller, be made in the name in which the account stands; and where any such change is made (whether or not the permission of the Controller is necessary therefor) the account shall remain a blocked account notwithstanding the change, and this Schedule shall apply accordingly.

6 Where—

- (a) a sum is due from any person to any other person but the Controller directs that it shall be paid or credited to a blocked account only; and
- (b) the person to whom the sum is due nominates such an account to the person from whom the sum is due,

the last mentioned person is under a duty to the person to whom the sum is due to cause the sum to be paid or credited to that blocked account, and the crediting of any sum to a blocked account in pursuance of a direction of the Controller shall, to the extent of the sum credited, be a good discharge to the person from whom the sum is due:

Provided that in the case of a sum due under a contract this paragraph shall not apply in so far as it is shown to be inconsistent with the intention of the parties that it should apply.

FOURTH SCHEDULE

(Regulation 52)

REVOCATIONS

[*omitted*]

FIFTH SCHEDULE

(Regulation 39)

LEGAL PROCEEDINGS, ETC.

1 The provisions of Part III of these Regulations shall apply to sums required to be paid by any judgment or order of any court or by any award as they apply in relation to other sums, and it shall be implied in any judgment or order of any court in Bermuda, and in any award given under the law of Bermuda, that any sum required to be paid by the judgment, order or award (whether as a debt, as damages or otherwise) to which the said provisions apply shall not be paid except with the permission of the Controller.

2 Nothing in these Regulations shall be construed as preventing the payment by any person of any sum into a court in Bermuda but the provisions of Part III of these Regulations shall apply to the payment of any sum out of court, whether under a order of the court or otherwise, to or for the credit of any person resident outside the Bermuda exchange control area.

3 In any proceedings in a court in Bermuda and in any arbitration proceedings, a claim for the recovery of any debt shall not be defeated by reason only of the debt not being payable without the permission of the Controller and of that permission not having been given or having been revoked.

4 (1) In any bankruptcy, in the winding up of any company or in the administration of the estate of any deceased person (being a bankruptcy, winding up or administration carried on under the law of Bermuda), a claim for a sum not payable without the permission of the Controller shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if it has been given and had not been revoked:

Provided that nothing in this sub-paragraph shall be construed as affecting the application of the provisions of Part III of these Regulations to payments by any trustee, liquidator, personal representative or other person in any such bankruptcy winding up or administration.

(2) The provisions of regulation 32 restricting the making of settlements shall not apply to any deed of arrangement made for the benefit of creditors generally, and the provisions of sub-paragraph (1) of this paragraph shall apply in relation to proceedings under any deed of arrangement as they apply in relation to proceedings in bankruptcy.

5 A debt for the payment of which the permission of the Controller is required under these Regulations shall be a good petitioning creditor's debt, notwithstanding the said requirement.

EXCHANGE CONTROL REGULATIONS 1973

[Amended by:

SR&O 7 / 1974

BR 31 / 1981

BR 2 / 1986

BR 77 / 1998

2011 : 20

BR 75 / 2012

2012 : 35

2014 : 3

BR 50 / 2017

2017 : 41

BR 73 / 2018]