

*Finance Dept by HCN*

BECHUANALAND PROTECTORATE.

*308/42*

HIGH COMMISSIONER'S NOTICE

No. 235 of 1939.

It is hereby notified for general information that under and by virtue of the powers vested in him by section *two* of the Bechuanaland Protectorate Emergency Powers (Defence) Proclamation, 1939 (No. 36 of 1939), His Excellency the High Commissioner has been pleased to make the following Regulations.

By Command of His Excellency  
the High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.

High Commissioner's Office,  
Pretoria, 13th December, 1939.

REGULATIONS.

*Short Title and Commencement.*

1. These regulations may be cited as the Bechuanaland Protectorate Defence (Finance) Regulations, 1939, and shall have force and take effect from the date of publication in the *Gazette*.

*Definition of Terms.*

2. In these regulations, unless the context otherwise requires—

- “ authorised dealer ” means, in relation to any transaction in respect of gold, a person authorised by the Resident Commissioner to deal in gold, and in relation to any transaction in respect of foreign currency, a person authorised by the Resident Commissioner to deal in foreign currency;
- “ bank notes ” means bank notes which are legal tender in the Territory;
- “ bond ” does not include any mortgage bond or notarial bond registered or registrable in any registration office in the Territory other than a debenture bond;
- “ foreign currency ” means any currency other than currency which is legal tender in the Territory;
- “ gold ” means gold in any form, except in Regulation 3, in which “ gold ” means any gold other than wrought gold;

“ owner ”, in relation to any security, includes any person who has the right to sell or transfer that security, or who has the custody thereof, or who receives or has the right to receive, whether on his own behalf or on behalf of any other person, dividends or interest thereon, or who has any other interest therein;

“ Resident Commissioner ” means the Resident Commissioner and includes any officer designated by the Resident Commissioner for the purpose of these regulations;

“ security ” includes shares, stock, bonds, debentures, debenture stock and Treasury bills, but does not include a bill of exchange or promissory note;

“ the appropriate officer ” means any officer of customs or excise, any immigration officer, or any person authorised by the Resident Commissioner to act as such;

“ transfer ” includes transfer by way of loan or security; and for the purposes of these Regulations a person shall be deemed to transfer securities from the Territory elsewhere if he transfers securities from a register in the Territory to a register outside the Territory;

*Restriction on Purchase, Sale and Loans of Foreign Currency and Gold.*

3. Except with permission granted by the Resident Commissioner, no person other than an authorised dealer shall in the Territory buy or borrow any foreign currency from, or sell or lend any foreign currency to, any person not being an authorised dealer.

*Restriction on Export of Currency, Gold and Securities, etc.*

4. (1) Subject to any exemption which may be granted by the Resident Commissioner, no person shall, except with permission granted by the Resident Commissioner—

(a) take or send out of the Territory any bank notes, gold, securities or foreign currency, or transfer any securities from the Territory elsewhere; or

(b) draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment in the Territory is created or transferred as consideration—

(i) for receiving a payment, or acquiring property, outside the Territory, or

- (ii) for a right (whether actual or contingent) to receive a payment, or acquire property, outside the Territory, or make any payment as such consideration.

(2) Paragraph (1) of this regulation shall not prohibit the doing of anything, within the scope of his authority, by a person authorised by the Resident Commissioner to deal in foreign exchange, and shall not prohibit the doing of anything which is certified by the Resident Commissioner to be necessary for the purpose—

- (a) of meeting the reasonable requirements of a trade or business carried on in the Territory; or
- (b) of performing a contract made before the third day of September, 1939; or
- (c) of defraying reasonable travelling or other personal expenses.

(3) Any person who is about to leave the Territory (in this paragraph referred to as "the traveller"), shall, if requested so to do by the appropriate officer—

- (a) declare whether or not he has with him any bank notes, gold, securities, or foreign currency; and
- (b) produce any bank notes, gold, securities or foreign currency which he has with him;

and the appropriate officer and any person acting under his directions may search the traveller and examine or search any article which the traveller has with him, for the purpose of ascertaining whether he has with him any bank notes, gold, securities or foreign currency, and may seize any bank notes, gold, securities or foreign currency produced or found upon such examination or search unless either—

- (i) the appropriate officer is satisfied that the traveller is, in respect of any bank notes, gold, securities or foreign currency which he has with him, exempt from the prohibition imposed by paragraph (1) of this regulation; or
- (ii) the traveller produces to the appropriate officer a certificate granted by the Resident Commissioner which shows that the exportation by the traveller of any bank notes, gold, securities or foreign currency which he has with him does not involve a contravention of that paragraph.

No female shall be searched in pursuance of this paragraph except by a female.

(4) The appropriate officer and any person acting under his directions may examine or search any goods consigned from the Territory to a destination outside the Territory, for the purpose of ascertaining whether there are being sent therewith any bank notes, gold, securities, or foreign currency, and may seize any bank notes, gold, securities or foreign currency found upon such examination or search unless the appropriate officer is satisfied that the Resident Commissioner has granted a certificate which shows that the sending as aforesaid of the bank notes, gold, securities or foreign currency does not involve a contravention of paragraph (1) of this regulation.

(5) For the purposes of this regulation, any bills of exchange or promissory notes payable otherwise than in currency which is legal tender in the Territory shall be deemed to be foreign currency; and for the purposes of paragraph (1) (a) of this regulation, documents of title relating to securities shall be deemed to be securities, and references to securities in paragraphs (3) and (4) of this regulation shall be construed as including references to such documents of title.

*Acquisition by the Resident Commissioner of certain Foreign Currency, etc.*

5. (1) Every person resident in the Territory who at the commencement of these regulations is entitled to sell, or to procure the sale of, any foreign currency which is in the Territory shall within thirty days of that commencement, and every person resident in the Territory who after the said commencement becomes entitled to sell, or to procure the sale of, any foreign currency which is in the Territory, shall within thirty days after becoming so entitled, offer that currency, or cause it to be offered, for sale to the Resident Commissioner, or to a person authorised by the Resident Commissioner to act under this regulation; and the Resident Commissioner or a person so authorised may purchase such currency at such price as the Resident Commissioner may fix, being a price which, in the opinion of the Resident Commissioner, is not less than the market value of that currency on the day of purchase.

(2) Every person resident in the Territory who at the commencement of these regulations is entitled to assign, or to procure the assignment of, any right to receive outside the Territory, in respect of any credit or balance at a bank, payment of any amount in a foreign currency shall, within thirty days after that commencement, and every person resident in the Territory who after the said commencement becomes entitled to assign, or to procure the assignment of, any such right, shall within thirty days

after becoming so entitled, do all things necessary for the purpose of assigning that right to the Resident Commissioner or to a person authorised by the Resident Commissioner to act under this regulation.

The sum payable as consideration for any assignment made in accordance with this paragraph shall be such as the Resident Commissioner may fix.

(3) The provisions of paragraphs (1) and (2) of this regulation shall not impose upon any person an obligation in respect of any foreign currency or right to receive payment of any amount if—

- (a) he satisfies the Resident Commissioner or a person authorised by the Resident Commissioner to act under this regulation that all the persons interested in that currency or that right, as the case may be, other than persons interested therein merely as trustees or merely by virtue of any mortgage, pledge or charge which came into being before the third day of September, 1939, but including any persons beneficially interested in that currency or that right under a trust, are not resident in the Territory; or
- (b) he satisfies the Resident Commissioner or a person so authorised that that currency or that right, as the case may be, is held or is required for the purpose—
  - (i) of performing a contract made before the third day of September, 1939; or
  - (ii) of meeting the reasonable requirements of a trade or business carried on in the Territory otherwise than by way of dealing in foreign exchange, or
  - (iii) of defraying reasonable travelling or other personal expenses, or
- (c) he is, in respect of that currency or that right, as the case may be, exempted from this regulation by the Resident Commissioner or by a person so authorised.

*Acquisition by the Resident Commissioner of certain Securities.*

6. (1) The Resident Commissioner may by order direct—

- (a) that, subject to any exemptions for which provision may be made by the order, no person shall, except with permission granted by the Resident Commissioner, sell, transfer, or do anything which involves the creation of a charge on, securities of any such class as may be specified in the order, being a class of

securities which, in the opinion of the Resident Commissioner, is likely to be marketable outside the Territory; and

- (b) that the owner of any securities of the said class shall, in such manner and within such period as may be specified in the order, make a return to the Resident Commissioner giving such particulars with respect to those securities as may be so specified.

For the purposes of this paragraph, a person who mortgages or pledges a security shall be deemed thereby to create a charge on the security.

(2) At any time while an order made under paragraph (1) of this regulation with respect to securities of any class is in force, the Resident Commissioner, if he is of the opinion that it is expedient so to do for the purpose of strengthening the financial position of the Territory, may, by an order made generally with respect to any specified securities of that class, or by directions given with respect to any securities of that class of which any particular person is the owner, transfer to himself the securities to which the order or directions relates or relate, at a price specified in the order or directions, being a price which, in the opinion of the Resident Commissioner, is not less than the market value of the securities on the date of the making of the order or the giving of the directions.

(3) Where any order is made, or any directions are given, under paragraph (2) of this regulation with respect to any securities—

- (a) those securities shall forthwith vest in the Resident Commissioner free from any mortgage, pledge or charge, and the Resident Commissioner may deal with the securities as he thinks fit;
- (b) the owner of any of those securities, and any person who is responsible for keeping any register or book in which any of those securities is registered or inscribed or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Resident Commissioner may direct to be done for the purpose of securing that the security and any document of title relating thereto will be delivered to the Resident Commissioner or to such person as the Resident Commissioner may direct, and, in the case of any registered or inscribed security, that the security will be registered or inscribed in the name of the Resident Commissioner or such person as the Resident Commissioner may direct.

(4) The duty to deliver any security under paragraph (3) of this regulation shall include a duty to do all such things as are necessary to secure that any dividends or interest on that security becoming payable on or after the date of the making of the order or giving of directions will be paid to the Resident Commissioner; and where, in the case of any security payable to bearer which is delivered in pursuance of the said paragraph, any coupons representing any such dividends or interest are not delivered with the security, such reduction in the price payable therefor shall be made as the Resident Commissioner thinks fit:

Provided that, where the price specified in the order or directions in relation to any securities is ex any dividend or ex any interest, this paragraph shall not apply to that dividend or interest or to any coupon representing it.

(5) A certificate signed by any person authorised in that behalf by the Resident Commissioner that any specified securities are securities transferred to the Resident Commissioner under this regulation shall be treated by all persons responsible for keeping any registers or books in which the securities are registered or inscribed, or who are otherwise concerned with the registration or inscription of those securities, as conclusive evidence that the securities have been so transferred.

(6) This regulation shall not apply to any security if the Resident Commissioner is satisfied that at all times since the beginning of the third day of September, 1939, all the persons interested in the security, other than persons interested therein merely as trustees or merely by virtue of any mortgage, pledge or charge created before the said day, but including any persons beneficially interested therein under a trust, were not resident in the Territory.

#### *Control of Capital Issues.*

7. (1) No person shall, except with the consent of the Resident Commissioner and in accordance with such conditions as the Resident Commissioner may impose, make an issue of capital in the Territory or renew or postpone the date of maturity of any security maturing for repayment in the Territory:

Provided that this paragraph shall not apply to the issue of shares for a consideration not exceeding one hundred pounds in all to the signatories of a memorandum of association.

(2) No person shall issue any prospectus or other document offering for subscription any securities which does not include a statement that the Resident Commissioner has consented to the issue of the securities.

(3) For the purposes of this regulation a person shall be deemed to make an issue of capital who—

- (a) issues any securities (whether for cash or otherwise); or
- (b) receives any money on loan on the terms, or in the expectation, that the loan will or may be repaid wholly or partly by the issue of any securities, or by the transfer of any securities issued after the making of the loan.

*Exemption from Stamp Duty.*

8. Stamp duty shall not be chargeable on any document made for the sole purpose of meeting the requirements of these regulations.

*Forms.*

9. The Resident Commissioner may prescribe such forms for the purposes of these regulations as he may think expedient.

*Penalties.*

10. Every person who contravenes or fails to comply with the provisions of any of these regulations, or contravenes or fails to comply with the terms of any notice or order issued or any permission or exemption granted under these regulations, or who obstructs any person in the execution of any power or function assigned to him by or under these regulations, or who makes any incorrect statement in any declaration made or return rendered for the purposes of these regulations (unless he proves that he did not know, and could not by the exercise of a reasonable degree of care have ascertained, that the statement was incorrect), shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.