

BECHUANALAND PROTECTORATE.

HIGH COMMISSIONER'S NOTICE

No. 21 of 1942.

It is hereby notified for general information that, under and by virtue of the powers vested in him by section *one* 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 further amendments to the Bechuanaland Protectorate Defence (Finance) Regulations, 1939, published under High Commissioner's Notice No. 235 of 1939, which Regulations were amended as set forth in High Commissioner's Notices No. 127 of 1940, No. 137 of 1940 and No. 227 of 1940:—

1. Regulation 4 is hereby amended by—

- (i) the insertion in sub-paragraph (b) of paragraph (1) after the word "make" of the words "or receive";
- (ii) the addition at the end of paragraph (4) of the words "and that such certificate has not been granted in reliance on any incorrect statements".

2. Regulation 4 A is hereby amended by the deletion of the words "prescribe the currency or currencies in which payment may or may not be made" and the substitution thereof of the words "prescribe by Notice in the *Gazette* or by instructions to authorised dealers the currency or currencies or the manner in which payment may or may not be made".

3. The following Regulations, numbered 4 C, 4 D and 4 E, are hereby inserted after Regulation 4 B:—

BLOCKED ACCOUNTS.

"4 C. (1) In this Regulation 'blocked account' means an account opened with an authorised dealer for the purposes specified in the succeeding paragraphs.

(2) Whenever a person in the Territory is under a legal obligation to make a payment to a person outside the Territory but is precluded from effecting the payment as a result of any restrictions imposed by or under these Regulations, the Resident Commissioner may authorise such person to make the payment to a blocked account.

(3) The Resident Commissioner may by Notice in the *Gazette* direct, in respect of any particular person who is not in the Territory, or in respect of persons resident in a particular country, that all sums due by any other persons to such particular person or to persons resident in such particular country shall be paid into a blocked account.

(4) Whenever such direction has been given--

(a) any person who holds or may thereafter hold moneys on behalf of any creditor mentioned in paragraph (3), or who is or may thereafter become indebted to such a creditor, shall forthwith or, as the case may be, on the date upon which such moneys became due or such debt becomes payable, pay the said moneys or the sum representing such debt into the said blocked account;

(b) no person shall, without the permission of the Resident Commissioner, make any payment on behalf of any creditor mentioned in paragraph (3).

(5) Any payment made to a blocked account in terms of this Regulation shall, to the extent of the sum paid, be a valid discharge to the person making payment.

(6) Where the liability to make the payment is a liability to make the payment in currency other than Union currency, the amount of the liability in Union currency and the extent of the discharge shall be ascertained by converting the amount into Union currency at a rate fixed by the Resident Commissioner.

(7) No sum standing to the credit of a blocked account shall be dealt with in any way except with permission granted by the Resident Commissioner or a person authorised by the Resident Commissioner.

ASSIGNMENT TO RESIDENT COMMISSIONER OF RIGHT TO EXPORTED GOODS.

4 D. (1) Whenever a person has exported goods from the Territory to any country other than a country to which exports have been exempted in terms of paragraph (10) (c) of Regulation 5 and has failed to sell such goods within six months from the date of shipment from the Territory or within such shorter period as may have been determined in terms of paragraph (1) (a) (iii) of

Regulation 4 B, he shall within fourteen days from the date of expiry of the said period report in writing to the Resident Commissioner or to a person authorised by the Resident Commissioner that the said goods have not been sold, and the Resident Commissioner may thereupon order such person to assign to the Resident Commissioner his right to the said goods.

The sum payable as consideration for any assignment in terms of this Regulation shall be such sum as may be determined by or on behalf of the Resident Commissioner but shall not be less than the amount realized by the Resident Commissioner after deduction of the cost of realization.

(2) No person shall export any goods on conditions which would preclude him from giving effect to an order issued in terms of paragraph (1).

ASSIGNMENT TO RESIDENT COMMISSIONER OF RIGHT TO GOODS PURCHASED OUTSIDE THE TERRITORY.

4 E. (1) Whenever a person in the Territory has purchased goods in any country other than a country to which exports have been exempted in terms of paragraph (10) (c) of Regulation 5, and has paid for or made a payment on account of such goods, but the said goods have not been shipped to the Territory within four months from the date on which such payment was made, such person shall within fourteen days from the date of expiry of the said period of four months report in writing to the Resident Commissioner or to a person authorised by the Resident Commissioner that the goods have not been shipped to the Territory, and the Resident Commissioner may thereupon order such person to assign to the Resident Commissioner or to a person authorised by the Resident Commissioner his right to the said goods.

The sum payable in consideration for any assignment made in accordance with this Regulation shall be such sum as the Resident Commissioner may fix but shall not be less than the amount realized by the Resident Commissioner after deduction of the cost of realization.

(2) No person shall purchase any goods on conditions which would preclude him from giving effect to an order issued in terms of paragraph (1) ”.

4. Regulation 5 is hereby deleted and the following new Regulation is substituted therefor:—

ACQUISITION BY THE RESIDENT COMMISSIONER
OF FOREIGN CURRENCY.

“ 5. (1) Every person resident in the Territory who is entitled to sell or to procure the sale of any foreign currency shall within thirty days of the commencement of this Regulation, and every person resident in the Territory who thereafter becomes entitled to sell or to procure the sale of any foreign currency shall within thirty days after becoming so entitled, make or cause to be made a declaration in writing of such foreign currency to the Resident Commissioner or to a person authorised by the Resident Commissioner to act under this Regulation.

(2) Every person resident in the Territory who is entitled to assign or to procure the assignment of any right to receive outside the Territory, in respect of any credit or of any balance at a bank, payment of any amount in a foreign currency, shall within thirty days of the commencement of this Regulation, and every person resident in the Territory who thereafter becomes entitled to assign or to procure the assignment of any such right shall within thirty days after becoming so entitled, make or cause to be made a declaration in writing of such right to the Resident Commissioner or to a person authorised by the Resident Commissioner to act under this Regulation.

(3) Any person who has, in terms of paragraph (1) or paragraph (2), made a declaration in writing to the Resident Commissioner or to a person authorised by the Resident Commissioner to act under this Regulation shall be deemed to have offered such foreign currency or such right, as the case may be, to the Resident Commissioner, and the Resident Commissioner may purchase such foreign currency or such right at a price which in the case of foreign currency shall not be less than the market value of that currency on the day of purchase and in the case of a right shall be such as the Resident Commissioner may fix.

(4) Any person from whom the Resident Commissioner purchases a right in terms of this Regulation shall 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.

(5) No person who is entitled (whether actually or contingently) to receive a payment in a foreign currency shall, except with permission granted by or on behalf of the Resident Commissioner, do or refrain from doing any act with intent to secure that—

- (a) the receipt by him of the whole or any part of the payment in such currency is delayed;
- (b) the payment ceases, in whole or in part, to be receivable by him or receivable in that currency.

(6) Any foreign currency or any right in respect of which a declaration has been made in terms of paragraph (1) or paragraph (2) but which has not been purchased by the Resident Commissioner or by a person authorised by the Resident Commissioner to act under this Regulation shall not be sold, transferred or otherwise disposed of without the permission of the Resident Commissioner or of a person authorised by the Resident Commissioner.

(7) The provisions of paragraphs (3), (4) and (6) shall not impose upon any person an obligation in respect of any foreign currency or any right 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 sixth 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 sixth 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.

(8) The Resident Commissioner may withdraw any exemption granted in terms of sub-paragraph (b) or (c) of paragraph (7).

(9) For the purpose of this Regulation any person who has at any time since the sixth day of September, 1939, been in the Territory shall be deemed until the contrary is proved to have been and still to be resident in the Territory.

(10) (a) No person shall, during the period commencing upon the fifteenth day of November, 1940, and ending upon the thirty-first day of October, 1941, or thereafter during any calendar year commencing upon the first day of November, export from the Territory a total quantity of goods which exceed ten pounds in value unless the relative bill of entry export in respect of such goods is accompanied by a declaration in the form of the Annexure hereto, duly completed and signed by the consignor or a person duly authorised by him and attested by an authorised dealer:

Provided that where the goods are forwarded through the post a declaration in the said form so completed, signed and attested, shall be furnished to the postmaster at the time the parcel is handed in at the post office.

(b) The Resident Commissioner may direct that the said declaration shall be completed in respect of any commodity or article irrespective of its value.

(c) The Resident Commissioner may by Notice in the *Gazette* exempt from the provisions of sub-paragraph (a) of this paragraph exports to any particular country or to any group of countries.

(d) For the purposes of this paragraph 'value' shall mean the value for customs purposes as defined in section *thirty-eight* of Proclamation No. 20 of 1925."

5. The following Regulations are hereby inserted after Regulation 6:--

TRANSFER OF BUSINESSES AND UNDERTAKINGS.

" 6 A. No person resident in the Territory shall without the consent of the Resident Commissioner:--

- (a) transfer to a person resident outside the Territory any trade, business or undertaking carried on by him in the Territory;

- (b) do any act which is calculated to secure, or which forms part of a series of acts which together are calculated to secure, the transfer as aforesaid of any such trade, business or undertaking;
- (c) do any act whereby the management or control of such trade, business or undertaking is in any manner, whether wholly or partially, transferred out of the Territory.

BUSINESSES CONTROLLED BY PERSONS OUTSIDE THE TERRITORY.

6 B. Where the control of any business is established outside the Territory, any transaction with a branch of such business in the Territory shall be treated as if the said branch were a separate person. The manager or controller of such branch in the Territory shall assume the same obligations under these Regulations as he would have been required to assume if the said branch were independent of control from outside the Territory.

CONTROL BY THE RESIDENT COMMISSIONER OF BUSINESSES AND UNDERTAKINGS.

6 C. Whenever the Resident Commissioner is satisfied—

- (a) that the control or management of the affairs, property or business of any person is such that the provisions of any of these Regulations are being, or are likely to be, circumvented or evaded; and
- (b) that in order to prevent such circumvention or evasion it is necessary for the Resident Commissioner to control or manage the affairs, property or business of such person, the Resident Commissioner may appoint a controller in respect of the affairs, property or business of such person and by order confer on the said controller such powers as he may deem expedient for the managing or otherwise dealing with the said affairs, property or business."

6. Regulation 7 is hereby deleted and the following new Regulation is substituted therefor:--

"7. (1) Except with the consent of the Resident Commissioner and in accordance with such conditions as the Resident Commissioner may impose, no person shall during any calendar year—

- (a) make in the Territory an issue of capital to an amount exceeding five thousand pounds; or

(b) renew or postpone the date of maturity of securities maturing for repayment in the Territory which amount in the aggregate to more than five thousand pounds.

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

(3) For the purpose 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:

Provided that the raising of any loan by any local authority shall be deemed to constitute an issue of capital irrespective of whether or not securities are issued or transferred in connection with such loan."

7. Regulation 7 A is hereby deleted and the following new Regulation is substituted therefor:—

" 7 A. (1) The Resident Commissioner or a person authorised by the Resident Commissioner may order any person to provide security in such form and in such amount as the Resident Commissioner may determine, that he will comply, either generally or in respect of any particular transaction, with the provisions of any of these Regulations specified by the Resident Commissioner or by a person authorised by the Resident Commissioner.

(2) Where any person who has provided security in terms of this Regulation has failed to comply with the provisions of the Regulations in respect of which the security has been provided, the Resident Commissioner may direct that the said security shall be forfeited for the benefit of the general revenue of the Territory.

The forfeiture of such security shall not prevent any other action against the person concerned for his failure to comply with the provisions of these Regulations."

8. Regulation 10 is hereby amended by the addition thereto of the following proviso:—

" Provided that where he is convicted of an offence against any of these Regulations in relation to any security, foreign currency, gold, bank note, cheque, postal order, bill, note, debt, payment or goods, the fine which may be imposed on

him shall be a fine not exceeding five thousand pounds, or a sum equal to the value of the security, foreign currency, gold, bank note, postal order, bill, note, debt, payment or goods, whichever shall be the greater."

9. High Commissioner's Notice No. 127 of 1940 is hereby cancelled.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

High Commissioner's Office,
Cape Town, 28th January, 1942.

ANNEXURE.

DECLARATION IN REGARD TO FOREIGN
EXCHANGE PROCEEDS OF EXPORTS.

(For completion by consignor or person authorised by
him.)

The Director of Customs,

at

I/We,,
for and on behalf of
do hereby declare that the proceeds of the sale of the
goods detailed in the subjoined Schedule have been/
will be—

* (a) sold to.....(name
of authorised dealer) at.....;

* (b) dealt with in accordance with the provisions
of paragraph (7) (a) and (b) of Regulation
5 of the Bechuanaland Protectorate Defence
(Finance) Regulations, 1939;

* (c) exempted by the Resident Commissioner in
terms of paragraph (7) (a) of Regulation
5 of the Bechuanaland Protectorate Defence
(Finance) Regulations, 1939.

Dated at.....this
.....day of....., 19.....

Attested by:

.....
Authorised Dealer. Signature of Declarant.

SCHEDULE.

No. and Date of Export Entry.	Name of Vessel.	Name and Address of Consignor.	Name and Address of Consignee.	Description of Goods.	No. of Packages or Weight or Quantity.	Value.		Time and Method of Payment.
						S.A. Currency.	Foreign Currency.	
						£	s. d.	

N.B.—This declaration is required in respect of every consignment of a value exceeding £100.