

*Statutory Instrument No. 110 of 1976*

EXCHANGE CONTROL ACT

(Cap. 55:03)

**EXCHANGE CONTROL REGULATIONS, 1976**

*(Published on 13th August, 1976)*

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**IN EXERCISE** of the powers conferred by section 3 of the Exchange Control Act, the Minister of Finance and Development Planning hereby makes the following Regulations —

**PART I. *Preliminary***

Citation and  
commence-  
ment  
Inter-  
pretation

**1.** These Regulations may be cited as the Exchange Control Regulations, 1976, and shall come into operation on 23rd August, 1976.

**2.** (1) In these Regulations, unless the context otherwise requires, —

“authorized dealer” means, in relation to gold or any foreign currency, a person for the time being authorized by the Minister, by notice published in the Gazette, to act for the purposes of these Regulations as an authorized dealer in relation to gold, or, as the case may be, that foreign currency;

“authorized depository” means a person for the time being authorized by the Minister, by notice published in the Gazette, to act as an authorized depository for the purposes of Part IV of these Regulations;

“bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

“certificate of deposit” means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable;

“certificate of title to securities” means any document of title whereby a person recognizes the title of another to securities issued or to be issued by such first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

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

“foreign currency” has the meaning ascribed to it by regulation 3;

“Government bill” means any bill, note or other obligation of a Government in any part of the world, being a document by the delivery of which, with or without endorsement, title is transferable, and not being an obligation which is or has been legal tender in any part of the world, and includes a Treasury bill;

“policy of assurance” means any policy securing the payment of a capital sum or annuity on the occurrence of a specified event which is certain to happen and includes ---

(a) any policy by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life; and

(b) any policy securing the payment of an immediate annuity; and the reference in this definition to the occurrence of a specified event which is certain to happen shall include the occurrence which is certain to happen, of one of specified events none of which by itself is certain to happen;

“specified currency” has the meaning ascribed to it by regulation 4 as extended by regulation 6;

“unit”, in relation to a unit trust scheme, means a right or interest (whether described as a unit, as a sub-unit or otherwise) which may be acquired under the scheme;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, or providing for persons having funds available for investments, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) 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; and 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.

(3) Any power conferred by these Regulations to prescribe the declarations which are to be furnished on any occasion shall include a power to require that the declarations shall be made by specified persons and shall be verified in a specified manner.

(4) Nothing in these Regulations shall be construed as requiring the Minister to pay any sum otherwise than in Botswana currency or otherwise than in Botswana, and any provision of these Regulations requiring the Minister to pay any sum to any person shall, where that sum is in a specified currency, be construed as a provision that the Minister shall pay to that person the amount in Botswana currency which he would have received for the specified currency if he had sold it to an authorized dealer in pursuance of an offer made under regulation 4 at the time when the said sum is paid.

(5) 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 Botswana and are not citizens of Botswana.

## PART II. *Gold and Foreign Currency*

Dealings in  
gold and  
foreign  
currency

**3.** (1) Except with the permission of the Minister, no person, other than an authorized dealer, shall, in Botswana, and no person resident in Botswana, other than an authorized dealer, shall, outside Botswana, 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) Where a person buys or borrows any gold or foreign currency in Botswana or, being a person resident in Botswana, buys or borrows gold or foreign currency outside Botswana, 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 may from time to time be notified to him by the Minister.

(3) In these Regulations the expression "foreign currency" includes any currency and any notes of a class which are or have at any time been legal tender in any country outside Botswana, and any reference to foreign currency, except so far as the context otherwise requires, includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank, but does not include any currency or notes issued by the Bank of Botswana.

Surrender  
of gold and  
foreign  
currency

**4.** (1) (a) Every person in or resident in Botswana who is entitled to sell, or to procure the sale of, any gold, or any foreign currency to which this regulation applies, and is not an authorized dealer, shall offer it, or cause it to be offered, for sale to an authorized dealer, unless the Minister consents to his retention and use thereof or he disposes thereof to any other person with the permission of the Minister.

(b) The foreign currency to which this regulation applies is such foreign currency (hereinafter referred to as "specified currency") as may from time to time be specified by the Minister, by notice published in the Gazette.

(2) If a person who has obtained the consent of the Minister to his retention and use of any gold or specified 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, subregulation (1) shall thereupon apply to him in relation to that gold or currency as if the Minister had revoked his consent to his retention and use thereof.

(3) A person who acquires any gold or specified currency from an authorized dealer shall be treated for the purposes of this regulation as if the Minister had consented to the retention and use by him of that gold or currency (subject, however, to any conditions notified to him in accordance with regulation 3 (2)), and as if any statement made by him in an application for that gold or currency as to the purpose for which he requires it had been made by him in an application for the Minister's consent to his retention and use thereof.

(4) Where a person has become bound under this regulation to offer or cause to be offered any gold or specified currency for sale to an authorized dealer, he shall not be deemed to comply with that obligation by any offer made or caused to be made by him if the offer is an offer to sell at a price exceeding that authorized by the Minister or without payment of any usual and proper charges of the authorized dealer, or otherwise on any unusual terms.,

(5) Where a person has become bound under this regulation to offer or cause to be offered any gold or specified currency for sale to an authorized dealer and has not complied with that obligation, the Minister may direct that that gold or currency shall vest in the Minister and it shall vest in the Minister accordingly free from any mortgage, pledge or charge, and the Minister may deal with it as he thinks fit, but the Minister shall pay to the person who would, but for the direction, 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.

(6) In any proceedings in respect of a failure to comply with the provisions of 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.

**5. (1)** Every person in Botswana by whom or to whose order (whether directly or indirectly) any gold or any specified currency in the form of notes is held in Botswana but who is not entitled to sell it or procure its sale shall notify the Bank of Botswana in writing that he so holds that gold or currency.

Bailees of  
gold and  
foreign  
currency

(2) The Minister may direct any person in Botswana by whom or to whose order (whether directly or indirectly) any gold or any specified currency in the form of notes is held in Botswana, whether or not he is entitled to sell it or procure its sale, to cause that gold or currency to be kept at all times in the custody of such banker as may be specified in the direction.

**6. (1)** This regulation applies to any document of a kind 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 traveller's cheque or other draft or letter of credit so intended.

Travellers'  
cheques, etc.

(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) Any such document not expressed in terms of Botswana currency shall, if it is of a kind intended to enable the person to whom it is issued to obtain any specified currency, be treated also for the purposes of these Regulations as itself being specified currency.

(4) Every person in or resident in Botswana who holds or to whose order there is held any document to which this regulation applies, being a document expressed in terms of Botswana currency, shall encash it or cause it to be encashed in Botswana with the person issuing it or with a banker, unless the Minister consents to his retention and use thereof and, where in his application for that consent he has stated that he requires it for a particular purpose, unless also he still requires it for that purpose.

(5) A person who acquires any document to which subregulation (4) applies from an authorized dealer shall be treated for the purposes of that subregulation as if the Minister had consented to the retention and use by him of that document (subject, however, to any conditions notified to him in accordance with regulation 3 (2)), and as if any statement made by him in an application for that document as to the purpose for which he requires it had been made by him in an application for the Minister's consent to his retention and use thereof.

### PART III. *Payments*

Payments in Botswana

**7.** Except with the permission of the Minister, no person shall do in Botswana any of the things following —

- (a) make any payment to or for the credit of a person resident outside Botswana;
- (b) make any payment to or for the credit of a person resident in Botswana by order or on behalf of a person resident outside Botswana; or
- (c) place any sum to the credit of any person resident outside Botswana:

Provided that where a person resident outside Botswana has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) shall not prohibit the acknowledgment or recording of the payment.

Payments outside Botswana

**8.** (1) Except with the permission of the Minister, no person resident in Botswana shall, subject to the provisions of this regulation, make any payment outside Botswana to or for the credit of a person resident outside Botswana.

(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 the provisions of Part II or retained by him in pursuance of the consent of the Minister.

Compensation deals

**9.** (1) Except with the permission of the Minister, no person shall in Botswana, and no person resident in Botswana shall outside Botswana, make any payment to or for the credit of a person resident in Botswana as consideration for or in association with —

- (a) the receipt by any person of a payment made outside Botswana or the acquisition by any person of property which is outside Botswana; 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 Botswana or to acquire property which is outside Botswana.

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

#### PART IV. *Securities*

**10.** (1) In this Part —

- (a) the expression “registered” includes inscribed;
- (b) the expressions “registered in Botswana” and “registered outside Botswana” mean, respectively, registered in a register in, and registered in a register outside, Botswana;
- (c) the expression “security which is registered in Botswana otherwise than in a subsidiary register” means a security which either —
  - (i) is registered in Botswana and is not, and cannot without the necessity for an entry in the register in Botswana become, registered outside; or
  - (ii) is registered both in Botswana and outside but on a transfer cannot, without the necessity for an entry in the register in Botswana, become registered outside in the name of the transferee; and
- (d) the expression “a register” includes any book, file or index in which securities are registered.

Inter-  
pretation of  
Part IV

(2) For the purposes 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 references 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.

(4) In this Part the expression “holder”, —

- (a) in relation to a security transferable by means of a bearer certificate or to a coupon, includes the person holding the certificate or coupon; and
- (b) in relation to a security 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.

(5) 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 regards 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, and

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 —

- (i) a person shall not by reason only that he has a controlling interest in a body corporate be deemed for the purposes of this subregulation 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
- (iii) 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.

(6) A certificate of title shall not for the purposes of this Part be treated as in the custody of an authorized depository if either —

- (a) the depository has no notice of the nature of the certificate; or
- (b) the certificate is deposited with him in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person.

(7) Where a certificate of title outside Botswana is by this Part required to be kept in the custody of an authorized depository, it shall be deemed to be in the custody of an authorized depository if—

- (a) by his direction or with his assent it is in the custody of some other person who holds it on behalf of and to the order of the authorized depository; and
- (b) the certificate is not deposited with that other person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of a person other than himself;

and where a certificate of title is by virtue of this subregulation deemed to be in the custody of an authorized depository, references in this Part to the depository parting with the certificate or a coupon belonging thereto shall be construed as references to his permitting the person having the actual custody thereof to part with it otherwise than to the depository, and references to his destroying the certificate or such a coupon shall be construed as references to his permitting it to be destroyed.

Issue of securities

**11.** (1) Except with the permission of the Minister, no person shall in Botswana issue any security or, whether in Botswana or elsewhere, issue any security which is registered or to be registered in Botswana, unless the following requirements are fulfilled —

- (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 Botswana; and
- (b) the prescribed 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.

(2) The subscription of the memorandum of association of a company to be formed under the Companies Act, by a person resident outside Botswana, or by a nominee for another person so resident, shall, unless the person subscribes the memorandum with the permission of the Minister, be invalid insofar as it would on registration of the memorandum have the effect of making him a member of or shareholder in the company, so, however, that this provision shall not render invalid the incorporation of the company; and if, by virtue of this subregulation, the number of the subscribers of the memorandum, which subscribers on its registration become members of the company, is less than the minimum number required to subscribe the memorandum, the provisions of the Companies Act relating to the carrying on of business of a company, the number of whose members is reduced below the legal minimum, shall apply to the company as if the number of its members had been so reduced.

12. (1) Except with the permission of the Minister, a security registered in Botswana shall not be transferred, and a security not so registered shall not be transferred in Botswana, unless, in either case, the following requirements are fulfilled —

Transfer of securities and coupons

- (a) neither the transferor nor the person, if any, for whom he is a nominee is resident outside Botswana;
- (b) the transferor delivers to the transferee at or before the time of the transfer the prescribed declarations as to his residence and that of the person, if any, for whom he is a nominee;
- (c) neither the transferee nor the person, if any, for whom he is to be a nominee is resident outside Botswana; and
- (d) except where the security is registered in Botswana otherwise than in a subsidiary register, the Minister is satisfied that the requirements of paragraph (c) are fulfilled:

Provided that —

- (i) neither the transferee nor his agent shall be deemed to have committed an offence by reason only that the requirements of paragraph (a) 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; and
- (ii) neither the transferor nor his agent shall be deemed to have committed an offence by reason only that any of the requirements of paragraphs (c) and (d) have not been fulfilled unless, in the case of a non-fulfilment of the requirements of the said paragraph (c), the transferor or, as the case may be, his agent, knew or had reason to believe that those requirements were not fulfilled.

(2) Except with the permission of the Minister, a security not registered in Botswana shall not be transferred outside Botswana if either the transferor or the transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Botswana.

(3) Except with the permission of the Minister, no coupon shall be transferred —

- (a) in Botswana, if either the transferee or the person, if any, for whom he is to be a nominee is resident outside Botswana;

- (b) outside Botswana, if either the transferor or the transferee, or the person, if any, for whom the transferor or transferee is or is to be a nominee, is resident in Botswana.
- 13.** Except with the permission of the Minister, no person shall, in Botswana, and no person resident in Botswana shall, outside Botswana, issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.
- 14.** Except with the permission of the Minister, no person in or resident in Botswana shall do any act with intent to secure —
- (a) that a security which is —
- (i) registered in Botswana; or
- (ii) transferable by means of a bearer certificate in Botswana, becomes, or is replaced by, a security registered outside Botswana or a security transferable by means of a bearer certificate outside Botswana; or
- (b) that a certificate of title to any other security is issued outside Botswana in substitution for or in addition to a certificate of title thereto which is in, or is or has been lost or destroyed in, Botswana.
- 15.** Except with the permission of the Minister, no person resident in Botswana shall do any act with intent to secure that capital moneys payable on a security registered in Botswana are paid outside Botswana, or that, where the certificate of title to a security is in Botswana, capital moneys payable on the security are paid outside Botswana without production of the certificate to the person making the payment.
- 16.** Except with the permission of the Minister, no person concerned with the keeping of any register in Botswana shall —
- (a) enter in the register the name of any person in relation to any security unless there has been produced to him the prescribed evidence that the entry does not form part of a transaction which involves the doing of anything prohibited by these Regulations;
- (b) enter in the register, in respect of any security, an address outside Botswana, except for the purpose of any transaction for which the permission of the Minister has been granted with the knowledge that it involved the entry of that address; or
- (c) do any act in relation to the register which recognizes or gives effect to any act appearing to him to have been done with such intent as is mentioned in paragraphs (a) and (b), whether done by a person in or resident in Botswana or not.
- 17.** (1) Where —
- (a) the holder of a security is a nominee and the person for whom he is a nominee is resident outside Botswana; or
- (b) the holder of a security is not a nominee and is resident outside Botswana,
- then, except with the permission of the Minister, no person resident in Botswana shall do any act whereby the holder becomes his nominee in respect of the security.
- (2) Except with the permission of the Minister, a person resident in Botswana for whom the holder of a security is a nominee shall not do any act whereby —
- (a) the holder, being a person resident outside Botswana, holds the security otherwise than as his nominee; or

Issue of  
bearer  
certificates  
and coupons

Substitution  
of securities  
and certi-  
ficates outside  
Botswana

Payment of  
capital  
moneys  
outside  
Botswana

Duties of  
persons  
keeping  
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Additional  
provisions as  
to nominee  
holdings

(b) the holder, not being a person resident outside Botswana, holds the security as nominee for a person resident outside Botswana.

(3) Where the holder of a security is a nominee, then, except with the permission of the Minister, neither he, if he is resident in Botswana, nor any person resident in Botswana 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 recognizes 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 Botswana 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 Botswana and not elsewhere.

(4) Where the holder of a security is not a nominee and is resident in Botswana, then, except with the permission of the Minister, 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 Botswana and not elsewhere.

**18.** (1) This regulation and regulation 19 apply to any security except —

(a) a security which is registered in Botswana otherwise than in a subsidiary register, and on which none of the dividends or interest is payable on presentment of a coupon; and

(b) any such other securities as may be prescribed.

and in the following provisions of this regulation and regulation 19 the expressions "security", "certificate of title" and "coupon" mean respectively a security to which the said regulations apply, a certificate of title to such a security, and a coupon representing dividends or interest on such a security.

(2) It shall be the duty of every person by whom or to whose order (whether directly or indirectly) a certificate of title is held in Botswana, and of every person resident in Botswana by whom or to whose order (whether directly or indirectly) a certificate of title is held outside Botswana, to cause the certificate of title to be kept at all times, except with the permission of the Minister, in the custody of an authorized depository, and nothing in this Part shall prohibit the doing of anything for the purpose of complying with the requirements of this subregulation.

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

Provided that this subregulation shall not prohibit an authorized depository from parting with —

(i) a certificate of title or coupon 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 as the person from whom he receives instructions;

Deposit of  
certificates  
of title

(ii) a certificate of title, for the purpose of obtaining payment of capital moneys payable on the security, to the person entrusted with payment thereof;

(iii) a coupon in the ordinary course for collection.

(4) Except with the permission of the Minister, no capital moneys, interest or dividends shall be paid in Botswana on any security except to or to the order of an authorized depository having the custody of the certificate of title to that security, so, however, that this subregulation shall not be taken as restricting the manner in which any sums lawfully paid on account of the capital moneys, interest or dividends may be dealt with by the person receiving them.

(5) Except with the permission of the Minister, an authorized depository shall not do any act whereby he recognizes or gives effect to the substitution of one person for another as the person from whom he receives instructions in relation to a certificate of title or coupon, unless there is produced to him the prescribed evidence that he is not by so doing giving effect to any transaction which is prohibited by these Regulations.

(6) 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 Minister, no person shall in Botswana, and no person resident in Botswana shall outside Botswana, buy, sell, transfer, or do anything which affects his rights or powers in relation to, the security.

(7) Except with the permission of the Minister, no person in or resident in Botswana shall, in the case of a certificate of title with coupons (whether attached or on separate coupon sheets), detach any of the coupons otherwise than in the ordinary course for collection.

Additional provisions as to deposited certificates

**19.** (1) Where a certificate of title to a security is by regulation 18 required to be and is in the custody of an authorized depository, the provisions of this regulation shall, except so far as the Minister otherwise directs, have effect in relation thereto until —

(a) there are delivered to him the prescribed declarations as to the ownership of the security and the residence of the owners thereof; and

(b) in the case of a certificate of title which —

(i) would ordinarily be accompanied by coupons (whether attached or on separate coupon sheets); but

(ii) when it comes into the custody of the authorized depository wants, in order to render it complete, any coupons which would not in the ordinary course have been detached for collection, there have also been deposited with him the coupons so wanting at the time when the certificate of title comes into his custody:

Provided that where the said declarations have been delivered to an authorized depository and he has parted with the certificate of title, paragraph (a) shall not again apply on the certificate coming into the custody of another authorized depository or again coming into his own custody.

(2) Except with the permission of the Minister, the authorized depository shall not part with or destroy the certificate of title or any coupons belonging thereto, otherwise than as mentioned in paragraphs (b) and (c) of the

proviso to regulation 18 (3), or do any act whereby he recognizes or gives effect to the substitution of one person for another as the person from whom he receives instructions in relation thereto:

Provided that, where the person from whom an authorized depository receives instructions in relation to any certificate of title becomes bankrupt in Botswana or dies, this subregulation shall not prohibit the authorized depository from recognizing the trustee in bankruptcy or personal representative as the person entitled to give instructions in relation to the certificate of title.

(3) The authorized depository shall place any capital moneys, dividends or interest on the security received by him to the credit of the person by virtue of whose authority he received them, but shall not permit any part of the sums received to be dealt with except with the permission of the Minister.

**20.** (1) The Minister may, if in his opinion there are circumstances rendering it necessary or expedient so to do, by order direct that this regulation shall apply to such securities as may be prescribed, being securities on which capital moneys, dividends or interest are payable in a specified currency or as regards which the holder has an option to require payment of any capital moneys, dividends or interest thereon in a specified currency.

Special provisions as to dealings in certain securities

(2) Except with the permission of the Minister, no person shall, in Botswana, and no person resident in Botswana shall, outside Botswana, transfer, or do anything which affects his rights or powers in relation to, any security to which this regulation applies.

**21.** (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.

Validation of certain transfers

(2) Without prejudice to the provisions of subregulation (1), the Minister may issue a certificate declaring, in relation to a security, that any acts done before the issue of the certificate purporting to effect the issue or transfer of the security, being acts which were prohibited by these Regulations, are to be, and are always to have been, as valid as if they had been done with the permission of the Minister, and the said acts shall have effect accordingly.

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

#### PART V. *Import and Export*

**22.** (1) Except with the permission of the Minister, the import of —  
(a) any notes of a class which are or have at any time been legal tender in Botswana;  
(b) any such other notes as may be specified by the Minister, by notice published in the Gazette, being notes issued by a bank or notes of a class which are or have at any time been legal tender in any country;  
and

Restrictions on import

General  
restrictions  
on export

(c) 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, is prohibited.

(2) In this regulation the expression "note" includes part of a note.

**23.** (1) Except with the permission of the Minister, the export of —

(a) any notes of a class which are or have at any time been legal tender in Botswana or in any other country;

(b) any postal orders;

(c) any gold;

(d) 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 Botswana currency;

(iv) any document to which regulation 6 applies not issued by an authorized dealer or in pursuance of a permission granted by the Minister; and any document certifying the destruction, loss or cancellation of any of the documents aforesaid; and

(e) any such articles exported on the person of a traveller or in a traveller's baggage as may be prescribed,

is prohibited.

(2) In this regulation the expression "note" includes part of a note, and the expression "coupon" shall be construed in accordance with the meaning of "security".

Payment for  
exports

**24.** (1) The export of goods of any class or description to a destination in any such country as may be prescribed is prohibited except with the permission of the Minister unless the Director of Customs and Excise is satisfied —

(a) that payment for the goods has been made to a person resident in Botswana in such a manner as may be prescribed in relation to goods of that class or description exported to a destination in that country, or is to be so made not later than six months after the date of export; and

(b) that the amount of the payment which has been made or is to be made is such as to represent a return for the goods which is in all the circumstances satisfactory in the national interest:

Provided that the Minister may direct that, in cases to which the direction applies, 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 export" were omitted.

(2) For the purpose of satisfying himself in the case of any goods as to the matters specified in subregulation (1), the Director of Customs and Excise may require the person making entry of the goods for export to deliver to the collector or other proper officer together with the entry such declarations signed by such persons as the Director may require, and where any such declaration has been so required the goods shall not be exported until it has been delivered as aforesaid.

(3) Where the Director of Customs and Excise is not satisfied in the case of any goods as to the matters specified in subregulation (1) (b), he shall give his reasons to the person making entry of the goods for export and shall take into consideration any representations made by him.

(4) Any reference in this regulation to the destination of any goods includes a reference to the ultimate destination thereof.

#### PART VI. *Miscellaneous*

**25.** (1) Except with the permission of the Minister, no person resident in Botswana who has a right (whether present or future and whether vested or contingent) to receive any specified currency, or to receive from a person resident outside Botswana a payment in Botswana currency, shall do, or refrain from doing, any act with intent to secure —

Duty to collect certain debts

- (a) that the receipt by him of the whole or part of that currency or, as the case may be, of that payment in Botswana 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 subregulation shall, unless the Minister otherwise directs, —

- (i) 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) prohibit any transfer to a person resident in Botswana and not elsewhere of any right to receive any specified currency or payment in Botswana currency.

(2) Where a person has contravened the provisions of subregulation (1) in relation to any specified currency or payment in Botswana currency, the Minister may give to him or to any other person who appears to the Minister to be in a position to give effect thereto (being a person in or resident in Botswana) such directions as appear to the Minister to be expedient for the purpose of obtaining or expediting the receipt of the currency or payment in question, and, without prejudice to the generality of the foregoing, may direct that there shall be assigned to the Minister, or to such person as may be specified in the directions, the right to receive the currency or payment or enforce any security for the receipt thereof.

**26.** (1) Where —

- (a) any permission or consent has been granted under these Regulations, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be sold outside Botswana;
- (b) any statement or declaration has been made under any provision of these Regulations that any goods are to be sold outside Botswana; or
- (c) any currency has been obtained in, or by any person resident in Botswana on the faith of an application stating an intention that any goods should be sold outside Botswana,

Duty not to delay sale or importation of goods

then, except with the permission of the Minister, no person resident in Botswana 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, subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be imported; or
- (b) any currency has been obtained in, or by any person resident in Botswana on the faith of an application stating an intention that any goods should be so imported,

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

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

- (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 Minister; or
- (b) it appears to the Minister that the goods cannot be sold or imported as indicated by the condition, statement or declaration,

the Minister may give to any person resident in Botswana who appears to the Minister to be in a position to give effect thereto such directions as appear to them to be expedient as to the manner in which the goods are to be dealt with.

(4) Without prejudice to the generality of the provisions of subregulation (3), the power conferred thereby on the Minister to give directions shall extend to the giving of directions that the goods shall be assigned to the Minister or to a person specified in the directions.

(5) The powers conferred by subregulations (3) and (4) 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 Botswana or to be imported were to be produced or manufactured from other goods, to the giving of directions with regard to those other goods and any goods produced or manufactured from those other goods.

Property  
obtained by  
infringement  
of these  
Regulations

**27.** (1) Where a person —

- (a) has made any payment which is prohibited by these Regulations; or
- (b) being bound under these Regulations to offer or cause to be offered any specified currency to an authorized dealer, has otherwise disposed of that currency,

the Minister may direct him to sell or procure the sale of any property which he is entitled to sell or of which he is entitled to procure the sale, being property which represents, whether directly or indirectly, that payment or that specified currency, as the case may be, and may by the same or a subsequent direction specify the manner in which, the persons to whom and the terms on which the property is to be sold.

(2) Without prejudice to the generality of the provisions of subregulation (1), the power conferred thereby on the Minister to give directions shall extend to the giving of directions that the property shall be assigned to the Minister or to a person specified in the directions.

**28.** (1) Where, under this Part, the Minister has power to give directions that any right to receive any currency or payment in Botswana currency or to enforce any security for the receipt thereof, any goods or any other property shall be assigned to the Minister; the Minister shall also have power to direct that the right, goods or property shall vest in the Minister, and it or they shall vest in the Minister accordingly free from any mortgage, pledge or charge, and the Minister may deal with it or them as he thinks fit.

Provisions supplemental to preceding provisions of Part V

(2) Where, in pursuance of directions under the said provisions, any right, goods or property is or are assigned to the Minister or to a person specified in the directions, or, any right, goods or property vests or vest in the Minister in pursuance of directions given under subregulation (1), the Minister shall pay the net sum recovered by him in respect of the right, goods or property to the person making the assignment or, in the case of any right, goods or property vested in the Minister under subregulation (1), to the person who, but for the directions, would be entitled to the right, goods or property.

**29.** (1) Except with the permission of the Minister, no person resident in Botswana shall transfer to a person resident outside Botswana, or who is to be a nominee for a person resident outside Botswana, 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 Botswana and not elsewhere, or makes, with the permission of the Minister, any payment thereof to any other person, —

Transfer of annuities, policies, etc.

- (a) he shall not be bound to enquire 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 subregulation

(2) Subregulations (2) and (3) of regulation 21 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 the expression “nominee” has, in relation to any policy, annuity or insurance, the same meaning as the said expression has in Part III in relation to a security.

**30.** (1) Except with the permission of the Minister, no person resident in Botswana 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 Botswana, 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 Botswana.

Settlements

(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 Botswana.

(3) Subregulations (2) and (3) of regulation 21 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) the expression “will” includes any testamentary disposition.

Companies **31.** (1) (a) Where there is served on any person resident in Botswana a notice in writing that the Minister wishes any such requirements as are hereinafter mentioned to be complied with by any such body corporate as is specified in the First Schedule (hereinafter in this subregulation referred to as a “foreign company”), and that person can, by doing or refraining from doing any act, —

(i) cause the foreign company to comply with any of the requirements;

(ii) remove any obstacle to the foreign company complying with any of the requirements; or

(iii) 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 Minister, that person shall do, or, as the case may be, refrain from doing, that act.

(b) The requirements with respect to which such a notice may be given are as follows, that is to say, that the foreign company shall —

(i) furnish to the Minister such particulars as to its assets and business as may be mentioned in the notice;

(ii) sell or procure the sale to an authorized dealer of any gold or specified currency mentioned in the notice, being gold or specified currency which it is entitled to sell or of which it is entitled to procure the sale;

(iii) declare and pay such dividend as may be mentioned in the notice;

(iv) realize any of its assets mentioned in the notice in such manner as may be so mentioned;

(v) refrain from selling, transferring, or doing anything which effects its rights or powers in relation to, any such securities as may be mentioned in the notice.

(2) Except with the permission of the Minister, no person resident in Botswana shall do any act whereby a body corporate which is by any means

controlled, whether directly or indirectly, by persons resident in Botswana ceases to be controlled by persons resident in Botswana:

Provided that this subregulation shall not prohibit any person from selling any securities authorized to be dealt in or any recognized stock exchange in Botswana if the sale takes place in pursuance of an agreement entered into in the ordinary course of business on that exchange.

(3) Except with the permission of the Minister, no person resident in Botswana shall lend any money or securities to any body corporate resident in Botswana which is by any means controlled, whether directly or indirectly, by persons resident outside Botswana:

Provided that this subregulation shall not apply where the lender after making such enquiries 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.

(4) For the purposes of this regulation and of the First Schedule, persons resident in Botswana or outside Botswana 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.

#### PART VII. *Supplemental*

**32.** Any provision of these Regulations imposing any obligation or prohibition shall have effect subject to such exemptions as may be granted by order of the Minister, and any such exemptions may be either absolute or conditional. Exemptions

**33.** Where —

- a)* under any provision contained in Part III the permission of the Minister is required for the making of a payment or the placing of any sum to the credit of any person resident outside Botswana; or
- b)* any payment falls to be made by an authorized dealer on the sale of any gold or specified currency by any foreign company within the meaning of regulation 31 (1), being a sale made to comply with any requirement notified under that subregulation,

Blocked  
accounts

the Minister 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 provisions of the Second Schedule shall have effect in relation to the payment or crediting of the sum.

**34.** (1) It shall be an implied condition in any contract that, where, by virtue of these Regulations, the permission or consent of the Minister is at the time of the contract required for the performance of any term thereof, that term shall not be performed except insofar as the permission or consent is given or is not required: Contracts,  
legal  
proceedings,  
etc.

Provided that this subregulation shall not apply insofar 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 despite the provisions of these Regulations or for any other reason.

(2) Notwithstanding anything contained in the Bills of Exchange Act, neither the provisions of these Regulations, nor any condition, whether expressed or implied having regard to those provisions, that any payment shall not be made without the permission of the Minister under these Regulations, shall be deemed to prevent any instrument being a bill of exchange or promissory note. Cap. 46:02

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

Enforcement  
and adminis-  
tration

**35.** (1) The provisions of the Fourth Schedule shall have effect for the purpose of the enforcement of these Regulations.

(2) Persons belonging to the following classes —

- (a) bankers, authorized dealers, authorized depositories;
- (b) persons to whom any powers of the Minister under these Regulations are delegated;
- (c) persons who with the permission of the Minister are in possession of documents which would, but for the permission, have to be in the custody of an authorized depository;
- (d) persons concerned with the keeping of any register in Botswana; and
- (e) persons entrusted with the payment of capital moneys, dividends or interest in Botswana,

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

- (i) in the case of any such persons, directions as regards the exercise of any functions exercisable by them by virtue of, or by virtue of anything done under, any provision 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 to the Bank of Botswana on such terms as may be specified in any such directions.

Powers of  
Minister

**36.** (1) Any permission, consent or authority granted by the Minister under these Regulations —

- (a) may be either general or special;
- (b) may be absolute or conditional;
- (c) may be limited so as to expire on a specified date, unless renewed; and
- (d) shall be published in such a way as, in the opinion of the Minister, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in his opinion publication is not necessary for that purpose.

(2) Any directions given by the Minister under any provision of these Regulations —

- (a) may be either general or special; and
- (b) shall be given to such persons and in such manner as the Minister deems appropriate, and if so given shall be valid for all purposes.

(3) Notwithstanding subregulation (2) (b), a person shall not by virtue of any direction given by the Minister under these Regulations be convicted of an offence, unless the direction was served on him or he knew, or avoided getting to know, of the giving thereof:

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.

(4) The Minister may, to such extent and subject to such restrictions and conditions as he may deem proper, delegate or authorize the delegation of

any of his powers (other than any power to make orders or to give authority to apply for a search warrant) to any person, or class or description of persons, approved by him, and reference in these Regulations to the Minister shall be construed accordingly.

(5) Any document stating that any permission, consent, authority or direction is given under any of the provisions of these Regulations by the Minister, and purporting to be signed on his behalf, shall be evidence of the facts stated in the document.

**37.** (1) The Minister may by order or direction provide that, for such of the purposes of these Regulations as may be specified in the order or 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 order or direction.

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

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

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

**38.** Where a person resident in Botswana leaves Botswana, the Minister may, before, at or after the time he leaves Botswana, direct that, for such period as may be specified in the direction, payments by him or 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 he continues to be resident in Botswana, be subject to such restrictions as may be specified in the direction.

**39.** (1) For the purposes of these Regulations, a personal representative of a deceased person shall, unless the Minister otherwise directs, be treated as resident in the country where the deceased person was resident for the purposes in question at the time of his death and is not resident elsewhere, so far as relates to any matters in which the personal representative is concerned solely in his capacity as such.

(2) The Minister may give directions declaring that for all or any of the purposes of these Regulations a person is to be treated as resident or not resident in such countries as may be specified in the directions.

Prohibitory  
directions by  
Minister

**40.** (1) Where the Minister is satisfied that action is being, or is likely to be, taken to the detriment of Botswana by the government of, or persons resident in, any country outside Botswana, the Minister may give general or special directions prohibiting, either absolutely or to such extent as may be specified in the directions, the carrying out, except with permission granted by or on behalf of the Minister, of any order given by or on behalf of the government of that country or any person resident therein at the time when the directions were given or at any later time while the directions are in force insofar as the order —

- (a) requires the person to whom the order is given to make any payment or to part with any gold or securities; or
- (b) requires any change to be made in the persons to whose order any gold or securities are to be held.

(2) Where any directions are given under this regulation with regard to any country, a branch in that country of any business, whether carried on by a body corporate or otherwise, shall, for the purposes of this regulation, be treated in all respects as if the branch were a body corporate resident in that country.

Revocation  
of L. N. 63 of  
1965

**41.** The Exchange Control Regulations, 1965, are hereby revoked.

#### FIRST SCHEDULE (regs. 31 and 33) FOREIGN COMPANIES

1. The bodies corporate in question are bodies corporate not incorporated under the law of Botswana 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 Botswana;
- (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 Botswana;
- (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 Botswana; or
- (d) that more than one-half —
  - (i) of the interest payable on its loans and loan capital, if any;
  - (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 Botswana.

2. Where the identity of the persons 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 Botswana of a power of appointment or similar power, the sum, assets, interest or dividends shall, for the purposes of this Schedule, be deemed to be receivable, directly or indirectly, by or for the benefit of persons resident in Botswana.

## SECOND SCHEDULE

(reg. 33)

### BLOCKED ACCOUNTS

1. In this Schedule the expression "a blocked account" means an account opened as a blocked account at an office or branch in Botswana in favour of any person by a banker authorized by the Minister to open blocked accounts, and the expression "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 the next paragraph following, —

(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 of these Regulations, be invested instead in the purchase for that person of any such investments as may be prescribed for the purposes of subparagraph (i) of the proviso to paragraph 4.

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

Provided that, subject to compliance with the requirements of Part III —

(i) 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 may be prescribed; and

(ii) nothing in this Schedule shall be construed as restricting the manner in which the investments acquired may be dealt with.

5. Where a person in whose name a blocked account is standing becomes bankrupt in Botswana 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 Minister, be made in the name in which the account stands; and where any such change is made (whether or not the permission of the Minister is necessary therefor) the account shall remain a blocked account notwithstanding the change, and the provisions of this Schedule shall apply accordingly.

6. Where —

(a) a sum is due from any person to any other person but the Minister 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 Minister 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 insofar as it is shown to be inconsistent with the intention of the parties that it should apply.

### THIRD SCHEDULE

(reg. 34)

#### 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 Botswana, and in any award given under the law of Botswana, 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 Minister.

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

3. Without prejudice to the provisions of any written law relating to the making of rules of court, rules of court —

- (a) enabling any person who is required by any judgment, order or award to pay any sum, if he apprehends that the payment of that sum is unlawful under these Regulations except with the permission of the Minister, to pay that sum into court;
- (b) declaring that payment of a sum into court by virtue of subparagraph (a), together with the delivery to the other party concerned of such evidence of the payment as may be prescribed by the rules, shall, to the extent of the payment, be a good discharge to the person making the payment; and
- (c) so regulating the process of execution which may issue in respect of any sum required to be paid by any judgment, order or award as to secure that, unless it is shown, in such manner as may be prescribed by the rules, that the permission of the Minister for the payment of the sum is not required under these Regulations or has been given without conditions, the proceeds of the execution will be paid into court, and, so far as is necessary for that purpose, varying the form of any writ of execution or other similar document or the duties of the sheriff or other officer to whom any such writ or other similar document is directed,

may be made, as regards the High Court or any other court, by such authority as may be designated in that behalf by the Chief Justice:

Provided that —

- (i) the form of any bankruptcy notice shall be such as may be prescribed by the Minister; and
- (ii) nothing in this paragraph shall affect the provisions of any written law which requires rules of court for inferior courts to have the concurrence of the rule-making authority for the High Court.

4. In any proceedings in a court 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 Minister and of that permission not having been given or having been revoked.

5. (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 Botswana), a claim for a sum not payable without the permission of the Minister shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if it had been given and had not been revoked:

Provided that nothing in this subparagraph 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 these Regulations restricting the making of settlements shall not apply to any deed of arrangement made for the benefit of creditors generally, and the provisions of subparagraph (1) shall apply in relation to proceedings under any deed of arrangement as they apply in relation to proceedings in bankruptcy.

6. A debt for the payment of which the permission of the Minister is required under these Regulations shall, if in other respects it complies with the requirements of the Insolvency Act, be allowed to be a good petitioning creditor's debt, notwithstanding the said requirement, if and to the extent that the debt can be satisfied either by a payment into court or by a payment to a blocked account. Cap.

#### FOURTH SCHEDULE

(reg. 35)

#### ENFORCEMENT

##### PART I. *General Provisions as to Evidence and Information*

1. (1) Without prejudice to any other provisions of these Regulations, the Minister may give to any person in or resident in Botswana 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 Minister 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 (hereinafter in this Part of this Schedule referred to as "documents") in his possession or control as may be required for the said purpose by the Minister or by the person authorized to require the information, as the case may be.

(3) Nothing in the preceding provisions of this paragraph shall be taken to require any person who has acted as legal practitioner for any person to disclose any privileged communication made to him in that capacity.

(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 requirement to give the information or produce the documents.

2. (1) If a magistrate is satisfied by information on oath given by a person authorized by the Minister to act for the purposes of this paragraph either —

(a) that there is reasonable ground for suspecting that an offence against these Regulations has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorizing any police officer, together with any other persons named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises, or, as the case may be, the vehicle, vessel or aircraft.

(2) A person authorized by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft, may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any article found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against these Regulations or any document which he has reasonable ground for believing ought to have been produced under paragraph 1:

Provided that no female shall, in pursuance of any warrant issued under this paragraph, be searched except by a female.

(3) Where, by virtue of this paragraph, a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

3. (1) Any article coming into the possession of an executive authority (whether in consequence of the seizure of the article under or by virtue of these Regulations or otherwise) which the authority has reasonable ground for believing to be evidence of the commission of an offence against these Regulations may be retained for a period of three months or, if within that period there are commenced proceedings in respect of such an offence in which the article is, or can properly be, adduced in evidence, until the final determination of those proceedings.

(2) For the purposes of this paragraph, any person to whom any powers of the Minister under these Regulations are delegated or on whom any functions are conferred by or by virtue of these Regulations, including any police officer, shall be deemed to be an executive authority.

(3) For the purposes of this paragraph, any proceedings shall be deemed not to have been finally determined so long as there is pending any appeal in the matter of the proceedings, and an appeal in that matter shall be deemed to be pending during the ordinary time within which such an appeal may be lodged, and, if such an appeal is duly lodged, the appeal shall be deemed to be pending until it is decided or withdrawn.

(4) The powers conferred by this paragraph in relation to any article shall be in addition to, and not in derogation of, any powers otherwise exercisable in relation thereto.

4. No person in or resident in Botswana shall —

- (a) with intent to evade the provisions of these Regulations, destroy, mutilate, deface, secrete or remove any documents;
- (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;
- (c) obstruct any person in the exercise of any powers conferred on him by virtue of this Part of this Schedule.

#### **PART II. General Provisions as to Offences**

1. (1) Any person in or resident in Botswana who contravenes any restriction or requirement imposed by or under these Regulations, and any such person who conspires or attempts, or aids, abets, counsels or procures any other person, to contravene any such

restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Part of this Schedule:

Provided that an offence punishable by virtue of Part III of this Schedule shall not be punishable under this Part of this Schedule.

(2) Where an offence punishable under this Part of this Schedule 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.

(3) Any person who commits an offence punishable under this Part of this Schedule shall be liable to a fine of R10 000 and to imprisonment for five years; and where the offence is concerned with any currency, security, gold, goods or other property, the court may, if it thinks fit so to do, order such currency, security, gold, goods or property to be forfeited.

#### PART III. *Import and Export*

1. The Customs and Excise Duty Act shall, subject to such modifications, if any, as may be prescribed to adapt it to these Regulations, apply in relation to anything prohibited to be imported or exported by any of the provisions of Part V of these Regulations, except with the permission of the Minister as they apply in relation to goods prohibited to be imported or exported by or under any of the provisions of the Customs and Excise Duty Act, and any reference in the Customs and Excise Duty Act to goods shall be construed as including a reference to anything prohibited to be imported or exported by any of the provisions of the said Part V, except with the permission of the Minister.

2. Any declaration required to be given under Part V of these Regulations shall, for the purposes of the Customs and Excise Duty Act, be deemed to be a declaration in a matter relating to customs.

3. Without prejudice to any of the preceding provisions of this Part of this Schedule, any person who, on any occasion, is about to leave Botswana or arrives in Botswana (which person is hereinafter in this paragraph referred to as "the traveller") shall, if on that occasion he is required so to do by an officer of Customs or an immigration officer—

(a) declare whether or not he has with him anything prohibited to be imported or exported by any of the provisions of the said Part V except with the permission of the Minister; and

(b) produce any such thing as aforesaid which he has with him,

and the officer may examine or search any 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 reasonable ground for suspecting that it is prohibited to be imported or exported by any of the provisions of the said Part V except with the permission of the Minister:

Provided that no female shall be searched in pursuance of this paragraph except by a female.

MADE this 10th day of August, 1976.

M.L.O. STEVENS,  
*Acting Permanent Secretary,*  
*Ministry of Finance and Development Planning.*