

FOREIGN EXCHANGE ACT, 2009

(Act No. 10 of 2009)

I assent



A handwritten signature in dark ink.

J. A. Michel
President

9th July, 2009

**AN ACT to repeal and replace the Exchange Control Act,
1954 (Cap 76).**

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Foreign Exchange Act, 2009. Short title

Interpretation

2.

In this Act—

“authorised dealer” means —

- (a) a bank; or
- (b) a Bureau de Change;

Act 14 of
2004

“bank” means a person licensed under the Financial Institutions Act to conduct banking business;

Act 14 of
2004

“Bureau de Change” means a person licensed under the Financial Institutions Act to carry on foreign exchange business;

Act 12 of
2004

“Central Bank” means the Central Bank of Seychelles established by section 3 of the Central Bank of Seychelles Act;

“convertible foreign currency” means a foreign currency that is widely traded in international foreign exchange markets;

“current international transaction” means an international transaction for which payments are not for the purpose of transferring capital, and includes—

- (a) payments due in connection with foreign trade, other current business, including services and normal short-term banking and credit facilities;
- (b) payments due as interest on loans and as net income from other investments;
- (c) payments of moderate amounts for amortisation of loans or for depreciation of direct investments; and
- (d) moderate remittances for family living expenses;

“domestic currency” means currency notes and coins issued by the Central Bank;

“foreign currency” means currency notes and coins not issued by the Central Bank;

“foreign exchange” means —

(a) foreign currency; and

(b) monetary claims including —

(i) deposits, credits and balances; and

(ii) drafts, travellers cheques, letters of credit and bills of exchange,

payable in a foreign currency;

“international capital transaction” means an international transaction for the purpose of transferring capital between a resident and a non-resident and includes —

(a) direct investment;

(b) portfolio investment;

(c) borrowing and lending;

(d) capital transfers; and

(e) such other transactions as may be prescribed by regulations under this Act;

“international transaction” means a transaction between a resident and a non-resident whether it takes place in Seychelles or outside Seychelles;

“Minister” means the Minister responsible for Finance;

Cap 93

“non-resident” means a person who is not a resident;

“person” means any natural or legal person and includes a body of persons, whether it has legal personality or not;

“resident” means —

- (a) a natural person who resides permanently in Seychelles or holds a valid residence permit issued under the Immigration Decree or has been physically present in Seychelles for a period of at least one year;
- (b) an office, branch or agency of a legal person that is registered or incorporated in Seychelles or that has its centre of economic interest in Seychelles;
- (c)
 - (i) a member of a diplomatic or consular mission of Seychelles located outside Seychelles; and
 - (ii) the staff of such diplomatic or consular mission and members of their family who are citizens of Seychelles; or
- (d) the surviving heir of a person referred to in paragraph (a) or (c) where that heir resides permanently in Seychelles or holds a valid residence permit issued under the Immigration Decree or has been physically present in Seychelles for a period of at least one year;

“transfer” means a unilateral or unrequited transfer, whether current or capital in nature, and includes a remittance by a non-resident of the proceeds of a payment received in Seychelles.

Permitted
activities of
authorised
dealers

3.(1) A person other than an authorised dealer shall not, as a business —

- (a) buy foreign currency from or sell foreign currency to any person other than an authorised dealer;

- (b) set an exchange rate for the buying or selling of foreign currency; or
 - (c) act as a facilitator for payments, receipts or transfers in respect of international transactions in accordance with section 5.
- (2) For the purposes of this section, a person carries on any of the activities specified in subsection (1)(a), (b) or (c) as a business, if that person carries on any of those activities on a sustained basis and for a profit.
4. An authorised dealer shall conspicuously display at its exchange counter —
- (a) its exchange rates for the buying and selling of foreign currency; and
 - (b) any commission, fee or other item that affects the net proceeds of a sale or purchase of foreign currency.
5. Payments to and receipts from, and transfers to and from any person outside Seychelles with respect to an international transaction shall be made through an authorised dealer.
6. Payments for the export of goods and services from Seychelles shall be received by the exporter in a convertible foreign currency.
7. (1) Goods sold and services provided in Seychelles which are advertised for in Seychelles shall be advertised for in the domestic currency.
- (2) Goods sold and services provided in Seychelles may be advertised for outside Seychelles in a foreign currency.
- (3) Goods sold and services provided in Seychelles which are advertised for in a media which makes the advertisement accessible both in and outside Seychelles—

Authorised dealers to display exchange rates and other information

Payments, receipts and transfers for international transactions to be made through authorised dealers

Payments for export of goods and services to be received in convertible foreign currency

Advertisement of goods and services

- (a) shall, where the goods and services are intended for persons in Seychelles, be advertised in the domestic currency;
- (b) may, where the goods and services are intended for persons outside Seychelles, be advertised in a foreign currency; and
- (c) shall, where the goods and services are intended for persons both in and outside Seychelles, be advertised in both the domestic and a foreign currency.

Payments for
goods and
services provided
in Seychelles to
be in domestic
currency

8.(1) Subject to subsection (2), payments to any person in Seychelles for goods and services provided in Seychelles shall be made in the domestic currency.

(2) Notwithstanding subsection (1), any person may —

- (a) accept payment for goods or services provided in Seychelles in a foreign currency where payment in a foreign currency is made under a written law, is agreed to or is contractually stipulated by the parties;
- (b) offer to the person making a payment under paragraph (a), any money remaining after the transaction, in a foreign currency.

(3) Any conversion of currency under subsection (2)(a) or (b) shall be calculated at the average traded exchange rate published by the Central Bank and the exchange rate shall be conspicuously displayed by the person accepting payment in a foreign currency.

(4) A person who acquires any foreign currency under subsection (2) shall not sell such foreign currency to any person other than an authorised dealer.

Duty to keep
records

9. A person who engages in or facilitates a foreign exchange transaction shall keep records of the transaction for a period of at least 7 years.

10. The Minister or such other person authorised by the Minister may —

Powers of
Minister to
ensure
compliance
with this Act

- (a) require any document or information from any person in Seychelles; or
- (b) conduct on site inspection of any person in Seychelles;

to ensure compliance with this Act and for such other purpose as it considers necessary including the collection of statistics.

11. (1) A person —

Offences

- (a) other than an authorised dealer, who performs the functions of an authorised dealer as a business in contravention of section 3;
- (b) who, being an authorised dealer, fails to conspicuously display at its exchange counter its exchange rates for the buying and selling of foreign currency and other information as required by section 4;
- (c) who makes or receives any payment or transfer other than through an authorised dealer in contravention of section 5;
- (d) who, being an exporter, accepts payment for goods and services exported from Seychelles other than in a convertible foreign currency in contravention of section 6;
- (e) who makes an advertisement in contravention of section 7;
- (f) who makes or accepts payment for goods and services provided in Seychelles in a foreign currency in contravention of section 8;
- (g) who accepts payments in a foreign currency under section 8(2) but fails to comply with section 8(3);

- (h) who sells any foreign currency acquired under section 8(2) to any person other than an authorised dealer in contravention of section 8(4);
- (i) who fails to keep records or to keep such records for the requisite period in contravention of section 9;
- (j) who fails or refuses to produce any document or information when required to do so by the Minister or a person authorised by the Minister in contravention of section 10(a);
- (k) who knowingly provides any document or information pursuant to section 10(a) that are materially false or misleading; or
- (l) who fails or refuses to comply with an order or directive of the Minister or a person authorised by the Minister pursuant to section 10(b),

commits an offence and is liable on conviction to a fine not exceeding four hundred thousand rupees or to imprisonment for a term not exceeding one year.

(2) Where an offence under this Act is committed by a legal person, and any of its directors or other officers knowingly authorises, permits or acquiesces in the commission of the offence, the director or other officer also commits the offence.

Compounding
of offences

12.(1) The Minister may compound an offence under section 11 —

- (a) if the person charged with the offence admits to committing the offence; and
- (b) by accepting a sum of money not exceeding seventy-five percent of the maximum fine specified for the offence.

(2) A sum of money received under subsection (1) (b) shall be dealt with as if it were a fine imposed by a court.

(3) Where an offence is compounded under subsection (1), no proceedings shall be initiated or continued against the person charged with the offence with regard to that offence.

13. An action, suit or other legal proceeding shall not lie against a person for anything done or omitted or purported to be done in good faith in the discharge, exercise or performance of the duties, powers or functions of the person under this Act.

Protection of
acts done in
good faith

14. The Minister may delegate to the Governor of the Central Bank any power or duty imposed on the Minister by this Act other than the power to make regulations and this power of delegation.

Delegation of
powers of
Minister

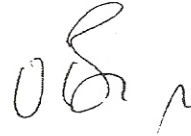
15. The Minister may make regulations for carrying into effect the purposes and provisions of this Act.

Regulations

16. The Exchange Control Act, 1954, is repealed.

Repeal of
Cap 76

I certify that this is a correct copy of the Bill which was passed by the National Assembly on the 30th June, 2009.



Veronique Bresson
Clerk of the National Assembly