



Tonga

FOREIGN EXCHANGE CONTROL REGULATIONS

Chapter 38.16.1

2016 Revised Edition



FOREIGN EXCHANGE CONTROL REGULATIONS

Made under the Foreign Exchange Control Act¹

Commencement [24th February, 1965]

1. These Regulations may be cited as the Foreign Exchange Control Regulations.
2. In these Regulations, unless the context otherwise requires —

“**Authorised dealer**” means, in relation to any foreign currency, a person appointed by the Reserve Bank by notice in the Gazette to act for the purposes of these Regulations as an authorised dealer in relation to that foreign currency. Such appointment may be subject to such restrictions as are set out in the notice;²

“**foreign currency**” includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers’ cheques, payable or expressed otherwise than in Tongan money, and also includes rights, and instruments of title, to money other than Tongan money;

“**Minister**” means the Minister of Finance and includes any person for the time being authorized by the Minister to exercise any of his powers or functions under these Regulations;

“**money**” includes the bank-notes and other currency of any country, and includes postal notes, money-orders, promissory notes, bills of exchange and any other negotiable instruments payable in the currency of any country;

“**net proceeds of exports**” means the gross proceeds of exports less such commission, charges and deductions as are customary and reasonable having regard to established trade practices relative to the goods being exported;

“**person**” includes any number of persons corporate or unincorporate;

“**Reserve Bank**” means the National Reserve Bank of Tonga established under the National Reserve Bank of Tonga Act,³ and includes any person authorised by the Reserve Bank to exercise any of its powers or functions under these Regulations;⁴

“**resident in Tonga**” means —

- (a) a Tongan national residing in Tonga;
- (b) a person who is not a Tongan national who has —
 - (i) resided continually in Tonga for two years or more; or
 - (ii) been granted a permit to reside in Tonga on assured income;
- (c) a married couple of whom one of the spouses is a resident in Tonga; or
- (d) a business entity (partnership, company, branch operation, sole proprietor, trust) that is incorporated, formed or registered and operating under the laws of Tonga;⁵

“**securities**” includes shares, stock, bonds, debentures, debenture stock, Treasury Bills, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title to securities;

“**Tongan currency**” includes notes, coins, postal orders, money orders, bills of exchange, promissory notes, drafts, letters of credit and travellers’ cheques, payable or expressed in Tongan money, and also includes rights, and instruments of title, to Tongan money.

RESTRICTIONS ON SENDING MONEY AND SECURITIES OUT OF THE KINGDOM

3. ⁶ No person shall, except with the consent of the Reserve Bank—
- (a) take or send money out of the Kingdom of Tonga;
 - (b) draw or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt so that a right (whether actual or contingent) to receive a payment in Tonga is created or transferred as consideration —
 - (i) for receiving a payment or acquiring property outside Tonga;
 - (ii) for a right (whether actual or contingent) to receive a payment or acquire property outside Tonga, or make any payment in Tonga as such consideration;
 - (c) create or transfer a right (whether actual or contingent) to receive a payment or acquire property outside Tonga or dispose of or otherwise deal with any money, securities, or property held or payable outside Tonga as consideration for receiving a payment or acquiring property in Tonga, or for the discharge of a debt payable in Tonga;
 - (d) take, send or transfer any securities from Tonga;

- (e) make an entry in a register in Tonga that recognises or gives effect to a transfer of any securities to a person resident outside Tonga.

3A.⁷

- (1) The consent of the Reserve Bank for any money to be taken or sent under regulation 3 may be delegated by the Reserve Bank to any financial institution licensed under the Financial Institutions Act.
- (2) A delegation made under this regulation shall be written and shall specify the maximum amount to which the delegation applies.

4.⁸

- (1) Except with the permission of the Reserve Bank —
 - (a) No person other than an authorised dealer shall, in Tonga, buy or borrow any foreign currency from, or sell or lend any foreign currency to, any person other than an authorised dealer;
 - (b) No person resident in Tonga, other than an authorised dealer, shall outside Tonga buy or borrow any foreign currency from or sell or lend any foreign currency to any person other than an authorised dealer.
- (2) Where a person buys or borrows any foreign currency in Tonga, or being a person resident in Tonga, buys or borrows foreign currency outside Tonga, he shall comply with such conditions as to the use to which it may be put or for the period for which it may be retained as may be imposed by the Reserve Bank.
- (3) For the purposes of this regulation, a person in Tonga who supplies goods or services in exchange for foreign currency shall not be taken to have bought such foreign currency provided that it is offered for sale within a reasonable time to an authorised dealer.

- 5.⁹** For the purpose of this regulation money shall be deemed to be taken or sent if it is taken or sent by telegraphic or electronic means, or by post, or by means of draft, letter of credit, travellers cheque, transfer between accounts, or any other means whatsoever.

5A.¹⁰

- (a) Except with the permission of the Reserve Bank, no person resident in Tonga shall lend any money or securities exceeding T\$50,000 at any time, to any body corporate resident in Tonga which is, by any means, controlled (whether directly or indirectly) by persons resident outside Tonga.

- (b) For the purpose of these Regulations a branch in Tonga of a body corporate incorporated outside Tonga is deemed to be resident in Tonga and controlled by persons resident outside Tonga.
- (c) Paragraph (a) will not apply where the lender, after making such enquiries as are reasonable under the circumstances of the case, does not know and has no reason to suspect that the body corporate is controlled by persons resident outside Tonga.
- (d) Paragraph (a) does not apply to the lending of money or securities to a financial institution licensed under the Financial Institutions Act.

RESTRICTION ON IMPORTING CERTAIN GOODS INTO THE KINGDOM

- 6. The Minister may from time to time publish in the Gazette a list of goods that are prohibited imports without a licence granted by the Minister.
- 7. Applications for import licences shall be made to the Minister in the form set out in the Schedule to these Regulations, and accompanied by a fee of \$5.¹¹
- 8. A person who applies to the Minister for any consent, permission, licence or exemption under these Regulations shall furnish all information and particulars as the Minister may require.
- 9. Any consent, permission, licence or exemption granted by the Minister may be revoked by him.
- 10.
 - (1) A person shall not —
 - (a) with intent to deceive, make any false statement in any writing or declaration made for the purposes of complying with these Regulations or in any communication with or application to the Minister;
 - (b) resist, obstruct or deceive any person who is lawfully exercising any power or function under these Regulations;
 - (c) without lawful excuse act in contravention of or fail to comply with any provision of these Regulations, or any direction, notice, requirement or condition given or imposed under these Regulations.
 - (2) Any person who contravenes any provision under subregulation (1) commits an offence.¹²
- 11.¹³ A person who commits an offence against these Regulations shall be liable on conviction —
 - (a) in the case of an individual to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 3 years;
 - (b) in the case of a body corporate, to a fine not exceeding \$200,000.

THE SCHEDULE

APPLICATION FOR LICENCE TO IMPORT GOODS:

Full Name of Applicant:

Address:

Occupation:

Purchase price of goods proposed to be imported:

Place from which goods are to be shipped:

Purposes for which goods are to be imported:

The abovenamed applicant hereby applies for a licence to import in the terms of the particulars set out above, the goods described below:

Distinguishing Marks	Descriptions of goods, and number and description of packages	Quantities

Date Signature

I hereby license the importation of the goods described in the above application in accordance with the provisions of the Foreign Exchange Control Act.

Date Signature

Minister

Form in triplicate —

one for Customs one for Applicant one for Treasury.

ENDNOTES

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- ¹ 1988 Revised Edition Cap. 103; G 7/1965, G 405/1981
Amended by GS 4/2000, commencement 23 June, 2000
Amended by GS 16/2009, commencement 12 August, 2009
- ² Inserted by GS 4/2000
- ³ Cap. 38.20
- ⁴ Inserted by GS 4/2000
- ⁵ Inserted by GS 16/2009
- ⁶ Amended by GS 4/2000
- ⁷ Inserted by GS 16/2009
- ⁸ Substituted by GS 4/2000
- ⁹ Substituted by GS 4/2000
- ¹⁰ Inserted by GS 4/2000 and Amended by GS 16/2009
- ¹¹ Amended by G. 405/81
- ¹² Inserted by GS 16/2009
- ¹³ Substituted by GS 4/2000 and Amended by GS 16/2009