



FOREIGN EXCHANGE ACT, 2009

EXPLANATORY NOTE

1.0 Aim

The Foreign Exchange Act, 2009 (hereafter referred to as the Act) has seemingly raised legal implications about the enforcement of some of the provisions contained therein. As such, this explanatory note attempts to clarify the intent of the Act.

Essentially the Act repeals and replaces the Exchange Control Act (Cap 76) which enforced a highly regulated and restrictive foreign exchange regime. The Act, unlike its predecessor is more regulatory as opposed to restricting activities of persons. The presence of provisions that may be perceived as impeding on the right of individuals to deal with their moneys is actually an effort to regulate the market and prevent illegal activities which flourished in the past under the Exchange Control Act.

2.0 Prominence of the Seychelles rupee

The primary focus of the Act is that the **local currency, the Seychelles rupee**, is **never refused** when offered as means of payment. Payments may however be made in foreign currency where stipulated in a written law, or in instances where there is a contractual (written or oral) agreement. In the case of an oral agreement, this would include a payment made in a restaurant, hotel, etc. Where payment is offered in a foreign currency, the person accepting payment may return the money remaining after the transaction in foreign or local currency. Persons who accumulate foreign currency through the receipt of foreign currency payments may choose to retain or sell the foreign currency amounts. In the instance where they wish to sell, they can only do so to an authorised dealer. If this

person were to sell to a party other than an authorised dealer then he or she shall be committing an offence by acting as an authorised dealer without a licence.

3.0 Authorised dealers

Authorised dealers are by definition only banks and bureaux de change as licensed by the Financial Institutions Act, 2004 as amended. These dealers are the only entities who are empowered to buy foreign currency from or sell foreign currency to a person other than an authorised dealer, as a business. By consequence, the law does not criminalise the occasional exchange of foreign currency between relatives or friends for a sum of Rupees, but it does cover instances where the individual is exchanging foreign currency on a sustained basis and for a profit as this person will be unlawfully acting as an authorised dealer without a licence and be subject to the penalties as provided for in the Act.

4.0 Facilitators for payments

Authorised dealers may act as facilitators for payments, receipts or transfers in respect of international transactions which are defined as payments between a resident and non-resident, and targets rather the cross border movement of funds e.g. foreign currency in a bank account in Seychelles being transferred to a foreign bank account overseas, this should only occur via authorised dealers. This provision by consequence is not intended to restrict a resident from making use of his account overseas to make payment or transfer to a non-resident party. The resident is free to use his account in Seychelles and any account outside Seychelles, but where the money is originating from Seychelles then it is a requirement that the medium through which it leaves the Seychelles is an authorised dealer.

5.0 Setting of exchange rates

The power to set exchange rate for the buying and selling of foreign currency is also limited to authorised dealers. Consequently, whilst any person may accept payment in foreign currency subject to a written or oral agreement of the parties, or when stipulated

in a written law, the parties receiving payment cannot set their own rates for the transaction; the rate to be applied in this instance will be the average traded exchange rate¹ which is published as the ‘Average Rates of Authorised Dealers’ in the daily newspaper and on the Central Bank (CBS) website (www.cbs.sc).

6.0 Display of exchange rates, commissions, fees etc

Authorised dealers are obligated to display at their exchange counters the exchange rates for the buying and selling of foreign currency as well as any commission, fee or other item that would affect the net proceeds of a sale or purchase of foreign currency. This will allow the customer to make an informed decision before any transaction is entered into.

7.0 Advertising and payment for goods and services in Seychelles

Advertising and payment for goods and services in Seychelles shall be advertised and paid for in Rupees. The only exception arises if the customer is willing to pay in foreign currency. At this point, as the provider of goods and services cannot set an exchange rate he will be obliged to use the average traded exchange rate.

It is accepted that providers of goods and services who were previously advertising in a foreign currency will require a transition period in which to ensure that all prices that feature in Seychelles are in Rupees. To this end, a transition period until October 1st 2009 was granted. Any person who cannot meet this deadline due to legitimate reasons need to contact the Central Bank, explaining the means that have been and are being taken to ensure full compliance.

¹ The average traded exchange rate is calculated by the CBS from data received from all authorised dealers on a daily basis except Saturdays, Sundays and public holidays. The average traded exchange rate appears as the ‘Average Rates of Authorised Dealers’ in the publication by the CBS in the Nation and the CBS website daily (www.cbs.sc)

8.0 Advertising to a market outside Seychelles

Certain providers of goods and services target a market outside Seychelles and as such the Act allows these parties in this instance to advertise in a foreign currency. In addition, where the goods or service is advertised in a media which is accessible both inside and outside Seychelles, e.g. the internet, then the currency which should be used for advertisement is determined by who is being targeted, e.g. a customer in Seychelles in Rupees and a customer outside Seychelles in a convertible foreign currency. However it is important to note that where the non-resident effects payment in Seychelles then he will be able to do so in Rupees primarily or in foreign currency at his discretion as long as this is agreeable to the goods and services provider.

9.0 Payments for export of goods and services

The Act provides that payments for the export of goods and services from Seychelles shall be received by the exporter in a convertible foreign currency.

10.0 Summary

In conclusion and to reiterate, the Act is geared to regulate the market as opposed to restricting the activities of persons and to protect the public at large from persons who seek to enrich themselves unjustly by imposing their own terms and conditions. The Act offers one set of rules to which all parties **without exception** are required to abide to. Therefore, whoever is affected by the Act is encouraged to comply with this piece of legislation and to contact the CBS to clarify any queries when in doubt.
