



ST. CHRISTOPHER AND NEVIS

CHAPTER 21.07

EXCHANGE CONTROL ACT and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

EXCHANGE CONTROL ACT

Act 27 of 1958 ... in force 10th December 1958

Amended by: Act 12 of 1967

Act 1 of 1996

EXCHANGE CONTROL (BAILEES EXEMPTION) ORDER – Section 33

S.R.O. 51/1958

EXCHANGE CONTROL (BRANCHES) ORDER – Section 41

S.R.O. 46/1958

EXCHANGE CONTROL (DETERMINATION OF RESIDENCE)

ORDER – Section 43(2)

S.R.O. 58/1958

EXCHANGE CONTROL (IMPORT & EXPORT) ORDER – Section 33

S.R.O. 56/1958

Amended by: S.R.O. 7/1965

S.R.O. 34/1966

EXCHANGE CONTROL (LENDING TO BANKS) (EXEMPTION)

ORDER – Section 33

S.R.O. 48/1958

EXCHANGE CONTROL (PRESCRIBED COURTS) ORDER – Section 2

S.R.O. 59/1958

Page

3

EXCHANGE CONTROL (TEMPORARY VISITORS) (EXEMPTION)**ORDER – Section 33**

S.R.O. 49/1958

CHAPTER 21.07
EXCHANGE CONTROL ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

GOLD AND FOREIGN CURRENCY

3. Dealings in gold and foreign currency

PART III

MISCELLANEOUS

4. Companies

PART IV

SUPPLEMENTAL

5. Exemptions
6. Contracts, legal proceedings, etc.
7. Enforcement and administration
8. Application to Crown
9. Minister's Orders and Regulations
10. Other powers
11. Financial provisions
12. Branches
13. Persons leaving the scheduled territories
14. Determination of residence
15. Power of Minister

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

FIFTH SCHEDULE

SIXTH SCHEDULE

SEVENTH SCHEDULE

EIGHTH SCHEDULE

NINTH SCHEDULE

TENTH SCHEDULE

ELEVENTH SCHEDULE

TWELFTH SCHEDULE

THIRTEENTH HSCHEDULE

FOURTEENTH SCHEDULE

FIFTEENTH SCHEDULE
SIXTEENTH SCHEDULE
SEVENTEENTH SCHEDULE
EIGHTEENTH SCHEDULE
NINETEENTH SCHEDULE
TWENTIETH SCHEDULE

CHAPTER 21.07
EXCHANGE CONTROL ACT

AN ACT TO CONFER POWERS AND IMPOSE DUTIES AND RESTRICTIONS IN RELATION TO GOLD, CURRENCY, PAYMENTS, SECURITIES, DEBTS AND THE IMPORT, EXPORT, TRANSFER AND SETTLEMENT OF PROPERTY; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Exchange Control Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“authorised dealer” means, in relation to gold or foreign currency, a person for the time being authorised by an Order from the Minister to act for the purposes of this Act as an authorised dealer in relation to gold, or, as the case may be, that foreign currency;

(Amended by Act 6 of 1976)

“authorised depositary” means a person for the time being authorised by an Order of the Minister to act as an authorised depositary for the purposes of Part IV;

(Amended by Act 6 of 1976)

“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;

“capital account transaction” includes the buying and foreign security, the acquisition aboard of an asset consumable nature and the transfer aboard of funds asset;

(Amended by S.R.O. 12/2004)

“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 the 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;

“current account transaction” includes the buying and selling payment or receipt of payment for services and payment of income, whether derived from employment, profit, rent or any other legitimate source;

(Amended by S.R.O. 12/2004)

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

“gold” means gold coin or gold bullion;

“Minister” means the Minister for the time being responsible for the subject of Finance;

(Inserted by Act 1 of 1996)

“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;

“prescribed” means prescribed, for the purposes of the provision in question, by order of the competent authority;

“scheduled territories” has the meaning ascribed to it by section 3;

(Amended by S.R.O. 12/2004)

“securities” means shares, stock, bonds, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and shares in an oil royalty;

(Amended by S.R.O. 12/2004)

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing for persons having funds available for investment, 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;

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

(2) Any provision of this Act (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 this Act imposing an obligation on any person to do an act if he or she 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 or she can to secure the doing of the act.

(3) Any power conferred by this Act 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 this Act shall be construed as requiring the Financial Secretary to pay any sum otherwise than in sterling or Eastern Caribbean dollars or otherwise than in the State, and any provision of this Act requiring the Financial Secretary to pay any sum to any person shall, where that sum is a specified currency, be construed as a provision that the Financial Secretary shall pay to that person the amount in sterling or Eastern Caribbean dollars which he or she would have received for the

specified currency if he or she had sold it to an authorised dealer at the time when the said sum is paid.

(5) The obligations and prohibitions imposed by this Act shall, subject to the express limitations contained therein, apply to all persons, notwithstanding that they are not British subjects.

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 authorised dealer, shall, in the State, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer.

(Amended by Act 6 of 1976)

(2) Except with the permission of the Minister, no person resident in the scheduled territories other than an authorised dealer, shall, in the State, do any act which involves, is in association with or is preparatory to buying or borrowing any gold or foreign currency from, or selling or lending any gold or foreign currency to, any person outside the State.

(Amended by Act 6 of 1976)

(3) Where a person buys or borrows any gold or foreign currency in the State or, being a person resident in the scheduled territories does any act which involves, is in association with, or is preparatory to the buying or borrowing of gold or foreign currency outside the State, he or she 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 or her by the Financial Secretary.

(4) In this Act—

- (a) the expression “foreign currency” does not include any currency or notes issued by the Government or under the law of any part of the scheduled territories, but, save as aforesaid, includes any currency other than sterling or Eastern Caribbean dollars and any notes of a class which are or have at any time been legal tender in any territory outside the State, 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; and
- (b) the expression “the scheduled territories” means the territories specified in the First Schedule, so, however, that the Minister may at any time by Order amend the said Schedule, either by the addition or exclusion of territories or otherwise, and the said expression shall be construed accordingly.

PART III
MISCELLANEOUS

Companies.

4. (1) Except with the permission of the Financial Secretary, no person resident in the State shall do any act whereby a body corporate which is by any means controlled (whether directly or indirectly) by persons resident in the State ceases to be controlled by persons resident in the State:

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

(2) No person resident in the scheduled territories shall, in the State, do any act which involves, is in association with, or is preparatory to, any such transaction outside the State as is referred to in this subsection.

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

Provided that this subsection shall not apply where the lender after making such inquiries 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) No person resident in the scheduled territories shall, in the State, do any act which involves, is in association with, or is preparatory to, any such transaction outside the State as is referred to in subsection (3).

(5) For the purposes of this section and of the Second Schedule, persons resident in the State or outside the scheduled territories 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.

(6) In this section, the expression "security" includes a secondary security.

PART IV
SUPPLEMENTAL

Exemptions.

5. Any provision of this Act imposing any obligation or prohibition shall have effect subject to such exemptions as may be granted by Order of the Minister and any such exemption may be either absolute or conditional.

(Amended by Act 6 of 1976)

Contracts, legal proceedings, etc.

6. (1) It shall be an implied condition in any contract that, where, by virtue of this Act, the permission or consent of the Financial Secretary is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required:

Provided that this subsection shall not apply in so far 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 this Act or for any other reason.

(2) Notwithstanding anything in the Bills of Exchange Act, neither the provisions of this Act, nor any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without the permission of the Financial Secretary under this Act, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

(3) The provisions of the Fourth Schedule shall have effect with respect 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 behoof of creditors.

Enforcement and administration.

7. (1) The provisions of the Fifth Schedule shall have effect for the purpose of the enforcement of this Act.

(2) Persons belonging to the following classes, that is to say—

- (a) bankers, authorised dealers, authorised depositaries;
- (b) persons to whom any powers of the competent authority under this Act are delegated;
- (c) persons who with the permission of the competent authority are in possession of documents which would, but for the permission, have to be in the custody of an authorised depositary;
- (d) persons concerned with the keeping of any register in the State; and
- (e) persons entrusted with the payment of capital moneys, dividends or interest in the State;

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

- (i) in the case of any such persons, directions as respects the exercise of any functions exercisable by virtue of, or by virtue of anything done under, any provision of this Act; or
- (ii) in the case of authorised 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 England on such terms as may be specified in any such directions.

Application to Crown.

8. This Act shall bind the Crown and shall apply to transactions by a Government department or other person acting on behalf of the Crown, and the competent authority shall not, by virtue of any contract made by them or on their behalf in relation to any securities, be under any obligation to grant any permission under Part IV or any exemption from the provision of Part IV.

Minister's Orders and Regulations.

9. (1) The Minister may, by Order make such transitional provisions as appear to him or her necessary or expedient in consequence of the exercise by him or her of any other power to make Orders under this Act.

(2) The Minister may make such regulations to replace the Defence (Finance) Regulations specified in the Sixth Schedule or any one or more of them as are, in his or her opinion, necessary for purposes ancillary to the principal objects of this Act.

(Amended by Act 6 of 1976)

Other powers.

10. (1) Any permission, consent or authority, granted under this Act—

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

(2) Any directions given under any provision of this Act—

- (a) may be either general or special;
- (b) may be revoked or varied by subsequent directions; and
- (c) shall be given to such persons and in such manner as the competent authority thinks appropriate and if so given shall be valid for all purposes.

(3) Notwithstanding paragraph (c) of subsection (2), a person shall not, by virtue of any direction given by the competent authority under this Act, be convicted of an offence against this Act, unless the direction was served on him or her or he or she 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 or her notice, it shall be for him or her to show that he or she neither knew nor avoided getting to know of the giving thereof.

(4) The competent authority may, to such extent and subject to such restrictions and conditions as he or she may think proper, delegate or authorise the delegation of any of his or her 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 or her, and references in this Act shall be construed accordingly.

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

Financial provisions.

11. Any expenses incurred under or by virtue of this Act by any Government department shall be paid out of moneys provided by the National Assembly, and any sums received under or by virtue of this Act by any Government department shall be paid to the Accountant-General.

Branches.

12. (1) The Minister may, by Order or direction, provide that, for such of the purposes of this Act 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.

(Amended by Act 6 of 1976)

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

(3) Subsections (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.

Persons leaving the scheduled territories.

13. Where a person resident in the State leaves the scheduled territories, the Financial Secretary may, before, at or after the time he or she leaves the scheduled territories, direct that, for such period as may be specified in the direction, payments by him or her or on his or her behalf and to him or her or to his or her credit and transactions in or in relation to securities or secondary securities in which he or she is in any way concerned shall, whether or not he or she continues to be resident in the State, be subject to such restrictions as may be specified in the direction.

Determination of residence.

14. (1) For the purposes of this Act, a personal representative of a deceased person shall, unless the Financial Secretary otherwise directs, be treated as resident in the territory where the deceased person was resident for the purposes in question at the time of his or her death and as not resident elsewhere, so far as relates to any matters in which the personal representative is concerned solely in his or her capacity as such.

(2) The Financial Secretary may give directions declaring that for all or any of the purposes of this Act a person is to be treated as resident or not resident in such territories as may be specified in the directions.

Power of Minister.

15. (1) Notwithstanding anything to the contrary contained in this Act, the Minister may, where it appears to him or her to be necessary or expedient, by Order published in the *Gazette* amend, vary, suspend or revoke any of the provisions of this Act (other than this section) subject to the provisions contained in the said Order.

(2) This section does not authorise the Minister to impose any new or increase any existing fee or charge.

(3) Any Order made under this section shall be subject to negative resolution of the National Assembly.

(Inserted by Act 1 of 1996)

FIRST SCHEDULE

(Section 3)

SCHEDULED TERRITORIES

1. The fully self-governing countries of the British Commonwealth except Canada.
2. Any Colony under the dominion of Her Majesty except (Zimbabwe).
3. Any territory administered by the government of any part of Her Majesty's dominions under the trusteeship system of the United Nations.
4. Any British protectorate or British protected state.
5. South West Africa.
6. The Irish Republic.
7. Iceland.
8. Burma.
9. The Hashemite Kingdom of the Jordan.
10. The United Kingdom of Libya.

SECOND SCHEDULE

(Section 32)

FOREIGN COMPANIES

1. The bodies corporate in question are bodies corporate not incorporated under the laws of the State 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 the State;
 - (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 the State;
 - (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 the State; 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 the State.

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 the State 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 the State.

(Amended by S.R.O. 12/2004)

THIRD SCHEDULE

(Suspended by S.R.O. 12/2004)

FOURTH SCHEDULE

(Section 35)

LEGAL PROCEEDINGS, ETC.

1. The provisions of Part III 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 the State, and in any award given under the law of the State, 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 Financial Secretary.

2. Nothing in this Act shall be construed as preventing the payment by any person of any sum into any court in the State but the provisions of Part III 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 the scheduled territories.

3. Without prejudice to the provisions of enactments 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 or she apprehends that the payment of that sum is unlawful under this Act, except with the permission of the Financial Secretary, to pay that sum into court;
- (b) declaring that payment of a sum into court by virtue of the preceding subparagraph, 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 Financial Secretary for the payment of the sum is not required under this Act 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 respects the High Court, or any other court, by such authority as may be designated in that behalf by the Chief Justice:

Provided that the form of any bankruptcy notice shall be such as may be prescribed by the Financial Secretary, and nothing in this paragraph shall affect the provisions of any legislation which requires rules of court for inferior courts to have the concurrence of the rule-making authority for the High Court.

4. (1) In any proceedings in a prescribed 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 permission of the Financial Secretary and of that permission not having been given or having been revoked.

(2) No court shall be prescribed for the purpose of this paragraph unless the Financial Secretary is satisfied that adequate provision has been made therefor by rules of court for the purposes specified under the last preceding paragraph.

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 under the law of the State), a claim for a sum not payable without the permission of the Financial Secretary 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 to payments by any trustee, liquidator, personal representative or other person in any such bankruptcy, winding up or administration.

(2) The provisions of this Act 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) of this paragraph 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 Treasury is required under this Act shall, if in other respects it complies with the requirements of subsection (1) of section 4 of the Bankruptcy Act, Cap. 5.04 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.

FIFTH SCHEDULE*(Section 36)***ENFORCEMENT****PART I****GENERAL PROVISIONS AS TO EVIDENCE AND INFORMATION**

1. (1) Without prejudice to any other provisions of this Act, the Financial Secretary may give to any person in or resident in the State directions requiring him or her, within such time and in such manner as may be specified in the directions, to furnish to him or her, or to any person designated in the directions as a person authorised to require it, any information in his or her possession or control which the Financial Secretary or the person so authorised, as the case may be, may require for the purpose of securing compliance with or detecting evasion of this Act.

(2) A person required by any such directions as aforesaid to furnish information shall also produce such books, accounts or other documents (hereafter in this Part of this Schedule referred to as “documents”) in his or her possession or control as may be required for the said purpose by the Financial Secretary or by the person authorised 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 counsel or solicitor for any person to disclose any privileged communication made to him or her in that capacity.

(4) Where a person is convicted on indictment 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 justice of the peace is satisfied by information on oath given by a person authorised by the Financial Secretary to act for the purposes of this paragraph either—

- (a) that there is reasonable ground for suspecting that an offence against this Act 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 the preceding paragraph and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he or she may grant a search warrant authorising 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 authorised 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 or she 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 seize any article found in the premises or on or in the vehicle, vessel, or aircraft, which he or she has reasonable ground for believing to be evidence of the commission of any offence against this Act or any documents which he or she has reasonable ground for believing ought to have been produced under the preceding paragraph:

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 or she may use such force as is reasonably necessary for the purpose of exercising that power.

3. (1) Any article coming into possession of an executive authority (whether in consequence of the seizure of the article under or by virtue of this Act or otherwise) which the authority has reasonable ground for believing to be evidence of the commission of an offence against this Act 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 competent authority under this Act are delegated or on whom any functions are conferred by or by virtue of this Act, 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 the State shall—

- (a) with intent to evade the provisions of this Act, destroy, mutilate, deface, secrete or remove any documents;
- (b) in furnishing any information for any of the purposes of this Act make any statement which he or she 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 or her by virtue of this Part of this Schedule.

PART II

GENERAL PROVISIONS AS TO OFFENCES

1. (1) Any person in or resident in the State who contravenes any restriction or requirement imposed by or under this Act, 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, commits 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 or she proves that the contravention was committed without his or her consent or connivance and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of his or her 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—

- (a) on summary conviction, to imprisonment for not more than three months or to a fine or to both;
- (b) on conviction on indictment, to imprisonment for not more than two years or to a fine or to both,

and where the offence is concerned with any currency, any security, any gold, any goods or any other property, the court may, if they think fit so to do, order the currency, security, gold, goods or property to be forfeited.

(4) Except in the case of a body corporate convicted on indictment, the maximum fine which may be imposed for an offence punishable under this Part of this Schedule shall be—

- (a) on summary conviction, fifteen thousand dollars; and
- (b) on conviction on indictment, twenty-two thousand five hundred dollars;

so however, that (in either case) where the offence is concerned with any currency, any security, any payment, any gold, any goods or any other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required so to do under Part I of this Schedule, a larger fine may be imposed not exceeding three times the amount or value of the currency, security, payment, gold, goods or property.

(Amended by Acts 7 of 1976 and 9 of 1986)

2. (1) No proceedings for an offence punishable under this Part of this Schedule shall be instituted, except by or with the consent of the Director of Public Prosecutions or appropriate officer:

Provided that this subparagraph shall not prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.

(Amended by Act 12 of 1967)

(2) Proceedings against any person in respect of an offence punishable under this Part of this Schedule may be taken before the appropriate court in the State having jurisdiction in the place where that person is for the time being.

(3) Any proceeding under a law establishing summary jurisdiction which may be taken against any person in respect of an offence punishable under this Part of this

Schedule may, notwithstanding anything to the contrary in that law, be taken at any time within twelve months from the date of the commission of the offence or within three months from the date on which evidence sufficient in the opinion of the Financial Secretary to justify the proceedings comes to the knowledge of the Financial Secretary, whichever period last expires, or, where the person in question was outside the State at the date last-mentioned, within twelve months from the date on which he or she first arrives in the State thereafter.

(4) For the purposes of this paragraph a certificate of the Financial Secretary as to the date on which such evidence as aforesaid came to the knowledge of the Financial Secretary shall be conclusive evidence thereof.

3. The maximum period of imprisonment that may be imposed by a court of summary jurisdiction in the State—

(a) in respect of the non-payment of a sum adjudged to be paid by a conviction for an offence punishable under this Part of this Schedule; or

(b) in respect of the default of a sufficient distress to satisfy any such sum, shall, in cases where the sum exceeds five hundred dollars, be increased in accordance with the following scale, that is to say,

Where the amount of the sum adjudged to be paid by the conviction, as ascertained by the conviction	The said period shall not exceed
exceeds five hundred dollars but does not exceed one thousand five hundred dollars	Four months.
exceeds one thousand five hundred dollars	six months.

4. Where a corporation is charged, whether alone or jointly with some other person, with an indictable offence punishable under this Part of this Schedule, the Magistrate may, if he or she is of opinion that the evidence offered on the part of the prosecution is sufficient to put the accused corporation upon trial, commit the corporation for trial.

5. Where an indictment has been filed against a corporation in respect of an offence punishable as aforesaid, the corporation may, on arraignment before the High Court, enter in writing by its representative a plea of guilty or not guilty, and if either the corporation does not appear by a representative or, though it does so appear, fails to enter as aforesaid any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

6. Any indictment filed against a corporation or other document addressed to a corporation may be served upon the corporation by leaving it at, or sending it by post to, the registered office of the corporation or, if there be no such office in the State, by leaving it at or sending it by post to, the corporation at any place in the State at which it trades or conducts business.

7. (1) In this paragraph, the expression “representative”, in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Part of this Schedule authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

(2) A representative for the purposes of this Part of this Schedule need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Part of this Schedule shall be admissible without further proof as *prima facie* evidence that that person has been so appointed.

PART III

IMPORT AND EXPORT

1. (1) The enactments relating to customs shall, subject to such modifications, if any, as may be prescribed to adapt them to this Act apply in relation to anything prohibited to be imported or exported by any of the provisions of Part V except with the permission of the Financial Secretary as they apply in relation to goods prohibited to be imported or exported by or under any of the said enactments, and any reference in the said enactments 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 Financial Secretary.

(2) References in this paragraph to the enactments relating to Customs shall be taken as including references to the Customs Tariff Act, Cap. 20.06 as amended.

2. Any declaration required to be given under Part IV shall, for the purposes of the Customs Tariff Act as amended be deemed to be a declaration in a matter relating to customs.

3. If anything prohibited to be exported by any provision of Part V is exported in contravention thereof, or is brought to a quay or other place, or water borne, for the purpose of being so exported, the exporter or his or her agent shall be liable to the same penalty as that to which a person is liable for an offence to which the Customs Tariff Act as amended applies.

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

- (a) declare whether or not he or she has with him or her anything prohibited to be imported or exported by any of the provisions of the said Part V except with the permission of the Financial Secretary; and
- (b) produce any such thing as aforesaid which he or she has with him or her,

and the officer may examine or search any article which the traveller has with him or her for the purpose of ascertaining whether he or she is conveying or has in his or her possession any such thing, and, if the officer has reasonable grounds for suspecting that the traveller has about his or her person any such thing, search him or her, 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 Financial Secretary:

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

5. Subparagraph (2) of paragraph 1 of Part II of this Schedule shall apply also to offences punishable by virtue of this Part of this Schedule.

SIXTH SCHEDULE

(Section 38)

RETENTION OF DEFENCE (FINANCE) REGULATIONS

Power of Minister to prohibit action on certain orders as to gold, etc.

5. Where the Minister is satisfied that owing to the changes in the external or internal position of any State, action is being or is likely to be, taken to the detriment of the economic position of the State 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—

- (a) the State or the Sovereign thereof or any person resident therein; or
- (b) any body corporate which is incorporated under the laws of that State or is under the control of that State or the Sovereign thereof or any person resident therein,

in so far as the order requires the person to whom the order is given to make any payment or to part with any gold or securities, or requires any change to be made in the persons to whose credit any sum is to stand or to whose order any gold or securities are to be held.

Power to obtain information.

22. (1) The Minister may give to any person directions requiring him or her, within such time and in such manner as may be specified in the directions to furnish to him or her or to any person designated in the directions as a person authorised to require it, any information in his or her possession or control which the Minister or the person so authorised, 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 produce such books, accounts or other documents (hereinafter referred to as "documents") in his or her possession or control as may be required by the Minister or by the person authorised to require the information, as the case may be, and for the purpose of inspecting any such documents any person so authorised as aforesaid, or any person authorised to act on behalf of the Minister under this paragraph, may enter any premises and may take possession of any of the documents or take in relation thereto any other steps which appear to him or her necessary for preserving them and preventing interference therewith.

(3) No person shall, with intent to evade the provisions of these Regulations, destroy, mutilate, deface, secrete or remove any documents.

(4) Any information given by a person in compliance with this regulation may be given in evidence against him or her notwithstanding that it may tend to incriminate him or her.

(5) The provisions of this regulation shall be without prejudice to any other provisions of these Regulations relating to the giving of information, provisions of the last foregoing paragraph shall be without prejudice to any question as to the admissibility as evidence of information obtained under statutory powers in the absence of any such express provision.

(6) The Minister may, to such extent and subject to such restrictions as he or she thinks proper, delegate his or her powers under this regulation to any person or class or description of persons approved by him or her.

Application of certain provisions of the Defence Regulations 1939.

23. (1) The provisions of Part VIII of the Defence Regulations, 1939, shall apply for the purpose of the enforcement of the these Regulations, and otherwise in relation thereto, as if in the said Part VIII to those Regulations any reference to those Regulations included a reference to these Regulations.

Interpretation.

25. (1) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively, assigned to them, that is to say—

“bank notes” means bank notes or notes which are legal tender in the State, or in the United Kingdom or in any part thereof and banknotes legally issued in the State and includes any bank notes which have ceased or cease to be legal tender in the United Kingdom;

“foreign currency” means any currency other than sterling;

“gold” means gold coin or gold bullion;

“legal tender” means a tender of payment of money in the case of Trinidad currency notes and silver coins for the payment of any amount, in the case of bronze coins for a payment of an amount not exceeding twenty-four cents;

“silver and bronze coins” means coins issued by the Mint in accordance with the Coinage Act, 1870 (Imperial) (33 & 34 Vict.c. 10);

“owner”, in relation to any security, includes any person who has power to sell or transfer a security, or who has the custody thereof, or who receives, whether on his or her own behalf or on behalf of any other person, dividends or interest thereon or who has any other interest therein, and also includes, in case where securities are held on any trust, or dividends or interest thereon are paid into a trust fund, any trustee or any person entitled to enforce the performance of the trust, or to revoke or vary, with or without the consent of any other person, the trust or any of the terms thereof, or to control the investment of the trust moneys;

“security”, except in so far as is otherwise expressly provided, includes—

- (a) shares, stocks, bonds, notes, debentures, and debenture stock;
- (b) a deposit receipt in respect of the deposit of securities;
- (c) a unit or sub-unit of a unit trust;

(d) a life assurance policy or other contract entered into with an assurance company for securing the payment in the future of any capital sum or sums or of an annuity;

(e) a warrant conferring an option to acquire a security;

(f) a share in an oil royalty,

but does not include a bill of exchange or a promissory note;

“sterling area” means the United Kingdom, the Isle of Man, and such other territories as may be declared by Order of the Minister to be included in the sterling area.

(2) Any consent or permission granted by or on behalf of the Minister under any of these Regulations may be granted either absolutely or subject to conditions.

SEVENTH SCHEDULE

(Section 44)

EXCHANGE CONTROL (SUSPENSION OF PROVISIONS) ORDER

Citation.

1. This Order may be cited as the Exchange Control (Suspension of Provisions) Order.

Interpretation.

2. In this Order—

“Act” means the Exchange Control Act, Cap. 21.07;

“capital account transaction” includes the buying and selling of a foreign security, the acquisition abroad of an asset of a non-consumable nature and the transfer abroad of funds or any other asset;

“current account transaction” includes the buying and selling of a good, payment or receipt of payment for services and payment or receipt of income, whether derived from employment, profit, interests, rent or any other legitimate source.

Suspension of Provisions.

3. The provisions of the Act listed in Part I and Part II of the Schedule to this Order are suspended for the purposes and to the extent stated in this Order, this is to say—

(a) the provisions listed in Part I are suspended generally;

(b) all other Rules, Orders or Statutory Instruments made under any of the provisions listed in Part I of the Schedule to this Order shall be deemed to be suspended;

(c) the provisions listed in Part II are suspended in respect of a request for any foreign exchange transaction, whether it is a capital account transaction or a current account transaction, for any amount up to the equivalent of two hundred and fifty thousand dollars Eastern Caribbean Currency.

(Amended by S.R.O. 61/1997)

- (d) all other Rules, Orders or Statutory Instruments made under any of the provisions listed in Part II of the Schedule to this Order shall be deemed to be suspended to the extent provided under paragraph (c).

Application.

4. The limitation provided in paragraph 3(c) does not apply to an import trade transaction which is supported by the necessary invoices.

SCHEDULE TO THE ORDER

(Section 3)

PART I

Sections 4 – 6
23–29
32(1)(2)
34
Third Schedule

PART II

Sections 7 – 22
30 – 31

EIGHTH SCHEDULE

(Section 33)

EXCHANGE CONTROL (BAILEES EXEMPTION) ORDER

Short Title.

1. This Order may be cited as the Exchange Control (Bailees Exemption) Order.

Exemption of Bailee Bankers.

2. There shall be exempted from the obligation imposed by the provisions of section 5 of the Exchange Control Act, any Banker to the extent that he or she shall not be required to notify to the Financial Secretary as provided in the said section 5 in any case where he or she is satisfied that the person for whom or by whose order any gold or specified currency in the form of notes is held is not required by virtue of the provisions of section 4 of the Exchange Control Act, Cap. 21.07 to offer that gold or specified currency or cause it to be offered for sale to an authorised dealer.

Power to Remove Exemption.

3. The Financial Secretary may, at any time, direct that the exemption conferred by this Order shall not apply as may be specified in the direction.
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NINTH SCHEDULE

(Section 41)

EXCHANGE CONTROL (BRANCHES) ORDER

Short Title.

1. This Order may be cited as the Exchange Control (Branches) Order.

Application of Act to Branch Businesses.

2. For the purposes of the Exchange Control Act, 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.

Branch Businesses in State Deemed Resident.

3. A person or body of persons carrying on in the State a branch of any business, shall, as respects such business as is carried on by that branch, be treated for all the purposes of the Act as resident in the State.

Head Offices included in Reference to Branches.

4. Reference in this Order to a branch of a business shall be deemed to include a reference to the head office of that business.

Power to Vary Order.

5. This Order may be varied by subsequent Orders as respects any particular person or body of persons.

TENTH SCHEDULE

(Suspended by S.R.O. 12/2004)

ELEVENTH SCHEDULE

(Section 43(2))

EXCHANGE CONTROL (DETERMINATION OF RESIDENCE) ORDER

Short Title.

1. This Order may be cited as the Exchange Control (Determination of Residence) Order.

Determination of Residence.

2. A person or body of persons (whether corporate or unincorporate) carrying on any business or any activity, whether for the purpose of profit or not, in two or more countries, shall as respects such business or activity as is carried on in each country,

be treated for all the purposes of the Exchange Control Act, as resident in the country in which the business or activity is carried on.

TWELFTH SCHEDULE

(Suspended by S.R.O. 12/2004)

(Sections 2 & 10)

THIRTEENTH SCHEDULE

(Section 33)

EXCHANGE CONTROL (IMPORT AND EXPORT) ORDER

Short Title.

1. This Order may be cited as the Exchange Control (Import and Export) Order.

Exemption from Restrictions on Importation of Notes and Securities.

2. There shall be exempted from the provisions of section 23 of the Exchange Control Act, Cap. 21.07 the importation into the State—
 - (a) on the person of, or in the baggage of, a traveller to the State in any ship or aircraft from some place outside the State, of bank notes legally issued in the State, notes which are legal tender in the State and bank notes which are legal tender in the United Kingdom or in any part thereof;
 - (b) of the certificate of title to any security which is registered in the scheduled territories and is not and cannot, without the necessity for an entry in the register in the scheduled territories, become registered outside the scheduled territories, or is registered both in the scheduled territories and outside the scheduled territories but on a transfer cannot, without the necessity for an entry in the register in the scheduled territories, become registered outside the scheduled territories in the name of the transferee and on which none of the dividends or interest is payable on presentment of a coupon.

Exemption from Restrictions on Exportation of Notes and Securities.

3. There shall be exempted from the provisions of section 24 of the Exchange Control Act, the exportation from the State—
 - (a) by any traveller on his or her person or in his or her baggage, if he or she is about to leave the Territory, of bank notes legally issued in the Territory and notes which are legal tender in the Territory to an amount not exceeding fifty pounds sterling in value, and in addition thereto, bank notes which are legal tender in the United Kingdom or in any part thereof and foreign currency notes to such amount that the sum of such notes does not exceed in total fifty pounds sterling in

value, or the amount brought by such person into the Territory, whichever is the greater:

(Substituted by S.R.O. 34/1966)

Provided that—

- (i) if and so long as there is in force a permission granted under subsection (1) of section 24 of the Exchange Control Act, authorising that person to take any notes to which section 24 applies, out of the State, he or she shall not be entitled to any exemption;
- (ii) nothing in this sub-paragraph shall be deemed to authorize the contravention of any of the provisions of section 3 of the Exchange Control Act, which relate to dealings in gold and foreign currency or section 8 of the Act which relate to payments outside the State;
- (b) in any manner other than on the person of a traveller or in a traveller's baggage, to any of the scheduled territories, except the United Kingdom, of notes to any amount expressed in the currency of the territory to which the notes are exported;
- (c) in any manner other than on the person of a traveller, or in a traveller's baggage, to any of the scheduled territories, of postal orders;
- (d) to any of the scheduled territories, of any policy of assurance expressed in the terms of currency of any of the scheduled territories;
- (e) of any bill of exchange or promissory note expressed in terms of the currency of any of the scheduled territories not being a bill or note which is or has at any time been legal tender in any of those territories;
- (f) of any bill of exchange or promissory note expressed in terms of a currency other than sterling and issued by an authorised dealer or in pursuance of a permission granted by the Financial Secretary;
- (g) of the certificate of title to any security which is registered in the scheduled territories and is not and cannot, without the necessity of an entry in the register in the scheduled territories, become registered outside the scheduled territories or is registered both in the scheduled territories and outside the scheduled territories but on a transfer cannot without the necessity for an entry in the register in the scheduled territories become registered outside the scheduled territories in the name of the transferee and on which none of the dividends or interest is payable on presentment of a coupon;
- (h) by any traveller not resident in the State on his or her person or in his or her baggage, of any traveller's cheque or letter of credit which has been imported by that traveller.

Calculation of Sterling Value of Notes.

4. For the purpose of the last foregoing paragraph the sterling value of notes which are or have at any time been legal tender in any territory other than the United Kingdom shall be calculated—

- (a) at the Bank of England's selling rates for the relative notes on the day in question, or if there is no such selling rate;

- (b) at the current market rate, or, if there is neither a selling rate nor a market rate;
- (c) at a rate determined or to be determined by the Financial Secretary for the currency concerned.

Non-Application of Above Exemptions.

5. The exemptions granted by this Order shall not apply to—
- (a) a person employed or engaged in any capacity on board any ship or aircraft arriving in or departing from the State; or
 - (b) any person described in the Schedule to this Order when travelling on official duty.

Definition of “scheduled territories”.

6. In this Order, the expression “scheduled territories” has the meaning ascribed to it by section 3 of the Exchange Control Act.

SCHEDULE TO THE ORDER

(Section 5(6))

- 1. Male person serving in the Armed Forces of the Crown.
- 2. Female person serving in any of the capacities hereinafter mentioned, that is to say—
 - (a) Member of Queen Alexandra’s Royal Naval Nursing Service or any reserve thereof.
 - (b) Member of the Women’s Royal Naval Service.
 - (c) Woman medical or dental practitioner serving in the Royal Navy or any naval reserve.
 - (d) Member of Queen Alexandra’s Imperial Military Nursing Service or any reserve thereof.
 - (e) Member of the Territorial Army Nursing Service or any reserve thereof.
 - (f) Member of the Auxiliary Territorial Service.
 - (g) Woman employed with the Royal Army Medical Corps or the Army Dental Corps with relative rank as an officer.
 - (h) Member of Princess Mary’s Royal Air Force Nursing Service or any reserve thereof.
 - (i) Member of the Women’s Auxiliary Air Force.
 - (j) Woman employed with the Medical Branch or the Dental Branch of the Royal Air Force with relative rank as an officer.
 - (k) Member of the Voluntary Aid Detachments employed under the Admiralty Army Council or Air Council.

FOURTEENTH SCHEDULE

(Section 33)

**EXCHANGE CONTROL (LENDING TO BANKS) (EXEMPTION)
ORDER**

Short Title.

1. This Order may be cited as the Exchange Control (Lending to Banks) (Exemption) Order.

Exemption on Loans to Banks.

2. There shall be exempted from the provisions of subsection (3) of section 32 of the Exchange Control Act, the lending of any money or securities by any person resident in the State to any office or branch in the State of a Bank which is by any means controlled (whether directly or indirectly) by persons resident outside the scheduled territories.

FIFTEENTH SCHEDULE

(Suspended by S.R.O. 12/2004)

SIXTEENTH SCHEDULE

(Section 2)

EXCHANGE CONTROL (PRESCRIBED COURTS) ORDER

Short Title.

1. This Order may be cited as the Exchange Control (Prescribed Courts) Order.

Courts Prescribed.

2. The courts prescribed for the purposes of paragraph 4 of the Fourth Schedule to the Exchange Control Act, are the courts set out in the Schedule to this Order.

SCHEDULE TO THE ORDER

(Section 2)

The Eastern Caribbean Supreme Court
Magistrate's Courts.

SEVENTEENTH SCHEDULE

(Suspended by S.R.O. 12/2004)

EIGHTEENTH SCHEDULE

(Suspended by S.R.O. 12/2004)

NINETEENTH SCHEDULE

(Section 33)

**EXCHANGE CONTROL (TEMPORARY VISITORS) EXEMPTION
ORDER****Short Title.**

1. This Order may be cited as the Exchange Control (Temporary Visitors) (Exemption) Order.

Exemption of Non-Residents from Surrender of Gold and Foreign Currency.

2. There shall be exempted from the obligation imposed by the provisions of section 4 of the Exchange Control Act, any person in the State who is not resident in the State.

Power to Remove Exemption.

3. The Financial Secretary may, at any time, direct that the exemption conferred by this Order shall not apply to such person as may be specified in the direction.

TWENTIEHT SCHEDULE

(Section 2(1))

EXCHANGE CONTROL (AUTHORISED DEALER) ORDER**Short Title.**

1. This Order may be cited as the Exchange Control (Authorised Dealer) Order.

Authorised Dealer Specified.

2. The Bank of America National Trust and Savings Association of Basseterre, St. Kitts, is authorised to act for the purposes of the Exchange Control Ordinance, 1958, as an authorised dealer in relation to gold and foreign currency.
