



Tonga

**FOREIGN EXCHANGE CONTROL BILL
2018**



FOREIGN EXCHANGE CONTROL BILL 2018

Arrangement of Sections

Section

PART I - PRELIMINARY	5
1 Short Title	5
2 Interpretation.....	5
3 Administration	8
PART II - REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE AND GOLD	8
4 Dealing in foreign exchange and gold	8
5 Holding, taking, sending or transferring of foreign exchange and gold	8
6 Foreign exchange and security transactions.....	8
7 Export of goods and services	10
8 Realisation and repatriation of foreign exchange and gold.....	10
9 Exemption from realisation and repatriation in certain cases	10
PART III - AUTHORISED PERSON	11
10 Authorised person	11
11 Reserve Bank's powers to issue directions to authorised person and impose administrative penalties	11
12 Power of Reserve Bank to inspect authorised person	12
PART IV – LICENSING	12
13 Prohibition from carrying on foreign exchange services business as an authorised person	12
14 Application for licence.....	13
15 Requirements for a licence.....	13
16 Grant or refusal of licence.....	14
17 Fees	14

18	Duration of licence	15
19	Conditions of licence.....	15
20	Display of licence.....	15
21	Revocation of licence	15
22	Licence to be forwarded to the Reserve Bank.....	16
23	Effect of revocation or surrender of licence	17
24	Surrender of licence	17
25	Preservation of rights and claims	17
26	Approval for change in name of licensee	17
27	Restriction of business	18
28	Publication of list of licensees.....	18

PART V - CONTRAVENTION AND PENALTIES **18**

29	Penalties	18
----	-----------------	----

PART VI - ENFORCEMENT **19**

30	Power of search and seizure.....	19
----	----------------------------------	----

PART VII - MISCELLANEOUS **19**

31	Presumption as to documents in certain cases.....	19
32	Power to make directives	20
33	Repeal and saving.....	20

EXPLANATORY NOTES **22**



FOREIGN EXCHANGE CONTROL BILL 2018

A BILL FOR AN ACT FOR THE REGULATION OF FOREIGN EXCHANGE AND SUPPORT THE MAINTENANCE OF THE KINGDOM'S FOREIGN RESERVES, AND MATTERS CONNECTED THEREWITH.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short Title

This Act may be cited as the Foreign Exchange Control Act 2018.

2 Interpretation

In this Act, unless the context otherwise requires,-

“**authorised person**” means a person for the time being authorised under section 10(1) to deal in gold or foreign exchange or foreign securities;

“**bank**” means a financial institution engaged in banking business and other financial activities as defined in the National Reserve Bank of Tonga Act;

“**board**” means the National Reserve Bank of Tonga board of directors;

“currency” includes cash in the form of coins and bank notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

“customs officer” means any officer authorised by the Ministry responsible for customs;

“export” means the taking out of Tonga to a place outside Tonga any goods or services;

“fit and proper”, in relation to a person, means criteria as the Reserve Bank may prescribe;

“foreign currency” means any currency other than Tongan currency;

“foreign exchange” means foreign currency and includes, –

- (a) deposits, credits and balances payable in any foreign currency;
- (b) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Tongan currency but payable in any foreign currency; and
- (c) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside Tonga, but payable in Tongan currency;

“foreign exchange services business” means the business of dealing with foreign exchange and gold and such other business as the Bank may prescribe;

“foreign security” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency;

“gold” means gold coin or gold bullion;

“immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

“import” means bringing into Tonga any goods or services;

“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;

“notify” means to notify in the Gazette and the expression **“notification”** shall be construed accordingly;

“person” includes –

- (a) an individual;
- (b) a company;
- (c) a firm;
- (d) an association of persons or a body of individuals, whether incorporated or not;

- (e) every artificial juridical person, not falling within any of the preceding paragraphs; and
- (f) any agency, office or branch owned or controlled by such person referred to in paragraph (e);

“person resident in Tonga” means –

- (a) a person residing in Tonga for more than one year;
- (b) any person or body corporate registered or incorporated in Tonga;
- (c) any person licenced to carry on a business in Tonga;
- (d) an office, branch or agency in Tonga owned or controlled by a person resident outside Tonga; or
- (e) an office, branch or agency outside Tonga owned or controlled by a person resident in Tonga;

“person resident outside Tonga” means a person who is not resident in Tonga;

“prescribed” means prescribed by directives made under this Act;

“repatriate to Tonga” means bringing into Tonga the realised gold or foreign exchange and –

- (a) the selling of such gold or foreign exchange to an authorised person in Tonga in exchange for Tongan currency; or
- (b) the holding of realised amount in an account with a bank in Tonga to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression **“repatriation”** shall be construed accordingly;

“Reserve Bank” means the National Reserve Bank of Tonga established under the National Reserve Bank of Tonga Act;

“security” means shares, stocks, bonds, debentures or any other instrument;

“service” means service of any description which is made available to potential users and includes the provision of facilities in connection with tourism, banking, financing, insurance, medical assistance, legal assistance, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information;

“tax authorities” means any officer authorised by the Ministry responsible for revenue;

“Tongan currency” means currency in Tongan pa’anga; and

“transfer” includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

3 Administration

The Reserve Bank shall be responsible for administering, enforcing, carrying out, and giving effect to, the provisions of this Act and shall exercise, discharge, and perform on behalf of the Reserve Bank, the powers, duties and functions conferred to it under this Act.

PART II - REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE AND GOLD

4 Dealing in foreign exchange and gold

- (1) Save as otherwise provided in this Act, rules or directives made thereunder, or with the general or special permission of the Reserve Bank, no person shall –
 - (a) deal in or transfer any gold, foreign exchange or foreign security to any person not being an authorised person;
 - (b) make any payment to or for the credit of any person resident outside Tonga in any manner otherwise through an authorised person;
 - (c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside Tonga in any manner; or
 - (d) enter into any financial transaction in Tonga as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside Tonga by any person.
- (2) The permission of the Reserve Bank under subsection (1) may be delegated to any authorised persons.

5 Holding, taking, sending or transferring of foreign exchange and gold

Save as otherwise provided in this Act, no person resident in Tonga shall acquire, hold, take, own, possess or transfer any gold, foreign exchange, foreign security or any immovable property situated outside Tonga.

6 Foreign exchange and security transactions

- (1) Subject to the provisions of sub-section (2), any person may sell or purchase foreign exchange to or from an authorised person for any foreign exchange transactions.
- (2) The Reserve Bank may, prescribe –
 - (a) any class or classes of transactions which are permissible;
 - (b) the limit up to which foreign exchange shall be admissible for such transactions;

- (c) the limit on the spreads of the exchange rate offered by an authorised person;
- (d) by directives, to prohibit, restrict or regulate the following -
 - (i) transfer or issue of any foreign security by a person resident in Tonga;
 - (ii) transfer or issue of any security in Tonga by a person resident outside Tonga;
 - (iii) transfer or issue of any security or foreign security by any branch, office or agency in Tonga of a person resident outside Tonga;
 - (iv) any borrowing or lending in foreign currency in whatever form or by whatever name called;
 - (v) any borrowing or lending in any currency in whatever form or by whatever name called between a person resident in Tonga and a person resident outside Tonga;
 - (vi) deposits between persons resident in Tonga and persons resident outside Tonga;
 - (vii) export, import or holding of any currency;
 - (viii) transfer of immovable property outside Tonga, other than a lease not exceeding five years, by a person resident in Tonga;
 - (ix) acquisition or transfer of immovable property in Tonga, other than a lease not exceeding five years, by a person resident outside Tonga;
 - (x) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred -
 - (A) by a person resident in Tonga and owed to a person resident outside Tonga; or
 - (B) by a person resident outside Tonga; and
 - (xi) fees imposed on foreign exchange transactions.
- (3) A person resident in Tonga may hold, own, transfer or invest in gold, foreign currency, foreign security or any immovable property situated outside Tonga if such gold, currency, security or property was acquired, held or owned by such person when he was resident outside Tonga or inherited from a person who was resident outside Tonga.
- (4) A person resident outside Tonga may hold, own, transfer or invest in gold, Tongan currency, security or any immovable property situated in Tonga if such gold, currency, security or property was acquired, held or owned by such person when he was resident in Tonga or inherited from a person who was resident in Tonga.
- (5) Without prejudice to the provisions of this section, the Reserve Bank may, by directive, prohibit, restrict, or regulate establishment in Tonga of a branch, office or other place of business by a person resident outside Tonga, for

carrying on any activity relating to such branch, office or other place of business.

7 Export of goods and services

- (1) Every exporter of goods shall-
 - (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside Tonga;
 - (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.
- (2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.
- (3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

8 Realisation and repatriation of foreign exchange and gold

Save as otherwise provided in this Act, where any amount of gold or foreign exchange is due or has accrued to any person resident in Tonga, such person shall take all reasonable steps to realise and repatriate to Tonga such gold or foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9 Exemption from realisation and repatriation in certain cases

The provisions of sections 5 and 8 shall not apply to the following, namely -

- (a) possession of gold, foreign currency by any person up to such limit as the Reserve Bank may prescribe;
- (b) foreign currency account held or operated by such person up to such limit to which the Reserve Bank may prescribe; and
- (c) gold or foreign exchange held by a person resident in Tonga up to such limit as the Reserve Bank may prescribe.

PART III - AUTHORISED PERSON

10 Authorised person

- (1) The Reserve Bank may, on an application made to it, authorise any person to be known as authorised person to deal in gold, foreign exchange or in foreign securities, as an authorised dealer, money changer or in any other manner as it deems fit.
- (2) An authorised person shall, in all his dealings in gold, foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any gold, foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.
- (3) An authorised person shall, before undertaking any transaction in gold or foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, directive, notification, direction or order made there under, and where the said person refuses to comply with any such requirement or make only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.
- (4) Any person, other than an authorised person, who has acquired or purchased gold or foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (3) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the gold or foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of gold or foreign exchange is not permissible under the provisions of the Act or the rules or directives or direction or order made thereunder shall be deemed to have contravened the provisions of the Act for the purpose of this section.

Provided that no such authorisation shall be revoked unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

11 Reserve Bank's powers to issue directions to authorised person and impose administrative penalties

- (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, directives, notifications or directions made thereunder, give to the authorised person any direction in regard to

making of payment or the doing or desist from doing any act relating to gold or foreign exchange or foreign security.

- (2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, directive, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.
- (3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person an administrative penalty which may not exceed \$10,000 and in the case of continuing contravention with an additional penalty which may not exceed \$2,000 for every day during which such contravention continues.

12 Power of Reserve Bank to inspect authorised person

- (1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of -
 - (a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
 - (b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so; or
 - (c) securing compliance with the provisions of this Act or of any rules, directives, directions or orders made there under.
- (2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

PART IV – LICENSING

13 Prohibition from carrying on foreign exchange services business as an authorised person

- (1) No person shall be an authorised person without a licence issued under this Act.
- (2) The Reserve Bank may prescribe different classes, categories or descriptions of licence in respect of dealing with foreign exchange and gold.

- (3) Any person who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

14 Application for licence

- (1) An application for a licence to be an authorised person shall be made in writing to the Reserve Bank by an applicant —
 - (a) in such form and manner together with such documents as the Reserve Bank may prescribe; and
 - (b) by submitting such information as the Reserve Bank may prescribe.
- (2) No person shall apply for a licence to be an authorised person unless it is a company.
- (3) The Reserve Bank may, by written notice, require the applicant or any person who is or is to be a director, controller or chief executive officer of the applicant to provide additional information or documents.
- (4) If any additional information or document required under subsection (3) is not provided by the applicant or its director, controller or chief executive officer, as the case may be, within the period specified in the written notice or any extended period granted by the Reserve Bank, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

15 Requirements for a licence

- (1) An applicant for a licence to be an authorised person shall comply with the following requirements -
 - (a) every person who is, or is to be, a substantial shareholder, director, controller, chief executive officer, or manager of the applicant has fulfilled the minimum criteria of a “fit and proper” person as the Reserve Bank may prescribe;
 - (b) the applicant has a sound business plan;
 - (c) the applicant has appropriate, sound and adequate governance arrangements, internal control mechanisms and procedures to manage the operations of the intended business activities;
 - (d) the applicant has appropriate, sound and adequate internal control mechanisms and compliance programmes to comply with the requirements of the Money Laundering and Proceeds of Crime Act 2000 and other statutory obligations to which the applicant is or shall be subject;
 - (e) the applicant has the financial capability to satisfy the capital requirements as the Reserve Bank may prescribe;

- (f) the information and documents furnished by the applicant to the Reserve Bank are true and accurate; and
 - (g) the applicant has met other requirements which are necessary to manage the operations of the foreign exchange services business as the Reserve Bank may prescribe.
- (2) The Reserve Bank shall have full discretion to determine whether an applicant has complied with the requirements under subsection (1).
- (3) The Reserve Bank, in considering the application for a licence under section 14 shall take into account the following matters -
- (a) any matter relating to any person who is or will be employed by, or associated with, the applicant for the purpose of the foreign exchange services business of the applicant;
 - (b) any matter relating to any related or associate corporation or to any substantial shareholder, director, controller or chief executive officer of the applicant;
 - (c) any information relating to the applicant in the possession of the Reserve Bank whether provided by the applicant or not; and
 - (d) whether the granting of the licence would be beneficial to the national and economic interest of the Kingdom.

16 Grant or refusal of licence

- (1) The Reserve Bank may, after considering the application for a licence under section 14 and being satisfied that all the requirements under section 15(1) have been complied with and all matters under section 15(3) have been taken into account, grant a licence or refuse to grant the licence.
- (2) The Reserve Bank may impose such conditions as it considers appropriate in granting a licence.
- (3) A licensee who fails to comply with any condition imposed under subsection (2) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

17 Fees

- (1) A licensee shall pay to the Reserve Bank —
- (a) a fee for an application for a licence;
 - (b) an annual licence fee; and
 - (c) such other fees as the Reserve Bank may prescribe relating to its foreign exchange services business, of such amount and in such manner as the Reserve Bank may prescribe.

- (2) There shall be no refund of any application fee or other fees paid under subsection (1) by the Reserve Bank to any person in the event a licence is revoked by the Reserve Bank, or surrendered to the Reserve Bank.

18 Duration of licence

Notwithstanding section 21, a licence shall remain valid unless revoked under this Act.

19 Conditions of licence

- (1) Notwithstanding any other provisions of this Act, the Reserve Bank may, at any time —
 - (a) amend or cancel any condition imposed under this Act; or
 - (b) impose a limit on any condition imposed under this Act so as to expire on a specified date.
- (2) Notwithstanding any other provisions of this Act, the Reserve Bank may, at any time, impose any new conditions on a licence.
- (3) A licensee who fails to comply with any condition imposed under subsection (2) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

20 Display of licence

- (1) Every licensee shall display in a conspicuous position —
 - (a) its licence at its principal place of business; and
 - (b) a copy of its licence at each of its other offices.
- (2) Subsection (1) shall not apply to an electronic terminal.
- (3) A licensee who contravenes subsection (1) commits an offence.

21 Revocation of licence

- (1) The Reserve Bank may revoke a licence if it is satisfied that —
 - (a) the licensee, its chief executive officer, or any of its shareholders, controllers, directors, or managers, has been convicted of an offence under this Act, the National Reserve Bank of Tonga Act, the Financial Institutions Act 2004, or any other written law administered by the Reserve Bank or the Companies Act 1995 or any offence involving fraud, dishonesty, corruption or other offences of the same kind;

- (b) the controller of the licensee has failed to comply with the minimum criteria of a “fit and proper” person;
 - (c) the licensee goes into liquidation or is wound up or is otherwise dissolved;
 - (d) the licensee is contravening or has contravened any provision of the Act;
 - (e) the licensee has contravened any of the conditions of its licence;
 - (f) the licensee has ceased to carry on foreign exchange services business for which it is licensed for any continuous period of six months, or for any period aggregating nine months during a continuous period of twelve months;
 - (g) the licensee has engaged in unsafe and unsound practices; or
 - (h) the licensee is contravening or has contravened the provisions of the Money Laundering and Proceeds of Crime Act 2000.
- (2) Where the Reserve Bank proposes to revoke a licence, the Reserve Bank shall give the licensee written notice setting out the proposed revocation and the grounds for the revocation.
- (3) The licensee shall be given an opportunity to make written representation to the Reserve Bank within fourteen days from the date of the written notice under subsection (2).
- (4) Where no written representation is received by the Reserve Bank within the period specified under subsection (3), the Reserve Bank shall revoke the licence by written notice.
- (5) Where written representation is received, the Reserve Bank shall, after considering the representation, give the licensee written notice of its decision within 7 days upon receipt of written representation.
- (6) A revocation under subsection (4), or a decision to revoke a licence under subsection (5), shall come into effect immediately or at any date as the Reserve Bank may prescribe in its written notice.
- (7) Where the Reserve Bank decides under subsection (5) not to revoke the licence, the Reserve Bank may impose such conditions on the licensee as it may prescribe in the written notice given under that subsection.
- (8) The satisfaction of the Reserve Bank that paragraph (1)(d), (e) or (h) has been contravened by a licensee may be arrived at regardless as to whether or not there is any prosecution of any licensee for such contravention.

22 Licence to be forwarded to the Reserve Bank

- (1) A licensee shall forward the licence to the Reserve Bank within fourteen days from the date the revocation of the licence takes effect under section 21(6), as the case may be.
- (2) A licensee who contravenes subsection (1) commits an offence.

23 Effect of revocation or surrender of licence

- (1) A licensee shall, immediately or within such period as the Reserve Bank may prescribe, cease to carry on the foreign exchange services business in respect of which the licence was granted if —
 - (a) revocation of the licence has taken effect under section 21(6); or
 - (b) surrender of the licence has taken effect under section 24.
- (2) A licensee who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding ten years or both.
- (3) A licensee whose licence has been revoked under this Act shall not have any claim whatsoever against the Reserve Bank or be entitled to compensation from the Reserve Bank for any damage or loss suffered by or caused to the licensee by such revocation of licence.

24 Surrender of licence

- (1) A licensee proposing to surrender its licence shall give the Reserve Bank written notice informing the Reserve Bank of the proposed surrender of the licence, reasons for the surrender and the date on which the surrender is to take effect.
- (2) The licensee shall forward the licence to the Reserve Bank within 14 days from the date on which the surrender is to take effect.

25 Preservation of rights and claims

Any revocation or surrender of a licence under this Act shall not operate so as to —

- (a) affect any agreement, transaction or arrangement relating to the foreign exchange services business, as the case may be, entered into by —
 - (i) a person prior to the revocation or surrender of the licence; or
 - (ii) a licensee prior to such revocation or surrender of the licence, as the case may be; or
- (b) affect any right, claim, obligation or liability arising under any such agreement, transaction or arrangement.

26 Approval for change in name of licensee

- (1) No licensee shall effect any change in its name without the prior written approval of the Reserve Bank.
- (2) A licensee who contravenes subsection (1) commits an offence.

27 Restriction of business

- (1) Except with the prior written approval of the Reserve Bank, a licensee shall not carry on any business activity other than business activity for which it is licensed under this Act.
- (2) Without prejudice to the generality of subsection (1), a licensee shall only carry on a foreign exchange services business activity for which it is licensed under this Act.
- (3) A licensee who contravenes subsection (1) or (2) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

28 Publication of list of licensees

- (1) The Reserve Bank shall publish in the Gazette and website a list of licensees.
- (2) Where there is any amendment to the list of licensees under subsection (1), the Reserve Bank shall cause to be published in the Gazette and website a notice thereof.
- (3) Without prejudice to subsection (1), the Reserve Bank may publish the list of licensees or any amendments to the list in such form and manner as the Reserve Bank thinks fit.

PART V - CONTRAVENTION AND PENALTIES**29 Penalties**

- (1) If any person contravenes any provision of this Act, or contravenes any rule, directive, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he commits an offence and shall be liable upon conviction -
 - (a) in the case of an individual, to a fine not exceeding \$10,000 (or, if the offence is a continuing one, to a fine not exceeding \$1,000 for every day during which the offence continues) or to imprisonment for a term not exceeding 3 years or both; and
 - (b) in the case of a body corporate, to a fine not exceeding \$200,000 or, if the offence is a continuing one, to a fine not exceeding \$2,000 for every day during which the offence continues.
- (2) Any Court adjudging any contravention under sub-section (1), may, if it thinks fit in addition to any penalty which it may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Reserve Bank and

further direct that the gold or foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into Tonga or shall be retained outside Tonga in accordance with the directions made in this behalf.

- (3) For the purposes of subsection (2), “property” includes -
- (a) deposits in a bank, where the said property is converted into such deposits;
 - (b) Tongan currency, where the said property is converted into that currency; and
 - (c) any other property which has resulted out of the conversion of that property.

PART VI - ENFORCEMENT

30 Power of search and seizure

- (1) The Reserve Bank may by notification, authorise any officer to investigate any contravention referred to in section 13.
- (2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on custom officers and tax authorities under their respective Acts and shall exercise such powers, subject to such limitations laid down under those respective Acts.

PART VII - MISCELLANEOUS

31 Presumption as to documents in certain cases

Where any document –

- (a) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or
- (b) has been received from any place outside Tonga (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person, and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the Court, as the case may be, shall –
 - (i) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been

signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

- (ii) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence; and
- (iii) in a case falling under paragraph (a), also presume, unless the contrary is proved, the truth of the contents of such document.

32 Power to make directives

- (1) The Reserve Bank may, by notification, make directives to carry out the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), such directives may provide for any other matter which is required to be, or may be, prescribed.
- (3) Without prejudice to the generality of this section, such directives may provide for -
 - (a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;
 - (b) the manner and the form in which the declaration is to be furnished under section 7(1);
 - (c) the period within which and the manner of repatriation of foreign exchange and gold under section 8;
 - (d) the limit up to which any person may possess gold or foreign currency under section 9(a);
 - (e) the class of persons and the limit up to which foreign currency account may be held or operated under section 9(b);
 - (f) the limit up to which foreign exchange and gold acquired may be retained under section 9(c); and
 - (g) any other matter which is required to be, or may be prescribed.

33 Repeal and saving

- (1) The Foreign Exchange Control Act is hereby repealed.
- (2) All Regulations made under the Foreign Exchange Control Act are hereby repealed.
- (3) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or

any license, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

Passed by the Legislative Assembly this day of 2018.

EXPLANATORY NOTES

(These notes do not form part of the Bill and is only intended to explain its scope and purpose)

PART I

1. **Section 2** - This section provides for definitions of certain words used in the Bill for clarity and ensures the objectives of the provisions of the Bill are achieved.
2. **Section 3** – The Reserve Bank shall be responsible for administering the provisions of the Act.

PART II

3. **Section 4** – This section talks about dealings in gold, foreign exchange and foreign securities and payments to and receipts from any person outside Tonga which requires the general or special permission of the Reserve Bank.
4. **Section 5** – Restrains any person resident in Tonga from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside Tonga except as specifically provided in the Act.
5. **Section 6** – The Bill permits a person to sell or purchase foreign exchange freely except in a few cases where limits have been prescribed whereby the Reserve Bank has the power to regulate foreign exchange transactions.
6. The Reserve Bank may prohibit, restrict or regulate transfers or issue of any foreign security by residents and non-residents, borrowing or lending or deposits in foreign exchange and between residents and non-residents.
7. This supports the aim of the Bill to better manage the foreign reserves of the country.
8. **Section 7** - This section requires every exporter of goods to declare the details of the goods that are being exported to the Reserve Bank or to such other authority, and also any other information that may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

9. **Sections 8 and 9** - These sections cast the responsibility on the persons resident in Tonga who has any amount of foreign exchange due or accrued in their favour to get the same realised and repatriated to Tonga within the specific period and the manner specified by the Reserve Bank. This supports the aim of the Bill to capture all foreign exchange due to Tonga.

PART III

10. **Sections 10 to 12** – These sections deal with duties and liabilities of the persons authorised to deal in foreign exchange or foreign securities. The activities that an authorised person is permitted to undertake are also specified. There is also a provision that gives the power for the Reserve Bank to inspect the authorised person and impose administrative penalties for non-compliance with the requirements of the Bill, which strengthens the powers of the Reserve Bank to enforce compliance by authorised persons.

PART IV

11. **Sections 13-28** – This provides the licensing requirements that are to be met in order to conduct foreign exchange business as well as the grounds and process for the revocation of licence. An authorised person may also propose to surrender its licence. The agreements, transactions or arrangements undertaken by the foreign exchange business would not be affected by the revocation or surrender of licence.

PART V

12. **Sections 29** - For any kind of contravention under this Bill, this section provides the penalties that may be applicable, upon conviction, for both individuals and body corporates.
13. **Section 30** – The Reserve Bank may authorise officers to investigate any contravention of the requirement to be licenced in order to undertake foreign exchange business.
14. **Section 31** – This provision talks about documents that are admissible in the courts of law.
15. **Section 32** – The Reserve Bank may issue directives to carry out the provisions of the Bill.
16. **Section 33** – This provision provides for repeal and saving.

Hon. Poasi Tei
Acting Minister for Finance