

N.R.C.D. 44
FOREIGN EXCHANGE ACT, 1972

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N.R.C.D. 44
FOREIGN EXCHANGE ACT, 1972⁽¹⁾

AN ACT in respect of foreign exchange and to provide for related matters.

1. Wilful misrepresentation of cost of goods or services

(1) A person shall not wilfully misrepresent the cost of goods or services to obtain a transfer of foreign exchange to pay for goods or services provided abroad personally or on behalf of any other person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to the penalties provided in this Act.

2. Persons concerned in offence under section 1

A person who directly or indirectly assists, permits or is concerned with the commission of an offence under section 1 commits an offence and is liable on conviction to the penalties provided in this Act.

2A. Certain export prices deemed unsatisfactory

(1) Subsection (1) of section 10 of the Exchange Control Act, 1961 (Act 71) (which requires that payment for exports shall represent a return for the goods which is in the national interest) is not, for the purposes of this Act, complied with if the export price payable is less than the minimum world market price for the export on the date of the contract export item unless the Bank of Ghana directs otherwise.

(2) An exporter of the goods which the Bank of Ghana has prescribed by notice in the *Commercial and Industrial Bulletin of the Gazette* shall declare to the public authority controlling the export of the goods, the world market price at the time of the export contract, and the public authority shall decide whether the price payable is satisfactory in the national interest, taking into consideration the world market price declared by the exporter as well as any other information in the possession of the public authority.

(3) In the absence of a public authority controlling the export, the reference in this subsection to a public authority shall be a reference to the Bank of Ghana.

(4) A person who makes a false declaration under this section commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units or to a term of imprisonment of not less than five years nor more than fifteen years or to both the fine and the imprisonment.²⁽²⁾

2B. Certain misrepresentations in export transactions constitute offences

An exporter who misrepresents in a manner specified in section 2C, 2D or 2E the consignee or the quality or quantity of goods in a document relating to the export of the goods, commits an offence and is liable on summary conviction to the penalties provided in that section.

2C. Misrepresentation of consignee

(1) An exporter commits the offence of misrepresenting the consignee of goods,

- (a) if knowing that the exported goods will be resold to any other person in substantially the same form and quantity as when exported from the Republic, a person is named as consignee in documents relating to the export who is not the person to whom the goods are resold or to be resold and the price paid or payable by that person is lower than the world market price;
- (b) if the exporter and the consignee named in a document relating to the export have a common financial interest as defined in subsection (2) and the price paid or payable by the consignee is lower than the world market price as on the date the consignee is named.

(2) An exporter and a consignee have, for the purposes of this Act, a common financial interest for the purposes of subsection (1) (b),

- (a) if the consignee is a person who wholly or partly owns the share capital of the exporter or is a person whose share capital is wholly or partly owned by the exporter, or
- (b) if the consignee and the exporter are people whose share capital is wholly or partly owned by the same person.

(3) Where a person is convicted for misrepresenting the consignee, the Court shall order the offender to pay to the Bank of Ghana within thirty days in a foreign exchange determined by the Court, a sum of money equal to ten times the difference between the world market price and the price paid or payable by the misrepresented consignee.

2D. Misrepresentation of quality or quantity of exports

(1) An exporter commits the offence of misrepresenting the quality or quantity of exports if in a document relating to the export, the exporter states a quality or quantity in respect of the goods which is intended to secure or which secures a lower price than the price which would have been secured if the exporter had stated the true quality or quantity of the goods.

(2) A person convicted under subsection (1) for misrepresenting the quality or quantity of exports, is liable to pay to the Bank of Ghana within thirty days in a foreign exchange determined by the Court, a sum of money equal to ten times the amount representing the difference between the price which would have been secured if the exporter had stated the true quality or quantity of the goods and the price which was intended to be secured or which was secured on the misrepresentation.

2E. Export of services

Sections 2A to 2D apply with the necessary modifications to the export of services from the Republic.

2F. Definition of world market price

(1) For the purposes of sections 2A, 2B, 2C and 2E, the expression “**world market price**” means the price current or prevailing in the country designated in a document relating to the export as the country of consignment or, where appropriate, the price fixed under an international agreement for the time being in force.

(2) Where there is a doubt about the world market price in respect of goods, a statement by the Bank of Ghana on the price is conclusive.³⁽³⁾

3. Ascertainment of amount transferred by wilful misrepresentation

(1) For the purpose of ascertaining whether a person has wilfully misrepresented the cost of goods or services provided abroad, the Court shall determine

- (a) the normal commercial cost of the goods or services provided in their country of origin and in the case of the goods taking into account the fact that they are intended for export, and
- (b) the amount of foreign exchange transferred in payment for those goods or services.

(2) The amount by which the foreign exchange transferred in payment for the goods or services in question exceeds their normal commercial cost is, for the purposes of this Act, an amount transferred by wilful misrepresentation.

4. Penalty on the amount transferred by wilful misrepresentation

Where a person is convicted of an offence under section 1, 2 or 3, the Court shall order the offender to pay to the Bank of Ghana within thirty days a sum of money not less than ten times the amount found in accordance with section 3 to have been transferred by wilful misrepresentation.⁴⁽⁴⁾

5. Penalty payable in foreign exchange

The amount of money payable to the Bank of Ghana under section 4 shall be paid in the form of foreign exchange as shall be determined by the Court.

6. Further penalty on failure to pay foreign exchange

Where a person convicted of an offence under section 1, 2 or 3, fails within thirty days to pay the

foreign exchange to the Bank of Ghana, the Court shall, in lieu of that penalty, impose on the offender a fine of not less than one thousand penalty units or a term of imprisonment of not less than five years but not exceeding fifteen years, or to both the fine and the imprisonment.5(5)

7. Offence by bodies of persons

(1) Where an offence is committed under this Act by a body of persons,

- (a) in the case of a body corporate, other than a partnership, every director and officer of that body corporate shall be deemed to have committed that offence, and
- (b) in the case of a partnership, every partner shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence under subsection (1) if it is proved that the offence was committed without the personal knowledge of, or that due diligence was exercised by, that person to prevent the commission of the offence.

8. Jurisdiction of courts

A person may be prosecuted and convicted or otherwise proceeded against for an offence under this Act, whether or not the act constituting the offence was committed in or outside the Republic or before or after the commencement of this Act.6(6)

9. Foreign exchange to be paid into the Consolidated Fund

Where foreign exchange is paid to the Bank of Ghana in accordance with this Act, the Bank of Ghana shall pay that foreign exchange into the Consolidated Fund.

10. Application of Act

A person may be proceeded against and convicted in respect of an offence under this Act whether or not foreign exchange has in fact been transferred, and accordingly a reference in this Act to foreign exchange transferred includes a reference to the foreign exchange that could have been transferred on the basis of the misrepresentation.7(7)

Endnotes

1 (Popup - Footnote)

1. This Act was issued as the Foreign Exchange Decree, 1972 ([N.R.C.D. 44](#)), made on the 14th day of March, 1972 and published in the *Gazette* on 17th March, 1972.

2 (Popup - Footnote)

2. [Sections 2A, 2B, 2C, 2E](#) and [2F](#) were inserted by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).

3 (Popup - Footnote)

3. Substituted by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).

4 (Popup - Footnote)

4. Substituted by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).

5 (Popup - Footnote)

5. Substituted by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).

6 (Popup - Footnote)

6. Substituted by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).

7 (Popup - Footnote)

7. Added by the Foreign Exchange (Amendment) Decree, 1973 (N.R.C.D. 162).