

**EXCHANGE CONTROL (ANTI-SABOTAGE)
DECREE 1977**



Decree No. 57

[5th August 1977]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) Any person who, whether or not before the commencement of this Decree but not earlier than 29th July 1975, does any of the following things, that is to say—

Offences.

(a) without the permission of the appropriate authority—

(i) makes any payment to or for the credit of a person resident outside Nigeria ; or

(ii) makes any payment to or for the credit of any person resident in Nigeria by order or on behalf of a person who is resident outside Nigeria ; or

(iii) makes any payment whatsoever in respect of any loan, bank overdraft or other credit facilities outside Nigeria ; or

(iv) places any sum to the credit of any person resident outside Nigeria ;

(b) without the permission of the appropriate authority, and being a person resident in Nigeria, makes any payment outside Nigeria to or for the credit of a person resident outside Nigeria, or takes or accepts any loan, bank overdraft or other credit facilities ;

(c) without the permission of the appropriate authority, in Nigeria makes any payment to or for the credit of any person resident in Nigeria, or being resident in Nigeria makes any payment outside Nigeria to or for the credit of a person resident in Nigeria, as consideration for or in association with—

(i) the receipt by any person of a payment made outside Nigeria or the acquisition by any person of property which is outside Nigeria ; or

(ii) the transfer to any person, or the creation of a favour to any person, of a right (whether present or future, or whether vested or contingent) to receive a payment outside Nigeria or to acquire property which is outside Nigeria ;

(d) without the permission of the appropriate authority and not being an authorised dealer, in Nigeria buys or borrows any foreign currency from or sells or lends any foreign currency to any person other than an authorised dealer ; or

(e) without the permission of the appropriate authority, and not being an authorised dealer, while resident in Nigeria buys or borrows any foreign currency outside Nigeria from or sells or lends any foreign currency to any person other than an authorised dealer ;

(f) without the permission of the appropriate authority—

(i) transfers any security or creates or transfers any interests in a security, to or in favour of a person resident outside Nigeria ;

(ii) transfers any security from a register in Nigeria to a register outside Nigeria or does any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in or registered in Nigeria of any security which is either outside or registered outside Nigeria ; or

(iii) issues, whether in Nigeria or elsewhere, any security which is registered or to be registered in Nigeria to a person resident outside Nigeria ; or

(iv) acquires or disposes of any foreign security ;

(g) counterfeits or falsifies any document which is required for obtaining any permission under the Act or which is used for the transaction of any business connected with the obtaining of any such permission ;

(h) knowingly accepts, receives or uses any document to which paragraph (g) above relates ;

(i) counterfeits any seal, signature, initials or other mark of or used by any officer for the verification of any document to which paragraph (g) above relates ; or

(j) alters any document to which paragraph (g) above relates after it has been officially issued ;

(k) unlawfully imports into Nigeria any notes which are or at any time have been legal tender in Nigeria or any foreign currency ;

(l) does any other act which is prohibited under the Act ;

shall, notwithstanding anything to the contrary in any law, be guilty of an offence under this Decree.

(2) For the purposes of subsection (1) of this section, any payment made and anything done by any person otherwise than in accordance with the terms of a permission granted under or pursuant to the Act shall be deemed to have been made or done, as the case may be, without the permission of the appropriate authority.

(3) The onus of proving that any payment was made or anything done was with the permission of the appropriate authority shall be on the person charged.

(4) In this Decree—

(a) the reference to the appropriate authority is a reference to the Federal Commissioner for Finance or any person or authority authorised by him to give any required permission under the Act ;

(b) the reference to "permission" includes a reference to any consent or approval required under the Act ; and

(c) "the Act" means the Exchange Control Act 1962 and any subsidiary legislation made thereunder.

1962 No. 16.

2.—(1) Any person convicted of an offence under section 1 of this Decree shall—

Penalties,
etc.

(a) in the case of an individual, be liable to imprisonment for not less than 5 years or a fine of an amount not less than the amount or value of the currency, security, payment, property or transaction in respect of which the offence was committed, or both such imprisonment and fine ; and

(b) in the case of a body corporate, be liable to a fine of not less than twice the amount or value of the currency, security, payment, property or transaction in respect of which the offence was committed or a sum of ₦10,000, whichever is higher.

(2) Where an offence under section 1 by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity) he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished as an individual.

(3) For the purposes of subsection (1) above "value" in the case of an offence under paragraphs (g) to (j) of section 1 (1) above means the amount stated on the face of the document or the value of the transaction to which the document relates or, where appropriate, its equivalent in Nigerian currency.

3.—(1) For the purpose of the recovery of any fine imposed on an offender under this Decree, the tribunal shall have power to make an order for the forfeiture to the Federal Military Government of—

Forfeiture
orders.

(a) any assets owned or held by the offender ; or

(b) any assets held by any person whom having regard to his relationship to the offender or to any other circumstances there is reason to believe that such assets are held on behalf or in trust for the offender ; and the reference in this paragraph to a person shall include a reference to a body whether corporate or unincorporate.

(2) An order under this section shall have effect according to its tenor and the failure to comply with any order so made shall be an offence punishable on conviction—

(a) in the case of an individual, by imprisonment for not less than two years or more than five years without the option of a fine ; and

(b) in the case of body corporate, by a fine in an amount equal to the value of the asset affected by the non-compliance.

4.—(1) The Head of the Federal Military Government shall, whenever occasion demands, constitute one or more tribunals for the trial of offences under this Decree.

Constitution
of special
tribunals,
etc.

(2) A tribunal constituted under subsection (1) of this section shall consist of a chairman who shall be a judge of the High Court of a State or of

the Federal Revenue Court and two other persons at least one of whom shall be an officer in the Nigerian Army not below the rank of major or an officer of the Nigerian Navy or Air Force of equivalent rank.

Procedure
for the trial
of offences.

5.—(1) The trial of offences under this Decree shall commence by way of application, supported by proofs of evidence, made to the tribunal in that behalf by the Attorney-General of the Federation or by such officer subordinate to him as the Attorney-General may authorise to do so:

Provided that the question whether any authority has been given in pursuance of this subsection or what the authority was shall not be enquired into by any person except at the instance of the Attorney-General.

(2) Where after perusal of the application and the proofs of evidence or any further evidence in such form as the tribunal may consider necessary the tribunal is satisfied that any person appears to have committed any offence under this Decree, it shall cause notice to be served on that person calling upon him to show cause why he should not be punished for that offence.

(3) Where no cause or no sufficient cause under subsection (2) above is shown by the person on whom a notice is served under that subsection to its satisfaction, the tribunal may, after such inquiry as the tribunal may consider necessary, convict that person of the offence and impose upon him an appropriate sentence in accordance with the provisions of this Decree.

(4) The procedure to be followed upon an application to the tribunal under subsection (1) above shall be in accordance with such directions as the tribunal may make either generally or for the purpose of a particular trial; and in relation to and for the purpose of proceedings of the tribunal the tribunal shall have the same powers, whether of compelling the attendance of persons and the production of documents or otherwise, as the High Court of a State has in the exercise of its ordinary jurisdiction.

(5) Without prejudice to the generality of subsection (4) above, a tribunal shall, if satisfied that it is in the public interest so to do, have power—

(a) to admit or exclude the public or the press, or both, from any of its proceedings;

(b) to direct that the name or other particulars of any witness be not published.

(6) An offender under this Decree shall be entitled to defend himself in person or by a person of his own choice who is a legal practitioner, and to examine in person or by his legal practitioner, if he so wishes, any person whose evidence on affidavit or otherwise forms part of the case against him.

Evidence of
pecuniary
resources or
property.

6.—(1) In any trial for an offence under this Decree the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the tribunal as corroborating the testimony of any witness in such trial or inquiry that such accused person accepted or obtained any payment and as showing that such payment was accepted or made as alleged in the charge.

(2) An offender shall, for the purposes of subsection (1) of this section, be deemed to be in possession of pecuniary resources or property or to have obtained an accretion thereto where such resources or property are held or

such accretion is obtained by any other person whom, having regard to his relationship to the offender or to any other circumstances, there is reason to believe him to be holding such resources or property or to have obtained the accretion in trust for or on behalf of such offender.

(3) For the avoidance of doubt, the reference in subsection (2) above to any person includes a reference to a body, whether corporate or unincorporate.

7. Notwithstanding anything to the contrary in any law (including any rule of law), no witness shall, in any trial or inquiry under this Decree be presumed to be unworthy of credit by reason only that he took part in the commission of the offence.

Evidence of accomplices.

8.—(1) Whenever two or more persons are charged with an offence under this Decree, the tribunal may require one or more of them to give evidence as a witness for the prosecution.

Witness to be compellable in certain cases.

(2) Any person who refuses to be sworn or to answer any lawful question after having been required to do so pursuant to subsection (1) above may be dealt with in the same manner as a witness so refusing may be dealt with by a High Court.

9.—(1) Any person who—

(a) aids, counsels, abets or procures any person to commit an offence under this Decree ; or

Parties to offence, etc.

(b) conspires with any person to commit such an offence, whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Decree.

(2) Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged, and punished as provided in section 2 above.

(3) Where a person is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence the offender shall not be entitled to acquittal but he may be convicted of the attempt and punished as provided in section 2 above.

10.—(1) The Head of the Federal Military Government shall have power to confirm or disallow any conviction or sentence imposed by a tribunal.

Conviction or sentence subject to confirmation or disallowance.

(2) Any sentence imposed under this Decree shall not take effect until the conviction or sentence is confirmed by the Head of the Federal Military Government under subsection (1) above and pending such confirmation the convicted offender shall be kept in such place of safe custody as the tribunal may decide.

(3) Where under subsection (1) above, the Head of the Federal Military Government disallows—

(a) a conviction, whether upon representation made by the convicted offender or from other circumstances, he shall order the release of the person convicted from custody ;

(b) a sentence, he may substitute a less severe form of punishment for any punishment imposed on the convicted offender.

Exclusion of
right of
appeal.

11. No right of appeal to any court in Nigeria granted by any enactment or law shall apply in respect of the conviction of an offender or in respect of any sentence imposed by a tribunal constituted under this Decree.

Exclusion of
civil pro-
ceedings ;
supple-
mental.

1963 No. 20.

12.—(1) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to this Decree and if any such proceedings are instituted after the commencement of this Decree the proceedings shall abate, be discharged and made void.

(2) The question whether any provision of Chapter III of the Constitution of the Federation has been, is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be inquired into in any court of law and, accordingly, sections 32, 115 and 117 (2)(b) of that Constitution shall not apply in respect of any such question.

1964 No. 1.

(3) It is hereby declared that section 24 of the Interpretation Act 1964 (which provides, *inter alia*, that a person shall not be punished twice where he is guilty of an offence under more than one enactment) shall apply in respect of this Decree.

Interpre-
tation.

13.—(1) In this Decree—

“foreign currency” means any currency other than Nigerian currency and includes any notes which are or have at any time been legal tender in any territory outside Nigeria, and where reference is made to foreign currency, the reference includes the right to receive foreign currency in respect of any credit or balance at a bank ;

“foreign security” means any security issued in any country other than Nigeria and includes any security where the principal or interest is payable in any foreign currency or is payable elsewhere than in Nigeria ;

“the tribunal” means any tribunal constituted under section 4 of this Decree.

1962 No. 16.

(2) Except where the context otherwise requires expressions used in this Decree have the same meaning as in the Exchange Control Act 1962.

Citation.

14. This Decree may be cited as the Exchange Control (Anti-Sabotage) Decree 1977.

MADE at Lagos this 5th day of August 1977.

LT.-GENERAL O. OBASANJO,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its effect)

The Decree makes special penal provisions with respect to acts subversive of the Exchange Control legislation in force in the country. Stiff penalties are prescribed and provisions are made for the constitution of special tribunals for the trial of offenders under the Decree, and with respect to ancillary and evidentiary matters.