

2024-06-18

### OBJECTS AND REASONS

This Bill would

- (a) repeal and replace the *Foreign Currency Permits Act, 2018* (Act 2018-44);
- (b) make better provision for the grant of a foreign currency permit to any qualified person that earns 100 per cent of its annual income in foreign currency; and
- (c) provide for related matters.

*Arrangement of Sections*

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## **BARBADOS**

A Bill entitled

An Act to make better provision for the grant of a foreign currency permit to any qualified person that earns 100 per cent of its annual income in foreign currency and for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Foreign Currency Permits Act, 2024*.

**Interpretation**

2. In this Act,

“company”

(a) has the meaning assigned to it by section 2(1)(b) of the *Companies Act, Cap. 308*; and

(b) includes a shipping corporation within the meaning of the *Shipping Corporations Act, Cap. 296B*;

“Comptroller” has the meaning assigned to it by section 2 of the *Customs Act, 2021 (Act 2021-34)*;

“Director” means the Director of International Business;

“external company” has the meaning assigned to it by section 252(2) of the *Companies Act, Cap. 308*;

“firm” has the meaning assigned to it by section 6 of the *Partnership Act, Cap. 313*;

“foreign currency” has the meaning assigned to it by section 2(1) of the *Exchange Control Act, Cap. 71*;

“foreign currency permit” or “permit” means the document granted to a qualified person by the Director;

“qualified person” means a company, an external company, a firm, a society or a trustee in relation to a trust, where the company, external company, firm,

society or trust, as the case may be, earns 100 per cent of its income in foreign currency;

“service provider” has the meaning assigned to it by section 2 of the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12);

“society” has the meaning assigned to it by section 2(d) of the *Societies With Restricted Liability Act, Cap. 318B*;

“trust” means a trust registered under the *Trusts (Miscellaneous Provisions) Act, 2018* (Act 2018-49).

## PART II

### APPLICATION FOR AND GRANT OF PERMIT

#### **Application for permit**

**3.(1)** A qualified person may, in such form as the Director determines, apply to the Director for the grant of a foreign currency permit.

- (2) An application made under subsection (1) shall contain the following:
- (a) details of the registered office, where applicable;
  - (b) details of the service provider, where applicable;
  - (c) details of the auditor;
  - (d) the date of the end of the financial year;
  - (e) the number of persons to be employed who require work permits;
  - (f) the positions to be held by the persons who require work permits;
  - (g) the name, address and official corporate number or registration number assigned to every related entity carrying on business, which is licensed, incorporated, registered or organized in Barbados;

- (h) a list of the activities in which the qualified person will engage and a full description of the business that it intends to carry on;
  - (i) the academic qualifications, training, experience, corporate status and description of the business of every director and manager, where applicable;
  - (j) whether any senior member of staff or manager has ever in, any country, been convicted of a criminal offence involving fraud or any other offence of dishonesty, money laundering or insider trading; and
  - (k) whether any senior member of staff or manager has been investigated by a regulatory body in any country.
- (3) An application for the grant or renewal of a permit must be accompanied by
- (a) the prescribed fee which shall be non-refundable; and
  - (b) a declaration in the form set out in the *First Schedule*
    - (i) certifying that the audited annual financial statements of the applicant for the financial year immediately preceding the year of application disclose that 100 per cent of the applicant's income for that year was earned in foreign currency; or
    - (ii) in the case of an initial application, certifying that the entity intends to earn 100 per cent of its income in foreign currency.
- (4) An applicant under subsection (1) shall satisfy such other conditions as the Director may require.

#### **Grant or renewal of foreign currency permit**

- 4.** Where the applicant complies with section 3, the Director may grant, or as the case may be, renew the permit.



**Cancellation or refusal of permit**

5.(1) Where a qualified person

- (a) fails to comply with any condition of its permit imposed pursuant to section 3;
- (b) fails to comply with or ceases to satisfy any requirement of this Act; or
- (c) knowingly
  - (i) makes an untrue statement of a material fact;
  - (ii) omits to state a material fact; or
  - (iii) makes a statement containing information that is misleading,

the Director shall refuse to grant that person a permit or where that permit has already been granted, cancel or refuse to renew it.

(2) The Director may also refuse to grant a permit or may cancel or refuse to renew a permit on the ground of public policy.

(3) The Director shall give a qualified person notice in writing where the Director intends to

- (a) refuse to grant a permit; or
- (b) cancel or refuse to renew a permit,

and shall include in the notice, the reason for the decision.

(4) A notice given under this section shall specify that the qualified person may within 21 days of the date of the notice inform the Director of any objections.

(5) Where the Director is satisfied that the qualified person has met all of the conditions for the grant or renewal of the permit, the Director may withdraw the notice referred to in subsection (3).

(6) Where the Director is not satisfied that the qualified person has met all of the conditions, the Director may cancel or refuse the permit and notify the qualified person of the decision.

### **Appeal**

6. A qualified person who is aggrieved by the decision of the Director to cancel or refuse to renew a permit, may within 30 days of being notified of the cancellation or refusal to renew by the Director, appeal to a Judge in chambers.

### **Surrender of permit**

7. A qualified person to whom a permit has been granted may,  
(a) by a resolution of the Board of Directors; or  
(b) where there is no Board of Directors, by the request of  
(i) an officer of the holder of a foreign currency permit; or  
(ii) a trustee, in respect of a trust,

surrender the permit by filing a declaration with the Director.

### **Validity of permit**

8. A permit remains valid for 12 months unless cancelled or revoked by the Director.

## **PART III**

### **MISCELLANEOUS**

### **Exemption**

9. The *Exchange Control Act*, Cap. 71 does not apply to a qualified person granted a permit under this Act.

**Machinery, equipment etc exempt from certain taxes and duties**

**10.(1)** Subject to subsection (2), a holder of a foreign currency permit which is engaged exclusively in the trade of services may import free of customs duty, value added tax, *ad valorem* stamp duty and other like duties, taxes and imposts, such plant, machinery, equipment, fixtures, appliances, apparatus, tools and spare parts, and such raw materials, goods, components and other articles, as are necessary for the holder of the permit to carry on its business.

(2) The goods referred to in subsection (1) may only be imported free of the duties, taxes and other imposts referred to in that subsection where the Secretary, Managing Director or other similar officer of the holder of the foreign currency permit, or in respect of a trust, a trustee, certifies to the Comptroller that the goods are imported for use exclusively in the business of the holder of the foreign currency permit.

(3) Where a holder of a foreign currency permit imports under this section any materials, goods or articles free of any duty, tax or other imposts, those materials, goods, or articles shall not be sold or disposed of otherwise than in the ordinary course of the business of the holder of the permit, until after the expiration of 5 years from the date of importation, unless

- (a) the sale or disposition is to another holder of a foreign currency permit;  
or
- (b) the amount of duty, tax or other impost that would have been payable had subsection (1) or (2) not applied is first paid to the Comptroller and a certificate of such payment is issued by the Comptroller.

(4) Nothing imported or purchased free of any duty, tax or other imposts under this section by a holder of a foreign currency permit shall, without the prior written approval of the Minister responsible for Finance, be used for any purpose other than the purpose stated for customs when it was imported or purchased, unless it is subsequently acquired by another person pursuant to subsection (3).

(5) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

### **Record and inspection of machinery and equipment**

**11.(1)** A holder of a foreign currency permit which imports into Barbados or purchases in Barbados any article in respect of which it has been granted relief from customs duty under section 10 shall comply with subsection (2).

- (2) A holder of a foreign currency permit referred to in subsection (1) shall
- (a) keep a record of the articles so imported or purchased in such form, and containing such particulars, as the Comptroller requires;
  - (b) cause the articles to be marked in such manner as the Comptroller requires; and
  - (c) permit the Comptroller, or a person authorized by him for the purpose, to inspect at reasonable times such record, and to have access to any factory or warehouse under its control, for the purpose of examining any such article which the Comptroller has reason to believe to be therein and of satisfying himself of the accuracy of the particulars contained in the record.

(3) A holder of a foreign currency permit which contravenes this section is guilty of an offence and liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

### **Fees**

**12.** The fees set out in the second column of the *Second Schedule* are payable in respect of the matters set out opposite thereto in the first column thereof.

### **Regulations**

**13.** The Minister may make regulations for giving effect to this Act.

**Amendment of Schedules**

**14.** The Minister may by order amend the *Schedules*.

**Repeal of Act 2018-44**

**15.** The *Foreign Currency Permits Act, 2018* (Act 2018-44) is repealed.

**Commencement**

**16.** This Act shall be deemed to have come into operation on the 1<sup>st</sup> day of January, 2019.

FIRST SCHEDULE

(Section 3(3))

**DECLARATION**

I, \_\_\_\_\_  
*Name of Declarant*

of \_\_\_\_\_  
*Full Address of Declarant*

do hereby declare as follows:

- (a) that I am the [Secretary/Managing Director/Officer/Trustee] of the [company/proposed company/society/trust] and that I am authorized to make this declaration under the *Foreign Currency Permits Act, 2024* (Act 2024- ) and the regulations;
- (b) that having made all reasonable enquiries, the information supplied to the Director of International Business in connection with this application is, to the best of my knowledge and belief, accurate in material respects and does not omit any information which might reasonably be considered relevant to the application; and
- (c) that the [company/proposed company/society/trust] [generates/will continue to generate] 100 per cent of its income in foreign currency.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Signature of Declarant*

**SECOND SCHEDULE***(Section 12)**FEES*

Description of Fees	Amount \$
1. Application for permit	250.00
2. Permit	1 000.00
3. Renewal of permit	1 000.00

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2024.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
\_\_\_\_\_, 2024.

**President**