

Statutory instrument 61 of 2004

Exchange Control (Tobacco Finance)Order,2004

SIs. 61/ 2004. 229/2004.

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IT is hereby notified that the Reserve Bank of Zimbabwe, in terms of section 40 of the Exchange Control Regulations, 1996, and with the approval of the Minister of Finance and Economic Development, has made the following order: —

1. Title

This order may be cited as the Exchange Control (Tobacco Finance) Order, 2004.

2. Interpretation

(1) In this order—

“AI tobacco grower” and “A2 tobacco grower” mean persons resettled pursuant to the Model A 1 resettlement scheme or Model A2 resettlement scheme as described in the Land Reform Resettlement Programme and Implementation Plan (Phase 2) published in April 2001;

“access”, in relation to onshore or offshore funds, means borrow, draw on or otherwise obtain such funds;

“auction tobacco” means tobacco purchased on any auction floor in Zimbabwe;

“contract grower” means a tobacco grower approved as a contract grower under paragraph (b) of subsection (1) of section 4A;

[Definition inserted by s.i 229 of 2004.]

“contract tobacco” means tobacco purchased by a contractor under the contractual arrangements referred to in the definition of the term “contractor”;

“contractor” means a person approved as a contractor under paragraph (a) of subsection (1) of section 4A;

[Definition inserted by s.i 229 of 2004.]

“interbank market” means the foreign currency market operated by authorised dealers in Zimbabwe;

“Memorandum of Deposit Scheme” means the scheme operated by the Reserve Bank whereby the Reserve Bank provides a Zimbabwe dollar cash payment in favour of a borrower of offshore funds while such funds are held as security by the lender;

“offshore funds” means any funds, moneys, deposit, loan, line of credit, advance from a customer or parent company or other funds or facility whatsoever located or obtainable outside Zimbabwe;

“onshore funds” means any funds, moneys, deposit, loan, line of credit, advance from a customer or parent company or other funds or facility whatsoever located or obtainable within Zimbabwe;

“processed tobacco” means tobacco subjected to any process or treatment which is necessary in the preparation of the tobacco for resale in the form of leaf tobacco, strip tobacco, tipped or thrashed tobacco, stem tobacco or scrap tobacco;

“TIMB” means the Tobacco Industry and Marketing Board established under the Tobacco Industry and Marketing Act [Chapter 18:20];

“tobacco auction floor” means premises for the sale of tobacco;

“tobacco buyer” means a person who is —

- (a) licensed or required to be licensed under the Tobacco Industry and Marketing Act [Chapter 18:20] as a buyer of auction tobacco; or

- (b) registered or required to be registered under the Tobacco Industry and Marketing Act [*Chapter 18:20*] as an authorised buyer of auction tobacco;
 - (c) a contractor.
- (2) Words importing male or female persons include corporate bodies.

3. Application

This order shall apply to every tobacco buyer involved in the purchase of tobacco.

4 Financing of tobacco purchases by tobacco buyers

- (1) Notwithstanding subsection (1) of section 4 of the Exchange Control Regulations, 1996, but subject to subsection (2) of section 4 of those regulations—
- (a) all auction and contract tobacco shall be paid for in United States dollars; and
 - (b) subject to subsection (2), every tobacco buyer shall access only offshore funds for the purpose of purchasing tobacco.
- (2) Where a buyer satisfies the Reserve Bank that he or she is not capable of accessing any offshore funds, he or she may apply through an authorised dealer to the Reserve Bank to participate in the Memorandum of Deposit Scheme for the purpose of purchasing tobacco on any auction or contract tobacco.
- (3) For the avoidance of doubt it is declared that no tobacco buyer shall, for the purpose of purchasing any contract tobacco or auction tobacco—
- (a) draw on its corporate foreign currency account; or
 - (b) purchase, borrow or raise foreign currency funds from onshore funds, the interbank market, an authorised dealer or any domestic source whatsoever.

4A Approval of contractors and contract growers

- (1) No person shall be contractor or contract grower unless approved as a contractor in terms of subsection (2).
- (2) The Minister responsible for agriculture shall approve—
- (a) persons as contractors who will enter into TIMB-supervised contractual arrangements with contract growers, whereby the tobacco production of such growers is financed by such persons in return for purchasing their tobacco in accordance with section 5:
Provided that, of the total contracted growers financed by any person approved as a contractor, not less than eight *per centum* shall be A1 and A2 tobacco growers; and
 - (b) A1 and A2 tobacco growers and other tobacco growers as contract growers for persons approved as contractors in terms of paragraph (a).
- (3) For the avoidance of doubt it is declared that section 4 shall apply to contractors in the same as it applies to other tobacco buyers.

[Section inserted by s.i 229 of 2004..]

5. Purchases of contract tobacco

(1) A contractor shall purchase so much of the value of the contract tobacco produced by a contract grower as is equivalent to the amount used by the contractor to finance the grower, and any balance remaining may be sold by the contract grower as auction tobacco.

[Subsection substituted by s.i 229 of 2004.]

- (2) Contractors shall not purchase contract tobacco except—
- (a) at receiving points for the sale of contract tobacco designated by the TIMB; and (b) in the presence of officials of the TIMB.
- (3) Where a contractor financed any A1 and A2 tobacco grower—
- (a) by accessing offshore funds for that purpose, the amount used to finance the grower may be set off against the price of the tobacco sold to the contractor by the grower;
 - (b) by accessing any onshore funds for that purpose, the contractor shall access offshore funds for the purpose of purchasing tobacco from the grower.
- (4) No later than twenty-four hours or the next business day after purchasing contract tobacco every contractor shall submit to the Reserve Bank particulars of the quantity and value of contract tobacco purchased.
- (5) Where the price for auction tobacco prevailing on the day that the contract tobacco is received by the contractor is higher than the predetermined price of contract tobacco, the contractor shall make the additional payment for the contract tobacco—
- (a) by accessing the offshore funds used to purchase the tobacco; or
 - (b) by means of the facility provided under the Memorandum of Deposit Scheme.

6. *Inter-merchant tobacco sales*

Except with the authority of the Reserve Bank, no tobacco buyer shall buy from or sell to another tobacco buyer any processed tobacco.

7. *Foreign currency obtained by accessing offshore funds for financing of tobacco purchases*

(1) Authorised dealers shall comply with such directions as may be given to them by the Reserve Bank relating to any foreign currency that comes into their possession as a result of the accessing of offshore funds in terms of this order.

(2) A tobacco buyer may retain the export proceeds realised from the sale of exported tobacco (net after deduction in respect of the repayment of any moneys accessed from offshore funds) in his foreign currency account.

(3) A tobacco buyer referred to in subsection (2) shall be deemed to be an “exporter” for the purposes of the Exchange Control (Currency Exchange) Order, 2004, published in Statutory Instrument 9 of 2004, except that the foreign currency surrender requirement in that order will apply to the net and not the gross export proceeds realised by the tobacco buyer from the sale of exported tobacco.

8. *Repeals*

The Exchange Control (Tobacco Finance) Order, 2001, published in Statutory Instrument 153B of 2001, and the Exchange Control (Tobacco Finance) (Amendment) Order, 2002, published in Statutory Instrument 110D of 2002, are repealed.