

Statutory Instrument 4 of 2004.

Exchange Control (Payment for Electricity in Foreign Currency by Exporters and Partial Exporters) Order, 2004

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IT is hereby notified

2. Interpretation

(1) In this order—

“customs territory” and “licensed investor” bear the meanings assigned to those terms by section 2 of the Export Processing Zones Act [*Chapter 14:07*];

“Exchange Control Order” means the Exchange Control Order, 1996, published in Statutory Instrument 110 of 1996;

“export proceeds” means money received or receivable from the export of goods and services— (a) to countries outside the customs territory by a licensed investor;

(b) to countries outside Zimbabwe by a business organisation referred to in paragraph (b) of the definition of “exporter”;

and includes a right to receive money;

“exporter” means—

(a) a licensed investor; or

(b) a business organisation which exports on average eighty *per centum* or more per quarter of its total output of goods or services produced or provided by it in Zimbabwe, for which it lawfully receives any foreign currency;

“partial exporter” means a business organisation which exports on average less than eighty *per centum* per quarter of its total output of goods or services produced or provided by it in Zimbabwe, for which it lawfully receives any foreign currency;

“quarter” means a period of three months ending on the 31st March, 30th June, 30th September and 31st December in each year;

“regionally benchmarked foreign exchange tariff” means an electricity tariff based on the average of the tariffs charged in United States dollars by other suppliers of electricity in the SADC region, as reviewed and notified by ZESA to exporters and partial exporters from time to time;

“SADC region” means the region made up of countries belonging to the Southern African Development Community, established in terms of a treaty signed at Windhoek in the republic of Namibia on the 17th August, 1992;

“Zimbabwe Electricity Supply Authority” or “ZESA” means the holding company incorporated in terms of section 68 of the Electricity Act [*Chapter 13:19*] that is the successor to the statutory body of that name established by section 3 of the repealed Electricity Act [*Chapter 13:05*].

(2) Any word or expression to which a meaning has been assigned in the Exchange 3. Control Order shall have the same meaning when used in this order.

(3) Payment of electricity bills in foreign currency by exporters and partial exporters

(1) Notwithstanding subsection (1) of section 4 of the principal regulations, but subject to subsection (2) of section 4 of those regulations, the Zimbabwe Electricity Supply Authority is hereby authorised to bill every exporter in United

States dollars for the supply of electricity by ZESA to the, exporter, using the regionally benchmarked foreign exchange tariff applicable on the day of billing.

(2) Notwithstanding subsection (1) of section 4 of the principal regulations, but subject to subsection (2) of section 4 of those regulations, an exporter billed in United States dollars in terms of subsection (1) shall pay for the supply of electricity by ZESA in United States dollars or the equivalent in Euros or in any other currency denominated under the Exchange Control Order at the international cross rate of exchange prevailing on the date of billing.

(3) Subsections (1) and (2) shall apply to every partial exporter except that ZESA shall not bill such exporter to the extent of more than thirty-five *per centum* of the electricity supplied by ZESA to the exporter, and, for this purpose, any partial exporter may enter into a contract or memorandum of agreement with ZESA to pay for a specified amount not exceeding thirty-five *per centum* of the electricity. supplied by ZESA to the exporter.

(4) A contract or memorandum of agreement referred to in subsection (3) shall be submitted to the Reserve Bank for its approval prior to implementation.

4. Manner of payment by exporters of electricity bills in foreign currency

Subject to subsection (2), an exporter or partial exporter billed in terms of section 3 shall pay for the supply of electricity by ZESA—

- (a) from its export proceeds deposited in a foreign currency account operated by it in terms of the Exchange Control (Export processing Zones) Order, 2001, in the case of a licenced investor; or
- (b) from the share of its export proceeds permitted by the Reserve Bank to be credited to its foreign currency account held by it with the authorised dealer which processes Form CD 1 in respect of its exports, in the case of a partial exporter or business organisation referred to in paragraph (b) of the definition of “exporter”.

5. Prepayment of electricity bills by exporters and partial exporters

(1) Subject to subsection (2), any designated consumer of electricity may enter into a contract or memorandum of agreement with ZESA to pay in advance for the supply of electricity by ZESA in foreign currency.

(2) A contract or memorandum of agreement referred to in subsection (1) shall be submitted to the Reserve Bank for its approval prior to implementation.

6. Accounting for foreign currency obtained by ZESA under this order

(1) All foreign currency received by ZESA in terms of this order shall be deposited in a foreign currency account opened and operated with any authorised dealer:

Provided that ZESA may open and operate separate foreign currency accounts with the same or different authorised dealers in respect of each of the foreign currencies in which it receives payment in terms of this order.

(2) ZESA shall not make any withdrawals from any foreign currency account referred to in subsection (1) except with the prior written approval of the Reserve Bank and for the sole purposes of—

- (a) purchasing electricity outside Zimbabwe; and
- (b) importing spare parts and components needed to maintain the local generation and supply of electricity.

7. Expiry of order

This order shall cease to have effect in relation to exporters and partial exporters who are residents of Zimbabwe six months after it is published, unless earlier renewed for a period not exceeding six months