

Statutory Instrument 150 of 2008.

Exchange Control (Cotton) Order, 2008

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

ARRANGEMENT OF SECTIONS

Section

1. Title.
2. Interpretation.
3. Prohibition of purchase of contract seed cotton except in accordance with this order.
4. Registration of seed cotton merchants.
5. Financing of seed cotton purchases by seed cotton merchants.
6. Purchases of contract seed cotton.
7. Inter-merchant cotton lint sales.
8. Foreign currency obtained by accessing offshore funds for financing of seed cotton purchases.
9. Submission of returns.
10. Offences and penalties. Schedule: Forms.

1. Title This

order may be cited as the Exchange Control (Cotton) Order, 2008.

2. Interpretation

In this Order—

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

“contract seed cotton” means seed cotton which is subject to a contractual arrangement between a cotton merchant and a seed cotton grower, whereby the seed cotton merchant finances the growing of the seed cotton by the seed cotton grower for subsequent purchase from the seed cotton grower;

“cotton lint” means the fibre component produced from ginning seed cotton;

“exportable cotton lint” means cotton lint belonging to the portion of such lint that may be exported, as determined under section 5(3);

“finance”, in relation to the provision of finance by a seed cotton merchant to a seed cotton grower, includes the provision in kind of chemicals, fuel, equipment and other inputs;

“form” means a form specified in the Schedule;

“ginning” means the primary processing of seed cotton, which involves the separation of cotton seed from seed cotton into cotton lint and ginned seed;

“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 or facility whatsoever located or obtainable outside Zimbabwe;

“onshore funds” means any funds, moneys, deposit, loan, line of credit or facility whatsoever located or obtainable within Zimbabwe;

“principal regulations” means the Exchange Control Regulations, 1996;

“Reserve Bank” means the Reserve Bank of Zimbabwe’s department or division responsible for administering exchange control policies;

“seed cotton” means raw cotton which has not been subjected to the process of ginning, or any other process;

“seed cotton grower” means any person involved in the growing and production of seed cotton;

“seed cotton merchant” means any person registered with the Reserve Bank to purchase seed cotton from seed cotton growers, whether or not in terms of the arrangements provided for under this order.

3. Prohibition of purchase of contract seed cotton except in accordance with this order

No person may—

- (a) purchase any cotton, whether contract seed cotton or otherwise, with a view to marketing it as ginned or unginned cotton; or
- (b) be a party to a contract whereby he or she finances the growing of seed cotton by a seed cotton grower for subsequent purchase from the seed cotton grower; unless such person is registered as a seed cotton merchant in terms of section 4.

4. Registration of seed cotton merchants

(1) Every seed cotton merchant wishing to purchase seed cotton shall register with the Reserve Bank through his or her authorised dealer no later than the 15th February of each year.

(2) An application for registration in terms of subsection (1) shall be in Form EC Cot 1 set out in the Schedule and shall be supported by a reference supplied by a body which, in the opinion of the Reserve Bank, after consultation with the Ministry responsible for agriculture is representative of seed cotton merchants.

(3) Any seed cotton merchant who registers in terms of this section on the basis of either or both of the following—

- (a) that he or she does not intend to purchase any seed cotton for export; or
- (b) that he or she does not intend to finance the growing of seed cotton by a seed cotton grower for subsequent purchase from the seed cotton grower; shall, if he or she later intends to engage in either of the activities described in paragraph (a) or (b), submit a new application for registration in terms of this section before exporting such seed cotton, or as soon as possible after financing the growing of seed cotton by a seed cotton grower for subsequent purchase from the seed cotton grower, as the case may be.

5. Financing of seed cotton purchases by seed cotton merchants

(1) Notwithstanding section 4(1) of the principal regulations, but subject to section 4(2) of those regulations, every seed cotton merchant shall access only offshore funds for the purpose of purchasing contract seed cotton.

(2) No seed cotton merchant shall, for the purpose of purchasing seed cotton in terms of subsection (1)—

- (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.

(3) The ministry responsible for industry and international trade shall, in consultation with the Ministry responsible for agriculture, from time to time in writing to the Reserve Bank and to seed cotton merchants, determine the ratio of exportable and non-exportable cotton lint for any specified period of time.

(4) The purchase price for seed cotton shall be denoted in United States dollars and paid for in Zimbabwe dollars at the interbank market rate prevailing on the date of the transaction.

6. Purchases of contract seed cotton

(1) contract seed cotton shall not be purchased by any person other than the seed cotton merchant with whom the seed cotton grower concerned entered into a contract referred to in section 3(a).

(2) A seed cotton merchant may purchase non-contract seed cotton from any seed cotton grower:

Provided that no part of the cotton lint produced from such seed cotton shall be exportable except so much as does not exceed the ratio of cotton lint allowed to be exported in terms of section 5(3).

(3) A seed cotton merchant shall not purchase seed cotton in woolpacks other than in his or her own woolpacks.

(4) Where a seed cotton merchant financed any seed cotton grower—

- (a) by accessing offshore funds for that purpose, the amount used to finance the grower shall, subject to approval by the Reserve Bank on presentation of the relevant documentation proving the amount, be set off against the price of the seed cotton sold to the seed cotton merchant by the seed cotton grower;
- (b) by accessing any onshore funds for that purpose, the seed cotton merchant shall access offshore funds for the purpose of purchasing seed cotton from the seed cotton grower.

(5) The contract whereunder the seed cotton merchant finances the growing of seed cotton by a seed cotton grower may, subject to the approval of the Reserve Bank, provide that a specific portion of the seed cotton produced by the grower be given to the merchant in exchange for the provision of finance to the grower in the following season.

7. Inter-merchant cotton lint sales

Except with the authority of the Reserve Bank, no seed cotton merchant shall buy from or sell to another seed cotton merchant any cotton lint, whether or not it is exportable cotton lint.

8. Foreign currency obtained by accessing offshore funds for financing of seed cotton 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 seed cotton merchant may retain the export proceeds realised from the sale of exportable cotton lint (net after deduction in respect of the repayment of any moneys accessed from offshore funds) in his or her foreign currency account.

9. Submission of returns

(1) Every Monday by 1200 hours, every seed cotton merchant shall, through his or her authorised dealer, submit to the Reserve Bank particulars of the quantity and value of seed cotton purchased in the preceding week, in Form EC Cot 2 set out in the Schedule.

(2) Unless purchases of seed cotton are in their final week, the seed cotton merchant is required in Form EC Cot 2 to make a return of estimated purchases of seed cotton in the following week, so as to facilitate the draw-down of funds for future purchases of seed cotton.

10. Offences and penalties

Any person who—

- (a) engages in either of the activities described in section 3(a) or (b) without being registered as a seed cotton merchant in terms of section 4; or
- (b) contravenes section 4(3), 5(2), 6(3) or 9; or
- (c) makes a deliberately false statement in a form required to be submitted in terms of this order; shall be guilty of an offence and liable to the penalties referred to in section 5 of the Act.

SCHEDULE (Sections 4 and 9)

FORMS

Form EC Cot 1

RESERVE BANK OF ZIMBABWE

REGISTRATION OF INTENT TO PURCHASE SEEDCOTTON BY THE COTTON MERCHANT

1. Name and address of Merchant

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2. Ginning capacity (indicating any tolling if any, and the company to provide the service)

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3. Do you intend to export any of the seed cotton purchased by you? YES/NO. If yes, disclose the source(s) of your offshore funds

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4. In the case of a merchant who is a party to any contract seed cotton arrangements, Total. Area Contracted—Hectares— (to be supported by a list of the contracted growers and their hectareage)

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5. Expected Yield (kg/ha) where item 4 applicable

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6. Level of USD financing of cotton production, indicating source(s) of offshore funds, where item 4 applicable.....

TOTAL					

Name in full

Authorised signatory

Designation

Date