

**Statutory Instrument 9 of 2004**

**Exchange Control (Currency Exchange) Order, 2004**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Title.
2. Interpretation.
3. Application of order in relation to licensed investors.
4. Establishment of Currency Exchange.
5. Functions of Currency Exchange.
6. Foreign Currency Auction Committee.
7. Exporting business organisations to offer proportion of foreign currency for auction by Currency Exchange.
8. Lodging of bids with the Currency Exchange.
9. Procedure on tender day.
10. Gold producers to offer proportion of foreign currency for auction by Currency Exchange.
11. Tobacco proceeds.
12. Other foreign currency receipts.
13. Supplementary directions.

SCHEDULE

Proportions of Export Proceeds to be Offered for Sale at Fixed Rate and by Auction.

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

*1. Title*

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

*2. Interpretation*

In this Order—

“cut-off price” means the price below which any bids for the purchase of foreign currency will be rejected;

“exchange rate direction” means the Exchange Control (Exchange Rate) Direction, 2002;

“export documentation” means the Form CD1, CD3, TR1, TR2 or any other form evidencing the export of goods or services and the receipt of payment therefor, and all other documentation therewith;

“fixed rate” means the rate at which the Zimbabwe dollar may be exchanged for the United States dollar in terms of the exchange rate direction;

“gross export proceeds” means export proceeds before the deduction of any loan repayments, royalties, management fees, agency fees or any other payment whatsoever;

“group of business organisations” means companies or other bodies corporate that are related to each other as holding company and subsidiary, or as subsidiaries of the same holding company, for the purposes of section 143 of the Companies Act [*Chapter 24:03*];

“foreign currency auction” means an auction of foreign currency conducted in terms of section 9;

“joint-venture licensed investor” and “licensed investor” bear the meanings assigned to them by section 2 of the Export Processing Zones Act [*Chapter 14:07*];

“ruling auction rate”, in relation to any transaction to which this order applies, means the rate at which the Zimbabwe dollar may be exchanged with the United States dollar, as fixed by a foreign currency auction occurring on or immediately before the date of the transaction;

“tender day” means the day appointed by the Currency Exchange in terms of subsection (1) of section 8 as a day when a foreign currency auction will take place.

(2) Any word or expression to which a meaning has been assigned in the Exchange Control Regulations, 1996, the Exchange Control Order, 1996, and the exchange rate direction shall have the same meaning when used in this order.

### **3. Application of order in relation to licensed investors**

This order applies to all business organisations as it relates to them, including local licensed investors and to joint-venture licensed investors if the proportion of the joint-venture licensed investor that is owned by persons domiciled in Zimbabwe is equivalent to or exceeds sixty *per centum*.

### **4. Establishment of Currency Exchange**

- (1) There is hereby established a unit of the Reserve Bank, to be known as the Currency Exchange
- (2) The staff of the Currency Exchange shall consist of such officers, inspectors or employees of the Reserve Bank referred to in section 46 of the Reserve Bank of Zimbabwe Act [Chapter 22: 15] as are nominated by the Governor of the Reserve Bank.
- (3) There shall be a Chairperson of the Currency Exchange who shall be appointed by the Governor of the Reserve Bank after consultation with the Minister of Finance and Economic Development.

### **5. Functions of Currency Exchange**

Subject to this order, the functions of the Currency Exchange shall be—

- (a) to conduct foreign currency auctions; and
- (b) to perform such other function as may be assigned to it by or under this order or as the Governor of the Reserve Bank may assign to it by direction in writing.

### **6. Foreign Exchange Auction Committee**

- (1) The operations of the Currency Exchange shall be governed by a committee, called the Foreign Exchange Auction Committee.
- (2) The Foreign Exchange Auction Committee shall consist of —
  - (a) a chairperson, who shall be the Chairperson of the Currency Exchange; and
  - (b) not more than seven persons appointed by the Governor of the Reserve Bank from members of the staff referred to in subsection (2) of section 4; and
  - (c) a representative of the Ministry of Finance and Economic Development appointed by the Minister of Finance and Economic Development.
- (3) The Foreign Exchange Auction Committee shall perform the functions of the Currency Exchange in terms of section 9.

### **Exporting business organisations to offer proportion of foreign currency for auction by 7. Currency Exchange**

(1) With effect from the 1st January, 2004, every business organisation engaging in the export of goods and services shall be required to acquit the export documentation in respect of those exports— (a) on the basis of gross export proceeds; and

- (b) no later than 90 days from the date when the export documentation in respect of those exports was raised (hereinafter referred to as the “maximum acquittal period”):

Provided the Reserve Bank may for good cause shown authorise an extension of this period.

(2) Subject to subsection (3), where foreign currency held in a business organisation’s foreign currency account represents the proceeds from exports, the business organization—

- (a) shall, if it acquits the export documentation in respect of those exports in advance or within any period sooner than the maximum acquittal period as indicated in the first column of the Schedule—
  - (i) offer the proportion of the currency indicated opposite thereto in the second column of the Schedule for sale at the fixed rate to the authorised dealer that processed the export documentation in respect of those exports; and
  - (ii) offer the proportion of the currency indicated opposite thereto in the third column of the Schedule for sale by auction by the Currency Exchange through the authorised dealer referred to in subparagraph (i);
- (b) shall, if it acquits the export documentation in respect of those exports on the day after the maximum acquittal period or within any other extension of that period approved by the Reserve Bank, as indicated in the first column of the Schedule—
  - (i) offer the proportion of the currency indicated opposite thereto in the second column of the Schedule for sale at the fixed rate to the authorised dealer that processed the export documentation in respect of those exports; and

- (ii) offer the proportion of the currency indicated opposite thereto in the third column of the Schedule for sale by auction by the Currency Exchange through the authorised dealer referred to in subparagraph (i);
- (c) may retain the balance remaining in the foreign currency account after offering the proportions referred to in paragraph (a) or (b) for up to twenty-one days, during which the business organisation may draw down on the account for the purpose of settling any exchange control approved transactions, including—
  - (i) the settlement of any external loan repayments; and
  - (ii) the purchase of any imports; and thereafter, if the currency has not been withdrawn earlier, the business organisation shall sell it to the Reserve Bank through the authorised dealer at the ruling auction rate.

(3) If a business organisation fails to acquit the export documentation in respect of any exports within the maximum acquittal period and no extension of such period is approved by the Reserve Bank in terms of paragraph (b) of subsection (2), no amount of the proceeds from exports may be retained in its foreign currency account, and the business organisation concerned shall forthwith offer—

- (a) twenty five *per centum* of the proceeds for sale at the fixed rate to the authorised dealer that processed the export documentation in respect of those exports; and
- (b) seventy-five *per centum* of the proceeds for sale by auction by the Currency Exchange through the authorised dealer referred to in paragraph (a).

(4) The amount of foreign currency offered for sale by auction in terms of paragraph (a) or (b) of subsection (2) shall be specified by the business organisation concerned in a form provided by the Reserve Bank to authorised dealers for the purpose, which form shall be submitted to the Currency Exchange before 12.00 p.m. on the day immediately preceding the tender day next following the completion of the form.

(5) If an exchange control authority is satisfied after due inquiry that a business organisation has contravened paragraph (a) of subsection (1), subsection (2) or subsection (3), the exchange control authority may in terms of section 35 of the principal regulations direct any authorised dealer to do all or any of the following— (a) to close any foreign currency account operated by—

- (i) the business organisation concerned; or
- (ii) where the business organisation is a member of a group of business organisations, by all members of that group;

(b) not to permit the business organisation to open a foreign currency account; and the authorised dealer concerned shall take all necessary steps to comply with the direction:

Provided that the exchange control authority shall without delay notify the business organisation or group of business organisations concerned, in writing, of the terms of any such direction.

#### **8. Lodging of bids with the Currency Exchange**

(1) Subject to subsection (2), any person who wishes to purchase foreign currency offered for sale by auction by the Currency Exchange in terms of section 7 shall forward through an authorised dealer to the Currency Exchange a written bid in a form provided by the Reserve Bank to authorised dealers for the purpose, specifying— (a) the amount of foreign currency, denominated in United States dollars, sought to be purchased; and

- (b) the preferred exchange rate for the foreign currency sought to be purchased; and
- (c) the purpose for which the foreign currency is sought to be purchased; and
- (d) the source of the funds with which the person proposes to purchase the foreign currency; and (e) relevant exchange control authority for the foreign currency payment.

(2) No business organisation referred to in section 7 shall qualify to bid for foreign currency offered for sale by auction by the Currency Exchange for any purpose unless it satisfies an exchange control authority that— (a) its balance referred to in paragraph (c) of subsection (2) of section 7 is insufficient for that purpose; and

- (b) in the case of a business organisation wishing to buy foreign currency for the purpose of making any external loan repayments, the insufficiency referred to in paragraph (a)—
  - (i) is absolute, that is, no balance at all existed at the time in question to enable it to make payments for any purpose whatsoever; or
  - (ii) arose after it had drawn down on its balance exclusively for the purpose of settling those repayments.

(3) An authorised dealer will comply with any other directions issued by the Currency Exchange with respect to the eligibility of persons to purchase foreign currency offered for sale by auction by the Currency Exchange in terms of section 7, including directions with respect to—

- (a) the aggregating of bids by persons for amounts not exceeding five thousand United States dollars; and
- (b) the purpose for which the foreign currency is sought to be purchased; and

(c) the provision of security by the bidder, or the furnishing of adequate proof that the bidder is capable of fulfilling his or her obligations in the event that his or her bid is successful.

(4) Upon consideration by an authorised dealer of all bids received in terms of subsection (3), the authorised dealer shall—

(a) seal all eligible bids and forward them to the Currency Exchange no later than 9.00 a.m. on any tender day within a period of seven days after the bid is sealed; and (b) notify the bidders concerned accordingly.

(5) No bidder may withdraw a bid once it has been lodged with the Currency Exchange.

#### **9. Procedure on tender day**

(1) The Currency Exchange shall give every authorized dealer not less than twelve hours' notice of a tender day.

(2) On the tender day the Currency Exchange shall—

(a) receive, open and examine the bids for that day and reject any bids that are ineligible by reason of noncompliance with any directions referred to in subsection (2) of section 8; and

(b) fix a recommended cut-off price by collating eligible bids with the foreign currency available for sale on that day, and immediately forward the recommendation to the Governor of the Reserve Bank, who may accept the recommendation as final or specify an alternative final cut-off price;

(c) immediately upon being informed of the Governor's decision in terms of paragraph (b), reject any bids that are below the final cut-off price and match the foreign currency available for sale on that day with the remaining bids, in order of preference from the highest to the lowest bidder:

Provided that if two or more eligible bidders offer the same price in Zimbabwe dollars for an amount of foreign currency sought to be purchased, the bidder seeking the greater amount of foreign currency shall be matched before the other bidder or bidders.

(3) At the conclusion of the auction—

(a) foreign currency shall be awarded on the basis of bids matched in accordance with paragraph (c) of subsection (2); and

(b) the Chairperson shall announce to authorised dealers the results of the auction and the ruling auction rate; and

(c) any foreign currency unsold shall be purchased by the Reserve Bank at the ruling auction rate; and

(d) every unsuccessful bidder may make a new application in terms of subsection (2) in respect of the next auction.

#### **10. Gold producers to offer proportion of foreign currency for auction by Currency Exchange**

(1) Of the foreign currency paid by the Reserve Bank for gold sold to it by a gold producer—

(a) twenty-five *per centum* of the currency (or such other proportion of the currency as the Reserve Bank shall, from time to time, notify to gold producers), shall be purchased by the Reserve Bank at the fixed rate; and

(b) twenty-five *per centum* of the currency (or such other proportion of the currency as the Reserve Bank shall, from time to time, notify to gold producers), shall be offered by the Reserve Bank on behalf of the gold producer for sale by auction by the Currency Exchange; and

(c) fifty *per centum* shall be credited to the gold producer's foreign currency account and be dealt with in terms of paragraph (c) of subsection (2) of section 7.

#### **11. Tobacco proceeds**

(1) Of the foreign currency drawn down by the tobacco merchants or buyers in terms of the Exchange Control (Tobacco Finance) Order, 2001, published in Statutory Instrument 153B of 2001, for tobacco sold by a producer—

(a) twenty-five percentum of the currency (or such other proportion of the currency as the Reserve Bank shall, from time to time, notify to tobacco producers), shall be purchased by the Reserve Bank at the fixed rate; and

(b) seventy-five *per centum* of the currency (or such other proportion of the currency as the Reserve Bank shall, from time to time, notify to tobacco producers), shall be purchased by the Reserve Bank at the ruling auction rate.

#### **12. Other foreign currency receipts**

(1) Foreign currency offered or required to be offered for sale through an authorised dealer by—

(a) any person in terms of section 10, 10A and 10C of the Exchange Control Order, 1996; (b)

any of the following persons who operate a foreign currency account—

(i) a mission or agency as defined in subsection (1) of section 2 of the Foreign Missions and Agencies (Premises) Act [Chapter 3:01];

(ii) a private voluntary organisation registered or required to be registered in terms of the Private Voluntary Organizations Act [Chapter 17:05];

(iii) an international organisation accorded privileges and immunities in terms of the Privileges and Immunities Act [Chapter 3:03];

- (iv) any individual not designated as a corporate holder of a foreign currency account; shall be purchased by the Reserve Bank at the ruling auction rate.

**13. Directions supplementing or amending this order**

The Reserve Bank may issue directions to authorized dealers which—

- (a) supplement the provisions of this order; or (b) have the effect of varying the terms of this order:

Provided that such variation shall be confirmed by an amendment of this order within 30 days of the date when the varying direction is issued.

**Schedule ( Section 7 (2) (a) and (b))**

**PROPORTIONS OF EXPORT PROCEEDS TO BE OFFERED FOR SALE AT FIXED RATE AND BY AUCTION**

<i>Export documentation fixed rate</i>	<i>Proportion for sale by auction</i>	<i>Proportion for export proceeds retained</i>	<i>Proportion of acquittal period (days)</i>	<i>sale at</i>
Advance payments		20%	Optional	80%
1-30.		25%	5%	70%
31-60		25%	10%	65%
61-90		25%	20%	55%
91-100		25%	25%	50%
101-120		25%	35%	40%
121 and above		25%	75%	0

# Statutory Instrument 77 of 2004

[Date of commencement :

## Exchange Control (Money Transfer Agencies) Order, 2004

*S.Is 77/2004, 81A/2004.*

### ARRANGEMENT OF SECTIONS

#### PART I

##### PRELIMINARY

- 1 Title.
- 2 Interpretation.
- 3 Persons providing money transfer services to be registered.
- 4 Documentation in support of registration as a money transfer agency.
5. Registration of money transfer agencies.
6. Amendment and cancellation of registration of money transfer agencies.
7. Renewal of registration of money transfer agencies and opening of new branches.
8. Minimum capital and financial security requirements of money transfer agencies.
9. Operations of money transfer agencies.
10. Commissions, fees and charges.
11. Officers of money transfer agencies.
12. Premises and equipment of money transfer agencies.
13. Accounts, returns and financial statements of money transfer agencies.
14. Compliance directions and penalties.
15. Appeals.
16. Directives to money transfer agencies
17. Existing money transfer agencies deemed to be registered.

First Schedule: Application for Registration as a Money Transfer Agency.

Second Schedule: Form of Reserve Bank Receipt.

Third Schedule: Minimum Equipment and Stationery Requirements of Money Transfer Agency.

Fourth Schedule: Foreign Currency Weekly Return

**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, has made the following order:—**

#### *1. Title*

This order may be cited as the Exchange Control (Money Transfer Agencies) Order, 2004.

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

#### *2. Interpretation*

(1) In this order—

“auditor” means an auditor who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*];

[Inserted by s.i 81A of 2004 with effect from the 6th April 2004]

“banking institution” means a banking institution registered in terms of the Banking Act [*Chapter 24:20*];

“building society” means a building society registered in terms of the Building Societies Act [*Chapter 24:02*];

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

“float money” means money kept by a money transfer agency—

- (a) in the form of Zimbabwean currency to meet its Zimbabwe dollar commitments to its customers; or
- (b) in the form of foreign currency to meet its foreign currency commitments to its customers;”;

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

“free funds” means foreign currency acquired outside Zimbabwe by a resident of Zimbabwe otherwise than by any trade, business or other gainful occupation or activity carried on by him or her in Zimbabwe, or otherwise lawfully held outside Zimbabwe by a resident of Zimbabwe;

“money transfer agency” means a person that provides a money transfer service;

“money transfer service” means the business of transferring foreign currency between persons resident in Zimbabwe and persons resident in any other country or territory, and includes the buying of foreign currency in connection with such a service;

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

“principal regulations” means the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996;

“ruling auction rate” has the meaning given to that term by subsection (1) of section 2 of the Exchange Control (Currency Exchange) Order, 2004, published in Statutory Instrument 9 of 2004.

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

### **3. *Persons providing money transfer services to be registered***

(1) Subject to section 16, no person may provide a money transfer service unless such person is registered as a money transfer agency in terms of this order.

(2) No person shall be registered as a money transfer agency in terms of this order unless such person—

- (a) is registered or incorporated as a company in terms of the Companies Act [*Chapter 24:03*]; or
- (b) is a division, department, unit or subsidiary company of a banking institution or a building society, the accounts of which are audited separately from the accounts of the parent banking institution or building society.

### **4. *Documentation in support of registration as a money transfer agency***

A person wishing to be registered as a money transfer agency shall apply to the Exchange Control Division of the Reserve Bank in the form set out in the First Schedule for such registration, and shall submit with the application a fee of five hundred thousand dollars and the following documentation in support of the application—

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

(a) in the case of a company—

- (i) a true copy, certified by the auditors of the company, of its memorandum and articles of association; and
- (ii) a true copy, certified by the auditors, of the certificate of incorporation or registration of the company, issued in terms of the Companies Act [*Chapter 24:03*]; and
- (iii) a statement, certified by the auditors of the company showing the authorised and paid-up share capital of the company; and

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

(b) in the case of a division, department or unit of a banking institution or building society, proof of registration of the parent banking institution or building society as a banking institution or building society; and

(c) a statement, certified the auditors of the company or and the auditors of the parent banking institution or building society (as the case may be) showing—

- (i) the assets that will comprise the minimum capital required in terms of paragraph (a) of section 8; and
- (ii) bank deposits comprising the float money referred to in paragraph (b) of section 8; and
- (iii) compliance with the minimum financial security requirements specified in paragraph (c) of section 8; and

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

(d) a statement of monthly cashflow projections indicating expected foreign currency receipts for a twelvemonth period, and target markets; and

(e) the name and address of every person who will become an officer of the proposed money transfer agency, together with details of their qualifications in the field of exchange control law and procedure, and the offices and branches where they will be stationed; and

(f) the name of each country or territory in or from which the applicant provides a money transfer service with Zimbabwe together with proof—

- (i) in the form of an agreement or provisional agreement between the applicant and the money transfer agency concerned that the applicant is affiliated or associated with a money transfer agency lawfully operating in the country or territory concerned; or
- (ii) that the applicant is itself registered or otherwise lawfully operating in the country or territory concerned; and

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

- (g) an application for exchange control authority to maintain float money consisting of foreign currency of a specified amount.

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

- (i) affiliate or associate with a money transfer agency lawfully operating in the country or territory concerned; or
- (ii) secure registration or other authorisation to enable it to operate in such country or territory.

#### ***5. Registration of money transfer agencies***

(1) The Reserve Bank shall consider every application submitted to it in terms of section 4 and, if it is satisfied—

- (a) as to the matters specified in paragraphs (a) to (g) of section 4; and
- (b) that the applicant has sufficient financial resources to conduct a money transfer service; and
- (c) that the applicant has a fixed place of business which, in regard to location, size and security, is suitable for conducting a money transfer service; and
- (d) the applicant will take adequate steps to safeguard and account for any foreign currency and Zimbabwean currency it may receive and deal with in the course of its business as a money transfer agency, and in particular that it will comply with the requirements of section 9; and
- (e) the documents or information submitted with the application do not disclose that undesirable methods of conducting business will be adopted by the applicant; it shall register the applicant as a money transfer agency, subject to such terms and conditions as the Reserve Bank may specify in writing to the applicant.

(2) If the Reserve Bank refuses to register the applicant as a money transfer agency it shall furnish the reasons for its refusal to the applicant and refund half of the application fee to it—

- (a) immediately, if the applicant does not intend to appeal against the decision of the Reserve Bank; or
- (b) upon the determination of any appeal lodged by the applicant against the decision of the Reserve Bank, if it loses the appeal:

Provided that if the applicant gives any information in connection with the application which is, to the applicant's knowledge, false in any material particular, or which the applicant does not have reasonable grounds for believing to be true, no part of the application fee shall be refunded

(3) On registering any person as a money transfer agency the Reserve Bank shall—

- (a) enter the name of the agency in a register kept by it for the purpose, together with any terms and conditions subject to which the agency is registered; and
- (b) issue the agency with a certificate of registration.

(4) A money transfer agency may, subject to this order and the terms and conditions of its registration, conduct a money transfer service.

#### ***6. Amendment and cancellation of registration of money transfer agencies***

(1) The Reserve Bank may at any time amend the terms and conditions subject to which a money transfer agency is registered:

Provided that, before effecting any such amendment otherwise than at the request of the money transfer agency concerned, the Reserve Bank shall afford the money transfer agency an adequate opportunity to make representations in the matter.

(2) If the Reserve Bank is satisfied that—

- (a) the registration of any money transfer agency was secured through fraud or the misrepresentation of a material fact; or
- (b) a money transfer agency has failed to comply with—
- (i) any provision of this order or any direction or order made or issued thereunder with which it was its duty to comply; or
- (ii) any term or condition subject to which it was registered; or
- (c) a money transfer agency no longer possesses sufficient financial resources to conduct business as a money transfer agency; or
- (d) a money transfer agency has failed to safeguard or account for any foreign currency or Zimbabwean currency it has received or dealt with in the course of its business as a money transfer agency;

it may cancel its registration as a money transfer agency or may alter or amend any term or condition of its registration:

Provided that before doing so the Reserve Bank shall afford the money transfer agency concerned an adequate opportunity to make representations in the matter.



### **7. *Renewal of registration of money transfer agencies and opening of new branches***

(1) The annual fee payable to the Reserve Bank by a money transfer agency for the renewal of its registration shall be five hundred thousand dollars.

(2) The annual fee referred to in subsection (1) shall be paid not later than the 31st March of the year following that in respect of which the fee is payable.

(3) A registered money transfer agency that wishes to open a new branch of its operations anywhere in Zimbabwe may apply in writing to the Reserve Bank for permission to open such branch, and shall submit with its application—

(a) a fee of one hundred thousand dollars; and

(b) particulars of the location, size and security of the proposed branch of the money transfer agency; and (c) such information as the Reserve Bank may require.

(4) The Reserve Bank shall consider an application submitted to it in terms of subsection (3), and if it is satisfied as to any matter it considers relevant in connection with the application, and in particular that the proposed branch of the money transfer agency will comply with the requirements of subsections (2) and (3) of section 12, it grant permission for the branch to be opened.

### **8. *Minimum capital and financial security requirements of money transfer agencies***

No person shall be registered as a money transfer agency in terms of section 5 unless it satisfies the Reserve Bank that it has, and will maintain at any point in time—

(a) a minimum capital of one hundred million dollars in the form of cash, equity, movable or immovable assets or any combination of the foregoing; and

(b) float money of not less than one hundred million dollars in Zimbabwean currency deposited with an authorised dealer;

(c) security cover to meet its commitments to its customers in the form of—

(i) a security deposit with the Reserve Bank of not less than twenty-five thousand United States dollars; or

(ii) a policy of professional indemnity issued by an insurer registered in terms of the Insurance Act [Chapter 24:07] for a sum not less than the Zimbabwe dollar value of twenty-five thousand United States dollars.

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

### **9. *Operations of money transfer agencies***

(1) Every money transfer agency shall conduct its operations in such a manner as will ensure its compliance with the requirements of subsections (2) to (9).

(2) A money transfer agency that receives foreign currency for the account of persons who opt to be paid for the foreign currency in Zimbabwean currency shall—

(a) deposit the foreign currency in a single foreign currency account opened and operated by the money transfer agency with an authorised dealer:

Provided that a money transfer agency 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; and

(b) transmit the foreign currency to the Reserve Bank—

(i) before the end of working hours on Friday each week; or

(ii) as soon as the aggregate of the foreign currency it receives amounts to twenty-five thousand United States dollars;

whichever is the earlier date, whereupon the Reserve Bank shall exchange such foreign currency for Zimbabwean currency at the ruling auction rate.

(3) All foreign currency sent through a money transfer agency by citizens of Zimbabwe or persons who have a right of permanent residence in Zimbabwe for the benefit or to the account of recipient customers in Zimbabwe shall originate from free funds held by the persons who sent the foreign currency.

(4) The option whether to receive any foreign currency sent through a money transfer agency to a recipient customer in Zimbabwe—

(a) as foreign currency or the equivalent thereof in Zimbabwean currency; or

(b) in the form of cash or travellers cheques; shall be exercised by the recipient customer alone.

(5) Whenever it is open for business, a money transfer agency shall display, in a manner visible to the public —

(a) the current certificate of registration issued to it; and

(b) a notice—

(i) showing the rates at which it will exchange any foreign currency for Zimbabwean currency; and

(ii) reminding recipient customers in Zimbabwe who opt to receive as foreign currency any foreign currency sent to them through the money transfer agency that, in accordance with section 4 of the principal regulations, they may not sell that foreign currency except through an authorised dealer.

(6) Where a recipient customer in Zimbabwe opts to receive the equivalent of any foreign currency sent through a money transfer agency in Zimbabwean currency, the money transfer agency shall on behalf of the Reserve Bank buy such foreign currency from the recipient customer at the ruling auction rate.

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

(7) Where a recipient customer in Zimbabwe opts to receive as foreign currency any foreign currency sent through a money transfer agency, the money transfer agency shall—

(a) in addition to displaying the notice referred to in paragraph (a) of subsection (5), draw the attention of the recipient customer to the provisions section 4 of the principal regulations in such a manner as will secure the customer's personal acquaintance therewith; and

(b) issue to the recipient customer a Reserve Bank receipt for the foreign currency in the form shown in the Second Schedule.

(8) Except as authorised by an exchange control authority, a money transfer agency shall not, for its own account, buy foreign currency from recipient customers in Zimbabwe or from any other person or source whatsoever.

(9) No money transfer agency shall receive foreign currency originating from the export of goods or services or capital inflows.

#### ***10. Commissions, fees and charges***

(1) A money transfer agency shall not demand from any recipient customer any commission, fee or charge whatsoever but the Reserve Bank shall pay the agency an agency's commission in Zimbabwean currency for every payout (in Zimbabwean currency) to a recipient customer at such rate as may be agreed between the Reserve Bank and money transfer agencies generally, or, in the absence of such agreement, at such rate as the Reserve Bank will fix by directive issued to money transfer agencies generally.

[Amended by s.i 81A of 2004 with effect from the 6th April 2004]

(2) Where a money transfer agency that is affiliated or associated with another money transfer agency operating in a country or territory outside Zimbabwe receives for its own account any commission from such other money transfer agency in respect of business conducted between that country or territory and Zimbabwe, the first-mentioned money transfer agency shall deposit such commission in the foreign currency account referred to in paragraph (a) of subsection (2) of section 9.

#### ***11. Officers of money transfer agencies***

(1) Every money transfer agency shall be managed by a manager or managing director who is a fit and proper person to manage the money transfer agency in terms of subsection (2).

(2) No person shall be a fit and proper person to be a manager or managing director of a money transfer agency if—

(a) he or she is the manager or managing director of another money transfer agency which carries on business in Zimbabwe in competition with the first-mentioned agency; or

(b) he or she does not have sufficient qualifications or experience in the field of exchange control law and procedure;

Provided that this disqualification does not apply to a person whom the Reserve Bank is satisfied will, before the pre-opening inspection referred to in subsection (1) of section 12, have satisfactorily completed a course of training on exchange control law and procedure conducted or approved by the Reserve Bank; or

(c) under the law of any country—

(i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) he or she has made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(iii) he or she has been convicted of theft, fraud, forgery, uttering a forged document or perjury or any other offence, whether inside or outside Zimbabwe and by whatever name called, that is similar to any of those offences, and has not received a free pardon; or

(iv) he or she has been convicted of any offence and sentenced to a term of imprisonment exceeding six months, imposed inside or outside Zimbabwe otherwise than as an alternative to or in default of payment of a fine, and has not received a free pardon.

(3) No person shall be a fit and proper person to be a member of the professional or operational staff of a money transfer agency unless he or she has sufficient qualifications in the field of exchange control law and procedure:

Provided that this disqualification does not apply to a person whom the Reserve Bank is satisfied will, before the pre-opening inspection referred to in subsection (1) of section 12, have satisfactorily completed a course of training on exchange control law and procedure conducted or approved by the Reserve Bank.

(4) A person shall be deemed to have sufficient qualifications or experience in the field of exchange control law and procedure for the purpose of being an officer or member of the professional or operational staff of a money transfer agency if the Reserve Bank certifies that such person has satisfactorily completed any course of training on exchange control law and procedure conducted or approved by the Reserve Bank. [Amended by SI 81A of 2004 with effect from the 6th April 2004]

(5) If any information comes to the notice of the Reserve Bank to the effect that an officer of a money transfer agency is not or has ceased to be a fit or proper person to hold the office concerned, the Reserve Bank shall—

(a) furnish the money transfer agency and the officer concerned with full details of all the information in the possession of the Reserve Bank in that regard; and

(b) request the officer concerned in writing to make written representations to the Reserve Bank on the matter within thirty days of the request.

(6) The Reserve Bank may, after considering any representations received in terms of paragraph (b) of subsection (5), direct the money transfer agency in writing to commence proceedings for the removal of the officer concerned within such period as the Reserve Bank shall specify.

### ***12. Premises and equipment of money transfer agencies***

(1) Every new money transfer agency or new branch of a money transfer agency shall be subjected to a preopening inspection conducted by the Reserve Bank before it is opened to the public.

(2) Every money transfer agency shall be conducted in premises that comply with the following requirements in addition to any other requirements that may be specified in directions issued by the Reserve Bank— (a) the premises shall be reasonably secure, that is—

(i) the premises shall not be mobile; and

(ii) the premises shall be easily visible to the general public; and

(iii) the premises shall be readily accessible by members of the public; and

(b) the tellers shall work behind a counter that affords reasonable protection to the tellers.

(3) For the purpose of the proper and efficient conduct of its operations, a money transfer agency shall comply with the minimum equipment and stationery requirements specified in the Second Schedule.

### ***13. Accounts, returns and financial statements of money transfer agencies***

(1) A money transfer agency shall—

(a) keep proper accounts and other records relating thereto; and

(b) before the end of working hours on Monday each week, submit to the Exchange Control Division of the Reserve Bank a return in the form prescribed in the Fourth Schedule; and

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

(c) at the end of each financial year, prepare financial statements reflecting, in accordance with sound accounting practices, the agency's operations and financial condition.

(2) The accounts of a money transfer agency shall be audited by an auditor who is registered as a public auditor in terms of the Public Accountants and Auditors Act [Chapter 27:12] and who is not an employee, manager or director of the money transfer agency.

(3) Every money transfer agency shall furnish to the Reserve Bank copies of the audited annual financial statements prepared in terms of paragraph (b) of subsection (1) by the 31st March after the end of the financial year to which the statements relate.

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

### ***14. Compliance directions and penalties***

Additionally or alternatively to any penalty provided under the Act, the Reserve Bank may direct a money transfer agency to cease providing any money transfer service if the money transfer agency— (a) contravenes any provision of this order or any directive issued in terms of section 16; or

- (b) fails to comply with the principal regulations or the Exchange Control Order or any exchange control directive issued in terms of the principal regulations.

### **15. Appeals**

Any person who is aggrieved by a decision of the Reserve Bank refusing to register it as a money transfer agency or cancelling the registration of a money transfer agency or amending any term or condition of its registration, may appeal to the review authority referred to in section 43 of the principal regulations within the time there prescribed, and section 18 of the Exchange Control Order shall apply to any such appeal.

### **16. Directives to money transfer agencies**

The Reserve Bank may issue to money transfer agencies generally—

- (a) directives requiring them to publish, at their own expense, particulars of their registration in a newspaper, the Gazette or both;
- (b) directives requiring them to publish their financial accounts annually or at more frequent intervals; (c) directives not inconsistent with this order on any matter the Reserve Bank deems fit.

### **17 Existing money transfer agencies deemed to be registered (1)**

.....

[Repealed by s.i 81A of 2004 with effect from the 6th April 2004]

- (a) a company registered or incorporated in terms of the Companies Act [*Chapter 24:03*]; or
- (b) a division, department, unit or subsidiary company of a banking institution or a building society, the accounts of which are audited separately from the accounts of the parent banking institution or building society; shall, subject to this section, be deemed to be registered as a money transfer agency in terms of this order.

(2) Every existing money transfer agency shall, no later than thirty days from the date of commencement of the Exchange Control (Money Transfer Agencies) (Amendment) Order, 2004 (No. 1) — i.e.6th May,2004 –Editor , submit a completed application form in terms of section 4, together with the fee and all the documentation referred to in that section.

[Substituted by SI 81A of 2004 with effect from the 6th April 2004]

- (3) If any existing money transfer agency—

- (a) does not meet the requirements referred to in paragraphs (a), (b) and (c) of section 8;

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

(b) does not comply with any of the requirements of section 9 or 10; it shall comply with such requirements no later than thirty days from the date of commencement of the Exchange Control (Money Transfer Agencies) (Amendment) Order, 2004 (No. 1)—i.e.6th May,2004—Editor;

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

(4) Every existing money transfer agency shall, when requested to do so by the Reserve Bank, furnish it with the names and addresses of every person who is an officer of the money transfer agency, together with details of their qualifications in the field of exchange control law and procedure, and the offices and branches where they will be stationed.

(5) Every officer of an existing money transfer agency shall within thirty days from the date of commencement of the Exchange Control (Money Transfer Agencies) (Amendment) Order, 2004 (No. 1) undergo the training referred to in subsection (4) of section 11.

[Substituted by s.i 81A of 2004 with effect from the 6th April 2004]

(6) Additionally or alternatively to any penalty provided under the Act, the Reserve Bank may direct an existing money transfer agency to cease providing any money transfer service if the agency fails to comply with subsection (2), (3), (4) or (5).

- (7) Every existing money transfer agency shall renew its registration in terms of section 7.

[Inserted by s.i 81A of 2004 with effect from the 6th April 2004]

## **First Schedule (Section 4 (1))**

### **APPLICATION FOR REGISTRATION AS MONEY TRANSFER AGENCY**

Instructions on How to Complete this Form.

Attach Annexure wherever necessary.

Attach Annexure wherever necessary.

Do not leave any questions blank or unanswered: where necessary answer "Not applicable" or "Not known". Upon completion the original of this form and supporting Annexure should be submitted to:

The Division Chief  
Exchange Control  
Reserve Bank of Zimbabwe  
80 Samora Machel Avenue  
HARARE

All inquiries concerning this form should be directed to the Division Chief as above.

#### PRELIMINARY

State the name, address and telephone number of the promoter(s)/persons(s) who may be contacted regarding any questions in respect of this application.

#### PART 1: PARTICULARS OF MONEY TRANSFER AGENCY AND DIRECTORS

1. Name under which Money Transfer Agency ('the applicant') seeks registration:
2. Physical address of the applicant's head office:
3. Names, home physical addresses and occupations of chairperson and directors:
4. Name and home physical address of Chief Executive Officer:
5. Name and home physical address of Chief Accounting Officer:
6. Name, home physical address and qualifications of the applicant's auditors (in the case of a partnership, give the name of the partnership and of the partner principally responsible for the audit of the applicant):
7. Name, and head office address of the International Money Transfer Agency that has contracted the local Money Transfer Agency to payout foreign currency to Zimbabwean beneficiaries. (please attach copy of original or draft Agreement)
8. Name of every country or territory outside Zimbabwe in which applicant conducts or proposes to conduct a money transfer service and address in any country or territory where its conducts such service:

9. An application for Money Transfer Agency must be accompanied by the following documents:—
- Where the applicant is a company:
    - (i) A true copy, certified by the chairman and director of the company, of memorandum and articles of association,;
    - (ii) A true copy, certified by the Registrar of Companies, of the certificate of incorporation of the company, issued in terms of the Companies Act [*Chapter 24:03*], in the case where the applicant is a company;
    - (iii) A statement, certified by the chairman, a director and the auditors of the company showing the authorised and paid-up capital of the company, and the assets that will comprise the minimum capital required in terms of section 5 for the registration of the company as a money transfer agency
  - Where the applicant is a division, department or unit of a banking institution or building society, proof of registration of the parent banking institution or building society as a banking institution or building society
  - Where applicant is a company or a division, department or unit of a banking institution or building society, a bank account statement from an authorised dealer proving the deposit of. ZWD100 million cash with the authorised dealer as float money.
    - (i) a list of the assets that will comprise the capital required for the registration of the company as a money transfer agency;
    - (ii) the names and addresses of the every person who will become an officer of the proposed money transfer, together with details of their qualifications in the field of exchange control law and procedures, and the offices and branches where they will be stationed;
    - (iii) Details on the agent's commission; and
    - (iv) Monthly cashflow projections indicating expected foreign currency receipts for a 12 month period and target markets.
10. Has the applicant or any director of the applicant ever, under the law of any country:—
- (a) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged: Yes/No.
  - (b) made an assignment to, or, arrangement or composition with, his creditors, which has not been rescinded or set aside. Yes/No.
  - (c) been convicted of theft, fraud, forgery, uttering a forged document or perjury of any other offence, by whatever name called, that is similar to any of those offences. Yes/No.
  - (d) been convicted of any offence and sentenced to a term of imprisonment exceeding six months, imposed otherwise than as an alternative to or in default of payment of a fine, and has not received a free pardon? Yes/No.
- If the answer to any of these questions is Yes, provide details.
11. Are there any material disputes between the applicant and the Zimbabwe Revenue Authority or the authority responsible for collecting taxes in any country with respect to any assessment for income tax or other taxes payable by the applicant? If yes, provide details.

#### Declaration

We, the undersigned chief executive officer and members of the board of the applicant do hereby certify that:

- (i) all information given in response to and in support of the questions and items in this Part of this application is true and correct to the best of our knowledge and belief:
- (ii) this application is made in good faith with the purposes and intent that the affairs and business of the applicant will at all times be honestly conducted in accordance with good and sound business principles and in full compliance with all applicable laws and lawful directives. We further certify that to the best of our knowledge and belief there are facts or information relevant to this application of which the Reserve Bank of Zimbabwe should be aware, and we pledge to promptly inform the Reserve Bank of Zimbabwe of any changes material to this application which may arise while it is being considered by the Reserve Bank of Zimbabwe. We undertake to comply

with all information requests by the Reserve Bank for regulatory/supervisory purposes, and hereby authorize the Reserve Bank of Zimbabwe and any of its authorized staff to make an inquiry or obtain any information from any source for the purpose of determining the correctness of all representations made in connection with this application or of assessing its merits.

Chairperson of the Board (print name)

Signature

... ..

Director (print name)

Signature Chief Executive Officer (print name)

Signature

... ..

Director (print name)

Signature

Second Schedule (Section 9 (7) (b))

FORM OF RESERVE BANK RECEIPT

Recipient Copy C 0001

Date [Reserve Bank Crest] PO Box  
1283

Harare

Telephone: 703000/111

[Amended by SI 81A of 2004 with effect from - the 6th April 2004]

FOREIGN CURRENCY TRANSFER RECEIPT

Name Of Money Transfer Agent Amount

Purchased:

(in original currency, e.g. US\$, GBP, ZAR) Auction Rate:

Form of Payout:

(in local currency; foreign currency; traveller's cheques; bank draft; etc)

Amount of Pay-out: Source Country:

Recipient's Name

(optional)

Recipient's Signature

Money Transfer Agent Official Stamp

Money Transfer Agents are authorised to receive foreign currency remittances from abroad and make Payouts to beneficiaries and issue this receipt on behalf of the Reserve Bank, in terms of Exchange Control (Money Transfer Agencies), Order, 2004

Third Schedule (Section 12 (3))

MINIMUM EQUIPMENT AND STATIONERY REQUIREMENTS OF MONEY TRANSFER AGENCIES

1. A sign clearly visible to customers of the money transfer agency bearing the name of the agency.
2. . . . .

[Repealed by SI 81A of 2004 with effect from the 6th April 2004]

3. A money deposit safe.
4. Adequate computer equipment, telephones and telefacsimile machines to facilitate the efficient processing of transactions, record keeping and reporting.
5. Official stamps made to Reserve Bank specifications.
6. A rate-board showing the daily auction exchange rates for any pay-outs in local currency.

[Substituted by SI 81A of 2004 with effect from the 6th April 2004]

Fourth Schedule (Section 13 (1) (b))

**FOREIGN CURRENCY WEEKLY RETURN-MONEY TRANSFER AGENCY**

E/C FORM MT 1

Money Transfer Agency

Exchange Authority Number

Month of Return

Date of Submission

Date of Receipt      Beneficiary      Amount Received      Date of Payout  
Form of Payout in Foreign  
Currency

Cash      ZW\$

Paid      Auction

Rate

**DECLARATION BY MONEY TRANSFER AGENCY**

The Money Transfer Agent declares that the information contained in this form is, in its entirety, true and correct. This declaration is made in compliance with the provisions of Section 41 of the Exchange Control Regulations Statutory Instrument 109 of 1996. The Money Transfer Agent acknowledges that, providing false information is breach of Paragraph (b) of Subsection (1) of Section 5, of Exchange Control Act *Chapter 22:05* and doing so will render me liable to prosecution under the Act.

Authorised Signatory,

Money Transfer Agency

Authorised Signatory,

Money Transfer Agency

[Substituted by SI 81A of 2004 with effect from - the 6th April 2004]

**EXCHANGE CONTROL REVIEW COMMITTEE DECISION**

[Repealed by SI 81A of 2004 with effect from the 6th April 2004]

on 5.