

## Statutory instrument 131 of 2008

### Exchange Control (Foreign Exchange Licensed Shops) Order, 2008

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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 has made the following order:—**

#### *1. Title*

This order may be cited as the Exchange Control (Foreign Exchange Licensed Shops) Order, 2008.

#### *2. Interpretation*

In this Order—

“basic commodities”, for the purposes of section 5(1), means the following commodities that are locally manufactured, produced or processed, namely, mealie-meal, milk (fresh or powdered), bread, eggs, cooking oil, sugar, salt, medicines, school uniforms, exercise books, sanitary pads, margarine, soap, toothpaste or any other locally manufactured, produced or processed commodity notified in a direction by the Reserve Bank to local manufacturers and licensed operators;

“corporate entity” means a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*];

“deemed export proceeds” means money received or receivable from the sale of foreign commodities in accordance with this order, which proceeds are subject to the foreign currency surrender and retention requirements embodied in the orders and directions issued from time to time by the Reserve Bank in terms of the principal regulations and the Exchange Control (General) Order, 1996;

“foreign commodity” means a commodity wholly manufactured, produced or processed outside Zimbabwe;

“foreign currency” means the United States Dollar, South African Rand, Botswana Pula and the British Pound;

“licensed operator” means the specified registered operator who is licensed under this order to sell foreign commodities in foreign currency;

“commodities” means wares, merchandise, produce and, generally, corporeal movable things of any description;

“licence” means a licence issued in terms of section 3(1);

“petroleum undertaking” means any “oil company” or “petroleum product outlet” as defined in the Control of Goods (Petroleum Products Prices) Order, 2003, published in Statutory Instrument 97 of 2003;

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

“registered operator” means a person registered as an operator in terms of the Valued Added Act [*Chapter 23:12*];

“shop” means premises licensed or required to be licensed in terms of the Shop Licences Act [*Chapter 14:17*];

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

“specified registered operator” means a corporate entity that is the operator of—

- (a) a shop; or
- (b) a petroleum undertaking.

### **3. *Licensing of specified registered operators***

(1) Notwithstanding section 4(1) of the principal regulations a specified registered operator wishing to import any foreign commodity for the purpose of selling it locally in foreign currency shall apply to the Reserve Bank through his or her authorised dealer for a licence in accordance with this order.

(2) An application to be licensed in terms of subsection (1) shall be supported by the documentation specified in Form FOLIWARS 0001A.

(3) The security deposit that is required in Form FOLIWARS 001A to be lodged with the Reserve Bank in connection with the application to be licensed shall—

- (a) be paid no later than ninety days of the date of the issuance of the licence if the application is successful; and
- (b) be refunded upon expiry of the licence to the licensed operator, if the operator has substantially complied to the satisfaction of the Reserve Bank with all the provisions of this order applicable to the operator.

(4) Failure to lodge the security deposit referred to in subsection (3) with the Reserve Bank within the time stipulated shall result in the revocation of the licence:

Provided that the Reserve Bank may, for good cause shown by the licensed operator, allow a longer period within which the operator must pay the deposit.

(5) Notwithstanding the date when an application to be licensed in terms of subsection (1) is approved, every licence shall expire on the 31st December, 2010.

### **4. *Pre-opening inspection requirements***

(1) No licensed operator shall commence operations as such before the Reserve Bank has carried out a pre-opening inspection of the intended business premises and has approved commencement of operations.

(2) Every licensed operator shall—

(a) be required to have the following on its premises—

- (i) at least one counterfeit detecting machine for each foreign currency proposed to be received in payment for the commodities sold by the operator;
- (ii) one or more cash registers with the ability to print receipts which itemize the commodities sold and their prices in the appropriate foreign currency;
- (iii) a secure safe, that is, a strong room or metal container provided with a secure lock, for the safekeeping of deemed export proceeds;
- (iv) distinctive signage in the form required by the Reserve Bank outside the premises indicating that the operator is a licensed operator;
- (v) adequate filing and documentation facilities that will enable the speedy inspection by Reserve Bank inspectors of all documentation related to the operations of the licensed operator;

and

- (b) where it sells or intends to sell commodities that are not foreign commodities in addition to foreign commodities, be divided into clearly demarcated compartments or divisions in compliance with the requirements of section 5(1);
- (c) display its licence in a conspicuous place visible to the public.

(3) The requirements specified under subsection (2) are continuing requirements and must be complied with at all times during the continuance of the licence.

### **5. *Sale of commodities to licensed operators by local manufacturers***

(1) A local manufacturer of any commodity, other than a basic commodity, may sell such commodity to a licensed operator in foreign currency.

(2) The foreign currency proceeds earned by a local manufacturer referred to in subsection (1,) shall be deposited into a corporate foreign currency account held by such manufacturer with an authorised dealer and shall be treated as deemed export proceeds.

(3) Whenever a local manufacturer of any commodity sells such commodity to a licensed operator in foreign currency, the local manufacturer shall—

- (a) make the relevant deposit of the deemed export proceeds in terms of subsection (2) within 24 hours of the sale:

Provided that if no payment for the commodities is made to the local manufacturer on the same day as the commodities are delivered to the licensed operator, the special form CD1 shall be acquitted no later than seven days from the date of delivery; and,

- (b) complete and deliver to its authorised dealer together with the deposit a special CD1 form.

(4) If a local manufacturer of any commodity, other than a basic commodity, sells such commodity to a licensed operator in Zimbabwe currency, the operator shall sell that commodity in Zimbabwe currency.

#### **6. Pricing, sale and display of commodities by licensed operators**

(1) A licensed operator which sells either or both of the following classes of commodities—

(a) basic commodities;

(b) commodities referred to in section 5(4), in addition to foreign commodities, shall sell the commodities referred to in paragraph (a) and (b) in Zimbabwe dollars in a clearly demarcated compartment or division that is separate from the compartment or division in which foreign commodities are sold.

(2) A licensed operator shall sell its foreign commodities in foreign currency to the public:

Provided that any unsold perishable stock of foreign commodities may, subject to full disclosure of the relevant particulars in or together with EC Form (FOLIWAR-08), be transferred to the appropriate compartment or division of the operator to be sold to the public in Zimbabwe dollars.

(3) A licensed operator shall display the prices of its foreign commodities—

(a) in a manner that is conspicuous to the public; and

(b) in all of the foreign currencies specified in the definition of “foreign currency”.

#### **7. Designation of foreign currency earnings by licensed operators**

(1) Foreign currency proceeds earned by a licensed operator from its sale of foreign commodities shall be treated as deemed export proceeds.

(2) Every licensed operator shall open or operate a Special Foreign Currency Account with an authorised dealer for purposes of depositing its deemed export proceeds.

(3) The portion of a licensed operator’s deemed export proceeds allowed to be retained in its foreign currency account may be expended by the operator in any way it deems fit, including the importation of foreign commodities in replenishment of its stocks.

#### **8. Deposit of deemed export proceeds and submission of documentation therewith**

(1) A licensed operator shall, no later than 1100 hours on the day following that on which the deemed export proceeds were earned—

(a) deposit into its Special Foreign Currency Account the deemed export proceeds; and

(b) deliver to the authorised dealer together with such deposit banking sheet in the form Banking Sheet (FQLIWAR-08) itemising the deemed export proceeds by the appropriate foreign currency.

(2) A licensed operator shall, no later than 0900 hours each Monday deliver to the nearest Exchange Control Officer resident to the premises of the licensed operator—

(a) copies of all the Banking Sheets (FOLIWAR-08) delivered to its authorised dealer in the previous week; and

(b) a weekly sales declaration for the previous week in EC Form FOLIWAR-08.

(3) Deemed export proceeds received on Saturdays, Sundays or public holidays shall be deposited on the following Monday or next business day, whichever is applicable.

#### **9. No derogation from other laws governing licensed operators**

Nothing in this order shall derogate from any other law governing the operations of a licensed operator.

#### **10. Forms**

In terms of Section 5 (2) of the Interpretation Act [*Chapter 1:01*], Forms FOLIWAR-001A, Banking Sheet (FOLIWAR-08), EC Form FOLIWAR-08 and the special CD 1 form are not published in these regulations, but may be inspected and obtained free of charge at the offices of the Reserve Bank at 80, Samora Machel Avenue, Harare, or 93, Leopold Takawira Avenue, Bulawayo, or at any of the offices of a resident Exchange Control Officer in any province.

#### **11. Offences and penalties**

Any person who—

(a) sells foreign commodities in any currency other than the Zimbabwe dollar without being licensed as a licensed operator in terms of this order; or

(b) being a local manufacturer, sells a basic commodity to any person, whether or not a licensed operator, in foreign currency; or

(c) contravenes section 4(3), 5(3) or (4), 6(1) or (3), 7(2), 8(1) or (2); or

(d) makes any statement or supplies any information for the purposes of this order which he or she knows is false or has no reason to believe is true; shall be guilty of an offence and liable to the penalties referred to in section 5 of the Act.