# Statutory Instrument 25 of 2005

**Exchange Control (Platinum Producers) Order, 2005**

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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 (Platinum Producers) Order, 2005.

## 2. Interpretation

(1) In this order—

“approved” means approved by the Reserve Bank;

“business day” means any day other than a Saturday, a Sunday or a public holiday; “collection account” means a foreign currency account opened in terms of section 4(1).

“deal”, in relation to platinum, includes to sell, barter, pledge or exchange platinum, or to offer or expose platinum for sale, barter, or exchange;

“debt service coverage account” means the account established with the Reserve Bank in terms of section

4(2)(*b*);

“dividend sinking fund account” means the account established with the Reserve Bank in terms of section

4(2)(*a*);

“managing bank” means a banking institution with which a platinum producer has opened a collection account;

“operating account” means the account established with the Reserve Bank in terms of section 4(2)(*c*); “platinoid metal” means osmium, palladium, rhodium or ruthenium;

“platinum” means—

1. platinum or a platinoid metal in any form whatsoever; or
2. any article or substance containing platinum or a platinoid metal; but does not include a manufactured article which is an article of commerce, an item of jewellery or a work of art;

“platinum produner” means a person who—

1. in Zimbabwe mines or extracts platinum or a platinoid metal; or
2. carries on business, whether alone or in conjunction with any other business, of exporting platinum or a platinoid metal from Zimbabwe;

“the Act” means the Exchange Control Act [*Chapter 22:05*] and any regulation, order or direction made under that Act.

(2) Words importing male or female persons include corporate bodies.

## 3. Effects of this order

1. This order shall have effect notwithstanding any licence, permit, authority, dispensation or permission granted or issued under the Act, the Gold Trade Act [*Chapter 21:03*], the Mines and Minerals Act [*Chapter 21:05*], the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*} or any other enactment prior to the date of commencement of this order.
2. Nothing in this order shall be construed as relieving a platinum producer of the need to obtain any licence, permit, authority or permission under the Act, the Gold Trade Act [*Chapter 21:03*], the Mines and Minerals Act [*Chapter 21:05*], the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*] or any other enactment.

## 4. Accounts to be opened by platinum producers and managing banks

1. Not later than the 28th February, 2005, every platinum producer shall open a foreign currency account, to be known as a collection account, with a banking institution registered under the Banking Act [*Chapter 24:20*] and carrying on business in Zimbabwe as a commercial bank or a merchant bank.
2. Where a platinum producer has opened a collection account with a managing bank in terms of subsection (1), the managing bank shall without delay open the following accounts with the Reserve Bank in the platinum producer’s name—
3. a dividend sinking fund account; and
4. a debt service coverage account; and
5. an operating account; and the platinum producer shall provide the managing bank with whatever authority is necessary to enable it to open the accounts specified in paragraphs (*a*), (*b*) and (*c*).

## 5. Collection account

(1) A platinum producer who has opened a collection account in terms of section 4 shall deposit into the account all foreign currency he or she receives— (*a*) as proceeds from—

1. the mining or extracting of platinum in Zimbabwe; or
2. the beneficiation or processing, whether in or outside Zimbabwe, of platinum mined or extracted in Zimbabwe; or
3. the export of platinum from Zimbabwe; or
4. any dealings in platinum that has been mined or extracted in Zimbabwe; or
5. the mining, extracting, beneficiation, processing or sale of gold that is carried on in conjunction with or incidentally to the platinum producer’s mining or extraction of platinum

and

(*b*) by way of loans in connection with the mining or extraction of platinum; and (*c*) where the platinum producer is a company, for the acquisition of shares in the company.

1. Within two business days after foreign currency has been deposited into a platinum producer’s collection account, the platinum producer shall cause the currency (other than any currency attributable to the proceeds referred to in subsection (1)(*a*)(v), which shall be sold within those two business days to the Reserve Bank) to be transferred to his or her dividend sinking fund account, debt service coverage account or operating account, as may be appropriate.
2. The Reserve Bank and the managing bank concerned shall take whatever steps are necessary to facilitate the transfer of foreign currency into the appropriate accounts in terms of subsection (2).

## 6. Dividend sinking fund

1. Moneys transferred to a platinum producer’s dividend sinking fund shall be for the payment, subject to the Act, of dividends to the platinum producer’s shareholders or investors who are foreign residents, and subject to subsection (2) no moneys shall be withdrawn or paid from such an account except for that purpose and in accordance with the Act.
2. If the Reserve Bank is satisfied that a platinum producer requires funds for the conduct or expansion of his or her operations and that such funds cannot be provided from his or her operating account, the Reserve Bank may, on request by the platinum producer, transfer the necessary funds from his or dividend sinking fund account to his or her operating account.

## 7. Debt service coverage account

1. Moneys transferred to a platinum producer’s debt service coverage account shall be for the repayment, subject to the Act, of approved loans, and subject to subsection (3) no moneys shall be withdrawn or paid from such an account except for that purpose and in accordance with the Act.
2. The moneys held in a platinum producer’s debt service coverage account at any one time shall not exceed the platinum producer’s liability to repay approved loans, or instalments on approved loans, over the following three months.
3. If the Reserve Bank is satisfied that a platinum producer requires funds for the conduct or expansion of his or her operations and that such funds cannot be provided from his or her operating account, the Reserve Bank may, on request by the platinum producer, transfer the necessary funds from his or her debt service coverage account to his or her operating account.

## 8. Operating account

1. All foreign currency in a platinum producer’s collection account that is not transferred to the platinum producer’s dividend sinking fund account or debt service coverage account shall be transferred to his or her operating account in terms of section 5 (2).
2. Subject to the Act and subsection (3), foreign currency transferred to a platinum producer’s operating account may be used for meeting the producer’s day-to-day operating expenses, including— (*a*) paying suppliers and creditors; and
3. meeting operating costs; and
4. funding expansion programmes; and
5. paying business travel allowances; and
6. making any other payments that are authorised or permitted under the Act.

(3) If any foreign currency remains in a platinum producer’s operating account more than forty-five days after it was transferred to the account, the Reserve Bank shall—

(*a*) convert it into Zimbabwean currency at the rate fixed at the most recent auction conducted in terms of the Exchange Control (Currency Exchange) Order, 2004 (Statutory Instrument 9 of 2004); and (*b*) cause the Zimbabwean currency to be p aid without delay to the platinum producer.

## 9. Duties of managing bank and Reserve Bank regarding accounts

1. All instructions and requests by a platinum producer for payments to be made from the producer’s dividend sinking fund account, debt service coverage account or operating account shall be made to the Reserve Bank through the producer’s managing bank, and, subject to the Act and this order, the Reserve Bank shall give effect to any such instruction or request without delay.
2. A platinum producer’s managing bank shall undertake monthly reconciliations of the producer’s collection account, dividend sinking fund account, debt service coverage account and operating account and shall submit to the Reserve Bank a return of each such reconciliation within seven days after the end of the month being reported on.

## 10. Prohibition against keeping of off-shore accounts by platinum producers

On and after the 28th February, 2005, no platinum producer shall open or maintain an account with a bank or financial institution outside Zimbabwe for the purpose of receiving or making payments in connection with— (*a*) the mining or extracting of platinum in Zimbabwe; or

1. the beneficiation or processing, whether in or outside Zimbabwe, of platinum mined or extracted in Zimbabwe; or
2. the export of platinum from Zimbabwe; or
3. any dealings in platinum that has been mined or extracted in Zimbabwe.

## 11. Supplementary directions

1. The Reserve Bank may supplement this order with written directions given to platinum producers and managing banks in terms of section 35 of the principal regulations.
2. Directions under subsection (1) may provide for—
3. the furnishing of returns and information by platinum producers and managing banks;
4. exempting any platinum producer or managing bank from any provision of this order;

Provided that any direction given under this paragraph, together with the reasons for the exemption, shall be published by the Reserve Bank in the Gazette no later than thirty days after the direction is given;

1. condoning any failure to do anything required to be done by this order or any direction within a certain period, or extending any period within which anything is required to be done by this order or any direction;
2. any other matter which, in the opinion of the Reserve Bank, is necessary or desirable to give effect to this order.

## 12. Assignment of functions of Reserve Bank

1. Any function of the Reserve Bank under this order may be exercised on behalf of the Bank by any officer or employee of the Bank who has been authorised to do so by the Governor or a Deputy Governor of the bank.
2. Authorisation in terms of subsection (1) may be given to a particular officer or employee or to officers or employees in a particular division or department of the Reserve Bank, and may be given absolutely or subject to conditions.

## 13. Transitional provision

Any platinum producer who holds in an account with a bank or financial institution outside Zimbabwe any funds arising from—

1. the mining or extracting of platinum in Zimbabwe; or
2. the beneficiation or processing, whether in or outside Zimbabwe, of platinum mined or extracted in Zimbabwe; or
3. the export of platinum from Zimbabwe; or
4. any dealings in platinum that has been mined or extracted in Zimbabwe; shall, on or before the 28th February,2005,cause those funds to be transferred to the collection account by him in terms of section 5.