GOVERNMENT NOTICE NO. 14

EXCHANGE CONTROL ACT

(CAP. 45:01)

EXCHANGE CONTROL (REPATRIATION OF EXPORT PROCEEDS AND OPERATIONS OF FOREIGN CURRENCY DENOMINATED ACCOUNTS) REGULATIONS, 2022

IN EXERCISE of the powers conferred by section 3 of the Exchange Control Act, I, SOSTEN ALFRED GWENGWE, Minister of Finance and Economic Affairs, make the following Regulations—

Citation

1. These Regulations may be cited as the Exchange Control (Repatriation of Export Proceeds and Operations of Foreign Currency Denominated Accounts) Regulations, 2022.

Definition

2. In these Regulations, unless the context otherwise requires—

"authorized dealer" has the meaning ascribed thereto in the Exchange Control Regulations, and "authorized dealer bank" shall be construed accordingly;

"bank" has the meaning ascribed thereto in the Banking Act; Cap. 44:01

"foreign currency denominated account" means a bank account maintained in foreign currency in a bank that operating in Malawi;

"resident" means a person who has ordinarily resided in Malawi continuously for a period of not less than twelve months; and

"the Bank" means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act. Cap. 44:02

Objective

3. The objectives of these Regulations are to—

(*a*) guide operations of foreign currency denominated accounts;

(*b*) increase the circulation of scarce foreign currency resources in the Malawi economy; and

(*c*) ensure timely repatriation of all export proceeds to Malawi.

Application

4.—(1) The requirement for conversion of foreign exchange shall not apply to embassies, international and non-governmental organizations operating foreign currency denominated accounts that are fully funded from external sources.

(2) The requirements on export proceeds shall only apply to exporters of goods and services from Malawi.

Operations of foreign currency denominated accounts

5.—(1) Authorized dealer banks shall be allowed to open foreign currency denominated accounts for exporters of goods, services and other customers receiving foreign exchange on a regular basis.

(2) Notwithstanding subregulation (1), the Bank reserves the right to direct authorized dealer banks to close the foreign currency denominated accounts that are not operating in line with these Regulations and order the immediate liquidation of the balance into Malawi Kwacha by the holding bank.

(3) Foreign currency denominated account holders shall not credit their foreign currency denominated accounts with foreign exchange purchased from the domestic foreign exchange market.

Export proceeds and foreign exchange

6. Export proceeds or foreign exchange accrued to residents of Malawi shall—

(*a*) be received in Malawi within one hundred and twenty days from the date of exportation of goods or services; and

(*b*) be repatriated to Malawi and disposed of in accordance with these Regulations.

Mandatory conversion of export proceeds

7.—(1) An authorized dealer bab nk shall inform the receiver of export proceeds or foreign currency regarding the receipt of the export proceeds or foreign exchange, as the case may be, within twenty-four hours or the following working day in case of a weekend of receipt of the proceeds or foreign currency.

(2) A person who has received export proceeds or foreign currency in accordance with these Regulations shall, within two working days after the date he is informed about the receipt of the export proceeds, be required to sell thirty per cent of the export proceeds or foreign currency to the Bank, through the receiving authorized dealer bank.

(3) Where an authorized dealer bank has not received any instructions from a receiver of export proceeds or foreign currency, after the expiry of the two working days referred to under subregulation (2), the authorized dealer bank shall be required to convert a prescribed percentage of the proceeds, at the prevailing buying exchange rate of that authorized dealer bank.

(4) After a conversion of foreign currency under this regulation is complete, the receiver of the export proceeds or foreign currency may have the remaining foreign currency credited to a foreign currency denominated account maintained with any bank in Malawi.

Submission of reports

8. In order to ensure compliance, an authorized dealer bank shall be required to submit monthly reports to the Bank before the 15th day of the subsequent month, detailing total amounts of foreign currency purchased, foreign currency balances and any other relevant information with regard to foreign currency transactions as may be prescribed by the Bank.

Offences and penalties

9.—(1) A person who contravenes regulations 5 and 6 commits an offence and shall, upon conviction, be liable to—

(*a*) a fine proportionate to the value of the transaction; and

(*b*) imprisonment for five years.

(2) Any person who contravenes regulations 7 and 8 commits an offence and shall, upon conviction, be liable to—

(*a*) closure of the foreign currency denominated account and immediate liquidation of the balance into Malawi Kwacha by the holding bank;

(*b*) in the case of an individual, including the person who made the decision and the one who authorized the transaction, a fine not exceeding seven million Kwacha and imprisonment for four years; and

(*c*) in the case of a body corporate, there shall be no limit to the fine which may be imposed in respect of the offence thereof.

Made this 27th day of May, 2022.

S. A. GWENGWE
Minister of Finance and Economic Affairs

CORRIGENDUM

Act No. 5 of 2022—Land (Amendment) Act, 2022, published in the *Gazette* dated 31st March 2022, in section 39, by adding the word "not" betwen the words "has" and "commenced" which appear in the second line of subsection (1). The word "not" was inadvertently omitted.