

GOVERNMENT NOTICE No. 4

EXCHANGE CONTROL ACT

(CAP 45:01)

EXCHANGE CONTROL (FOREIGN EXCHANGE BUREAUX)
REGULATIONS, 2007

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FIRST SCHEDULE

SECOND SCHEDULE

IN EXERCISE of the powers conferred by section 3 of the Exchange Control Act, I, GOODALL E. GONDWE, Minister of Finance, make the following Regulations—

Citation and commencement 1. These Regulations may be cited as the Exchange Control (Foreign Exchange Bureaux) Regulations, 2007, and shall come into operation on 1st May, 2007.

Interpretation 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;

Cap: 44:01 “bank” has the meaning ascribed thereto in the Banking Act;
“convertible currency” means any of the currencies specified in the First Schedule hereto and such other currency as the Bank may prescribe in its Guidelines;

“fit and proper test” means a measure, examination or test subjected by the Bank to an applicant of a foreign exchange bureau licence or proposed director of a foreign exchange bureau with the purpose of determining the integrity, competence, financial soundness, propriety and general capability of such applicant or director to operate or direct a foreign exchange bureau business;

“foreign currency” is used interchangeably with the expression “foreign exchange”;

“foreign exchange bureau” means a business enterprise licensed under Part II to carry on the business of buying and selling foreign currency;

“licence fee” means the fee for a foreign exchange bureau licence specified in regulation 8 (4) prescribed in these Regulations or in Guidelines issued by the Bank under these Regulations;

Cap. 44:02 “the Bank” means the Reserve Bank of Malawi established under the Reserve Bank of Malawi Act;

“these Regulations” includes any Guidelines issued by the Bank under these Regulations.

3. The Bank shall, in accordance with these Regulations, issue Guidelines for the establishment and operation of foreign exchange bureaux.

Guidelines for establishing foreign exchange bureaux

PART II—LICENSING OF FOREIGN EXCHANGE BUREAUX

4. A foreign exchange bureau may carry on the business of buying and selling foreign currency subject to the provisions of the Exchange Control Act, these Regulations and any other subsidiary legislation made under the Exchange Control Act.

Foreign exchange bureau business
Cap. 45:01

5.—(1) An institution which satisfies the requirements of these Regulations and wishes to carry on the business of a foreign exchange bureau may apply to the Bank for a licence to carry on such business.

Application to carry on a foreign exchange bureau business

(2) An applicant for a licence for a foreign exchange bureau shall have at the time of application—

(a) been registered in accordance with the Companies Act as a limited liability company;

Cap. 46:03

(b) be either an authorized dealer bank or other Financial Institution registered under the Banking Act; and

Cap. 44:01

(c) have an identifiable place of business which is accessible to the public and is, in the opinion of the Bank, suitable in all respects for the business of a foreign exchange bureau.

6. An application for a licence shall be in the form set out in the Second Schedule, addressed to the Bank, and shall—

Form of application and particulars

(a) state the name of the foreign exchange bureau;

(b) state the name and address of the applicant's bankers;

(c) specify the proposed place of business of the foreign exchange bureau; and

(d) be accompanied with the specimen signature of each director, or, as the case may be, each proprietor, of the proposed bureau.

7. In addition to the provisions of regulation 6, the directors and management of any proposed foreign exchange bureau shall undergo a fit and proper test as prescribed by the Bank from time to time.

Fit and proper test

8.—(1) The Bank shall, within ninety days of an application for a licence, consider the application and—

Foreign exchange bureau licence

(a) approve it if the Bank is satisfied that the applicant—

(i) has met the eligibility and competence requirements of the fit and proper test;

(ii) shall operate either as an extension of foreign exchange operations of an authorized dealer bank but limited to only selling and buying of foreign exchange for travel purposes; or as a subsidiary of an authorized dealer bank or other financial institution; and

(iii) has complied with the requirements of these Regulations;

or

(b) refuse to grant the licence if not so satisfied.

(2) The Bank shall, before granting a licence under this regulation, cause to be made, an inspection of the place of business of the proposed bureau by an authorized officer of the Bank for the purpose of ascertaining whether or not the premises comply with the requirements of these Regulations.

(3) The Bank shall, within seven days after the expiration of the period prescribed by subregulation (1), inform the applicant of its decision, giving reasons where the Bank refuses to grant a licence.

(4) Where the Bank approves an application for a foreign exchange bureau, it shall issue to the applicant a foreign exchange bureau licence in the prescribed form upon payment by the applicant to the Bank of a licence fee to be determined by the Bank from time to time.

(5) The Bank shall issue an exchange control circular to notify all authorized dealers of the licensing of a new foreign exchange bureau.

(6) The Bank shall issue a press release to the general public informing the public of any new foreign exchange bureau.

9. An institution issued with a foreign exchange bureau licence shall—

Minimum requirements on being issued a foreign exchange bureau licence

(a) prominently display, and at all times keep so displayed, a copy of the licence on its business premises;

(b) have identifiable employees of its foreign exchange bureau, by providing to the Bank their names, curriculum vitae, residential addresses, specimen signatures, and passport-size photographs;

(c) immediately inform the Bank of any change with regard to the composition of the employees;

(d) not permit any other person, other than those employees who have been registered with the Bank, to transact any business on behalf of the foreign exchange bureau;

(e) immediately on the commencement of the business of the foreign exchange bureau, open a foreign currency account, solely for the day to day operations of the foreign exchange bureau, with an authorized dealer bank and report that fact in writing to the Bank within fourteen days from the commencement of business; and

(f) maintain on the account opened pursuant to paragraph (e), a minimum balance as the Bank may, from time to time, prescribe in its Guidelines.

10.—(1) Each foreign exchange bureau or foreign exchange bureau branch shall be treated as autonomous for the purposes of licensing and operations.

Foreign exchange bureau licence not transferable

(2) A foreign exchange bureau licence shall neither be transferable nor assignable and no foreign exchange bureau shall operate as an agent of another foreign exchange bureau.

11.—(1) A foreign exchange bureau licence shall be valid for a period of twelve months from the date of issue and may be renewed for similar periods upon payment of the licence fee.

Duration and
renewal of a
foreign
exchange
bureau licence

(2) An application for renewal of a foreign exchange bureau licence, supported by a tax clearance certificate and other documents prescribed by the Bank in its Guidelines, shall be submitted to the Bank at least two (2) months before the expiry date of the foreign exchange bureau licence.

(3) At the expiration of its licence, a foreign exchange bureau shall forthwith cease operations, unless the licence has been renewed by the Bank.

(4) The renewal of a foreign exchange bureau licence shall be at the discretion of the Bank and shall be subject to satisfaction of all the requirements as provided in these Regulations and other relevant laws.

12.—(1) A foreign exchange bureau licence shall not be suspended except as provided in this regulation.

Suspension of
a foreign
exchange
bureau licence

(2) Where a foreign exchange bureau licence has been issued and it is subsequently found that it was issued as a result of a materially false or fraudulent representation supplied to the Bank by the proprietor of the foreign exchange bureau or any person acting under his instructions, the Bank shall give written notice to the foreign exchange bureau requesting it to show cause within a reasonable time specified in the notice why the licence should not be revoked.

(3) Where a foreign exchange bureau is in breach of any provision of these Regulations, the Bank shall give written notice to the foreign exchange bureau specifying particulars of the breach and requiring the foreign exchange bureau to show cause within thirty days why the licence of the bureau should not be revoked.

(4) Where the Bank deems it necessary, the notice given under subregulation (3) may be accompanied with an order suspending the operations of the bureau for a period to be determined by the Bank.

(5) Notwithstanding subregulation (4), the Bank may suspend the operations of the bureau by following suspension procedures as follows—

(a) carry out, or cause to be carried out, an instant audit of the foreign exchange bureau's books and registers in order to take stock of the bureau's cash balances, assets and other holdings;

(b) physical sealing of the premises and confiscation of the operating licence of the foreign exchange bureau; and

(c) in the case of a foreign exchange bureau which is a subsidiary of a bank or non-bank financial institution, order the blocking of the Malawi Kwacha and Foreign Currency Denominated Accounts of the foreign exchange bureau.

(6) The Bank may issue a press release notifying and alerting the general public against dealing with a foreign exchange bureau over the period of the bureau's suspension.

Procedure for
revocation

13.—(1) If—

(a) the Bank is not satisfied with the cause shown under Regulation 12; or

(b) in the opinion of the Bank, the conduct of a foreign exchange bureau is detrimental to the success of the whole or any aspect of the foreign exchange bureau scheme under these Regulations,

the Bank may revoke the licence issued in respect of the foreign exchange bureau.

(2) In addition to procedures for suspension of foreign exchange bureau operations under regulation 12, revocation of a foreign exchange bureau licence shall include—

(a) full payment of any fines to which the bureau or its directors may be liable under these Regulations; and

(b) winding up the foreign exchange bureau through normal liquidation process of a private limited company.

(3) If, in the opinion of the Bank, the conduct of a foreign exchange bureau involves a slight first-time misdemeanor, the Bank shall issue a warning, cautioning the bureau of suspension or revocation for repeated offences.

PART III—FOREIGN EXCHANGE BUREAU OPERATIONS

Operations of a
foreign
exchange
bureau

14.—(1) A foreign exchange bureau licence shall authorize the holder to engage in spot transactions only.

(2) A foreign exchange bureau may deal in any currencies and, subject thereto and to the restrictions specified in subregulation (4), may engage in—

(a) buying and selling foreign currency in cash;

(b) buying travellers cheques and other similar instruments of foreign currency;

(c) selling travellers cheques and other similar instruments of foreign currency on agency basis on behalf of authorized dealer banks.

(3) Every foreign exchange bureau shall issue to a buyer a receipt in the prescribed form giving particulars of the customer for every transaction where the bureau—

(a) buys travellers cheques and other similar instruments of foreign currency;

(b) buys cash foreign currency equivalent to one thousand United States Dollars (US\$1,000) and above, or any other amount as prescribed by the Bank from time to time; or

(c) sells travellers cheques under subregulation (2) (c) on agency basis.

(4) A foreign exchange bureau, whether owned by a bank or not, shall not operate or be regarded as a bank and shall not operate or be regarded as a bank and shall not perform any of the following functions—

- (a) open foreign exchange or Malawi Kwacha accounts for any customer;
- (b) establish a letter of credit; or
- (c) perform any other banking business to sell or purchase foreign exchange for any other purposes except travel for holiday, business and medical expenses.

15.—(1) No person shall—

Prohibited transactions

(a) deposit, or accept a deposit of, Malawi Kwacha, with a foreign exchange bureau with the intention of obtaining or supplying foreign exchange equivalent thereof wholly or in part at a future date;

(b) deposit, or accept a deposit of, foreign currency, with a foreign exchange bureau with the intention of obtaining or supplying the Malawi Kwacha equivalent thereof either wholly or in part at a future date;

(c) refuse to sell foreign currency to any customer if such foreign currency is available at the foreign exchange bureau;

(d) fail to issue an accurate official receipt to cover purchase and sale of foreign currency at a foreign exchange bureau;

(e) issue an official foreign exchange bureau receipt for any purpose other than to cover the purchase and sale of foreign currency by the issuing foreign exchange bureau; or

(f) buy or sell foreign exchange which they know to be counterfeit or not legal tender in the country of issue.

16.—(1) No foreign exchange bureau shall be involved in transferring funds whether directly or indirectly in and out of the country in whatever manner on behalf of itself or any other parties.

Transferring of funds

(2) A person who contravenes subregulation (1) commits an offence and shall, on conviction, in addition to any other penalty imposed, be liable to the automatic revocation of its foreign bureau licence.

17.—(1) Every foreign exchange bureau shall quote its foreign exchange buying and selling rates, which rates shall be prominently displayed in the premises of the foreign exchange bureau.

Buying and selling rates

(2) A foreign exchange bureau shall prominently display at all times in its premises, a notice informing its customers that the customers are entitled to be issued with an official receipt in the prescribed form for any purchase or sale of foreign currency made by them.

(3) A foreign exchange bureau shall report its buying and selling rates to the Bank as the Bank may require in its Guidelines.

Foreign
currency
accounts

18. A foreign exchange bureau shall maintain a foreign currency account with an authorized dealer bank for the following purposes—

(a) to receive inward foreign currency transfers on its own account; and

(b) for the settlement of its local foreign currency transactions.

Transfer from
foreign
currency
account

19. A foreign exchange bureau shall not use its foreign currency account maintained in accordance with regulation 18 to transfer money outside Malawi, except in accordance with these Regulations.

Foreign
exchange
transactions
to be
confidential

20.—(1) All transactions conducted by a foreign exchange bureau shall be done and maintained in the strictest confidence as between the foreign exchange bureau and the other parties to the transactions and the foreign exchange bureau shall not make any disclosure thereof except as required by law.

(2) No information or document other than the information or document required for the completion of the foreign exchange purchase or sale receipts shall be demanded by any foreign exchange bureau.

Registers and
records

21.—(1) Every foreign exchange bureau shall maintain—

(a) a register of purchases of foreign currency in cash;

(b) a register of sales of foreign currency in cash;

(c) a register of purchases of travellers cheques; and

(d) a register of sales of travellers cheques.

(2) Every foreign exchange bureau shall maintain adequate accounting records to enable it prepare its final accounts.

(3) All registers and other records of a foreign exchange bureau shall be made available for inspection by authorized officers of the Bank.

Foreign
exchange float

22.—(1) A foreign exchange bureau may not maintain foreign exchange float in excess of fifty thousand United States Dollars (US\$50,000) of any stockpiled notes held.

(2) A foreign exchange bureau shall sell any foreign exchange balance in excess of fifty thousand United States Dollars (US\$50,000) to an Authorized Dealer in foreign exchange.

Inspection of
bureaux

23. The Bank shall, at least once in each licence year of a foreign exchange bureau, examine the operations of a foreign exchange bureau and may do so at any time as the Bank considers necessary.

PART IV—FOREIGN CURRENCY FOR TRAVEL

Personal travel
allowances

24. A person who wishes to travel outside Malawi may purchase from a foreign exchange bureau for each trip, such holiday, business, or medical allowances whose limits shall be prescribed by the Bank from time to time, and shall, if so required at the exit point, furnish the foreign currency sale allowance receipt in respect of the foreign currency purchased.

25. The Bank shall, from time to time, review the limits of the personal travel allowances and shall so advise through press releases to the general public and circulars to the foreign exchange bureaux.

Review of allowances

PART V—MISCELLANEOUS

26.—(1) Every foreign exchange bureau shall submit to the Bank, in the prescribed form, the following returns—

Returns

(a) a weekly return of its foreign exchange position, which return shall be submitted not later than 4.00 p.m. of every working Monday of the week; and

(b) a monthly return of total purchases and sales of foreign currency, which return shall be submitted not later than five working days after the end of the month for which the return is being made.

27.—(1) The Bank may, at any time, cause an inspection to be made by an officer of the Bank of any foreign exchange bureau and of its books of accounts.

Inspection of books of accounts of a foreign exchange bureau

(2) It shall be the duty of every employee of a foreign exchange bureau, within a reasonable time, to produce to the officer making an inspection under subregulation (1) all such books, accounts and other documents in the power or custody of the foreign exchange bureau and to furnish that officer with such statements or information relating to the affairs of the foreign exchange bureau as he may require.

28. Any person who—

Offences

(a) fails to maintain a foreign currency account contrary to regulation 9 (e);

(b) transfers or assigns a foreign exchange bureau licence contrary to regulation 10;

(c) deals in foreign currency in contravention of regulation 14;

(d) fails to credit the account of a foreign exchange bureau upon receiving remittances from outside Malawi on behalf of the foreign exchange bureau;

(e) fails to submit a weekly or monthly return contrary to regulation 26; and

(f) contravenes any of these Regulations,

commits an offence and shall, on conviction, be liable to a fine of five hundred thousand Kwacha (K500,000) or twice the value of the transaction, whichever is the higher amount, and to imprisonment for ten (10) years; and, where applicable, the court convicting such person shall, in addition, order that the funds involved in the transactions or otherwise connected therewith be forfeited to the Government.

29. Nothing in these Regulations shall be construed as prohibiting or in any way restricting—

Right of the Bank, etc., to buy and sell foreign currency

(a) the Bank from buying or selling foreign currency from or to any foreign exchange bureau or person; or

(b) any bank authorized to operate as an authorized dealer under the Exchange Control Regulations from continuing to operate as such.

Guidelines
generally

30.—(1) The Bank may, from time to time, issue Guidelines for the operation of these Regulations and may at any time revise the Guidelines so issued.

(2) The Bank may, in the Guidelines issued under subregulation (1) prescribe any particulars or matter, including forms, it deems necessary or expedient for the operation, or use in the operation, of these Regulations and any particulars or matter so prescribed shall be deemed to be particulars or matter required under these Regulations.

Revocation of
the Exchange
Control (Forex
Bureaux and
Foreign
Exchange
Fixing Sessions)
Regulations,
sub. leg. p. 25

31. The Exchange Control (Forex Bureaux and Foreign Exchange Fixing Sessions) Regulations are hereby revoked.

FIRST SCHEDULE

reg. 2

AUTHORIZED CURRENCIES FOR TRANSACTIONS BY A FOREIGN EXCHANGE BUREAU

Canadian Dollar
COMESA Dollar
EURO
French Franc
Japanese Yen
Pound Sterling
South African Rand
United States Dollar
Any currency of a Southern Africa Development Community (SADC) member state

SECOND SCHEDULE

reg. 6

Form of Application for a Foreign Exchange Bureau Licence

APPLICATION FOR A FOREIGN EXCHANGE BUREAU LICENCE

NOTES:

(a) To be completed by the company applying for a foreign exchange bureau licence and submitted in a sealed envelope to the Governor, Reserve Bank of Malawi;

(b) Copy of Certificate of Registration must be attached. All information provided on this Form shall be treated as confidential and shall be used only for the processing of the application.

- 1. Full name of applicant (*block letters*)
- 2. Postal address of applicant (*block letters*)
- 3. Full name(s) of applicant's banker(s) (*block letters*)
- 4. Location of proposed foreign exchange bureau:
 - (a) District
 - (b) City/Town
 - (c) Plot No. and Street
 - (d) Other information on location (if any)

5. Company Certificate of Registration No.

6. Full names and addresses of directors/proprietors—

	<i>Name</i>	<i>Title</i> <i>(e.g. Director or Proprietor)</i>	<i>Address</i>
1.
2.
3.

7. Appended hereto is a declaration by each of the above-named directors/proprietors as follows—

I, the undersigned, hereby declare that the above particulars are correct and that I undertake to operate the foreign exchange bureau in accordance with the Exchange Control (Foreign Exchange Bureaux) Regulations, and any other written law and Guidelines issued by the Reserve Bank of Malawi governing the operation of a foreign exchange bureau in Malawi.

Signature Date

Full Name

Designation

Witness's Signature

Name and address of Witness

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Made this 12th day of April, 2007.

(FILE NO. C 19/4/16)

GOODALL E. GONDWE
Minister of Finance

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