

GOVERNMENT NOTICE NO. 73

EXCHANGE CONTROL ACT

(CAP. 45:01)

EXCHANGE CONTROL (HOLDING FOREIGN CURRENCY DENOMINATED
ACCOUNTS AND MANDATORY CONVERSION OF FOREIGN CURRENCY
RECEIPTS) REGULATIONS, 2024

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

1. These Regulations may be cited as the Exchange Control (Holding Foreign Currency Denominated Accounts and Mandatory Conversion of Foreign Currency Receipts) Regulations, 2024. Citation
2. In these Regulations, unless the context otherwise requires— Interpretation

“authorized dealer” in respect of any transaction relating to foreign exchange, means a person licensed or authorized by the Bank to deal in foreign exchange;

“Bank” means the Reserve Bank of Malaŵi established under section 3 of the Reserve Bank of Malaŵi Act; Cap.44:02

“bank” has the meaning as ascribed to that term in the Banking Act; Cap. 44:01

“contract party” means any party established or operating in Malawi that is in contract with an NGO or international NGO through a partnership or service agreement;

“foreign currency denominated account” means a bank account maintained in foreign currency in a bank operating in Malaŵi;

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“government agency” has the meaning ascribed thereto under the Public Finance Management Act;

“holding foreign currency denominated account” means an account maintained by a public body operating donor funded projects, a research institution receiving grants and donations, a public university receiving donor funds for research purposes or an incorporated trustee, opened and maintained at the Bank and used solely for the purpose of receiving and holding public money in foreign currency;

“incorporated trustees” means trustees of any charity for religious, educational, literary, artistic, scientific or public charitable purposes or of any association of persons for any religious, educational, literary, artistic, scientific, social, athletic or charitable purpose or for any purpose which in the opinion of the Minister is for the benefit or welfare of the inhabitants of Malawi or any part, who have either been issued or not issued with a certificate of incorporation of the trustees of such charity or association as a corporate body;

Cap. 5:05

“international NGO” has the meaning ascribed thereto under the Non-Governmental Organizations Act;

Cap. 5:05

“NGO” has the meaning ascribed thereto under the Non-Governmental Organizations Act;

Cap. 5:05

“public benefit purpose” has the meaning ascribed thereto under the Non-Governmental Organizations Act;

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“public body” has the meaning ascribed thereto under the Public Finance Management Act;

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“public money” has the meaning ascribed thereto under the Public Finance Management Act.

“public university” means any institution that provides higher education, established under the laws of Malawi and is wholly or partially funded by the Government;

“research institution” means an institution registered under the Laws of Malawi with a mandate to undertake research and development activities in Malawi and includes Government departments, local councils and public institutions; and

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“statutory body” has the meaning ascribed thereto under the Public Finance Management Act.

Application

3. These Regulations shall apply to—

(a) public bodies, research institutions and public universities operating donor funded projects, receiving grants and donations, receiving donor funds for research purposes, or in general, operating foreign currency denominated accounts that are fully funded from external sources;

(b) NGOs, international NGOs, contract parties and incorporated trustees who receive funding from sources outside Malawi through authorized dealer banks;

(c) charities and religious organizations which receive funding, donations or grants from outside Malawi; and

(d) authorized dealer banks who maintain foreign currency denominated accounts for public bodies, research institutions, public universities, NGOs, international NGOs, contract parties and incorporated trustees which are credited with funding from sources outside Malawi.

4. The objectives of these Regulations are to provide for—

Objectives

(a) the opening and operations of holding foreign currency denominated accounts at the Bank;

(b) the mandatory conversion of holding foreign currency denominated account balances;

(c) mandatory conversion or retention ratio for non-governmental organisations, international non-governmental organisations and incorporated trustees; and

(d) offences related to transactions of holding foreign currency denominated accounts.

5.—(1) The Bank shall, for purposes of—

Holding foreign currency denominated accounts at the Bank Cap.44:02

(a) efficient and effective discharge of its foreign exchange management functions pursuant to the Reserve Bank of Malawi Act;

(b) ensuring that public bodies, research institutions, public universities, charities or religious institutions operating donor funded projects, receiving grants and donations, receiving donor funds for research purposes, or in general, operating foreign currency denominated accounts that are funded from external sources are not facilitating illegal foreign exchange dealings in Malawi; and

(c) ensuring that the Bank is able to monitor and confirm that funding from sources outside Malawi is only through foreign currency credited or deposited into the accounts of recipient institutions in Malawi,

facilitate the opening of foreign currency denominated accounts at the Bank for public bodies, research institutions, and public universities.

(2) Public bodies, research institutions, public universities, which operate donor funded projects, receive grants and donations, receive donor funds for research purposes, or in general, operate foreign currency denominated accounts that are funded from external sources, shall—

(a) open and maintain holding foreign currency denominated accounts at the Bank; and

(b) receive all their funding in foreign currency, including cash, by direct credit, or deposit, into the holding foreign currency denominated accounts opened and maintained at the Bank.

(3) An authorized dealer bank which currently holds foreign currency in an account belonging to, or to the credit of a—

(a) public body which operates donor funded projects;

(b) research institution which receives grants and donations; or

(c) public university which receives donor funds for research purposes,

shall, immediately, transfer or remit the foreign currency to the holding foreign currency denominated account opened and maintained at the Bank.

Mandatory conversion or retention ratio on holding foreign currency denominated account credits

6.—(1) The Bank shall, on receipt of a credit as funding in a holding foreign currency denominated account, apply a mandatory conversion or retention ratio of eighty percent of the total funding at the official buying exchange rate, published by the Bank whilst keeping the remaining twenty percent in the foreign currency denominated account.

(2) The Bank shall, from time to time, modify the mandatory conversion or retention ratio in subregulation (1) and shall communicate such moderation through a circular published on the Bank’s website and in two newspapers of wide circulation in Malawi.

(3) The mandatory conversion requirement referred to under subregulation (1) shall not apply to funds transferred from an authorized dealer bank to a holding foreign currency denominated account in accordance with regulation 5 (3).

(4) For the purposes of this regulation, “circular” means a written notice on a new policy or change of policy relating to holding foreign currency denominated accounts.

Use of funds in holding foreign currency denominated accounts

7.—(1) A public body operating donor funded projects, research institution receiving grants and donations, a public university receiving donor funds for research purposes may access the funds in the holding foreign currency denominated account opened and maintained at the Bank, on request, by way of either withdrawal or bank transfer.

(2) A public body operating donor funded projects, research institution receiving grants and donations, public university receiving donor funds for research purposes that requests to withdraw or transfer funds from the holding foreign currency denominated account shall complete and submit a withdraw or bank transfer instruction to its bank and the bank shall, immediately, submit a request to the Bank for release of the funds to the operating account of the requesting institution.

(3) Where the funds requested pursuant to subregulation (2) will be used within Malaŵi, the Bank shall transfer the funds so requested to the authorized dealer bank in the Malaŵi currency equivalent, converted using the official

buying exchange rate published by the Bank, on the day the transfer is to be effected.

(4) A public body operating donor funded projects, research institution receiving grants and donations, a public university receiving shall be entitled to utilize, only for own use, the foreign exchange balance in its foreign currency denominated account.

(5) The utilization under subregulation (4), shall be allowed for all cross-border payments of the same legal entity or institution, including payments for imports of goods or services.

(6) Any funds remaining in the holding foreign currency denominated account, after applying the conversion ratio, shall be utilized within eight months from the date of the date when the mandatory conversion was made.

(7) After the expiry of the period prescribed in subregulation (6), the unutilized funds in the holding foreign currency denominated account shall be converted into Malawi currency.

(8) For purposes of this regulation, “operating account” means an account maintained by a public body operating donor funded projects, a research institution receiving grants and donations, a public university receiving donor funds for research purposes or an incorporated trustee, at a commercial bank, used solely for expenditure, which is linked to a holding foreign currency denominated account.

8.—(1) An NGO, an international NGO, a contract party, a charity, a religious organization, an incorporated trust or unincorporated trust which intends to receive funding from sources outside Malawi shall ensure that such funding is received—

- (a) in foreign currency; and
- (b) through an authorized dealer bank.

Mandatory conversion or retention ratio for NGOs, international NGOs and incorporated trustees

(2) Where an NGO, an international NGO, a contract party, a religious organization, an incorporated trust or unincorporated trust has received funding from an external source in line with subregulation (1), the authorized dealer bank shall inform the NGO, international NGO, the contract party or incorporated trustee of the receipt of the external funding, within twenty-four hours or the following working day in case of a weekend.

(3) An NGO, international NGO, a contract party, a religious organization, a charity, an incorporated trust or unincorporated trust which has received external funding in accordance with these Regulations shall, within two working days after the date it is informed about the receipt of the external funding, be required to sell to the Bank, through the receiving authorized dealer bank, seventy percent of the foreign currency received at the prevailing selling rate of the receiving authorized dealer bank.

(4) Where an authorized dealer bank has not received any instructions from the receiving NGO, international NGO, contract party or incorporated trustee to sell the foreign currency to the Bank, in accordance with subregulation (3), the authorized dealer bank that received the foreign

currency shall, after the expiry of the two working days referred to in subregulation (3), convert the foreign currency, in line with the prevailing mandatory conversion percentage of seventy percent of the funds received at the prevailing selling rate of that authorized dealer bank.

(5) After a conversion of foreign currency under this regulation is complete, an NGO, an international NGO, a contract party, a religious organization, a charity, an incorporated trust or unincorporated trust shall be entitled to utilize, only for own use, the foreign exchange balance in their foreign currency denominated account.

(6) The utilization of funds referred to under subregulation (5) shall be allowed for all cross-border payments of the same legal entity, including payments for imports of goods or services.

(7) Any funds remaining in foreign currency denominated account may also be converted into local currency at any time if the account holder so wishes.

Submission
of reports

9.—(1) For purposes of ensuring compliance and monitoring, all public bodies operating donor funded projects, research institutions receiving grants and donations, public universities receiving donor funds for research purposes, incorporated trustees, charities, religious organisations, incorporated and unincorporated trusts, NGOs, international NGOs and contract parties operating foreign currency denominated accounts that are fully funded from external sources shall submit to the Bank annual reports detailing the support received from sources outside Malawi, clearly indicating the break down on how much of the support is in form of goods, services and foreign currency.

(2) The reports shall be submitted to the Bank not later than the 31st January of the subsequent year.

Inspection of
records

10.—(1) An authorized dealer bank shall submit monthly reports to the Bank before the 15th day of the subsequent month, indicating the amounts of foreign currency converted for NGOs, international NGOs, contract parties and incorporated trustees and any other relevant information regarding foreign currency conversion as may be prescribed by the Bank.

(2) An authorized dealer shall maintain all records, documents and account statements relating to foreign currency converted for NGOs, international NGOs, contract parties and incorporated trustees and any other relevant information with regard to foreign currency conversion as may be prescribed by the Bank for a period of seven years.

(3) The records, documents and account statements in subregulation (1) shall be maintained in a format that can easily be retrieved and made available on request.

11.—(1) A person, NGO, international NGO, public body, public university, charity, incorporated trustees, business enterprise or any other organisation shall not deal with any unlicensed foreign currency broker, whether local or international.

Prohibition of dealing with unlicensed foreign currency exchange brokers and selling foreign currency in the foreign currency denominated account

(2) A person, NGO, international NGO, public body, public university, charity, incorporated trustees, business enterprise or any other organisation shall not sell foreign currency in a foreign currency denominated account to a foreign exchange bureau.

12.—(1) A person who contravenes any of these Regulations commits an offence and shall, upon conviction be liable to—

Offences and penalties

- (a) in the case of a natural person, including the person who—
 - (i) made the decision;
 - (ii) failed to prevent contravention of any of these Regulations;
 or
 - (iii) authorized the transaction prohibited under these Regulations,

a fine not exceeding K200,000,000.00 or an amount equivalent to the financial gain generated by the commission of the offence, whichever is greater and imprisonment for five years; and

- (b) in the case of a body corporate, a fine without limit.

(2) A person who makes or enters into any arrangements, whether oral or in writing, for the purpose of, or which have the effect of, in any way, whether directly or indirectly, defeating, evading or avoiding, or preventing the operation of, these Regulations in any respect commits an offence and shall be liable to a fine of K150,000,000.00 and to imprisonment for four years.

(3) Any person charged with or concerned or acting in, the control or management of the affairs or activities of an NGO, an international NGO, a public body, research institution, charity, religious institution, public university operating donor funded projects, receiving grants and donations, receiving donor funds for research purposes, or in general, operating foreign currency denominated accounts that are fully funded from external sources commits an offence if he or she fails to put in place adequate procedures designed to prevent contravention of any of the Regulations and shall be liable to a fine of K150,000,000.00 and to imprisonment for four years.

(4) Where a person convicted of an offence under any of these Regulations is a body corporate, society, association or body of persons, as the case may be, any person who at the date of the commission of the offence was a director or employee concerned or acting in, the control or management of the affairs or activities of such body corporate, society, association or body of persons, as the case may be, shall also be deemed to have committed the offence.

(5) For an offence under subregulation (4), it shall be a defence that such person, through no act or omission on his or her part, he or she was not aware that the offence was being, or was intended or about to be, committed, or that he or she took all reasonable steps to prevent its commission.

(6) An authorized dealer bank which—

(a) facilitates the receipt of external funding by an NGO, international NGO, contract party or incorporated trustee in Malawi currency when the authorized dealer bank ought to have known that such funding was coming from a source outside Malawi;

(b) fails to transfer foreign currency domiciled in the accounts of public bodies, research institutions and public universities maintained with the authorized dealer bank into holding foreign currency denominated account opened and maintained at the Bank per the requirements of regulation 5;

(c) fails to put in place adequate procedures designed to prevent persons associated with an authorized dealer bank from contravening any provisions of these Regulations; or

(d) deals with an unlicensed local or international foreign currency broker,

commits an offence and shall be liable to a fine without limit.

(7) In addition to the penalty in subregulations (1) (2) and (3), a court may order that all the benefits derived from the offence be forfeited to the State.

Made this 12th day of December, 2024.

(FILE NO. FIN/PFSPD/02/05)

S. CHITHYOLA
*Minister of Finance and
Economic Affairs*