

PAYMENT FOR IMPORTS

(A) IMPORT PERMITS

In view of the measures of control exercised over the importation of certain types of goods, Authorised Dealers must, in their own interest, ensure that a covering Import Permit issued by ITAC, is available or is not required, before establishing documentary credits, stand-by letters of credit, arranging to guarantee payments (e.g. giving an undertaking of suretyship by signing a bill of exchange other than as drawer or acceptor, or a promissory note other than as maker, i.e. an aval) or making payment or entering into forward contracts in connection with the importation of goods into the Republic.

(B) REQUISITE DOCUMENTATION

- (i) Authorised Dealers may only effect foreign exchange payments for imports against the following documentation:
 - (a) Commercial invoices issued by the supplier;
 - (b) any one of the transport documents as prescribed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (UCP 600) and its supplement for electronic presentation, the eUCP, evidencing transport of the relative goods to the Republic; or
 - (c) Freight Forwarders Certificate of Receipt or Freight Forwarders Certificate of Transport; or
 - (d) consignee's copy of the prescribed SARS Customs Declaration.
- (ii) In lieu of the documents referred to in (i)(b) and (c) above, arrival notifications issued by shipping companies may be tendered.
- (iii) Imports from Botswana may, however, be paid for against the commercial invoice issued by the supplier and the consignee's copy of the prescribed SARS Customs Declaration.

(C) PAYMENT FOR IMPORTS

- (i) Import Payments

Foreign exchange may be provided to pay:

- (a) The actual price of imported goods;
- (b) bona fide freight charges;
- (c) insurance cover;

- (d) buying commissions and retainer fees due to agents, provided that the rate of commission or fee is normal in the particular trade concerned; and/or
 - (e) other incidental charges incurred in the purchase and shipment of the goods, but not included in the actual price.
 - (f) interest payments of up to the applicable base rate plus 2 per cent for credit shorter than one year.
- (ii) Final Settlement for Imports

Authorised Dealers may approve requests for final settlement adjustments on imports, e.g. amounts due in respect of weight adjustments, quality allowances etc., against documentary evidence confirming the purpose and amounts involved.

(D) TIME OF PAYMENT

- (i) Advance payments and/or cash with order requests

Authorised Dealers may provide foreign exchange in respect of advance payments and/or cash with order requests to cover the cost of permissible imports, other than capital goods, against the presentation of an invoice.

Authorised Dealers must, in respect of payments in excess of R50 000, subsequently view a copy of the prescribed SARS Customs Declaration bearing the MRN, to ensure that the foreign exchange provided had been utilised for the purpose stated and that the goods have been imported into the Republic.

- (ii) Capital Goods

Foreign exchange may be provided for advance payments up to 100 per cent of the ex-factory cost of capital goods to be imported not exceeding a total value of R10 million. Payment for the importation of capital goods in excess of R10 million may only be provided up to 50 per cent of the ex-factory cost of the goods to be imported. Authorised Dealers should, however, be satisfied that the order would otherwise be refused and that such payment is normal in the trade concerned.

- (iii) "Cash on Delivery" Consignments

Authorised Dealers may provide foreign exchange to meet import payments relating to goods which have been consigned by air on a "cash on delivery" basis against submission of a copy of the relative transport document dated and signed by a member of the South African Association of Freight Forwarders.

Authorised Dealers must satisfy themselves, by viewing the commercial invoice and the prescribed SARS Customs Declaration within 14 days thereafter, that the foreign exchange provided has been used for the purpose stated and that the goods have been imported into the Republic.

(iv) Extended Credit Terms

The establishment of documentary credits, stand-by letters of credit, arranging to guarantee payments (e.g. by aval) or open account payments in connection with the importation of goods into the Republic, where the credit terms extended to the local importer exceed 12 months, require the prior approval of the Financial Surveillance Department. Such extended credit terms would normally relate to the importation of capital goods.

(v) Payments older than 12 months

Payments in respect of imports where the required import documents are older than 12 months may be effected, provided that no interest has been charged by the foreign supplier.

(vi) Balance of payments category

Payments for imports against an invoice only should be reported under the advance payment category 101. Similarly, payment for imports against an invoice and transport documents should also be reported under the advance payment category 101. Advance payments for customers with an Imports Undertaking, must be reported under category 102-01 to 102-11.

Payments for imports where the goods have already been released by Customs and the prescribed SARS Customs Declaration bearing the MRN has been issued, the applicable import category, excluding category 101, must be used.

(E) COMPUTER SOFTWARE

(i) Importation of computer software

(a) Authorised Dealers may effect payment in respect of the importation of computer software and specific custom-made computer software products, including any licence fees which may be payable, against the production of documentary evidence confirming the purpose and amount payable.

(b) The requirements of subsection (B)(i) above should be adhered to, where applicable.

(ii) Local reproduction or copying of computer software packages

- (a) Authorised Dealers may approve royalty payments to non-residents, including any licence fees, which are payable from the local reproduction or copying of computer software packages provided that:
 - (aa) where applicable, advance payments are fully recoupable from future royalty payments;
 - (bb) the licensor is an unrelated party, i.e. none of the parties have any direct/indirect interest or shareholding in each other;
 - (cc) the royalties payable are based on net sales specifically related to the computer software package;
 - (dd) the application is accompanied by documentary evidence confirming the purpose and amount payable; and
 - (ee) requests for minimum royalty payments are referred to the Financial Surveillance Department, together with a copy of the agreement entered into and supporting documentation motivating the rationale for the minimum payment.

(iii) Maintenance payments to non-residents in respect of computer software

Authorised Dealers may effect maintenance payments applicable to computer software packages, in advance and/or retrospectively, against documentary evidence confirming the purpose and amount payable.

(iv) Payment for computer software downloaded electronically via the Internet

Authorised Dealers may effect payment in respect of software, which is downloaded via the Internet (the actual program and/or the activation code) against documentary evidence confirming the purpose and amount payable.

(v) Extension of agreements

Authorised Dealers may, where applicable, approve the extension of the agreements authorised in (i) to (iv) above as well as agreements previously approved by the Financial Surveillance Department, provided that the agreement originally entered into makes provision for an extension or an addendum to the agreement is viewed confirming the extension thereof.

(F) EVIDENCE OF IMPORTATION

- (i) Authorised Dealers must insist upon the presentation to them of the prescribed SARS Customs Declaration bearing the MRN, as evidence

that goods in respect of which transfers have been effected in terms of subsection (C) above, have been cleared by Customs. These documents must be presented at the time foreign currency payments for imports are made where the goods have already been cleared by Customs, or in the case of advance payments in excess of R50 000, as soon as possible thereafter. The detailed information shown on these documents must be checked against the information obtained at the time payment for the relative import was made, in order to verify that the payment made relates to the goods which have been cleared.

Where the prescribed SARS Customs Declaration reflects the Customs Requested Procedure Code indicating that the goods are held in bonded warehouse, Authorised Dealers must diarise to view subsequent documentation from Customs, confirming the removal of the goods in bonded warehouse. Authorised Dealers must, however, be alert to the presentation of documentation which would indicate that the goods have been exported from the Republic. Such transactions are regarded as merchanting transactions and are subject to the provisions outlined in Section B.12(A) of the Rulings.

Where the goods have been despatched to the Republic by post, Authorised Dealers must insist upon the presentation to them of the commercial invoices issued by the supplier as well as the foreign parcel manifest bearing an original South African Post Office stamp or the CN22/23 label affixed to or completed by the sender in respect of the postal article as evidence that the goods, for which payment has been made in terms of subsection (C) above, have been received in South Africa. The aforementioned documents must be presented at the time foreign currency payments for imports are made where the goods have already been received in South Africa, or, where the goods have not been received, as soon as possible thereafter. In the case of goods received via the South African Post Office, category 101-11 or 103-11 must be used since the prescribed SARS Customs Declaration will not be available.

In the case of imports via courier with a customs value of R500 or less and on which no customs duty is payable, the Customs and Excise Form DA 306 or a letter/courier waybill from the clearing agent indicating the goods were declared as low value may be accepted *in lieu* of the prescribed SARS Customs Declaration. These payments must be reported under category 107.

All documentation must be retained by the customer for a period of at least five years.

- (ii) Where goods for which payment has been made from the Republic have not been or will not be consigned to the Republic within four months of the date of payment, the importer must within 14 days of the expiry of such period, advise the Authorised Dealer concerned in writing who

should report the matter to the Financial Surveillance Department via the Import Verification System by completing the following steps:- Select [Verification]. Under [Verification options] select [No MRN], under [No MRN options] select [No MRN]. Complete the fields and in the description field add the reason why the delivery of the goods have been delayed or will not be received.

Authorised Dealers should diarise to pursue without delay all outstanding import verifications with the importers concerned in writing after the four month period mentioned above and should no response or an unsatisfactory response be received after a further period of six months, the matter should be reported to the Financial Surveillance Department following the abovementioned steps. In the description field add "No response from client". In addition, an application must also be submitted to the Financial Surveillance Department providing details of the transaction(s), i.e. date, Transaction Reference Number, and amount as well as the importers' contact details.

- (iii) Where the relative consignment has been lost or resold in the country of supply, Authorised Dealers are responsible for ensuring that the foreign exchange proceeds of any insurance claim or of the sale of the goods are properly accounted for in terms of the provisions of Regulation 6. The Import Verification System must be updated accordingly.

(G) GENERAL

- (i) Importation of Newspapers, Books, Periodicals

Payments may be effected against documentary evidence confirming the amount involved, for the importation of newspapers, books and periodicals whether in printed, audio or audio visual format, which are intended for the customer's own private use and not for resale.

- (ii) Importation of Medical Preparations

Payments may be effected, for purchases by private individuals of medical preparations and herbal remedies, subject to Authorised Dealers being satisfied that the goods are for the applicant's own private use and not for resale and that an Import Permit is available or is not required. Such requests may only be acceded to against the submission of documentary evidence confirming the amount involved. If necessary, foreign exchange may be provided on a "cash with order" basis, but Authorised Dealers must satisfy themselves by the subsequent submission of documentary evidence that the foreign exchange provided has been used for the purpose stated, and that the goods have arrived in the Republic.

(iii) Philatelic Imports

Authorised Dealers may grant applicants foreign exchange in payment for imports from abroad for philatelic purposes.

No Import Permit will be issued in cases of this nature, but Authorised Dealers must furnish the applicant with a letter of authority, on the following lines, for submission to the appropriate Government Department:

TO WHOM IT MAY CONCERN

"I/We hereby certify that (full name and address) is/are authorised, in terms of the the Exchange Control Regulations, 1961, to import postage stamps, postage stamps on covers and postal stationery.

THIS AUTHORITY EXPIRES ON 31 DECEMBER(Signed)".

The Government Department concerned will endorse, on the face of the letter, the value of each parcel received in the Republic during the relative period. When this authority has been fully used or on the date of its expiry, the relative letter of authority must be returned to the Authorised Dealer concerned before a new letter in respect of any subsequent period is issued.

(iv) Numismatic Imports

(a) Matters relating to the importation of medals, medallions, pendants and other similar non-currency articles, must be referred to ITAC.

(b) Authorised Dealers may grant applicants foreign exchange in payment of other numismatic imports, excluding South African gold coins minted in 1962 and thereafter, imported from abroad. No import permit will be issued in cases of this nature, but Authorised Dealers must furnish the applicant with a letter of authority on the following lines for submission to the appropriate Government Department:

"TO WHOM IT MAY CONCERN

I/We hereby certify that (full name and address) is/are authorised, in terms of the Exchange Control Regulations, 1961, to import currency coins, excluding South African Gold coins minted in 1962 and thereafter and also excluding medals and medallions or necklaces, pendants, girdles and brooches containing medallions. THIS AUTHORITY EXPIRES ON 31 DECEMBER..... (Signed)".

The Government Department concerned will endorse, on the face of the letter, the value of each parcel received in the Republic during the relative period. When this authority has been fully used or on the date of its expiry, the relative letter of authority must be returned to the Authorised Dealer concerned before a new letter in respect of any subsequent period is issued.

- (c) To obviate the issue of numerous letters of authority, an Authorised Dealer may apply in its own name, on behalf of its customers, for a single letter of authority in respect of a specific issue of commemorative currency coins abroad.

(v) Importation of Correspondence Courses

Payment may be effected, against the submission of documentary evidence confirming the amount involved, for fees due in respect of the importation of correspondence courses, whether in printed, audio or audio visual format.

- (vi) Charges incidental to cancellation of orders, retention and/or resale of goods awaiting consignment in country of supply.

Applications for foreign exchange to meet expenses incurred by local importers in cancelling orders or in arranging the storage of goods awaiting shipment to the Republic should be referred to the Financial Surveillance Department with full particulars.

- (vii) Payment for articles and photographs imported for publication in South African newspapers and periodicals

Payment may be effected to the contributor or to the owner of the publishing rights against the submission of documentary evidence confirming the amount involved.

- (viii) Importation of motor vehicles and caravans by residents returning from visits abroad Authorised Dealers may provide residents with the necessary foreign exchange to cover the cost of motor vehicles and caravans purchased outside the Republic for subsequent importation into the Republic, as well as freight, handling charges and other related costs, provided that:

- (a) The applicant can produce documentary evidence that permission has been granted by ITAC to purchase a motor vehicle or caravan abroad for subsequent importation into the Republic;
- (b) the applicant undertakes, in terms of the provisions of Regulation 2(5), to offer for sale to an Authorised Dealer any part of the foreign exchange allocation which was not used for the purchase of a motor vehicle or caravan; and

- (c) the Authorised Dealer calls for the subsequent submission of documentary evidence of importation of the motor vehicle or caravan and the cost thereof, and ensures that any difference between the foreign exchange allocation and the cost of purchasing the motor vehicle or caravan is accounted for in terms of (b) above.

Authorised Dealers should also ensure that all the conditions on which ITAC has granted authority for the importation of a motor vehicle or caravan are adhered to.

Applications submitted through a motor trader on behalf of a South African resident may be approved subject to the same conditions. In this respect the Authorised Dealer providing the relative foreign exchange should, if necessary, call on the Authorised Dealer of the applicant concerned to control the transaction in terms of (c) above.

(H) **IMPORTS UNDERTAKING DISPENSATION**

- (i) The Financial Surveillance Department would, on application through an Authorised Dealer, be prepared to consider requests to grant dispensation to certain companies from the requirement to submit supporting documentation to their Authorised Dealers for every foreign exchange transaction related to an import transaction.

The imports undertaking dispensation application form may be downloaded from the South African Reserve Bank's website - www.resbank.co.za, by following the links: Home>Regulation and supervision>Financial surveillance and exchange controls>Guidelines>Imports Undertaking Dispensation. The form must be accompanied by a resolution of the board of directors of the company, authorising the company to partake in the imports undertaking dispensation.

This dispensation is only applicable to companies, excluding Close Corporations, Trusts, Partnerships and Sole Proprietors, that in the course of their business:

- (a) are involved in the regular importation of goods into the Republic of South Africa from countries outside the Common Monetary Area;
- (b) make foreign exchange payments and/or payments to the credit of Non-Resident Accounts in consideration of the importation of the goods referred to in (a);
- (c) conclude a minimum of 120 import transactions per annum and have an import turnover in excess of Rand 20 000 000 per annum; and

- (d) have been active in the import industry for a minimum period of three years.
- (ii) Where the Financial Surveillance Department has granted a company the Imports Undertaking dispensation, the company is required to adhere to the following conditions:
- (a) an Integrated Form must be completed in all instances when foreign exchange is purchased, either spot or forward, from an Authorised Dealer to make a foreign exchange payment.
 - (b) the company must advise its Authorised Dealer that the transaction(s) is in respect of the business activities described in (i) above;
 - (c) the company must create and maintain an audit trail within its records which should consist of the logical and orderly retention of the following documents for a period of five years for inspection purposes:
 - (aa) Integrated Form; and
 - (bb) supporting documentation required in terms of Section B.1(B) of the Rulings.
 - (d) the directors of the company will be responsible for:
 - (aa) the design, implementation and effective operation of an adequate internal control system over import transactions;
 - (bb) the maintenance of related supporting documentation that will facilitate the prevention and detection of fraud and error; and
 - (cc) the establishment of policies and procedures that ensure compliance with the terms of the imports undertaking dispensation.
 - (e) the company must at any time permit any authorised representative of the Financial Surveillance Department to inspect the records of the company to ascertain whether the Regulations and Rulings are being complied with; and
 - (f) a letter of compliance, on the company's official letterhead and signed by two executive directors, confirming that the conditions applicable to the Imports Undertaking dispensation have been complied with, must be submitted to the Financial Surveillance Department on an annual basis. The letter of compliance must be

e-mailed to SARBUndertakings@resbank.co.za specifying "Imports Undertaking Letter of Compliance" in the Subject field.

- (iii) The company may, under the control of an Authorised Dealer and in accordance with the requirements of the Rulings, continue to operate and maintain a C.F.C. account in terms of Section E.(B) of the Rulings.
- (iv) The company must inform the Financial Surveillance Department in writing through their Authorised Dealer of:
 - (a) any addition or amendment of an Authorised Dealer as identified on the imports undertaking application form;
 - (b) any addition or amendment of a Group Company identified on the imports undertaking application form; and
 - (c) any amendment to the information stated on the imports undertaking application form.

within a period of one month from the date of such addition and/or amendment.

- (v) No addition or amendment referred to in (iv) above will be binding on the Financial Surveillance Department, unless such amendment and/or addition has:
 - (a) been recorded in writing;
 - (b) been signed on behalf of the company by an authorised official;
 - (c) been submitted to the Financial Surveillance Department through the company's Authorised Dealer, together with a certified extract of a resolution of the board of directors of the company, in terms of which the authorised official has been authorised to bind the company to such addition and/or amendment; and
 - (d) been approved by the Financial Surveillance Department under the signature of a duly authorised Financial Surveillance Department official.
- (vi) The Financial Surveillance Department may at any time, by notice in writing to the company or its Authorised Dealer, amend and/or supplement the requirements relating to the Imports Undertaking dispensation.
- (vii) Any instances of non-compliance with the conditions outlined above will be viewed in a serious light and the Financial Surveillance Department reserves the right to deal with such matters in a manner as contemplated in the Exchange Control Regulations.

- (viii) All other foreign exchange transactions not related to imports do not form part of this dispensation and should be dealt with in terms of the provisions outlined in the Rulings.

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