

Zimbabwe

## Bank Use Promotion Act

### Chapter 24:24

Legislation as at 31 December 2021

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## Bank Use Promotion Act (Chapter 24:24)

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# Zimbabwe

## Bank Use Promotion Act Chapter 24:24

Published in Government Gazette

**There are multiple commencements**

Provisions	Status
Part I (section 1–2); Part II (section 3–9); Part III (section 10–22); Part V (section 33–41); Part VI (section 41A–49)	commenced on 17 February 2004.
Part IV (section 23–32)	commenced on 1 September 2004.
Part III, section 22A	commenced on 31 December 2021.

*[This is the version of this document from 31 December 2021.]*

*[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe. This version is up-to-date as at 31st December 2016.]*

*[Amended by [Money Laundering and Proceeds of Crime Amendment Act, 2018 \(Act 12 of 2018\)](#) on 20 July 2018]  
[Amended by [Finance Act, 2021 \(Act 7 of 2021\)](#) on 31 December 2021]*

*[Act 2/2004, 16/2004 (s. 29), 12/2006 (s. 48), 3/2009 (s. 55), 4/2013 (s. 108), 1/2018 (s. 46). SIs. 199/2006 (s. 15), 21/2008, 62/2008, 73/2008, 109/2008]*

**AN ACT to promote the use and suppress the abuse of the banking system; to enable the unlawful proceeds of all serious crime including drug trafficking to be identified, traced, frozen, seized and eventually confiscated; to establish a Bank Use Promotion and Suppression of Money Laundering Unit; to require financial institutions and cash dealers to take prudential measures to help combat money laundering; and to provide for matters connected with or incidental to the foregoing.**

## Part I – Preliminary

### 1. Short title and commencement

- (1) This Act may be cited as the Bank Use Promotion Act *[Chapter 24:24]*.  
*[section amended by Act [4 of 2013](#)]*
- (2) Part IV shall come into operation on a date to be fixed by the President by statutory instrument, and the remainder of the Act shall come into operation on the day of its publication in the *Gazette*.

### 2. Interpretation

In this Act#

“**account**” means any facility or arrangement by which a financial institution does any one or more of the following#

- (a) accepts deposits of currency;

- (b) allows withdrawals of currency or transfers into or out of the account;
- (c) pays cheques or payment orders drawn on a financial institution, or collects cheques or payment orders on behalf of a person;
- (d) supplies a facility or arrangement for a safety deposit box;

“**cash**” means any bank notes and coins of any currency that is currently, or from time to time, designated as legal tender in Zimbabwe, and includes, but is not limited to, the United States dollar, the South African Rand, the British pound, the Euro, the Botswana Pula, the Chinese Yuan, the Indian Rupee, the Japanese Yen, the Australian dollar and bond notes and coins issued in terms of the Reserve Bank of Zimbabwe Act [Chapter 22.15];

[definition substituted by Act [1 of 2018](#)]

“**cash dealer**” means a person who does any one or more of the following#

- (a) carrying on the business of an insurer, an insurance intermediary, a securities dealer or stock broker, a futures broker, or an operator of a gaming house, casino or lottery;
- (b) issuing, selling or redeeming travellers’ cheques, money orders or similar instruments, dealing in bullion, or collecting, holding and delivering cash as part of a business that provides payroll services;
- (c) money-changing, that is, exchanging currency, money cheques, travellers cheques or other negotiable instruments;

“**cash detainable offence**” means any one of the following offences in respect of which cash may be seized from a person in anticipation of prosecuting that person for the offence—

- (a) a contravention of a compliance order referred to in paragraph (b), (e) or (g) of subsection (1) or subsection (2) of section nineteen; or
- (b) a contravention of section twenty relating to a breach of section eleven or subsection (1) of section fourteen or section fifteen; or
- (c) a contravention of subsection (1) of section twenty; or
- (d) a contravention of subsection (1) of section twenty-two;

“**compliance order**” means an order issued in terms of section nineteen or thirty, as the case may be;

“**currency**” means the coin and banknotes of Zimbabwe or of a foreign country that has been designated as legal tender and is ordinarily used and accepted as a medium of exchange in the country of issue, and the terms “Zimbabwean currency” and “foreign currency” shall be construed accordingly;

“**defendant**” means a person suspected of or charged with#

- (a) a serious offence; or
- (b) a cash detainable offence; or
- (c) an offence referred to in section thirty-two; whether or not he or she has been convicted of the offence;

**“designated institution”** means any person designated in the First Schedule;

**“Detained Cash Trust Account”** means the Detained Cash Trust Account referred to in subsection (1) of section thirty-seven;

**“Director”** *[definition of “Director” deleted and substituted by definition of “Director-General” by section 23(a) (i) of [Act 12 of 2018](#)]*

**“Director-General”** means the Director-General of the Unit appointed in terms of section 6C of the Money Laundering and Proceeds of Crime Act *[Chapter 9:24]*;

*[definition of “Director-General” substituted by section 23(a)(i) and (ii) of [Act 12 of 2018](#)]*

**“disclosure order”** means an order issued in terms of section eighteen or twenty-nine, as the case may be;

**“document”** means any record of information, and includes anything that#

- (a) is written; or
- (b) contains marks, figures, symbols, or perforations that have meaning and can be interpreted by persons qualified to do so; or
- (c) has sounds, images or writings that can be produced, with or without the aid of anything else; or
- (d) is a map, plan, drawing, photograph or similar thing;

**“finance agent”** means a person who discounts private sale agreements, that is, agreements under which goods are sold by another person who is not a registered operator as defined in the Value Added Tax Act *[Chapter 23:12]*;

**“financial institution”** has the meaning assigned to it in the Money Laundering and Proceeds of Crime Act *[Chapter 9:24]*.

*[definition substituted by Act [8 of 2013](#)]*

**“fixed date”** means the date fixed or specified in terms of subsection (2) of section one as the date of commencement of this Act or Part IV, as the case may be;

**“gift”** includes any property or benefit transferred by a person to another person directly or indirectly#

- (a) after the commission of a serious offence by the first person; or
- (b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; or
- (c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

**“identity document”** means#

- (a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act *[Chapter 10:17]*, or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
- (b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act *[Chapter 4:02]*, or in terms of any enactment relating to refugees; or
- (c) any passport, identity document or drivers licence issued by a foreign government;

**“interest”**, in relation to cash, includes either or both of the following#

- (a) any beneficial interest whatsoever in the cash, whether present, future or contingent;
- (b) a right, power or privilege in connection with the cash;

**“inspector”** means a person referred to in section five;

**“law enforcement agency”** means the Police Force (including a member of the Police Constabulary as defined in section 2 of the Police Act [Chapter 11:10]) or an intelligence service maintained by the Government, or any agency assigned by an enactment to maintain and enforce the law;

**“Minister”** means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

**“moneylender”** means a person licensed as a moneylender under the Moneylending and Rates of Interest Act [Chapter 14:14];

**“negotiable instrument”** means any bill of exchange, letter of credit, cheque, draft or other document, whether negotiable or not, which has been drawn or issued either inside or outside Zimbabwe and is intended to enable any person to obtain, either directly or indirectly, any sum of money, whether in Zimbabwean or foreign currency;

**“parastatal”** means any corporate body—

- (a) established by or in terms of any Act of Parliament for special purposes specified in that Act; or
- (b) wholly owned or controlled by the State;

**“proceedings”** means any procedure conducted by or under the supervision of a judge or magistrate in relation to any alleged or proven offence, or cash held in connection with such offence, and includes an inquiry, investigation, or preliminary or final determination of facts;

**“property”** means currency and all other real or personal property of every description, whether situated in Zimbabwe or elsewhere, tangible or intangible, and includes any interest in such property;

**“property of or in the possession or control of any person”** includes any gift made by that person;

**“relevant financial business”** means business referred to in the Second Schedule;

**“Reserve Bank”** means the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [Chapter 22:15];

**“serious offence”** has the meaning assigned to it in the Money Laundering and Proceeds of Crime Act [Chapter 9:24];

*[definition substituted by Act 4 of 2013]*

**“tainted property”** has the meaning assigned to it in the Money Laundering and Proceeds of Crime Act [Chapter 9:24], and includes “terrorist property” as defined in that Act;

*[definition substituted by Act 4 of 2013]*

**“trader”** means a person referred to in paragraph (a) of section ten;

**“Unit”** means the Financial Intelligence Unit established by section 6A of the Money Laundering and Proceeds of Crime Act [Chapter 9:24];

*[definition of “Unit” substituted by section 23(a)(ii) of Act 12 of 2018]*

**“unit trust scheme”** has the meaning given to that term in section 2 of the Collective Investment Schemes Act, 1997;

**“Zimbabwe Revenue Authority”** means the Authority established in terms of section 3 of the Revenue Authority Act [Chapter 23:11].

(2) A reference in this Act to#

- (a) a male or female person includes, where appropriate, a corporate body;

- (b) money laundering or laundering the proceeds of a serious offence means any act, scheme, arrangement, device, deception or artifice whatsoever by which the true origin of the proceeds of any serious offence is sought to be hidden or disguised;
  - (c) a person being charged or about to be charged with a serious offence is a reference to a procedure, however described, in Zimbabwe or elsewhere, by which criminal proceedings may be commenced;
  - (d) a benefit obtained or otherwise accruing to a person, includes a reference to a benefit derived or obtained by, or otherwise accruing to, another person at the request or direction of that person.
- (3) For the purposes of this Act—
- (a) dealing with property held by any person shall include—
    - (i) where the property is a debt owed to that person, making a payment to any person in reduction or full settlement of the amount of the debt; or
    - (ii) converting or receiving the property as a gift; or
    - (iii) removing the property from Zimbabwe;
  - (b) a person shall be deemed to have benefited from the proceeds of a serious offence if—
    - (i) he or she at any time, whether before or after the fixed date, receives any payment or other reward in connection with, or derives any pecuniary advantage from the commission of a serious offence, whether committed by him or her or another person;
    - (ii) he or she receives or derives a payment, reward or pecuniary advantage in connection with the commission of a serious offence, whether he or she receives or derives such payment, reward or pecuniary advantage before or after the fixed date;
    - (iii) the value of his or her proceeds from a serious offence is the aggregate of the values of the payments, rewards or pecuniary advantages received or derived by him or her in connection with the commission of the offence.

## Part II – \*\*\*

*[Part II repealed by section 23(b) of [Act 12 of 2018](#)]*

### 3. \*\*\*

*[section 3 repealed by section 23(b) of [Act 12 of 2018](#)]*

### 4. \*\*\*

*[section 4 repealed by section 23(b) of [Act 12 of 2018](#)]*

### 5. \*\*\*

*[section 5 repealed by section 23(b) of [Act 12 of 2018](#)]*

### 6. \*\*\*

*[section 6 repealed by section 23(b) of [Act 12 of 2018](#)]*

### 7. \*\*\*

*[section 7 repealed by section 23(b) of [Act 12 of 2018](#)]*



**8. \*\*\***

*[section 8) repealed by section 23(b) of [Act 12 of 2018](#)]*

**9. \*\*\***

*[section 9 repealed by section 23(b) of [Act 12 of 2018](#)]*

### **Part III – Bank Use Promotion**

#### **10. Traders, parastatals and moneylenders to open and keep accounts with financial institutions**

Every—

- (a) trader registered or required to be registered in terms of the Value Added Tax *[Chapter 23:12]*; and
- (b) parastatal; and
- (c) moneylender;

shall open and keep open an account with a financial institution.

#### **10A. Designated payees to afford electronic payment facilities**

- (1) In this section, “designated payee” means—
  - (a) an arm, organ, branch or agency of the State;
  - (b) a local authority;
  - (c) a trader registered or required to be registered in terms of the Value Added Tax Act *[Chapter 23:12]*;
  - (d) a trader other than one referred to in paragraph (c) whose average monthly turnover exceeds two thousand five hundred dollars;
  - (e) a parastatal;
  - (f) a moneylender.
- (2) Subject to subsections (4) and (5), every designated payee shall, if a person tenders payment for its goods or services by electronic means instead of cash or partly by cash and partly by electronic means, accept the tender of such payment.
- (3) No designated payee shall charge or apply a premium or discount to the price of its goods or services on the basis that the person has paid for its goods or services by cash or electronic means instead of cash, or partly by cash and partly by electronic means.
- (4) Every existing designated payee must, by the 1st April, 2018—
  - (a) acquire any device that facilitates the electronic payment for its goods or services (commonly known as a “point of sale machine”); or
  - (b) facilitate the payment for its goods or services electronically by the use of a mobile telephonic device or a computer.
- (5) Unless a designated payee has availed to its customers both of the means of electronic payment referred to in subsection (4)(a) and (b), the designated payee can require a person who tenders to pay for goods or services by electronic means to pay by the use of the means referred to in subsection (4)(a) or (b).

- (6) The Unit may by notice in the Gazette, exempt from the requirements of subsection (2) any designated payee, whether by reference to a class or description of such designated payees or by reference a maximum total monthly turnover generated by such payee.
- (7) Every designated payee who is not able to comply with this section by the 1st April, 2018, must apply to the Director of the Unit in writing for an extension of time within which to comply, setting out the reasons why he or she cannot comply by the fixed date, and the Director shall, on good cause shown, grant an extension for compliance not exceeding thirty (30) days.

*[section inserted by Act [1 of 2018](#)]*

#### **11. Traders and parastatals to bank surplus cash in an account within a certain time**

- (1) Every trader, and parastatal shall, unless it has good cause for not doing so, deposit in an account with a financial institution no later than the close of normal business hours on the day following that on which the cash is received or on the next banking day—
  - (a) cash that is surplus to the requirements of the trader or parastatal; or
  - (b) cash in excess of two hundred dollars (or such other amount in excess of two hundred dollars as the Minister may prescribe from time to time);

whichever is the lesser amount.

*[section amended by section 14 of s.i 109 of 2008 and by Act [1 of 2018](#)]*

- (2) A trader or parastatal shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that it has good cause for not complying with subsection (1).

#### **12. Traders and parastatals to settle certain trade debts otherwise than in cash**

- (1) Every trader and parastatal shall, unless it has good cause for not doing so, settle otherwise than in cash every one of its trade debts that exceeds five thousand dollars (or such other amount in excess of five thousand dollars as the Minister may prescribe from time to time).

*[subsection amended by section 14 of s.i 109 of 2008]*

- (2) A trader or parastatal shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that it has good cause for not complying with subsection (1).

#### **13. Records to be kept by traders and parastatals**

Every trader and parastatal shall keep records clearly showing—

- (a) its cash receipts on each day; and
- (b) its cash payments on each day and the person to whom and purpose for which such payments were made; and
- (c) its payments otherwise than in cash on each day and the person to whom and purpose for which such payments were made.

#### **14. Unlawful trading in cash**

- (1) No person other than a financial institution or moneylender shall exchange any negotiable instrument for cash at a premium.
- (2) No financial institution or moneylender shall charge any premium for exchanging any negotiable instrument for cash in excess of the greater of the following amounts—
  - (a) the amount of any fee, commission or other charge (exclusive of any tax imposed by the State) imposed by it for such exchange on the fixed date; or

- (b) the prescribed amount.

## 15. Maximum cash to be kept by moneylenders

- (1) No moneylender shall at any time keep for the purposes of his or her business cash in excess of ten thousand dollars (or such other amount in excess of ten thousand dollars as the Minister may prescribe from time to time) unless he or she has good cause for doing so.

*[subsection amended by section 14 of s.i 109 of 2008 and by Act 1 of 2018]*

- (2) A moneylender shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she has good cause for not complying with subsection (1).

## 16. Abolition, freezing and monitoring of charges by financial institutions for deposit, withdrawal or transfer of cash or other financial services

- (1) No financial institution shall impose any fee, commission or other charge whatsoever in respect of the deposit with it of cash by a trader, parastatal or any other person, except such fee, commission or other charge as the Minister may, after consultation with the Governor of the Reserve Bank, prescribe.
- (2) The Minister may prescribe the maximum fee, commission or other charge for the withdrawal of cash or foreign currency by an account holder, or for the transfer of cash or foreign currency between account holders or between an account holder and any other person, and if the Minister so prescribes no financial institution shall impose any fee, commission or other charge for any such service (exclusive of any tax imposed by the State) in excess of the maximum fee, commission or other charge so prescribed.
- (3) The Unit shall keep under review every fee, commission or other charge imposed by any financial institution or class of financial institution for its services (other than for the deposit, withdrawal or transfer of cash or foreign currency), and for that purpose may issue to any financial institution a disclosure order requiring it to account for the basis on which it imposes the fee, commission or other charge.
- (4) After reviewing in terms of subsection (3) any fee, commission or other charge imposed by a financial institution or class of financial institution, the Director may, subject to section nineteen, issue a compliance order requiring the financial institution or class of financial institution concerned to reduce the fee, commission or other charge in issue to a level specified in the order.

## 17. Financial institutions to offer deposit facilities on reasonable deposit requirement terms

- (1) Subject to subsection (3), every financial institution which is#
- (a) a commercial bank registered as such in terms of the Banking Act [Chapter 24:20] shall offer as part of the banking business carried on by it facilities for the operation of a savings or current account by any member of the public who meets the minimum financial requirements prescribed by that bank for the operation of such account;
  - (b) a building society registered as such in terms of the Building Societies Act [Chapter 24:02] shall offer as part of the business carried on by it facilities for the operation of a savings account by any member of the public who meets the minimum financial requirements prescribed by that building society for the operation of such account.
- (2) Subject to subsection (3), the People's Own Savings Bank established in terms of the People's Own Savings Bank of Zimbabwe Act [Chapter 24:22] shall offer as part of the business carried on by it facilities for the operation of a savings account by any member of the public who meets the minimum financial requirements prescribed the by People's Own Savings Bank for the operation of such account.

- (3) No financial institution shall require as a condition of operating#
- (a) a savings account, that a person operating such account should at any time keep in such account a minimum balance of more than twenty-five dollars (or such higher amount as the Minister may prescribe from time to time);
  - (b) a current account, that a person operating such account should at any time keep in such account a minimum balance of more than fifty dollars (or such higher amount as the Minister may prescribe from time to time).

*[subsection amended by s.i 109 of 2008]*

- (4) Subsection (3) does not prevent a financial institution from offering (in return for higher-value services) savings or current accounts requiring higher minimum balances than those specified in that provision, as long as such accounts are offered in addition to the accounts referred to in subsection (3).

## 18. Disclosure orders under Part III

- (1) For the purposes of monitoring compliance with this Part, the Director may issue a disclosure order in writing requiring—
- (a) a trader, parastatal, financial institution or moneylender to disclose to an inspector any of the records kept by the trader, parastatal, financial institution or moneylender; or
  - (b) a financial institution to provide him or her with a report on any transaction, account, record or client of the financial institution.
- (2) Any trader, parastatal, financial institution or moneylender which is aggrieved by any order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may —
- (a) confirm or vary the order; or
  - (b) discharge the order.
- (3) Any trader, parastatal, financial institution or moneylender which fails to comply with a disclosure order within fourteen days (or such longer period as the Director may, for good cause shown, allow in writing) of the date of service of the order shall be guilty of an offence and liable to a fine not exceeding level eight for each day during which it is in default of compliance with the order, calculated from the day when the disclosure order was served.

## 19. Compliance orders under Part III

- (1) Where the Director has reasonable grounds for believing that a trader, parastatal, financial institution or moneylender has failed to comply with section ten, eleven, twelve, thirteen, fourteen, fifteen, subsection (1) or (2) of sixteen or section seventeen, as the case may be, the Director may (whether or not after the issue of a disclosure order) issue a compliance order in writing to the trader, parastatal, financial institution or moneylender directing that trader, parastatal, financial institution or moneylender—
- (a) in the case of a contravention of section ten, to open an account with a financial institution within seven days of the date of service of the order and furnish proof satisfactory to an inspector that such account has been opened no later than seven days after it is opened; or
  - (a1) in the case of a contravention of [section 10A](#), either or both of the following as may be appropriate—
    - (i) to immediately comply with [section 10A\(1\)](#); or

- (ii) to comply with [section 10A\(4\)](#) within seven days of the date of service of the order;  
*[subsection inserted by Act 1 of 2018]*
- (b) in the case of a contravention of section eleven, to deposit in a financial institution any cash held in contravention of that section no later than the close of normal business hours on the day following that on which the order is served or on the next banking day, and furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made; or
- (c) in the case of a contravention of section twelve, to cease immediately to settle any of its trade debts exceeding five million dollars in cash or such other amount as prescribed by the Minister; or
- (d) in the case of a contravention of section thirteen, to begin keeping the records referred to in that provision and furnish no later than seven days after the date of service of the order proof satisfactory to an inspector that it has begun to do so; or
- (e) in the case of a contravention of subsection (1) of section fourteen—
  - (i) to cease immediately to trade in cash in the manner described in that provision; and
  - (ii) to deposit in a financial institution any cash being so traded no later than the close of normal business hours on the day following that on which the order is served or on the next banking day; and
  - (iii) to furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made;or
- (f) in the case of a contravention of subsection (2) of section fourteen, to cease immediately to collect the premium referred to in that section and to refund to any person who paid it the amount so collected; or
- (g) in the case of a contravention section fifteen, to deposit in a financial institution any cash in excess of what may lawfully be held by the moneylender concerned no later than the close of normal business hours on the day following that on which the order is served or on the next banking day, and furnish proof satisfactory to an inspector that such deposit has been made no later than seven days after it is made; or
- (h) in the case of a contravention of section sixteen—
  - (i) to cease immediately to collect any fee, commission or other charge collected in contravention of subsection (1) of that section and to refund to any person who paid it the amount so collected; or
  - (ii) to cease immediately to collect any excess fee, commission or other charge collected in contravention of subsection (2) of that section and to refund to any person who paid it the amount so collected;
  - (i) in the case of a contravention of section seventeen, to cease immediately to require any person to operate a savings or current account with a minimum balance in excess of that stipulated by paragraph (a) or (b) of subsection (3) of that section.
- (2) The Director may serve a compliance order in terms of paragraph (e) of subsection (1) on any person (other than a financial institution or moneylender) holding cash in circumstances which give rise to a reasonable suspicion that it is being held for the purpose of exchanging it in contravention of subsection (1) of section fourteen.
- (3) Before taking any action in terms of subsection (1) or (2), the Director shall notify in writing the trader, parastatal, financial institution, moneylender or other person concerned of his or her intention to issue a compliance order and the reasons for doing so, and shall call upon the trader,

parastatal, financial institution, money-lender or other person to show cause, within forty-eight hours or such longer time as may be specified in the notice, why such compliance order should not be issued.

- (4) Any trader, parastatal, financial institution, moneylender or person who or which is aggrieved by an order given in terms of subsection (1) may apply to a judge in chambers and upon such application the judge may—
  - (a) confirm or vary the order; or
  - (b) discharge the order.
- (5) Any trader, parastatal, financial institution, moneylender or person who or which fails to comply with a compliance order within fourteen days (or such longer period as the Director may, for good cause shown, allow in writing) of the date of service of the order shall be guilty of an offence and liable—
  - (a) in a case where the compliance order relates to a contravention of section 10 or 10A, to a fine not exceeding level eight for each day during which it is in default of compliance with that provision, calculated from the day when the compliance order was served;  
*[paragraph amended by Act 1 of 2018]*
  - (b) in a case where the compliance order relates to a contravention of section eleven or twelve, to a fine—
    - (i) equivalent to the value of the excess cash involved in the contravention of the relevant provision; or
    - (ii) not exceeding level ten, if the amount referred to in subparagraph (i) is not readily ascertainable;
  - (c) in a case where the compliance order relates to a contravention of subsection (1) of section fourteen, to a fine—
    - (i) equivalent to the value of the cash exchanged in contravention of that provision; or
    - (ii) not exceeding level fourteen, if the amount referred to in subparagraph (i) is not readily ascertainable;
  - (d) in a case where the compliance order relates to a contravention of section fifteen, to a fine—
    - (i) equivalent to the value of the excess cash held in contravention of that provision; or
    - (ii) not exceeding level ten; whichever is the greater amount;
  - (e) in a case where the compliance order relates to a contravention of section thirteen, subsection (2) of section fourteen, subsection (1) or (2) of section sixteen or section seventeen, to a fine not exceeding level eight for each day during which it is in default of compliance with that provision, calculated from the day when the compliance order was served;
  - (f) in a case where the compliance order is issued in terms of subsection (4) of section sixteen, to a fine not exceeding level eight for each day during which it is in default of compliance with that order, calculated from the day when the compliance order was served.
- (6) Where a person is convicted of a cash detainable offence and any cash was seized from the convicted person in terms of Part V, such cash shall be paid from the Detained Cash Trust Account and applied towards meeting the fine.

## 20. Repeated contraventions of sections 10, 10A, 11, 12, 13, 14, 15, 16 and 17

Where a trader, parastatal, financial institution, moneylender or other person, having initially obeyed or been convicted of contravening a compliance order, commits another contravention of section 10, 10A, 11,

12, 13, 14, 15, 16 and 17 (whether or not the contravention is of the same provision as the one in respect of which the compliance order was issued), it shall not be necessary to serve another compliance order upon that trader, parastatal, financial institution, moneylender or other person, and he or she shall be guilty of an offence and liable to the same penalty as that for a breach of a compliance order issuable in respect of that contravention.

*[section amended by Act 1 of 2018]*

## 21. Temporary restrictions on cash withdrawals from financial institutions

- (1) If the Minister considers it necessary to do so in the interests of public order or the economic interests of the State, he or she may, by notice in the *Gazette*, prohibit—
  - (a) any persons or class of persons from withdrawing, during any period of twenty-four hours, such cash amount as may be specified in the notice from their accounts with financial institutions;
  - (b) any financial institution from permitting the withdrawal of cash in excess of the amounts referred to in paragraph (a).
- (2) The Unit may—
  - (a) for good cause shown, exempt any person from compliance with a notice made in terms of subsection (1); and
  - (b) delegate to any financial institution its power to grant exemptions in terms of paragraph (a).
- (3) Subject to subsection (2), any person who or financial institution which contravenes a notice made in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight.
- (4) A notice made in terms of subsection (1) shall expire six months after the date on which it was published, unless it has earlier been repealed.
- (5) The Minister shall cause a notice made in terms of subsection (1) to be laid before the National Assembly as soon as possible after it was made, and if, within twenty sitting days after it was laid before the House, the House resolves that the notice should be repealed, the Minister shall forthwith repeal it.

*[section substituted by Act 8 of 2013]*

## 22. Unlawful hoarding of cash

- (1) Subject to subsection (2), any person, other than a trader, parastatal, moneylender or financial institution, who, otherwise than for good cause, has on his or her person, or under his or her immediate control, or upon any land or upon or in any premises, cash in excess of ten thousand dollars, shall be guilty of an offence and liable to a fine equivalent to—
  - (a) the excess cash held in contravention of this section; or
  - (b) a fine not exceeding level ten; whichever is the greater amount.
- (2) Any person (other than a financial institution)—
  - (a) who has on his or her person, or under his or her immediate control, or upon any land or upon or in any premises, any amount of cash, whether or not in excess of ten thousand dollars; and
  - (b) about whom there is any information or intelligence leading to a reasonable suspicion that he or she is acting on behalf of the trader, parastatal, moneylender to circumvent the provisions of section 11 or 15;shall be guilty of an offence and liable to a fine equivalent to—

- (c) all the cash held in contravention of this section; or
  - (d) a fine not exceeding level ten; whichever is the greater amount.
- (3) A person referred to in—
- (a) subsection (1) shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, any good cause for not complying with that provision;
  - (b) subsection (2) shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that the suspicion there referred to is unfounded:
- Provided that if he or she is found to be in possession of cash in excess of ten thousand dollars, he or she is liable to prosecution under subsection (1).
- (4) The Minister may, by notice in a statutory instrument, suspend the operation of this section (other than this subsection) indefinitely or for a period specified in the notice, and may, in like manner, bring it back into operation.

*[section substituted by Act [1 of 2018](#)]*

## **22A. Civil penalty orders and amendment or substitution of Schedule**

- (1) Additionally or alternatively to the prosecution of any offence against section 10, 10A, 11, 13 or 18, a contravention of section 10, 10A, 11, 13 or 18, is a civil default for which the defaulter or alleged defaulter is liable to the civil penalty specified in the Schedule for that default.
- (2) Subject to subsection (3), the Minister, may by notice in a statutory instrument amend or replace the Schedule.
- (3) When the Minister wishes to amend or replace the Schedule, the Minister shall lay the draft statutory instrument amending or replacing the Schedule before the National Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*.

*[section 22A inserted by section 43 of [Act 7 of 2021](#)]*

## **Part IV – Suppression of money laundering**

*[Part IV repealed by Act [8 of 2013](#)]*

**23. \*\*\***

*[section repealed by Act [8 of 2013](#)]*

**24. \*\*\***

*[section repealed by Act [8 of 2013](#)]*

**25. \*\*\***

*[section repealed by Act [8 of 2013](#)]*

**26. \*\*\***

*[section repealed by Act [8 of 2013](#)]*



27. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

28. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

29. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

30. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

31. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

32. \*\*\*

*[section repealed by Act [8 of 2013](#)]*

## **Part V – Seizure of cash unlawfully held**

### ***Division A: Cash detainable offences***

#### **33. Powers of search, entry and seizure**

- (1) Subject to subsection (2) and this Part, a police officer or inspector may search a person for, and seize, any cash which the police officer or inspector believes, on reasonable grounds, to be held in connection with a cash detainable offence.
- (2) The search or seizure referred to in subsection (1) shall be made—
  - (a) with the consent of the person concerned; or
  - (b) under warrant issued in terms of section thirty-four; or
  - (c) in emergencies in terms of section thirty-five.
- (3) Subject to subsection (2), a police officer or inspector may enter upon any land or upon or into premises, and search the land or premises for any cash which the police officer or inspector believes, on reasonable grounds, to be held in connection with a cash detainable offence.
- (4) Any person who hinders, obstructs or makes any false representation to a police officer or inspector making a search, entry or seizure for the purposes of this Part shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or both.

#### **34. Search warrants in relation to cash held in connection with cash detainable offences**

- (1) Where a police officer or inspector has reasonable grounds for believing that there is any cash held in connection with a cash detainable offence on a person, under his or her immediate control, or upon any land or upon or in any premises, the police officer or inspector may apply to a magistrate for the issue of a search warrant for the cash.

- (2) On an application in terms of subsection (1), a police officer or inspector shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (3) issue a warrant authorising a police officer or inspector to —
- (a) in the case of a search warrant in respect of land or premises, enter upon the land, or upon or into the premises; and
  - (b) search for the cash; and
  - (c) seize cash found in the course of the search which the police officer or inspector, on reasonable grounds, believes to be cash held in connection with a cash detainable offence.
- (3) A magistrate shall not issue a warrant in terms of this section unless he or she is satisfied that there are reasonable grounds for issuing the warrant.
- (4) A warrant issued in terms of this section shall specify—
- (a) the purpose for which the warrant is issued; and
  - (b) the date on which the warrant shall cease to have effect; and
  - (c) the time during which entry upon any land or premises is authorised.
- (5) Subject to subsection (6), a police officer or inspector acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.
- (6) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.

### 35. Search in emergencies

A police officer or inspector may search a person for cash held in connection with a cash detainable offence or enter upon land or upon or into premises and search for such cash and may seize any such cash he or she finds in the course of the search if—

- (a) he or she believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the cash; and
- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Part.

### 36. Inspector to be accompanied by police officer

An inspector who intends to make any search, entry or seizure for the purposes of this Part shall—

- (a) notify the officer commanding the police district in which the inspector intends to make the search, entry or seizure; and
- (b) be accompanied by a police officer assigned to him or her or by the police officer referred to in paragraph (a):

Provided that where an inspector has reason for believing that any delay involved in obtaining the accompaniment of a police officer would defeat the object of the search, entry or seizure, he or she may make such search, entry or seizure without such police officer.

**37. Verification of whether cash is detainable, and custody, return and forfeiture of seized cash**

- (1) The Unit shall open and keep a trust account, to be called the “Detained Cash Trust Account”, with as many financial institutions and at such number of branches as it thinks necessary, in which all cash seized in terms of this Part shall be deposited and held in trust for every defendant from whom it is seized.
- (2) The Unit shall issue written directions by way of circular to every officer commanding a police district—
  - (a) identifying the financial institutions and branches at which the Unit operates the Detained Cash Trust Account; and
  - (b) prescribing the procedures and details relating to the application of subsection (6).
- (3) Before seizing any cash in terms of this Part, a police officer or inspector shall afford a defendant (if he or she is present or can be readily contacted) an opportunity to show good cause why the cash should not be seized.
- (4) Where a police officer or inspector seizes or intends to seize any cash in terms of this Part, the police officer—
  - (a) shall, if the defendant is present at the place where it is found—
    - (i) count the cash in the presence of the defendant at the place where it is found, and—
      - A. issue to the defendant a receipt for the amount of cash thus counted and remove the cash to the nearest police station; or
      - B. desist from seizing the cash where the amount of it does not exceed the lawful amount prescribed in respect of the cash detainable offence concerned;or
    - (ii) request the defendant to count it in the presence of the police officer or inspector at the place where it is found, after which the police officer or inspector—
      - A. shall issue to the defendant a receipt for the amount of cash thus counted and remove the cash to the nearest police station; or
      - B. desist from seizing the cash where the amount of it does not exceed the lawful amount prescribed in respect of the cash detainable offence concerned;
  - (b) shall, if the defendant is present at the place where it is found but the cash is of such amount as to render the counting of it on the spot impractical—
    - (i) request the defendant to accompany the police officer or inspector with the cash to the nearest police station for the purpose of witnessing its deposit in a secure place; and
    - (ii) inform the defendant of a time, not later than forty-eight hours after the cash is thus deposited, when he or she, or another person authorised by him or her in writing, may be present at the police station for the purpose of witnessing the counting of the cash and collecting a receipt for the amount of cash thus counted;
  - (c) shall, if the defendant is present at the place where it is seized but the cash is found in such a place or such circumstances as to render the counting of it on the spot impractical, request

the defendant to accompany the police officer or inspector with the cash to the nearest police station, whereupon—

- (i) subparagraph (i) or (ii) of paragraph (a) shall apply to the counting of the cash, as if the references in that provision to the place where the cash is found are references to the police station; or
- (ii) paragraph (b) shall apply to the counting of the cash; whichever course is appropriate to the circumstances of the case;
- (d) shall, where the defendant is not present at the place where it is found, secure the attendance of any two witnesses who are not police officers or inspectors for the purposes of paragraphs (a), (b) or (c), and those paragraphs shall apply as if the references in them to the defendant are references to such witnesses:

Provided that—

- (i) the witnesses shall not be required to count any cash to be seized; and
  - (ii) where cash is removed from the place where it is found—
    - A. a notice in writing to that effect, and of the police station to which it has been removed, shall be prominently displayed by the police officer or inspector at the place from where it is removed; and
    - B. the appropriate receipt shall be despatched at the earliest opportunity to the defendant.
- (5) Where a defendant refuses to count the cash as requested under subparagraph (ii) of paragraph (a) of subsection (4), or refuses or fails to accompany a police officer or inspector, or be present at the counting of the cash in terms of paragraph (b) or (c) of subsection (4), a police officer or inspector may count the cash seized within the next forty-eight hours after it was seized and, within that period, issue to the defendant a receipt for the amount of the cash thus counted, which amount shall be presumed to be the correct amount of the cash seized.
  - (6) A police officer or inspector who seizes cash in terms of this Part shall, no later than forty-eight hours after it has been counted, deposit the cash in the Detained Cash Trust Account and submit to the Unit a copy of the receipt issued in relation to such deposit together with the name and address of the defendant from whom the cash was seized.
  - (7) Cash held in the Detained Cash Trust Account may not be held for more than fourteen days after seizure, unless a magistrate orders its continued detention for a period not exceeding three months from the date of seizure.
  - (8) Where cash has been seized in terms of this Part and, at the end of the period of seven days after its seizure, the matter has not been laid before a magistrate, any person who claims an interest in the cash may (subject to subsection (12)) apply to a magistrate for an order that the cash be returned to him or her.
  - (9) In granting an order for the further detention of the money, a magistrate shall satisfy himself or herself that there are reasonable grounds for the suspicion that the cash was held in connection with a cash detainable offence, and consideration is being given to institute criminal proceedings for such offence.
  - (10) A magistrate may subsequently order the continued detention of the cash if he or she is satisfied that the conditions set out in subsection (9) still exist, but the total period of detention shall not exceed six months, and shall be calculated from the date the order was made in terms of that subsection.
  - (11) Subject to subsection (12), cash detained in terms of this section may be released in whole or in part to the defendant, by order of a magistrate or the Director, after considering any views by the Director of Public Prosecutions to the contrary, upon application by or on behalf of that defendant, if it is found that its continued detention is no longer justified.

- (12) Where a magistrate or the Director orders cash to be released in terms of this section, it shall not be released except by cheque transfer to an account kept with a financial institution by the defendant, and, where no such account is in existence on the date of the order, the cash shall not be released until the defendant opens such an account to enable the cash to be so transferred.

### **38. Proof of certain matters in prosecutions for cash detainable offences**

In any criminal proceedings in connection with a cash detainable offence—

- (a) a copy of a receipt issued in respect of cash seized in terms of this Part, certified by or on behalf the police officer commanding the police district in which such cash was seized, or by or on behalf of the inspector who seized the cash; or
- (b) a copy of a receipt issued in relation to a deposit of cash in the Detained Cash Trust Account, accompanied by a document giving the name and address of the person from whom it was seized, both certified by or on behalf the police officer commanding the police district in which such cash was deposited, or by or on behalf of the inspector who seized the cash;

shall be received in evidence before any court as *prima facie* proof of the fact that the cash was seized from the person named in the receipt or document and as proof of the amount of cash thus seized, and no court shall require that cash seized and detained in terms of this Part be exhibited as evidence for the purpose of such proceedings if such receipt or document is produced before it.

#### ***Division B: Seizure and detention of cash or currency held in connection with offences other than cash detainable offences***

### **39. Seizure and detention of cash that is the proceeds of crime or used in unlawful dealings in foreign currency**

- (1) Notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Act [Chapter 9:07], the Money Laundering and Proceeds of Crime Act [Chapter 9:24], or the Exchange Control Act [Chapter 22:05], this Part shall apply to cash used or suspected of being used in connection with—
- (a) money-laundering or the financing of terrorist activities; or
  - (b) any serious offence; or
  - (c) any offence of buying or borrowing foreign currency from, or selling or lending foreign currency to, a person other than a person authorised under the Exchange Control Act [Chapter 22:05];

as if such offence is a cash detainable offence.

*[subsection substituted by Act 8 of 2013]*

- (2) For the avoidance of doubt, it is declared that the effect of subsection (1) is that if a person suspected of committing an offence referred to in that subsection is in possession of cash (of whatever amount), such cash may be seized in accordance with this Part and detained in the Detained Cash Trust Account, and may not be released therefrom except in accordance with subsection (6) of section nineteen or subsections (11) and (12) of section thirty-seven.

### **40. Seizure and detention of suspicious imports or exports of currency**

- (1) A police officer or inspector may seize and detain any currency which is being imported into or exported from Zimbabwe if such currency is more than the amount prescribed by the Minister, and he or she has reasonable grounds to suspect that—
- (a) either the currency was derived from the commission of a serious offence or the currency is intended to be used in the commission of a serious offence; or

- (b) the currency is being imported into or exported from Zimbabwe in contravention of the Exchange Control Act [Chapter 22:05].
- (2) Currency seized and detained in terms of subsection (1) shall be deposited in the Detained Cash Trust Account and may not be held for more than seven days after such seizure, unless a magistrate orders its continued detention for a period not exceeding three months from the date of seizure.
- (3) In granting an order for the further detention of the currency, a magistrate should satisfy himself or herself that there are reasonable grounds for the suspicion referred to in subsection (1), and the continued detention of the currency is justified so as to enable the investigation of its origin or derivation, and consideration is being given to institute criminal proceedings in Zimbabwe or elsewhere for an offence connected to such currency against the person who was in possession of the currency.
- (4) A magistrate may subsequently order the continued detention of the currency if he or she is satisfied that the conditions set out in subsection (3) still exist, but the total period of detention shall not exceed two years, and shall be calculated from the date the order was made in terms of that subsection.
- (5) Subject to subsection (6), currency detained in terms of this section may be released in whole or in part to the person on whose behalf it was imported or exported, by order of a magistrate or an inspector, after considering any views by the Director of Public Prosecutions to the contrary, upon application by or on behalf of that person, if it is found that its continued detention is no longer justified.
- (6) No currency detained under this section shall be released where#
  - (a) an application is made for the purpose of#
    - (i) the forfeiture or confiscation of the whole or any part of the currency; or
    - (ii) its restraint pending determination of its liability to forfeiture or confiscation;
  - or
  - (b) proceedings are instituted in Zimbabwe or elsewhere against any person for an offence with which the currency is connected;

unless and until the proceedings relating to the relevant application or the proceedings for the offence, as the case may be, have been concluded.

#### **41. Applicability of Cap.9:24 where tainted property consists of currency, other property or both**

If a person suspected of committing a serious offence is in possession of tainted property—

- (a) consisting of currency alone, this Act shall apply to the exclusion of the Money Laundering and Proceeds of Crime Act [Chapter 9:24]; or
- (b) consisting exclusively of property other than currency, the Money Laundering and Proceeds of Crime Act [Chapter 9:24], shall apply to the exclusion of this Act; or
- (c) consisting of both currency and property other than currency—
  - (i) this Act shall apply to such part of the property as consists of currency; and
  - (ii) the Money Laundering and Proceeds of Crime Act [Chapter 9:24], shall apply to such part of the property as does not consist of currency.

[section substituted by Act 4 of 2013]

## Part VI – General

### 41A. Freezing orders

- (1) The Director may, without notice of his or her intended action to the affected person and financial institution, serve upon that person and the financial institution concerned, a written temporary freezing order having effect for not more than ninety days in respect of the account or accounts of any person (hereinafter called “the sanctioned person”) reasonably suspected of violating any provision of this Act, the Exchange Control Act [Chapter 22:05] or the Money Laundering Act.
- (2) The temporary freezing order shall prevent—
  - (a) the sanctioned person or any person acting on his or her behalf in whatever capacity from—
    - (i) operating any account affected by the order; or
    - (ii) opening any account with same or any other financial institution; and
  - (b) the financial institution where the account of the sanctioned person is held from authorising or executing any transactions through that account, whether at the instance of the sanctioned person or not;

without the express approval of the Director given subject to the conditions specified by the Director.

- (3) Within the period of the temporary freezing order, or any extension of the freezing order as the court may allow the Director may apply to a magistrate’s court for a freezing order in respect of the sanctioned person for any definite or indefinite period:
- (4) An application for a freezing order shall be in writing and shall be supported by an affidavit of the Director indicating that the Director believes, and the grounds for his or her belief, that the account is concerned in any violation of or is being used for violating any cited provision of this Act, the Exchange Control Act [Chapter 22:05] or the Money Laundering Act.
- (5) An application for a freezing order may include an application for an order by the court limiting or restricting attendance at the court and publication of its proceedings in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04].
- (6) The court may make a freezing order for any definite or indefinite period in relation to any one or more accounts referred to in an application brought under this section where it is satisfied that there are reasonable grounds to believe that the account or accounts in question are concerned in any violation of or are being used for violating any cited provision of this Act, the Exchange Control Act [Chapter 22:05] or the Money Laundering Act:

Provided that—

- (a) no freezing order may be issued for a definite period exceeding twelve months without the Director applying for an extension of the order in the same way that he or she applied for the original order;
  - (b) a freezing order issued for an indefinite period shall lapse at the end of the twelfth month on the date after was issued unless the Director applies (in the same way that he or she applied for the original order) for a renewal of the order or for an order having effect for a definite period.
- (7) The temporary freezing order shall prevent—
  - (a) the sanctioned person or any person acting on his or her behalf in whatever capacity from—
    - (i) operating any account affected by the order; or
    - (ii) opening any account with same or any other financial institution; and

- (b) the financial institution where the account of the sanctioned person is held from authorising or executing any transactions through that account, whether at the instance of the sanctioned person or not;

without the express approval of the Director given subject to the conditions specified by, the Director.

- (8) Within twenty-one days of the granting of a freezing order or such other period as the court may direct, notice of the order shall be served on all persons known to the Director to have an interest in the funds affected by the order, and such other persons as the court may direct.
- (9) Subject to subsection (10), the Director shall not, in relation to the same sanctioned person and to the same account or accounts, make more than two temporary freezing orders in any period of twelve months.
- (10) If, within any period of twelve months, the need arises for any account of a sanctioned person to be frozen after it has been temporarily frozen twice within that period, the Director shall apply to a magistrate's court for a freezing order in accordance with the following subsections.
- (11) An application for a freezing order shall be in writing and shall be supported by an affidavit of the Director indicating that the Director believes, and, the grounds for his or her belief, that the account is concerned in any violation of or being used for violating any cited provision of this Act, the Exchange Control Act [Chapter 22:05] or the Money Laundering Act, which application may—
  - (a) be made *ex parte* and without notice, if the Director sets forth in his or her affidavit reasonable grounds for believing that the giving of notice to any affected party is likely to prejudice the purpose for which the application is sought;
  - (b) include an application for an order by the court limiting or restricting attendance at the court and publication of its proceedings in terms of the Courts and Adjudicating Authorities (Publicity Restriction Act [Chapter 7:04].
- (12) Subsections (6), (7) and (8) apply also to any order applied for under subsection (11).

[section 41A inserted by Act 1 of 2018 and amended by section 44 of Act 7 of 2021]

## 42. Secrecy, immunity and protection of designated institutions

- (1) This Act shall have effect notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by law or otherwise.
- (2) No action, suit or other proceedings shall lie against any designated institution, or an officer, employee or other representative of such designated institution, acting in the ordinary course of his or her employment or representation in relation to any action taken in good faith by that designated institution.
- (3) The identity of any designated institution which makes a report to the Unit shall not be disclosed in any proceedings in a court of law without the consent of the designated institution.

## 43. Confidentiality

- (1) Any information reported to the Unit or gathered or discovered by any inspector or officer thereof in the course of exercising his or her functions under this Act shall be confidential to the Unit and no person shall disclose any such information to any other person or body except—
  - (a) in the course of exercising his or her functions under this Act; or
  - (b) to a judge in chambers for the purposes of section seven, eighteen, nineteen, twenty-nine, thirty or thirty-one; or
  - (c) in accordance with the order of any court; or



- (d) for the purposes of any prosecution or criminal proceedings.
- (2) An inspector or member of staff of the Unit who discloses any information referred to in subsection (1) otherwise than in accordance with that provision, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or imprisonment for a period not exceeding three years, or both.

#### **44. Immunity where official powers or functions exercised in good faith**

No suit, prosecution or other legal proceedings shall lie against the Government, the Reserve Bank, the Unit, an inspector or member of staff of the Unit or any police officer or other person in respect of anything done by or on behalf of that person, with due diligence and in good faith, in the exercise of any power or other performance of any function under this Act or any order made thereunder.

#### **45. Saving of privileges to legal profession**

Nothing contained in this Act shall be construed as derogating from the common law privilege attaching to communication made between a legal practitioner and client for the purpose of giving or receiving legal advice or to communications made between a legal practitioner, client and their agents or employees for the dominant purpose of pending or contemplated proceedings.

#### **46. Costs of applications in chambers**

A judge who determines any application in terms of section seven, eighteen, nineteen, twenty-nine, thirty or thirty-one shall make such order as to the costs of the application as he or she considers proper.

#### **47. Special jurisdiction of regional magistrates courts**

Notwithstanding anything in the Magistrates Court Act [Chapter 7:10], regional magistrates shall have special jurisdiction to impose the punishment prescribed for any offence against the provisions of this Act.

#### **48. Regulations**

- (1) Subject to subsection (2), the Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations in terms of subsection (1) may provide penalties for contraventions thereof:  
Provided that no such penalty shall exceed a fine of level fourteen or imprisonment for a period of five years or both such fine and such imprisonment.  
*[subsection amended by Act 3 of 2009]*
- (3) Regulations in terms of subsection (1) that provide penalties for contraventions thereof may impose upon any person charged with a criminal offence the burden of proving particular facts.  
*[subsection inserted by Act 3 of 2009]*

#### **49. Amnesty for breaches of sections 10 and 11**

- (1) An amnesty for any contravention of section 10 or 11 shall come into force in accordance with the terms of the Schedule
- (2) Subject to the Schedule this section and the Schedule shall be deemed to be repealed on the 1st April, 2018.  
*[section substituted by Act 1 of 2018]*

## **First Schedule (Section 2(1))**

### **Designated institutions**

1. A financial institution, other than the Reserve Bank.
2. A person registered as an insurer in terms of the Insurance Act [Chapter 24:07].
3. A person registered as a legal practitioner in terms of the Legal Practitioners Act [Chapter 27:07].
4. A person registered as a public accountant in terms of the Public Accountants and Auditors Act [Chapter 27:12].
5. A person registered as an estate agent in terms of the Estate Agents Act [Chapter 27:05].
6. A cash dealer.
7. A moneylender.
8. A pension fund registered in terms of the Pension and Provident Funds Act [Chapter 24:09].
9. A person carrying on the business of import/export.
10. A person carrying on the business as a manager or trustee of a unit trust or other collective investment scheme.
11. A person, other than a financial institution, who carries on the business, whether formally or informally, of providing money transmission services.

## **Second Schedule (Section 2(1))**

### **Relevant financial business**

1. Acceptance of deposits by a financial institution, other than the Reserve Bank.
2. Acceptance of deposits by a person registered in terms of the Estate Agents Act [Chapter 27:05] the Legal Practitioners Act [Chapter 27:07] or the Public Accountants Act [Chapter 27:12].
3. Lending moneys.
4. Financial leasing.
5. Money transmission services.
6. Providing guarantees and commitments.
7. Deposit taking and investment business (including dealing in financial futures relating to securities, options, units in collective investment schemes and stocks and shares).
8. Life insurance business.
9. Money changing, that is, exchanging currency, money, cheques, travellers cheques or other negotiable instruments.

### Third Schedule (Section 9)

#### Provisions applicable to the Bank Use Promotion and Suppression of Money Laundering Advisory Committee

##### 1. Interpretation in Third Schedule

In this Schedule#

“**member**” means a member of the Committee.

##### 2. Disqualification for appointment to Committee

- (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office if—
  - (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
  - (b) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
  - (c) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
  - (d) within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced—
    - (i) in Zimbabwe, in respect of an offence involving dishonesty; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty.
- (2) A person who is—
  - (a) a member of Parliament; or
  - (b) a member of three or more statutory bodies;shall not be appointed as a member, nor shall he or she be qualified to hold office as a member.
- (3) For the purposes of paragraph (b) of subparagraph 2—
  - (a) a person who is appointed to a council, board or other body which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
  - (b) “statutory body” means—
    - (i) any commission established by the Constitution; or
    - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President, a Minister or any statutory body or by a commission established by the Constitution.

##### 3. Terms and conditions of office of members

- (1) A member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his or her appointment.

- (2) On the expiry of the period for which a member was been appointed, the member shall continue to hold office until he or she has been re-appointed or the member's successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

- (3) A person who ceases to be a member shall be eligible for re-appointment: Provided that no person may be re-appointed for a fifth term in office.
- (4) Members shall hold office on such terms and conditions as the Minister may fix.

#### **4. Vacation of office by members**

- (1) A member shall vacate office and the member's office shall become vacant—
- (a) one month after the date the member gives notice in writing to the Minister of his or her intention to resign office or after the expiry of such other period of notice as the member and the Minister may agree; or
  - (b) on the date the member begins to serve a sentence of imprisonment in Zimbabwe or in any other country;
  - (c) if the member becomes disqualified in terms of paragraph (a), (b) or (c) of subparagraph (1) of paragraph 2, or in terms of subparagraph (2) of that paragraph, to hold office as a member; or
  - (d) if the member is required in terms of subparagraph (2) or (3) to vacate his or her office as a member.
- (2) The Minister may require a member to vacate his or her office if—
- (a) the member has been guilty of conduct which renders the member unsuitable to continue to hold office as a member; or
  - (b) the member has failed to comply with any condition of his or her office fixed in terms of paragraph 3; or
  - (c) the member has ceased to possess any qualification by reason of which he or she was appointed; or
  - (d) the member is mentally or physically incapable of efficiently performing his or her duties as a member; or
  - (e) the member contravenes paragraph 11; or
  - (f) the member or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his or her duties as a member.
- (3) The Minister, on the recommendation of the Committee, may require a member to vacate office if the Minister is satisfied that the member has been absent without the consent of the chairperson from three consecutive meetings of the Committee of which the member has been given at least seven days' notice, and that there was no just cause for the member's absence.

#### **5. Suspension of members**

The Minister—

- (a) may suspend from office a member against whom criminal proceedings have been instituted in respect of an offence for which a sentence of imprisonment without the option of a fine may be imposed; and

- (b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;

and, while that member is so suspended, the member shall not carry out any of his or her duties or be entitled to any remuneration or allowances as a member.

## **6. Dismissal of Committee**

- (1) Subject to subparagraph (2), if the Minister considers that—
  - (a) the Committee has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or
  - (b) whether through disagreements amongst its members or otherwise, the Committee is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairperson, dismiss all the members of the Committee, and their offices shall become vacant as soon as the chairperson receives the notice.

- (2) A member who has been dismissed in terms of subparagraph (1) shall be eligible for re-appointment.

## **7. Filling of vacancies on Committee**

- (1) Within three months after a member's death or vacation of office, the Minister shall, subject to paragraph 2, appoint a person to fill the vacancy.
- (2) Within one month after dismissing all the appointed members in terms of paragraph 6, the Minister shall, subject to paragraph 2, appoint persons to fill the vacancies.

## **8. Vice-chairperson of Committee**

- (1) At its first meeting the Committee shall elect from among the members appointed in terms of paragraph (b) subsection (2) of section nine a member to be the vice-chairperson of the Committee.
- (2) The vice-chairperson may at any time, by written notice to the Minister, resign his or her office as such.
- (3) Within three months after being notified of a vacancy in the office of the vice-chairperson, the Committee shall, subject to subparagraph (1), elect a member to fill the vacancy.
- (4) The vice-chairperson shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of chairperson is vacant.

## **9. Meetings and procedure of Committee**

- (1) The Committee shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Committee shall meet at least six times in each financial year.

- (2) The chairperson—
  - (a) may convene a special meeting of the Committee at any time; and
  - (b) shall convene a special meeting of the Committee on the written request of the Governor or Minister or not fewer than two members, which meeting shall be convened for a date not

sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

- (3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.
- (4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—
  - (a) such business as may be determined by the chairperson, where he or she convened the meeting in terms of paragraph (a) of subparagraph (2); or
  - (b) the business specified in the request for the meeting, where the chairperson convened the meeting in terms of paragraph (b) of subparagraph (2).
- (5) The chairperson or, in the chairperson's absence, the vice-chairperson, shall preside at all meetings of the Committee:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Committee, the members present may elect one of their number to preside at that meeting as chairperson.
- (6) The quorum at any meeting of the Committee shall be a majority of the members.
- (7) Subject to subparagraph (11), anything authorised or required to be done by the Committee may be decided by a majority vote at any meeting of the Committee at which a quorum is present.
- (8) With the approval of the other members, the chairperson may invite any person to attend a meeting of the Committee or of a subcommittee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Committee or the subcommittee, as the case may be, at that meeting.
- (9) A person invited to attend a meeting of the Committee or of a subcommittee in terms of subparagraph (8) may take part in the proceedings of the Committee concerned or the subcommittee as if he or she were a member thereof, but shall not have a vote on any question before the Committee or subcommittee, as the case may be.
- (10) At all meetings of the Committee each member present shall have one vote on any question before the Committee:

Provided that—

  - (i) in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote;
  - (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Committee which relates to his or her vacation of office as a member.

## 10. Subcommittees of Committee

- (1) For the better exercise of its functions, the Committee may establish one or more subcommittees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a subcommittee shall not prevent the Committee from itself exercising that function, and the Committee may amend or rescind any decision of the subcommittee in the exercise of that function.
- (2) On the establishment of a subcommittee the Committee may appoint to the subcommittee persons who are not members of the Committee.
- (3) The chairperson of the Committee or of a subcommittee may at any reasonable time and place convene a meeting of that subcommittee.

- (4) The procedure of the subcommittee shall be as fixed from time to time by the Committee.
- (5) Subject to this paragraph, subparagraphs (2) to (7) of paragraph 9 shall apply, *mutatis mutandis*, to subcommittees and their members as they apply to the Committee and its members.

#### **11. Members of Committee and subcommittees to disclose certain connections and interests**

- (1) In this paragraph—

“relative”, in relation to a member of the Committee or of a subcommittee, means the member’s spouse, child, parent, brother or sister.
- (2) If a member of the Committee or of a subcommittee, or a relative of such a member, owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member, the member shall forthwith disclose the fact to the Committee or the subcommittee, as the case may be.
- (3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Committee or the subcommittee, as the case may be, which relates to any interest, property or right referred to in that subparagraph.
- (4) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or imprisonment for a period not exceeding three months, or both.

#### **12. Minutes of proceedings of Committee and of subcommittees**

- (1) The Committee shall cause minutes of all proceedings of and decisions taken at any meeting of the Committee or of a subcommittee to be entered in books kept for the purpose.
- (2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting of the Committee or the subcommittee concerned, as the case may be, to which the minutes relate or by the chairperson of the next following meeting, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting.

#### **13. Remuneration and allowances of members of Committee and subcommittees**

Members of the Committee and of subcommittees shall be paid from the funds of the Reserve Bank—

- (a) such remuneration, if any, as the Minister may fix for members of the Committee or members of subcommittees, as the case may be, generally; and
- (b) such allowances, if any, as the Minister may fix to meet any reasonable expenses incurred by a member in connection with the business of the Committee or the subcommittee, as the case may be.

### **Fourth Schedule (Section 49)**

#### **Amnesty for hoarding cash in breach of sections 10 and 11**

[Schedule inserted by Act [1 of 2018](#)]

##### **1. Interpretation in Fourth Schedule**

- (1) In this Schedule, unless the context otherwise requires—

“**amnesty**” means, in a general sense, the amnesty for traders, parastatals and moneylenders contemplated by this Schedule that begins on the 1st January, 2018, and ends on the 1st April, 2018, and, in a particular sense, an amnesty granted in conformity with this Part to an applicant therefor;

“**amnestied period**” means any period before the 1st January, 2018;

“**Bank Use Promotion Unit**” means the Bank Use Promotion Unit of the Reserve Bank, established in terms of the Bank Use Promotion Act [Chapter 24:24];

“**hoarded cash**” means cash that a trader or parastatal failed to deposit in a financial institution in accordance with [section 11](#), being cash—

- (a) that is surplus to the requirements of the trader or parastatal; or
- (b) in excess of that prescribed by or under [section 11\(1\)\(b\)](#);

“**Revenue Authority**” means the Zimbabwe Revenue Authority as established by the Zimbabwe Revenue Authority Act [Chapter 23:11].

- (2) Any term defined in the Act shall bear the same meaning when used in this Schedule.

## 2. Amnesty in respect of contraventions of sections 10 and 11 of Cap. 24:24

An amnesty in respect of any contravention of [section 10](#) or [11](#) shall come into force in accordance with the terms of this Schedule, the effect of which is that—

- (a) where a compliance order in terms of [section 19](#) was, before the 1st January, 2018, issued to a trader, parastatal or moneylender for non-compliance with [section 10](#) or [11](#), such compliance order, unless earlier discharged, is suspended for the period of the amnesty and discharged if the trader, parastatal or moneylender avails itself of the amnesty before the 1st April, 2018; and
- (b) where a trader, parastatal or moneylender has failed to comply with [section 10](#) or [11](#) before the 1st January, 2018—
  - (i) no compliance order shall be issued to such trader, parastatal or moneylender for the period of the amnesty ending on the 1st April, 2018; and
  - (ii) such trader, parastatal or moneylender shall, without reference to [section 19](#) of the Act, be liable to prosecution under [paragraph 7](#) if it fails to avail itself of the amnesty before the 1st April, 2018.

## 3. Administration of amnesty and powers of Governor of Reserve Bank

- (1) The Unit shall be responsible for administering the amnesty and for ensuring compliance by successful applicants therefor with the terms of their amnesties.
- (2) The Governor-of the Reserve Bank shall have the authority to do anything necessary for the efficient and effective application or implementation of this Schedule.

## 4. Non-application of certain criminal and other laws in respect of amnestied conduct

- (1) Subject to this Schedule, for the purpose of this amnesty, the contravention of [section 10](#) or [11](#) for which an amnestied person would, but for this Schedule, be liable to be prosecuted by the National Prosecuting Authority shall not be deemed to be criminal conduct.
- (2) [Section 10](#) of this Act, and [section 34B](#) (“Reward for information”) of the Revenue Authority Act [Chapter 23:11] (No. 17 of 1999) shall not apply to any information provided or measure taken which relates to an offence for which an amnestied person is not liable by virtue of this Schedule to be prosecuted by the National Prosecuting Authority.



## 5. Scope of amnesty

- (1) The amnesty applies in respect of any violation of section 10 or 11 within the scope of this section.
- (2) In order to qualify for the amnesty a person who—
  - (a) being a trader, parastatal or moneylender, had failed, before the 1st January, 2018, to open and keep open an account with a financial institution, must open such account before the 1st April, 2018, and deposit any hoarded cash; or
  - (b) being a trader, and parastatal, had failed before the 1st January, 2018, to deposit hoarded cash in an account with a financial institution, must deposit the cash in a financial institution by the 1st April, 2018.
- (3) An amnesty granted to a trader, parastatal or moneylender does not affect the liability for tax of the trader, parastatal or moneylender on any hoarded cash, provided that the trader, parastatal or moneylender shall not be subject to any penalty by way of interest or enhanced tax on the hoarded tax in question

## 6. Proof and modalities of compliance

- (1) The receiving local financial institution shall immediately notify the Unit of the deposit of any hoarded cash, furnishing it with documentary proof of the same that discloses—
  - (a) the name of the trader or parastatal to which the hoarded cash belongs and its value; and
  - (b) that the trader or parastatal is making the deposit pursuant to this amnesty.

## 7. Confidentiality

- (1) Any information reported to the Unit or gathered or discovered by any employee, inspector or agent of the Unit in the course of exercising his or her functions under this Schedule shall be confidential to the Unit, and no person shall disclose any such information to any other person or body except—
  - (a) in the course of exercising his or her functions under this Act; or
  - (b) to a judicial officer for the purposes of any legal, proceedings under this Act; or
  - (c) in accordance with the order of any court; or
  - (d) for the purposes of any prosecution or criminal proceedings;or where the disclosure is authorised or required by or under this Schedule or any other law.
- (2) Any officer, employee, inspector or agent of the Unit who discloses any information referred to in subparagraph (1) otherwise than in accordance with that subsection, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.
- (3) The Director shall ensure that the Unit maintains adequate systems and procedures to maintain the confidentiality of information referred to in subsection (1).

## 8. Failure to avail oneself of the amnesty

Any trader, parastatal or moneylender in possession of hoarded cash who or which fails to avail itself, herself or himself of the amnesty under this Part shall be guilty of an offence and liable—

- (a) in a case of a contravention of section 10 of the Act, to a fine not exceeding level eight for each day during which it is in default of compliance with that provision, calculated from the 1st April, 2018; and

- (b) in a case of a contravention of section 11 of the Act, to a fine equivalent to the value of the hoarded cash.

## Fourth Schedule (Section 22A)

### Civil penalty orders

*[Please note: numbering as in original.]*

*[Fourth Schedule inserted by section 45 of [Act 7 of 2021](#)]*

#### 1. Interpretation in the Fourth Schedule

In this Schedule, unless the context otherwise requires—

“**citation clause**”, in relation to a civil penalty order, is the part of the order in which the designated officer names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;

“**civil penalty register**” means the register referred to in paragraph 6 (“Evidentiary provisions in connection with civil penalty orders”);

“**continuing default**” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;

“**corporate defaulter**” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (6));

“**date of issuance**”, in relation to the service of a civil penalty order, means the date on which it is served in any of the ways specified in paragraph 3(1);

“**defaulter**” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;

“**designated officer**” means the Director-General of the Financial Intelligence Unit or an employee or the FIU or other person designated and authorised by the Director-General of the FIU to undertake duties in connection with the implementation of this Schedule;

“**officer**”, in relation to a corporate defaulter, means a member of its board or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;

“**penalty clause**”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;

“**remediation clause**” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;

“**show cause clause**” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

#### 2. Power of designated officer to issue civil penalty orders

- (1) Where default is made in complying with section 10, 10A, 11, 13 or 18 of the Act, the designated officer may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate description specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

- (2) In the event of default in complying with section 10, that is to say, failure to open a bank account, the civil penalty order shall provide for—
- (a) a combination of a fixed penalty and potentially two cumulative penalties, of which—
    - (i) the fixed penalty of one hundred thousand Zimbabwe dollars; and
    - (ii) the cumulative penalty—
      - (A) relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
      - (B) relating to the failure to open the bank account—
        - (I) shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
        - (II) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
  - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:
- Provided that—
- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it is shown that the order was issued in error, the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (3) In the event of default in complying with section 10A, that is to say, failure to avail to customers an electronic means of payment, the civil penalty order shall provide for—
- (a) a combination of a fixed penalty and potentially two cumulative penalties, of which—
    - (i) the fixed penalty shall be five hundred thousand Zimbabwe dollars; and
    - (ii) the cumulative penalty—
      - (A) relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
      - (B) relating to the failure to comply with section 10A—
        - (I) shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
        - (II) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
  - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer

why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it is shown that the order was issued in error, the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (4) In the event of default in complying with section 11, that is to say, failure to bank surplus cash in a bank account within the time specified, the civil penalty order shall provide for—

- (a) a combination of—
  - (i) a fixed penalty of one hundred thousand Zimbabwe dollars or the total amount not banked, whichever is greater; and
  - (ii) a cumulative penalty over a period not exceeding ninety days of five *per centum* of the outstanding amount of the fixed penalty for each day (beginning on the day after the service of a civil penalty order) that the fixed penalty or any outstanding amount thereof remains unpaid by the defaulter;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it is shown that the order was issued in error the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (5) In the event of default in complying with section 13, that is to say, failure to keep records, the civil penalty order shall provide for—
- (a) a combination of a fixed penalty and potentially two cumulative penalties, of which—
    - (i) the fixed penalty shall be an amount of five hundred thousand Zimbabwe dollars; and
    - (ii) the cumulative penalty—
      - (A) relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
      - (B) relating to the failure to comply with section 13—
        - (I) shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
        - (II) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
  - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer

why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
  - (ii) if within that period it shown that the order was issued in error, the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (6) In the event of default in complying with section 18, that is to say, failure to comply with a disclosure order, the penalty order shall provide for—
- (a) a cumulative penalty of twenty thousand Zimbabwe dollars for each day that the person fails to make the disclosures required by section 18, not exceeding a period of ninety days, which penalty must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
  - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it shown that the order was issued in error the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

### **3. Service and enforcement of civil penalties and destination of proceeds thereof**

- (1) References to the designated officer serving upon a defaulter any civil penalty order in terms of this Schedule, are to be interpreted as requiring the designated officer to serve such order in writing to the defaulter concerned—
  - (a) by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person, or to a responsible individual at the place of business of the defaulter; or
  - (b) by delivery through a commercial courier service to the defaulter's place of business or his or her principal office in Zimbabwe or other place of business of the defaulter; or
  - (c) by electronic mail to the defaulter whose electronic mail address is known to the designated officer.
- (2) The designated officer shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the designated officer in the civil penalty register.
- (3) The designated officer may, if the defaulter is a corporate defaulter—
  - (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned;
  - (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the designated officer shall note in the civil penalty

register), there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

- (4) The designated officer may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Schedule if the defaults in question—
  - (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
  - (b) arose in connection with the same set of facts.
- (5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the designated officer may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—
  - (a) summons is issued to the accused person for the prosecution of the offence; or
  - (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
  - (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

- (6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the designated officer to pay the civil penalty in the event that the defaulter does not pay.
- (7) Upon the expiry of the ninety-day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).
- (8) The amount of any civil penalty shall—
  - (a) be payable to the designated officer and shall form part of the funds of the Reserve Bank; and
  - (b) be a debt due to the Reserve Bank and shall be sued for in any proceedings in the name of the Reserve Bank in any court of competent civil jurisdiction:

Provided that for this purpose, the court of the magistrate in the district where the defaulter has his or her principal place of business shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction.

- (9) Proceedings in a court for the recovery of a civil penalty shall be deemed to be proceedings for the recovery of a debt as if the defaulter had acknowledged the debt in writing.
- (10) If the designated officer in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the

designated officer may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
  - (b) were served—
    - (i) on the same defaulter; or
    - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or
    - (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.
- (11) Unless the designated officer has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the designated officer for the amount of any outstanding civil penalty due from the convicted defaulter.

#### **4. Limitation on issuance and enforcement of civil penalty orders**

- (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur.
- (2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable (either immediately or within seven days from the service of the civil penalty order) to a penalty or combined penalties in excess of the equivalent to more than twice the highest monetary penalty for which that person is liable in respect of any of those civil defaults, the Reserve Bank may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

#### **5. When hearings on question whether to serve civil penalty orders may be held**

- (1) If, in response to a show cause clause, an alleged defaulter satisfies the designated officer, that it is not possible within 48 hours to demonstrate that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control, the designated officer shall afford the alleged defaulter an opportunity to be heard by making oral representations to the designated officer, for which purpose—
  - (a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the designated officer an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;
  - (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the designated officer may serve copies of the affidavit on any person who, in the designated officer's opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at a meeting to be presided over by the designated officer (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other person or not issued at all; and:



Provided that in such invitation or at the meeting the designated officer may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

- (2) The following provisions apply to every meeting convened under this paragraph in connection with the issuance of a civil penalty order—
- (a) if the alleged defaulter fails to attend at the meeting the designated officer may proceed to issue the civil penalty order;
  - (b) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;
  - (c) at the conclusion of the meeting the designated officer may—
    - (i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and, if so to upon whom, and if the designated officer decides to issue the civil penalty order the designated officer shall do so within twenty-four hours;
    - (ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the designated officer finds that the defaulter's objections to its issuance were baseless, vexatious or frivolous:

Provided that the designated officer may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter or any other person found to be liable for the civil penalty.

## 6. Evidentiary provisions in connection with civil penalty orders

- (1) For the purposes of this Schedule the designated officer shall keep a civil penalty register wherein shall be recorded—
- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be;
  - (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
    - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
    - (ii) a meeting was held in accordance with paragraph 5, then—
      - (A) a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the designated officer);
      - (B) a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different defaulter was served with it.



- (2) A copy of—
- (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the designated officer as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or
  - (b) any civil penalty order that has been served in terms of this Act, authenticated by the designated officer as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

## 7. Designated officers

- (1) Any reference to the FIU in this Schedule shall be construed as a reference to a designated officer.
- (2) The Director-General of the FIU shall furnish each designated officer with a certificate signed by or on behalf of the Governor stating that he or she has been appointed as a designated officer for the purpose of this Schedule.
- (3) A designated officer shall, on demand by any person affected by the exercise of the powers conferred upon the FIU under this Schedule, exhibit the certificate issued to him or her in terms of subsection (2).