

**CHAPTER 9:24**  
**MONEY LAUNDERING AND PROCEEDS OF CRIME ACT**

*Acts 4/2013, 4/2014 (s. 12), 5/2014 (s. 33). S.I.s 123/2013, 136/2013,*

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FIRST SCHEDULE: Financial Institutions and Competent Supervisory Authorities.

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**AN ACT to suppress the abuse of the financial system and enable the unlawful proceeds of all serious crime and terrorist acts to be identified, traced, frozen, seized and eventually confiscated; to repeal the Serious Offences (Confiscation of Profits) Act [Chapter 9:17]; to amend the Criminal Matters (Mutual Assistance) Act [Chapter 9:06], the Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24], the Building Societies Act [Chapter 24:02] and the Asset Management Act [Chapter 24:26]; and to provide for matters connected therewith or incidental thereto.**

[Date of commencement : 28th June, 2013]

WHEREAS section 327 of the Constitution provides as follows:

*(2) An international treaty which has been concluded or executed by the President or under the President's authority—*

- (a) does not bind Zimbabwe until it has been approved by Parliament; and*
- (b) does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament.*

AND WHEREAS the International Convention for the Suppression of the Financing of Terrorism was adopted by the General Assembly of the United Nations Organisation by Resolution 54/109 of 9 December, 1999, and entered into force on the 10<sup>th</sup> April, 2002;

AND WHEREAS since 1999 Zimbabwe has been a member of the Eastern and Southern African Anti Money Laundering Group (ESAAMLG), a body whose object is to adopt and implement measures to combat money-laundering and the financing of terrorism and serious crime;

AND WHEREAS by virtue of its membership of ESAAMLG, Zimbabwe is pledged to implement recommendations issued by an inter-governmental organisation called the Financial Action Task Force (FATF), whose 40 recommendations are regarded as representing international standards to which all states should aspire;

AND WHEREAS Zimbabwe is desirous of fulfilling its obligations under the International Convention for the Suppression of the Financing of Terrorism and implementing the said FATF recommendations;

NOW THEREFORE, be it enacted by the President and Parliament of Zimbabwe as follows:—

## CHAPTER I

### PRELIMINARY

#### PART I

##### CITATION AND INTERPRETATION

#### 1 Short title

This Act may be cited as the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

#### 2 Interpretation

(1) In this Act—

“account” has the meaning given to it in section 13;

“bearer negotiable instruments” has the meaning given to it in section 10;

“beneficial owner” has the meaning given to it in section 13;

“competent supervisory authority” means any statutory body or authority responsible for the licensing, registration, regulation or discipline of financial institutions, estate agents, legal, accounting or corporate service professionals, gaming operators, precious stones dealers and precious metals dealers; and, without limiting the scope of this definition, includes the competent supervisory authorities listed in Part II of the First Schedule;

“compliant jurisdiction” means a State or territory that subjects financial institutions and other persons to requirements equivalent to those specified in this Act, and supervises such institutions and persons for compliance with those requirements in a manner equivalent to that applicable in Zimbabwe (and the terms “incompliant jurisdiction” and “insufficiently compliant jurisdiction” shall be construed accordingly);

“correspondent banking service” has the meaning given to it in section 13;

“corporate body of a public character” means a body corporate—

(a) established directly by or under any enactment for special purposes specified in that enactment; or

(b) wholly owned or controlled by the State that discharges statutory functions, including functions specified by or under a licence or other like authority issued in terms of an enactment;

“currency” has the meaning given to it in section 10;

“customer” has the meaning given to it in section 13;

“customer identification and verification” has the meaning given it in section 13;

“dealing with property” means any of the following—



- (a) a transfer or disposition of property; or
- (b) making or receiving a gift of the property; or
- (c) removing the property from Zimbabwe; or
- (d) 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
- (e) using the property to obtain or extend credit, or using credit that is secured by the property; or
- (f) where the property is an interest in a partnership, doing anything to diminish the value of the partnership;

“defendant” means a person suspected of or charged with a serious offence whether or not he or she has been convicted of the offence;

“designated non-financial business or profession” has the meaning given to it in section 13;

“directive” means a directive issued in terms of section 4;

“Director” means the Director of the Unit appointed in terms of the Bank Use Promotion Act [*Chapter 24:24*];

[Definition inserted by Act No. 4 of 2014]

“document” means a record of information kept in any form;

“financial institution” means any person who conducts as a business one or more of the following activities for or on behalf of a customer—

- (a) acceptance of deposits and other repayable funds from the public, including private banking;
- (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting;
- (c) financial leasing other than with respect to arrangements relating to consumer products;
- (d) the transfer of money or value;
- (e) issuing and managing means of payment, including, but not limited to, credit and debit cards, travellers’ cheques, money orders and bankers’ drafts, and electronic money;
- (f) issuing financial guarantees and commitments;
- (g) trading in—
  - (i) money market instruments, including, but not limited to, cheques, bills, certificates of deposit and derivatives; or
  - (ii) foreign exchange; or
  - (iii) exchange, interest rate and index instruments; or
  - (iv) transferable securities; or

- (v) commodity futures;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment-related insurance, including insurance intermediation by agents and brokers;
- (m) money and currency changing;
- (n) the provision—
  - A. or transfer of ownership, of a life insurance policy or the provision of reinsurance in respect of any such policy; or
  - B. of investment-related insurance services; or
  - C. of services as or by means of insurance underwriters, insurance agents or insurance brokers;

and, without derogating from the generality of the foregoing, includes any of the financial institutions or classes of financial institution listed in Part I of the First Schedule;

“funds or other assets” has the meaning given to it in section 7;

“funds transfer” means any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution (the originator and beneficiary may be the same person);

“financing of terrorism” means any offence referred to in section 9;

“foreign counterpart agency” means any person, authority or body in another State or territory that exercises functions equivalent to those of the Unit under this Act;

“gift” means property given by one person to another person, and includes any transfer of property directly or indirectly—

- (a) after the commission of an offence by the first person;
- (b) to the extent of the difference between the market value of the property at the time of its transfer and—
  - (i) the consideration provided by the transferee; or
  - (ii) the consideration paid by the transferor;

whichever is greater;

“identity document” has the meaning given to it in section 13;

“inspector” means a person referred to in section 5 of the Bank Use Promotion Act [*Chapter 24:24*] (No. 2 of 2004);

“instrumentality” and “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part to commit a criminal offence or criminal offences and is deemed to include property of or available for use by a terrorist organisation;

“interdict” means an order made in terms of section 40 restraining any person from dealing with property;

“interest”, in relation to an interest in property, includes any beneficial interest in the property (whether present or future, vested or contingent, or full or partial) or any right, power or privilege in connection with the property;

“law enforcement agency” means the Police Service (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;

[Definition amended by Act 5 of 2014]

“legal arrangement” refers to express trusts or other similar legal arrangements;

“Minister” means—

- (a) the Minister responsible for Justice in relation to Chapters IV and V;
- (b) the Minister responsible for Finance in relation to the remainder of this Act;

or any other Minister or Ministers to whom the President may, from time to time, assign the administration of this Act;

“money laundering” and “money laundering offence” means any offence referred to in section 8;

“organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious offences in order to obtain, directly or indirectly, a financial or other benefit;

“originator” has the meaning given to it in section 13;

“politically-exposed person” has the meaning given to it in section 13;

“prescribed”, when used—

- (a) with reference to the Minister who prescribes or without reference to the person who prescribes, means prescribed by the Minister by regulations made under section 103; or
- (b) with reference to the Director who prescribes, means prescribed by directive;

“proceeds” and “proceeds of crime” means any property or economic advantage derived from or obtained directly or indirectly through the commission of a

criminal offence, including economic gains from the property and property converted or transformed, in full or in part, into other property;

“property” means assets of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, whether situated in Zimbabwe or elsewhere, and includes an interest, whether full or partial, in any such property;

“public authority or person” means any person, body, organ, agency or institution belonging to or employed by the State or a local authority;

“record” means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

“Recovered Assets Fund” means the Fund established by section 96;

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

“senior management” has the meaning given to it in section 13;

“serious offence” means—

- (a) a money laundering offence; or
- (b) a terrorist financing offence; or
- (c) a terrorist act, under whatever offence that act is prosecuted; or
- (d) an offence for which the maximum penalty is death or life imprisonment; or
- (e) an offence for which the maximum penalty is imprisonment of four years or more, with or without the option of a fine; or
- (f) an offence under the law of a foreign State in relation to any act or omission which, had it occurred in Zimbabwe, would have constituted an offence under paragraph (a), (b), (c), (d) or (e);

“shell bank” has the meaning given to it in section 13;

“suspicious transaction report” has the meaning given to it in section 13;

“tainted property” means—

- (a) proceeds from or instrumentalities of the commission of a serious offence, other than a terrorist act; or
- (b) property which has been, is being, or is intended to be used to commit a serious offence, other than a terrorist act; or
- (c) property which has been, is being, or is intended to be used by an organised criminal group; or

- (d) property owned or controlled by, or on behalf of, an organised criminal group; or
- (e) property which has been collected for the purpose of providing support to an organised criminal group or funding a serious offence;

“terrorist” means any individual who—

- (a) commits or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in terrorist acts;
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist act” means—

- (a) an act of insurgency, banditry, sabotage or terrorism as defined in section 19 of the Criminal Law Code; or
- (b) any offence specified in the Suppression of Foreign and International Terrorism Act [*Chapter 11:21*] (No. 5 of 2007); or
- (c) an act which constitutes an offence within the scope of, and as defined in one of the international agreements specified in the Second Schedule; or
- (d) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act;

“terrorist financing” and “terrorist financing offence” means any offence referred to in section 9;

“terrorist organisation” means any group of terrorists that—

- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; or
- (b) participates as an accomplice in terrorist acts; or
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist property” means—

- (a) the proceeds from or instrumentalities of the commission of a terrorist act; or

- (b) property which has been, is being, or is intended to be used to commit a terrorist act; or
- (c) property which has been, is being, or is intended to be used by a terrorist organisation; or
- (d) property owned or controlled by, or on behalf of, a terrorist organisation; or
- (e) property which has been collected for the purpose of providing support to a terrorist organisation or funding a terrorist act;

“transaction” has the meaning given to it in section 13;

“ultimately owns or controls the rights to or benefits from property”, has the meaning given to it in section 13;

“Unit” means the Bank Use Promotion and Suppression of Money Laundering Unit established in terms of section 3 of the Bank Use Promotion Act [*Chapter 24:24*] (No. 2 of 2004);

“wire transfer” has the meaning given to it in section 13;

“Zimbabwe Revenue Authority” means the Zimbabwe Revenue Authority established by section 3 of the Revenue Authority Act [*Chapter 23:11*] (No. 17 of 1999).

(2) When property is held by a legal person, a natural person is deemed to ultimately own or control rights to or benefit from property of that legal person within the meaning of paragraph (a) of the definition of “beneficial owner” in section 13, if the natural person—

- (a) owns or controls, directly or indirectly (including through trusts or bearer share holdings) twenty-five *per centum* or more of the shares or voting rights of that legal person; or
- (b) otherwise exercises control over the management of the legal person.

(3) The Minister may, by notice in a statutory instrument, declare that any person or incorporated or unincorporated association of persons providing any financial service of a description specified in the declaration shall be a financial institution for the purposes of all or any of the provisions of this Act and may in like manner amend or revoke any such declaration.

(4) A reference in this Act to another enactment includes a reference to any enactment replacing it, if the replacing enactment substantially re-enacts the relevant provisions of the original enactment.

## PART II

### GENERAL PROVISIONS TO SECURE COMPLIANCE WITH THIS ACT

#### **3 Unit and competent supervisory authorities to cooperate in securing compliance with this Act**

(1) In addition to its other functions the Unit shall, for the purposes of this Act, have the following functions—

- (a) to combat money laundering, the financing of terrorist activities, and the use of the financial system to commit or facilitate the commission of serious offences; and
- (b) to provide assistance and information to foreign counterpart agencies, and to any international organisation, for the purposes of combating money-laundering, the financing of terrorist activities and the commission of serious offences, whether in Zimbabwe or elsewhere.

(2) The Unit, acting with the cooperation of the competent supervisory authorities, bears the primary and general responsibility for ensuring compliance with this Act.

(3) Competent supervisory authorities shall, under the guidance of the Unit, supervise compliance with the applicable requirements of this Act by the financial institutions and designated non-financial businesses or professions for which they are responsible.

(4) A directive shall define the scope and extent of the cooperation required by the Unit from competent supervisory authorities for ensuring compliance with this Act, and such directive shall prevail over any inconsistent provision of a law constituting, establishing or designating the competent authority in question.

(5) This section shall not be interpreted as requiring the Unit in every case to communicate or otherwise deal with financial institutions and designated non-financial businesses or professions only through the appropriate competent supervisory authority.

(6) The Unit and its inspectors may exercise any of their powers under this Act for the purpose of providing assistance or information to foreign counterpart agencies in terms of subsection (1)(b).

#### **4 Power of Director to issue directives for purposes of this Act**

(1) The Director may, in consultation with the Governor of the Reserve Bank, issue to competent supervisory authorities, financial institutions and designated non-financial businesses or professions or any class of such authority, institution, business or profession, written directives of a general character not inconsistent with this Act relating to the exercise of any functions conferred or imposed on competent supervisory authorities, financial institutions and designated non-financial businesses or professions by or under this Act which, in the Director's opinion, are necessary or convenient to be so issued for the better administration and implementation of this Act.

(3) Any directive issued under this section—

- (a) may be absolute or conditional;
- (b) may be limited so as to expire on a specified date unless renewed;

- (c) may be revoked or varied in the same way as it was issued;
- (d) shall be given to such persons or published in such manner as, in the opinion of the Director, will give any person affected by it an adequate opportunity of getting to know of it.

(4) Subject to subsections (6) and (7), any competent supervisory authority, financial institution or designated non-financial business or profession which fails to comply with a directive addressed to it within the period specified in the directive (or such longer period as the Director may, for good cause shown, allow in writing) shall be guilty of an offence and liable to a fine not exceeding five hundred dollars (US \$500) for each day during which it is in default of compliance with the directive, calculated from the day when the directive was issued.

[Subsection amended by Act No. 4 of 2014]

(5) Subject to subsection (6), the Director may, in his or her discretion, publish a directive by notice in the *Gazette*, and such publication shall be sufficient notice to any financial institution or designated non-financial business or profession or class thereof to which it is addressed.

(6) Every directive providing for the imposition of a civil penalty must be framed in general terms as applying to all financial institutions or designated non-financial businesses or professions or any one or more classes thereof, and must be published with the approval of the Minister as a statutory instrument.

(7) No competent supervisory authority, financial institution or designated non-financial business or profession shall be convicted of a contravention of this Act by virtue of a directive which was not published in the *Gazette* unless it is proved that—

- (a) the directive was served on the competent supervisory authority, financial institution or designated non-financial business or profession; or
- (b) the financial institution knew or avoided getting to know of the directive:

Provided that, where it is shown that reasonable steps were taken for the purpose of bringing the contents of the directive to its notice, the onus shall lie on the financial institution or designated non-financial business or profession concerned to show that it did not know and did not avoid getting to know of the directive.

(8) Any competent supervisory authority, financial institution or designated non-financial business or profession aggrieved by a directive issued under subsection (1) may apply to a judge in chambers, and upon such application the judge may confirm, vary or set aside the directive and additionally, or alternatively, give such other order in the matter as he or she considers just.

(9) Directives of general application, that is to say, directives applying to all financial institutions or designated non-financial businesses or professions or any one or more classes thereof, shall be kept available for inspection by members of the public, free of charge, at all reasonable times at the offices of the Unit and at such other places throughout Zimbabwe as are prescribed.



## 5 Directives may specify civil infringements and impose civil penalties and other sanctions

(1) Without derogating from any criminal penalty that may be imposed by this Act, a directive may specify to be a civil infringement any intentional or grossly negligent failure to comply with any specific obligation of this Act (including any specific obligation of a directive allowed by this Act to be provided for by way of a directive) that is imposed upon any competent supervisory authority, financial institution, designated non-financial business or profession, and their respective directors, principals, officers, partners, professionals, agents and employees.

(2) A directive may impose for any specified civil infringement on the part of any competent supervisory authority, financial institution, designated non-financial business or profession, or any of its respective directors, principals, officers, partners, professionals, agents or employees, any one or more of the following sanctions or measures—

- (a) a written warning; or
- (b) an order to comply with any specific instruction; or
- (c) an order to a competent supervisory authority, financial institution, designated non-financial business or profession to submit reports at specified intervals on such matters concerned with ensuring compliance with this Act as are specified in the order; or
- (d) any one of the following kinds of orders (called a “civil penalty order”) addressed to an infringer, which order shall be issued within such of the following parameters as may be appropriate to the infringement, namely a civil penalty order imposing—
  - (i) a fixed civil penalty for a specified completed and irremediadable civil infringement, for which—
    - A. the prescribed penalty shall not exceed a fixed penalty not exceeding two hundred and fifty thousand dollars (US \$250 000); and
    - B. the prescribed penalty for each day (beginning on the day after the issuance of the civil penalty order) during which the infringer fails to pay the civil penalty, shall not exceed a fixed penalty not exceeding five hundred dollars (US\$ 500) per day for a maximum period of one hundred and eighty days;
 and
  - (ii) a fixed civil penalty for a specified completed but remediadable infringement—
    - A. for which the prescribed penalty shall not exceed a fixed penalty not exceeding fifty thousand dollars (USS 50 000); and
    - B. which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and



capacity or of any specified director, principal, officer, partners, professional, agent or employee of that institution, business or profession.

[Subsection amended by Act No. 4 of 2014]

(3) A directive may specify the conditions under which a competent supervisory authority may impose specified sanctions, measures or civil penalties for civil infringements committed by any person or entity for which that authority is responsible, namely any financial institution or designated non-financial business or profession, and their respective directors, principals, officers, partners, professionals, agents and employees.

## **6 Enforcement of civil penalties and accounting for proceeds thereof**

(1) A civil penalty imposed in pursuance of a directive made under section 5(2)(d) shall constitute a debt due to the Unit or the competent supervisory authority that imposed it, and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Unit or the competent supervisory authority, as the case may be.

(2) The amount of a civil penalty shall be paid into and form part of the funds of—

- (a) the Reserve Bank of Zimbabwe, in the case of a civil penalty imposed and collected or recovered by the Unit; or
- (b) the competent supervisory authority concerned, in the case of a civil penalty imposed and collected or recovered by that authority.

## **CHAPTER II**

### **MONEY-LAUNDERING AND TERRORIST FINANCING**

#### **PART I**

##### **MONEY-LAUNDERING AND TERRORIST FINANCING OFFENCES**

## **7 Interpretation in Part I of Chapter II**

In this Part—

“funds or other assets” means financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.

## **8 Money laundering offences**

(1) Any person who converts or transfers property—

- (a) that he or she has acquired through unlawful activity or knowing, believing or suspecting that it is the proceeds of crime; and

[Paragraph substituted by Act No. 4 of 2014]

- (b) for the purpose of concealing or disguising the illicit origin of such property, or of assisting any person who is involved in the commission of a serious offence to evade the legal consequences of his or her acts or omission;

commits an offence.

(2) Any person who conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property is the proceeds of crime, commits an offence.

(3) Any person who acquires, uses or possesses property knowing or suspecting at the time of receipt that such property is the proceeds of crime, commits an offence.

(4) Participation in, association with or conspiracy to commit, an attempt to commit, and aiding, abetting, facilitating and counselling the commission of any of the offences referred to in subsections (1), (2) and (3) is also an offence.

(5) Knowledge, suspicion, intent or purpose required as elements of an offence referred to in subsections (1), (2), (3) and (4) may be inferred from objective factual circumstances.

(6) In order to prove that property is the proceeds of crime, it is not necessary for there to be a conviction for the offence that has generated the proceeds, or for there to be a showing of a specific offence rather than some kind of criminal activity, or that a particular person committed the offence.

(7) For the purposes of this section, “proceeds of crime” includes proceeds of an offence committed outside Zimbabwe if the conduct constitutes an offence in the State or territory where the conduct occurred and would have constituted an offence if committed within Zimbabwe.

(8) The offences referred to in subsections (1), (2), (3) and (4) shall be punishable—

- (a) by a fine not exceeding five hundred thousand dollars (US\$500 000) or not exceeding twice the value of the property involved or the gain derived by the offender, whichever is greater; or

[Paragraph substituted by Act No. 4 of 2014]

- (b) by imprisonment for a period not exceeding twenty-five years; or
- (c) both such fine and such imprisonment.

## **9 Terrorist financing offences**

(1) Any person who by any means, directly or indirectly, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part—

- (a) in order to carry out a terrorist act; or
- (b) by a terrorist; or

[Paragraph amended by Act No. 4 of 2014]

- (c) by a terrorist organisation;

commits an offence.

- (2) An offence under subsection (1) is committed—
  - (a) even if the terrorist act there referred to does not occur or is not attempted; and
  - (b) even if the funds were not actually used to commit or attempt the terrorist act there referred to; and
  - (c) regardless of the State or territory in which the terrorist act is intended or does occur.
- (3) It shall also be an offence to—
  - (a) participate as an accomplice in an offence within the meaning of subsection (1);
  - (b) organise or direct others to commit an offence within the meaning of subsection (1);
  - (c) intentionally contribute to the commission of an offence under subsection (1) by a group of persons acting with a common purpose, where the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (1) or where the contribution is made knowing the intention of the group is to commit an offence under subsection (1).
- (4) The offence referred to in subsections (1) and (3) shall be punishable—
  - (a) by a fine not exceeding five hundred thousand dollars (US \$500 000) or not exceeding twice the value of the property that forms the subject of the charge, whichever is greater; or  
[Paragraph amended by Act No. 4 of 2014]
  - (b) by imprisonment for a period not exceeding thirty-five years; or
  - (c) by both such fine and such imprisonment.

## **PART II**

### **CROSS BORDER TRANSPORTATION OF CURRENCY, BEARER NEGOTIABLE INSTRUMENTS AND PRECIOUS METALS AND STONES**

#### **10 Interpretation in Part II of Chapter II**

In this Part—

“bearer negotiable instruments” includes—

- (a) monetary instruments such as cheques, travellers cheques, promissory notes, money orders and other negotiable instruments that are in bearer form, that is to say, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; and
- (b) incomplete instruments including cheques, promissory notes and money orders, signed but with the payee’s name omitted;

“currency” means the coin and paper money of Zimbabwe, or of a foreign country, that is designated as legal tender or is customarily used and accepted as a medium of exchange;

“precious metal” means gold, platinum or a platinoid metal;

“precious stone” means any diamond or emerald, or any other substance which, in terms of the Precious Stones Trade Act [*Chapter 21:06*] is declared to be a precious stone for the purposes of that Act;

“unmanufactured”, in relation to a precious metal or precious stone, means not embodied in or not constituting any article of commerce, item of jewellery or work of art, and “manufactured” shall be construed accordingly.

**11 Obligation to disclose physical cross-border transportation of currency, bearer negotiable instruments and precious metals or stones**

(1) Any person who enters or leaves Zimbabwe in possession of—

- (a) currency equal to or exceeding fifteen thousand United States dollars (or such lesser or greater amount as may be prescribed);
- (b) bearer negotiable instruments of a value equal to or exceeding fifteen thousand United States dollars (or such lesser or greater amount as may be prescribed);
- (c) unmanufactured precious metals or precious stones; or
- (d) manufactured precious metals or precious stones in such a quantity as cannot reasonably be attributable to the personal use of the person, or of the members of his or her immediate family (whether or not such family members are travelling with him or her);

or arranges for the transportation of any such items into or out of Zimbabwe by cargo, courier, postal service or any other means, shall disclose such items to a customs official or inspector upon being requested to do so.

(2) Where disclosure under subsection (1) is made to an officer of the Zimbabwe Revenue Authority, such disclosure (together with all relevant details of the person making the disclosure) shall be recorded by the officer, and the Zimbabwe Revenue Authority shall provide access to this information to an inspector on request.

(3) Any person who intentionally or by gross negligence fails to make any disclosure that he or she is requested to make under subsection (1), or makes a disclosure that is false in any material particular, or fails to make a full material disclosure, commits an offence and is liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

[Subsection amended by Act No. 4 of 2014]

## **12 Seizure, detention and forfeiture of currency, bearer negotiable instruments and precious metals or stones**

(1) The Unit or any inspector or officer of the Zimbabwe Revenue Authority may seize or detain part of or the whole amount of the items referred to in section 11(1)(a) to (d)—

- (a) where an offence under section 11(3) is committed or is reasonably suspected; or
- (b) whether or not disclosure of the items is made, if there are reasonable grounds for suspecting that such items are the proceeds of crime, terrorist property or an instrumentality used or intended for use in the commission of an offence.

(2) Property seized under subsection (1) shall not be detained for more than seventy-two hours after seizure, unless a magistrate or justice of the peace, upon being satisfied that—

- (a) the person from whom it was seized failed to make any disclosure of it that he or she was requested to make under section 11(1), or made a disclosure of it that was false in any material particular, or failed to make a full material disclosure of it; and
- (b) the continued detention of the property is justified while—
  - (i) its origin or derivation is further investigated; or
  - (ii) consideration is given to the institution in Zimbabwe or elsewhere of criminal proceedings against any person for an offence with which the seized property is connected;

orders its continued detention for a period not exceeding three months from the date of the initial seizure.

(3) A magistrate or justice of the peace may subsequently order continued detention of the property if satisfied of the matters set forth in subsection (2), but the total period of detention shall not exceed two years from the date of the order made under that subsection.

(4) Subject to subsection (5), upon application by or on behalf of a person whose property is detained under this section, such property may be released in whole or in part to that person by an order of—

- (a) a magistrate having jurisdiction in the area where the property was seized or is being detained, where the original detention was ordered by a justice of the peace; or
- (b) a magistrate senior in rank to the magistrate who originally ordered the detention, having jurisdiction in the area where the property was seized or being detained;

if the magistrate is satisfied, after considering any views of the Director of Public Prosecutions, that its continued detention is no longer justified.

(5) Property detained under this section shall not be released if an application for restraint, confiscation or forfeiture of the property is pending under Chapters IV or V, or

if proceedings have been instituted in Zimbabwe or elsewhere against any person for an offence with which the property is connected, unless and until the proceedings on the application or the proceedings related to an offence have been concluded. If the application relates to property that is commingled with other property, the commingled property is subject to continued detention under this section.

(6) A prosecutor may apply for the forfeiture of any property which has been seized and detained under this section to—

- (a) the magistrate having jurisdiction in the area where the property was seized or being detained, where the original detention was ordered by a justice of the peace; or
- (b) a magistrate having jurisdiction in the area where the property was seized or being detained who is senior in rank to the magistrate who originally ordered the detention;

and the magistrate shall order forfeiture of such property if satisfied on a balance of probabilities that the property directly or indirectly represents—

- (i) terrorist property; or
- (ii) the proceeds of crime or an instrumentality used or intended for use in the commission of an offence.

(7) Before making an order of forfeiture under subsection (6), the court shall order that notice be provided to any person who has asserted an interest in the property and provide an opportunity for that person to be heard.

### **CHAPTER III**

#### **OBLIGATIONS OF FINANCIAL INSTITUTIONS AND DESIGNATED NON-FINANCIAL BUSINESSES OR PROFESSIONS**

##### **PART I**

###### **CUSTOMER IDENTIFICATION AND ACCOUNT OPENING REQUIREMENTS**

### **13 Interpretation in Part I of Chapter III**

In this Chapter and elsewhere—

“account” means any facility or arrangement by which a financial institution or a designated non-financial business or profession does any of the following—

- (a) accepts deposits of funds or other assets; or
- (b) allows withdrawals or transfers of funds or other assets; or
- (c) pays negotiable or transferable instruments or payment orders on behalf of any other person;

and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“beneficial owner” means—



- (a) a natural person who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or
- (b) a person who exercises ultimate effective control over a legal person or legal arrangement;

“correspondent banking service” means the provision of banking, payment and other services by one financial institution (the “correspondent financial institution”) to another financial institution (the “respondent financial institution”) to enable the latter to provide services and products to its own customers, and “correspondent banking relationship” shall be construed accordingly;

“customer” means any of the following—

- (a) the person for whom a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom an account or rights or obligations under a transaction have been assigned or transferred;
- (d) any person who is authorised to conduct a transaction or control an account;
- (e) any person who attempts to take any of the actions referred to above;
- (f) the client of a legal or accounting professional;
- (g) such other person as may be prescribed;

“customer identification and verification” means identifying a customer and verifying the customer’s identity by means of an identity document as and when required by this Act;

“dangerous drug” has the meaning given to it by Chapter VII of the Criminal Law Code;

“designated non-financial business or profession” means any of the following—

- (a) a casino licensee, lottery licensee or other person licensed or required to be licensed under the Lotteries and Gaming Act [*Chapter 10:26*] (No. 26 of 1998) (hereinafter in this Act called a “gaming operator”);
- (b) an estate agent registered or required to be registered under the Estate Agents Act [*Chapter 27:17*] (No. 6 of 1999) (hereinafter in this Act called an “estate agent”);
- (c) a licensed dealer or permit holder, or person required to be licensed or hold a permit, in terms of the Precious Stones Trade Act [*Chapter 21:06*] (hereinafter in this Act called a “precious stones dealer”);
- (d) any person licensed, permitted or required to be licensed or permitted in terms of the Gold Trade Act [*Chapter 21:03*], to deal in gold, engage in

gold recovery works, assay gold or acquire or be in possession or dispose of gold (hereinafter in this Act called a “precious metals dealer”);

- (e) any person engaged in the mining or exportation of, or dealing in—
- (i) platinum or a platinoid metal in any form whatsoever; or
  - (ii) any article or substance containing platinum or a platinoid metal (not including a manufactured article which is an article of commerce, an item of jewellery or a work of art);

if such mining, exportation or dealing is authorised or required to be authorised in any way by or under the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999) (hereinafter in this Act called a “precious metals dealer”);

- (f) persons registered or required to be registered in terms of the Legal Practitioners Act [*Chapter 27:07*], the Chartered Secretaries (Private) Act [*Chapter 27:03*], the Public Accountants and Auditors Act [*Chapter 27:12*] (No. 13 of 1995), the Chartered Accountants Act [*Chapter 27:02*] and the Estate Administrators Act [*Chapter 27:20*] (No. 16 of 1998) (hereinafter in this Act called a “legal, accounting, corporate service or estate administration professional”)—

- (i) the buying and selling of real estate;
- (ii) the managing of client money, securities or other assets;
- (iii) the management of bank, savings or securities accounts;
- (iv) the organisation of contributions for the creation, operation or management of legal persons;
- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (vi) administering deceased or insolvent estates;

- (g) trust and company service providers not otherwise registered or licensed or required to be registered or licensed under any law and who, as a business, prepare for or carry out transactions on behalf of customers in relation to any of the following services to third parties—

- (i) acting as a formation, registration or management agent of legal persons;
- (ii) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- (iv) acting as, or arranging for another person to act as, a trustee of an express trust or other similar arrangement;

(v) acting as, or arranging for another person to act as, a nominee shareholder for another person;

(h) such other transaction as may be designated in accordance with section 101;

“identity document” means—

(a) a document issued to a person in terms of section 7(1) or (2) 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; or

(d) in relation to a corporate body—

(i) a certificate of incorporation or registration certified by or on behalf of the incorporating or registering authority in which, or together with or which, the names and addresses of the directors or members of the board or other governing body of the corporate body are disclosed; and

(ii) the memorandum and articles of association of a corporate body or equivalent documents constituting the corporate body and disclosing the names and addresses of the founding members, shareholders or stakeholders of the corporate body;

“originator” means the account holder, or where there is no account, the person that places the order with a financial institution to perform a wire transfer;

“politically-exposed person” means—

(a) any person who is or has been a “public officer” as defined in section 169 of the Criminal Law Code; or

(b) any person who is or has been a manager, chief executive officer, chief financial officer, corporate secretary, member of a board of directors or holder of a similar post in any statutory corporation or State-controlled company; or

(c) any person who is or has been a senior office-bearer in a political party in any country;

and shall include any immediate family member or close associate of any of the foregoing persons;

“prescribed transaction” means a transaction referred to in section 15(1) or (2) which requires customer identification and verification;

“senior management”, in relation to—

(a) a financial institution, means a person not lower in rank than the chief executive officer of that institution (by whatever title that person is designated), or the most senior executive officer of that institution in Zimbabwe in the case of a financial institution whose head office is located outside Zimbabwe;

(b) a designated non-financial business or profession, means a person not lower in rank than a senior partner or the chief executive officer of that business or profession (by whatever title that person is designated), or the most senior partner or most senior executive officer of that business or profession in Zimbabwe in the case of a business or profession whose head office is located outside Zimbabwe;

“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed or registered, but does not include a bank of that description which is wholly owned by one or more financial institutions forming part of a regulated financial services group that is subject to effective consolidated supervision;

“suspicious transaction report” means a report required to be made under section 30 ;

“transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to—

(a) opening of an account;

(b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;

(c) the use of a safety deposit box or any other form of safe deposit;

(d) entering into any fiduciary relationship;

(e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any payment made in respect of a lottery, bet or other game of chance;

(g) establishing or creating a legal person or legal arrangement;

(h) such other transaction as may be designated in accordance with section 101;

“ultimately owns or controls the rights to or benefits from property”, in relation to the property of a legal person that is deemed to be owned or controlled by a natural person, has the meaning given to that phrase in subsection (2) of section 15;

“wire transfer” means any transaction carried out on behalf of an originator through a financial institution (including an institution that originates the wire transfer and an intermediary institution that participates in completion of the transfer)

by electronic means with a view to making an amount of money available to a beneficiary person at another financial institution.

#### **14 Anonymous accounts and shell banks prohibited**

(1) No financial institution shall establish or maintain any anonymous account, or an account under fictitious name.

(2) No shell bank may be established or permitted to operate in or through the territory of Zimbabwe.

(3) No person shall enter into or continue business relations with a shell bank or a respondent financial institution in a foreign country that permits any of its accounts to be used by a shell bank.

(4) No designated non-financial business or profession shall effect or facilitate a transaction where any director, principal, officer, partner, professional, agent or employee of the business or profession knows or has reasonable grounds to suspect that a party to the transaction is acting anonymously or under a name that is not his or her own, unless the director, principal, officer, partner, professional, agent or employee concerned in the transaction is satisfied as to the true identity of the party and that there are legitimate reasons for the party so to act.

(5) Where a designated non-financial business or profession has effected or facilitated a transaction in which a party is acting anonymously or under a name that is not his or her own, the director, principal, officer, partner, professional, agent or employee concerned in the transaction shall, on behalf of the business or profession of which he or she is the director, principal, officer, partner, professional, agent or employee, record its reasons for doing so and shall keep the record for at least five years after the completion of the transaction.

(6) Any person who intentionally or by gross negligence—

(a) opens an anonymous account or an account in a fictitious name for a customer in contravention of subsection (1); or

(b) establishes a shell bank in Zimbabwe in contravention of subsection (2); or

(c) contravenes subsection (3), (4) or (5);

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding ten years, or both such fine and such imprisonment.

[Subsection amended by Act No. 4 of 2014]

#### **15 Customer identification requirements**

(1) Subject to the special identification requirements of subsection (2), every financial institution and designated non-financial business or profession shall identify every one of their customers and verify a customer's identity by means of an identity document, when—

(a) opening an account for or otherwise establishing a business relationship with a customer; or

- (b) the customer, who is neither an account holder nor in an established business relationship with the financial institution, wishes to carry out a transaction in an amount equal to or exceeding five thousand United States dollars (or such lesser or greater amount as may be prescribed, either generally or in relation to any class of financial institution), whether conducted as a single transaction or several transactions that appear to be linked:

Provided that if the amount of the transaction is unknown at the time it is commenced, the customer's identification shall be verified as soon as the amount of the transaction has reached the prescribed amount;

or

- (b1) every legal practitioner involved in any of the following transactions for his or her client
  - (i) the buying or selling of immovable property or any interest in immovable property;
  - (ii) the management of money, securities or other assets;
  - (iii) the management of bank, savings or securities accounts;
  - (iv) the organisation of contributions for the creation, operation or management of companies;
  - (vi) the creation, operation or management of legal persons or arrangement, and buying and selling of business entities;

[Paragraph inserted by Act No. 4 of 2014]

or

- (c) the customer, whether or not he or she is in an established business relationship with the financial institution, wishes to carry out a domestic or international wire transfer of monetary amounts in the amount equal to or exceeding one thousand United States dollars (or such lesser or greater amount as may be prescribed, either generally or in relation to any class of financial institution); or
- (d) doubts exist about the veracity or adequacy of previously obtained identity documents; or
- (e) there is a suspicion of money laundering or financing of terrorism involving the customer or the customer's account.

(2) Unless there is a suspicion of money laundering or financing of terrorism, in which case identification and verification of the identity of the customer concerned must take place without regard to any monetary threshold, the following persons are subject to the obligations of subsection (1) to identify and verify the identity of any of their customers in the following circumstances—

- (a) every legal, accounting or corporate service professional involved in any transaction concerning the buying or selling of immovable property or any interest in immovable property that is not mediated through a financial institution or estate agent;

- (b) every estate agent, in relation to the vendor and purchaser involved in any transaction concerning the buying or selling of immovable property or any interest in immovable property;
- (c) every gaming operator, in relation to any of their customers who opens an account or engages in any financial transaction the value of which is equal to or exceeds three thousand United States dollars (or such lesser or greater amount as may be prescribed);
- (d) every precious stones dealer and every precious metals dealer, in relation to any of their customers from whom or on behalf of whom they receive a payment in currency equal to or exceeding fifteen thousand United States dollars (or such lesser or greater amount as may be prescribed).

(3) In addition to identifying and verifying the identity of a customer who is not the beneficial owner of property that is the subject-matter of a prescribed transaction, financial institutions and designated non-financial businesses or professions shall, as part of their obligation under subsection (2) or (3), identify the beneficial owner of such property as if the beneficial owner were the customer in question:

Provided that a directive may prescribe circumstances, such as where the ownership relates to public companies, in which such identification and verification is not necessary.

## **16 Timing of customer identification and verification**

(1) The identification and verification of the identity of each customer, and obtaining of other information required by section 15, shall take place before the establishment of an account, or of a business relationship (or before the carrying on of further business, if money laundering or financing of terrorism is suspected, or if doubts exist about the veracity or adequacy of previously-obtained identity documents):

Provided that the Director may, through a directive, prescribe the circumstances in which the verification of identity may be completed as soon as reasonably practicable after the commencement of the business if—

- (a) the risk of money laundering or financing of terrorism is effectively managed; and
- (b) a delay in verification is unavoidable in the interests of not interrupting the normal conduct of business.

(2) A financial institution or designated non-financial business or profession shall apply the identification and verification requirements of section 15 to customers and beneficial owners with which it had a business relationship at the time of the coming into force of this Act on a risk-sensitive basis depending on the type and nature of the customer, business relationship, product or transactions, or as may otherwise be prescribed by directives or regulations.

(3) Where a financial institution or designated non-financial business or profession has entered into a continuing business relationship with a person whose identity and other particulars it has confirmed and established in terms of section 15, the institution,

business or profession concerned shall take reasonable steps to ensure that it is informed of, or ascertains, any changes in that identity or those particulars.

### **17 Particulars of customer identification**

To the extent that the following particulars are not disclosed by the identity document in question, every financial institution and designated non-financial business or profession shall obtain and verify, when required to do so as part of their obligations under section 16, the following particulars in respect of a customer, true as at the date referred to in section 16—

- (a) for a customer who is an individual, his or her full name and date and place of birth;
- (b) for a legal person the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of legal status and legal form, provisions governing the authority to bind the legal person, and such information as is necessary to understand the ownership and control of the legal person;
- (c) for legal arrangements, the names of every trustee, settlor, and beneficiary of an express trust, and of any other party with authority to manage, vary or otherwise control the arrangement;
- (d) in addition to the identity of the customer, the identity of any person acting on behalf of a customer, including evidence that such person is properly authorised to act in that capacity;
- (e) information on the intended purpose and nature of each business relationship;
- (f) sufficient information about the nature and business of the customer to permit the financial institution or designated non-financial business or profession to fulfil its obligations under this Act.

### **18 Reliance on customer identification by third parties**

(1) Financial institutions and designated non-financial businesses or professions may rely on intermediaries or other third-parties to perform customer identifications as required by section 15, if—

- (a) there is no suspicion of money laundering or the financing of terrorism; and
- (b) information on the identity of each customer and beneficial owner is provided immediately on opening of the account or commencement of the business relationship; and
- (c) the financial institution or designated non-financial business or profession is satisfied that the third party—
  - (i) is able to provide without delay copies of the relevant identity document and other documents relating to the obligation of due diligence upon request; and
  - (ii) is established, domiciled or ordinarily resides in a compliant jurisdiction.



(2) A third party referenced in subsection (1)(c) may not claim professional privilege or a similar principle or rule with respect to the customer identification and beneficial ownership information and documentation required to be furnished under section 15.

(3) A directive may prescribe jurisdictions that the Director considers to be compliant jurisdictions.

(4) Compliance with this section does not relieve the financial institution or designated non-financial business or profession relying on the third party from ultimate responsibility for compliance with this Act, including all of the due diligence and reporting requirements thereof.

## **19 Customers not physically present**

(1) Financial institutions and designated non-financial businesses and professions shall take adequate measures to address the specific risk of money laundering and financing of terrorism in the event they conduct business relationships or execute transactions with a customer who is not physically present for purposes of identification.

(2) Such measures shall ensure that the due diligence is no less effective than where the customer appears in person, and may require additional documentary evidence, or supplementary measures to verify or certify the documents supplied, or confirmatory certification from financial institutions or other documentary evidence or measures, as may be prescribed in directives.

## **20 High risk customers and politically-exposed persons**

Financial institutions and designated non-financial businesses and professions shall have appropriate risk management systems—

- (a) to identify customers whose activities may pose a high risk of money laundering and financing of terrorism, and shall exercise enhanced identification, verification and ongoing due diligence procedures with respect to such customers; and
- (b) to determine if a customer or a beneficial owner is a politically-exposed person, and if so shall—
  - (i) obtain approval from senior management before establishing a business relationship with the customer, or later, as soon as an existing customer or beneficial owner is identified as a politically-exposed person; and
  - (ii) take all reasonable measures to identify the source of wealth and funds and other assets of the customer or beneficial owner;

and

- (c) provide increased and ongoing monitoring of the customer and the business relationship to prevent money laundering or the commission of other offences and to permit the financial institution, designated business or profession to fulfil its obligations under this Act, including all of the due diligence and reporting requirements thereof.

## **21 Customer identification and account-opening for cross-border correspondent banking relationships**

When providing cross-border correspondent banking services, financial institutions shall—

- (a) obtain approval from senior management before establishing a correspondent banking relationship, either generally or on a case-by-case basis, as may be appropriate; and
- (b) identify and verify the identification of respondent financial institutions with which they conduct correspondent banking relationships; and
- (b) collect all the information it is lawfully capable of collecting on the nature of the respondent financial institution's activities; and
- (d) based on such information, evaluate the respondent financial institution's reputation and the nature of supervision to which it is subject; and
- (e) evaluate the controls implemented by the respondent financial institution with respect to anti-money laundering and combating the financing of terrorism; and
- (f) establish an agreement on the respective responsibilities of each party under the correspondent banking relationship to ensure against the risk of money laundering and to combat the financing of terrorism; and
- (g) in the case of a payable-through account, ensure that the respondent financial institution has verified its customer's identity, has implemented mechanisms for ongoing monitoring with respect to its customers, and is capable of providing relevant identifying information on request; and
- (h) not enter into a correspondent banking relationship or other business relationship with a shell bank, and to discontinue such a relationship immediately upon becoming aware that the correspondent financial institution is a shell bank; and
- (i) not enter into a correspondent banking relationship or other business relationship with a respondent financial institution in a foreign country if the respondent institution permits its accounts to be used by a shell bank, and to discontinue such a relationship immediately upon the coming into force of this Act.

## **22 Inability to fulfill customer identification and verification**

A financial institution or designated non-financial business and profession that cannot fulfil the requirements of this Part with respect to any customer or beneficial owner shall not establish an account for or maintain the business relationship with that customer and shall immediately make a report on the matter to the Unit.

## **23 Failure to comply with Part I of Chapter III**

Any person who intentionally or by gross negligence fails to undertake the identification of any customer or otherwise to fulfil the customer identification and risk management requirements in accordance with section 15 shall be guilty of an offence

and liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding three years, or both such fine and such imprisonment.

[Section amended by Act No. 4 of 2014]

## **PART II**

### **ONGOING OBLIGATIONS OF FINANCIAL INSTITUTIONS AND DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

#### **24 Record-keeping**

(1) Financial institutions and designated non-financial businesses and professions shall maintain all books and records with respect to their customers and transactions as set forth in subsection (2), and shall ensure that such records and the underlying information are available on a timely basis to the Unit and such other competent authorities as are prescribed by the Minister.

(2) Such books and records shall include, as a minimum—

- (a) account files, business correspondence, and copies of documents evidencing the identities of customers and beneficial owners obtained in accordance with this Act, all of which shall be maintained for not less than five years after the business relationship has ended; and
- (b) records on transactions sufficient to reconstruct each individual transaction for both account holders and non-account holders which shall be maintained for not less than five years from the date of the transaction; and
- (c) the findings set forth in writing pursuant to section 26(2)(c) and related transaction information which shall be maintained for at least five years from the date of the transaction; and
- (d) copies of all suspicious transaction reports made pursuant to section 30, including any accompanying documentation, which shall be maintained for at least five years from the date the report was made.

#### **25 Internal programmes to combat money laundering and financing of terrorism**

(1) Financial institutions and designated non-financial businesses and professions shall develop and implement programmes for the prevention of money laundering and financing of terrorism, which programmes shall include the following—

- (a) internal policies, procedures and controls to fulfil obligations pursuant to this Act; and
- (b) adequate screening procedures to ensure high standards when hiring employees; and
- (c) ongoing training for officers and employees to make them aware of this Act and other laws relating to money laundering and the financing of terrorism, with a view to assisting them to recognise transactions and actions that may be

linked to money laundering or financing of terrorism, and to instruct them in the procedures to be followed in such cases; and

- (d) policies and procedures to prevent the misuse of technological developments including those related to electronic means of storing and transferring funds or value; and
- (e) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act.

(2) Financial institutions and designated non-financial businesses and professions shall designate a compliance officer at management level to be responsible for the implementation of, and ongoing compliance with, this Act by the institution, business or profession.

(3) Such compliance officer shall have ready access to all books, records and employees of the institution, business or profession concerned as is necessary to fulfil his or her responsibilities.

(4) A directive may prescribe the type and extent of measures financial institutions and designated non-financial businesses and professions must undertake with respect to each of the requirements in this section, having regard to the risk of money laundering and financing of terrorism and the size of the institution, business or profession.

## **26 Ongoing due diligence and special monitoring of certain transactions**

(1) Financial institutions and designated non-financial businesses and professions shall exercise ongoing due diligence with respect to business relationships that are or may become subject to the requirements of customer identification and verification, including—

- (a) maintaining current information and records relating to the customer and beneficial owner concerned; and
- (b) closely examining the transactions carried out in order to ensure that such transactions are consistent with their knowledge of their customer, and the customer's commercial or personal activities and risk profile; and
- (c) ensuring the obligations pursuant to sections 19, 20 and 21 relating to high risk customers, politically-exposed persons, and correspondent banking relationships are fulfilled.

(2) Financial institutions and designated non-financial businesses and professions shall—

- (a) pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
- (b) pay special attention to business relations and transactions with persons, including legal persons and arrangements, from or in incompliant or insufficiently compliant jurisdictions; and

- (c) examine as far as possible the background and purpose of transactions under paragraphs (a) and (b) and set forth in writing their findings; and
- (d) take such specific measures as may be prescribed by directive from time to time to counter the risks with respect to business relations and transactions specified under paragraph (b).

(3) The findings referenced in subsection (2)(c) shall be maintained as specified in section 24, and be made available promptly if requested by the Unit or by a foreign counterpart agency, a competent supervisory authority or other authority prescribed by the Minister.

## **27 Obligations regarding wire transfers**

(1) When undertaking wire transfers equal to or exceeding one thousand United States dollars (or such lesser or greater amount as may be prescribed), financial institutions shall—

- (a) identify and verify the identity of the originator;
- (b) obtain and maintain the account number of the originator or, in the absence of an account number, a unique reference number;
- (c) obtain and maintain the originator's address or, in the absence of an address, the originator's national identity number or date and place of birth; and
- (d) include information referred to in paragraphs (a), (b) and (c) in the message or payment form accompanying the transfer.

(2) Despite the foregoing requirements, a financial institution is not required to verify the identity of a customer with which it has an existing business relationship, provided that it is satisfied that it already knows and has verified the true identity of the customer.

(3) When a financial institution acts as an intermediary in a chain of payments, it shall retransmit all of the information it received with the wire transfer.

(4) A directive may modify the requirements set forth in subsection (1)—

- (a) with respect to domestic wire transfers, as long as the directive provides for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means; and
- (b) with respect to cross-border transfers where individual transfers from a single originator are bundled in a batch file, as long as the directive provides for the originator's account number or unique reference number to be included, and that the batch file contains full originator information that is fully traceable in the recipient country.

(5) Subsections (1) and (2) do not apply to transfers—

- (a) executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction;
- (b) between financial institutions acting for their own account.

(6) If the institutions referred to in subsection (1) receive wire transfers that do not contain the complete originator information required under that subsection, they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(7) Financial institutions referred to in subsection (1) that cannot obtain the missing information referred to in subsection (6) must refuse acceptance of the transfer and immediately make a report thereon to the Unit.

## **28 Failure to comply with Part II of Chapter III**

(1) Any person who intentionally or by gross negligence—

- (a) fails to maintain books and records as required by section 24; or
- (b) destroys, falsifies or removes such records; or
- (c) fails to make such information available in a timely manner in response to a lawful request by the Unit or a competent supervisory authority for such books or records;

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding three years, or both such fine and such imprisonment.

[Subsection amended by Act No. 4 of 2014]

(2) Any person who intentionally or by gross negligence—

- (a) fails to maintain internal control programs in compliance with section 25(1) or (2); or
- (b) fails to conduct due diligence with respect to customers, accounts, and transactions in compliance with section 26(1); or
- (c) fails to comply with the obligations for special monitoring set forth in section 26(2); or
- (d) fails to comply with the obligations relating to wire transfers set forth in section 27;

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding three years, or both such fine and such imprisonment.

[Subsection amended by Act No. 4 of 2014]

## **29 Compliance with obligations under Parts I and II by foreign subsidiaries and branches of financial institutions**

(1) Financial institutions shall require their foreign branches and majority-owned subsidiaries to implement the requirements of Part I and this Part to the extent that domestic applicable laws and regulations of the host country so permit.

(2) If the laws of the country where the branch or majority-owned subsidiary is situated prevent compliance with these requirements, for any reason, the financial institution shall so advise the Unit, which may take such steps as it believes to be appropriate to accomplish the purposes of this Act.

## PART III

### REPORTING OBLIGATIONS

#### **30 Obligation to report suspicious transactions**

(1) Subject to subsections (2) and (3), financial institutions, designated non-financial businesses and professionals, and their respective directors, principals, officers, partners, professionals, agents and employees, that suspect or have reasonable grounds to suspect that any property or any transaction or attempt to effect a transaction—

- (a) involves or is the proceeds of crime; or
- (b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or those who finance terrorism;

shall submit promptly, but not later than three working days after forming the suspicion, a report setting forth the suspicion to the Unit.

[Subsection substituted by Act No. 4 of 2014]

(2) Despite subsection (1), an estate agent or legal, accounting or corporate service professional is required to submit a report of a suspicious transaction in accordance with subsection (1) only when—

- (a) they engage, on behalf of or for a client, in a financial transaction associated with an activity specified in relation to such professionals under section 15(2)(a), (b) or (b1); and

[Paragraph amended by Act No. 4 of 2014]

- (b) in the case of a legal practitioner, the relevant information upon which the suspicion is based was not received from or obtained on a client—
  - (i) in the course of ascertaining the legal position of his or her client; or
  - (ii) in performing his or her task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

(3) Despite subsection (1), a gaming operator, precious stones dealer or precious metals dealer, is required to submit a report of a suspicious transaction in accordance with subsection (1) only when they engage, on behalf of or for a client, in a financial transaction referred to in section 15(2)(c) or (d).

(4) A competent supervisory authority shall inform the Unit if, in the course of discharging its responsibilities—

- (a) it discovers facts that could be related to money laundering or terrorist financing; or
- (b) it appears to the supervisory authority that a financial institution or designated non-financial business or profession of which it is the supervisory authority, or any of their respective directors, officers or employees, is not complying or

has not complied with the obligations set out in this section or this Act generally.

(5) A directive shall prescribe the procedures for and form in which the reports shall be submitted to the Unit.

(6) The Unit may supplement the foregoing directive with written guidelines issued from time to time as it sees fit to assist financial institutions and designated non-financial businesses and professions to fulfill their obligations under this section and such directives may require the submission of threshold-based cash transaction reports.

[Subsection substituted by Act No. 4 of 2014]

### **31 Inapplicability of confidentiality provisions and prohibition against tipping-off**

(1) No secrecy or confidentiality provision in any other law shall prevent a financial institution or designated non-financial business or profession from fulfilling its obligations under section 30 or the other provisions of this Act.

(2) No financial institution or designated non-financial business or profession, nor any director, partner, officer, principal or employee thereof, shall disclose to any of their customers or a third party that a report or any other information concerning suspected money laundering or financing of terrorism will be, is being or has been submitted to the Unit, or that a money laundering or financing of terrorism investigation is being or has been carried out, except in the circumstances set forth in subsection (3) or when otherwise required by law to do so.

(3) A disclosure may be made to carry out a function that a person has relating to the enforcement of any provision of this Act or of any other enactment, or, in the case of a legal practitioner or accountant, when seeking to dissuade a client from engaging in illegal activity.

### **32 Protection of identity of persons and information relating to suspicious transaction reports**

(1) Except for the purposes of the due administration of this Act, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a suspicious transaction report, or handled the underlying transaction.

(2) No person shall, in any judicial proceeding, be required to disclose a suspicious transaction report or any information contained in the report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction, unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) For the purposes of determining any matter referred to in subsection (2) the judge or other presiding officer shall do any of the following as seems to him or her appropriate—

- (a) direct that the information or identity of the person concerned be disclosed privately to the judge or presiding officer for his or her consideration; or



- (b) after examination of the information which has been privately disclosed to a judge or presiding officer, edit the information in such manner or to such extent as the judge or presiding officer considers best suited to preserve the public interest in upholding the objectives of this Act and to serve the interests of the parties concerned; or
- (c) consider whether disclosure should be limited or restricted in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*] or otherwise.

### **33 Exemption from liability for good faith reporting of suspicious transactions**

No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or breach of contract shall lie against financial institutions and designated non-financial businesses or professions or their respective directors, principals, officers, partners, professionals or employees who, in good faith, submit reports or provide information in accordance with the provisions of this Act.

### **34 Failure to comply with Part III of Chapter III**

Any person who intentionally or by gross negligence—

- (a) fails to submit a report to the Unit as required by section 30(1); or
- (b) makes a false or misleading statement, provides false or misleading information, or otherwise fails to state a material fact in connection with such person's obligations under this Part, including the obligation to make a suspicious transaction report; or
- (c) discloses to a customer or a third party information in contravention of section 31 (2);

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or to imprisonment for a period not exceeding three years, or both such fine and such imprisonment.

[Section amended by Act No. 4 of 2014]

## **PART IV**

### **DUTIES OF UNIT IN RELATION TO INFORMATION RECEIVED UNDER PARTS I, II AND III OF CHAPTER III**

### **35 Action regarding reports and other information received by Unit**

The Unit shall receive, analyse and disseminate suspicious transactions and shall on the basis of reports or other information received by it under Part I, II or III, or otherwise, where it has reasonable grounds to suspect that any transaction is suspicious or that any property is proceeds of crime, or is related to or intended for the financing of terrorism, or is terrorist property, promptly communicate its suspicion, together with the relevant report or information to the police for investigation.

[Section substituted by Act No. 4 of 2014]

### **36 Access to information**

(1) In relation to any information it has received in accordance with its functions, the Unit is authorised to obtain from financial institutions, designated non-financial businesses or professions, and any of their respective directors, principals, officers, partners, professionals, agents and employees, any additional information that the Unit deems necessary to carry out its functions.

(2) The information requested under subsection (1) shall be provided within the time limits set and the form specified by the Unit in writing.

(3) The Unit is authorised to access and review on-site information which is necessary to the fulfilment of its functions and that belongs to or is in the custody of financial institutions and designated non-financial businesses and professions.

(4) Subsections (1) and (2) shall be applied subject to the limitations in the definition of “designated non-financial businesses and professions” in section 13 and subject to section 30(2).

(5) The Unit may, in relation to any report or information it has received, obtain, where not otherwise prohibited by law, any information it deems necessary to carry out its functions from any of the following—

- (a) a law enforcement agency;
- (b) any competent supervisory authority;
- (c) any public authority or person;
- (d) any corporate body of a public character;
- (e) a public company or other person or entity in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] (No. 5 of 2002).

### **37 Sharing Information with foreign counterpart agencies**

(1) The Unit may, on its own initiative or upon request, share information with any foreign counterpart agency that is subject to similar secrecy obligations with respect to the information it receives based upon reciprocity or mutual agreement.

(2) The Unit may make the following inquiries on behalf of a foreign counterpart agency where the inquiry may be relevant to the foreign counterpart agency’s analysis of a matter involving the suspected proceeds of crime or terrorist property, or potential financing of terrorism—

- (a) search its own databases, including information related to reports of suspicious transactions, and other databases to which the Unit has direct or indirect access, including databases of a law enforcement agency, competent supervisory authority, public authority or person, corporate body of a public character and commercially available databases; and
- (b) obtain from financial institutions and designated non-financial businesses and professions information that is relevant in connection with such request; and
- (c) obtain from the persons referred to in section 36(5) information that is relevant in connection with such request to the extent that the Unit could obtain such information in a domestic matter; and

- (d) take any other action in support of the request of the foreign counterpart agency that is consistent with the authority of the Unit in a domestic matter.

## CHAPTER IV

### CONVICTION-BASED CONFISCATION AND BENEFIT RECOVERY ORDERS AND INVESTIGATIVE POWERS APPURTENANT THERETO

#### PART I

##### APPLICATION OF CHAPTER IV AND INTERPRETATION

### 38 Application of Chapter IV

(1) This Chapter shall apply—

- (a) in respect to any serious offence; and
- (b) in respect of an offence under the law of a foreign State in relation to acts and omissions which, had they occurred in Zimbabwe, would have constituted a serious offence in Zimbabwe:

Provided that—

- (i) in the case of a request relating to an interdict on or to the recovery of proceeds, instrumentalities or benefits, there is property located in Zimbabwe that can be restrained or recovered for the purpose of a confiscation order or benefit recovery order; or
- (ii) in the case of a request relating to tracing, identifying, locating or quantifying proceeds, benefits or instrumentalities, there is or may be relevant information or evidence within Zimbabwe;

and a formal request for assistance has been made by the foreign State for the restraint or confiscation of property in relation to the offence, or for information or evidence that may be relevant to the proceeds, benefits or instrumentalities of the offence.

(2) With respect to the application of this Chapter to the offences specified in subsection (1)(b), the authorities within Zimbabwe shall have discretion whether or not to seek orders and to otherwise apply the provisions of this Chapter.

(3) This Chapter shall apply even if the conduct which forms the basis for the offence occurred before the Chapter came into effect, and shall apply to any benefit whether it was obtained before or after this Chapter came into force.

(4) Any question of fact to be decided by a court on an application under this Chapter is to be decided on a balance of probabilities.

### 39 Interpretation in Chapter IV

(1) In this Chapter and elsewhere—

“authorised officer” means a police officer or an inspector;

“benefit” means an advantage, gain, profit, or payment of any kind, and the benefits that a person derives or obtains or that accrue to him or her include those that another person derives, obtains or that otherwise accrue to such other

person, if the other person is under the control of, or is directed or requested by, the first person;

“court” means, in relation to the granting of—

- (a) an interdict or confiscation order, the High Court of Zimbabwe; or
- (b) a benefit recovery order, a magistrates court or the High Court of Zimbabwe;

“effective control”, in relation to property, is to be construed in accordance with subsection (2);

“property in which the defendant has an interest”, in relation to property forming the subject matter of an offence, includes—

- (a) any property that is, on the day when the first application is made under this Chapter in respect of that offence, subject to the effective control of the defendant; and
- (b) any property that was the subject of a gift from the defendant to another person within the period of six years before the first application is made under this Chapter in respect of that offence;

“property in which the relevant person has an interest”, in relation to property forming the subject matter of an offence, includes—

- (a) any property that is, on the day when the first application is made under this Chapter in respect of that offence, subject to the effective control of the relevant person; and
- (b) any property that was the subject of a gift from the relevant person to another person within the period of six years before the first application is made under this Chapter in respect of that offence;

“relevant appeal date” used in relation to a confiscation order or benefit recovery order made in consequence of a person's conviction of an offence means—

- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction, or for the lodging of an appeal against the making of a confiscation order or benefit recovery order, expires, whichever is the later; or
- (b) where an appeal against a person's conviction or against the making of a confiscation order or benefit recovery order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later;

“relevant person” is a person who has been convicted of a serious offence, or has been charged with a serious offence, or is the subject of an investigation for a serious offence.

(2) A person is considered to exercise effective control over a property, if he or she exercises practical control over the property, whether or not that control is supported by

any property interest or other legally enforceable power; accordingly, in determining whether property is subject to the effective control of a person—

- (a) it is not necessary for the court or other person who is required to determine this issue to be satisfied that the person has an interest in the property;
- (b) regard may be had to—
  - (i) shareholdings in, debentures over, or directorships of a company that has an interest (whether direct or indirect) in the property; and
  - (ii) a trust that has a relationship to the property; and
  - (iii) family, domestic, business or other relationships between persons having an interest in the property, or in companies referred to in subparagraph (i), or trusts referred to in subparagraph (ii), and other persons;
- (c) the court may refuse to treat property as being subject to the effective control of a person if it is satisfied that a person’s ownership or control of the property is subject to a lawful, *bona fide* trust held for the benefit of a third party.

(3) For the purposes of this Chapter, a gift includes a gift made by the subject of an investigation or defendant at any time after the commission of the offence, or, if more than one offence, the earliest of the offences to which the proceedings relate, unless the defendant satisfies the court that it is not appropriate in all the circumstances to take any particular gift into consideration.

## PART II

### INTERDICTS

#### **40 Application for interdict**

(1) Where a person has been convicted of a serious offence, has been charged with a serious offence, or is the subject of an investigation for a serious offence (referred to hereafter in this Part as “the relevant person”), the Prosecutor-General may make application to the court for an interdict under subsection (2) restraining any relevant person or other specified person from dealing with either or both of the following kinds of property—

- (a) specified property that is reasonably believed to be tainted property or terrorist property;
- (b) specified tainted property or terrorist property in which the relevant person has an interest.

(2) An application for an interdict against property reasonably believed to be tainted property or terrorist property may be made to secure property for the purposes of an application for a confiscation order pursuant to section 50.

(3) An application for an interdict against specified tainted property or terrorist property in which the relevant person has an interest may be made to secure property for the purposes of a benefit recovery order pursuant to section 59.

(4) If so requested by the Prosecutor-General, an application for an interdict pursuant to subsection (1) shall be heard *ex parte* and *in camera* in accordance with the terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04], unless to do so would clearly not be in the interest of justice.

(5) An application made to interdict property for the purposes of a confiscation order under subsection (1)(a) shall be in writing and shall be supported by an affidavit of a police officer indicating that the officer believes, and the grounds for his or her belief, that the property which is the subject of the application is tainted property or terrorist property.

(6) Where an application under subsection (1)(a) is made prior to the charging of a person for a serious offence, the affidavit shall also set forth the officer's belief, and the grounds for his or her belief, that the relevant person committed the offence, is the subject of an investigation for the offence and is likely to be charged with the offence or an offence arising from the same conduct.

(7) An application to interdict property for the purposes of a benefit recovery order under subsection (1)(b) shall be in writing and shall be supported by an affidavit of a police officer indicating that the officer believes, and the grounds for his or her belief, that the relevant person derived a benefit directly or indirectly from the commission of the serious offence.

(8) Where an application under subsection (1)(b) is made prior to the charging of the person with a serious offence, the affidavit shall also set forth the officer's belief, and the grounds for his or her belief, that the relevant person committed the offence and is likely to be charged with the offence or a related offence.

(9) If property which is the subject of an application under subsection (1)(b) is the property of a third party, the affidavit shall indicate that the officer believes, and the grounds for his or her belief, that the relevant person has an interest in the property.

#### **41 Interdict and notice thereof**

(1) Where the Prosecutor-General applies to the court for an interdict in accordance with section 40, and the court is satisfied, having regard to the facts and beliefs set out in the affidavit in support of the application and any other relevant matter, that there are reasonable grounds to believe that—

- (a) the relevant person committed the serious offence and is either the subject of a criminal investigation or has been charged with the offence, where the relevant person has not been convicted of the offence; or
- (b) the property which is the subject of the application is tainted property or terrorist property, where the application for an interdict is made for the purpose of securing property for the purpose of a confiscation order; or
- (c) the relevant person derived a benefit from the commission of the serious offence, and has an interest in that property, where the application for an interdict is made for the purpose of securing property for the purpose of a benefit recovery order;

the court may grant an interdict in accordance with subsection (2).

- (2) The court may in the interdict order any one or more of the following—
- (a) that the property, or such part of the property as is specified in the interdict, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as are specified in the interdict;
  - (b) that the property, or such part of the property as is specified in the interdict, shall be seized, taken into possession, delivered up for safekeeping or otherwise secured by a named authorised officer, the Prosecutor-General or such other person appointed for this purpose by the court;
  - (c) if the court is satisfied that the circumstances so require, direct a named receiver or trustee to take custody and control of the property, or such part of the property as is specified in the interdict and to manage or otherwise deal with the whole or any part of the property in accordance with any direction from the court.

(3) Where a receiver or trustee has been appointed under subsection (2)(c) in relation to property, he or she may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of the foregoing—

- (a) becoming a party to any civil proceedings that affect the property;
- (b) causing that the property to be insured;
- (c) realising or otherwise dealing with the property if it is perishable, subject to wasting or other forms of loss, its value is volatile or the cost of its storage or maintenance is likely to exceed its value, subject to the proviso that this power may only be exercised without the prior approval of the court in circumstances where—
  - (i) all persons known by the receiver or trustee to have an interest in the property consent to the realisation or other dealing with the property; or
  - (ii) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the property; or
  - (iii) the cost of obtaining such approval would, in the opinion of the receiver or trustee, be disproportionate to the value of the property concerned;
- (d) if the property consists, wholly or partly, of a business—
  - (i) employing, or terminating the employment of, persons in the business; and
  - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis; and
  - (iii) selling, liquidating or winding up the business if it is not a viable, going concern, subject to obtaining the prior approval of the court;
- (e) if the property includes shares in a company, exercising rights attaching to the shares as if the trustee were the registered holder of the shares.

(4) An interdict made under subsection (2)(c) terminates—

- (a) when ordered by the court; or
- (b) when an order is made pursuant to section 50; or
- (c) thirty days after the making of a confiscation order or a benefit recovery order.

(5) An interdict in respect of property may be made whether or not there is any evidence of risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(6) Where an interdict is made the Prosecutor-General shall, within twenty-one days of the making of the interdict, or such other period as the court may direct, give notice of the interdict to persons affected by the order.

## **42 Enforcement of interdicts abroad**

Where an interdict is made and the Prosecutor-General believes that specified property in which the relevant person has an interest is situated in a State or territory outside Zimbabwe, the Prosecutor-General may, in accordance with the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*], request assistance from the government of such State or territory to enforce the interdict in such State or territory.

## **43 Further orders**

(1) Where the court makes an interdict, the court may, at the time when it makes the interdict or at any later time, make any further orders in connection with the interdict that the court considers appropriate, on its own motion or on application by—

- (a) the Prosecutor-General, or a receiver or trustee appointed under section 41(2)(c) to take control of the property subject to the interdict, seeking any order specified in subsection (2) (a); or
- (b) by an owner of the property subject to the interdict, or the relevant person (or, with the leave of the court, any other person), seeking any order specified in subsection (2)(b).

(2) Without limiting the generality of the foregoing, the court may make any of the following orders—

- (a) on application by the Prosecutor-General, or a receiver or trustee—
  - (i) an order directing the owner or the relevant person or a director or officer specified by the court of a body corporate that is an owner or the relevant person to give to the Prosecutor-General and to any receiver or trustee appointed pursuant to section 41(2)(c) a sworn statement setting out such particulars of the property or dealings with the property by the owner or the relevant person, as the case may be, as the court thinks proper;
  - (ii) where the interdict directed a receiver or trustee to take custody and control of property pursuant to section 41(2)(c)—
    - A. an order regulating the manner in which the receiver or trustee may exercise his or her powers or perform his or her duties under the interdict;



- B. an order determining any question relating to the property to which the interdict relates, including any liabilities of the owner, or the exercise of the powers, or performance of the duties, of the receiver or trustee;
  - C. an order directing the owner or another person to do any act or thing necessary or convenient to be done to enable the receiver or trustee to take custody and control of the property in accordance with the interdict;
- (b) on application by the Prosecutor-General, or a receiver or trustee, or the owner, relevant person or other person referred to in subsection (1)(b)—
- (i) an order revoking the interdict or varying the property to which it relates;
  - (ii) an order varying any condition to which the interdict is subject;
  - (iii) an order to provide for meeting, out of the property or a specified part of the property that is subject to the interdict, all or any of the following—
    - A. the relevant person's reasonable living expenses (including the reasonable living expenses of his or her dependants, if any) and reasonable business expenses;
    - B. the relevant person's reasonable expenses in defending a criminal charge or any proceeding under this Act.

(3) A court may make provision under subsection (2)(b)(iii) for reasonable legal or living and business expenses only if the relevant person satisfies the court that he or she cannot meet such expenses out of property that is not subject to an interdict, and the court determines it is in the interest of justice to make such a provision.

(4) Where a person is required to give a statement pursuant to subsection (2)(a)(i), the person is not excused from making the statement on the ground that the statement might tend to incriminate the person, or make the person liable to a confiscation order, benefit recovery order, or a penalty.

(5) Where a person makes a statement pursuant to an order under subsection (2)(a)(i), anything disclosed in any statement and any information, document or thing obtained as a direct or indirect consequence of the statement is not admissible against the person in any criminal proceedings except proceedings in respect of the falsity of the statement.

(6) For the purposes of subsection (5), applications for an interdict, a confiscation order or a benefit recovery order are not criminal proceedings.

#### **44 Exclusion of property from interdict**

(1) Where a person who is not the relevant person having an interest in property that is subject to an interdict applies to the court to exclude his or her interest from the interdict, the court shall grant the application if satisfied—

- (a) in the case of an interdict to secure property for a confiscation order, either—

- (i) that the property is not the proceeds or an instrumentality of crime, and that the applicant was not, in any way, involved in the commission of the offence in relation to which the interdict was granted; or
  - (ii) where the applicant acquired the interest—
    - A. before the commission of the offence, the applicant did not know that the relevant person would use, or intended to use, the property in or in connection with the commission of the offence; or
    - B. at the time of or after the commission or alleged commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was the proceeds or an instrumentality of crime;
  - (b) in the case of an interdict to secure property for a benefit recovery order, that the property interest which is the subject of the application is not property in which the relevant person has an interest.
- (2) For purposes of subsection (1)(a)(ii), the value of the applicant's interest shall be in proportion to the consideration the applicant provided to the relevant person.
- (3) Where a person having an interest in property that is subject to an interdict who is a defendant applies to the court to exclude his or her interest from the order, the court shall grant the application if satisfied—
- (a) in the case of an interdict that secures property for a confiscation order, that the property is not the proceeds or an instrumentality of crime; and
  - (b) in the case of an interdict that secures property for a benefit recovery order, that a benefit recovery order cannot be made against the defendant.
- (4) Where property is restrained to secure it for the purposes of both confiscation and benefit recovery orders, the court may decline to make an order excluding property from restraint if the criteria for exclusion from only one kind of interdict are satisfied upon the ground that the other purpose for which the property is restrained still applies.

#### **45 Recording of interdicts against title to certain properties**

- (1) Where an interdict applies to any property the title to which is evidenced and transferred by registration in accordance with any of the following—
- (a) the Deeds Registries Act [*Chapter 20:05*]; or
  - (b) the Mines and Minerals Act [*Chapter 21:05*]; or
  - (c) the Patents Act [*Chapter 26:03*]; or
  - (d) the Trade Marks Act [*Chapter 26:04*]; or
  - (e) the Industrial Designs Act [*Chapter 26:02*]; or
  - (f) the Copyright and Neighbouring Rights [*Chapter 26:05*];
- or in accordance with any other law providing for the evidencing or transfer of title to a particular kind of property by registration or similar formality, the authority responsible

for administering those provisions shall, on application by the Prosecutor-General, record on the register kept pursuant to those provisions the particulars of the interdict.

(2) If those particulars are so recorded, a person who subsequently deals with the property shall be deemed to have notice of the interdict at the time of the dealing.

#### **46 Contravention of interdict**

(1) A person who knowingly contravenes an interdict by disposing of or otherwise dealing with property that is subject to the interdict is guilty of an offence and liable to—

- (a) a fine not exceeding one hundred thousand dollars (US \$100 000) or not exceeding twice the value of the property that forms the subject of the charge, whichever is greater; or

[Paragraph amended by Act No. 4 of 2014]

- (b) imprisonment for a period not exceeding twenty-five years; or
- (c) both such fine and such imprisonment.

(2) Where—

- (a) an interdict is made against property; and
- (b) the property is gifted, disposed of or otherwise dealt with in contravention of the interdict; and
- (c) the disposition was either not for sufficient consideration or not in favour of a person who acted in good faith;

the Prosecutor-General may apply to the court that made the interdict for an order that the gift, disposition or dealing be set aside.

(3) Where the Prosecutor-General makes an application under subsection (2) in relation to a gift, disposition or dealing, the court may make an order—

- (a) setting the gift, disposition or dealing aside from the day on which it took place; or
- (b) setting the gift, disposition or dealing aside from the day of the order under this subsection, and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the gift, disposition or dealing took place and before the order is made under this subsection.

#### **47 Property seizure order under Chapter IV**

(1) The court may, on application by the Prosecutor-General, make an order in conformity with subsection (7) (called a “property seizure order”) to search for and seize specified property that is the subject of an interdict, or property which the court reasonably believes is tainted property or terrorist property, if the court is satisfied that—

- (a) in the case of specified property that is the subject of an interdict, an interdict has not been effective to preserve the property; or

- (b) in the case of property that the court reasonably believes is tainted property or terrorist property, there is a reasonable likelihood of dissipation or alienation of the property if the order is not granted.

(2) A property seizure order shall also grant power to a person named in the order to enter any premises in Zimbabwe to which the order applies and to use all necessary force to effect such entry.

(3) If during the course of searching under a property seizure order, an authorised officer finds any property or thing that he or she believes on reasonable grounds—

- (a) will afford evidence as to the commission of an offence; or
- (b) is of a kind which could have been included in the order had its existence been known of at the time of application for the order;

he or she may seize that property or thing and the seizure order shall be deemed to authorise such seizure.

(4) Property, other than evidence of other crimes, seized under a property seizure order, may only be retained by or on behalf of the Prosecutor-General for thirty days.

(5) The Prosecutor-General may subsequently make application for an interdict in respect of such property.

(6) If the authorised officer is an inspector who believes that the execution of an order under this section may give rise to a breach of the peace or other criminal conduct, the inspector may request that he or she be accompanied by one or more police officers who will assist in execution of the order.

(7) A property seizure order shall specify—

- (a) the purpose for which the order is issued, including the nature of the relevant offence; and
- (b) the kind of property authorised to be seized; and
- (c) the date on which the order shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorised

#### **48 Protection of receiver or trustee**

Where a court has appointed a receiver or trustee in relation to property pursuant to sections 41(2)(c) or 69(2), the receiver or trustee shall not be personally liable for any loss or claim arising out of the exercise of powers conferred upon him or her by the order or under this Chapter unless the court in which the claim is made is satisfied that—

- (a) the applicant has an interest in the property in respect of which the loss or claim is made; and
- (b) the loss or claim arose by reason of the negligence or reckless or intentional misconduct of the receiver or trustee.

#### **49 Duration of interdict**

(1) Where the court makes an interdict on the basis that a person is the subject of an investigation for an offence, and the person is not charged with that offence or any

offence arising from the same conduct or course of conduct within the period of twelve months from the date on which the interdict is made (in this section called “the investigation period”), the interdict shall be deemed to be discharged on the date of expiry of the investigation period unless the Prosecutor-General earlier, on notice to any person affected by the interdict, applies to the court for an extension of the investigation period for a specified period not exceeding six months, whereupon the court may extend the investigation period for a specified period if it is satisfied that it is in the interest of justice to do so.

(2) Where the court orders an extension of an investigation period in accordance with subsection (1), the Prosecutor-General may apply for one more extension of it in accordance with subsection (1) for a specified period not exceeding six months.

### **PART III**

#### **CONFISCATION ORDERS**

##### **50 Application for confiscation orders**

(1) Where a person is convicted of a serious offence, the Prosecutor-General may apply to the court for a confiscation against property that is identified as tainted property or terrorist property in relation to that offence.

(2) Except with the leave of the court, the Prosecutor-General must make an application under subsection (1) within six months of the date upon which a person was convicted of the offence.

(3) A court shall grant leave under subsection (2) only if it is satisfied that—

- (a) the property to which the application relates was derived, realised or identified after the period referred to in subsection (1); or
- (b) the application is based upon evidence that could not reasonably have been obtained by the Prosecutor-General before the period referred to in subsection (1);

and it is otherwise in the interest of justice to do so.

(4) The Prosecutor-General may amend an application for a confiscation order at any time prior to the final determination of the application by the court, provided that reasonable notice of the amendment is given to affected persons.

(5) Where an application under this section has been finally determined, the Prosecutor-General may not make a further application for a confiscation order in respect of the same offence without the leave of the court.

(6) A court shall grant leave under subsection (5) only if it is satisfied that—

- (a) the property to which the new application relates was identified after determination of the previous application; or
- (b) necessary evidence became available after the previous application was determined;

and it is otherwise in the interest of justice to do so.

(7) A further application under this section may not be made later than six years after the date of the final determination of the previous application under this section.

## **51 Application for confiscation order in cases where concerned person absconds or dies**

(1) A person will be taken to have been convicted of an offence for purposes of section 50 when the court, on application by the Prosecutor-General, is satisfied under subsection (3) that the person should be taken to have been convicted and that this Chapter should apply to him or her.

(2) The Prosecutor-General may make an application to the court for the determination under subsection (1) that a specified person shall be taken to be convicted.

(3) The court may grant an application under subsection (2) where it is satisfied that—

- (a) a person was charged with an offence, a warrant for his or her arrest was issued in relation to the charge, and reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued; or
- (b) a person was charged with the offence but died without the charge having been determined;

and, having regard to all the evidence before the court, that such evidence is of sufficient weight to support a conviction for the offence.

(4) For the purposes of subsection (3)(a), a person shall be taken to have been convicted on the last day of the period referred to in that subsection.

(5) Where a person has died, any notice authorised or required to be given to a person under this Chapter may be given to the person's legal personal representative.

(6) A reference in this Chapter to a person's interest in property is, if the person has died, a reference to an interest in the property that the person had immediately before his or her death.

## **52 Service of application for confiscation order and appearances**

(1) Where the Prosecutor-General makes an application for a confiscation order against property under section 50—

- (a) he or she shall serve a copy of the application on the person convicted and on any other person whom the Prosecutor-General has reason to believe may have an interest in the property; and
- (b) the person convicted and any other person claiming an interest in the property may appear and adduce evidence at the hearing of the application; and
- (c) at any time before its final determination of the application, the court may direct the Prosecutor-General to provide such notice as the court deems appropriate to any person who, in the court's opinion, appears to have an interest in the property.

(2) The absence of the person convicted, or of any person to whom notice has been given, does not prevent the court from making a confiscation order in their absence.

(3) The court may waive the requirements under subsection (1) to give notice if—

(a) the person convicted is before the court; and

(b) the court is satisfied either that any other person who has an interest in the property is present before the court or that it is fair to waive the requirement despite any such person not being present.

### **53 Procedure on application for confiscation order**

(1) Where an application is made for a confiscation order in respect of a person's conviction of an offence, the court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted.

(2) Where an application for a confiscation order is before the court before which the defendant was convicted, the court, if satisfied it is reasonable to do so, may defer imposing sentence until it has determined the application.

(3) Any court with jurisdiction to hear an application for a confiscation order under this Chapter may make such an order by the consent of the relevant parties or persons.

(4) No applicant for a confiscation order, prosecutor or member of a law enforcement agency shall enter into an agreement to settle any matter in respect of which a confiscation order could be made under this Chapter which involves the payment of money or the transfer of property to the State, except—

(a) by way of a consent order under subsection (3); or

(b) as restitution for stolen property; or

(c) as compensation for loss or destruction of or damage to property; or

(d) with the approval of the court before which the person was convicted and before which an application for a confiscation order might be made.

### **54 Confiscation order on conviction**

(1) A confiscation order is an order *in rem*, following conviction for a serious offence, to forfeit to the State property that is tainted property or terrorist property in relation to that offence.

(2) The court may make an order under this section if the Prosecutor-General has applied to the court for an order under section 50 or, in the absence of an application, if the court believes it is appropriate to make an order.

(3) Where the court is satisfied, on a balance of probabilities, that property is tainted property or terrorist property in relation to a serious offence for which the defendant has been convicted, the court shall order that it be confiscated.

(4) In considering whether to issue a confiscation order, the court may have regard to—

(a) the rights and interests of third parties in the property; and

(b) the gravity of the offence concerned; and

(c) any extraordinary hardship, beyond that which might ordinarily be expected to flow from the operation of this section, that may reasonably be expected to be caused to any person by the operation of the order; and

(d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) In determining whether property is an instrumentality of the offence for which the defendant is convicted, the court, unless satisfied to the contrary, may infer that the property is such an instrumentality if it was in the defendant's possession at the time of or immediately after the commission of the offence.

(6) In determining whether property is proceeds of such an offence, unless satisfied to the contrary, the court may infer that the property was derived, obtained or realised as a result of or in connection with the commission of the offence, if it was acquired or possessed by the defendant, during or within a reasonable time after the period of the commission of the offence.

(7) Where the court orders the confiscation of property other than money, the court shall specify in the order the amount that it considers to be the value of the property at the time of its order.

(8) Where the court makes a confiscation order, the court may give such directions as are necessary or convenient for giving effect to the order.

## **55 Enforcement of confiscation orders abroad**

(1) Where, after conviction for an offence, a confiscation order has been made in respect of property that is proceeds or an instrumentality of the offence, and such property is situated in a State or territory outside Zimbabwe, the Prosecutor-General may, in accordance with the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*], request assistance from the government of the other State or territory to ensure that the property specified in the order is realised.

(2) If a request under subsection (1) has resulted in the realisation of property in the foreign State or territory, the property realised shall be applied in accordance with the terms of any agreement between the States.

## **56 Effect of confiscation order and recording of order against title to certain properties**

(1) Subject to subsection (2), where the court makes a confiscation order against any property, the property vests absolutely in the State by virtue of the order.

(2) Where a confiscation order applies to any property the title to which is evidenced and transferred by registration in accordance with any of the following—

(a) the Deeds Registries Act [*Chapter 20:05*]; or

(b) the Mines and Minerals Act [*Chapter 21:05*].

(c) the Patents Act [*Chapter 26:03*]; or

(d) the Trade Marks Act [*Chapter 26:04*]; or

(e) the Industrial Designs Act [*Chapter 26:02*]; or



(f) the Copyright and Neighbouring Rights Act [*Chapter 26:05*];

or in accordance with any other law providing for the evidencing or transfer of title to a particular kind of property by registration or similar formality, the authority responsible for administering those provisions shall, on application by the Prosecutor-General, register the State as owner of the property, and the Prosecutor-General shall do or authorise to be done anything necessary or convenient to obtain the registration of the State as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(3) All rights to property of the kind referred to in subsection (2) shall lie with the State until the registration is effected.

(4) Where the court makes a confiscation order against property, the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with before the relevant appeal date.

## **57 Exclusion of property from a confiscation order**

(1) A person who is not the defendant and who has an interest in property that is subject to a confiscation order may apply to the court to exclude his or her interest from the order.

(2) The court shall grant the application under subsection (1) if it is satisfied that—

- (a) the property is not the proceeds or instrumentality of crime; or
- (b) the applicant was not in any way involved in the commission of the offence in relation to which the confiscation order was made;

and, where the applicant acquired the interest—

- (i) before the commission of the offence, the applicant did not know that the defendant would use, or intended to use, the property in or in connection with the commission of the offence; or
- (ii) at the time of or after the commission or alleged commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds or an instrumentality of crime.

(2) For purposes of subsections (1)(c) and (d), the value of the applicant's interest shall be in proportion to the consideration the applicant provided to the defendant.

(3) An application under this section may be made whether or not the interest in property that is the subject of the application is or was the subject of an interdict.

(4) An application under this section shall be made within six months of the day on which the confiscation order is made.

(5) The following persons may not, without the leave of the court, make an application under this section, namely any person—

- (a) who, having been served with the application for a confiscation order under section 52 and made an appearance at the hearing of the application for a confiscation order, seeks to make an application under this section after the confiscation order is made;

- (b) whose application to exclude the property from restraint under section 44 was considered and dismissed.

## **PART IV**

### **BENEFIT RECOVERY ORDERS**

#### **58 Advance notification of application for benefit recovery orders**

(1) A magistrates court or the High Court which imposes a sentence of imprisonment (with or without a fine) upon a person who has been convicted of an offence in respect of which a benefit recovery order may be sought, may suspend the whole or a portion of the sentence of imprisonment conditionally upon the person complying with the terms of any benefit recovery order that may be applied for in terms of section 59, and the provisions of section 66(2) shall thereupon apply to any failure on the part of the convicted person to comply with the benefit recovery order.

(2) With a view to rendering the provisions of this Part operative, the prosecutor must notify the court in advance of the possibility that the Prosecutor-General may, upon conviction of the person for any offence, apply for a benefit recovery order in respect of that offence, which notice must be given in—

- (a) the statement of the charge lodged with the clerk of the magistrates court before which the person is to be tried, where the offence is to be tried summarily; or
- (b) the indictment, where the person is to be tried before the High Court;

together with sufficient particulars of the application for the benefit recovery order as will enable the court to determine the application immediately upon the conviction of the defendant.

(3) If, despite the conviction of the person and the total or partial suspension of his or her sentence of imprisonment, no application is made by the Prosecutor-General for a benefit recovery order within the period specified in section 59(2), the suspended portion of the period of imprisonment shall come into effect.

#### **59 Application for benefit recovery order**

(1) Where a person is convicted of an offence in respect of which notice of an application for a benefit recovery order has been given in terms of section 58, the court shall—

- (a) sentence the person for the offence by imposing—
  - (i) a sentence of imprisonment that is wholly or partially suspended conditionally upon compliance with a benefit recovery order; and
  - (ii) any other penalty, if any, it may lawfully impose, such as a fine or community service order;

and immediately thereafter proceed to determine the application for the benefit recovery order; or

(b) defer sentencing the person for the offence, on its own motion, or at the instance of the prosecutor, the defendant or of any person who may be interested in the benefit recovery order—

- (i) if (in the opinion of the court), the particulars about the alleged benefit derived from the offence, the nature of the benefit, its value or other matters required in order for the benefit recovery order to be effectively imposed and enforced were not sufficiently canvassed during the trial for the offence; or
- (ii) if there is any dispute of fact concerning the nature of the benefit, its value or other substantial dispute of fact;

and immediately thereafter the court shall proceed to determine the application for the benefit recovery order.

(2) A deferral of sentencing for the purposes of hearing an application for a benefit recovery order pursuant to subsection (1)(b) shall be to a date no later than thirty days after the day of the conviction for the offence concerned.

(3) Any matter required to be proved on an application for a benefit recovery order shall be proved on a balance of probabilities.

(4) The Prosecutor-General may amend an application for a benefit recovery order at any time prior to the final determination of the application by the court, provided that reasonable notice of the amendment is given to affected persons.

(5) Where the court has deferred sentencing for the purposes of hearing an application for a benefit recovery order pursuant to subsection (1)(b), it shall impose the sentence at the same time that it determines the application for the benefit recovery order.

(6) Where an application under this section has been finally determined, the Prosecutor-General may not make a further application for a benefit recovery order in respect of the same offence without the leave of the court.

(7) A court shall grant leave under subsection (6) only if it is satisfied that—

- (a) the benefit to which the new application relates was identified after determination of the previous application; or
- (b) necessary evidence became available after the previous application was determined;

and it is otherwise in the interest of justice to do so.

(8) A further application under this section may not be made later than six years after the date of the final determination of the previous application under this section.

## **60 Application for benefit recovery order in cases where concerned person absconds or dies**

(1) A person will be taken to have been convicted of an offence for purposes of section 59 when the court, on application by the Prosecutor-General, is satisfied under subsection (3) that the person should be taken to have been convicted and that this Chapter should apply to him or her.

(2) The Prosecutor-General may make an application to the court for the determination under subsection (1) that a specified person shall be taken to be convicted.

(3) The court may grant an application under subsection (2) where it is satisfied that—

- (a) a person was charged with an offence, a warrant for his or her arrest was issued in relation to the charge, and reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued; or
- (b) a person was charged with the offence but died without the charge having been determined;

and, having regard to all the evidence before the court, that such evidence is of sufficient weight to support a conviction for the offence.

(4) For the purposes of subsection (3)(a), a person shall be taken to have been convicted on the last day of the period referred to in that subsection.

(5) Where a person has died, any notice authorised or required to be given to a person under this Chapter may be given to the person's legal personal representative.

(6) A reference in this Chapter to a person's interest in property is, if the person has died, a reference to an interest in the property that the person had immediately before his or her death.

## **61 Service of application for benefit recovery order and appearances**

(1) Where the Prosecutor-General makes an application for a benefit recovery order under section 59—

- (a) he or she shall serve a copy of the application on the person convicted; and
- (b) the person convicted and, subject to obtaining the leave of the court, any other person claiming an interest in the property, may appear and adduce evidence at the hearing of the application.

(2) The absence of the person convicted, or of any person to whom notice has been given, does not prevent the court from making a benefit recovery order in their absence.

(3) The court may waive the requirements under subsection (1) to give notice if—

- (a) the person convicted is before the court; and
- (b) the court is satisfied either that any other person who has an interest in the property is present before the court or that it is fair to waive the requirement despite any such person not being present.

## **62 Procedure on application for benefit recovery order**

(1) Where an application is made for a benefit recovery order in respect of a person's conviction of an offence, the court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted.

(2) Any court with jurisdiction to hear an application for a confiscation order or a benefit recovery order under this Chapter may make such an order by the consent of the relevant parties or persons.

(3) No applicant for a benefit recovery order, prosecutor or member of a law enforcement agency shall enter into an agreement to settle any matter in respect of which a benefit recovery order could be made under this Chapter which involves the payment of money or the transfer of property to the State, except—

- (a) by way of a consent order under subsection (2); or
- (b) as restitution for stolen property; or
- (c) as compensation for loss or destruction of or damage to property; or
- (d) with the approval of the court before which the person was convicted and before which an application for a benefit recovery order might be made.

### **63 Benefit recovery order on conviction**

(1) A benefit recovery order is an order *in personam* requiring the defendant to pay an amount equal to the benefit he or she derived from—

- (a) any offence or offences of which he or she was convicted; or
- (b) any criminal activity which the court finds to be related to the offence or offences of which he or she was convicted.

(2) The court may make an order under this section if the Prosecutor-General has applied to the court for an order under section 59 or, in the absence of an application, if the court believes it is appropriate to make an order.

(3) Where the court is satisfied, on a balance of probabilities, that the defendant benefited—

- (a) from the offence or offences of which he or she was convicted; or
- (b) from any criminal activity which the court finds to be related to the offence or offences of which he or she was convicted;

the court shall order him or her to pay to the State an amount equal to the value of his or her benefit from such offence, offences or related criminal activities.

(4) The court shall assess the value of the benefit so derived in accordance with sections 64, 65 and 66.

(5) Where the court makes a benefit recovery order against a person—

- (a) the order shall not, except with the leave of the court and in accordance with any directions of the court, be enforced before the relevant appeal date; and
- (b) if, after the relevant appeal date, the order has not been vacated or discharged, the order may be enforced and any proceeds applied in accordance with this Chapter and any directions given by the court.

### **64 Rules for determining value of benefit**

(1) For the purposes of this Part, the value of the benefit derived by a defendant from an offence or related criminal activity may include—

- (a) any money received by the defendant, or by another person at the request or by the direction of the defendant, as a result of the commission of the offence;
- (b) the value of any property that was derived or realised, directly or indirectly, by the defendant or by another person at the request or by the direction of the defendant, as a result of the commission of the offence; and
- (c) the value of any service or financial advantage provided for the defendant or another person, at the request or by the direction of the defendant, as a result of the commission of the offence;
- (d) unless the court is satisfied that the increase was due to causes unrelated to the commission of the offence, any increase in the total value of property in which the defendant has an interest in the period beginning immediately before the commission of the offence and ending at some time after the commission of the offence;

but does not include any property confiscated under Part III of this Chapter.

(2) In calculating, for the purposes of a benefit recovery order, the value of the benefit derived by the defendant from the commission of an offence—

- (a) any expenditure of the defendant in connection with the commission of the offence shall be disregarded; and
- (b) the court shall make any adjustment necessary to prevent a benefit from being counted more than once.

(3) For the purposes of subsection (1)(d), if an offence is committed between two dates, the period begins immediately before the earlier of the two dates and ends at some time after the later of the two dates.

(4) Where the benefit derived by a defendant was in the form of property including dangerous drugs or some other form of illegal property, the court may, in determining the value of that property, have regard to evidence given by a law enforcement officer or other person whom the court considers has expert knowledge of the value of that kind of property.

## **65 Statements relating to benefit**

(1) Where the Prosecutor-General has applied to the court for a benefit recovery order, he or she may provide to the court, and, if so, shall serve upon the defendant, a statement setting out an assessment of the value of the benefit obtained by the defendant.

(2) The court may require any defendant served with a copy of a statement under subsection (1) to respond to each allegation in it and, in so far as he or she does not accept any allegation, to indicate on oath any facts upon which he or she proposes to rely.

(3) The court may, for the purposes of determining whether there was a benefit and the value of the benefit, treat—

- (a) any acceptance by the defendant of the allegations set forth in the statement under subsection (1) as conclusive of the matters to which it relates;

- (b) a defendant's failure to respond or to indicate the facts upon which he or she will rely as his or her acceptance of every allegation in the statement, other than—
  - (i) an allegation regarding whether he or she complied with the requirement; and
  - (ii) an allegation that he or she has benefited from the offence or that he or she obtained any property or advantage as a result of or in connection with the commission of the offence.

## **66 Amount recovered under benefit recovery orders**

(1) The amount to be recovered under a benefit recovery order shall be the amount specified in the order under section 63 or, if a certificate is issued pursuant to subsection (6) for a lesser amount, the amount specified in the certificate.

(2) No earlier than four months after the later of—

- (a) the date on which a benefit recovery order is made; or
- (b) the date on which a certificate is issued pursuant to this section; or
- (c) the date on which any appeal lodged against a benefit recovery order or a certificate issued pursuant to this section is finally determined, dismissed or withdrawn;

the court shall, on the application of the Prosecutor-General, where the defendant has failed to pay all or part of the amount to be recovered under the benefit recovery order, bring into effect the suspended term of imprisonment, or the suspended portion of the term of imprisonment, imposed under section 59(1)(a)(i).

(3) Where a court brings into effect a suspended term of imprisonment under subsection (2), it shall direct that—

- (a) the term be served consecutively upon any other form of imprisonment imposed on that person, or that the person is then serving; and
- (b) that any law regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply to the suspended term of imprisonment brought into effect under subsection (2); and
- (c) notwithstanding any term of imprisonment brought into effect, the unpaid amount will remain due and owing.

(4) An application for the certificate referred to in subsection (6) may be made by the defendant to the court in which an application for a benefit recovery order has been made against him or her pursuant to section 59.

(5) An application pursuant to subsection (4)—

- (a) may not be made more than thirty days after the date upon which a benefit recovery order was made; and
- (b) must be supported by a sworn affidavit of the defendant and of any other person upon whom the defendant proposes to rely; and

- (c) must be served upon the Prosecutor-General together with any supporting affidavits; and
- (d) has the effect of suspending the running of time under subsection (2)(b) until the application is finally determined, dismissed or is withdrawn.

(6) The court shall grant a certificate pursuant to this section if, having regard to any affidavit filed pursuant to subsection (5), any affidavit filed in response by the Prosecutor-General and any oral testimony, it is satisfied that—

- (a) it has been provided with an accurate assessment of the total value of the financial resources held by the defendant, or subject to his or her effective control (irrespective of whether they are subject to an interdict under this Act); and
- (b) the total value of the financial resources held by the defendant, or subject to his or her effective control is less than the amount ordered to be paid under the benefit recovery order.

(7) Where a certificate is granted pursuant to subsection (6), it must specify a monetary amount equal to the total value of the financial resources held by the defendant or subject to his or her effective control.

(8) The court may, on the application of the Prosecutor-General within two years after the grant of the certificate, vary or revoke it or issue a benefit recovery order in a new amount, when—

- (a) it is made aware of facts that would have led it to a different conclusion regarding the granting of a certificate or the amount of a certificate; or
- (b) the defendant acquires possession or control of additional assets which, had they been available at the date of the certificate, would have resulted in the certificate not being granted or granted for a higher amount.

## **67 Discharge of benefit recovery order**

(1) A benefit recovery order is discharged—

- (a) on the satisfaction of the order by payment of the amount due under the order; or
- (b) if the conviction of the offence or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted; or
- (c) if the order is quashed.

(2) A person's conviction for an offence shall be taken to be quashed in any case—

- (a) where a person is convicted of the offence, if the conviction is quashed or set aside;
- (b) where a person is charged with and found guilty of the offence but is discharged without any conviction being recorded, if the finding of guilt is quashed or set aside; or



- (c) where the person is granted a pardon in respect of the person's conviction for the offence.

## **PART V**

### CONFISCATION AND BENEFIT RECOVERY ORDERS GENERALLY; COMPENSATION ORDERS

#### **68 Reviews and appeals re confiscation and benefit recovery orders**

(1) A person who is aggrieved by—

- (a) a confiscation order; or
- (b) a benefit recovery order;

may seek a review of such order no later than the date specified in the order for its execution from—

- (i) the High Court, in the case of a benefit recovery or confiscation order granted by a magistrates court; or
- (ii) the Supreme Court, in the case of a benefit recovery order or confiscation order granted by the High Court.

(2) On an review in terms of subsection (1)—

- (a) the reviewing court may confirm, correct, vary, or set aside and substitute the confiscation or benefit recovery order; or
- (b) refer any question of fact or law in connection with the confiscation or benefit recovery order back for consideration by the court that issued it.

(3) An appeal on a question of law only shall lie to the Supreme Court from any decision of the High Court or a magistrates court on a review in terms of this section or on a referral in terms of subsection (2)(b).

#### **69 Realisation of property subject to confiscation or benefit recovery order**

(1) Where a confiscation order or benefit recovery order is not subject to review under section 68, and is not discharged, the court may, on an application by the Prosecutor-General, exercise the powers conferred upon the court by this section.

(2) The court may appoint a receiver or trustee to take possession and control of, and then to realise—

- (a) where a confiscation order has been made, the property subject to confiscation pursuant to that order; and
- (b) where a benefit recovery order has been made—
  - (i) property in which the defendant has an interest; or
  - (ii) restrained property; or
  - (iii) specified items of property in which the defendant has an interest.

(3) Where a receiver or trustee has already been appointed pursuant to section 41(2)(c) to take possession or control of property in which the defendant has an interest,

any order made pursuant to subsection (2) should be made in respect of that receiver or trustee.

(4) The court may make any further orders to assist the receiver or trustee in the discharge of his or her duties that the court considers are reasonably necessary.

(5) The court shall, in respect of any property, exercise the powers conferred by this section only after it affords persons asserting any interest in the property a reasonable opportunity to make representations to the court.

## **70 Application of monetary sums**

(1) Monetary sums in the hands of the receiver or trustee from his or her receipt of the property of the defendant and from the realisation of any property under section 69 shall, after any such payments as the court may direct are made out of those sums, be paid to the Registrar of the court and applied on the defendant's behalf towards the satisfaction of the benefit recovery order in the manner provided by subsection (3).

(2) If, after full payment of the amount payable under the confiscation order or benefit recovery order, any sums under subsection (1) remain in the hands of such a receiver or trustee, the receiver or trustee shall distribute those sums among such of those persons who held property which has been realised under this Chapter and in such proportions, as the court directs, after giving a reasonable opportunity for those persons to make representations to the court.

(3) Property received by the Registrar of the court in payment of amounts due under a benefit recovery order or to satisfy a confiscation order shall be applied as follows—

- (a) if received from a receiver under subsection (1), it shall first be applied in payment of the receiver or trustee's remuneration and expenses; and
- (b) the balance shall be paid or transferred to the Recovered Assets Fund.

## **71 Compensation orders**

(1) If an interdict was made and thereafter an application for a confiscation or benefit recovery order under this Chapter was not granted or was withdrawn, or was never made because the defendant was acquitted, and the interdict was accordingly revoked, the court may make a compensation order on application to it by a person if—

- (a) the person suffered a loss as a result of the operation of the interdict; and
- (b) there was a serious default consisting of gross negligence or intentional misconduct on the part of a person involved in the investigation or prosecution, and the investigation would not have continued or the proceedings would not have started or continued had the default not occurred.

(2) The amount of compensation to be paid under this section is the amount the court thinks reasonable having regard to the loss suffered and any other relevant circumstances.

(3) An application under subsection (1) must be made no later than three months after the date an interdict was not granted, withdrawn or revoked.

(4) The person making an application for a compensation order must provide notice of the application to the Prosecutor General.

## PART VI

### INVESTIGATIVE ORDERS FOR CRIMINAL CONFISCATION

#### 72 Production order for property tracking documents

(1) A production order under this section will require the production of a document relevant in identifying, locating or quantifying property or necessary for its transfer, hereinafter referred to as a “property tracking document”.

(2) An authorised officer may apply *ex parte* and in writing to court for an order to require the person believed to have possession or control of a property tracking document to produce such document.

(3) An application under this section shall be supported by an affidavit setting out the grounds for the application.

(4) Where the court finds there are reasonable grounds to believe that a person has been, is or will be involved in the commission of an offence, and that any specified person has possession or control of a property tracking document relating to—

- (a) the property of a person involved in the commission of such an offence; or
- (b) the proceeds or instrumentalities of such an offence;

it may make an order that the person produce the document to an authorised officer at a time and place specified in the order.

(5) If any of the material specified in an application for a production order for property tracking documents consists of information contained in a computer, the production order has effect as an order to produce the material in a form in which it can be taken away, and in which it is visible and legible.

(6) An authorised officer to whom documents are produced under this section may inspect the documents and—

- (a) make copies of the documents; or
- (b) retain the documents for as long as is reasonably necessary for the purposes of this Part, provided that copies of the documents are made available to the person producing them if requested, or reasonable access is provided to the documents.

(7) A person may not refuse to produce a document ordered to be produced under this section on the ground that—

- (a) the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production of the document would be in breach of an obligation (whether imposed by a law of Zimbabwe or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

### **73 Evidential value of information**

(1) Where a person produces a document pursuant to an order under this Part, the production of the document, and any information, document or thing obtained as a direct or indirect consequence of the production of the document, is not admissible against the person in any criminal proceedings except proceedings under section 74.

(2) For the purposes of subsection (1), proceedings on an application for an interdict, a confiscation order or a benefit recovery order are not criminal proceedings.

### **74 Failure to comply with production order**

(1) Where a production order requires a person to produce a document to an authorised officer, the person is guilty of an offence against this section if he or she—

- (a) contravenes the order without reasonable cause; or
- (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the authorised officer and provide to the authorised officer any correct information of which the person is in possession or control.

(2) Where the offence referred to in subsection (1) is committed by—

- (a) an individual, he or she shall be liable to a fine of one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment; or

[Paragraph amended by Act No. 4 of 2014]

- (b) a company or other corporate body—
  - (i) it shall be liable to fine; not exceeding one hundred thousand dollars (US\$100 000); and
  - (ii) every director or member of the governing body of the company or corporate body shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment, unless the director or member concerned proves that he or she took no part in the conduct of the company or corporate body.

[Paragraph amended by Act No. 4 of 2014]

### **75 Power to search for and seize documents relevant to locating property**

(1) The court may, on application by an authorised officer, make a warrant in conformity with subsection (4) to search for and seize documents relevant in identifying, locating or quantifying property or necessary for its transfer, hereinafter referred to as “property tracking documents,” provided that the following circumstances are satisfied—

- (a) a production order has been given in respect of the document and has not been complied with; or

- (b) a production order in respect of the document would be unlikely to be effective; or
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the authorised officer does not gain immediate access to the document without any notice to any person; or
- (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained; and

(2) If during the course of searching under a warrant granted under this section, an authorised officer finds anything that he or she believes on reasonable grounds—

- (a) will afford evidence as to the commission of an offence; or
- (b) is of a kind which could have been included in the warrant had its existence been known of at the time of application for the warrant;

he or she may seize that property or thing and the warrant shall be deemed to authorise such seizure.

(3) An authorised officer who has seized property tracking documents pursuant to this section may retain the documents for as long as is reasonably necessary for the purposes of this Chapter, provided that copies of the documents are made available to the person producing them if requested, or reasonable access is provided to the documents.

(4) A warrant under this section shall specify—

- (a) the purpose for which the warrant is issued, including the nature of the relevant offence; and
- (b) the kinds of documents authorised to be seized; and
- (c) the date on which the warrant shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorised

## **76 Customer information orders**

(1) A court may, on an application made by the Prosecutor General, and if the conditions set forth in subsections (2) and (3) are met, make an order (“customer information order”) that a financial institution provide to an authorised officer any such customer information as it has relating to the person or account specified in the application.

(2) The application must state that there is an investigation of a specified offence and the order is sought for purposes of a criminal investigation of such offence.

(3) The court must be satisfied that there are reasonable grounds for believing that the financial institution may have information that is relevant in the investigation.

(4) Customer information is information whether a person holds, or has held, an account or accounts at the financial institution (whether solely or jointly), and information identifying a person who holds an account, and includes all information as to—

- (a) the account number or numbers;

- (b) the person's full name;
- (c) his or her date of birth;
- (d) his or her most recent address and any previous addresses;
- (e) the date or dates on which he or she began to hold the account or accounts and, if he or she has ceased to hold the account or any of the accounts, the date or dates on which he or she did so;
- (f) such evidence of his or her identity as was obtained by the financial institution;
- (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him or her;
- (h) the account number or numbers of any other account or accounts held at the financial institution to which he or she is a signatory and details of the person holding the other account or accounts;
- (i) if a legal entity—
  - (i) a description of any business which it carries on;
  - (ii) the country or territory in which it is incorporated or otherwise established and any number allocated to it;
  - (iii) its registered office, and any previous registered offices;
  - (iv) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts;
- (j) any other information which the court specifies in the customer information order.

(5) A financial institution shall provide the information to the authorised officer in such manner, and at or by such time, as is specified in the order.

(6) No obligation to maintain the confidentiality of information held by a financial institution, whether imposed by a law or contract, can excuse compliance with an order made under this section.

(7) A financial institution subject to a customer information order is guilty of an offence against this section if it knowingly—

- (a) fails to comply with the order; or
- (b) provides false or misleading information in purported compliance with the order.

(8) A financial institution that has been served with a customer information order, and every employee, officer or agent of such institution, shall not disclose the existence or operation of the order to any person except—

- (a) an employee, officer or agent of the institution for the purpose of complying with the order; or
- (c) a legal practitioner for the purpose of obtaining legal advice or representation in respect of the order; or

- (c) an authorised officer referred to in the order.
- (9) Where the offence referred to in subsection (7) or (8) is committed by—
  - (a) an individual who is an employee, officer or agent of the financial institution in question, he or she shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment; or
  - (b) a company or other corporate body—
    - (i) it shall be liable to a fine not exceeding level fourteen; and
    - (ii) every director or member of the governing body of the company or corporate body shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment, unless the director or member concerned proves that he or she took no part in the conduct of the company or corporate body.

[Subsection amended by Act No. 4 of 2014]

## **77 Monitoring orders**

(1) The Prosecutor-General may apply, *ex parte* and in writing, to a court for an order (a “monitoring order”) directing a financial institution to disclose information to an authorised officer obtained by the institution about transactions conducted through an account held by a particular person with the financial institution.

(2) An application for a monitoring order shall be supported by an affidavit of an authorised person stating his or her belief that—

- (a) the person in respect of whose account the order is sought—
  - (i) has committed or was involved in the commission, or is about to commit or be involved in the commission of, an offence; and
  - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an offence;

or

- (b) the account is relevant to identifying, locating or quantifying terrorist property.

(3) A monitoring order shall—

- (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the financial institution; and
- (b) not have retrospective effect; and
- (c) only apply for a period of a maximum of three months from the date it is made.

(3) A court shall issue a monitoring order only if it is satisfied that there are reasonable grounds for believing the allegations put forth in the affidavit referred to in subsection (2).

(4) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held; and
- (b) the class of information that the financial institution is required to give.

(5) A financial institution subject to a mentoring order is guilty of an offence against this section if it knowingly—

- (a) fails to comply with the order; or
- (b) provides false or misleading information in purported compliance with the order.

(6) A financial institution that has been served with a monitoring order, and every employee, officer or agent of such institution, shall not disclose the existence or operation of the notice to any person except—

- (a) an employee, officer or agent of the institution for the purpose of complying with the order; or
- (b) a legal practitioner for the purpose of obtaining legal advice or representation in respect of the order; or
- (c) an authorised officer referred to in the order.

(7) Where the offence referred to in subsection (5) or (6) is committed by—

- (a) an individual who is an employee, officer or agent of the financial institution in question, he or she shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment; or
- (b) a company or other corporate body—
  - (i) it shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000); and
  - (ii) every director or member of the governing body of the company or corporate body shall be liable to a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of three years or both such fine and such imprisonment, unless the director or member concerned proves that he or she took no part in the conduct of the company or corporate body.

[Subsection amended by Act No. 4 of 2014]

(8) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court, provided that nothing in this section shall be construed as requiring a legal practitioner to disclose to any court the existence or operation of a monitoring order.



## CHAPTER V

### CIVIL FORFEITURE OF TAINTED AND TERRORIST PROPERTY

#### PART I

##### CIVIL FORFEITURE ORDERS, PROPERTY FREEZING ORDERS AND PROPERTY SEIZURE ORDERS

#### 78 Interpretation in Part I of Chapter V

(1) In this Part—

“authorised officer” means a police officer or an inspector;

“court” means the High Court of Zimbabwe;

“enforcement authority”, in relation to property that is the subject of a civil forfeiture order, means the Prosecutor-General, his or her named representative, or the specified receiver or trustee under section 82(1)(c);

“legitimate owner”, in relation to the owner of tainted or terrorist property or any interest therein, means—

(a) in the case of such property that is the proceeds of a serious offence or terrorist act, a person who—

(i) was the rightful owner of the property before the criminal conduct occurred and was deprived of the property by the criminal conduct; or

(ii) acquired the property in good faith and for fair value after the criminal conduct and did not and could not reasonably have known the property was such proceeds;

(b) in the case of such property that is the instrumentality of a serious offence or terrorist act, a person who has done all that can reasonably be done to prevent the property being used as an instrumentality.

#### 79 Application of Part I of Chapter V

(1) Orders for civil forfeiture can be sought in respect of property that is suspected to be tainted property or terrorist property whenever such property is identified by or comes into the possession of the Unit, a law enforcement authority or a competent supervisory authority.

(2) Orders for civil forfeiture may not be granted with respect to property acquired or used before this Act came into force.

(3) An order for civil forfeiture may be sought where the conduct on which the application for forfeiture is based was committed by an individual who died at any time within a period beginning no earlier than six years before the date when the application for the order is made in accordance with this Chapter.

#### 80 Civil forfeiture orders

(1) An order for civil forfeiture is an order *in rem*, granted by a court with civil jurisdiction to forfeit to the State tainted property or terrorist property.

(2) The court, on an application by the Prosecutor-General, shall grant a civil forfeiture order in respect of property within the jurisdiction of Zimbabwe, where the court finds, on a balance of probabilities, that such property is tainted property or terrorist property.

(3) In order to satisfy the court under subsection (2)—

- (a) that property is proceeds of a serious offence or a terrorist act, it is not necessary to show that the property was derived directly or indirectly, in whole or in part, from a particular serious offence or terrorist act, or that any person has been charged in relation to such an offence or act; only that it is proceeds from some conduct constituting or associated with the serious offence or terrorist act;
- (b) that property is an instrumentality of a serious offence or terrorist act, it is not necessary to show that the property was used or intended to be used to commit a specific serious offence or terrorist act, or that any person has been charged in relation to such an offence or act; only that it was used or intended to be used to engage in conduct constituting or associated with the serious offence or terrorist act;
- (c) that property is tainted property or terrorist property, it is not necessary to show that the property—
  - (i) was derived from a specific serious offence or terrorist act, as long as it is shown it was derived from some serious offence or terrorist act; or
  - (ii) has been or is being or is intended to be used by an organised criminal group or terrorist organisation, or to commit a specific serious offence or terrorist act, as long it is shown that it has been, is being or is intended to be used by some organised criminal group or terrorist organisation or to commit some serious offence or terrorist act; or
  - (iii) is owned or controlled by or on behalf of a specific organised criminal group or terrorist organisation, as long as it is shown to be owned or controlled by or on behalf of some organised criminal group or terrorist organisation; or
  - (iv) has been provided or collected for the purpose of supporting a specific organised criminal group or terrorist organisation or funding a specific serious offence or terrorist act, as long as it is shown to have been provided or collected for the purpose of providing support to some organised criminal group or terrorist organisation or funding some serious offence or terrorist act, or that any person has been charged in relation to such conduct.

(4) An application for civil forfeiture may be made in respect of property into which original proceeds have been converted either by sale or otherwise.

(5) For the purposes of making a determination under subsection (2)—

- (a) proof that a person was convicted of any offence for conduct that is relevant to the determination of whether property is tainted property or terrorist property, is proof that the person committed the conduct;
- (b) the court may, on a balance of probabilities, find that property is tainted property or terrorist property, even if a person whose conduct is relevant to the determination of whether property is tainted property or terrorist property was acquitted of an offence related to that conduct, or if the charge was withdrawn before a verdict was returned, or if the proceedings were stayed.

## **81 Property freezing order under Part I of Chapter V**

(1) The Prosecutor-General may apply to the court for a property freezing order in respect of property that he or she reasonably believes to be tainted property or terrorist property.

(2) An application for a property freezing order shall be in writing and shall be supported by an affidavit of an authorised officer indicating that the officer believes, and the grounds for his or her belief, that the property which is the subject of the application is tainted property or terrorist property.

(3) An application for a property freezing order may—

- (a) be made *ex parte* and without notice, if the authorised officer 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*].

(4) The court may make a property freezing order to preserve the specified property where it is satisfied that there are reasonable grounds to believe that the property, or part of it, is tainted property or terrorist property.

(5) Within twenty-one days of the granting of a property freezing order or such other period as the court may direct, notice of the order shall be served on all persons known to the Prosecutor-General to have an interest in the property affected by the order, and such other persons as the court may direct.

## **82 Further provisions in relation to property freezing orders**

(1) Where a court makes a property freezing order, the court may, at the time when it makes the order, or at any later time, make any further orders that it considers appropriate, including, without limiting the generality of the foregoing, the following orders—

- (a) an order that the property or part of the property specified in the property freezing order shall be seized, taken into possession, delivered up for safe-keeping or otherwise secured by the Prosecutor-General;

- (b) an order that the property or part of the property specified in the property freezing order shall be dealt with in a particular manner, including by an encumbrance which is ordered by the court on such property in favour of the Prosecutor-General together with an order that prohibits any other encumbrance, or by a prohibition regarding dealing in or with such property;
- (c) an order to appoint a receiver or trustee to take custody or control of the property or a part of the property that is specified in the property freezing order, and to manage or otherwise deal with the whole or any part of the property in accordance with any directions of the court;
- (d) such other order for the preservation, management or disposition of the property or part of the property specified in the property freezing order as the court considers appropriate.

(2) Any costs associated with the appointment of a receiver or trustee and the work subsequently undertaken by him or her pursuant to the appointment shall be paid from the Recovered Assets Fund.

(3) Where a receiver or trustee has been appointed under subsection (1)(c) in relation to property, he or she may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of the foregoing—

- (a) becoming a party to any civil proceedings that affect the property;
- (b) causing the property to be insured;
- (c) realising or otherwise dealing with the property if it is perishable, subject to wasting or other forms of loss, its value volatile or the cost of its storage or maintenance likely to exceed its value, subject to the proviso that this power may only be exercised without the prior approval of the court in circumstances where—
  - (i) all persons known by the receiver or trustee to have an interest in the property consent to the realisation or other dealing with the property; or
  - (ii) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the property; or
  - (iii) the cost of obtaining such approval would, in the opinion of the receiver or trustee, be disproportionate to the value of the property concerned;
- (d) if the property consists, wholly or partly, of a business—
  - (i) employing, or terminating the employment of, persons in the business; and
  - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis; and
  - (iii) selling, liquidating or winding up the business if it is not a viable, going concern, subject to obtaining the prior approval of the court;

(e) if the property includes shares in a company, exercising rights attaching to the shares as if the trustee were the registered holder of the shares.

(4) The court may exclude from the property freezing order such amount as it considers appropriate for the payment of reasonable living expenses to any person whose property is the subject of a property freezing order where the court—

(a) is satisfied that such person cannot meet such expenses out of property that is not subject to a property freezing order; and

(b) determines that it is in the interests of justice to make such exclusion.

(5) Where a court makes a property freezing order, it may upon application by anyone with an interest in the property or by the Prosecutor-General and at any time make any further order in respect of the property including an order to revoke the property freezing order or to vary the order.

### **83 Property seizure order under Part I of Chapter V**

(1) The court may, on application by the Prosecutor-General, make an order in conformity with subsection (6) (called a “property seizure order”) to search for and seize specified property that is the subject of a property freezing order, if the court is satisfied that—

(a) a property freezing order would not be effective to preserve the property; or

(b) there is a reasonable suspicion of risk of dissipation or alienation of the property if the order is not granted.

(2) A property seizure order shall also grant power to a person named in the order to enter any premises in Zimbabwe to which the order applies, and to use all necessary force to effect such entry.

(3) If during the course of a search under a property seizure order, an authorised officer finds any property or thing that he or she believes on reasonable grounds is of a kind which could have been included in the order had its existence, or its existence in that place, been known of at the time of application for the order, he or she may seize that property and the seizure order shall be deemed to authorise such seizure.

(4) Property seized under a property seizure order, may only be retained by or on behalf of the Prosecutor-General for thirty days.

(5) The Prosecutor-General may subsequently make application for a property freezing order in respect of such property.

(6) If the authorised officer is an inspector who believes that the execution of an order under this section may give rise to a breach of the peace or other criminal conduct, the inspector may request that he or she be accompanied by one or more police officers who will assist in execution of the order.

(7) A property seizure order shall specify—

(a) the purpose for which the order is issued, including the nature of the relevant offence; and

(b) the kind of property authorised to be seized; and

- (c) the date on which the order shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorised

#### **84 Application for and granting of civil forfeiture order**

(1) Where the Prosecutor-General believes that any property is tainted property or terrorist property, he or she may apply to the court for an order of civil forfeiture in respect of that property in accordance with the rules of court applicable to civil applications.

(2) Where the Prosecutor-General makes an application for a civil forfeiture—

- (a) he or she shall serve a copy of the application on any person whom the Prosecutor-General has reason to believe has an interest in the property; and
- (b) any person claiming an interest in the property may appear and adduce evidence at the hearing of the application; and
- (c) at any time before the final determination of the application, the court may direct the Prosecutor-General to provide such notice as the court deems appropriate to any person who, in the court's opinion, appears to have an interest in the property.

(3) Service of notice under subsection (2) shall be effected in accordance with the rules of court applicable in civil court proceedings.

(4) Any person who asserts an interest in the property and who seeks to oppose the making of a civil forfeiture order, or who wishes to exclude his or her interest from a civil forfeiture order, shall file an appearance in accordance with the rules of court applicable in civil court proceedings.

(5) Where an application for a civil forfeiture order is before the court, the court may determine by its own procedures the evidence that may be adduced before it; it shall in particular ensure that any person with an interest of any nature in the property which is the subject of the application has an opportunity to make representations to the court as to whether an order for civil forfeiture should be granted.

(6) Where the court is satisfied on a balance of probabilities that property specified in the application is tainted property or terrorist property, it shall grant a civil forfeiture order in respect of such property.

(7) A civil forfeiture order shall have the effect of vesting the forfeited property in a named representative of the Prosecutor-General or specified receiver or trustee who shall be responsible for realising the property in accordance with section 89.

#### **85 Orders regarding legitimate owners**

(1) If, in the course of a hearing of an application for a civil forfeiture order, the court is satisfied on a balance of probabilities that any property which is the subject of the application is tainted property or terrorist property and that a person is a legitimate owner, the court shall make any order it considers necessary to protect that person's interest in the property.

(2) No order may be made under subsection (1) if the property is property that is unlawful for the person to possess in Zimbabwe.

**86 Fugitive claims**

A person who is a fugitive from justice in Zimbabwe may not appear, either personally or through a representative, in a proceeding for civil forfeiture in Zimbabwe or contest the granting of a civil forfeiture order.

**87 Appeals against civil forfeiture orders and property freezing orders**

A person who is aggrieved by the grant or refusal to grant—

- (a) a civil forfeiture order; or
- (b) a property freezing order or a further order in connection therewith made under section 82(5);

may appeal against such grant or refusal to the Supreme Court no later than the date specified in the order for its execution, or, in the case of a refusal to grant the order, no later than thirty days after the date of such refusal.

**88 Limit on purchase of forfeited property**

No person who had possession of property or was entitled to possession of property affected by a civil forfeiture order immediately prior to the making of the order, nor any person acting on behalf of such a person, other than a legitimate owner, shall be entitled to purchase the property from the enforcement authority.

**89 Realisation of forfeited property**

(1) Subject to any limits in the order for civil forfeiture granted by the court, the enforcement authority—

- (a) may take such steps to sell, destroy or otherwise deal with property vested in him or her by the forfeiture order, as he or she sees fit; and
- (b) so far as practicable, must realise the value of the property vested in him or her by the forfeiture order, in the manner best calculated to maximise the realised amount; and
- (c) may incur reasonable expenditure for the purpose of realising the value of the property vested in him or her by the forfeiture order.

(4) Any expenditure incurred by the enforcement authority under subsection (3) shall be defrayed from the Recovered Assets Fund.

(5) The proceeds of the realisation of any property forfeited as a result of a civil forfeiture order shall be paid into the Recovered Assets Fund.

**90 Compensation and protection of trustee, etc.**

(1) If, in the case of any property in respect of which an application for a civil forfeiture order has been made, or in respect of which a property freezing order has been made at any time, the court does not in the course of the proceedings make a civil forfeiture order, the person whose property it is may make an application to the court for compensation.

(2) The person making an application for compensation must provide notice of the application to the Prosecutor-General and to whichever enforcement authority had custody of the property.

(3) If the court has made a decision by reason of which no forfeiture order could be made in respect of the property, the application for compensation must be made within the period of three months from the date of the decision, or if there is an appeal against the decision, from the date on which any proceedings on appeal are finally concluded or (as the case may be) the date on which the appeal is abandoned.

(4) The court may grant an application made under this section in such amount as the court thinks reasonable having regard to the loss suffered and any other relevant circumstances.

(5) Where the court has appointed a receiver or trustee in relation to property pursuant to sections 82(1)(c) or vested it in a named representative of the Prosecutor-General pursuant to section 84(7), the receiver, trustee or representative shall not be personally liable for any loss or claim arising out of the exercise of powers conferred upon him or her by the order or this Chapter unless the court in which the claim is made is satisfied that—

- (a) the applicant has an interest in the property in respect of which the loss or claim is made; and
- (b) the loss or claim arose by reason of the negligence or reckless or intentional misconduct of the receiver, trustee or representative.

## **91 Obtaining information from foreign authorities**

The Prosecutor-General may, in accordance with the Civil Matters (Mutual Assistance) Act [*Chapter 8:02*], make an application to a court or tribunal in a country designated under that Act for information or evidence relevant to a civil forfeiture investigation or proceeding.

## **PART II**

### **INVESTIGATIVE ORDERS FOR CIVIL FORFEITURE**

## **92 Production order for property tracking documents**

(1) A production order under this section in relation to a civil forfeiture investigation is an order requiring a person to produce a document relevant in identifying, locating or quantifying property or necessary for its transfer, hereinafter referred to as a “property tracking document”, or requiring that person to give a specified person access to the material specified in an application for a production order.

(2) Where the Prosecutor-General has reasonable grounds to believe that property as specified in subsection (5) is or may be subject to an application for a civil forfeiture order, he or she may apply *ex parte* and in writing to a court for an order requiring the person believed to have possession or control of a property tracking document to produce such document.

(3) An application under this section shall be supported by an affidavit setting out the grounds for the application.

(4) The application must—

- (a) specify the property that is subject to the civil forfeiture application; and



- (b) state that the production order is sought for the purposes of the investigation; and
- (c) state that the production order relates to a specified property tracking document, or to a property tracking document of a description specified in the application; and
- (d) state that a person specified in the application appears to be in possession or control of the property tracking document.

(5) Where an application is made to the court for a production order and the court finds there are reasonable grounds to believe that specified property is or may be the subject of an application for civil forfeiture, and that a specified person has possession or control of a property tracking document relating to the specified property, it may make an order that the person produce the document to a named representative of the Prosecutor-General at a time and place specified in the order.

(6) Before granting an application for a production order, the court must be satisfied that there are reasonable grounds for believing that—

- (a) the property said to be the subject of the civil forfeiture investigation is tainted property or terrorist property; and
- (b) the person specified in the application has control of the property tracking document specified in the application.

(7) A production order granted under this section does not grant right of entry to premises.

(8) A production order may be made subject to such other conditions as the court may impose.

### **93 Further provisions relating to production orders for property tracking documents**

(1) A person may not refuse to produce documents ordered to be produced under this section on the ground that—

- (a) the document might tend to incriminate the person or make the person liable to a penalty; or
- (b) the production of the document would be in breach of an obligation (whether imposed by a law of Zimbabwe or otherwise) of the person not to disclose either the existence or contents, or both, of the document.

but a production order granted under this Part does not require a person to produce or give access to any items subject to legal privilege.

(2) A production order granted under this Part has effect in spite of any restriction on the disclosure of information however imposed.

(3) The person to whom documents are produced under this section may—

- (a) inspect the documents and make copies of the documents; or
- (b) retain the documents for as long as is reasonably necessary for the purposes of this Part provided that a copy of any document is made available to the person

producing it if requested, and that the document is eventually returned to the person producing it, or reasonable access is provided to the records.

(4) If any of the material specified in an application for a production order consists of information contained in a computer, the production order has effect as an order to produce the material in a form in which it can be taken away, and in which it is visible and legible.

(5) The court may discharge or vary a production order on application by the Prosecutor-General.

#### **94 Search warrants for property tracking documents**

(1) Where the Prosecutor-General has reasonable grounds to believe that specified property is or may be subject to an application for a civil forfeiture order, he or she may apply *ex parte* to the court for a search warrant for property tracking documents.

(2) The court may grant such a warrant if it is satisfied that each of the requirements for the making of the warrant as specified in this section is fulfilled.

(3) An application under this section shall be in writing and shall be supported by an affidavit setting out the grounds for the application.

(4) A search warrant in relation to a civil forfeiture investigation is an order authorising a person named in the warrant to enter (using such force as is necessary) and search premises specified in the application, and further authorising that person to seize and retain any property tracking document specified in the warrant which is found there and which is likely to be of substantial value to the investigation.

(5) Before granting an application for a search warrant under this section, the court must be satisfied that there are reasonable grounds for believing that the property said to be the subject of the civil forfeiture investigation is tainted property or terrorist property. The court must also be satisfied that there are reasonable grounds for believing that the document specified in the warrant is within the premises.

(6) Before granting an application for a search warrant under this section, the court must be satisfied that—

- (a) a production order has been given in respect of the document and has not been complied with; or
- (b) a production order in respect of the document would be unlikely to be effective; or
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the person authorised does not gain immediate access to the document without any notice to any person; or
- (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(6) A search warrant for a property tracking document shall specify—

- (a) the purpose for which the warrant is issued, including the nature of the relevant offence; and
- (b) the kind of property authorised to be seized; and

- (c) the date on which the warrant shall cease to have effect; and
- (d) the time during which entry upon any land or premises is authorised.

## **95 Further provisions relating to search warrants for property tracking documents**

(1) A search warrant granted under section 94 (“section 94 warrant”) does not confer the right to seize any items subject to legal privilege.

(2) Property tracking documents seized by virtue of a section 94 warrant may be retained for as long as is reasonably necessary for the purposes of this Act:

Provided that copies of the documents are made available to the person from whom they were seized within ten working days of the seizure if requested.

(3) A section 94 warrant authorises the person executing it to require any information which is held in a computer to be produced in a form in which it can be taken away, and in which it is visible and legible.

(4) If during the course of searching under a section 94 warrant, the officer named in the warrant finds a property tracking document or anything or property that he or she believes on reasonable grounds—

- (a) is of a kind which could have been included in the warrant had its existence, or its existence in that place, been known of at the time of application for the warrant; or
- (b) is of a kind which could have been included in the warrant had its existence or its existence in that place, been known at the time of the application for the warrant; or
- (c) will afford evidence as to the commission of an offence;

he or she may seize that property tracking document, thing or property, and the warrant shall be deemed to authorise such seizure.

## **CHAPTER VI**

### **RECOVERED ASSETS FUND**

## **96 Establishment of Recovered Assets Fund**

(1) There is hereby established in the accounts of Zimbabwe an account to be known as the Recovered Assets Fund.

(2) The Minister of Finance shall prescribe instructions for the administration of the Recovered Assets Funds and the implementation of any of the other provisions of this Chapter.

## **97 Receipts and disbursements of Recovered Assets Fund**

(1) There shall be credited to the Recovered Assets Fund—

- (a) all moneys derived from the fulfilment of confiscation, benefit recovery, and civil forfeiture orders and from settlements of confiscation, recovery and forfeiture claims; and

- (b) any voluntary payment, grant or gift made by any person for the purposes of the Recovered Assets Fund; and
- (d) any income derived from the investment of any amounts that are credited to the Recovered Assets Fund; and
- (e) any sharing of confiscated or forfeited property and funds received from other States.

(2) The Minister of Finance may authorise payments out of the Recovered Assets Fund to—

- (a) compensate victims who suffer losses as a result of serious offences or terrorist acts;
- (b) pay expenses relating to the recovery, management and disposition of property under this Act, including mortgages and liens against relevant property, and the fees of receivers, trustees, managers or other professionals providing assistance;
- (c) share recovered property with foreign States;
- (d) pay third parties for interests in property as appropriate;
- (e) pay compensation ordered by a court pursuant to section 71 or 90;
- (f) enable the appropriate law enforcement agencies to continue to address serious offences and terrorist acts;
- (g) assist in programmes to combat the trafficking in and consumption of dangerous drugs, including programmes for the rehabilitation of persons addicted to dangerous drugs;
- (h) pay the costs associated with the administration of the Recovered Assets Fund, including the costs of external audits.

## **98 Administration and investment of Recovered Assets Fund**

(1) The Recovered Assets Fund shall be administered on behalf of the Minister of Finance by the Reserve Bank of Zimbabwe in accordance with instructions referred to in section 96(2).

(2) Any part of the Recovered Assets Fund not immediately required for the purposes of the Fund may be invested by the Reserve Bank of Zimbabwe in such manner as the Minister may determine or approve.

## **99 Financial year, accounts and audit of Recovered Assets Fund**

(1) The financial year of the Recovered Assets Fund shall be the period of twelve months ending on the 31st December in each year.

(2) The Reserve Bank of Zimbabwe shall, on behalf of the Minister of Finance, cause proper books of accounts of the Fund to be kept, together with adequate financial and other records in relation thereto, and, within three months after the end of the financial year to which the accounts relate, shall submit the accounts to the Auditor-General for audit in terms of subsection (3).

(3) The accounts of the Fund shall be audited by the Auditor-General, who shall have all the powers conferred upon him or her by the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) and the Audit Office Act [*Chapter 22:18*] (No. 12 of 2009).

[Section amended by Act 5 of 2014]

## **100 Occasional, periodic and annual reports relating to Recovered Assets Fund**

(1) The Reserve Bank of Zimbabwe shall submit to the Minister—

- (a) such reports in connection with the Recovered Assets Fund as the Minister may require on the matters referred to in subsection (2); and
- (b) such periodic reports, and at such intervals, as it considers advisable; on the matters referred to in subsection (2).

(2) The Minister of Finance shall table before the National Assembly not later than thirty days from the end of the financial year of the Recovered Assets Funds a report detailing—

- (a) the amounts credited to the Recovered Assets Fund; and
- (b) the investments made with the amounts credited to the Recovered Assets Fund; and
- (c) the payments made from the Recovered Assets Fund including the specific purpose for which payments were made and to whom; and
- (d) anything in connection with the administration and operation of the Recovered Assets Fund that the Minister considers it fit in the public interest to report upon.

## **CHAPTER VII**

### **GENERAL AND AMENDMENT OF OTHER ACTS**

## **101 Designation of non-financial businesses and professions and transactions**

(1) Subject to subsection (2), the Minister may, after consultation with the financial institutions, businesses and professions concerned, by notice in a statutory instrument—

- (a) designate any additional non-financial business or profession to be a “designated non-financial business or profession” for the purpose of the definition of that term in section 13; or
- (b) designate any additional transaction for the purpose of the definition of that term in section 13.

(2) When the Minister wishes to make a designation under subsection (1), the Minister shall lay the draft statutory instrument making the designation 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*.

## 102 Amendment or substitution of First and Second Schedules

(1) Subject to subsection (1), the Minister, after consultation with the Unit, may by notice in a statutory instrument amend or replace the First or Second Schedules.

(2) Subject to subsection (3), when the Minister wishes to amend or substitute the First or Second Schedules, the Minister shall lay the draft statutory instrument amending or substituting the First or Second 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*.

(3) The Minister may cause to be published in the *Gazette* a statutory instrument which simply updates references to persons or bodies amended or substituted by any enactment without substantially affecting their original nature or description.

## 103 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 for—

- (a) the reporting by designated non-financial businesses or professions and other persons of transactions involving the receipt, payment or transfer of cash or funds;
- (b) specific due diligence requirements with respect to customer identification and any other matter for which due diligence is appropriate in terms of this Act;
- (c) particulars, in addition to those specified in Parts I and II of Chapter III, which designated non-financial businesses or professions shall obtain, record and report concerning applicants, customers and transactions or any class thereof;
- (d) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine not exceeding one hundred thousand dollars (US \$100 000) or imprisonment for a period of five years or both such fine and such imprisonment.

[Proviso amended by Act No. 4 of 2014]

(3) Regulations in terms of subsection (1) that provide penalties for contraventions thereof may, without shifting the onus of proof borne by the State in criminal cases, impose upon any person charged with a criminal offence the burden of proving particular facts.

## 104 Repeal of Cap. 9:17

The Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] is repealed.

## 105 Amendment of Cap. 9:06

The Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] is amended—

- (a) in section 2 (“Interpretation”)—

- (i) in subsection (1)—
- A. by the repeal of the definitions of “money-laundering offence”, “monitoring order”, “pecuniary penalty order”, and “tainted property” and the substitution of the following definitions—
- “money-laundering offence”, in relation to the proceeds of a serious offence, means an offence involving—
- (a) the engaging, directly or indirectly, in a transaction which involves money or other property which is, in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the proceeds of a serious offence; or
- (b) the receiving, possessing, concealing, disposing of or bringing into a country of money or other property which is, in terms of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the proceeds of the serious offence;
- “foreign benefit recovery order” means an order for the recovery of benefits derived from the commission of a foreign specified offence and registered in Zimbabwe in terms of section 32(1), but does not include an order for the payment of money by way of compensation, restitution or damages;
- “tainted property” has the meaning given to it in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], and includes “terrorist property” as defined in that Act”;
- B. by the repeal of the definition of “serious narcotics offence” and “serious offence”;
- (ii) by the insertion after subsection (3) of the following subsections—
- “(4) References in this Act to requests for assistance in criminal matters and to information contained in such request or accompanying such request in a document, include references to such information transmitted by electronic or digital means, under the following conditions—
- (a) the sender of the request or document and the recipient must both use mutually agreed electronic or digital addresses; and
- (b) the electronic or digital transmission embodying the request or document must be authenticated by the electronic signature of the sender or by other means mutually agreed; and
- (c) the electronic or digital transmission embodying the request or document must be materialised in a paper copy printed by the recipient.
- (5) The terms “benefit recovery order”, “financial institution”, “monitoring order”, “production order” and “property-tracking

document”, have the meanings assigned by the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*]”;

(b) by the insertion of the following section after section 2—

**“2A Purpose of Act and powers and responsibilities of Prosecutor-General**

(1) The purpose of this Act is to enable the Prosecutor-General and appropriate authorities to provide the widest possible range of cooperation to each other for purposes of mutual legal assistance in criminal matters, including (without derogating from the generality of the foregoing) mutual legal assistance in connection with criminal investigations and proceedings related to money laundering and financing of terrorism and to associated predicate offences.

(2) This Act shall be construed in such manner as best ensures the attainment of its purpose referred to in subsection (1).

(3) The Attorney General has the responsibility and power to make and receive requests for assistance in any criminal matter in accordance with this Act, and in so doing shall ensure the timeous, expeditious and proper processing of the same, for which purpose the Attorney General may avail himself or herself of the services of the International Criminal Police Organization (commonly called “Interpol”).”;

(c) in section 3 (“Application of Act”), by the insertion of the following subsection after subsection (3)—

“(4) The requirement of dual criminality upon which the principle of mutual assistance in criminal matters is based shall be deemed to be fulfilled in respect of any offence for which assistance is sought if the conduct underlying the offence is a criminal offence under the laws of Zimbabwe and the foreign country concerned, irrespective of whether the laws of the requesting foreign country place the offence within the same class of offences as Zimbabwe or denominate the offence by the same terminology as in Zimbabwe.”;

(d) in section 4 (“Aspects of mutual assistance”), by the insertion of the following paragraphs after paragraph (j)—

“(k) Identifying or tracing the proceeds of crime, funds or property or instrumentalities or other things for evidentiary or confiscation purposes;

(l) the examination of objects and sites;

(m) any other form of mutual legal assistance not contrary to the law of Zimbabwe.”;

(e) in section 6 (“Refusal of assistance”), by the insertion of the following subsection after subsection (2)—

“(3) For the purposes of subsection (1)(a), (b) or (c), money laundering and financing of terrorism shall not be regarded as political offences, or



offences connected with a political offence, or offences inspired by political motives.

(4) Secrecy or confidentiality provisions binding banks and other financial institutions cannot be invoked as a ground for refusal to comply with a request by a foreign country for assistance under this Act, as long as the other conditions for granting such request under the this Act are fulfilled.

(5) Assistance shall not be refused on the sole ground that the offence is also considered to involve fiscal matters.

(6) However, the prior invocation by a foreign country requesting assistance under this Act of the grounds mentioned under subsections (4) and (5) to refuse assistance to Zimbabwe under this Act shall constitute grounds for the Prosecutor-General, at his or her discretion, to refuse that country's request for assistance on the same grounds.”.

#### **106 Amendment of Cap. 11:21**

The Suppression of Foreign and International Terrorism Act [*Chapter 11:21*] (No. 5 of 2007) is amended by the repeal of section 16 and the substitution of—

#### **“16 Application of Cap. 9:24 and Cap. 24: 24 to property referred to in section 13**

Where any property that may be the subject-matter of an offence under section 13—

- (a) consists of money, the Bank Use Promotion Act [*Chapter 24:24*] (No. 2 of 2004) shall apply to such property as if the offence were a cash detainable offence in terms of that Act;
- (b) consists of property other than money, the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], shall apply to such property as if it were tainted or terrorist property in terms of that Act.”.

#### **107 Amendment of Cap. 24:02**

The Building Societies Act [*Chapter 24:02*] is amended—

- (a) in section 57 (“Directors and chief executive officer”) by the repeal of subsection (5) and the substitution of—

“(5) No person shall exercise any of the function of a director following his or her appointment or re-appointment as a director, unless his or her appointment or re-appointment, as the case may be, has been approved by the Registrar:

Provided that this subsection shall not apply to a person who was a director immediately before the date of commencement of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], until his or her current term as a director comes to an end.

- (6) An application for approval under subsection (5) shall be made in writing to the Registrar and shall provide such information as may be prescribed or as the Registrar may reasonably require.

(7) The Registrar shall without delay consider every application made to him or her under subsection (5), and within two weeks after receiving it shall notify the applicant, in writing—

- (a) of his or decision on the application; and
- (b) if he or she refuses to approve the appointment of the person concerned, of his or her reasons for so refusing;

unless the applicant consents to an extension of the two-week period.

(8) The Registrar shall approve the appointment or re-appointment of a person as director unless the Registrar believes on reasonable grounds that the person—

- (a) is disqualified for appointment in terms of section *fifty-nine* or in terms of the rules of the society concerned; or
- (b) has knowingly been involved, whether in Zimbabwe or elsewhere, in money-laundering or financing terrorist activities as defined in the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*]; or
- (c) is otherwise not a fit and proper person to be a director.

(9) If the chief executive officer of a society becomes aware of—

- (a) any material change in the information that was provided to the Registrar in terms of subsection (6) in regard to a director; or
- (b) any fresh information concerning a director;

which might reasonably be expected to cause the Registrar to reconsider his or her approval of the director concerned, the chief executive officer shall forthwith and in writing inform the Registrar of that change or provide the Registrar with that fresh information, as the case may be.

(10) On receipt of information in terms of subsection (9), the Registrar may reconsider his or her approval of the director concerned, and subsections (7) and (8) shall apply accordingly, with any necessary changes.

(11) Every society shall notify the Registrar of the name, and such other particulars as may be prescribed, of its chief executive officer.

(12) Any person who knowingly contravenes subsection (5), (9) or (11) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”;

- (b) in section 59 (“Disqualifications for appointment as director”) in subsection (1) by the deletion from paragraph (d) of “or perjury” and the substitution of “, perjury, money-laundering or financing terrorist activities”;
- (c) in section 68 (“Appeals against decision of Registrar”) by the insertion after “*fourteen,*” of “section 58(7) or (10),”.

## 108 Amendment of Cap. 24:24

The Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24] (No. 2 of 2004) is amended—

(a) by the repeal of section 1 and the substitution of—

### “1 Short title and commencement

This Act may be cited as the Bank Use Promotion Act [Chapter 24:24].”;

(b) in section 2 (“Interpretation”) by the repeal of the definitions of “financial institution”, “serious offence” and “tainted property” and the substitution of the following—

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

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

“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”;

(c) in section 4 (“Functions of the Unit”) by the repeal of paragraphs (b) and (c) and the substitution of—

“(b) to discharge the functions assigned to it under the Money Laundering and Proceeds of Crime Act [Chapter 9:24].”;;

(d) in section 9 (“Bank Use Promotion and Suppression of Money Laundering Advisory Committee”)(3) by the repeal of paragraph (d);

(e) by the repeal of section 21 and the substitution of—

### “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.”;

(f) by the repeal of Part IV;

(g) in section 39 (“Seizure and detention of cash that is the proceeds of crime or used in unlawful dealings in foreign currency”) by the repeal of subsection (1) and the substitution of—

“(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 that offence were a cash detainable offence.”;

(h) by the repeal of section 41 and the substitution of—

**“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.”.

**109 Amendment of Cap. 24:26**

(1) The Asset Management Act [*Chapter 24:26*] is amended—

(a) in section 3 (“Meaning of ‘business of asset management’”) in subsection (2) by the deletion from paragraph (c) of “less than ten million dollars per year” and the substitution of “annually less than such amount as may be prescribed”;

(b) in section 9 (“Disqualification for appointment as officer of asset manager”) in subsection (1)—

(i) in paragraph (b) by the deletion from subparagraph (iii) of “or perjury” and the substitution of “, perjury, money-laundering or financing terrorist activities”;

(ii) by the insertion after paragraph (b) of the following paragraph—

“or

(c) has knowingly been involved, whether in Zimbabwe or elsewhere, in money-laundering or financing terrorist activities as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*];”;

(c) in section 24 (“Regulations”) by the insertion of the following subsection, the existing section becoming subsection (1)—

“(2) Regulations made in terms of subsection (1) may provide for—

(a) the qualifications and disqualifications of shareholders, officers, employees and agents of asset managers;

(b) information to be supplied to the Registrar concerning—

(i) the operations and activities of asset managers; and

(ii) the shareholders, officers, employees and agents of asset managers;

(c) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine of level ten or imprisonment for a period of six months or both such fine and such imprisonment.”.

(2) Until the Minister prescribes some other amount in terms of section 24 of the Asset Management Act [*Chapter 24:26*], an amount of ten thousand United States dollars shall be deemed to be prescribed for the purpose of section 3(2)(c) of the Act.

## FIRST SCHEDULE (Section 3)

### FINANCIAL INSTITUTIONS AND COMPETENT SUPERVISORY AUTHORITIES

#### PART I

##### FINANCIAL INSTITUTIONS

1. A banking institution registered or required to be registered under the Banking Act [*Chapter 24:20*].
2. A building society registered or required to be registered under the Building Societies Act [*Chapter 24:02*].
3. The Reserve Bank of Zimbabwe.
4. The Infrastructure Development Bank of Zimbabwe established by the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*].
5. The Minerals Marketing Corporation of Zimbabwe established by section 3 of the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*].
6. The company which, in terms of the definition of “Corporation” in section 2 of the Agricultural Finance Act [*Chapter 18:02*], exercises the Corporation’s functions in terms of that Act.
7. A person that holds or is deemed to hold a postal licence in terms of the Postal and Telecommunications Act [*Chapter 12:05*] (No. 4 of 2000).
8. An asset manager as defined in the Asset Management Act [*Chapter 24:26*] (No. 16 of 2004).
9. Moneylenders licensed in terms of the Moneylending and Rates of Interest Act [*Chapter 14:14*].
10. A collective investment scheme as defined in section 3 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997) and a company acting as the trustee or manager of such a scheme.
11. The People’s Own Savings Bank of Zimbabwe established in terms of the People’s Own Savings Bank of Zimbabwe Act [*Chapter 24:22*] (No. 18 of 1999).
12. Any person or incorporated or unincorporated association of persons providing any financial service that is declared to be a financial service in terms of section 2(3), whether generally for the purposes of this Act or specifically in relation to any provision of this Act.

#### PART II

##### COMPETENT SUPERVISORY AUTHORITIES

1. The Registrar of Banking Institutions appointed in terms of section 4 of the Banking Act [*Chapter 24:20*], in relation to banking institutions; or
2. The Registrar of Building Societies appointed in terms of section 5 of the Building Societies Act [*Chapter 24:02*], in relation to building societies;

3. The Reserve Bank of Zimbabwe, in relation to:
  - (a) the Infrastructure Development Bank of Zimbabwe established by the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]; and
  - (b) the company which, in terms of the definition of “Corporation” in section 2 of the Agricultural Finance Act [*Chapter 18:02*], exercises the Corporation’s functions in terms of that Act; and
  - (c) the People’s Own Savings Bank of Zimbabwe established in terms of the People’s Own Savings Bank of Zimbabwe Act [*Chapter 24:22*] (No. 18 of 1999);
  - (d) precious metal dealers referred to in paragraph (e) of the definition of “designated non-financial business or profession” in section 2.
4. The Postal and Telecommunications Regulatory Authority established by section 5 of the Postal and Telecommunications Act [*Chapter 12:05*] (No. 4 of 2000), in relation to persons that hold or are deemed to hold postal licences in terms of that Act; or
5. Registrar of Asset Managers appointed in terms of section 4 of the Asset Management Act [*Chapter 24:26*] (No. 16 of 2004), in relation to asset managers; or
6. The Registrar of Moneylenders appointed in terms of the Moneylending and Rates of Interest Act [*Chapter 14:14*], in relation to moneylenders; or
7. The Registrar of Collective Investment Schemes appointed in terms of section 4 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997) in relation to collective investment schemes and companies acting as the trustees or manager of such schemes.
8. The Lotteries and Gaming Board established in terms of section 3 of the Lotteries and Gaming Act [*Chapter 10:26*] (No. 26 of 1998), in relation to gaming operators.
9. The Institute of Chartered Accountants of Zimbabwe incorporated in terms of section 3 of the Chartered Accountants Act [*Chapter 27:02*].
10. The Insurance and Pensions Commission established in terms of section 7 of the Insurance and Pensions Commission Act [*Chapter 24:21*] (No. 7 of 2000).
11. The Public Accountants and Auditors Board established by section 4 of the Public Accountants and Auditors Act [*Chapter 27:12*] (No. 13 of 1995).
12. The Institute of Chartered Secretaries and Administrators in Zimbabwe incorporated by section 3 of the Chartered Secretaries (Private) Act [*Chapter 27:03*], in relation to chartered secretaries and administrators.
13. The Law Society of Zimbabwe referred to in section 51 of the Legal Practitioners Act [*Chapter 27:07*], in relation to legal practitioners.
14. The Estate Agents Council referred to in section 3 of the Estate Agents Act [*Chapter 27:17*] (No. 6 of 1999).

15. The Council of Estate Administrators established by section 3 of the Estate Administrators Act [*Chapter 27:20*] (No. 16 of 1998).
16. The Secretary of the Ministry responsible for the administration of the Precious Stones Trade Act [*Chapter 21:06*], in relation to precious stones dealers.
17. The Secretary of the Ministry responsible for the administration of the Gold Trade Act [*Chapter 21:03*], in relation to precious metal dealers referred to in paragraph (*d*) of the definition of “designated non-financial business or profession” in section 2.
18. The Securities Commission established in terms of the Securities Act [*Chapter 24:25*] (No. 17 of 2004).

SECOND SCHEDULE (Paragraph (*a*) of definition of “terrorist act” in section 7)

INTERNATIONAL AGREEMENTS DEFINING TERRORIST ACTS

1. The International Convention for the Suppression of the Financing of Terrorism (1999).
2. The Convention for the Suppression of Unlawful Seizure of Aircraft (1970),
3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971).
4. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973),
5. The International Convention against the Taking of Hostages (1979).
6. The Convention on the Physical Protection of Nuclear Material (1980).
7. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988),
8. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988),
9. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988),
10. The International Convention for the Suppression of Terrorist Bombings (1997).