

This Bill was gazetted on 14th December 2018



**FINANCE (No. 3) BILL, 2018**

MEMORANDUM

This Bill will amend the Finance Act [*Chapter 23:04*], the Income Tax Act [*Chapter 23:06*], the Value Added Tax Act [*Chapter 23:12*], the Customs and Excise Act [*Chapter 23:02*] and the Revenue Authority Act [*Chapter 23:11*]. The opportunity is also taken to amend other Acts having fiscal, financial or investment implications. These amendments will give effect to certain fiscal measures mentioned by the Minister of Finance and Economic Development in the National Budget Statement delivered on the 22nd November, 2018, and make certain modifications to improve revenue collection and administration. In more detail, the individual clauses of the Bill provide as follows:

*Clause 1*

This clause sets out the Bill's short title.

*Clauses 2 and 3*

Section 14 of the Finance Act prescribes the rates of income tax payable by various classes of taxpayers.

This clause will alter the income "bands" according to which rates of income tax are calculated. The main alteration is to the minimum level of income that will attract income tax. At present this minimum is \$3 600 a year, and this clause will increase that amount to \$4 200.

*Clauses 4 and 13*

The Finance Act, 2002, introduced a tax on transfers of money between persons mediated by financial institutions otherwise than by cheque.

These clauses will amend the Finance Act [*Chapter 23:04*] and the Income Tax Act [*Chapter 23:06*], to give effect (with some modifications) to the new enhanced rate of intermediated money transfer tax provisionally enacted (subject to endorsement by the Parliament) by Statutory Instrument 205 of 2018, pursuant to section 3(2) of the Finance Act [*Chapter 23:04*]. The definition of "transaction on which the tax is payable" defines the scope of exemptions from the tax.

*Clauses 5 and 6*

Section 12 of the Income Tax Act deems certain income to be from a source within Zimbabwe even if earned by the work or activity of the taxpayer outside the country. This clause will deem the revenues earned in Zimbabwe by foreign-based satellite broadcasting services and electronic commerce platforms to be income from a source within Zimbabwe.

*Clause 7*

Section 15 of the Income Tax Act provides for mining entities to claim expenses in respect of two or more mining locations where the revenue authority is satisfied that the mining operations conducted on the mining locations are inseparable or substantially interdependent. This clause seeks to amend section 15 by providing clarity regarding the concept of "inseparable or substantially interdependent".

*Clause 8*

This clause seeks to clarify that any amount of Intermediated Money Transfer Tax is not deductible in term of section 16 of the Income Tax.

*Clause 9*

This clause concerns directors of a company who evade tax by causing the winding-up of the company and subsequent incorporation of another doing the same business as the old company. By this amendment they will be made jointly and severally liable for any amount of tax due by the old company.

*Clause 10*

This clause will amend section 80 of the Income Tax Act, which makes special provision for persons (“payees”) who enter into contracts with the Government, statutory bodies, quasi-Governmental institutions or taxpayers who are registered as such in the records of the Commissioner-General, and who have not submitted income tax returns for the most recent year of assessment. The paying officer of the Government or the statutory body, quasi-Governmental institution or taxpayer concerned is presently obliged to withhold 10% of all payments due to the payees under the contracts and pay the withheld amounts to the Commissioner-General.

This amendment seeks to exempt payments to non-resident persons from withholding tax in circumstances where they do not file tax returns because they are not compelled to do so.

*Clause 11*

The Finance Act of 2014 incorporated certain anti-avoidance and anti-transfer pricing provisions in the Income Tax Act. This clause seeks to improve the anti-transfer pricing provisions by amending section 98B to provide for penalties, on a graduating scale, for failure to adhere anti-transfer pricing provisions. This clause also requires taxpayers to submit annual returns showing transactions entered between controlled and/or associated enterprises. There is also provision for Transfer Pricing Documentary Requirements, which will act as a guide to associated enterprises in the recording of transactions, in compliance with the Arm’s Length Principle.

*Clause 15*

This clause seeks to extend the meaning of “time of supply” in section 8 of the Value Added Tax Act by adding that in the case of a supply of moveable goods, the time of supply is the time of removal of that moveable good from the place of sale; and in the case of supply of immovable good the time of supply is the time when the recipient takes possession; and in the case of a supply of a service the time of supply is the time when the service is performed.

*Clause 18*

This clause inserts a new paragraph in section 16(2) to the effect that a registered operator cannot deduct any amounts from the input tax that were as a result of applying a rate of exchange in excess of the parity rate of one United States dollar to a bond note unit.

*Clauses 19 and 20*

These clauses have the effect of obliging a registered person to pay VAT in the same currency that he or she was paid in respect of taxable supplies. It also provides for a civil penalty for the evasion of this provision.

*Clause 21*

This section is repealed as it has been overtaken by the new Part IIIA of the Revenue Authority Act.

*Clause 22*

An earlier amendment of this provision mistakenly omitted “principal private residence” and substituted “residential stand” only, when both were intended to be within the scope of this provision”.

*Clause 23*

This clause seeks to give customs officers the right to obtain a warrant from a magistrate authorising them to search any private residences that are reasonably suspected of being used to store uncustomed goods or commit contraventions of the Customs and Excise Act.

*Clause 25*

The clause introduces a civil penalty for not timeously remitting royalties payable on minerals in terms of section 37A of the Finance Act.

*Clause 27*

This clause seeks to repeal Part IIIA of Revenue Authority Act and substitute it with a new Part detailing an expedited procedure for recovery of outstanding taxes in a manner which is simpler and fairer than the previous one.

*Clause 28*

The clause will amend the Criminal Law Code by updating the Standard Scale of Fines. Levels 1 to 3 were last updated in the Finance Act of 2017, while levels 4 to 14 have not been updated since 2009, and are no longer deterrent to offenders. The revision proposed by this Bill will double the deposit fine level to \$60,00 and quadruple all the following levels, so that the highest level, level 14, will go up from a maximum fine of \$5 000,00 to \$20 000,00.

*Clauses 29-35*

In order to combat money laundering, terrorist financing, tax evasion and corruption, it has become necessary to give powers to ZACC, ZIMRA and ZRP to elicit explanations from persons who exhibit great wealth without having any apparent lawful means of obtaining such wealth. Accordingly, a new Part will be inserted in the Money Laundering and Proceeds of Crime Act providing for unexplained wealth orders issued by the High Court at the instance of ZACC, ZIMRA or ZRP. These orders will require the addressee to explain his or her wealth and provide supporting documentation therefor.

These clauses also insert another Part establishing the Asset Management Unit of the Reserve Bank. It will be responsible for the safe keeping of property that is frozen or confiscated in term of the Act. Certain other amendments of the Act are made to enable us to comply with our FATF obligations to prevent out country becoming a conduit for money laundering.

*Clause 36*

This clause seeks to remediate section 5 of the Exchange Control Act by fixing the same penalty of imprisonment not exceeding ten years for convictions of unauthorised dealing in foreign currency that does not involve exportation, externalisation or expatriation, as would be in the case of convictions that do involve exportation, externalisation or expatriation.



ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

*Section*

1. Short title.

PART II

INCOME TAX

*Amendments to Chapter I of Finance Act [Chapter 23:04]*

2. Amendment of section 14 of Cap. 23:04.
3. Amendment of Schedule to Chapter I of Cap. 23:04.
4. New section substituted for section 22G of Cap. 23:04.

*Amendments to Income Tax Act [Chapter 23:06]*

5. Amendment of section 12 of Cap. 23:06.
6. New section inserted in Cap. 23:06.
7. Amendment of section 15 of Cap. 23:06.
8. Amendment of section 16 of Cap. 23:06.
9. Amendment of section 77 of Cap. 23:06.
10. Amendment of section 80 of Cap. 23:06.
11. Amendment of section 98B of Cap. 23:06.
12. Amendment of Third Schedule to Cap. 23:06.
13. Amendment of Thirtieth Schedule to Cap. 23:06.

PART III

VALUE ADDED TAX

*Amendment to Value Added Tax Act [Chapter 23:12]*

14. Amendment of section 2 of Cap. 23:12.
15. Amendment of section 8 of Cap. 23:12.
16. Postponement of tax on exportation of unbeneficiated platinum.
17. Amendment of section 15 of Cap. 23:12.
18. Amendment of section 16 of Cap. 23:12.
19. Amendment of section 38 of Cap. 23:12.
20. New section inserted after section 38 of Cap. 23:12.
21. Repeal of section 40 of Cap. 23:12.

PART IV

CAPITAL GAINS TAX

22. Amendment of section 21 of Cap 23:01.

PART V

CUSTOMS AND EXCISE

*Section*

23. New section inserted after section 13 in Cap. 23:02.
24. Amendment of section 39 of Cap. 23:02.

PART VI

MINES AND MINERALS

25. Substitution of section 37 of and Schedule to Chapter VII of Cap. 23:04.
26. Application of paragraph 1 of Schedule to Chapter VII of Cap. 23:04.

PART VII

REVENUE AUTHORITY

27. New Part substituted for Part IIIA in Cap. 23:11.

PART VIII

CRIMINAL LAW (CODIFICATION AND REFORM) ACT [CHAPTER 9:23]

28. Amendment of Cap. 9:23.

PART IX

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT [CHAPTER 9:24] (No. 4 of 2013)

29. Amendment of section 2 of Cap. 9:24.
30. Amendment of section 6B of Cap. 9:24.
31. Amendment of section 15 of Cap. 9:24.
32. Amendment of section 16 of Cap. 9:24.
33. Amendment of section 27 of Cap. 9:24.
34. New Chapter IIIA inserted in Cap. 9:24.
35. New Chapter VIA inserted in Cap. 9:24.

PART X

EXCHANGE CONTROL ACT [CHAPTER 22:05]

36. Amendment of section 5 of Cap. 22:05.

# BILL

To make further provision for the revenues and public funds of Zimbabwe  
and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

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## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Finance (No. 3) Act, 2018.

## PART II

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### INCOME TAX

#### *Amendments to Chapter I of Finance Act [Chapter 23:04]*

#### **2 Amendment of section 14 of Cap. 23:04**

15 With effect from the year of assessment beginning on the 1st January, 2019,  
section 14 (“Income tax for periods of assessment after 1.4.88”)(2) of the Finance Act  
[Chapter 23:04] is amended in subsection (2)—

H.B. 13, 2018.]

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- (a) by the repeal of paragraph (a) and the substitution of—
- “(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment earned in foreign currency—
- (i) so much as does not exceed four thousand two hundred United States dollars;
  - (ii) so much as exceeds four thousand two hundred United States dollars but does not exceed eighteen thousand United States dollars;
  - (iii) so much as exceeds eighteen thousand United States dollars but does not exceed sixty thousand United States dollars;
  - (iv) so much as exceeds sixty thousand United States dollars but does not exceed one hundred and twenty thousand United States dollars;
  - (v) so much as exceeds one hundred and twenty thousand United States dollars but does not exceed one hundred and eighty thousand United States dollars;
  - (vi) so much as exceeds one hundred and eighty thousand United States dollars but does not exceed two hundred and forty thousand United States dollars;
  - (vii) so much as exceeds two hundred and forty thousand United States dollars;”;
- (b) by the insertion after paragraph (j) of the following paragraph—
- “(k) in respect of amounts receivable by or on behalf of a satellite broadcasting service domiciled outside Zimbabwe, or an electronic commerce platform domiciled outside Zimbabwe, that are deemed by virtue of section 12(6) and (7) of the Taxes Act to be income derived from a source within Zimbabwe, at the specified percentage of each United States dollar of that income.”.

**3 Amendment of Schedule to Chapter I of Cap. 23:04**

With effect from the year of assessment beginning on the 1st January, 2019, the Schedule (“Credits and Rates of Income Tax”) to Chapter I of the Finance Act [*Chapter 23:04*] is amended in Part II—

- (a) by the repeal of the items relating to section 14(2)(a) and the substitution of—

“Section	Level of taxable income	Specified percentage %
14(2)(a)(i)	Up to US\$4 200	0
14(2)(a)(ii)	US\$4 201 to US\$18 000	20
14(2)(a)(iii)	US\$18 001 to US\$60 000	25
14(2)(a)(iv)	US\$60 001 to US\$120 000	30
14(2)(a)(v)	US\$120 001 to US\$180 000	35
14(2)(a)(vi)	US\$180 001 to US\$240 000	40
14(2)(a)(vi)	US\$240 501 and more	45”;

- (b) by the insertion after the item relating to section 14(2)(j) of the following item—

“14(2)(k)	Income of foreign domiciled satellite broadcasting service or electronic commerce platform deemed in terms of section 12(6) and (7) of the Taxes Act to be income derived from a source within Zimbabwe .....5%”.
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**4 New section substituted for section 22G of Cap. 23:04**

With effect from the 13th October, 2018, section 22G of the Finance Act [*Chapter 23:04*] is repealed and the following is substituted—

**“22G Intermediated Money Transfer Tax**

5 The intermediated money transfer tax chargeable in terms of section 36G of the Taxes Act shall be calculated at the rate of zero comma zero two United States dollars on every dollar or part thereof transacted for each transaction on which the tax is payable:

10 Provided that if a single transaction on which the tax is payable is equivalent to or exceeds five hundred thousand United States dollars, a flat intermediated money transfer tax of ten thousand United States dollars shall be chargeable on such transaction.”.

*Amendments to Income Tax Act* [Chapter 23:06]

**5 Amendment of section 12 of Cap. 23:06**

15 With effect from the 1st January, 2019, section 12 (“Circumstances in which amounts are deemed to have accrued from sources within Zimbabwe”) of the Income Tax Act [*Chapter 23:06*] is amended—

(a) in subsection (1) by the insertion of the following paragraph after paragraph (e)—

20 “(f) in the circumstances specified in subsections (6) and (7).”;

(b) by the insertion of the following subsections after subsection (5)—

25 “(6) Any amount receivable by or on behalf of a satellite broadcasting service domiciled outside Zimbabwe from persons resident in Zimbabwe in respect of the provision or delivery of television or radio programmes to those persons shall be deemed to be income from a source within Zimbabwe.

30 (7) Any amount receivable by or on behalf of an electronic commerce platform domiciled outside Zimbabwe from persons resident in Zimbabwe in respect of the provision or delivery of goods or services to those persons shall be deemed to be income from a source within Zimbabwe.

(8) In subsections (6) and (7)—

35 ““electronic commerce platform” means a service which by the use of a telecommunications service or electronic means (and whether mediated by computers, mobile telephones or other devices) sells and delivers goods and services to customers;

40 “satellite broadcasting service” means a service which by means of a satellite (whether or not in combination with cable optical fibre or any other means of delivery) delivers television or radio programmes to persons having equipment appropriate for receiving that service.”.

**6 New section inserted in Cap. 23:06**

45 With effect from the 1st January, 2019, the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following section after section 12—

**“12A Taxation of certain income deemed to be from a source within Zimbabwe**

(1) This section applies to the taxation of income deemed in terms of section 12(6) and (7) to be income from a source within Zimbabwe.

(2) Every person who provides services as a satellite broadcasting service or provides or delivers goods and services as an electronic commerce platform which receives revenues in excess of five hundred thousand dollars (\$500 000,00) in any year of assessment from the provision or delivery of such services or services to persons resident in Zimbabwe, shall pay tax on such revenues charged and levied at the rate specified in section 14(2)(k) of the Charging Act.

(3) Any amount so received or accrued in any year of assessment by way of income arising by virtue of section 12(6) and (7)—

- (a) shall, notwithstanding section 7, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to that year of assessment; and
- (b) shall not reduce any assessed loss which the taxpayer would have had in that year of assessment if such amount had not been received by or accrued to him or her.

(4) Sections 19A (“Non-resident companies: basis of charge and determination of company tax”) and section 19B (“Meaning of “permanent establishment””) shall not apply to the taxation of income deemed to have accrued from a source within Zimbabwe in terms of section 12(6) and (7).”.

**7 Amendment of section 15 of Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2019, section 15 (“Deductions allowed in determination of taxable income”)(2) of the Income Tax Act [*Chapter 23:06*] is amended in paragraph (2)(f)(i) by the repeal of the proviso thereto and the substitution of—

“Provided that an allowance or deduction in terms of this subparagraph may be claimed in respect of two or more mining locations together, whether or not the expenditure or losses are attributable to either or any one of the mining locations concerned, where the Commissioner is satisfied that the mining operations conducted on the mining locations are inseparable or substantially interdependent, that is to say—

- (i) both or all of the mining locations are held by the same taxpayer; and
- (ii) the mineral or minerals produced at the locations are part of an integrated process of beneficiation under the control of the taxpayer.”.

**8 Amendment of section 16 of Cap. 23:06**

Section 16 (“Cases in which no deduction shall be made”) (1) of the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following paragraph after paragraph (d)—

“(d1) any amount of Intermediated Money Transfer Tax charged in terms of section 22G of this Act;”.

**9 Amendment of section 77 of Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2019, section 77 (“Recovery of tax”)(2) of the Income Tax Act [*Chapter 23:06*] is amended in paragraph (2)(f)(i) by the insertion of the following subsection after subsection (7)—

- 5 “(8) If, in Zimbabwe or in its country of formation, incorporation or registration, a company or entity (“the old company or entity”) is wound up voluntarily, or otherwise in circumstances that give rise to a reasonable suspicion that it was deliberately put into liquidation to avoid any tax liability, and—
- 10 (a) the directors (or other persons acting in a similar capacity) of the old company or entity (or any of them)—
- (i) incorporate or register another company or other entity (hereinafter called the “new company or entity”) that carries out substantially the same business as the old company; or
- (ii) operate as sole traders, whether individually or collectively,
- 15 carrying on substantially the same business as the old company;
- (b) the whole or a substantial part of its business and property wherever situated is transferred to another company or entity which will be or has been formed, incorporated or registered under any law;

20 the directors of the old company or entity (whether or not any of them become directors of or act in a similar capacity in relation to the new company or entity) shall be jointly and severally liable for the amount of any tax due and payable by the old company or entity.”.

**10 Amendment of section 80 of Cap. 23:06**

25 (1) Section 80 (“Withholding of amounts payable under contracts with State or statutory corporations”)(1) of the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in subsection (1) by the repeal of the definition of “payee” and the substitution of—
- 30 ““payee” means a person to whom any amount is payable in terms of a contract, but does not include a non-resident person liable to pay the withholding taxes under the Seventeenth, Eighteenth and Nineteenth Schedules;”.
- (b) in subsection (4) by the insertion of the following paragraph after paragraph (b)—
- “or
- 35 (c) where the registered taxpayer is exempt from payment of tax, the Commissioner shall refund the tax so payable to the payee or allow a set-off against other tax payable to the Commissioner.”.

40 (2) The failure by the Reserve Bank of Zimbabwe to withhold (in terms of section 80 of the Income Tax Act [*Chapter 23:06*]) tax from payments to payees who are recipients of interest accruing from Treasury Bills is hereby condoned for the period 1st February, 2009 to 1st December, 2018.

(3) The failure by any school to withhold tax from payments to payees in terms of section 80 of the Income Tax Act [*Chapter 23:06*] is hereby condoned for the period six years ending on the 31st December, 2017.

**45 11 Amendment of section 98B of Cap. 23:06**

With effect from the 1st January, 2019, section 98B (“Transactions between associates”) of the Income Tax Act [*Chapter 23:06*] is amended—

- (a) by the insertion of the following subsection after subsection (2)—
- “(2a) In addition, where the Commissioner amends an assessment by virtue of subsection (2), the taxpayer or taxpayers concerned shall be liable—
- (a) if there is evidence that the avoidance, reduction or postponement of the liability to tax was actuated by the use of fraud or evasion, to a penalty of one hundred *per centum* of the shortfall amount; or 5
- (b) in the absence of such evidence as is mentioned in paragraph (a)— 10
- (i) where contemporaneous transfer pricing documentation does not exist in relation to the transaction giving rise to the amended assessment, or does not comply with the guidelines prescribed in the Thirty-Fifth Schedule, to a penalty of thirty *per centum* of the shortfall amount; or 15
- (ii) where contemporaneous transfer pricing documentation exists in relation to the transaction giving rise to the amended assessment, and complies with the guidelines prescribed in the Thirty-Fifth Schedule, to a penalty of ten *per centum* of the shortfall amount.”; 20
- (b) by the insertion of the following subsections after subsection (5)—
- “(6) Every person who engages or will in a transaction to which subsection (1) or (4) applies shall submit a return to the Commissioner in the prescribed form requiring disclosure of the details of the transaction or contemplated transaction. 25
- (7) The Commissioner, in the exercise of his or her powers under section 37(10) requires any person to make a return in the prescribed form referred to in subsection (6).” 30

## 12 Amendment of Third Schedule to Cap. 23:06

The Third Schedule (“Exemptions from Income Tax”) to the Income Tax Act [Chapter 23:06] is amended in paragraph 3 by the insertion of the following paragraph after paragraph (i)—

- “(j) of financial institutions in the form of income from Treasury Bills, if the terms sheet subject to which the Treasury Bills in question were issued specified that their income was tax-free.”. 35

## 13 Amendment of Thirtieth Schedule to Cap. 23:06

With effect from the 13th October, 2018, (or the 22nd November, 2018, in respect of the exemptions referred to in paragraphs (l) to (p) of the definition of “transaction on which tax is payable” as inserted by this subsection, which may have been applied with effect from that date by any taxpayer), the Thirtieth Schedule (“Intermediated Money Transfer Tax”) to the Income Tax Act [Chapter 23:06] is amended in paragraph 1 (“Interpretation”)(1) by the insertion of the following definitions— 40

- ““company” means a company or private business corporation registered or incorporated under the enactment providing for the registration or incorporation of such entities; 45
- “marketable security” has the meaning given to it by section 2 of the Capital Gains Tax Act [Chapter 23:01];

“money market instrument” means any—

- (a) Treasury Bill, Treasury Bond, Reserve Bank of Zimbabwe Bill or Reserve Bank of Zimbabwe Bond;
- (b) corporate bill or bond, that is, any bill or bond issued in the name of a company;
- (c) negotiable certificate of deposit or fixed deposit instrument;

“nostro foreign currency account” means any account designated in terms of Exchange Control Directive RT/120 of 2018, held with a financial institution in Zimbabwe, in which money in the form of foreign currency is deposited from offshore or domestic sources;

“pension fund” means—

- (a) the National Social Security Authority established by the National Social Security Authority Act [*Chapter 17:04*];
- (b) any pension fund registered as such in terms of the Pension and Provident Funds Act [*Chapter 24:09*];

“remuneration” has the meaning given to it by paragraph 1(1) of the Thirteenth Schedule of the Act (whether or not such remuneration is subject to employees’ tax);

“specified trust account” means any trust account required to be opened and operated in terms of the Insurance Act [*Chapter 24:07*], The Legal Practitioners Act [*Chapter 27:07*], the Estate Agents Act [*Chapter 27:17*] (No. 6 of 1999) or the Estate Administrators Act [*Chapter 27:20*] (No. 16 of 1998);

“transaction on which the tax is payable” does not include any of the following transactions—

- (a) the transfer of money for the purchase or sale of marketable securities;
- (b) the transfer of money for the purchase or redemption of money market instruments;
- (c) the transfer of money on payment of remuneration;
- (d) the transfer of money to or from the Zimbabwe Revenue Authority for the payment or refund of any tax, duty or other charges;
- (e) the intra-corporate transfer of money, that is to say, transfer of money between the treasury account and any trading account held in the name of the same company;
- (f) the transfer of money from (but not into) specified trust accounts;
- (g) the transfer of money into and from nostro foreign currency accounts;
- (h) the transfer of money by Government from the Consolidated Revenue Fund or from funds established in terms of section 18 of the Public Finance Management Act;
- (i) the transfer of money to any pension fund or to beneficiaries of such a fund;
- (j) the transfer of money for the procurement, production or sale (wholesale or retail) of a petroleum product by a petroleum company licensed in terms of Part VI of the Petroleum Act [*Chapter 13:22*];
- (k) the transfer of money involving a transaction other than one mentioned in the foregoing paragraphs, if the value of transaction is ten United States dollars or below;

- (l) the transfer of money between an individual’s mobile wallet account and his or her bank account;
- (m) the transfer of money from a medical aid society registered in terms of the Medical Services Act to a medical service provider in settlement of a claim for services rendered by that provider; 5
- (n) the transfer of money in the form of insurance premiums—
  - A. by insurance brokers to insurance companies; and
  - B. by insurance companies to reinsurers, retrocessionaires and asset managers registered in terms of the Asset Management Act; 10
- (o) the transfer of money to producers, sellers or exporters of minerals by the Minerals Marketing Corporation of Zimbabwe pursuant to the Minerals Marketing Corporation Act;
- (p) the transfer of money to producers or sellers of gold Fidelity Printers and Refiners (Private) Limited; 15
- (q) the transfer of money to a successor company of the Zimbabwe Electricity Supply Authority (referred to in section 75 of the Electricity Act [*Chapter 3:09*]) from a trust fund credited with prepayments for electricity made by a mobile banking service provider; 20
- (r) the transfer of money by travel agents to airlines on the purchase and administration of air tickets.

(2) The collection of intermediated money transfer tax in terms of Statutory Instrument 205 of 2018 is hereby validated to the date of commencement of this Act.

### PART III 25

#### VALUE ADDED TAX

##### *Amendments to Value Added Tax Act [Chapter 23:12]*

#### **14 Amendment of section 2 of Cap. 23:12**

With effect from the 1st January, 2019, section 2 (“Interpretation”) of the Value Added Tax Act [*Chapter 23:12*](1) is amended by the repeal of the definition of “imported services” and the substitution of— 30

““imported services” means a supply of services that is made by a supplier who is not resident in Zimbabwe or carries on business outside Zimbabwe to a recipient who is a resident of Zimbabwe to the extent that such services are utilised or consumed in Zimbabwe;”. 35

#### **15 Amendment of section 8 of Cap. 23:12**

With effect from the 1st January, 2019, section 8 (“Time of supply”) of the Value Added Tax Act [*Chapter 23:12*](1) is amended by the repeal of subsection (1) and the substitution of—

“(1) For the purposes of this Act, a supply of goods or services shall, except as is otherwise provided for in this Act, be deemed to take place— 40

- (a) at the time an invoice is issued by the supplier or the recipient in respect of that supply; or
- (b) the time any payment of consideration is received by the supplier in respect of that supply; or 45
- (c) in the case of a supply of a moveable good, at the time of its removal from the place of sale; or

- (d) in the case of a supply of an immoveable goods, at the time the recipient takes possession of it; or
- (e) in the case of a supply of a service at the time the service is performed; whichever time is earlier.”.

5 **16 Postponement of tax on exportation of unbeneficiated platinum**

Despite section 14(2) of the Finance Act, 2014, section 12D(“Collection of tax on exportation of unbeneficiated platinum, determination of value thereof”) of the Value Added Tax Act [*Chapter 23:12*] has effect from the year of assessment beginning on the 1st January, 2022.

10 **17 Amendment of section 15 of Cap. 23:12**

Section 15 (“Calculation of tax payable”)(2) of the Value Added Tax Act [*Chapter 23:12*] is amended in paragraph (a) by the insertion of the following proviso thereto—

- “Provided that if the registered operator can show good cause to the Commissioner for extending the time for claiming a deduction of amount of input tax, the Commissioner may allow such a claim from the time a registered operator was required to make a return.”.

**18 Amendment of section 16 of Cap. 23:12**

Section 16 (“Permissible deductions in respect of input tax”)(2) of the Value Added Tax Act [*Chapter 23:12*] is amended by the insertion of the following paragraph after paragraph (d)—

- “(e) that results from the application of a rate of exchange in excess of the parity rate of one United States dollar to a bond note unit, if the goods and services in question were acquired by such registered operator in a legal tender other than foreign currency (for the purposes of this paragraph “legal tender other than foreign currency” has the meaning given to that term in section 38(9)).”.

**19 Amendment of section 38 of Cap. 23:12**

With effect from the 1st January, 2019, section 38 (“Manner in which tax shall be paid”) of the Value Added Tax Act [*Chapter 23:12*] is amended—

- (a) by the insertion after subsection (4) and the following subsection—
- “(4a) For the purposes of subsection (4)—
- (a) if the price for the taxable supplies in question is paid for in a foreign currency, then the registered operator shall pay the amount of the tax to the Commissioner in that foreign currency;
- (b) if the price for the taxable supplies in question is paid for in legal tender other than foreign currency, then the registered operator may pay the amount of the tax to the Commissioner in that legal tender or in a foreign currency.”;
- (b) by the insertion after subsection (8) of the following subsection—
- “(9) In subsections (4) and (4a)—
- “bond note” means a unit of legal tender whose par value in relation to the United States dollar is backed by a guarantee extended to the Reserve Bank by one or more

international financial institutions, and “bond coins” shall be construed accordingly;

“legal tender other than foreign currency” means bond notes and coins, or money paid by means of an electronic transfer of funds through an account (other than a nostro foreign currency account) with a banking institution; 5

“nostro foreign currency account” means any account designated in terms of Exchange Control Directive RT/120 of 2018, held with a financial institution in Zimbabwe, in which money in the form of foreign currency is deposited from offshore or domestic sources.”. 10

## 20 New section inserted after section 38 in Cap. 23:12

With effect from the 1st January, 2019, the Value Added Tax Act [*Chapter 23:12*] is amended by the insertion after section 38 of the following section—

“38A Civil penalty for breach of section 38(4a) 15

(1) As soon as it comes to the notice of the Commissioner that a registered operator has failed to comply with section 38(4a) the Commissioner shall serve upon the operator notice of an assessment in terms of section 31 of double the amount of tax payable in the prescribed currency concerned, which shall be payable in the prescribed currency concerned: 20

Provided that if the amount assessed is in a prescribed currency other than the United States dollar, the registered operator may tender instead the equivalent amount of that tax in United States dollars, being an amount obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing on the day the tax concerned becomes due. 25

(2) A registered operator upon whom the Commissioner has served a notice of assessment in terms of subsection (1) and who fails without just cause to comply with the notice within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall— 30

(a) be liable for a civil penalty of thirty United States dollars (or the maximum monetary figure specified from time to time for level 4, whichever is the lesser amount) for each day the registered operator remains in default, not exceeding a period of one hundred and eighty-one days: 35

Provided that the Commissioner shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care; and 40

(b) if the registered operator continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 45

(3) A civil penalty that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority. 50

(4) The amount of a civil penalty shall be paid into and form part of the funds of the Zimbabwe Revenue Authority.”.

## 21 Repeal of section 40 of Cap. 23:12

Section 40 of the Value Added Tax Act [*Chapter 23:12*] is repealed.

5

### PART IV

#### CAPITAL GAINS TAX

## 22 Amendment of section 21 of Cap 23:01

With effect from the year of assessment beginning on the 1st January, 2007, section 21 (“Provision for sales of principal private residences”)(1) of the Capital Gains Tax Act [*Chapter 23:06*] is amended by the repeal of subsections (2) and (3) and the substitution of—

“(2) An individual may elect that, where a capital gain has been received by or has accrued to him on or after the 1st April, 1988, in respect of the sale by him of his or her principal private residence or residential stand (hereinafter in this section called the “old principal private residence or old residential stand”) and the Commissioner is satisfied that, before the end of the year of assessment next following the sale, an amount equal to the whole or part of the consideration received or accrued in respect of the sale has been or will be expended on the purchase or construction, on land owned by him or her in Zimbabwe, of another principal private residence or residential stand (hereinafter in this section called the “new principal private residence or new residential stand”) for the individual concerned—

- (a) capital gains tax shall not be chargeable, if the amount of the consideration so received or accrued is equal to or less than the amount so expended; and
- (b) capital gains tax shall be chargeable, if the amount of the consideration so received or accrued exceeds the amount so expended, on a proportion of the capital gain determined by applying the following formula—

$$\frac{A \times C}{B}$$

in which—

- A represents that portion of the amount of the consideration received or accrued on the sale of the old principal private residence or old residential stand not so expended on the purchase or construction of the new principal private residence or new residential stand;
- B represents the total amount of the consideration received or accrued on the sale of the old principal private residence or old residential stand;
- C represents the capital gain in respect of the sale of the old principal private residence or old residential stand.”.

(3) Where an amount is not chargeable to capital gains tax in terms of subsection (2), such amount shall be deducted from the amount referred to in section 11(2)(a) when determining the capital gain in respect of the new principal private residence or new residential stand, with effect from the year of assessment in which the new principal private residence or new residential stand was acquired.”.

## PART V

## CUSTOMS AND EXCISE

**23 New section inserted after section 13 in Cap. 23:02**

The Customs and Excise Act [*Chapter 23:02*] is amended in Part II (“Powers of Officers”) by the insertion of the following section after section 13—

“13A Proper officer may obtain search warrant in respect of certain private residences

(1) If a proper officer satisfies a magistrate by statement made on oath that there are, within the magistrate’s area of jurisdiction, any private residential premises in respect of which there are reasonable grounds for suspecting that they are being used for business purposes or the unlawful storage of uncustomed goods, and that it is necessary to examine or take possession of any money, property, records or documents in order to—

- (a) prevent, investigate or detect an offence under this Act; or
- (b) enforce any tax;

the magistrate may by warrant authorise the officer and any other officers designated by the Commissioner-General to exercise the following powers—

- (c) without previous notice, at any reasonable time during the day to enter the premises and search them for any money, property, records or documents specified in the warrant;
- (d) in carrying out a search referred to in paragraph (c), to open or cause to be removed and opened any article in which money, property, records or documents referred to in that paragraph are suspected to be contained;
- (e) to seize any money, property, records or documents which, in the officer’s opinion, may afford material evidence in assessing a person’s liability for any tax and to retain the money, property, records and documents for as long as they are reasonably required for any assessment or proceedings, whether civil or criminal, under this Act.

(2) A proper officer shall on demand by any interested person produce for inspection the warrant issued to him or her under subsection (1).

(3) Subject to subsections (1) and (2), sections 50, 55, 56 and 57 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, with any necessary changes, in relation to the issue of a warrant under subsection (1) and to the powers conferred by the warrant.

(4) Section 11 (“Notice of disclosure of protected information”) of the Interception of Communications Act [*Chapter 11:20*] (No. 6 of 2007), applies, with such changes as may be necessary, as if a warrant issued under subsection (1) is a notice imposing a disclosure requirement in respect of any records or documents subject to the warrant that are “protected information” as defined in section 2(1) of that Act.”.

**24 Amendment of section 39 of Cap. 23:02**

Section 184 (“Miscellaneous offences”) of the Customs and Excise Act [*Chapter 23:02*] is amended—

- (a) by the repeal of paragraph (g);
- 5 (b) by the repeal of paragraph (o) and the substitution of—
  - “(o) fraudulently claims any suspension, rebate, remission, refund or drawback of duty pursuant to regulations made in terms of section 223 for the purposes of section 120.”.

## PART VI

## 10 MINES AND MINERALS

**25 Substitution of section 37 of and Schedule to Chapter VII of Cap. 23:04**

Section 37A (“Collection of mining royalties”) of the Finance Act [*Chapter 23:04*] is amended by the insertion of the following subsections after subsection (3)—

15 “(4) As soon as it comes to the notice of the Commissioner that any person responsible for remitting royalties timeously in terms of subsection (2) has failed to do so, the Commissioner shall serve upon that person notice to pay double the amount of the royalties payable (hereinafter called “the primary civil penalty”):

20 (5) A person upon whom the Commissioner has served a notice in terms of subsection (1) and who fails without just cause to comply with the notice within the first seven days of the period of one hundred and eighty-one days referred to in paragraph (a) below, shall—

- 25 (a) be liable for a secondary civil penalty of thirty United States dollars (or the maximum monetary figure specified from time to time for level 4, whichever is the lesser amount) for each day the person remains in default, not exceeding a period of one hundred and eighty-one days:

30 Provided that the Commissioner shall have power to waive the payment or refund the whole or part of any secondary civil penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care; and

- 35 (b) if the person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) A primary and secondary civil penalty that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

40 (5) The amount of a primary and secondary civil penalty shall be paid into and form part of the funds of the Zimbabwe Revenue Authority.”.

**26 Application of paragraph 1 of Schedule to Chapter VII of Cap. 23:04**

45 For the purpose of arriving at the value of the reduced royalty on incremental output of gold as provided in paragraph 1 of the Schedule to Chapter VII of the Finance Act [*Chapter 23:04*] (which fixes the rates of royalties for the purposes of section 245 of the Mines and Minerals Act [*Chapter 21:05*]), the value of the gold output in question

shall be based on the average prices realised for the gold in the year of assessment in which the reduced royalty is claimed.

This provision has effect from the year of assessment ending on the 31st December, 2014, and applies to every subsequent year of assessment.

## PART VII 5

### REVENUE AUTHORITY

#### **27 New Part substituted for Part IIIA in Cap. 23:11**

The Revenue Authority Act [*Chapter 23:11*] is amended by the repeal of Part IIIA and the substitution of—

#### “PART IIIA 10

##### EXPEDITED PROCEDURE FOR RECOVERY OF OUTSTANDING TAXES

#### **33A Expedited Procedure for recovery of outstanding taxes**

(1) Notwithstanding anything contained in—

- (a) the Capital Gains Tax Act [*Chapter 23:01*]; or
- (b) the Income Tax Act [*Chapter 23:06*]; or 15
- (c) the Stamp Duties Act [*Chapter 23:09*]; or
- (d) the Value Added Tax Act [*Chapter 23:12*] (No. of 2002);
- (e) the Customs and Excise Act [*Chapter 23:02*];

the Authority may recover any outstanding tax or duty, including interest and any penalty thereon, payable and outstanding in terms of those Acts in accordance with this section. 20

(2) If any person fails to pay any duly assessed tax, additional tax, duty due, penalty or interest payable in terms of the Acts specified in subsection (1), when it becomes due or is payable by him or her, the Authority may an *ex parte* application in any Magistrates Court within the province where the taxpayer is ordinarily resident or has his or her principle place of business, seeking an order— 25

- (a) for the payment of the assessed tax, additional tax, penalty or interest tax; and
- (b) authorising the Messenger of Court to attach the taxpayer’s movable property to satisfy the debt due upon service of the order on the taxpayer; 30

(3) The application shall be supported by an affidavit by or on behalf of the Commissioner-General setting forth the following, that—

- (c) the Authority has served an assessment on the taxpayer; and 35
- (d) the taxpayer has not objected to the assessment, or if the taxpayer has objected, the taxpayer has not appealed against the decision on the assessment within the time prescribed in the scheduled Act in question, despite which the taxpayer has failed to pay the outstanding tax, and the amount thereof so due or payable by the taxpayer remains outstanding; 40

(4) In the case of a debt established in terms of the Customs and Excise Act, the affidavit referred to in subsection (2) shall set forth the following— 45

(a) that the Commissioner-General has issued a special warrant for recovery of duty due; and

5

(b) the person against whom the special warrant has been raised has not challenged the same; or the goods in question cannot be located or found and the Authority has made a written demand for the payment of the outstanding duty which demand has not been complied with, so that the duty due remains outstanding.

10

(5) The magistrate on considering the *ex parte* application in terms of subsection (2), may make a provisional order for the following—

(a) payment of the assessed amount; and

(b) immediate attachment of the movable property of the judgment debtor.

15

(6) The provisional order shall notify the judgment debtor to appear on a specified return date to show cause why—

(a) the provisional order should not be confirmed; and

(b) the attached goods should not be removed and sold in execution; and

(c) he or she should not be ordered to pay the costs of suit.

20

(7) A provisional order may be served on a judgment debtor in terms of the Magistrate Court Rules (or any other rules that may be substituted for the same).

(8) On the return date, the Court shall proceed to hear the matter in camera, and may—

25

(a) confirm the provisional order or any variations thereof; or

(b) discharge the provisional order;

and make such order as to costs as it thinks just.

30

(9) Any appeal against the order granted by the court in terms of subsection (8) shall not suspend the operation of the order being appealed against, and no court shall grant an order suspending the operation of that order.

35

(10) Notwithstanding anything contained in the Magistrates Court Act [Chapter 7:10], or any other law dealing with the monetary jurisdiction of the Magistrates Court an *ex parte* application may be made in terms of subsection (3) of this section with the clerk of the magistrate's court having jurisdiction in respect of the person for any amount whatsoever.

40

(11) Nothing in this section shall be construed as depriving the Authority of any other remedy for the recovery of tax, additional tax, duty due, penalties or interest mentioned in the Acts specified in subsection (1) of this section or as exempting from prosecution and punishment any person who is liable thereto under any other section of the Acts specified in subsection (1).

45

(12) Where, in addition to any amount of tax or additional tax or duty which is due or is payable by any person in terms of the Acts specified in subsection (1), any amount of interest or penalty is payable

by him or her in terms of that Act, any payment made by that person in respect of such tax, additional tax, duty due, interest or penalty which is less than the total amount due by him or her in respect of such tax, additional tax, duty due, interest and penalty shall for the purposes of this section be deemed to be made towards settlement of the tax or additional tax or duty due in the first instance, until it is fully settled by any future such payments, and thereafter the payments shall be made—

- (a) in respect of such penalty; and
- (b) to the extent that such payment exceeds the amount of such penalty, in respect of such interest.

(13) If any claim is made to or in respect of any movable property attached pursuant to an order issued in terms of subsection (8)(a) by any person (“the claimant”) other than the taxpayer against whom such order is issued, the Authority shall, if it has reason to believe that the property in question was disposed of to the claimant with the intention of securing that property against attachment in terms of this section, serve on the claimant a copy of the final order relating to the taxpayer, and this section shall apply to the claimant as if the claimant is joined in the proceedings against the taxpayer under this section.

(14) The property attached and removed pursuant to the confirmation of the provisional order in terms of subsection (8)(a) shall be sold in execution by public auction.

(15) The proceeds of any sale in execution in terms of this section shall be applied in payment of—

- (a) the tax or duty due, together with any penalty and interest thereon; and
- (b) the costs awarded in favour of the Authority by the final attachment order; and
- (c) expenses incurred in connection with the sale;

in that order.

(16) Any balance remaining after the proceeds of any sale have been applied in terms of subsection (16) shall, be paid to the taxpayer.”.

## PART VIII

### CRIMINAL LAW (CODIFICATION AND REFORM) ACT [CHAPTER 9:23]

#### **28 Amendment of Cap. 9:23**

With effect from the 1st January, 2019, the First Schedule to the Criminal Law Code is repealed and the following is substituted—

## “FIRST SCHEDULE (Sections 2(1) and 280)

## STANDARD SCALE OF FINES

Level	Monetary Amount (US \$)
1	20
2	30
3	60
4	400
5	800
6	1200
7	1600
8	2000
9	2400
10	2800
11	4000
12	8000
13	12 000
14	20 000.”.

## PART IX

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT [*CHAPTER 9:24*] (No. 4 of 2013)**29 Amendment of section 2 of Cap. 9:24**

5 With effect from the 9th November, 2018, the Money Laundering and Proceeds of  
Crime Act [*Chapter 9:24*] (No. 4 of 2013) (hereinafter in this Part called “the principal  
Act”) is amended in section 2 (“Interpretation”)(1) of the principal Act is amended by  
the insertion of the following definition—

10 ““receiver” or “trustee”, in relation to property for which it is provided by  
this Act that a receiver or trustee may be appointed, means the Asset  
Management Unit established by section 100A, unless some other  
person is appointed as such receiver or trustee;”.

**30 Amendment of section 6B of Cap. 9:24**

Section 6B (“Functions of Unit”)(1) of the principal Act is amended—

15 (a) by the deletion from paragraph (c) of the words “as may be appropriate  
or necessary”

(b) by the insertion after paragraph (e) of the following paragraph—

20 “(e1) to act as the central agency for the collection and maintenance  
of data and statistics relating to implementation of anti-money  
laundering and combating financing of terrorism measures, and,  
in so doing, may require competent authorities to submit any  
such data or statistics in such manner and form as the Unit may  
prescribe;”.

**31 Amendment of section 15 of Cap. 9:24**

Section 15 (“Customer identification requirements”) of the principal Act is amended by the repeal of subsection (3) and the substitution of the following subsections—

“(3) In addition to identifying and verifying the identity of a customer who is not the beneficial owner of property, financial institutions and designated non-financial businesses or professions shall, as part of their obligations under subsection (1) or (2), identify and verify the identity of the beneficial owner of such property, using relevant information or data obtained from a reliable source, such that the financial institution or designated non-financial business or profession is satisfied that it knows who the beneficial owner is: 5 10

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.

(4) In addition to the identification and verification measures required for the customer and the beneficial owner, financial institutions and designated non-financial businesses or professions shall, in relation to a beneficiary of a life insurance policy and other investment related insurance policies— 15

- (a) in the case of a beneficiary that is identified as a specifically named natural or legal person or legal arrangement, record the name of the beneficiary as soon as such beneficiary is identified or designated; and 20
- (b) in the case of a beneficiary designated by characteristics or by class or by other means, obtain sufficient information concerning the beneficiary to satisfy the financial institution or designated non-financial business or profession that it will be able to establish the identity of the beneficiary at the time of the payout; and 25
- (c) in both the cases referred to under paragraphs (a) and (b), verify the identity of the beneficiary at the time of the payout.”.

**32 Amendment of section 16 of Cap. 9:24**

Section 16 (“Timing of customer identification and verification”)(1) of the principal Act is amended by the repeal of the proviso thereto and substitution of— 30

“Provided that a financial institution or a designated non-financial business or profession may allow a customer to utilise a business relationship prior to identity verification if the following conditions are met—

- (a) a delay in verification is unavoidable in the interest of not interrupting the normal conduct of business; and 35
- (b) the financial institution or designated non-financial business or profession adequately manages the money laundering and terrorist financing risk through adoption of risk management procedures concerning the conditions under which the customer may so utilise the business relationship. 40

**33 Amendment of section 27 of Cap. 9:24**

Section 27 (“Obligations regarding wire transfers”)(9) of the principal Act is amended by the insertion after “Intermediary” of “and beneficiary”.

**34 New Chapter IIIA inserted in Cap. 9:24**

With effect from the 9th November, 2018, the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013) (hereinafter called “the principal Act”) is amended by the insertion of the following Chapter after Chapter III— 45

“CHAPTER IIIA

UNEXPLAINED WEALTH ORDERS

PART I

PRELIMINARY PROVISIONS

5                   37A Interpretation in Chapter IIIA

(1) In this Chapter—

“enforcement authority” means—

- (a) the Zimbabwe Ant-Corruption Commission; or
- (b) the National Prosecuting Authority; or
- 10 (c) the Commissioner-General of the Zimbabwe Republic Police; or
- (d) the Zimbabwe Revenue Authority;

“enforcement or investigatory proceedings” means any proceedings in relation to property taken under—

- 15 (a) this Chapter; or
- (b) Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”); or
- 20 (c) Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”); or

“hold”, in relation to a person holding property, means—

- (a) own or have a beneficial interest in the property; or
- (b) have effective control over the property; or
- 25 (c) act as the trustee of a settlement in which the property is comprised; or
- (d) actually or potentially benefit as a beneficiary in relation to a settlement in which the property is comprised; or
- (e) where the property in question is currency or bearer negotiable instruments, engage in a course of dealing with respect to the property—
- 30 (i) whether personally or through one or more financial institutions or other agents; and
- (ii) whether on his or her own behalf or on behalf of another person who may be the owner of or
- 35 (iii) whether by means of a single transaction or two or more transactions;

40 within a period of a year or any lesser period wherein currency or instruments of an aggregate value of fifty thousand dollars or individual sums of more than ten thousand dollars is or are exchanged, transferred or otherwise dealt with;

“obtain”, in relation to a person obtaining property, includes—

- (a) to obtain an interest in property,
- (b) to obtain effective control over the property,
- (c) to become the trustee of a settlement in which the property is comprised; 5
- (d) to become an actual or potential beneficiary in relation to a settlement in which the property is comprised;

“response period” is whatever period the court specifies under section 37B(1) as the period within which the requirements imposed by the unexplained wealth order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements). 10

(2) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person exercises, is able to exercise or is entitled to acquire direct or indirect control over the property. 15

### 37B Unexplained wealth orders

(1) The High Court may, on an *ex parte* application made by an enforcement authority, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled. 20

(2) An application for an order must—

- (a) specify or describe the property in respect of which the order is sought; and
- (b) specify the person whom the enforcement authority thinks holds the property (“the respondent”) (and the person specified may include a person outside Zimbabwe). 25

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

- (a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made; and 30
- (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met); and
- (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and 35
- (d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify— 40

- (a) the form and manner in which the statement is to be given,
- (b) the person to whom it is to be given, and
- (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.

5 (6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

### 37B Requirements for making of unexplained wealth order

10 (1) In deciding whether to make an unexplained wealth order the High Court must be satisfied that there is reasonable cause to believe that—

- (a) the respondent holds the property; and
- (b) the value of the property is greater than ten thousand United States dollars or its equivalent in any currency.

15 (2) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain or hold the property.

20 (3) The High Court must be satisfied that—

- (a) the respondent is a politically exposed person; or
- (b) there are reasonable grounds for suspecting that—
  - (i) the respondent is, or has been, involved in serious crime (whether in Zimbabwe or elsewhere), or
  - (ii) a person connected with the respondent is, or has been, so involved.

(4) It does not matter for the purposes of subsection (2)(a)—

- (a) whether or not there are other persons who also hold the property;
- (b) whether the property was obtained by the respondent before or after the coming into force of this section.

(5) For the purposes of subsection (2)—

- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
- (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
- (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
- (d) “known” sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

- (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest. 5

(6) For the purposes of this section, 2A (“When persons deemed to be associates”) of the Income Tax Act [*Chapter 23:06*] applies in determining whether a person is connected with another.

(7) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (1)(b) to the value of the property is to the total value of those items. 10

### 37C Effect of order, cases of non-compliance

(1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period. 15

(2) The property is to be presumed to be tainted property for the purposes of any proceedings taken in respect of the property under this Act, unless the contrary is shown. 20

(3) The presumption in subsection (2) applies in relation to property—

- (a) only so far as relating to the respondent’s interest in the property; and  
 (b) only if the value of that interest is greater than the sum specified in section 37B(1)(b). 25

(4) For the purposes of subsection (1)—

- (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 37E); 30  
 (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with. 35

(5) Subsections (6) and (7) apply in determining the respondent’s interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order is connected with another person who is, or has been, involved in serious crime. 40

(6) In a case within subsection (5), the respondent’s interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.

(7) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in 45

subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

### 37D Effect of order: cases of compliance or purported compliance

5 (1) This section applies in a case where, before the end of the response period (as defined by section 37C(4)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

10 (2) If an interim freezing order has effect in relation to the property (see section 37H), the enforcement authority must determine what enforcement or investigatory proceedings, if any, it considers ought to be taken in relation to the property.

(3) A determination under subsection (2) must be made within the period of 60 days starting with the day of compliance.

15 (4) If the determination under subsection (2) is that no further enforcement or investigatory proceedings ought to be taken in relation to the property, the enforcement authority must notify the High Court of that fact as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (3)).

20 (5) If there is no interim freezing order in effect in relation to the property, the enforcement authority may (at any time) determine what, if any, enforcement or investigatory proceedings it considers ought to be taken in relation to the property.

25 (6) A determination under this section to take no further enforcement or investigatory proceedings in relation to any property does not prevent such proceedings being taken subsequently (whether as a result of new information or otherwise, and whether or not by the same enforcement authority) in relation to the property.

(7) For the purposes of this section—

30 (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with; and

35 (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days); and

40 (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address;

and in paragraphs (a) to (c) references to compliance include purported compliance.

**37E Making false or misleading statements in response to unexplained wealth order**

(1) A person who, in purported compliance with a requirement imposed by an unexplained wealth order—

- (a) makes a statement that the person knows to be false or misleading in a material particular; or 5
- (b) makes a statement that is false or misleading in a material particular knowing that there is a real risk or possibility that it may be so false or misleading;

shall be guilty of an offence and liable to a fine not exceeding sixty-five thousand dollars (US\$65 000,00) or to imprisonment for a period not exceeding two years, or both such fine and such imprisonment. 10

**37F Uses in criminal proceedings of statements in response to unexplained wealth order**

(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings. 15

(2) Subsection (1) does not apply—

- (a) in the case of proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”); or 20
- (b) on a prosecution for an offence under section 37D; or
- (c) on a prosecution for an offence of perjury (section 183 of the Criminal Law Code); or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1). 25

(3) A statement may not be used by virtue of subsection (2)(d) against a person unless—

- (a) evidence relating to it is adduced; or 30
- (b) a question relating to it is asked;

by the person or on the person’s behalf in proceedings arising out of the prosecution.

**37G Disclosure of information, copying of documents, etc**

(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed), but does not confer the right to require a person to— 35

- (a) answer any privileged question, that is to say a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court; or 40
- (b) provide any privileged information, that is to say, information which the person would be entitled to refuse to provide on

grounds of legal professional privilege in proceedings in the High Court; or

- (c) produce any privileged document, that is to say, any document which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court;

(however, a legal practitioner may be required to provide the name and address of a client of his or hers).

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) in relation to the property in respect of which the unexplained wealth order is made, but if the enforcement authority has reasonable grounds to believe that the documents—

- (a) may need to be produced for the purposes of any legal proceedings; and  
 (b) might otherwise be unavailable for those purposes;

they may be retained until the proceedings are concluded.

### 37H Interim freezing of property in connection with unexplained wealth orders

(1) At the same time and before the same court that an application for an unexplained wealth order is made under section 37B, the applicant enforcement authority may apply for an interim freezing order in respect of all or part of the property that is the subject of the unexplained wealth order applied for.

(2) The High Court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any confiscation order, benefit recovery order, civil forfeiture order or property seizure order that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 37I).

### 37I Variation and discharge of interim freezing order

(1) The High Court may at any time vary or discharge an interim freezing order but, before exercising such power, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(2) The High Court must discharge an interim freezing order, so far as it has effect in relation to any property, in each of the following cases ((a), (b) or (c))—

- (a) at the end of a period of 48 hours (beginning with the day after the day with which the 60 day period mentioned in section 37D(3) ends, but not including any public holiday), in a case where—
- (i) the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period; and 5
  - (ii) proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) or Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”) have not been commenced before the end of the said 48 hour period in relation to the property concerned; 10
- or
- (b) proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) or Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”) have been commenced before the end of a period of 48 hours after the day on which the 60 day period mentioned in section 37D(3) ends (but not including any public holiday) and the proceedings (including any on appeal) have been determined or otherwise disposed of; or 15
- (c) the court has received a notification in relation to the property concerned under section 37D(4) (notification from enforcement authority of no further proceedings). 25
- (3) Section 37D(7) applies for the purposes of subsection (2)(a) or (b) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place. 30
- (4) Before exercising power under this section to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- 37J Exclusions** 35
- (1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—
- (a) power to exclude property from the order; and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies. 40
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may (amongst other things) make provision for the purpose of enabling any person— 45

- (a) to meet the person’s reasonable living expenses; or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.

5 (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Chapter, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs;
- 10 (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion; and
- (c) is made subject to the same conditions as would be the required conditions (see section 43 (“Further orders”) (2)(b) (iii)) if the order had been made under section 82 (“Further provisions in relation to property freezing orders”) (in addition to any conditions under subsection (4)).

15 (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Chapter—

- 20 (a) must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant; and
- (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under the Legal Aid Act.

25 (7) If excluded property is not specified in the order it must be described in the order in general terms.

### 37K Restrictions on proceedings and remedies

- (1) While an interim freezing order has effect—
- 30 (a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies; and
- (b) no execution may be levied against the property to which the order applies except with the leave of the High Court and subject to any terms the court may impose.

35 (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

- 40 (a) stay the proceedings; or
- (b) allow them to continue on any terms it thinks fit.

(3) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned

an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

**37L Receivers in connection with interim freezing orders**

(1) This section applies where the High Court makes an interim freezing order on an application by an enforcement authority. 5

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards. 10

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the enforcement authority to obtain a recovery order in respect of any property. 15

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

(7) Unless the receiver in question is the Asset Management Unit, the enforcement authority may apply a sum received by it under section 97(2)(b) in making payment of the remuneration and expenses of a receiver appointed under this section. 20

(8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority). 25

**37M Powers of receivers appointed under section 37L**

(1) If the High Court appoints a receiver under section 37L on an application by an enforcement authority, the court may act under this section on the application of the authority. 30

(2) The court may by order authorise or require the receiver—

(a) to exercise any of the following powers in relation to any property in respect of which the receiver is appointed— 35

(i) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;

(ii) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business; 40

(iii) incurring capital expenditure in respect of the property;

(b) to take any other steps the court thinks appropriate in connection with the management of any such property

(including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the receiver is appointed—

- 5
- (a) to bring the property to a place specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);
  - (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.

10 (4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place specified by the receiver or to place them in the custody of the receiver.

15 (5) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.

(6) A receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property if—

- 20
- (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 37L; but
  - (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of the appointment.

25 (However, this subsection does not apply to the extent that the loss or damage is caused by the receiver's negligence).

### 37N Supervision of section 37M receiver and variations

(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under section 37L—

- 30
- (a) the receiver;
  - (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
  - (c) a person affected by an action taken by the receiver;
  - (d) a person who may be affected by an action proposed to be taken by the receiver.
- 35

(2) Before it gives directions under subsection (1) the court must give an opportunity to be heard to—

- 40
- (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
  - (c) a person who may be interested in the application under subsection (1).

- (3) The court may at any time vary or discharge—
  - (a) the appointment of a receiver under section 37M;
  - (b) an order under section 37P; or
  - (c) directions under this section.
- (4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—
  - (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 37P or (as the case may be) for the directions under this section;
  - (c) the parties to the proceedings for the interim freezing order concerned;
  - (d) any person who may be affected by the court’s decision.

**37O Compensation**

- (1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.
- (2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.
- (3) The court may order compensation to be paid to the applicant only if satisfied that—
  - (a) the applicant has suffered loss as a result of the making of the interim freezing order; and
  - (b) there has been a serious default on the part of the enforcement authority that applied for the order; and
  - (c) the order would not have been made had the default not occurred.
- (4) Where the court orders the payment of compensation—
  - (a) the compensation is payable by the enforcement authority that applied for the interim freezing order; and
  - (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”.

**35 New Chapter VIA inserted in Cap. 9:24**

With effect from 9th November, 2018, the principal Act is amended by the insertion of the following Chapter after Chapter VI—

“CHAPTER VIA

ASSET MANAGEMENT UNIT

100A Asset Management Unit

5 (1) There is hereby established a Unit in the administrative establishment of the Reserve Bank to be known as the Asset Management Unit (hereinafter referred to as “the AMU”).

(2) The AMU shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Chapter, of performing all acts that bodies corporate may by law perform.

10 (3) The AMU—

(a) shall be headed by a Director-General appointed by the Governor in consultation with the Minister; and

(b) shall consist of such other members of staff as may be necessary for the performance of its functions, who shall be appointed by the Director-General;.

(4) The staff of the AMU shall be answerable to the Director-General for the discharge of their duties and for any failure to do so or other breach of discipline, for which purpose the Director-General shall (as far as possible) apply the rules of the Reserve Bank pertaining to the discipline of the staff of the Reserve Bank.

(5) The budget of the AMU—

(a) shall be approved by the Board of the Reserve Bank; and

(b) be managed by the Director-General independently of the Reserve Bank but be subject to internal audit by the Reserve Bank and be audited by the auditors of the Reserve Bank; and

(c) may, in addition to consisting of moneys allocated by the Reserve Bank, include a sums received by it under section 97(2)(b) from the Recovered Assets Fund and any moneys appropriated by Act of Parliament for the purposes of the AMU.

(6) The Director-General shall vacate his or her office—

(a) if he or she tenders his or her resignation, in writing, to the Governor, giving such period of notice as may be provided for in his or her conditions of employment; or

(b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine in any country; or

(c) if he or she is found guilty of gross misconduct or incompetence, following a disciplinary process; or

(d) he is or she is no longer able to perform his or her functions due to infirmity of body or mind.

(7) The AMU shall operate independently of the Reserve Bank but be subject to any directions the Governor may from time to time give to the Director-General in writing.

100B Functions and powers of AMU

- (1) Subject to this Act, the function of the AMU shall be to act as receiver or trustee for all property for which a receiver or trustee may be appointed in terms of section 37K, 41(2)(c), 69(2) or 82(1)(c), for which purpose it may do anything that is reasonably necessary to preserve the property and its value including, without limiting the generality of the foregoing— 5
- (a) becoming a party to any civil proceedings that affect the property; 5
  - (b) causing that the property to be insured; 10
  - (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— 15
    - (i) all persons known by the AMU 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 20
    - (iii) the cost of obtaining such approval would, in the opinion of the AMU, be disproportionate to the value of the property concerned; 25
  - (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 30
    - (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;
    - (iv) incurring capital expenditure in respect of the business; 35
  - (e) if the property includes shares in a company, exercising rights attaching to the shares as if the AMU were the registered holder of the shares;
  - (f) securing the detention, custody or preservation of the property in order to manage it; 40
  - (g) pay expenses relating to mortgages and liens against the property;
  - (h) pay all utilities expenses in relation to the property;
  - (i) pay any expenses ordered by the court to be paid in terms of section 43(2)(b) (iii). 45

(2) To the extent that any of the expenses incurred in terms of subsection (1) cannot be met from any income of the property for the sake of which they were incurred, all such expenses shall be met from the budget of the AMU referred to in section 100A(4).

5           **100C Further provisions on staff and agents of AMU and their remuneration**

(1) Subject to this Act, the Director-General shall be responsible for directing, managing and controlling the activities of the AMU and its staff and agents.

10           (2) The staff of the AMU shall be employees of the Reserve Bank who are assigned to the AMU and such as other staff as may be seconded to it (for periods not exceeding six months at a time) from or by—

- (a) the Civil Service Commission;
- (b) the National Prosecuting Authority
- 15           (c) the Zimbabwe Revenue Authority;
- (d) the Zimbabwe Republic Police;

(3) The Director-General may appoint any—

- (a) police officer; or
- (b) employee of the Zimbabwe Anti-Corruption Commission established by the Constitution; or
- 20           (c) person employed by any other institution or authority that the Director-General considers appropriate;

to be an agent of the AMU for the purpose of exercising any of the AMU's functions in terms of this Chapter:

25           Provided that any such appointment shall be made with the approval of the Governor of the Reserve Bank and, in the case of—

- (a) a member of an intelligence service, with the approval of the person in control or command of the service;
- (b) an employee of the Zimbabwe Anti-Corruption Commission, with the approval of the chairperson of the Commission;
- 30           (c) an employee of any other institution or authority, with the approval of the governing body of that institution or authority.

(3) The remuneration payable to the staff and agents of the AMU shall be payable from the budget of the AMU referred to in section 100A(4) or by the institution from which any such staff was seconded, and no fee, commission or other similar charge shall be levied from the property of which the AMU is the receiver or custodian to pay for the work that its staff or agents do.

40           **100D Inspectors and their powers**

(1) The Director-General may appoint any member of the AMU's staff and any agent of the AMU to be an inspector for the purposes of this Chapter.

(2) The Director-General shall furnish each inspector with a certificate stating that he or she has been appointed as an inspector, and the inspector shall, on demand, exhibit the certificate to any person affected by the exercise of the inspector's powers.

(3) An inspector may, under warrant (unless the inspector believes on reasonable grounds that the delay in obtaining a warrant would defeat the purpose of this subsection, and that the inspector believes he or she would obtain the warrant from a Magistrate or Justice of the Peace on the grounds specified in paragraphs (i) or (ii) below, if he or she applied for one) enter any land or premises that is believed on reasonable grounds to be part of property of which the AMU is appointed the receiver or custodian under this Act, or in or upon which it is believed on reasonable grounds that there may be property of which the AMU is appointed the receiver or custodian under this Act. 5  
10

(4) After informing the person in charge or control of the premises of the purpose of his or her visit, an inspector may do any or all of the following— 15

- (a) make such examination and inquiry as he or she considers appropriate;
- (b) question any person who is employed in or at the premises; 20
- (c) require any person who is employed in or at the premises to produce any book, account, notice, record, list or other document;
- (d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or premises referred to in paragraph (c); 25
- (e) examine and make copies of any book, account, notice, record, list or other document;
- (f) take possession of any book, account, notice, record, list or other document: 30

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be necessary for the purpose of any examination, investigation, trial or inquiry arising out of any contravention of this Act. 35

(5) In a search under subsection (4), an inspector may be accompanied and assisted by one or more police officers or other persons, and those persons shall have the same powers as the inspector under that subsection.

(6) Every person whose premises have been entered in terms of subsections (4) and (5), and every employee or agent of that person in or on those premises shall forthwith provide the inspector and his or her assistants with whatever facilities the inspector may reasonably require for the exercise of the powers conferred on them by those subsections. 40

(7) If an inspector in the course of exercising his or her powers under this section finds property that he or she believes on reasonable 45

grounds to be property of which the AMU is appointed the receiver or custodian under this Act, he or she shall deal with it in accordance with section 100E.

5 (8) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

- (9) Any person who—
- (a) hinders or obstructs an inspector or his or her assistant in the exercise of his or her powers under this section; or
  - 10 (b) without just cause, fails or refuses to comply with a lawful request of an inspector or his or her assistant in terms of this section;

15 shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(10) A court convicting a person of failing to give information or to produce any document when required to do so under this section may require the person, within such period as the court may specify, to give the information or to produce the document, as the case may be.

20 **100E Recovery of unsecured property for which AMU is receiver or trustee under this Act**

- (1) In this section—
- “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—
- 25 (a) Chapter IIIA (“Unexplained Wealth Orders”); or
  - (b) Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”); or
  - 30 (c) Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”); or

(2) If an inspector in the course of exercising his or her powers under section 100F finds property that he or she believes on reasonable grounds to be property of which the AMU is appointed the receiver or custodian under this Act, he or she shall secure the detention, custody or preservation of the property in order to manage it, in accordance with the provisions of this section.

35

- (3) In respect of any property—
- (a) for which the AMU is appointed the receiver or trustee under this Act; but
  - 40 (b) the possession of which has not been surrendered to the AMU;

the following provisions of Part VI (“Search Warrants, Seizure, Detention and Disposal of Property Connected with Offences”, etc.) of the Criminal

Procedure and Evidence Act [*Chapter 9:07*] specified in subsection (3) shall apply to the AMU and its inspectors with such of the following modifications as are applicable, namely—

- (c) sections 47 and 48;
- (d) section 49 (by adding to the cases in which the State may, in accordance Part IV of the Criminal Procedure and Evidence Act, seize any article, the case where the article in question constitutes any part of property for which the AMU has been appointed the receiver or trustee in terms of this Act; 5
- (c) sections 50 and 51 (references to a “police officer” being construed as references to an inspector of the AMU); 10
- (d) section 58—
  - (i) subsection (1) (references to “criminal proceedings” and “conviction” therein being construed as references to “enforcement or investigatory proceedings”, and “determination of enforcement or investigatory proceedings” respectively) 15
  - (ii) subsections (3), (4), (5) and (6);
  - (iii) subsection (9) (references to the period of twenty-one days therein being construed as references to a period of ninety days, and references to the commencement of the prosecution of an offence in respect of which the seized article is required as an exhibit being construed as references to the commencement of “enforcement or investigatory proceedings”. 20 25

**100F AMU to have access to information**

(1) For the proper performance of its functions, the AMU shall have power to obtain from any—

- (a) financial institution; or
- (b) designated non-financial business or profession; or 30
- (c) law enforcement agency; or
- (d) competent supervisory authority; or
- (e) public authority or public officer; or
- (f) company; or
- (h) trustee of a trust; or 35
- (g) private voluntary organisation registered or required to be registered in terms of the Private Voluntary Organisations Act [*Chapter 17:05*];

any information, whether specific or general, that the Director-General considers necessary to carry out its functions under this Chapter 40

(2) Where, in the exercise of the power under subsection (1), the Director-General or an employee, inspector or agent of the AMU requests information from a person referred to in subsection (1), the information shall be provided within such reasonable time and in such manner as

may be specified by the Director-General or by the employee, inspector or agent concerned.

(3) This section shall not be construed as—

- (a) limiting the powers of inspectors under section 100F (“Inspectors and their powers”); or
- (b) precluding the AMU from obtaining information from any other person or entity, whether in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] or otherwise.

(4) The AMU 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.

(5) 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).

(6) The AMU 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) a company, trust or other person or entity in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] (No. 5 of 2002).

(7) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity.

#### 100G Confidentiality

(1) Any information reported to the AMU or gathered or discovered by any employee, inspector or agent of the AMU in the course of exercising his or her functions under this Chapter shall be confidential to the AMU, and no person shall disclose any such information to any other person or body except—

- (a) in the course of exercising his or her functions under this Chapter; or
- (b) to a judicial officer for the purposes of any legal proceedings under this Chapter; or
- (c) in accordance with the order of any court; or
- (d) for the purposes of any prosecution or criminal proceedings; or
- (e) where the disclosure is authorised or required by or under this Act or any other law.

(2) Any officer, employee, inspector or agent of the AMU who discloses any information referred to in subsection (1) otherwise than in accordance with that subsection, or makes use of it for personal gain, shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment. 5

(3) The Director-General shall ensure that the AMU maintains adequate systems and procedures to maintain the confidentiality of information referred to in subsection (1).

#### 100H Reports of AMU 10

The Director General shall, with the concurrence of the Governor—

- (a) as soon as possible after the 30th June of each year, submit to the Minister a report on the AMU's activities covering the period from the 1st January to the 30th June; and
- (b) as soon as possible after the 31st December of each year, submit to the Minister a consolidated report on the AMU's activities covering the period from the 1st January to the 31st December." 15

### PART X

#### EXCHANGE CONTROL ACT [CHAPTER 22:05] 20

#### **36 Amendment of section 5 of Cap. 22:05**

With effect from 9th November, 2018, the Exchange Control Act [Chapter 22:05] is amended in section 5 ("Offences and penalties") by the insertion of the following subsection after subsection (4)—

"(4a) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the unauthorised dealing in (other than the exportation, externalisation or expatriation from Zimbabwe) of any foreign currency, gold or precious stone, the court may, in addition to the fine referred to subsection (4), impose a sentence of imprisonment not exceeding ten years." 25