

DEPARTMENTAL DRAFT

H.B. 2019.]

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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, 2019.

PART II

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INCOME TAX

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

2 Amendment of section 4A of Cap. 23:04

The Finance Act [*Chapter 23:04*] is amended in section 4A (“Payment of certain taxes in foreign currency”)(1) by the repeal of paragraph (f) and the substitution of—

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“(f) the persons specified in section 15, 17, 18, 19, 20, 21, 22, 22A, 22B, 22F, 22G, 22I, 22J and 37A shall pay the taxes or royalties there mentioned in a foreign currency to the extent that the amounts from which the taxes or royalties are withheld are foreign currency amounts.”.

3 New section inserted in Cap. 23:04

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The Finance Act [*Chapter 23:04*] is amended by the insertion in Part II after section 13 of the following section—

“13A Youth employment credit

(1) In this section—

“employee” excludes a trainee, intern and apprentice and a managerial employee (as that latter term is defined in the Labour Act);”.

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(2) Subject to subsection (4), a credit to be determined in accordance with subsection (3) shall be deducted from the income tax payable by a company or trust that employs any additional employee aged thirty years or less during the year of assessment.

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(3) The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of five hundred dollars per month for each additional employee up to a maximum aggregate amount of sixty thousand dollars in any year of assessment.

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(4) For the purposes of this section—

(a) the company or trust in question must be a registered taxpayer and tax compliant for the preceding year of assessment (in proof of which the Commissioner may demand the production of the relevant tax clearance certificates); and

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(b) the credit may not be claimed before the additional employee concerned has completed twelve consecutive months’ employment with the claimant at a wage not less than two thousand dollars per month; and

(c) the credit may not be claimed by companies or trusts with an annual turnover to or exceeding the equivalent of one million United States dollars.”.

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4 Amendment of section 14 of Cap. 23:04

(1) Section 14 (“Income tax for periods of assessment after 1.4.88”)(2) of the Finance Act [*Chapter 23:04*] is amended—

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(a) with effect from the year of assessment beginning on the 1st. January, 2020—

“(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—

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(i) so much as does not exceed twenty-four thousand dollars;

(ii) so much as exceeds twenty-four thousand dollars but does not exceed ninety thousand dollars;

(iii) so much as exceeds ninety thousand five hundred dollars but does not exceed one hundred and eighty thousand dollars;

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- (iv) so much as exceeds one hundred and eighty thousand dollars but does not exceed three hundred and sixty thousand dollars;
- (v) so much as exceeds three hundred and sixty thousand dollars but does not exceed six hundred thousand dollars;
- (vi) so much as exceeds six hundred thousand dollars:

Provided that where a person earns any part of his or her taxable income from employment in a foreign currency, there shall be substituted for the figures referred to in subparagraphs (i) to (vii) the following figures —

- A. in subparagraph (i), “eight hundred and forty United States dollars”;
- B. in subparagraph (ii), “eight hundred and forty United States dollars” and “three thousand six hundred United States dollars”, respectively;
- C. in subparagraph (iii), “three thousand six hundred United States dollars”, and “twelve thousand United States dollars”, respectively;
- D. in subparagraph (iv), “twelve thousand United States dollars” and “ten thousand United States dollars”, respectively;
- E. in subparagraph (v), “four thousand and eight United States dollars” and “thirty six thousand United States dollars”, respectively;
- F. in subparagraph (vi), “thirty six thousand States dollars”;

(and, if such income is denominated in a foreign currency other than the United States dollar, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued);”.

(2) For the purpose of section 14(2)(a) of the Finance Act, the taxable income from employment of a person who receives such income partly in Zimbabwe dollars and partly in United States dollars shall be taxed as if the income was all denominated in United States dollars, with the Zimbabwe dollar portion of the income being converted to its United States equivalent at the interbank rate prevailing when the income was received. This provision takes effect from the 1st August, 2019.

5 Amendment of Schedule to Chapter I of Cap. 23:04

The Schedule (“Credits and Rates of Income Tax”) to Chapter I of the Finance Act [*Chapter 23:04*] is amended —

- (a) with effect from the year of assessment beginning on the 1st January, 2020, in Part II by the deletion of the items relating to the level of taxable income earned from employment, and the substitution of the following —

<i>“Section</i>	Level of taxable income	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$24 000	0

14(2)(a)(ii) \$24 001 to \$90 000	20
14(2)(a)(iii) \$90 001 to \$180 00	25
14(2)(a)(iv) \$180 001 to \$360 000	30
14(2)(a)(v) \$360 001 to \$600 000	35
14(2)(a)(vii) \$600 001 and more	40". 5

(b) by the repeal of the item relating to section 14(2) (c) and the substitution of—

“14(2)(c) Taxable income of a company or trust 24”.

6 Amendment of section 22G of Cap. 23:04

With effect from the 1st January, 2020, section 22G (“Intermediated Money Transfer Tax”) of the Finance Act [*Chapter 23:04*] is amended by the repeal of the proviso thereto and its substitution by— 10

“Provided that if a single transaction on which the tax is payable is equivalent to or exceeds one million two hundred and fifty thousand dollars, a flat intermediated money transfer tax of twenty-five thousand dollars shall be chargeable on such transaction.”. 15

Amendments to Income Tax Act [Chapter 23:06]

7 Amendment of section 2 of Cap. 23:06

Section 2 (“Interpretation”)(1) of the Income Tax Act [*Chapter 23:06*] is amended in the definition of “year of assessment” by the insertion of the following proviso after proviso (vi)— 20

“(vii) the year of assessment beginning on the 1st January, 2019, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following two periods— 25

A. the seven-month period beginning on the 1st January, 2019, and ending on the 31st July, 2019;

B. the five-month period beginning on the 1st August, 2019, and ending on the 31st December, 2019.”.

8 Amendment of section 8 of Cap. 23:06 30

Section 8 (“Interpretation of terms relating to income tax”)(1) of the Income Tax Act [*Chapter 23:06*] is amended in the definition of “gross income” with effect from the year of assessment beginning on the 1st January, 2020, and any subsequent year of assessment in paragraph (f) II, by the repeal of proviso (xi) and the substitution of—

“(xi) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2020, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following— 35

(a) fifty-four thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres; 40

(b) seventy-two thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred

cubic centimetres but does not exceed two thousand cubic centimetres;

(c) one hundred and eight thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) one hundred and forty-four thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.”.

9 Amendment of section 12A of Cap. 23:06

Section 12A (“Taxation of certain income deemed to be from a source within Zimbabwe”) of the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in subsection (2) with effect from the 24th June, 2019, by the deletion of “five hundred thousand dollars (\$500 000)” and the substitution of “five hundred thousand United States dollars (US \$500 000)”;
- (b) by the insertion of the following subsections after subsection (4)—

“(5) Where a company or other entity domiciled outside Zimbabwe is liable to pay tax in terms of subsection (2), such company or entity shall, within thirty days of becoming so liable or within thirty days of the promulgation of the Finance (No. 3) Act, 2019, as the case may be, appoint a person domiciled in Zimbabwe to act as its representative taxpayer, and notify such appointment in writing to the Commissioner.(failing which the Commissioner may, by written notice, appoint any person as its representative taxpayer).”.

10 Amendment of section 16 of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2020, section 16 (“Cases in which no deduction shall be made”) of the Income Tax Act [*Chapter 23:06*] is amended by the insertion after paragraph (r) of the following paragraph—

- “(s) any interest expenditure incurred on foreign loans in excess of the interest that would have been payable by applying the highest interbank rate of exchange offered by any authorised dealer (as defined in the Exchange Rate Act) at the time the interest accrues.”.

11 Amendment of section 53 of Cap. 23:06

Section 53 (“Representative taxpayers”)(1) of the Income Tax Act [*Chapter 23:06*] is amended in the definition of “representative taxpayer”—

- (a) by the repeal of paragraph (a) and the substitution of—

“(a) in relation to the income of a company (other than a company domiciled outside Zimbabwe whose income is taxed by virtue of section 12(6) and (7)), means the public officer of the company;”;

- (b) by the insertion of the following paragraph (f) and the substitution of—

“(g) in relation to the income of a company pr other entity domiciled outside Zimbabwe whose income is taxed by virtue of section 12(6) and (7)), means the person in Zimbabwe appointed by

that company or entity or the Commissioner in terms of section 12(5).”.

12 Amendment of section 80 of Cap. 23:06

Section 80 (“Withholding of amounts payable under contracts with State or statutory corporations”)(1) of the of the Income Tax Act [*Chapter 23:06*] is amended by the repeal of the definition of “payee” and the substitution of— 5

““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 or a non-resident person whose income is taxed by virtue of section 12(6) and (7) or who pays tax under the Thirty-Sixth Schedule;” 10

13 Repeal of section 97C of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2020, section 97C (“Credit where tax on non-executive directors’ fees has been withheld”) of the Income Tax Act [*Chapter 23:06*] is repealed. 15

14 Amendment of Third Schedule to Cap. 23:06

(1) The Third Schedule (“Exemptions from Income Tax”) to the Income Tax Act [*Chapter 23:06*] is amended—

(a) in paragraph 3 by the repeal of subparagraph (i) and the substitution of—

“(i) any qualifying venture capital company or fund (for the purposes of qualifying for the exemption under this provision, a “qualifying venture capital company or fund” means a company or fund which has as its principal object the provision of venture capital for development purposes and to which or in connection with which the following additional features or conditions must apply— 20

A. the venture capital company or fund as well as the recipient of the venture capital (“the recipient”) must be residents of or domiciled in Zimbabwe, and must be tax compliant (in proof of which the Commissioner may demand the production of the relevant tax clearance certificates); and 30

B. the venture capital company or fund must not (at least in respect of the receipt and accruals for which it claims exemption) invest in any of the following businesses or kinds of businesses—

I. businesses carried on in respect of the sale, leasing or other dealing with immovable property; 35

II. businesses ordinarily carried on by financial institutions;

III. businesses carried on in respect of financial or advisory services (including legal services, tax advisory services, stock broking services, management consulting services and auditing or accounting services); 40

IV. businesses carried on in respect of gaming or games of chance; 45

and

- 5 C. the recipient must not be listed on a stock exchange; and
- D. the recipient is or proposes to be active in agriculture, mining, manufacturing, tourism or other aspect of the economy deemed by the Minister by statutory instrument to be critical for national development; and
- 10 E. the venture capital company or fund must not hold shares in the recipient to the extent of controlling it, nor must it exert control over the recipient directly or indirectly through a related entity; and
- F. the predominant mode by which the venture capital company finances recipients is by means of equity rather than debt.”;
- (b) with effect from the 1st November, 2019, in paragraph 4(0) by the deletion of “one thousand dollars” and the substitution of “five thousand dollars”;
- (c) with effect from the 1st November, 2019, in paragraph 4(p)—
- 15 (i) by the deletion of “ten thousand dollars” and the substitution of “fifty thousand dollars”;
- (ii) in the proviso by the deletion of “forty-five thousand United States dollars” and the substitution of “sixty thousand dollars”.
- (2) Paragraph 3(j), concerning the tax exempt status of certain Treasury Bills, applies as if its provisions took effect from the 24th November, 2014.

15 Amendment of Fifth Schedule to Cap. 23:06

- (1) The Fifth Schedule (“Allowances and deductions in respect of income from mining operations and other provisions relating thereto”) to the Income Tax Act [*Chapter 23:06*] is amended in paragraph 1(1) by the repeal of the definition of “expenditure on equipment” and its substituted by—
- 25 ““expenditure on equipment” includes—
- (a) expenditure on renewals or replacements of buildings, works or equipment unless such expenditure has been allowed as a deduction in terms of paragraph 6;
- 30 (b) tangible or intangible property in the form of computer software (as defined in paragraph 1 of the Fourth Schedule) that is acquired, developed or used by a taxpayer in connection with his or her mining operations;”.

16 Amendment of Thirty-Fifth Schedule to Cap. 23:06

- 35 The Thirty-Fifth Schedule (“Transfer Pricing”) to the Income Tax Act [*Chapter 23:06*] is amended in paragraph 4(5)(e) by the repeal of paragraph 5.

PART III

VALUE ADDED TAX

Amendments to Chapter IV of Finance Act [Chapter 23:04]

40 17 Amendment of Schedule to Chapter IV of Cap. 23:04

With effect from the 1st January, 2020, the Schedule to Chapter IV of the Finance Act [*Chapter 23:04*] is amended in Part I (“General Rate of Value Added Tax”) by the deletion of “fifteen *per centum*” and the substitution of “fourteen and a half *per centum*”.

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

18 Amendment of section 2 of Cap. 23:12

With effect from the 1st January, 2020, section 2 (“Interpretation”) of the Value Added Tax Act [*Chapter 23:12*](1) is amended in the definition of “input tax” by the insertion in paragraph (a) of the following subparagraph after subparagraph (ii) — 5

“(iii) the registered operator on the importation of services by him or her; or”.

19 New section inserted in Cap. 23:12

With effect from the 1st January, 2020, section 38 (“Manner in which tax shall be paid”) of the Value Added Tax Act [*Chapter 23:12*] (1) by the insertion after section 13 of the following section — 10

“13A Certain imported services deemed to be locally supplied

(1) Despite section 13, the supply of radio and television services from outside Zimbabwe to an address in Zimbabwe or of electronic services by an electronic commerce operator domiciled outside Zimbabwe to a person resident in Zimbabwe at the of supply shall be deemed to be a supply made in Zimbabwe. 15

(2) The obligation to charge and account for tax shall be that of the supplier or his or her duly appointed representative in Zimbabwe.”.

20 Backdating of section 26 (a) of Act 1 of 2018

Section 26(a) of the Finance Act, 2018, which replaced the proviso to section 17 (“Adjustments”)(1) of the Value Added Tax Act [*Chapter 23:12*](1) applies as if it took effect from the 1st January, 2014.”. 20

21 Amendment of section 15 of Cap. 23:12

Section 15 (“Calculation of tax payable”) of the Value Added Tax Act [*Chapter 23:12*] is amended in subsection (2) — 25

(a) by the deletion of “goods into Zimbabwe” and the substitution of “goods or services into Zimbabwe”;

(b) by the insertion of the following paragraph —

“(e) an invoice is held in terms of section 13(2) and payment of the tax has been made in terms of section 13(1).” 30

PART IV

CAPITAL GAINS TAX

Amendments to Chapter VIII of Finance Act [Chapter 23:04]

22 Amendment of section 39 of Cap. 23:04

With effect from the 1st January, 2020, sections 39 (“Rates of capital gains withholding tax”) of the Finance Act [*Chapter 23:04*] is amended by the insertion of the following subsection, the existing section becoming subsection (1) — 35

“(2) It shall be presumed that a marketable security referred to in subsection (1)(c) or (d) was paid for in a foreign currency at the United States dollar market valuation of the security on the date of the sale, and that the capital gains tax thereon shall be paid in United States dollars accordingly, unless the seller provides documentary proof issued by — 40

- (a) a registered stockbroker who mediated the transaction; or
 (b) a financial institution through which the sale was effected;
 showing that the security in question was sold for Zimbabwe dollars.”.

PART V

CUSTOMS AND EXCISE

23 New section inserted in Cap. 23:02

(1) The Customs and Excise Act [*Chapter 23:02*] is amended by the insertion of the following section after section 115—

“115A Rates of exchange: conversion of foreign currency

When the value or cost of any imported goods, or any element that is required to be included in such value or cost, is expressed in the currency of a foreign country, it shall be converted to the currency of Zimbabwe at the selling rate for that foreign currency, as designated by the Commissioner in consultation with the Reserve Bank of Zimbabwe, applicable as a customs rate at the time the goods concerned were entered in terms of this Act.”.

(2) Wherever in the Customs and Excise (Tariff) Notice, 2017, published in Statutory Instrument 53 of 2017, duties are expressed as a specific rate in United States dollars as opposed to *ad valorem* rates, such duties shall be converted to Zimbabwe dollars at the prevailing customs exchange rate.

PART VI

MINES AND MINERALS

Amendment to Chapter VII of Finance Act [Chapter 23:04]

24 Amendment of Schedule to Chapter VII of Cap. 23:04

The Schedule to Chapter VII of the Finance Act [*Chapter 23:04*] is amended in the Part fixing the rates of royalties for the purposes of section 245 of the Mines and Minerals Act [*Chapter 21:05*]—

- (a) with effect from the 1st January, 2020, by the deletion of the item referring to “diamonds” and the substitution of the following item—

“Diamonds (but no royalty is payable in respect of diamonds sold at a discount equivalent the value of the royalty otherwise payable to any local diamond manufacturer) . . . 10”

- (b) with effect from the 23rd February, 2019, by the insertion of the following item below “Coal”—

“Black granite and other cut or uncut dimensional stone . . . 2”.

PART VII

REVENUE AUTHORITY

25 Amendment of section 34B of Cap. 23:11

Section 34B (“Reward for information”) of the Revenue Authority Act [*Chapter 23:11*] is amended in subsection (1) by the insertion of the following definition after the definition of “near relative”—

““revenue” has the meaning given to “revenues” in section 2, but for the purpose of this section does not include charges or penalties by way of interest or charges or penalties imposed at the discretion of the Commissioner;”.

26 Amendment of section 35 of Cap. 23:11 5

Section 35 (“Regulations”)(2) of the Revenue Authority Act [*Chapter 23:11*] is amended in paragraph (b) by the deletion of “one hundred and eighty-first day” and the substitution of “ninety-first day”.

PART VIII

RESERVE BANK OF ZIMBABWE 10

27 New section inserted in Cap. 22:15

The Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999) is amended—

- (a) by the insertion in Part VI (“Banknotes and Coinage”) of the following section after section 29A—

“29B Monetary Policy Committee 15

(1) There shall be a Monetary Policy Committee independent of the Board consisting of the Governor as the chairperson, the Deputy Governor or Deputy Governors as the deputy chairperson or deputy chairpersons, as the case may be, and not less than five or more than seven other persons appointed by the President after consultation with the Minister. 20

(2) The members of the Monetary Policy Committee appointed under subsection (1) must have knowledge, experience or expertise in matters relating to finance, banking and fiscal or monetary policy. 25

(3) The Monetary Policy Committee’s functions are—

- (a) to determine the monetary policy of Zimbabwe, including the setting of limits on open market operations by the Bank; and
 (b) to ensure price stability as defined by the Government’s inflation target set out in the National Budget; and 30
 (c) to determine interest rates for the economy in line with the Government’s economic policies and targets for growth and employment; and
 (d) to perform such other functions related to monetary policy as the Minister may prescribe by regulations. 35

(4) The Monetary Policy Committee shall submit its findings to the Board for information purposes only.”;

- (b) in section 7 (“Powers of Bank”)(1) by the insertion of the following proviso to paragraph (n)— 40

“Provided that the Bank shall only borrow foreign currency on behalf of the State and not on its own behalf.”.

PART IX
EXCHANGE CONTROL

28 Amendment of Cap. 22:05

The Exchange Control Act [*Chapter 22:05*] is amended—

- 5 (a) in section 2 (“Regulatory powers of President”)(1)) by the insertion of the following paragraph after paragraph (c)—

“and

- (d) the enforcement of the exclusive use of Zimbabwe dollar for domestic transactions.”;

- 10 (b) in section 5 (“Offences and penalties”) by the insertion of the following subsection after subsection (4d)—

“(4e) A contravention of any regulations made under section 2(1)

- (d) prohibiting the sale, offering for sale, quoting, displaying, charging, receipt or payment in any currency other than the Zimbabwe dollar for goods and services whose purchase, sale or disposal are or are deemed to be a domestic transaction, is a civil default for which the defaulter or alleged defaulter is liable to a civil penalty of the category specified in those regulations.”;

- (c) by the insertion of the following section after section 10—

20 “11 Civil penalty orders

The provisions of the Schedule apply to any infringement of this Act in respect of which it is provided that a civil penalty is payable.”;

- (d) by the insertion of the following schedule—

“SCHEDULE (Section 11)

25 CIVIL PENALTY ORDERS
ARRANGEMENT OF PARAGRAPHS

Section

1. Interpretation in Schedule.
2. Power of Reserve Bank to issue civil penalty orders and categories thereof.
30 3. Variation of certain penalties and limitation of multiple of penalties.
4. Service and enforcement of civil penalties and destination of proceeds thereof.
5. Limitation on issuance and enforcement of civil penalty orders.
6. Additional due process requirements before service of certain civil penalty orders.
35 7. Judicial review of civil penalty orders.
8. Evidentiary provisions in connection with civil penalty orders.
9. Designated officers.

Interpretation in Schedule

1. In this Schedule, unless the context otherwise requires—
40 “citation clause”, in relation to a civil penalty order, is the part of the order in which the Reserve Bank names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged,

together with (if necessary) a brief statement of the facts constituting the default;

“designated officer” means an employee or the Reserve Bank or other person designated and authorised by the Governor of the Reserve Bank to undertake duties in connection with the implementation of this Schedule; 5

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

“remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter. 10

Power of Reserve Bank to issue civil penalty orders and categories thereof

2. (1) Where default is made in complying with any provision of this Act or of regulations or order made under this Act for which a civil penalty is specified to be leviable, the Reserve Bank may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow. 15

(2) A category 1 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Reserve Bank or is possible), of which— 20

- (a) the fixed penalty shall be the maximum amount specified for level ten (or the penalty specified in paragraph 3, as the case may be); and 25
- (b) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under paragraph (a).

(3) A category 2 civil penalty order provides for a cumulative civil penalty for a specified completed but remediable default which— 30

- (a) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is to say, within twenty-four hours after the civil penalty is served on him or her); 35
- (b) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action). 40

(4) A category 3 civil penalty order provides for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—

- (a) the fixed penalty shall be the maximum amount specified for level five; and 45
- (b) the cumulative penalty—
 - (i) relating to paragraph (a) shall be a penalty of the maximum amount of level three for each day (beginning on the day after

the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a); and

(ii) relating to the taking of the specified remedial action—

A. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and

B. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order.

(5) A category 4 civil penalty order provides for a cumulative penalty for a continuing default which—

(a) must be suspended conditionally upon the defaulter immediately (that is to say, within twenty-four hours after the civil penalty is served on him or her) ceasing the default;

(b) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days.

(6) A category 5 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

(a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;

(b) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—

(i) a fixed penalty of the maximum amount for level ten for not meeting the specified deadline; and

(ii) a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

Variation of certain penalties and limitation of multiple of penalties

3. (1) Any regulations or orders made under or for the purpose of section 2(1) (d) that prohibit the sale, offering for sale, quoting, displaying, charging, receipt or payment in any currency other than the Zimbabwe dollar for goods and services whose purchase, sale or disposal are or are deemed to be a domestic transaction, may vary the fixed penalty for any category of civil penalty specified in paragraph 2 by specifying the fixed penalty of twice the value attributed by the defaulter to the goods or services in question.

(2) If the attributed value of the goods or services referred to in subparagraph (1) was in United States dollars or another foreign currency, for the purposes of fixing the penalty the Zimbabwe dollar equivalent of the value shall be the interbank rate of exchange of the Zimbabwe dollar for the United States dollar prevailing on the day the civil penalty order is issued.

(3) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable (either immediately or within seven days from the service of the civil penalty order) to a

penalty or combined penalties in excess of the equivalent of fifty thousand dollars, the Reserve Bank may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order. 5

Service and enforcement of civil penalties and destination of proceeds thereof

4. (1) References to the Reserve Bank serving upon a defaulter any civil penalty order in terms of this Act (or serving upon an alleged defaulter a show cause notice referred to in paragraph 6 (“Additional due process requirements before service of certain civil penalty orders”), are to be interpreted as requiring the Reserve Bank to deliver such order (or such notice) in writing to the defaulter (or alleged defaulter) concerned in any of the following ways— 10

- (a) by registered post addressed to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or 15
- (b) by hand delivery to the director, manager, secretary or accounting officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the Financial Intelligence Unit, or a police officer), or to a responsible individual at the place of business of the defaulter; or 20
- (c) by delivery through a commercial courier service to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or
- (d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Reserve Bank: 25

Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter’s (or alleged defaulter’s) legal practitioner in Zimbabwe.

(2) The Reserve Bank shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted shall be noted by the Reserve Bank in the civil penalty enforcement register referred to in paragraph 8 (“Evidentiary provisions in connection with civil penalty orders”). 30

(3) If in this Act both the defaulting company and every officer of the company who is in default are said to be liable to a civil penalty order, the Reserve Bank may— 35

- (a) in the same civil penalty order, name the defaulting company and every officer concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulting company and each of the officers concerned; 40
- (b) may choose to serve the order only upon the defaulting company if, in his or her opinion (which opinion the Director shall note in the civil penalty enforcement register referred to in paragraph 8, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default: 45

Provided that nothing in this section affects the default liability of officers of the company mentioned in subparagraph (8).

(4) The Reserve Bank may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question—

- 5 (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
 (b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Reserve Bank may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- 10 (a) summons is issued to the accused person for the prosecution of the offence; or
 (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
 15 (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

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

20 (6) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both.

(7) The amount of any civil penalty shall—

- 30 (a) be payable to the Reserve Bank and shall form part of the funds of the Reserve Bank; and
 (b) be a debt due to the Reserve Bank and shall be sued for in any proceedings in the name of the Reserve Bank in any court of competent civil jurisdiction.

35 (8) If the defaulter is a company, private business corporation or other body corporate, every officer of the company, corporation or body corporate, mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Reserve Bank to pay the civil penalty in the event that the company, corporation or body corporate does not pay.

40 (9) If the Reserve Bank in terms of subsection (7)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, it may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- 45 (a) were all served within the period of twelve months preceding the institution of the proceedings; and
 (b) were served—
 (i) on the same company or private business corporation; or
 (ii) in relation to the same default or set of defaults, whether committed

by the same company or private business corporation or different companies or private business corporations; or

- (iii) on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted. 5

(10) Unless the Reserve Bank has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (6), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Reserve Bank for the amount of any outstanding civil penalty due from the convicted defaulter. 10

Limitation on issuance and enforcement of civil penalty orders

5. (1) No civil penalty order may be issued more than twelve months from the date when the infringement or alleged infringement occurred or ceased to occur.

(2) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*]. 15

Additional due process requirements before service of certain civil penalty orders

6. (1) Except in relation to any civil penalty order which the Reserve Bank is satisfied that it does not involve any substantive dispute of fact, the Reserve Bank must notify the alleged defaulter in writing of the Reserve Bank’s intention to serve the civil penalty order (which notice shall hereafter be called a “show cause notice”) and the Reserve Bank’s reasons for doing so and shall call upon the alleged defaulter to show cause within the period specified in the notice (which period shall not be less than 48 hours or more than seven days from the date of service of the notice) why the civil penalty order should not be served upon him or her, and, if the alleged defaulter— 20

- (a) makes no representations thereto within the notice period, the Reserve Bank shall proceed to serve the civil penalty order; or
- (b) makes representations showing that the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control or for any other reason specified in the civil penalty provision in question, the Reserve Bank shall not proceed to serve the civil penalty order; or 30
- (c) makes no representations of the kind referred to in paragraph (b) the Reserve Bank shall proceed to serve the civil penalty order. 35

(2) In addition, where it appears to the Reserve Bank from written representations received under subparagraph (1) that there may be a material dispute of fact concerning the existence or any salient aspect of the alleged default, the Reserve Bank must afford the alleged defaulter an opportunity to be heard by making oral representations before the Reserve Bank, for which purpose the Reserve Bank shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the hearing and determination before the Reserve Bank of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Registrar. 40

(3) Any person who is aggrieved by a civil penalty order made after the making of representations in terms of this section may appeal against the order to 45

a judge of the High Court, and the judge may make such order as he or she thinks fit:

Provided that the lodging of the appeal shall not of itself suspend the obligation of the defaulter to comply with the civil penalty order.

5 *Judicial review of civil penalty orders*

7. If the Reserve Bank does not issue a show cause order under paragraph 6 before issuing and serving a civil penalty order under paragraph 5, the defaulter or alleged defaulter may seek review of the Reserve Bank's action by the High Court, but the lodging of the application for review shall not of itself suspend the obligation of the defaulter to comply with the civil penalty order.

Evidentiary provisions in connection with civil penalty orders

8. (1) For the purposes of this Schedule the Reserve Bank shall keep a civil penalty enforcement register wherein shall be recorded—

15 (a) the date of service of every show cause notice, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the alleged defaulter was alleged to be in default, and whether or not the show cause notice was followed by the service of a civil penalty order:

20 Provided that a record or an adequate summary of any representations made in response to a show cause notice shall be made by way of an entry or cross-reference in, or annexure to, the register, and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least three years from the date when they were made to the Reserve Bank;

25 (b) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be.

30 (2) A copy of—

35 (a) any entry in the civil penalty enforcement register, and of any annexure thereto or record cross-referenced therein, authenticated by the Reserve Bank as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or

40 (b) any civil penalty order that has been served in terms of this Act, authenticated by the Reserve Bank as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

Designated officers

9. (1) Any reference to the Reserve Bank in this Schedule shall be construed as a reference to a designated officer.

45 (2) The Governor of the Reserve Bank shall furnish each designated officer with a certificate signed by or on behalf of the Governor stating that he or she has been appointed as an designated officer for the purpose of this Schedule.

(3) A designated officer shall, on demand by any person affected by the exercise of the powers conferred upon the Reserve Bank under this Schedule, exhibit the certificate issued to him or her in terms of subsection (2).”.

PART IX

VALIDATION

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29 Validation of SI 295 of 2019

Statutory Instrument 295 of 2019 is validated with effect from the 20th September, 2019.