

PRIVATE VOLUNTARY ORGANISATIONS AMENDMENT

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PRIVATE VOLUNTARY ORGANISATIONS AMENDMENT BILL, 2021

MEMORANDUM

This Bill will amend the Private Voluntary Organisations Act [*Chapter 17:05*]. The amendments are being made, firstly, in order to comply with the Financial Action Taskforce (FATF) recommendations made to Zimbabwe. Further to this, it has also become necessary to streamline administrative procedures for private voluntary organisations to allow for efficient regulation and registration. FATF is an Intergovernmental organisation founded in 1989 on the initiative of the G7 countries. Its main objective is to develop policies to combat money laundering and Zimbabwe is a member. Each member country is assessed periodically for compliance with the policies and legislation on money laundering and financing of terrorism. Countries are assessed on two major criteria which are technical compliance and effectiveness. Technical compliance is concerned with deficiencies related to the country's anti money laundering and financing of terrorism legislation while effectiveness is concerned with deficiencies which highlight practical implementation challenges. This Bill seeks to comply with recommendations under technical compliance raised under Zimbabwe's Mutual Evaluation Report. As a result of the said deficiencies, Zimbabwe was placed under a monitoring programme in October 2018 by FATF in order to ensure the country aligns its laws on private voluntary organisation to recommendation 8 whose objective is to ensure that non-profit organisations are not misused by terrorist organisations whether as a way for such terrorist organisations to pose as legitimate entities; or to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes, as such, there is need to have clear laws that set out a framework that allows to prevent any potential abuse in key sectors.

Secondly, provisions have been added as a way to ensure that private voluntary organisations do not undertake political lobbying.

In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This Clause amends the existing section 2 which houses the Interpretations. The clause provides for the inclusion of the definition of "funds or other assets" which is very wide ranging to include all financial assets and funds or other assets of every kind. The clause also amends the definition of "private voluntary organisation" to ensure it covers all relevant organisations that fall under this law and the regulation of the Board.

The clause further amends section 2 with the insertion of new subsections relating to designations that the Minister may make in terms of high risk private voluntary organisations by regulations certain sectors or types of private voluntary organisations that he or she may consider to be high risk sectors or types in order to allow for closer monitoring and more stringent regulation of such sectors or types as well as making provision for trusts.

Clause 3

This clause repeals and substitutes section 5 to ensure the office of the Registrar is able to perform its functions more efficiently and provide for other staff who will assist the Registrar and the Registrar's power of delegation to such staff.

Clause 4

This clause makes provision for the Registrar to collect fees for the registration of private voluntary organisations.

Clause 5

This clause makes provision for the creation of an offence where a private voluntary organisation is involved in supporting or opposing a political party or candidate in relation to the offence created in the Political Party (Financing) Act.

Clause 6

This clause makes provision for the instances that require re-registration of private voluntary organisations in relation to material changes that occur in the private voluntary organisation concerned.

Clause 7

This clause repeals and substitutes sections 21 and 22 of the existing Act to make provision for the suspension of an executive committee of a private voluntary organisation by the Minister where there is maladministration and the power of the Minister to make an application to the Court for trustees for the organisation to be able to continue operation as investigations are being carried out.

Clause 8

This clause makes provision for a new section 22 which is directly related to the requirements that Zimbabwe must comply with under recommendation 8 of the FATF requirements and this deals with the process of assessment of risks in relation to private voluntary organisations that the Minister in corporation with the Financial Intelligence Unit, make at prescribed intervals in order to identify high risk sectors or organisations and prescribe special measures that must be applied in order to mitigate the risk.

Clause 9

This clause inserts a new section 22A which makes provision for the power of the Registrar to impose civil penalty orders under this Act on non-complying private voluntary organisations.

Clause 10

This Clause makes additions to the areas that the Minister may make regulations for which are pertinent to the efficient operations of the Board.

Clause 11

This clause makes provision for insertion of a Schedule in the Act that provides for the civil penalty regime contemplated in clause.

BILL

To amend the Private Voluntary Organisation Act [*Chapter 17:05*]; and to provide for matters connected therewith.

ENACTED by the President and the Parliament of Zimbabwe.

5 **1 Short title and date of commencement**

This Act may be cited as the Private Voluntary Organisations (Amendment) Act, 2021.

2 Amendment of section 2 of Cap. 17:05

10 Section 2 (“Interpretation”) of the Private Voluntary Organisation Act [*Chapter 17:05*] (hereinafter called “the principal Act”) is amended—

 (a) in subsection (1)—

 (i) after the definition of “contributor” by the insertion of the following definition—

15 ““funds or other assets” means any assets, including but not limited to economic resources, (including oil and other natural resources), financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such funds or other assets, including, but not
20 limited to bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of

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- credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services;”;
- (ii) In the definition of “private voluntary organisation”— 5
- A. by the insertion of the words “legal person, legal arrangement” after the words “means any” ;
- B. by the repeal of sub-paragraph (iii) and substitution of—
“(iii) any trust established directly by any enactment; or”
- C. by the repeal of sub-paragraph (x) and substitution of— 10
“(x) subject to subsection (4) any trust registered with the High Court.”;
- (b) by the insertion of the following subsections after subsection (2)—
- “(3) Notwithstanding the exemptions set out in paragraphs (i) to (x) of the definition of “private voluntary organisation”, in subsection 15
(1) the Minister may, through regulations, designate by name, type, class, or characteristics, any legal person, legal arrangement, body or association of persons, or institution, which the Minister deems to be at high risk of or vulnerable to misuse by terrorist organizations whether as a way for such terrorist organisations to pose as legitimate entities; 20
or to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes and—
- (a) shall require such legal person, legal arrangement, body 25
or association of persons, or institution to register as a private voluntary organisation in terms of this Act; and
- (b) may prescribe such additional or special requirements, obligations or measures, not inconsistent with this 30
Act, that shall apply in respect of such legal person, legal arrangement, body or association of persons, or institution, in order to mitigate against such risk or vulnerability.
- (4) Notwithstanding the exemption set out in sub-paragraph (iii) of the definition of “private voluntary organisation”, in subsection 35
(1), if the Registrar has a reasonable suspicion that any trust registered with the High Court, not being a trust exempted by virtue of sub-paragraphs (i), (ii) and (iv)—(ix) of the definition of “private voluntary organisation”, is collecting contributions from the public or outside 40
the country for the purposes outlined in paragraphs (a) to (g) in the definition of “private voluntary organisation”, the Registrar shall dispatch to the Trustee or any of the trustees of the Trust in question, a written notice requiring—
- (a) that the trustee(s) to subscribe to a sworn declaration 45
in the prescribed form that no one will on behalf of or in the name of the Trust collect contributions from the public or outside the country for the purposes outlined in paragraphs (a) to (g) in the definition of “private voluntary organisation” during the existence of the Trust; and 50

(b) that the Trustee—

(i) return to the Registrar the declaration duly sworn within thirty days (30) of the date when the Registrar dispatched the notice to the trustee(s); or

5 (ii) commence within the period specified in subparagraph (i) the registration of the Trust as a private voluntary organisation in terms of this Act.

(5) Any person who having received notice in terms of subsection (4) fails to comply with paragraph (b)(i) or (ii) of that subsection, or having submitted the required declaration, collects contributions from the public or outside the country for the purposes outlined in paragraphs (a) to (g) in the definition of “private voluntary organization” on behalf of or in the name of the trust, shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment not exceeding six months or to both such fine and such imprisonment.

(6) Pursuant to subsection (5) the Trustees shall be prosecuted if they don't sign the declaration or register or after signing the declaration that they are not collecting funds from the public or outside the country, continues to do so outside without being registered as a private voluntary organization. It shall be a defense to the charge if they can prove on a balance of probabilities that they were not collecting contributions from the public.

(7) A Trustee served with a notice under subsection (4) shall have a right within fourteen days of the date when the notice was dispatched to make written representations to the Registrar to have the notice withdrawn on the basis that the notice was made in error and if the Registrar—

(a) accepts such representations, the Registrar shall notify to the trustee in writing, of the withdrawal of the notice; or

(b) rejects such representations the Registrar shall notify the Trustee in writing accordingly and the thirty day period within which the trustee must take either of the actions specified in subsection (4)(b) commences from the date of the notification of such rejection.”.

3 Amendment of section 5 of Cap. 17:05

The principal Act is amended by the repeal of section 5 (“Registrar of Private Voluntary Organisations”) and the substitution of the following—

“5 Office of Registrar

(1) There shall be a Registrar of Private Voluntary Organisations and such other officers as may be necessary for the proper administration of this Act, whose offices shall be public offices and form part of the Public Service:

45 Provided that until an appointment of a Registrar is made, the person for the time being holding the office of Director of Social Welfare shall be the Registrar.

(2) Subject to this Act, the Registrar shall maintain at his or her office a Register of Private Voluntary Organisations in which he or she

shall enter all such particulars in relation to the registration of private voluntary organisations and their constitutions as he or she is required to enter by or in terms of this Act or any decision or order of a court.

(3) The Register shall be open to inspection during office hours by any member of the public on payment of the prescribed fee, if any. 5

(4) Subject to the directions of the Registrar, the other officers referred to in subsection (1) shall perform such of the Registrar’s functions as the Registrar may assign to them.

(5) The Registrar shall have power to delegate any of his or her powers to any officer other than the power of delegation.”. 10

4 Amendment of section 9 of Cap. 17:05

The principal Act is amended in section 9(1) by the insertion of “and a prescribed fee” after “constitution of the organisation”.

5 Amendment of section 10 of Cap. 17:05

The principal Act is amended in subsection (1) by the insertion of the following paragraph after paragraph (e) as follows— 15

“(e1) when any private voluntary organisation that supports or opposes any political party or candidate in a presidential, parliamentary or local government election or is a party to any breach of section 7 under Part III of the Political Parties (Finance) Act [*Chapter 2:12*] as a contributor of funds to a political party or candidate or otherwise shall be guilty of an offence and liable to a fine of level twelve or to imprisonment for a period not exceeding one year, or both such fine or such imprisonment.”. 20

6 Insertion of new section in Cap 17:05

The principal Act is amended by the insertion of the following section after section 13— 25

“13A Reregistration or amendment of registration required in certain circumstances

(1) In this section—

“material change” in relation to the amendment of the particulars of the original application for registration means— 30

(a) any change in the constitution governing the private voluntary organisation concerned happens upon the termination for any reason of the private voluntary organisation with respect to the disposal of its assets on the date of its termination; or 35

(b) any change in the ownership or control of the private voluntary organisation; or

(c) any variation of the capacity of the private voluntary organisation to operate as a private voluntary organisation. 40

(2) If there is any material change in the particulars furnished together with the application for the registration of a private voluntary organisation, the Secretary of the private voluntary organisation must

make an application to the Registrar in the prescribed form to amend the particulars of registration in relation to the private voluntary organisation, for which purpose the Secretary must submit to the Registrar an amendment application in the prescribed form no later than one month from the date when the material change occurred.

(3) Upon receiving an amendment application in terms of subsection (2) the Registrar—

- (a) shall approve the application if the application meets the substantive requirements in this Act and cause the appropriate entry in the register of private voluntary organisations to be made and notify the operator accordingly; or
- (b) shall reject the application if the application fails to meet the substantive requirements in this Act and order the reversal of the material change that prompted the application within a specified period; or
- (c) shall reject the application for the amendment if the application substantively fails to meet the requirements in this Act and order the applicant to re-register in terms of section 9.

(4) A certificate of registration may, subject to subsections (5) and (6) be transferred to another person in the following circumstances—

- (a) to another private voluntary organisation; or
- (b) to another person who is not a private voluntary organisation.

(5) A private voluntary organisation referred to in subsection (4) (a) must, before the proposed transfer is completed make application to the Registrar in the prescribed form for approval of the transfer, and the Registrar shall thereafter treat the application as if it is an application for the approval of a material change to which the provisions of subsection (2) and (3) shall apply:

Provided that in approving the transfer, the Registrar may cancel the certificate of registration of the private voluntary organisation being transferred or permit the applicant to hold it as a separate certificate, and in doing so may take into account the express wishes of the applicant.

(6) A private voluntary organisation referred to in subsection (4) (b) must before the proposed transfer takes place apply for the cancellation of the certificate of registration of the private voluntary organisation and make a new application for the registration of the private voluntary organisation in terms of section 9.

(7) Any private voluntary organisation that fails to comply with subsection (2) or (5) shall be liable to a civil penalty.”.

7 Repeal of section 21 in Cap 17:05

The principal Act is amended by the repeal of section 21 and substitution of the following—

“21 Suspension of executive committee

(1) If it appears to the Minister on information supplied to him or her in respect of any registered private voluntary organisation that—

- (a) the organisation has ceased to operate in furtherance of the objects specified in its constitution; or
 - (b) the maladministration of the organisation is adversely affecting the activities of the organisation; or
 - (c) the organisation is involved in any illegal activities; or 5
 - (d) it is necessary or desirable to do so in the public interest;
- the Minister may make application to the High Court to—
- (e) appoint one or more persons as trustees to run the affairs of the organisation for a period not exceeding sixty days pending the election of members of a new executive committee; 10
 - (f) suspend all or any of the members of the executive committee of a registered private voluntary organisation from exercising all or any of their functions in running the affairs of the organisation.
- (2) Pending determination by the High Court of an application 15
to appoint one or more trustees, the Minister may appoint one or more provisional trustees who shall exercise all the powers of the substantive trustee until the provisional trustee's appointment is confirmed by the High Court or some other person is appointed with the leave of the Court as a substantive trustee. 20
- (3) If the High Court refuses an application to appoint or confirm the appointment of one or more trustees, the refusal of the application shall not affect the validity of anything done by the provisional trustee in good faith pursuant to this section before the date of such refusal.
- (4) Subject to any directions the Minister may give him or her, 25
any trustee appointed in terms of subsection (1) or (2) shall exercise all the functions of the executive committee of the organisation:
- Provided that a trustee shall not, without the approval of the Minister, exercise any power conferred on the executive committee by the organisation to acquire or dispose of any funds or other assets of the organization. 30
- (5) Where the Minister has suspended any member of the executive committee of a registered private voluntary organization in terms of subsection (1) from exercising all his or her functions and has not revoked the suspension within thirty days after it was effected— 35
- (a) the office of the person so suspended shall thereupon become vacant; and
 - (b) whether or not he has earlier resigned his office, the person shall thereupon be disqualified from being nominated as a candidate for election to any office of the organisation until such time (whichever is the later) as— 40
 - (i) the Minister, by notice in the *Gazette* removes such disqualification; or
 - (ii) the High Court refuses an application in terms of subsection (3). 45
- (6) Where the Minister has suspended some but not all the members of the executive committee of a registered private voluntary organisation in terms of subsection (1), the remaining members shall, on the expiry of

the period referred to in subsection (5), forthwith call for the election of new members in accordance with the constitution of the organisation.

5 (7) Any provisional or final trustee who is not in fulltime employment of the State, shall be entitled to be paid from the funds of the organisation, for so long as he or she holds office as such, a monthly salary at such rate as the Minister may determine.

10 (8) If after due investigation by a trustee appointed in terms of this section, he or she finds sufficient evidence on a balance of probabilities that any person who is or has been an office-bearer or employee of the organisation has misappropriated any funds or other assets of the organisation, the trustee may—

- 15 (a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence so found; and
- (b) lodge, on due notice to the office-bearer or employee or former office bearer or employee concerned (“the respondent”), an application to the High Court, together with the affidavit, for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to refund or return to such organisation any funds or other assets which the respondent has misappropriated from such organisation, employers organisation or federation.

25 (9) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the High Court grants the application for the order with or without amendment, the trustee shall, if the respondent does not comply fully or at all with the order by the return day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a judgment of the appropriate court.

30 (10) For the purposes of subsection (8), “misappropriate” in relation to the funds or other assets or moneys of the organisation under trusteeship includes doing either or both of the following in defiance of a notice referred to in subsection (9)—

- 35 (a) expending or disposing of the funds or other assets of the organisation; or
- (b) withdrawing moneys from any account with any bank, building society or other financial institution operated on behalf of the organisation.

40 (11) Any person who—

- 45 (a) makes any false representation to, or otherwise wilfully hinders or obstructs a trustee in the exercise of his or her functions under this section; or
- (b) falsely holds himself or herself out to be a trustee; or
- (c) contravenes subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level 7 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

8 Insertion of new section 22 of Cap 17:05

The principal Act is amended by repeal of section 22 and substitution of the following—

“22 Identification, appreciation and assessment of risks in relation to private voluntary organisations and other institutions 5

(1) In this section—

“risk identification, appreciation and assessment” in relation to private voluntary organisations and those institutions set out in sub paragraphs (i) to (ix) of the definition of “private voluntary organisation” in subsection (1) means, an assessment (in accordance with the criteria furnished from time to time by the Financial Action Task Force) of the risk or vulnerability of such organisations or institutions to being misused by terrorist organisations whether as a way for such terrorist organisations to pose as legitimate entities; or to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes; 10 15 20

“Financial intelligence Unit” or Unit means the financial intelligence unit referred to in section 6A of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*].

(2) The Minister shall, in cooperation with the Financial Intelligence Unit at intervals of not less than once in five years undertake a risk assessment of all private voluntary organisations and those institutions set out in paragraphs (i) to (ix) of the definition of “private voluntary organisation” in subsection (1) and in so doing may make such an assessment with respect to individual organisations or institutions or organisations or institutions of a specified class, or both. 25 30

(3) The Minister on the basis of a risk assessment, may by notice in writing to the private voluntary organisation or institution concerned, or in the case of an institution requiring to be registered as a private voluntary organisation and require the organisation or the institution or organisation to undertake specified measures to mitigate the identified risk or vulnerability within a specified time. 35

(4) An organisation or institution designated under subsection (3) shall have a right within fourteen days of a designation to make written representations to the Minister to have the designation set aside or amended on the basis that— 40

- (a) the designation was made in error; or
- (b) the measures specified by the Minister to mitigate the identified risk or vulnerability are unreasonable or disproportionate in relation to the identified risk or vulnerability;

and the Minister may reject or accept, conditionally or unconditionally such representations. 45

(5) The Minister may prescribe such special measures and requirements as being applicable to the designated private voluntary organisations referred to in subsection (3), not inconsistent with this Act, for the purpose of eliminating or minimising the risk of abuse.

5 (6) The matters to be prescribed by the Minister in terms of this section may include—

- (a) identifying the at risk or vulnerable private voluntary organisations;
- 10 (b) any additional or special reporting requirements which the private voluntary organisations may be required to comply with, such as beneficial ownership;
- (c) any records or other information which the private voluntary organisations may be required to maintain;
- 15 (d) powers of the Registrar to monitor and enforce compliance with the Act, including powers to revoke licensing or registration of a non-compliant private voluntary organisation or to order removal of a director, trustee, employee or other office bearer of a private voluntary organisation;
- 20 (e) powers of the financial intelligence unit or other competent authority as may be prescribed by the Minister, to receive or access information held or maintained by the private voluntary organisations; and
- 25 (f) designation of a contact person or authority for purposes of cooperating with foreign counterparts in sharing information and preventing the abuse of private voluntary organisations for purposes of financing or supporting terrorism.

(6) A designated institution that fails to register as a private voluntary organisation shall be guilty of an offence and liable to a fine not exceeding level 14 and each of the members of the governing body of that organisation or institution shall be liable to the same offence and penalty and additionally or alternatively to the fine, shall be liable to imprisonment for a period not exceeding ten years.

35 (7) In respect of a designated private voluntary organisation referred to in subsection (3) that fails to comply with the requirements prescribed under subsections 3 and 6 the Registrar, at the direction of the Minister shall impose one or both of the following measures—

- (a) revoke or suspend the license or registration of the private voluntary organisation;
- 40 (b) order the removal of a director, trustee, employee or other office holder of the private voluntary organisation.

(8) Any person aggrieved by a decision of the Minister in terms of this Act may appeal to the High Court in terms section 4 of the Administrative Justice Act [*Chapter 10:28*].

45 (9) Upon an appeal in terms of subsection (8) the High Court may—

- (a) uphold the decision of the Minister; or
- (b) refer the decision back to the Minister for reconsideration (whether with or without directions on how the decision is

- to be reconsidered) on any one or more of the following grounds—
- (i) allowing extraneous or irrelevant considerations to affect the decision;
 - (ii) failure to take into account relevant considerations in arriving at the decision; 5
 - (iii) any material mistake of fact or law that tainted the decision;
 - (iv) interest in the cause, bias, malice or corruption or the part of any person involved in making or contributing to the decision; 10
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.”.
- 9 Insertion of new section 22A of Cap 17:05** 15
- The principal Act is amended by insertion after section 22 of the following—
- “22A Civil penalty orders and amendment or substitution of Schedule
- (1) 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. 20
- (2) Subject to subsection (3), the Minister, may by notice in a statutory instrument amend or replace the Schedule.
- (3) When the Minister, wishes to amend or replace the Schedule, the Minister shall lay the draft statutory instrument amending or replacing the Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the National Assembly, the Minister shall cause it to be published in the *Gazette*.”. 25
- 10 Amendment of section 28 of Cap. 17:05**
- Section 28 (“Regulations”) of the principal Act is amended— 30
- (a) by the insertion after paragraph (e) of the following—
 - “(e1) the procedure and frequency of meetings of the Board; and
 - (e2) the conditions under which members of members of the Board shall hold or cease to hold office; and
 - (e3) the fees payable to the Board in carrying out its functions in terms of this Act; and 35
 - (e4) the disclosures of sources of funding from outside Zimbabwe whether in the application, the audit report or both.”;
 - (b) by the amendment in subsection (2) of “fine of level 4” and the substitution of “fine of level 14”. 40

11 Schedule inserted in Cap. 17:05

“SCHEDULE (*Section 13A*)

CIVIL PENALTY ORDERS

ARRANGEMENT OF PARAGRAPHS

5

Section

1. Interpretation in Schedule.
2. Power of Registrar to issue civil penalty orders.
3. Limitation on issuance and enforcement of civil penalty orders.
4. Service and enforcement of civil penalties and destination of proceeds thereof.
5. When hearings on question whether to serve civil penalty orders may be held
6. Evidentiary provisions in connection with civil penalty orders.
7. Designated officers.

15

Interpretation in Schedule

1. In this Schedule, unless the context otherwise requires—
 - “citation clause”, in relation to a civil penalty order, is the part of the order in which the Registrar 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;
 - “date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served in any of the ways specified in paragraph 3(1);
 - “defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;
 - “designated officer” means an officer of the Registry or other person designated and authorised by the Registrar to undertake duties in connection with the implementation of this Schedule;
 - “penalty clause”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;
 - “remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;
 - “show cause clause” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

40

Power of Registrar to issue civil penalty orders

2. (1) Where default is made in complying with any provision of this Act or of regulations or orders made under this Act for which a civil

penalty is specified in this Act and Schedule to be leviable, the Registrar may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate description specified in this paragraph. 5

(2) A natural or legal person shall be guilty of a civil infringement if he or she without fails to comply with section 13A (2) and (5).

(3) In the event of default in complying with subparagraph (2), the civil penalty shall provide for—

(a) a combination of— 10

(i) a fixed penalty of the amount of ten thousand Zimbabwe dollars or an amount equivalent to the value of the foreign currency obtained (whichever is the greater amount); and

(ii) a cumulative penalty over a period not exceeding ninety days of five hundred Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) that the fixed penalty or any outstanding amount thereof remains unpaid by the defaulter; 15

(b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error: 20

Provided that— 25

(i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register. 30

Limitation on issuance and enforcement of civil penalty orders

3. (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur. 35

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable (either immediately or within seven days from the service of the civil penalty order) to a penalty or combined penalties in excess of the equivalent to more than twice the highest monetary penalty for which that person is liable in respect of any of those civil defaults, the Registrar 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. 40 45

Service and enforcement of civil penalties and destination of proceeds thereof

5 4. (1) References to the designated officer serving upon a defaulter any civil penalty order in terms of this Schedule, are to be interpreted as requiring the designated officer to serve such order in writing to the defaulter concerned—

- (a) by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person, or to a responsible individual at the place of business of the defaulter; or
- 10 (b) by delivery through a commercial courier service to the defaulter's place of business or his or her principal office in Zimbabwe or other place of business of the defaulter; or
- (c) by electronic mail to the defaulter whose electronic mail address is known to the designated officer.

15 (2) The designated officer shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the designated officer in the civil penalty register.

20 (3) The designated officer may, if the defaulter is a corporate defaulter—

- (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned;
- 25 (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the designated officer shall note in the civil penalty register), there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default;
- 30

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

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

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

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

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or 5
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings). 10

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the designated officer to pay the civil penalty in the event that the defaulter does not pay. 15

(7) Upon the expiry of the ninety-day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officers is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it). 20 25

(8) The amount of any civil penalty shall—

- (a) be payable to the designated officer and shall form part of the Consolidated Revenue Fund or if a retention fund for the Board is established in terms of section 18 of the Public Finance Management Act [*Chapter 22:19*] shall form the funds of that retention fund; and 30
- (b) be a debt due to the Consolidated Revenue Fund or retention fund referred to in paragraph (a) and shall be sued for by the Registrar on behalf of the Consolidated Revenue Fund or the Board in any proceedings in the name of the Consolidated Revenue Fund or the Board in any court of competent civil jurisdiction: 35

Provided that for this purpose, the court of the magistrate in the district where the defaulter has his or her principal place of business shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction. 40

(9) Proceedings in a court for the recovery of a civil penalty shall be deemed to be proceedings for the recovery of a debt as if the defaulter had acknowledged the debt in writing. 45

(10) If the designated officer in terms of sub-paragraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the designated officer may, after notice to all interested parties, bring a single action in

relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- 5 (b) were served—
 - (i) on the same defaulter; or
 - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or
 - 10 (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the designated officer has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against sub-paragraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the designated officer for the amount of any outstanding civil penalty due from the convicted defaulter.

20 *When hearings on question whether to serve civil penalty orders may be held*

5. (1) If, in response to a show cause clause, an alleged defaulter satisfies the designated officer, that it is not possible within 48 hours to demonstrate that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control, the designated officer shall afford the alleged defaulter an opportunity to be heard by making oral representations to the designated officer, for which purpose—

- 30 (a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the designated officer an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control;
- 35 (b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the designated officer may serve copies of the affidavit on any person who, in the designated officer’s opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at a meeting to be presided over by the designated officer (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other person or not issued at all;
- 40
- 45

Provided that in such invitation or at the meeting the designated officer may restrict the parties to submitting written representations

only, before or no later than 48 hours after the conclusion of the meeting.

(2) The following provisions apply to every meeting convened under this paragraph in connection with the issuance of a civil penalty order— 5

- (a) if the alleged defaulter fails to attend at the meeting the designated officer may proceed to issue the civil penalty order;
- (b) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter’s control; 10
- (c) at the conclusion of the meeting the designated officer may—
 - (i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and, if so to upon whom, and if the designated officer decides to issue the civil penalty order the designated officer shall do so within twenty-four hours; 15 20
 - (ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the designated officer finds that the defaulter’s objections to its issuance were baseless, vexatious or frivolous; 25

Provided that the designated officer may defer making a decision by no more than 48 hours after the conclusion of the meeting and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter or any other person found to be liable for the civil penalty. 30

Evidentiary provisions in connection with civil penalty orders

6. (1) For the purposes of this Schedule the designated officer shall keep a civil penalty register wherein shall be recorded—

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be; 35 40
- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
 - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
 - (ii) a meeting was held in accordance with paragraph 5, then— 45
 - A. a record or an adequate summary of any representations made at the hearing by way of

5 an entry or cross-reference in, or annexure to,
the register (and if recorded by way of annexure
or cross-reference, the representations must be
preserved for a period of at least six years from
the date when they were made to the designated
officer);

10 B. a record of the outcome of the hearing, that is to
say, whether or not the civil penalty order was
cancelled, and if not the date from which it was
to have effect and whether a different defaulter
was served with it.

(2) A copy of—

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

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

Designated officers

25 7. (1) Any reference to the Registrar in this Schedule shall be
construed as a reference to a designated officer.

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

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

