



ZIMBABWE

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ACT

To amend the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*];
and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and President of Zimbabwe.

PART I

PRELIMINARY

1 Title

This Act may be cited as the Money Laundering and Proceeds of Crime (Amendment) Act, 2019.

2 New Chapter IIIA inserted in Cap. 9:24

The Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013) is amended by the insertion of the following Chapter after Chapter III—

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“CHAPTER IIIA

UNEXPLAINED WEALTH ORDERS

PART I

PRELIMINARY PROVISIONS

37A Interpretation in Chapter IIIA

(1) In this Chapter—

“enforcement authority” means—

- (a) the National Prosecuting Authority; or
- (b) the Zimbabwe Revenue Authority;

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

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

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

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

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

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

- (a) to obtain an interest in property; or
- (b) to obtain effective control over the property, or

(c) to become the trustee of a settlement in which the property is comprised; or

(d) to become an actual or potential beneficiary in relation to a settlement in which the property is comprised;

“response period” is whatever period the court specifies under section 37B(6) as the period within which the requirements imposed by the unexplained wealth order are to be complied with (or within the latest period, if more than one period is specified in respect of different requirements).

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

37B Unexplained wealth orders

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

Provided that if the court is not so satisfied, it may dismiss the application or require the applicant to serve notice of the application on the respondent before proceeding with the application.

(2) An application for an order must—

(a) specify or describe the property in respect of which the order is sought; and

(b) specify the person whom the enforcement authority thinks holds the property (“the respondent”) (and the person specified may include a person outside Zimbabwe).

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

(a) setting out the nature and extent of the respondent’s interest in the property in respect of which the order is made; and

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met); and

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order; and

(d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

(a) the form and manner in which the statement is to be given; and

(b) the person to whom it is to be given; and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

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

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

(7) Any person subjected to any unexplained wealth order may at any time apply to the High Court that issued the order to set it aside on good cause shown.

37C Requirements for making of unexplained wealth order

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

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

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

(3) The High Court must be satisfied that there are reasonable grounds for suspecting that—

- (a) the respondent is, or has been, involved in serious crime (whether in Zimbabwe or elsewhere); or
- (b) a person connected with the respondent is, or has been, so involved.

(4) It does not matter for the purposes of subsection (1)—

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

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

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

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

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

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

37D Effect of order, cases of non-compliance

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

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

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

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

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

- (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 37E(7));
- (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

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

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

(7) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent’s interest in the property is to the total value of the respondent’s interest in those items.

37E Effect of order: cases of compliance or purported compliance

(1) This section applies in a case where, before the end of the response period (as defined by section 37B(6)), the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made.

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

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

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

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

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

(7) For the purposes of this section—

- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with; and
- (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days); and
- (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address;

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

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

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

- (a) makes a statement that the person knows to be false or misleading in a material particular; or

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

shall be guilty of an offence and liable to a fine not exceeding twenty *per centum* of the value of the property that is the subject of the unexplained wealth order or, if no such value specified, not exceeding twenty thousand United States dollars (US\$20 000) or the equivalent in Zimbabwe dollars at the prevailing interbank rate of exchange) or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

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

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

(2) Subsection (1) does not apply—

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

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

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

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

37H Disclosure of information, copying of documents, etc

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

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

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

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

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

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

they may be retained until the proceedings are concluded.

37I Interim freezing of property in connection with unexplained wealth orders

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

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

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

37J Variation and discharge of interim freezing order

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

(2) Any person subjected to an interim freezing order may at any time apply to the High Court that issued the order to set it aside on good cause shown.

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

- (a) at the end of a period of forty-eight hours (beginning with the day after the day with which the sixty-day period mentioned

in section 37E(3) ends, but not including any public holiday), in a case where—

- (i) the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period; and
- (ii) proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) or Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”) have not been commenced before the end of the said forty-eight hour period in relation to the property concerned;

or

- (b) proceedings under Chapter IV (“Conviction-based Confiscation and Benefit Recovery Orders and Investigative Powers Appurtenant Thereto”) or Chapter V (“Civil Forfeiture of Tainted and Terrorist Property”) have been commenced before the end of a period of forty-eight hours after the day on which the sixty-day period mentioned in section 37E(3) ends (but not including any public holiday) and the proceedings (including any on appeal) have been determined or otherwise disposed of; or
- (c) the court has received a notification in relation to the property concerned under section 37E(4) (notification from enforcement authority of no further proceedings).

(3) Section 37E(7) applies for the purposes of subsection (2)(a) or (b) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.

(4) Before exercising power under this section to vary or discharge an interim freezing order, the High Court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

37K Exclusions

(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

- (a) power to exclude property from the order; and
- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

- (a) to meet the person’s reasonable living expenses; or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

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

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

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

- (a) must have regard to the desirability of the person being represented in any proceedings under this Chapter in which the person is a participant; and
- (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under the Legal Aid Act (No. 18 of 1996).

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

37L Restrictions on proceedings and remedies

(1) While an interim freezing order has effect—

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

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

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

(3) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court’s decision.

37M Receivers in connection with interim freezing orders

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

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

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

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

(5) In its application the enforcement authority may nominate a suitably qualified person for appointment as a receiver who may be a member of staff of the enforcement authority:

Provided that if no application is made under this subsection, the receiver shall be the Asset Management Unit, which shall be deemed to have been appointed as the receiver by the High Court if the interim freezing order is granted.

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

(7) Subsection (6) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

37N Powers of receivers appointed under section 37M

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

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

- (a) to exercise any of the following powers in relation to any property in respect of which the receiver is appointed—
 - (i) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
 - (ii) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business;
 - (iii) incurring capital expenditure in respect of the property;
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property

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

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

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

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

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

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

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

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

37O Supervision of section 37M receiver and variations

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

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

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

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

(3) The court may at any time vary or discharge—

- (a) the appointment of a receiver under section 37M;

- (b) an order under section 37N; or
- (c) directions under this section.

(4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—

- (a) the receiver;
- (b) the parties to the proceedings for the appointment of the receiver, for the order under section 37M or (as the case may be) for the directions under this section;
- (c) the parties to the proceedings for the interim freezing order concerned;
- (d) any person who may be affected by the court's decision.

37P Compensation

(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may order compensation to be paid to the applicant only if satisfied that—

- (a) the applicant has suffered loss as a result of the making of the interim freezing order; and
- (b) there has been a serious default on the part of the enforcement authority that applied for the order; and
- (c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

- (a) the compensation is payable by the enforcement authority that applied for the interim freezing order; and
- (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.”.

