

CHAPTER 22:16

BALANCE OF PAYMENTS REPORTING ACT

Act 4/2004

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Designation of exporters.
4. Declaration of reportable transactions.
5. Establishment of reporting systems.
6. Operating rules of reporting systems.
7. Reporting of reportable transactions.
8. Control of undesirable conduct in regard to reporting system.
9. Unauthorised access to or manipulation of reporting system.
10. Powers of entry and search.
11. Preservation of secrecy.
12. Use of confidential information for personal gain.
13. Suspension of rights of financial institution or designated exporter.
14. Evidence.
15. Reserve Bank to consult financial institutions and designated exporters and to observe rules of natural justice.
16. Exercise of functions by Reserve Bank.
17. Appeals.

AN ACT to provide for the reporting of transactions affecting the balance of payments of Zimbabwe; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 27th August, 2004.]

1 Short title

This Act may be cited as the Balance of Payments Reporting Act [*Chapter 22:16*].

2 Interpretation

(1) In this Act—

“banking business” means the business of accepting deposits withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting the deposits;

“designated exporter” means a person declared in terms of section *three* to be a designated exporter;

“financial institution” means—

- (a) a banking institution registered or required to be registered under the Banking Act [*Chapter 24:20*]; or
- (b) a building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*]; or
- (c) a person, other than a banking institution or building society, that carries on the business of buying, selling, exchanging and additionally, or alternatively, transferring foreign currency; or
- (d) any other person that carries on banking business in Zimbabwe;

“foreign currency” includes—

- (a) any currency which is legal tender in a country outside Zimbabwe; and
- (b) any payment instruction which—
 - (i) is issued outside Zimbabwe and is intended to enable the person in whose favour it is issued to obtain, directly or indirectly, Zimbabwean currency or foreign currency from some other person on the credit of the person issuing the instruction; or
 - (ii) is issued in Zimbabwe and is intended to enable the person in whose favour it is issued to obtain, directly or indirectly, foreign currency from some other person on the credit of the person issuing the instruction;

“Minister” means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“operating rules” means rules made in terms of subsection (1) of section *six*;

“payment instruction” means an instruction to a financial institution to transfer funds or make a payment, and includes—

- (a) a cheque, draft, banker’s acceptance, bill of exchange, travellers cheque or letter of credit; and
- (b) an instruction made by electronic means;

“reportable transaction” means any transaction to which a financial institution or a designated exporter is a party and which—

- (a) involves—
 - (i) the purchase or sale of foreign currency; or
 - (ii) the exchange of foreign currency for Zimbabwean currency; or
 - (iii) the exchange of foreign currency of any particular kind for foreign currency of some other kind; or
 - (iv) the transfer of funds from or into Zimbabwe; or
 - (v) the incurring of any debt, obligation or liability on the part of a Zimbabwean resident to make a payment outside Zimbabwe; or
 - (vi) the incurring of any debt, obligation or liability on the part of a foreign resident to make a payment in Zimbabwe;

or

- (b) is declared to be a reportable transaction in terms of section *four*;

“reporting system” means a reporting system established in terms of subsection (1) of section *five*;

“Reserve Bank”, subject to section *sixteen*, means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:10*];

“supervisor” means—

- (a) a person who is a supervisor in terms of section 46 of the Banking Act [*Chapter 24:20*]; or
- (b) an officer or employee of the Reserve Bank who is designated by the Reserve Bank as a supervisor for the purposes of this Act.

(2) For the purposes of the definition of “reportable transaction” in subsection (1), a financial institution or designated exporter shall be regarded as a party to a transaction if—

- (a) the institution or exporter makes or is required to make any payment; or
- (b) the institution or exporter transfers or is required to transfer any funds; or
- (c) the institution or exporter does or is required to do any other thing;

in order to further the transaction.

3 Designation of exporters

If, in the opinion of the Reserve Bank—

- (a) any person exports goods from Zimbabwe of a value in excess of the amount prescribed by the Minister by notice in a statutory instrument, and engages in reportable transactions in relation to the exported goods; and
- (b) it is in the national interest for that person to report those reportable transactions through a reporting system;

the Reserve Bank may, by written notice to the person concerned, declare the person to be a designated exporter.

4 Declaration of reportable transactions

The Minister, on the recommendation of the Reserve Bank, may by notice in a statutory instrument declare that any class of transactions which, in his or her opinion, have or are likely to have an effect on the balance of payments of Zimbabwe shall be reportable transactions for the purposes of this Act.

5 Establishment of reporting systems

(1) Subject to this Act, the Reserve Bank shall establish and operate one or more systems for the reporting, by electronic or other means, of information relating to reportable transactions or any class of such transactions.

(2) The Reserve Bank may direct any financial institution or designated exporter to—

- (a) provide such facilities; and
- (b) establish such procedures; and
- (c) maintain and operate such equipment and programmes; and
- (d) make such connections;

as, in the Reserve Bank’s opinion, are necessary to enable the institution or exporter, as the case may be, to report reportable transactions through the appropriate reporting system.

(3) Unless the Minister directs otherwise, the expenses incurred by a financial institution or designated exporter in complying with any directive under subsection (2) shall be borne by the institution or exporter, as the case may be, and not by the Reserve Bank.

(4) Any financial institution or designated exporter that contravenes or fails to comply with a directive given to it under subsection (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

6 Operating rules of reporting systems

(1) The Reserve Bank may make rules for the operation of any reporting system and the reporting of reportable transactions through the system.

(2) Operating rules may provide for—

- (a) the classes of reportable transactions that are to be made through the reporting system concerned; and
- (b) the information that is to be provided through the reporting system concerned; and
- (c) the form and manner in which reports are to be generated or made through the reporting system concerned; and
- (d) the period within which reports are to be generated or made through the reporting system concerned; and
- (e) the procedures to be followed and programmes to be utilised in the generating or making of reports; and
- (f) any other matter which, in the Reserve Bank's opinion, is necessary or convenient to be provided for in order to maintain the effectiveness, integrity and security of the reporting system concerned and to ensure the proper reporting of transactions through the system.

(3) Operating rules need not be published in the *Gazette*, but the Reserve Bank shall ensure that they are—

- (a) communicated to all financial institutions and designated exporters that are required to comply with them; and
- (b) published without delay in the monthly bulletin produced by the Reserve Bank and in such other manner as the Reserve Bank considers appropriate.

(4) Any financial institution or designated exporter that contravenes or fails to comply with any operating rule communicated to it in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

7 Reporting of reportable transactions

(1) Where the Reserve Bank has established a reporting system for reportable transactions generally or any class of reportable transactions, every financial institution and designated exporter that becomes a party to any such transaction shall report it in accordance with the operating rules of the system.

(2) Any financial institution or designated exporter that contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

8 Control of undesirable conduct in regard to reporting system

(1) If the Reserve Bank has reasonable grounds to believe that a financial institution or designated exporter is engaging in or is about to engage in any act, omission or course of conduct which prejudices or will prejudice the integrity, effectiveness or security of a reporting system, the Reserve Bank may issue a written directive requiring that institution or exporter to do any one or more of the following—

- (a) to cease engaging in the act, omission or course of conduct concerned;
- (b) to do such things as the Reserve Bank may specify to remedy the situation;
- (c) to provide the Reserve Bank with such information relating to the matter as is specified in the directive.

(2) Any person who contravenes or fails to comply with a directive in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen.

9 Unauthorised access to or manipulation of reporting system

(1) In this section—

“database” means any collection of information or data, whether in electronic form or otherwise.

(2) Subject to subsection (3), any person who knowingly and intentionally—

- (a) gains access to information reported through a reporting system or contained in any database associated with a reporting system; or
- (b) alters or destroys any information reported through a reporting system or contained in any database associated with a reporting system; or
- (c) publishes any information reported through a reporting system or contained in any database associated with a reporting system; or
- (d) alters or destroys any programme for the electronic operation of a reporting system or any database associated with a reporting system;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Subsection (2) shall not apply to—

- (a) an employee or agent of the Reserve Bank or of a financial institution or designated exporter, acting lawfully in the course of his or her employment or mandate, as the case may be; or

(b) the publication of information obtained elsewhere than from a reporting system or a database associated with a reporting system.

(4) Subsection (2) shall have extra-territorial operation.

10 Powers of entry and search

(1) Subject to subsection (2), for the purpose of maintaining the integrity, effectiveness or security of a reporting system, or in order to ensure compliance with any operating rules or with any direction given under this Act, a supervisor may—

- (a) at any time during normal office hours, without previous notice, enter the premises of a financial institution or designated exporter;
- (b) examine and test any facility, equipment, programme or connection relating to the reporting system;
- (c) require any officer, employee or agent of a financial institution or designated exporter to produce any of the institution's or exporter's equipment, records or documents relating to the reporting system;
- (d) search any premises referred to in paragraph (a) for any equipment, records or documents relating to the reporting system;
- (e) examine and make extracts from and copies of records or documents relating to the reporting system;
- (f) remove any equipment, record or document relating to the reporting system from the premises of a financial institution or designated exporter, for so long as may be necessary for the purpose of examining it or, in the case of records or documents, making extracts from or copies of them:

Provided that—

- (i) the supervisor shall give a full receipt for any such equipment, record or document so removed;
 - (ii) no such equipment, record or document shall be examined unless an officer of the financial institution or designated exporter concerned has been given an opportunity to be present at the examination;
- (g) require any officer, employee or agent of a financial institution or designated exporter to explain any entry in a record or document relating to the reporting system.

(2) The powers of entry and search conferred by subsection (1) shall not be exercised except with the consent of the financial institution or designated exporter concerned or the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(3) For the purposes of subsection (1), a record or document relating to a reportable transaction shall be regarded as a record or document relating to a reporting system.

11 Preservation of secrecy

(1) Subject to subsections (2) and (3), no supervisor or officer or employee of the Reserve Bank shall disclose any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the affairs of any financial institution or designated exporter or of any party to a reportable transaction.

(2) The Reserve Bank may disclose any information whose disclosure, in the Reserve Bank's opinion, is reasonably necessary to protect the integrity, effectiveness or security of a reporting system.

(3) Subsection (1) shall not apply to—

- (a) any disclosure made by the person concerned in the performance of his or her functions under this Act or when required to do so by a court or in terms of any other enactment; or
- (b) the disclosure of information that is generally known to members of the public or a substantial section of the public; or
- (c) the disclosure of information that does not reveal details of any individual transaction reported through a reporting system; or
- (d) the reporting, to an appropriate authority, of any criminal conduct which the person concerned reasonably suspected may have occurred in connection with any transaction reported through a reporting system.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

12 Use of confidential information for personal gain

(1) Subject to subsection (2), if any supervisor or any officer or employee of the Reserve Bank for personal gain makes use of any information which he or she has acquired in the performance of his or her functions under this Act and which relates to the affairs of a particular financial institution or designated exporter or a party to a reportable transaction, he or she shall be guilty of an offence and liable to—

- (i) a fine not exceeding level fourteen or double the amount of his or her gain, whichever is the greater; or
 - (ii) imprisonment for a period not exceeding five years;
- or to both such fine and such imprisonment.

(2) It shall be a defence to a charge under subsection (1) for the person charged to show that the information which he or she used was generally known to members of the public or to a substantial section of the public.

13 Suspension of rights of financial institution or designated exporter

(1) If the Reserve Bank is satisfied that a financial institution or designated exporter has—

- (a) contravened or failed to comply with a directive given under subsection (2) of section *five* or issued under subsection (1) of section *eight*; or
- (b) contravened or failed to comply with an operating rule communicated to the institution or exporter, as the case may be, under subsection (3) of section *six*; or
- (c) failed to report a reportable transaction through a reporting system established for the reporting of such transactions; or
- (d) hindered or obstructed a supervisor in the exercise of his or her functions under section *ten*;

the Reserve Bank may, by written notice, suspend for such definite or indefinite period as may be specified in the notice the right of the financial institution or designated exporter to become a party to all reportable transactions or to such classes of reportable transactions as may be specified in the notice.

(2) The Reserve Bank may issue a notice under subsection (1) whether or not criminal proceedings have been instituted against the financial institution or designated exporter concerned in respect of the conduct that caused the Reserve Bank to issue the notice.

(3) Notwithstanding any other enactment, during the period specified in a notice issued under subclause (1), the financial institution or designated exporter concerned—

- (a) shall not become a party to any reportable transaction or to any class of such transactions specified in the notice, as the case may be; and
- (b) in the case of a financial institution, shall not enter into any transaction or exercise any function which a financial institution may enter into or exercise under the Exchange Control Act [*Chapter 22:05*];

except to such extent as may be specified in the notice.

(4) Any financial institution or designated exporter that contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding—

- (a) ten times the value of the foreign currency, funds, debt, obligation or liability involved in the reportable transaction that was the subject of the offence; or
- (b) level fourteen;

whichever is the greater.

14 Evidence

A document purporting to be signed by or on behalf of the Reserve Bank and stating—

- (a) the terms of any directive given under subsection (2) of section *five* or issued under subsection (1) of section *eight*; or
- (b) that any directive was given to a financial institution or designated exporter under subsection (2) of section *five* or issued under subsection (1) of section *eight*; or
- (c) the terms of any operating rule; or
- (d) that any operating rule was communicated to a financial institution or designated exporter in terms of subsection (3) of section *six*;

shall be admissible in any proceedings in any court on its production by any person, and shall be *prima facie* proof of the facts stated in it.

15 Reserve Bank to consult financial institutions and designated exporters and to observe rules of natural justice

Wherever practicable—

- (a) before exercising any of its functions under this Act, the Reserve Bank shall consult financial institutions and designated exporters that will be or are likely to be affected by the exercise of that function; and
- (b) when exercising any of its functions under this Act, the Reserve Bank shall observe the rules commonly known as the rules of natural justice and, in particular, shall take all reasonable steps to ensure that every person whose interests are likely to be affected by the exercise of that function is given an adequate opportunity to make representations in the matter;

unless, in the Reserve Bank's opinion, such consultation or observance would unduly delay the exercise of the function or would prejudice its effectiveness.

16 Exercise of functions by Reserve Bank

(1) Any function of the Reserve Bank under this Act may be exercised on behalf of the Bank—

- (a) by the Governor of the Reserve Bank; or
- (b) subject to the directions of the Governor of the Reserve Bank, by any Deputy Governor or officer of the Reserve Bank designated by the Governor.

(2) The Governor of the Reserve Bank and any Deputy Governor or officer of the Reserve Bank designated in terms of paragraph (b) of subsection (1) shall exercise the functions referred to in that subsection in accordance with any general directions of policy that the board of directors of the Reserve Bank may give them.

(3) This section shall not be construed as limiting the Reserve Bank's power under any other law to delegate its functions under this Act.

17 Appeals

(1) Any person aggrieved by—

- (a) a declaration of that person as a designated exporter; or
- (b) a directive given under subsection (2) of section *five* or issued under subsection (1) of section *eight*;
or
- (c) a notice under section *thirteen*;

may appeal against it to the Administrative Court within the time and in the manner prescribed in rules of court.

(2) In an appeal in terms of subsection (1), the Administrative Court may confirm, vary or set aside the declaration, directive or notice appealed against and give such other order, whether as to costs or otherwise, as the Court considers just.

(3) The lodging of an appeal in terms of subsection (1) shall not have the effect of suspending the declaration, directive or notice appealed against, but the Administrative Court shall ensure that all necessary steps are taken to determine the appeal as quickly as possible.