

**MONEY LAUNDERING AND PROCEEDS OF CRIME (AMENDMENT)
BILL, 2018**

EXPLANATORY MEMORANDUM

This Bill will amend the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], section 27 of the National Prosecuting Authority Act [*Chapter 7:20*], section 6 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*], section 87 of the Deeds Registries Act [*Chapter 20:05*], section 210 of the Customs and Excise Act [*Chapter 23:02*], section 5 of the Income Tax Act [*Chapter 23:06*], section 34A of the Revenue Authority Act [*Chapter 23:11*], section 360 of the Companies Act [*Chapter 24:03*] and the Bank Use Promotion Act [*Chapter 24:24*] with a view to achieving the following: the enactment of a comprehensive legal framework to combat money laundering and terrorist financing:

- the implementation in domestic law of the International Convention for the Suppression of the Financing of Terrorism was adopted by the General Assembly of the United Nations Organisation by Resolution 54/109 of 9 December, 1999, and related UN Security Council Resolutions 1267 (of 15 October, 1999) and 1373 (of 28 September, 2001);
- the implementation in domestic law of 40 recommendations regarded by the Financial Action Task Force (FATF), as representing international standards to which all states should aspire;
- the strengthening of the legislative defences against misuse of our financial system for the purpose of money-laundering or the financing of terrorist activities.

Since 1999 Zimbabwe has been a member of the Eastern and Southern African Anti Money Laundering Group, a body whose object is to adopt and implement measures to combat money-laundering and the financing of terrorism and serious crime. By virtue of its membership, Zimbabwe is pledged to implement recommendations issued by an inter-governmental organisation called the Financial Action Task Force, whose 40 recommendations are regarded as representing international standards to which all states should aspire. Failure to implement the recommendations will lead to Zimbabwe being increasingly isolated from the international financial system.

The Eastern and Southern African Anti Money Laundering Group evaluates its members' compliance with the 40 recommendations by sending teams of trained assessors from its member countries to visit each member state and assess the member's legislation and financial systems. Zimbabwe was found not to be fully compliant with a number of recommendations.

The findings of the team, and the urgent need to remedy the deficiencies found by them, are the immediate occasion for this Bill.

In more detail, the individual provisions of the Bill are as follows:

Clause 1

This Clause sets out the Bill's short title.

Clause 2

This clause sets out definitions of key words and phrases used in the Bill. Of particular note are the definitions of "competent authorities"; "document"; "Financial Action Task Force"

Clause 3

The principal act is amended by the amendment of section 3 on the Units and competent supervisory authorities' co-operation in ensuring compliance with the Act.

Clause 4

The principal Act is amended in section 4 Insertion of a new Chapter IA which shall give detail to the Financial Intelligence Unit.

Clause 5

Section 11 of the principal Act is amended in subsection (2) by the deletion and substitution to effect identification of and record keeping in relation to disclosures.

Clause 6

This clause makes an insertion of a new Part III in Chapter II in the principal act, on the Policy, Coordination and Risk factor of the Unit.

Clause 7

Amends section 13 in the interpretation section for Part I of Chapter III of the principal Act by inserting new definitions.

Clause 8

Amends section 15 of the principal Act, by being more specific to the property that is the subject matter to the prescribed transaction.

Clause 9

Amends section 20 of the principal Act is amended by the insertion of three new subsections, dealing with high risk customers and politically exposed persons.

Clause 10

Amends section 21 of the principal Act by inserting of a new paragraph (e1) in relation to compliance of previous sections of the principal act.

Clause 11

Amends section 25 of the principal Act by inserting subsections dealing with compliance with by local and foreign financial groups in combating money laundering and financing of terrorism.

Clause 12

Insertion of a new section 26A in relation to dealing with high risk countries.

Clause 13

The principal Act is amended by the repeal of section 27.

Clause 14

The principal Act is amended by the repeal of section 29, 35 and 36.

Clause 15

Amends section 39 of the principal Act by insertion of a new subsection.

Clause 16

Amends section 78 of the principal Act by inserting subsection (2).

Clause 17

The National Prosecuting Authority [*Chapter 7:20*] is amended by the insertion after section 27 of a new section 27A establishing the Asset Forfeiture Unit of the National Prosecuting Authority.

Clause 18

Amends of section 6 of the Criminal Matters (mutual assistance) Act [*Chapter 9:06*] by repealing subsection (5) and substitution of a new subsection specifying grounds for when assistance cannot be refused.

Clause 19

This clause amends the Deeds Registries Act [*Chapter 20:05*] in section 5, part VII in section 71A, and 87, by the insertion of sections dealing with duties of registrars; registration of deeds of trust and regulations respectively.

Clauses 20–22

These clauses amend the Customs and Excise Act [*Chapter 23:02*], in section 210; the Income Tax Act [*Chapter 23:06*] in section 5; and the Revenue Authority Act [*Chapter 23:11*] in section 34A. The amendments all refer to secrecy in relation to information received by the Commissioner-General and its qualifications for use.

Clause 23

Amends section 2 of the Bank Use Promotion Act [*Chapter 24:24*] by amending the definition of Director and unit, and repeals Part II.

Clause 24

Focuses on saving and transitional provisions mainly insertion of definitions for use in that particular section.

BILL

To amend the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], section 27 of the National Prosecuting Authority Act [*Chapter 7:20*], section 6 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*], section 87 of the Deeds Registries Act [*Chapter 20:05*], section 210 of the Customs and Excise Act [*Chapter 23:02*], section 5 of the Income Tax Act [*Chapter 23:06*], section 34A of the Revenue Authority Act [*Chapter 23:11*], section 360 of the Companies Act [*Chapter 24:03*] and the Bank Use Promotion Act [*Chapter 24:24*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Money Laundering and Proceeds of Crime (Amendment) Act, 2018.

2 Amendment of section 2 of Cap. 9:24

Section 2 (“Interpretation”) of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (hereinafter called “the principal Act”) is amended in subsection (1)—

(a) by the insertion of the following definitions—

““Advisory Committee” means the National Anti-Money Laundering Advisory Committee appointed in terms of section 12C;

“competent authorities” refers to public authorities institutions with designated responsibilities for combating money laundering and terrorist financing and include—

(i) the Financial Intelligence Unit;

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- (ii) competent supervisory authorities;
 - (iii) law enforcement agencies;
 - (iv) the National Prosecuting Authority;
 - (v) the Zimbabwe Revenue Authority; and
 - (vi) the Department of Immigration; 5
- “document” means a record of information kept in any form, including in electronic form;
- “Financial Action Task Force” refers to the inter-governmental body established in 1989 whose responsibility include is to development of anti-money laundering and combating of terrorist financing policies to combat money laundering and for adoption by countries;” 10
- (b) by the deletion of the definition of “serious offence” one year”six months and the substitution of the following—
- “serious offence” means—
- (a) a money laundering offence; or 15
 - (b) a terrorist financing offence; or
 - (c) a terrorist act, under whatever offence that act is prosecuted; or
 - (d) an offence for which the maximum penalty is death or life imprisonment; or 20
 - (e) an offence for which the penalty is—
 - (i) imprisonment of four years or more whether or not any portion is suspended by the convicting court;
 - (ii) imprisonment for any period of less than four years but not less than one year, any portion of which equal 25 to or exceeding one year is not suspended by the convicting court, without the option of a fine; or
 - (f) an offence under the law of a foreign State in relation to any act or omission which, had it occurred in Zimbabwe, would have constituted an offence under paragraph (a), (b), 30 (c), (d) or (e);”
- (c) by the repeal of the definition of “Unit” and the substitution of—
- ““Unit” means the Financial Intelligence Unit referred to in section 6A;”

3 Amendment of section 3 of Cap. 9:24 35

Section 3 (“Unit and competent supervisory authorities to co-operate in securing compliance with this Act”) is amended—

- (a) by the repeal of subsections (1) and (6);
- (b) by the insertion of a new subsection after subsection (3) as follows—
 - “(3a) The Unit and competent supervisory authorities shall come up with and implement supervision and monitoring programmes taking into account the money laundering and terrorist financing risks among and within financial institutions and designated non-financial businesses and professions and in so doing, shall direct greater focus and resources to institutions and areas of higher risk.”. 40 45

4 New Chapter inserted in Cap. 9:24

The principal Act is amended by the insertion after Chapter I of the following Chapter—

“CHAPTER IA

FINANCIAL INTELLIGENCE UNIT

6A Establishment, composition and location of Financial Intelligence Unit

(1) The Financial Intelligence Unit, previously established as the Bank Use Promotion and Suppression of Money Laundering Unit under the Bank Use Promotion Act [*Chapter 24:24*], continues in operation subject to this Act under the name “Financial Intelligence Unit”.

(2) The Unit shall be deemed to be a unit in the administrative establishment of the Reserve Bank having the following special features, namely that—

- (a) it shall be headed by a Director-General appointed by the Governor in consultation with the Minister; and
 - (b) it shall consist of such other members of staff as may be necessary for the performance of its functions, who shall be appointed by the Director-General; and
 - (c) the staff of the Unit shall be answerable to the Director-General for the discharge of their duties and for any failure to do so or other breach of discipline, for which purpose the Director-General shall (as far as possible) apply the rules of the Reserve Bank pertaining to the discipline of the staff of the Reserve Bank; and
 - (d) the budget of the Unit—
 - (i) shall be approved by the Board of the Reserve Bank;
 - (ii) be managed by the Director-General independently of the Reserve Bank but be subject to internal audit by the Reserve Bank and be audited by the auditors of the Reserve Bank; and
 - (iii) may, in addition to consisting of moneys allocated by the Reserve Bank, include any moneys appropriated by Act of Parliament for the purposes of the Unit;
- and
- (e) the Director-General shall vacate his or her office—
 - (i) if he or she tenders his or her resignation, in writing, to the Governor, giving such period of notice as may be provided for in his or her conditions of employment; or
 - (ii) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine in any country; or
 - (iii) if he or she is found guilty of gross misconduct or incompetence, following a disciplinary process; or
 - (iv) he is or she is no longer able to perform his functions due to infirmity of body or mind;

- (f) except as provided for in section 6B (2) the Unit shall have operational independence from the Reserve Bank and shall not, in the performance of its functions under this Act, be subject to the direction and control of the Minister or any other person or Authority. 5

6B Functions of Unit

(1) Subject to this Act, the functions of the Unit shall be—

- (a) to receive suspicious transaction reports, cash transaction reports and other financial data from financial institutions, designated non-financial businesses or professions or from any other sources; 10
- (b) using the information referred to in paragraph (a) and any other information to which the Unit may have access, to undertake operational and strategic analysis and produce ejudice reports; 15
- (c) to disseminate the results of the analyses to law enforcement agencies, other competent authorities, financial institutions, designated non-financial businesses or professions and to foreign counterpart agencies, as may be appropriate or necessary for purposes of combating money laundering, related predicate offences and terrorist financing, whether in Zimbabwe or elsewhere; 20
- (d) to monitor and ensure compliance with this Act by competent supervisory authorities, financial institutions and designated non-financial businesses or professions; 25
- (e) to coordinate the measures and activities referred to in section 12A; and
- (f) to perform any other function conferred or imposed on the Unit by or under this Act or any other enactment.

(2) The Minister, after consultation with the Advisory Committee, may, in writing give the Director-General directions with regard to policy to be adopted by the Unit in the performance of its functions. 30

6C Further provisions on the Director-General, staff, agents and inspectors of Unit

(1) The Director-General must be a person experienced or qualified in economics, banking, accounting, law or other profession relevant to combating money laundering and terrorist financing. 35

(2) Subject to this Act, the Director-General shall be responsible for directing, managing and controlling the activities of the Unit and its staff and agents. 40

(3) The Director-General may appoint any—

- (a) police officer; or
- (b) member of an intelligence service of the State; or
- (c) employee of the Zimbabwe Anti-Corruption Commission established by the Constitution; or 45
- (d) employee of the Reserve Bank; or
- (e) person employed by any other institution or authority that the Director-General considers appropriate;

to be an agent of the Unit for the purpose of exercising any of the Unit's functions in terms of this Act or any other enactment:

Provided that any such appointment shall be made with the approval of the Minister and, in the case of—

- 5 (a) a police officer, with the approval of the Commissioner-General of Police;
- (b) a member of an intelligence service, with the approval of the person in control or command of the service;
- 10 (c) an employee of the Zimbabwe Anti-Corruption Commission, with the approval of the chairperson of the Commission;
- (d) an employee of the Reserve Bank, with the approval of the Governor of the Reserve Bank;
- (e) an employee of any other institution or authority, with the approval of the governing body of that institution or authority.

15 (4) The Director-General may delegate to any member of the Unit's staff any function conferred or imposed upon him or her by this Act.

6D Inspectors and their powers

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

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

(3) An inspector may, under warrant (unless the inspector believes on reasonable grounds that the delay in obtaining a warrant would defeat the purpose of this subsection, and that the inspector believes he or she would obtain the warrant from a Magistrate or Justice of the Peace on the grounds specified in paragraphs (i) or (ii) below, if he or she applied for one) enter premises where the business of a financial institution or a designated non-financial business or profession is being carried on and, after informing the person in charge or control of the premises of the purpose of his or her visit, may do any or all of the following—

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

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be

necessary for the purpose of any examination, investigation, trial or inquiry arising out of any contravention of this Act; where there are reasonable grounds for believing that such action is necessary—

- (i) in the interests of public safety or public order; or 5
- (ii) for the prevention, investigation or detection of an offence in terms of this Act, for the seizure of any property which is the subject-matter of such an offence or evidence relating to such an offence, or for the lawful arrest of a person. 10

(4) In a search under subsection (3), an inspector may be accompanied and assisted by one or more police officers or other persons, and those persons shall have the same powers as the inspector under that subsection.

(5) Every person whose premises have been entered in terms of subsections (3) and (4), and every employee or agent of that person in or on those premises shall forthwith provide the inspector and his or her assistants with whatever facilities the inspector may reasonably require for the exercise of the powers conferred on them by those subsections. 15

(6) Nothing in this section shall be taken to require a legal practitioner to disclose any privileged communication made to him or her in that capacity. 20

(7) Any person who—

- (a) hinders or obstructs an inspector or his or her assistant in the exercise of his or her powers under this section; or 25
- (b) without just cause, fails or refuses to comply with a lawful request of an inspector or his or her assistant in terms of this section;

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 such fine and such imprisonment. 30

(8) A court convicting a person of failing to give information or to produce any document when required to do so under this section may require the person, within such period as the court may specify, to give the information or to produce the document, as the case may be. 35

6E Unit to have access to information

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

- (a) financial institution; or
- (b) designated non-financial business or profession; or 40
- (c) law enforcement agency; or
- (d) competent supervisory authority; or
- (e) public authority or public officer; or
- (f) company; or
- (h) trustee of a trust; or 45
- (g) private voluntary organisation registered or required to be registered in terms of the Private Voluntary Organisations Act [*Chapter 17:05*];

any information, whether specific or general, that the Director-General considers necessary to carry out its functions.

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

(3) This section shall not be construed as—

10 (a) limiting the powers of inspectors under section 6D (“Powers of inspectors”); or

(b) precluding the Unit from obtaining information from any other person or entity, whether in accordance with the Access to Information and Protection of Privacy Act [*Chapter 10:27*] or otherwise.

15 (4) The Unit is authorised to access and review on-site information which is necessary to the fulfilment of its functions and that belongs to or is in the custody of financial institutions and designated non-financial businesses and professions.

20 (5) Subsections (1) and (2) shall be applied subject to the limitations in the definition of “designated non-financial businesses and professions” in section 13 and subject to section 30(2).

(6) The Unit may, in relation to any report or information it has received, obtain, where not otherwise prohibited by law, any information it deems necessary to carry out its functions from any of the following—

(a) a law enforcement agency;

(b) any competent supervisory authority;

(c) any public authority or person;

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

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

35 6F Confidentiality

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

40 (a) in the course of exercising his or her functions under this Act; or

(b) to a judicial officer for the purposes of any legal proceedings under this Act; or

45 (c) in accordance with the order of any court; or

(d) for the purposes of any prosecution or criminal proceedings; or

(e) where the disclosure is authorised or required by or under this Act or any other law.

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

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

6G Reports of Unit

(1) The Director General shall, with the concurrence of the Advisory Committee —

(a) as soon as possible after the 30th June of each year, submit to the Minister a report on the Unit’s activities covering the period from the 1st of January to the 30 of June; and

(b) as soon as possible after the 31st December of each year, submit to the Minister a consolidated report on the Unit’s activities covering the period from the 1st of January to the 31st of December.

(2) As soon as practicable after receiving a consolidated report in terms of subsection (1)(b), the Minister shall lay it before Parliament.”.

5 Amendment of section 11 of Cap. 9:24

Section 11(“Obligation to disclose physical cross-border transportation of currency, bearer negotiable instruments and precious metals or stones”) is amended in subsection (2) by the deletion of the words “provide access to this information to an inspector on request” and the substitution of the words “, without delay and, in any case not later than seventy-two hours, submit a copy of every such disclosure and accompanying particulars of the person making the disclosure, to the Unit”.

6 New Part inserted in Chapter II in Cap. 9:24

The principal Act is amended by the insertion in Chapter II of the following Part—

“PART III

POLICY, COORDINATION AND RISK

12A National money laundering and terrorist financing risk assessment and risk mitigation

(1) The Unit shall be responsible for coordinating the activities and programs of competent authorities, financial institutions, designated non-financial businesses and professions and all other persons upon whom this Act imposes obligations, for purposes of combating money laundering and terrorist financing.

(2) The Unit shall coordinate with competent authorities, financial institutions, designated non-financial businesses or professions or any other persons or entities as the Unit considers relevant, to assess or facilitate the assessment of the money laundering and terrorist financing risks to which the country is exposed.

(3) Without derogating from the provisions of subsection (2) the Unit shall ensure that measures are undertaken—

(a) to identify and assess the money laundering and terrorist financing risks associated with all types of legal persons created or operating in the country; and

5 (b) to identify and assess the money laundering and terrorist financing risks that may arise in relation to new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

10 (4) In the performance of its duties under this section, the Unit may require any person or entity to provide such information as the Unit considers necessary or to take part in the risk assessment process or provide such other cooperation as may be reasonably necessary for the risk assessment.

15 (5) The Unit shall timeously submit results of any national risk assessment to the Minister and to the National Anti-Money Laundering Committee and to all relevant persons, entities and institutions as are reasonably interested in such results.

(6) The Unit shall ensure that relevant risk assessments are undertaken regularly and kept up to date.

20 (7) Competent authorities and other institutions with responsibilities for combating money laundering and terrorist financing, must pay due regard to the results and recommendations contained in a risk assessment report issued by the Unit and shall implement applicable anti-money laundering and combating financing of terrorism measures, commensurate with the risk.

25 **12B Assessing risks and implementing the risk-based approach by financial institutions and designated non-financial businesses and professions**

30 (1) Every financial institution and designated non-financial business or profession shall assess the money laundering and terrorist financing risks to which it is exposed, and shall maintain adequate records thereof.

(2) Based on the risk assessment, the financial institution or designated non-financial business or profession shall implement prescribed anti-money laundering and combating financing of terrorism measures, commensurate with the identified risks, that is to say —

35 (a) shall implement enhanced measures for high risk customers, products, services or situations as appropriate; and

(b) may implement simplified or reduced measures for low risk customers, products, services or situations as appropriate:

40 Provided that it shall not be permissible for a financial institution or designated non-financial business or profession to dispense with any prescribed anti-money laundering measures on the grounds that it considers the risk to be low.

45 (3) Every financial institution or designated non-financial business or profession shall review and update its risk assessment regularly to take into account material changes in risk factors and shall maintain records of such reviews and updates.

(4) Before launching any new product, service, business practice, and before the use of any new technological innovation, for both new and

existing products, every financial institution and every designated non-financial business or profession, shall assess and document the money laundering and terrorist financing risk posed by such product, service, business practice or technology, and put in place adequate measures to mitigate the risk. 5

(5) The Director General may issue directives or guidelines to further clarify or elaborate on the obligations of financial institutions and designated non-financial businesses and professions in terms of this section.

(6) Any financial institution or designated non-financial business or profession which fails to comply with the provisions of this section, including the requirements of any directive or guidelines issued thereunder by the Director General shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding two years or to both such fine and imprisonment. 10 15

12C Establishment of a National Anti-Money Laundering Advisory Committee

(1) There is hereby established a national committee to be known as the National Anti-Money Laundering Advisory Committee, (hereinafter referred to as “the Committee”), whose function shall be to advise the Minister on policies to combat money laundering and terrorist financing and performing any other function conferred or imposed on it by this or any other enactment. 20

(2) The Committee shall consist of—

(a) the Director-General; 25

(b) not less than three and not more than seven members appointed by the Minister from among heads of competent authorities (including a head of a relevant department or Unit of the Competent Authority) as defined under section 2.

(c) not less than three and not more than seven other persons appointed by the Minister for their qualifications or experience in financial analysis, law, accounting, forensic auditing, law enforcement or any other field which, in the Minister’s opinion, is relevant to the Committee. 30

(3) Members of the Committee shall be appointed on such terms and conditions and for such period, not exceeding three years, as the Minister may fix. 35

(4) A person who ceases to be a member shall be eligible for re-appointment for only one more term.

(5) The Minister shall appoint the Chairperson and Vice-Chairperson from amongst the members of the Committee. 40

(6) The Committee shall meet as often as necessary, but at least once every quarter.

(7) The procedure to be adopted at the meetings of the Committee shall be as determined by the Committee. 45

12D Establishment of a National Taskforce on Anti-Money Laundering and combating of Financing of Terrorism

(1) There is hereby established a national task force, to be known as the National Task Force on Anti Money Laundering and Combating

Financing of Terrorism (hereinafter referred to as the “National Task Force”).

(2) Membership of the National Task Force shall be as drawn from the following—

- 5 (a) Financial Intelligence Unit;
- (b) Ministry responsible for finance;
- (c) Ministry responsible for foreign affairs;
- (d) Ministry responsible for justice;
- (e) Ministry responsible for mining;
- 10 (f) Ministry responsible for the Private Voluntary Organizations Act [*Chapter 17.05*] ;
- (g) Attorney General’s Office;
- (h) Department of Immigration;
- (i) Estate Agents Council;
- 20 (j) Insurance and Pensions Commission;
- (k) Judicial Services Commission;
- (l) Lotteries and Gaming Board;
- (m) National Prosecuting Authority;
- (n) President’s Department;
- 25 (o) Postal and Telecommunications Regulatory Authority;
- (p) Registrar of Banks;
- (q) Registrar of Companies and Deeds;
- (r) Reserve Bank of Zimbabwe- Exchange Control;
- (s) Reserve Bank of Zimbabwe- National Payment Systems;
- 30 (t) Securities and Exchange Commission of Zimbabwe;
- (u) Zimbabwe Anti-Corruption Commission;
- (v) Zimbabwe Republic Police;
- (w) Zimbabwe Revenue Authority:

35 Provided that additional members for the national taskforce may be drawn from other organisations that can be identified as dealing with money laundering and terrorist financing.

(3) Meetings of the National Task Force shall be held as often as necessary but in any case not less than four times in a year and shall be chaired by the Director-General of the Financial Intelligence Unit.

- 40 (4) The functions of the National Task Force shall be to—
- (a) promote national cooperation and coordination among members, on anti-money laundering and combating financing of terrorism programs and activities; and
 - 45 (b) make recommendations to the Anti-Money Laundering Advisory Committee, on matters of a policy nature.”.

7 Amendment of section 13 of Cap. 9:24

Section 13 (“Interpretation in Part I of Chapter III”) is amended—

- (a) in the definition of “designated non-financial business or profession”—

- (b) by the insertion of new paragraph after paragraph (g) as follows—
 “(g1) any person who is engaged in the business of buying and selling motor vehicles whether new or used;”;
- (c) by the deletion from paragraph (h) of “transaction” and the substitution of “person or transaction”; 5
- (d) by the repeal of the definition of “politically-exposed person” and the substitution of the following—
 “politically exposed person” means –
 - (a) any person who is or has been entrusted in Zimbabwe with prominent public functions, including but not limited to, a Head of State or of government, a senior government, judicial or military official, a senior executive of a state-owned corporation, or a senior official of a political party; or 10
 - (b) any person who is or has been entrusted with prominent public functions by a foreign country, including but not limited to a Head of State or of government, a senior government, judicial or military official, a senior executive of a state-owned corporation, or a senior official of a political party; or 15
 - (c) any person who is or has held a position as a member of senior management of an international organisation, holding the position of director, deputy director, member or board or equivalent functions; or 20
 - (d) any close associate, spouse or family member of a person referred to in paragraphs (a) to (c).” 25

8 Amendment of section 15 of Cap. 9:24

Section 15 (“Customer identification requirements”) of the principal Act is amended—

- (a) in subsection (3) by the deletion of “that is the subject matter of a prescribed transaction” ; 30
- (b) in subsection (3) by the deletion of “subsection (2) or (3)” and the substitution of “subsection (1) or (2)”;

9 Amendment of section 20 of Cap. 9:24

Section 20 (“High risk customers and politically-exposed persons”) of the principal Act is amended by the insertion after paragraph (c) of the following subsections, the existing provision becoming subsection (1)— 35

- “(2) In relation to life insurance policies, financial institutions shall—
- (a) before a pay out of the proceeds of a policy, take reasonable measures to determine whether the beneficiary or, where applicable, the beneficial owner of the beneficiary, is a politically exposed person; and 40
 - (b) where higher risks are identified, the financial institution shall—
 - (i) conduct enhanced scrutiny of the whole business relationship with the policy-holder;
 - (ii) ensure that senior management is informed before pay out; and 45
 - (iii) consider submitting a suspicious transaction report in terms of section 30.

(3) The Director General may issue a directive to financial institutions and designated non-financial businesses or professions, prohibiting or restricting business relationships with other financial institutions or designated non-financial businesses or professions, as specified in such directive, who, in the Director-General's opinion, do not adequately implement measures to combat money laundering and terrorist financing.

10 Amendment of section 21 of Cap. 9:24

Section 21 ("Customer identification and account-opening for cross-border correspondent banking relationships") of the principal Act is amended by the insertion after paragraph (e) of the following paragraphs—

"(e1) satisfy itself that where any of their accounts are accessed by any of the respondent financial institution's customers, the respondent financial institution—

(i) has carried out measures equivalent to those set out in sections 15 to 20 in respect of those customers; and

(ii) is able to provide the correspondent financial institutions, on request, with all relevant information obtained about those customers as a result of those measures;"

11 Amendment of section 25 of Cap. 9:24

Section 25 ("Internal programmes to combat money laundering and financing of terrorism") of the principal Act is amended—

(a) in subsection (1) by the insertion, after the word "terrorism" of "taking into account the money laundering and terrorist financing risks and size of the business";

(b) by the deletion of subsection (4) and the substitution of the following—

"(4) A financial institution which is part of a financial group shall, in respect of its majority owned subsidiaries and branches, if any, whether local or foreign, implement group-wide programmes for combating money laundering and terrorist financing, as prescribed under this Act, including—

(a) measures set out under subsection (1);

(b) policies and procedures for sharing information required for purposes of customer due diligence and money laundering and terrorist financing risk assessment;

(c) adequate safeguards on the confidentiality and use of information exchanged."

(c) by the insertion after subsection (4) of the following—

"(5) In respect of its foreign subsidiaries or branches, the financial institution shall ensure compliance with the requirements of this section to the extent that applicable laws and regulation in the host country permit.

(6) If the laws of the country where the majority owned subsidiary or branch is situated prohibit compliance with these obligations, the financial institution shall so advise its supervisory authority."

12 New section inserted in Cap. 9:24

The principal Act is amended by the insertion of the following section after section 26 —

“26A Higher risk countries

(1) Financial institutions and designated non-financial businesses or professions shall exercise enhanced due diligence, proportionate to the risk, to business relationships and transactions with natural and legal persons, including financial institutions, from countries for which this is called for by the Financial Action Task Force, as advised by directive or circular issued by the Financial Intelligence Unit from time to time. 5

(2) Financial institutions and designated non-financial businesses and professions shall apply countermeasures proportionate to the risk, to business relationships and transactions with natural and legal persons, including financial institutions, from such countries as shall be communicated from time to time through a circular or directive issued by the Financial Intelligence Unit, on its initiative or pursuant to a call to do so by the Financial Action Task Force. 10

(3) The Unit shall, issue circulars, updated from time to time as necessary, advising financial institutions and designated non-financial businesses or professions, of countries that do not adequately implement measures to combat money laundering and terrorist financing, and requiring the financial institutions and designated non-financial businesses or professions, to exercise enhanced due diligence, commensurate with the risks, to business relationships with legal and natural persons from such jurisdictions.”. 15
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13 Amendment of section 27 of Cap. 9:24

The principal Act is amended by the repeal of section 27 (“Obligations regarding wire transfers”) and the substitution of the following— 25

“27 Obligations regarding wire transfers

(1) When undertaking wire transfers equal to or exceeding one thousand United States dollars (or such lesser or greater amount as may be prescribed), financial institutions shall—

- (a) identify and verify the identity of the originator; 30
- (b) obtain and maintain the account number of the originator or, in the absence of an account number, a unique reference number;
- (c) obtain and maintain the originator’s address or, in the absence of an address, the originator’s national identity number or date and place of birth; and 35
- (d) include information referred to in paragraphs (a), (b) and (c) in the message or payment form accompanying the transfer.

(2) For cross-border wire transfer of any amount below one thousand United States dollars, a financial institution shall ensure that such transfer is accompanied by— 40

- (a) originator information, namely—
 - (i) the name of the originator; and
 - (ii) the originator account number, where such an account is used to process the transaction, or in the absence of an account, a unique transaction reference number which enables traceability of the transaction; 45

and

- (b) beneficiary information, namely—
 - (i) the name of the beneficiary; and
 - (ii) the beneficiary account number, where such an account is used to process the transaction, or in the absence of an account, a unique transaction reference number which enables traceability of the transaction.

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(3) Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file shall contain—

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- (a) accurate originator information, including the originator's account number or unique transaction reference number; and
- (b) full beneficiary information.

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(4) Despite the foregoing requirements, a financial institution is not required to verify the identity of a customer with which it has an existing business relationship, provided that the financial institution is satisfied that it already knows and has verified the true identity of the customer.

(5) Subsections (1) and (2) do not apply to transfers—

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- (a) executed as a result of credit card or debit card transactions, provided that the credit card or debit card number accompanies the transfer resulting from the transaction; or
- (b) between financial institutions acting for their own account.

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(6) The Director-General may issue a directive modifying the requirements set forth in subsection (1) with respect to domestic wire transfers, as long as the directive provides for full originator information to be made available to the beneficiary financial institution and appropriate authorities by other means.

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(7) When acting as an intermediary financial institution, in respect of a cross-border wire transfer, a financial institution shall transmit all originator and beneficiary information received by it to the beneficiary financial institution and shall, in addition, retain such information.

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(8) Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary financial institution shall keep a record for at least ten years, of all the information received from the ordering financial institution or another intermediary financial institution.

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(9) Intermediary financial institutions shall have in place risk-based policies and procedures for determining—

- (a) when to execute, reject or suspend a wire transfer lacking required originator or required beneficiary information; and
- (b) the appropriate follow-up action.

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(10) For a cross-border wire transfer of one thousand United States dollars or more, a beneficiary financial institution shall verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with the record-keeping requirements set out in section 24.

(11) If a financial institution receives a wire transfer that does not contain the complete originator information required under that subsection, it shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary.

(12) A financial institution which provides money or value transfer services shall comply with all the relevant requirements of this section in every country where such financial institution operates, whether directly or through agents. 5

(13) A financial institution which provides money or value transfer services and which controls both the ordering and the beneficiary side of a wire transfer, shall— 10

- (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed; and
- (b) file a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Financial Intelligence Unit.”. 15

14 Repeal of sections 29, 35 and 36 of Cap. 9:24

Sections 29, 35 and 36 of the principal Act are repealed.

15 Amendment of section 39 of Cap. 9:24 20

Section 39 of the Principal Act (Interpretation in Part IV), is amended by the insertion of the following subsection after subsection (3)—

“(4) Where any property that would have been liable to seizure or confiscation cannot be located or identified or, for whatever reason, it is not practical or convenient to seize or confiscate the property, a competent court may order the seizure or confiscation, of property equivalent in value, from the defendant, whether or not such property is tainted property or represents proceeds of crime.”. 25

16 Amendment of section 78 of Cap. 9:24

Section 78 of the Principal Act (Interpretation in Part V), is amended by the insertion of the following subsection after subsection (1)— 30

“(2) Where any property that would have been liable to seizure or confiscation cannot be located or identified or, for whatever reason, it is not practical or convenient to seize or confiscate the property, a competent court may order the seizure or confiscation, of property equivalent in value, from the defendant, whether or not such property is tainted property or represents proceeds of crime.”. 35

17 New section inserted in Cap. 7:20

The National Prosecuting Authority Act [*Chapter 7:20*] is amended by the insertion of the following section after section 27—

“27A Establishment of Asset Forfeiture Unit of the NPA

(1) There is hereby established an Asset Forfeiture Unit (the “AFU”) within the National Prosecuting Authority whose functions shall be— 40

- (a) to give assistance to prosecutors in making, and co-ordinate the making of, and oversee the discharge of, applications for— 45
 - (i) interdicts under Part II of Chapter IV of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (hereinafter referred to as the “Money Laundering Act”); and

- 5
- (ii) confiscation orders interdicts under Part III of Chapter IV of the Money Laundering Act; and
- (iii) benefit recovery orders under Part IV of Chapter IV of the Money Laundering Act; and
- 10 (iv) compensation orders under Part V of Chapter IV of the Money Laundering Act; and
- (v) investigative orders for criminal investigation under Part VI of Chapter IV of the Money Laundering Act; and
- 15 (vi) civil forfeiture orders under Part I of Chapter V of the Money Laundering Act; and
- (vii) investigative orders for civil forfeiture under Part II of Chapter IV of the Money Laundering Act; and
- (viii) the confiscation of property that are the instrumentalities or proceeds of crime under any law other than the Money Laundering Act;
- and
- (b) on the instruction of the Prosecutor-General to make the applications referred to in paragraph (a) through any of its designated officers referred to in subsection (3); and
- 20 (c) to manage the storage, maintenance, of assets seized and forfeited pursuant to the Money Laundering Act; and
- (d) to provide mutual legal assistance to foreign states seeking the tracing, identification, freezing and confiscation of property under the Money Laundering Act and foreign anti-money-laundering laws.
- 25

(2) The AFU shall be headed by a Chief Public Prosecutor who shall be appointed by the Board and must be a Registered Legal Practitioner.

30 (3) The AFU shall be staffed on a casual, part-time, rotational or full-time basis by other prosecutors specially designated by the Prosecutor-General:

35 Provided that the Prosecutor-General may, with the leave of the Board and in consultation with the Minister, engage under agreement in writing any person having suitable qualifications and experience to perform services for the AFU in specific cases.

40 (4) In the exercise of its functions, the AFU shall work in cooperation with the Zimbabwe Anti Corruption Commission, Zimbabwe Revenue Authority, the Financial Intelligence Unit other supervisory, regulatory or investigative authorities for purposes of facilitating the tracing, identification, recovery, seizure or confiscation of proceeds of crime;

45 (5) The AFU may cooperate with foreign counterpart agencies, foreign supervisory, regulatory or investigative authorities and regional and international organisations involved in combating money laundering, terrorist financing or other crimes, for purposes of facilitating the tracing, identification, recovery, seizure or confiscation of proceeds of crime, whether in relation to offences committed in Zimbabwe or elsewhere.”.

18 Amendment of section 6 of Cap. 9:06

Section 6 (“Refusal of assistance”) of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] is amended by the repeal of subsection (5) and the substitution of—

- “(5) Assistance shall not be refused on the ground that—
- (a) the offence is considered to involve fiscal matters; or 5
- (b) an inquiry, investigation or prosecution is being or is about to be conducted in Zimbabwe in relation to the offence, unless the assistance would impede the inquiry, investigation or prosecution.”.

19 Amendment of Cap. 20:05

The Deeds Registries Act [*Chapter 20:05*] is amended— 10

- (a) in section 5 (“Duties of Registrars”) by the insertion after paragraph (r) of the following paragraphs—

- “(r1) subject to section 71A, register deeds of trust and amendments to them, and record any particulars relating to registered trusts that are required by that section;”;

- (b) in Part VII (“General”) by the insertion before section 71 of the following section—

“71A Registration of deeds of trust

“(1) Subject to this Act, a registrar shall not register a trust, whether it is a trust *inter vivos* or a testamentary trust, unless— 20

- (a) the identities of the founder and of all trustees and beneficiaries are disclosed, either in the trust deed or the application for registration; and
- (b) where effective control of the trust property is vested in a person other than a trustee or beneficiary, the identity of that person is disclosed either in the trust deed or in the application for registration; and 25
- (c) such other information as may be prescribed is disclosed, either in the trust deed or in the application for registration. 30

(2) Every trustee of a registered trust shall maintain up-to-date records of information referred to in subsection (1), as well as information on every financial institution and every designated non-financial business or profession which is a service provider to the trust.

(3) When registering a trust, a registrar shall record the prescribed particulars of the persons referred to in paragraphs (b) to (c) of subsection (1), and any changes to those particulars notified to him or her in terms of subsection (3). 35

(4) Every trustee of a registered trust shall ensure that, where there is a change to any of the particulars recorded in terms of subsection (1) in relation to the trust, the change is notified in writing to a registrar at the deeds registry within one month after the change occurred. 40

(5) A trustee who, without just cause, contravenes this section subsection (4) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”; 45

- (c) in section 87 (“Regulations”) by the insertion after paragraph (c) of the following paragraph—

5 “(c1) in regard to registered deeds of trust, the particulars and information to be disclosed and notified in terms of section 71A (“Registration of deeds of trust”);”.

20 Amendment of section 210 of Cap. 23:02

Section 210 (“Secrecy”) of the Customs and Excise Act [*Chapter 23:02*] is amended—

- 10 (a) in subsection (1) by the deletion of “subsections (3) and (4)” and the substitution of “subsections (3), (4) and (6)”;

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

“(6) Where the Commissioner is satisfied that any information is required for the purpose of—

- 15 (a) detecting, investigating or preventing a serious offence;
or

- (b) combating money laundering or terrorist financing;

as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the Commissioner shall disclose that information to the Director-General of the Financial Intelligence Unit established by that Act.”.

20 21 Amendment of section 5 of Cap. 23:06

Section 5 (“Preservation of secrecy”) of the Income Tax Act [*Chapter 23:06*] is amended—

- 25 (a) in subsection (1) by the deletion of “subsections (2) and (3)” and the substitution of “subsections (2), (3) and (3a)”;

- (b) by the insertion after subsection (3) of the following subsection—

“(3a) Where the Commissioner is satisfied that any information is required for the purpose of—

- 30 (a) detecting, investigating or preventing a serious offence; or
(b) combating money laundering or terrorist financing;

as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the Commissioner shall disclose that information to the Director-General of the Financial Intelligence Unit established by that Act.”.

22 Amendment of section 34A of Cap. 23:11

35 Section 34A (“Preservation of secrecy”) of the Revenue Authority Act [*Chapter 23:11*] is amended—

- (a) in subsection (1) by the deletion of “subsections (2) and (3)” and the substitution of “subsections (2), (3), (3a) and (4)”;

- (b) by the insertion after subsection (3) of the following subsection—

40 “(3a) Where the Commissioner-General is satisfied that any information is required for the purpose of—

- (a) detecting, investigating or preventing a serious offence;
or

- (b) combating money laundering or terrorist financing;

as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the Commissioner-General shall disclose that information to the Director-General of the Financial Intelligence Unit established by that Act.”.

23 Amendment of Cap. 24:24 5

The Bank Use Promotion Act [*Chapter 24:24*] is amended—

- (a) in section 2 (“Interpretation”)—
 - (i) in the definition of “Director” by the deletion of “Director” and substitution of “Director-General”;
 - (ii) in the definition of “Director-General” by the deletion of “subsection (3) of section *three*” and the substitution of “section 6C of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*]”;
 - (ii) by the repeal of the definition of “Unit” and the substitution of—
 - ““Unit” means the Financial Intelligence Unit established by section 6A of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*]”;
- (b) by the repeal of Part II (“Bank Use Promotion and Suppression of Money Laundering Unit”).

24 Savings and transitional provisions 20

- (1) In this section—
 - “fixed date” means the date of commencement of this Act;
 - “former Unit” means the Bank Use Promotion and Suppression of Money Laundering Unit established by section 3 of the Bank Use Promotion Act [*Chapter 24:24*];
 - “new Unit” means the Financial Intelligence Unit established by section 6A of the principal Act as amended by this Act.
- (2) Any word or expression defined in the principal Act as amended by this Act shall bear the same meaning when used in this Act.
- (3) Any property or assets which, immediately before the fixed date, were owned by or vested in the former Unit shall on that date become property or assets of the new Unit.