

Private Voluntary Organisations Amendment

H.B. 10A, 2021.]

PRIVATE VOLUNTARY ORGANISATIONS AMENDMENT BILL, 2021

Memorandum

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

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

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

Clause 1

This clause sets out the Bill's short title.

Clause 2

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

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

Clause 3

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

Clause 4

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

Clause 5

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

Clause 6

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

Clause 7

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

Clause 8

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

Clause 9

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

Clause 10

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

Clause 11

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

BILL

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

ENACTED by the President and the Parliament of Zimbabwe.

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

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

2 Amendment of section 2 of Cap. 17:05

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

(a) in subsection (1)—

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

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

“Office” refers to the Office of the Registrar of Private Voluntary Organisations

15 ““funds or other assets” means any assets, including but not limited to economic resources, (including oil and other natural resources), financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to

or interest in such funds or other assets, including, but not limited to bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of

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- credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services;”;
- (ii) In the definition of “private voluntary organisation”— 5
- A. by the insertion of the words “legal person, legal arrangement” after the words “means any” ;
- B. by the repeal of sub-paragraph (iii) and substitution of—
“(iii) any trust established directly by any enactment; or”
- C. by the repeal of sub-paragraph (x) and substitution of— 10
“(x) subject to subsection (4) any trust registered with the High Court.”;
- (b) by the insertion of the following subsections after subsection (2)—
- “(3) Notwithstanding the exemptions set out in paragraphs (i) to (x) of the definition of “private voluntary organisation”, in subsection 15
(1) the Minister may, through regulations, designate by name, type, class, or characteristics, any legal person, legal arrangement, body or association of persons, or institution, which the Minister deems to be at high risk of or vulnerable to misuse by terrorist organizations whether as a way for such terrorist organisations to pose as legitimate entities; 20
or to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes and—
- (a) shall require such legal person, legal arrangement, body 25
or association of persons, or institution to register as a private voluntary organisation in terms of this Act; and
- (b) may prescribe such additional or special requirements, obligations or measures, not inconsistent with this Act, that shall apply in respect of such legal person, 30
legal arrangement, body or association of persons, or institution, in order to mitigate against such risk or vulnerability.

3. New Parts substituted for Part II of Cap. 17:15

Part II of the principal Act is repealed and the following is substituted—

PART II

OFFICE OF THE REGISTRAR OF PRIVATE VOLUNTARY ORGANISATIONS

3 Office of the Registrar of Private Voluntary Organisations

(1) There shall be an Office of the Registrar of private voluntary organisations in the Ministry responsible for social welfare, in which shall be lodged the register of private voluntary organisations.

(2) The Office shall be headed by a Registrar who shall exercise general supervision and direction of the registry and shall be assisted by one or more assistant Registrars, inspectors and such other officers as may be necessary for the proper administration of this Act, whose offices shall be public offices and form part of the Public Service:

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

(3) Subject to this Act, the Registrar shall—

- (a) consider and determine every application for registration and every proposed cancellation or amendment of a certificate of registration; and
- (b) hear representations by any association, organization or institution claiming entitlement to be registered as a private voluntary organization; and
- (c) advise the Minister and registered private voluntary organizations in respect of any matter arising out of the administration or operation of this Act or any other matter referred to it by the Minister or the Registrar; and
- (d) to promote and encourage the co-ordination of the activities of registered private voluntary organisations having similar or related objects; and
- (e) to submit to the Minister an annual report concerning the administration and operation of this Act; and
- (f) maintain at his or her office a Register of Private Voluntary Organizations in which he or she shall enter all such particulars in relation to the registration of private voluntary organizations and their constitutions as he or she is required to enter by or in terms of this Act or any other enactment or decision of the Court;

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

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

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

(7) The Registrar may in writing authorise an assistant registrar, inspector or other officer referred to in subsection (2) to exercise any of the functions of a Registrar under this Act.

(8) Subsection (7) shall not be construed as limiting the power of the Chief Registrar of Companies and Other Business Entities to delegate functions under any other law.

(9) The Chief Registrar shall provide every inspector with a document identifying him or her as an inspector, and the inspector shall produce it on request by any interested person.

PART IIA

PRIVATE VOLUNTARY ORGANISATIONS FORUM

4 Private Voluntary Organisations Forum

(1) The Registrar shall annually, on a date and at a venue to be notified not less than three months beforehand in the *Gazette*, organise, convene and host a Private Voluntary Organisations Forum to discuss any issue or issues of concern generally to private voluntary organisations:

Provided that the venue of the Private Voluntary Organisations Forum shall rotate annually through every provincial centre of Zimbabwe in such order as the Registrar shall determine.

(2) The notice of intention to organise, convene and host the Forum shall include the following—

- (a) the proposed venue or venues and the proposed date or dates for the Forum; and
- (b) the proposed agenda for the Forum, if any; and
- (c) an invitation to relevant stakeholder organisations and other persons interested in issues of concern generally to private voluntary organisations to submit—

- (i) suggestions for topics to be included in the agenda for discussion at the Forum; and
- (ii) lists of proposed participants at the Forum, specifying for each proposed participant what credentials he or she possesses that may be of benefit to the Forum's deliberations.

(3) Before publishing a notice in terms of subsection (1) the Registrar shall constitute (whether on

a permanent or ad hoc basis) a committee ("the Pre-Forum committee") of the Forum with the following terms of reference—

- (a) to draw up a proposed agenda for the Forum; and
- (b) to advise the Registrar on the financial, organisational and logistical requirements for convening and hosting the Forum; and
- (c) to solicit financial support or sponsorship from the State, the private and parastatal sectors and civil society organisations to enable the Forum to be convened; and
- (d) receive reports from the subcommittees (if any) constituted in terms of subsection (4).

(4) To assist the Pre-Forum Committee in discharging its terms of reference the Registrar may constitute a subcommittee in every provincial centre of Zimbabwe chaired by a member of the Pre-Forum Committee.

(5) On the establishment of a committee, the Registrar—

- (a) shall appoint at least one officer of the Office as a member of the committee, and that officer or, if two or more officers of the Office are so appointed, one of those officers, as the case may be, shall be chairperson of the committee; and
- (b) may appoint as members of the committee persons who are not members of the Office and may fix terms and conditions of their appointment.

(3) Meetings of a committee may be convened at any time and at any place approved by the Registrar.

(4) If the chairperson of a committee is absent from any meeting of the committee, the members present may elect one of their number to preside at that meeting as chairperson.

(5) A majority of members of a committee shall form a quorum at any meeting of a committee.

(6) Anything authorised or required to be done by a committee may be decided by a majority vote at a meeting of the committee at which a quorum is present.

(7) At all meetings of a committee each member present shall have one vote on each question before the committee:

Provided that in the event of an equality of votes the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(8) Subject to this section, the procedure to be followed at any meeting of a committee shall be as fixed by the Registrar.

(9) The Registrar shall cause minutes of all proceedings of and decisions taken at every meeting of the Pre-Forum Committee to be entered in books kept for the purpose.

(10) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Pre-Forum Committee or the committee concerned, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings and decisions taken at the meeting concerned.

(11) The person presiding at the meeting shall cause copies of all minutes that have been signed to be sent to the Registrar for his or her information.

(12) After publishing a notice in terms of subsection (1) the Pre-Forum committee shall—

- (a) draw up a proposed final agenda for the Forum; and
- (b) select from the lists referred to in subsection (2)(c)(ii) a proposed final list of participants at the Forum; and
- (c) transmit its proposals made under paragraphs (a) and (b) to the Registrar, whose decision on these issues shall, subject to section 16, be final.

5 Conduct of Private Voluntary Organisations Forum

(1) For the purpose of conducting a Gender Forum the Registrar shall constitute (whether on a permanent or ad hoc basis) a committee (“the Forum committee”) of the Office of the Registrar with the following terms of reference—

- (a) to ensure the smooth and efficient conduct of the Forum; and
- (b) to keep minutes of or record the proceedings of the Forum, or to cause the proceedings of the Forum to be minuted or recorded.

(2) The conclusions of every Gender Forum shall be embodied in written resolutions for presentation to the Minister.”

“3A Amendment of Section 7 of Cap. 17:05

Section 7 (“Partial exemptions of private voluntary organisations”) is amended—

- (a) in subsections (1) by the deletion of “and after consultation with the Board”;
- (b) in subsection (2) by the deletion of “in consultation with the Board”
- (c) in subsection (4) by the deletion of “level three” and substitution of “level five”

“3B Amendment of Section 8 of Cap. 17:05

Section 8 (“Temporary Authority to collect contributions”) is amended in subsection (1) by the deletion of “after consultation with the chairman of the Board”

“3C New section substituted for section 6 of Cap. 17:15

Section 6 (“Private Voluntary Organisations to be registered”) of the principal Act is repealed and the following is substituted —

Private Voluntary Organisation to be registered

6(1) In this section—

“sanctionable trust” means a trust that may be dealt with by the Registrar in terms of subsection (7) on the basis that it is reasonably suspected of being in violation of subsection (2).

(2) No trust, body, or association of persons corporate or unincorporate or any institution—

- (a) whose objects or any of them include any of the objects specified in paragraphs (a) to (h) of the definition of “private voluntary organisation”; and
- (b) is not exempted by virtue of any of the sub-paragraphs (i)- (x) of the definition of “private voluntary organisation”;

shall, to the extent that it does not exclusively use its own funds or assets (that is to say, funds or assets generated by its own investments or other gainful activities carried on by itself) but instead—

- (c) seeks or obtains financial assistance from any source within or outside Zimbabwe; or
- (d) collects contributions from the public, for the fulfilment or purported fulfilment of those objects;

shall commence or continue to carry on its activities unless it has been registered in terms of this Act (even if it is a trust registered with the High Court referred to in sub-paragraph (iii) of the definition of “private voluntary organisation” in section 2).

(3) No person shall collect contributions from the public except in terms of this Act.

(4) No person (other than a trustee of a sanctionable trust in respect of which no action by the Registrar in terms subsection (7) has yet been taken) shall in any manner take part in the management or control of a private voluntary organisation, knowing that the organisation is contravening subsection (2).

(5) Any person (other than a trustee of a sanctionable trust referred to in subsection (4)) who contravenes subsections (2), (3) or (4) shall be guilty of an offence and liable—

- (a) in the case of a contravention of subsection (2), to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (b) in the case of a contravention of subsection (3), to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year one years or to both such fine and such imprisonment;
- (c) in the case of a contravention of subsection (4), to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) No unregistered private voluntary organization shall be entitled to receive a grant from the State.

(7) The Registrar may in respect of any sanctionable trust dispatch to the trustee or any of the trustees of the trust in question, a written notice setting forth the basis on which the Registrar reasonably suspects the trust of being in violation of subsection (2) and requiring that the trustee commence within thirty (30) days the registration of the trust as a private voluntary organization in terms of this Act.

(8) Any trustee who having received a notice in terms of subsection (7) fails to comply with such notice shall, together with any other person who is a joint trustee of the trust in question, be guilty of an offence and liable to a fine not exceeding level ten or imprisonment not exceeding six months or to both such fine and such imprisonment, and the trust in question shall (even if no trustee is prosecuted under this subsection) be guilty of an offence in terms of subsection (2), and

depending on the circumstances, subsections (3) and (4).

(9) Notwithstanding the common law, a trust together with its trustees can be charged jointly in respect of any offence alleged to have been committed by it and its trustees against subsections (2), (3) or (4).

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

- (a) accepts such representations, the Registrar shall notify to the trustee in writing, of the withdrawal of the notice; or
- (b) rejects such representations the Registrar shall notify the trustee in writing accordingly and the thirty (30) day period within which the trustee must take the actions specified in subsection (7) commences from the date of the notification of such rejection.”

4 Amendment of section 9 of Cap 17:05

Section 9 (“Registration”) of the principal Act is amended—

- (a) in section 9(1) by the insertion of “and a prescribed fee.” after “constitution of the organisation.” ;
- (b) by the insertion of the following new subsection—

“(1a) In addition to the requirements in subsection (1) the Registrar shall require particulars as shall be prescribed, including information related to beneficial ownership and persons in control of the private voluntary organisation.”;

- (c) in subsection (3) by the deletion of “submit any such objection to the Board for consideration” and the substitution of “submit any such objection to the Board for consideration” and substitution of “take such objection into consideration.”;

- (d) by the repeal of subsection (5) and substitution as follows—

“(5) Where the Registrar is satisfied that the requirements referred to in subsections (1), (2), (3) and (4) have been complied with, he or she shall consider the application, together with the constitution of the organization, any objection to the grant of the application and any further information supplied in connection with the application may—

- (a) after considering the application, grant it and issue to the organization concerned a certificate of registration subject to such conditions as he or she may impose; or
- (b) reject the application if it appears to the hi, or her that—
 - (i) the organization is not *bona fide* operating in furtherance of the objects mentioned in its application for registration; or
 - (ii) the organization does not, in respect of its constitution or management, or any other information required to be provided by the Registrar comply with the provisions of this Act.”;
- (e) in subsection (6) by the deletion of “Board” and substitution of “Registrar”.

“5 Amendment of Section 10 of Cap. 17:05

Section 10 (Cancellation or amendment of certificate”) of the principal Act is amended as follows—

- (a) in subsection (1) by the deletion of “Board” and the substitution of “Registrar”;
- (b) in subsection (1)(a) by the repeal of paragraph (a) and substitution as follows—
 - “(a) on any ground, other than a ground referred to in section 9(5)(b) (i) or (ii) upon which he could have rejected an application for registration by the organisation concerned ;or”;
- (c) in paragraph (f)(ii) by the deletion of “three” and substitution of “one”;
- (d) in subsection (2) in the chapeaux by the deletion of “Board may at any time direct the Registrar” and substitution of “Registrar may at any time”;
- (e) in subsection (2)(b) by the deletion of “Board” and the substitution of “Registrar”;
- (f) in subsection (4) by the deletion of “three” and the substitution of “twenty-one days”;

6 Insertion of new section in Cap 17:05

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

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

(1) In this section—

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

- (a) any change in the constitution governing the private voluntary organisation concerned happens upon the termination for any reason of the private voluntary organisation with respect to the disposal of its assets on the date of its termination; or 35
- (b) any change in the ownership or control of the private voluntary organisation; or
- (c) any variation of the capacity of the private voluntary organisation to operate as a private voluntary organisation. 40

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

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

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

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

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

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

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

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

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

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

6A New section substituted for section 14 of Cap. 17:15

Section 14 (“Appeals”) of the principal Act is repealed and the following section is substituted—

“14 Appeals

(1) Any private voluntary organization which is aggrieved by any decision of the Registrar relating to the rejection, either wholly or in part, of an application for registration or exemption or to the cancellation, amendment, surrender or restoration of a certificate of registration or exemption, may appeal against that decision to the Minister.

(2) Upon an appeal the Minister may—

- (a) uphold the decision of the Registrar; or
- (b) refer the decision back to the Registrar for re-consideration;(whether with or without directions on how the decision is to be reconsidered) on any one or more of the following grounds—
 - (i) allowing extraneous or irrelevant considerations to affect the decision; or
 - (ii) failure to take into account relevant considerations in arriving at the decision; or
 - (iii) any material mistake of fact or law that tainted the decision; or
 - (iv) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
 - (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.”

6B Amendment of section 18 of Cap. 17:05

The principal Act is amended in section 18 (“Branches not controlled by private voluntary organisations”) by the deletion of “after consultation with the Board” .

6C Amendment of section 19 Cap. 17:05

The principal Act is amended in section 19 (“Audit of accounts”) in the proviso by the deletion of “Board” and substitution of “Registrar”.

6D Amendment of Section 20 of Cap. 17:05

The principal Act is amended in section 20 (“Inspections and examination of accounts”)by the deletion of the chapeaux in subsection (1) with the substitution of the following—

- (1) The Registrar, or any of the Office’s inspectors shall be empowered—”

6E Insertion of New Part in Cap.17:05

The principal Act is amended by the insertion of a new Part after Part III as follows—

PART IIIA

CONDUCT OF PRIVATE VOLUNTARY ORGANISATIONS

20A Principles governing private voluntary organisations

(1) Every private voluntary organisation shall endeavour to conduct itself and its operations in accordance with the following principles namely that—

- (a) to ascertain the identity of donors and the sources of donations:

Provided that if the donor is anonymous, the private voluntary organisation must satisfy itself by other means that the donor is acting in good faith within the law and that the donation is made in good faith without intent to evade the law;

- (b) to refuse donations from illegitimate or immoral sources and to report to the Registrar and the appropriate authorities any such donation of which it becomes aware;

- (c) to ensure that its resources and every donation is used for the charitable objects for which the private voluntary organisation is registered;
- (d) to account transparently to its stakeholders including its donors and beneficiaries for the manner in which it distributes its funds and implements its programmes;
- (e) to use formal channels (that is to say registered banking institutions or other financial intermediaries regulated in Zimbabwe or in any other state) for the transmission of its funds at every point from source to destination;
- (f) not to discriminate between beneficiaries on the grounds of nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock:
 - Provided that it shall not be deemed to be discriminatory for a private voluntary organisations to favour beneficiaries of a particular group if its express object or one of its express objects is to benefit any disadvantaged group or members of such group of a particular description in terms of ethnicity, social origin, language, class, religious belief, custom, culture, sex, gender, marital status, age, pregnancy, disability, economic or social status, or persons born out of wedlock;
- (g) not to conduct themselves in any politically partisan manner whether by using its resources to benefit members of a particular affiliation or making any test of the political allegiance of its beneficiaries;
- (h) to be sensitive generally to the cultural values and norms of the community in the area where they will be primarily operating;
- (i) to economically and socially benefit the community in the area where they will be operating;
- (j) in as far as possible to employ personnel who are Zimbabwean citizens or permanent residents as members of their staff;
- (k) the implementation of fair and safe labour practices;”

40 **7 Repeal of section 21 in Cap 17:05**

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

“21 Suspension of executive committee

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

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

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

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

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

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

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

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

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

(11) Any person who—

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

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

8 Insertion of new section 22 of Cap 17:05

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

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

(1) In this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to be reconsidered) on any one or more of the following grounds—

- (i) allowing extraneous or irrelevant considerations to affect the decision;
- (ii) failure to take into account relevant considerations in arriving at the decision; 5
- (iii) any material mistake of fact or law that tainted the decision;
- (iv) interest in the cause, bias, malice or corruption or the part of any person involved in making or contributing to the decision; 10
- (v) gross irregularity in the proceedings or the decision of any person involved in making or contributing to the decision.”.

9 Insertion of new section 22A of Cap 17:05 15

The principal Act is amended by insertion after section 22 of the following—

“22A Civil penalty orders and amendment or substitution of Schedule

(1) The provisions of the Schedule apply to any infringement of this Act in respect of which it is provided that a civil penalty is payable. 20

(2) Subject to subsection (3), the Minister, may by notice in a statutory instrument amend or replace the Schedule.

(3) When the Minister, wishes to amend or replace the Schedule, the Minister shall lay the draft statutory instrument amending or replacing the Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the National Assembly, the Minister shall cause it to be published in the *Gazette*.”. 25

9A New section inserted in Cap. 17:15

The principal Act is amended by the insertion after section 22A of the following sections—

22B Co-operation with foreign counterpart authorities

(1) The President, or the Minister with the President’s authority, may enter into agreements with the Government of any other country or territory with a view to the rendering of reciprocal assistance in any or all of the following—

- (a) the registration of private voluntary organisations and the exchange of information related thereto;
- (b) the exchange of information and the rendering of mutual assistance related to the combating of the transnational abuse of private voluntary organisations for criminal purposes, the monitoring of the quality of the assistance given and the keeping of records of requests for information or assistance and of the responses thereto;
- (c) the administration of any office or offices that are a counterpart to the Office of the Registrar of Private Voluntary Organisations, including the mutual secondment and training of the staff of the Office and such offices.

(2) In particular, an agreement referred to in subsection (1) may empower the Registrar or the financial intelligence unit of the Reserve Bank, on his or her or its own behalf or on behalf of any law enforcement agency, to seek beneficial ownership or other information in respect of any company from the foreign counterpart, and, likewise, may provide beneficial ownership or other information in respect of any company to the foreign counterpart.

(4) The President may at any time revoke any such proclamation by a further proclamation in the Gazette, and the agreement shall cease to have effect upon the date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(5) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

22C Information sharing on private voluntary organisations of concern with foreign counterpart authorities

(1) In this section—

“private voluntary organisation of concern” means a private voluntary organisation suspected of terrorist financing or involvement in other forms of terrorist support.

(2) The FIU, may in consultation with the Registrar enter into agreements with a counterpart agency of another Government of any other country or territory with a view to the exchange of information and the rendering of mutual assistance related to the combating of the transnational abuse of private voluntary organisations for criminal purposes, the monitoring of the quality of the assistance given and the keeping of records of requests for information or assistance and of the responses thereto.

(3) In particular, an agreement referred to in subsection (1) may empower the Registrar or the Financial Intelligence Unit of the Reserve Bank, on his or her or its own behalf or on behalf of any law enforcement agency, to seek beneficial ownership or other information in respect of any private voluntary organisation from the foreign counterpart, and, likewise, may provide beneficial ownership or other information in respect of any company to the foreign counterpart.

(5) Any agreement referred to in subsection (1) may be made with retrospective effect.

(6) For the avoidance of doubt, the FIU shall be the point of contact to respond to international requests relating to private voluntary organisations of concern.

22D Minister may give policy directions to Registrar

(1) Subject to subsection (2), the Minister may give the Registrar such general directions relating to the policy the Registrar is to observe in the exercise of his or her functions as the Minister considers to be necessary in the national interest, which policy directions must—

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions—
 - (i) must not be issued in relation to any particular application or appeal pending before the Registrar and must not apply so as to influence or direct the Registrar on the outcome of any particular application, appeal or other matter that is being considered by the Registrar immediately before the directions are issued, or

- (ii) must not prejudice the application of the rules of natural justice by the Registrar in the exercise of his or her quasi-judicial functions;
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and
- (d) clearly express the national interest at stake;
- (e) must be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event.

(2) Before giving the Registrar any policy direction, the Minister shall inform the Registrar, in writing, of the proposed direction and the Registrar shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, his or her views on the proposal.

(3) The Registrar shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Registrar in terms of subsection (1), the Registrar shall ensure that the direction and any views the Registrar has expressed on it in terms of subsection (2) are set out in the Registrar's annual report.

9B Amendment of section 23 of Cap. 17:05

The principal Act is amended in section 23 ("General offences and penalties") by the insertion of the following subsection after subsection (3) as follows—

"(4) Any private voluntary organisation—

- (a) that supports or opposes any political party or candidate in a presidential, parliamentary or local government election; or
- (b) is a party to any breach of Part III of the Political Parties (Finance) Act [*Chapter 2:12*] as a contributor of funds to a political party or candidate or otherwise; or
- (c) wilfully denies any beneficiary assistance in furtherance of its charitable objects solely on the basis of that beneficiary's political affiliation, or wilfully makes such assistance conditional upon that beneficiary's political affiliation; or

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

(5) Subsection 4 shall not apply to a private voluntary organisation which assists members of disadvantaged groups to become candidates for election to parliament or any local authority:

Provided that such assistance must be afforded in a strictly non-partisan manner.

10 Amendment of section 28 of Cap. 17:05

Section 28 ("Regulations") of the principal Act is amended—

- (a) by the insertion after paragraph (e) of the following—

"(e1) requirements to be submitted when applying for registration;

(e2) increased monitoring and supervision measures for private voluntary organisations

found to be high risk;

- (e3) measures of systems that private voluntary organisations can use in order to self regulate and prevent being misused in terms of section 22;
 - (e4) the disclosures of sources of funding from outside Zimbabwe whether in the application, the audit report or both;
 - (e5) any other matter of concern to assist in the combating money laundering, terrorist financing and proliferation financing in the area of private voluntary organisations;
 - (e6) any other measures that promote accountability, integrity and public confidence in the administration and management of private voluntary organisations;
 - (e7) any other measures in addition to provisions in the law and the Money laundering and proceeds of Crime act or any other enactment to ensure effective coordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on private voluntary organisations;
 - (e8) any other matter of concern to ensure efficient regulation of private voluntary organisations.
- (b) by the amendment in subsection (2) of “fine of level four” and the substitution of “fine of level

11 Schedule inserted in Cap. 17:05

The principal Act is amended by the insertion of the following Schedule —

CIVIL PENALTY ORDERS

ARRANGEMENT OF PARAGRAPHS

Section

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

Interpretation in Schedule

1. In this Schedule, unless the context otherwise requires—

“citation clause”, in relation to a civil penalty order, is the part of the order in which the Registrar names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;

“date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served in any of the ways specified in paragraph 3(1);

“defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;

“designated officer” means an officer of the Registry or other person designated and authorised by the Registrar to undertake duties in connection with the implementation of this Schedule;

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

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

“show cause clause” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

Power of Registrar to issue civil penalty orders

2.(1) Where default is made in complying with any provision of this Act or of regulations or orders made under this Act for which a civil penalty is specified in this Act and Schedule to be leviable, the Registrar may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate description specified in this paragraph.

Specified Civil default

3. (1) A registered private voluntary organisation shall be guilty of a civil default if there is well founded information available to the Registrar indicating that it has received any donation from an

illegitimate or immoral source.

(2) Upon receipt of the information referred to in paragraph (1) the Registrar shall serve upon the defaulter a civil penalty order providing for—

- (a) the taking by the PVO of the remedial action specified in the order to enable the PVO to ascertain the legitimacy of the source of future donations received by it;
- (b) the suspension of the penalty for a specified period not exceeding fourteen days, by the end of which the PVO must satisfy the Registrar that it is in a position to be compliant in the future;
- (c) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, a penalty of one hundred united states dollars (or the equivalent at the auction rate of exchange ruling on the date of issuance of the order) for each day not exceeding ninety days during which the PVO is non-compliant;
- (d) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Registrar why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it is shown that the order was issued in error the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(3) A registered private voluntary organisation shall be guilty of a civil default if there is well founded information available to the Registrar indicating that it has not used formal channels (that is to say registered banking institutions or other financial intermediaries regulated in Zimbabwe or in any other state) for the transmission of its funds at every point from source to destination.

(4) Upon receipt of the information referred to in paragraph (1) the Registrar shall serve upon the defaulter a civil penalty order providing for—

(a) a combination of—

- (i) a fixed penalty of the amount of one thousand united States Dollars dollars(or the equivalent at the auction rate of exchange ruling on the date of issuance of the order)
 - (ii) a cumulative penalty over a period not exceeding ninety days of five per centum of the outstanding amount of the fixed penalty for each day (beginning on the day after the service of a civil penalty order) that the fixed penalty or any outstanding amount thereof remains unpaid by the defaulter;
- (b) the opening (within a period not exceeding fourteen days) by the PVO of a banking account with a registered banking institution or other regulated financial intermediary and
 - (c) upon the civil penalty referred to in paragraph (b) becoming operative because of non-compliance with the requested remedial action, a penalty of one hundred united states dollars (or the equivalent at the auction rate of exchange ruling on the date of issuance of the order) for each day not exceeding ninety days during which the PVO is non-compliant;
 - (d) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it is shown that the order was issued in error the designated officer shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

Limitation on issuance and enforcement of civil penalty orders

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

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable (either immediately or within seven days from the service of the civil penalty order) to a penalty or combined penalties in excess of the equivalent to more than twice the highest monetary penalty for which that person is liable in respect of any of those civil defaults, the Registrar may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

Service and enforcement of civil penalties and destination of proceeds thereof

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

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

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

(3) The Registrar may, if the defaulter is a corporate defaulter—

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

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

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

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

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty

proceedings, the Registrar may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

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

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

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

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

(8) The amount of any civil penalty shall—

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

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

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

(10) If the designated officer in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the designated officer may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties —

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

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

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

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

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

Provided that in such invitation or at the meeting the designated officer may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

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

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

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

Evidentiary provisions in connection with civil penalty orders

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

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be;
- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
 - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
 - (ii) a meeting was held in accordance with paragraph 5, then—
 - A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the designated officer);
 - B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different defaulter was served with it.

(2) A copy of—

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

Designated officers

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

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

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

“PART II

CONSEQUENTIAL AMENDMENTS

MONEY LAUNDERING AND PROCEEDS OF CRIME ACT [CHAPTER 09:24]

12 Amendment of section 2 of Cap. 9:24

The Money Laundering and Proceeds of Crime Act [Chapter 9:24] (hereinafter in this Part called the “principal Act”) is amended in section 2 (“Interpretation”) by—

- (a) in the chapeaux of the definition of “competent authorities”
- (b) the insertion of the following definition after the definition of “proceeds” —
“proliferation financing” means any offence referred to in section 9A;”

- (c) by the insertion of the following paragraph in the definition of “serious offence”—
“(c1) a proliferation financing offence;”

13 Amendment of section 3 of Cap. 9:24

The principal Act is amended in section 3 (“Unit and competent supervisory authorities to cooperate in securing compliance with this Act”) in subsection (3a) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”.

14 Amendment of section 6B of Cap. 9:24

The principal Act is amended in section 6B (“Functions of Unit”) in subsection (1)(c) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing” .

15 Amendment of section 6C of Cap. 9:24

The principal Act is amended in section 6C (“Further provisions on the Director-General, staff, agents and inspectors of Unit”) in subsection (1) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”.

16 Amendment of section 6E of Cap.9: 24

The principal Act is amended in section 6E (“Unit to have access to information”) in—

- (a) subsection (3)(b) by the deletion of “Access to Information and Protection of Privacy Act [Chapter 10:27] and the substitution of “Freedom of Information Act [Chapter 10:33], Cyber and Data Protection Act [Chapter 12:07].
- (b) In subsection (6)(d) subsection (3)(b) by the deletion of “Access to Information and Protection of Privacy Act [Chapter 10:27] and the substitution of “Freedom of Information Act [Chapter 10:33], Cyber and Data Protection Act [Chapter 12:07].

17 New section inserted in Cap. 9:24

The principal Act is amended by the insertion after section 9 of the following section—
9A Proliferation Financing

- (1) In this section—

“proliferation financing” means the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations;

(2) Any person who by any means directly or indirectly wilfully provides or collects funds, provides financial services or makes such services available to persons, or attempts to do so, with the intention or in the knowledge that such funds are to be used in whole or in part—

- (a) to manufacture, develop, produce or participate in the development or production of a nuclear biological or chemical weapon for use in terrorist acts or
- (b) to distribute or supply a nuclear, biological or chemical weapon to carry out a terrorist act or

- (c) to train persons or groups of persons to develop or produce or participate in the development or production of nuclear biological or chemical weapon for use by a terrorist or by a terrorist organization for any purpose
- (d) to carry out any other act--
 - (i) that has a purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or refrain from doing any act ; and
 - (ii) that is intended to cause—
 - (A) death or serious bodily harm to a civilian or in a situation of armed conflict to any person not taking an active part in the hostilities; or
 - (B) the risk, damage interference or disruption of any of the following kinds—
 - I. serious risk to the health or safety of the public or any section of the public; or
 - II. substantial property damage whether to public or private property involving a serious to the health or safety of the public or any section of the public;
 - III. serious interference with or serious disruption of an essential service, facility or system whether private or public not being an interference resulting from lawful advocacy or from protest dissent or stoppage of work.

commits the offence of financing of proliferation of weapons of mass destruction and shall be liable to a fine not exceeding twenty-five million united states dollars and imprisonment for a term not less than thirty-five years imprisonment.

(2) An offence under subsection (1) is committed regardless of whether—

- (a) the funds are actually used to manufacture, develop or produce nuclear biological or chemical weapons to commit or attempt to commit a terrorist act;
- (b) the funds are actually used to distribute or supply a nuclear biological chemical weapon to carry out a terrorist act;
- (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the nuclear, biological or terrorist act occurred or will occur.

(3) a director or person in charge of a legal entity who commits an offence under this section is liable to a fine not exceeding twenty five million united states dollars and imprisonment for a term not less than thirty-five years imprisonment.

(4) Where a body corporate or its director, manager, secretary or other similar officer concerned with the management of a body corporate has been convicted of an offence under this section, the court shall have power—

- (a) to revoke business licences;
- (b) to order the body corporate to be wound up ; or
- (c) to forfeit the assets of the body corporate to the recovered assets fund;
- (d) prohibit the body corporate from performing any further activities.

(5) The taking of proprietary steps including but not limited to requiring material or participating in the planning of an offence under this section shall be an offence and the person who commits such an offence is liable to the same penalty as provided for in the offence.

18 Amendment of section 12A of Cap. 9:24

The principal Act is amended in section 12A (National Money laundering and terrorist financing risk assessment and risk mitigation)—

- (c) in subsection (1) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;

- (d) in subsection (2) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;
- (e) in subsection (3)(a) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing” in subsection (3)(b) by the insertion after the words “terrorist financing” of “and proliferation financing” ;
- (f) by the insertion of a new paragraph in subsection (3) as follows—
 - “(c) identify and assess the money laundering, terrorist financing and proliferation financing risks that may arise in relation to virtual asset activities or operations of virtual asset service providers.”
- (g) in subsection (7) by the deletion the words “and anti- financing of terrorism” and substitution of “,anti- financing of terrorism and anti-proliferation financing” ;

19 Amendment of section 12B of Cap. 9:24

The principal Act is amended in section 12B (Assessing risks and implementing risk-based approach by financial institutions and designated non-financial businesses and professions)—

- (a) in subsection (1) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing” ;
- (b) in subsection (4) by deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;

20 Amendment of section 12C of Cap. 9:24

The principal Act is amended in section 12C (“Establishment of National Anti-Money Laundering Advisory Committee”) in subsection (1) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing” ;

21 Amendment of section 12D of Cap. 9:24

The principal Act is amended in section 12D (“Establishment of National Taskforce on Anti-Money Laundering and combating of Financing of Terrorism”)—

- (a) in the section head by the repeal of the section head and substitution as “Establishment of National Taskforce on Anti-Money Laundering, combating of Financing of Terrorism and Proliferation Financing”;
- (b) in subsection (1) by the deletion of the words “and combating terrorist financing” and substitution of “, combating terrorist financing and proliferation financing” ;
- (c) in subsection (2) by the deletion of the words “and terrorist financing” and substitution of “, terrorist financing and proliferation financing” ;
- (d) in subsection (4) by the deletion of “anti-financing of terrorism” and substitution of “, anti-financing of terrorism and anti-proliferation financing”;
- (e) by the insertion of new subsections after subsection (4) as follows—
 - “(5) The national taskforce shall come up a Charter in which it may outline matters of concern including processes and procedures of cooperation and coordination within the country in terms of combating money-laundering, terrorist financing and proliferation financing;
 - (6) The Minister responsible for finance may cause the Charter referred to in subsection (5) to be *Gazetted*.”

22 Amendment of section 15 of Cap. 9:24

The principal Act is amended in section 15 (“Customer Identification Requirements”)—

- (a) in subsection (1)(e) by the insertion after “financing of terrorism” of “or proliferation financing”;

- (b) in subsection (2) by the insertion after “financing of terrorism” of “or proliferation financing”;

23 Amendment of section 16 of Cap. 9:24

The principal Act is amended in section 16 (“Timing of customer identification and verification”)—

- (a) in the chapeaux of subsection (1) by the insertion after “financing of terrorism” of “or proliferation financing”;
- (b) in subsection (1)(b) by the deletion of “and terrorist financing” with substitution of “, terrorist financing and proliferation risk”.

24 Amendment of section 18 of Cap. 9:24

The principal Act is amended in section 18 (“Reliance on customer identification by third parties”) in subsection (1)(a) by the insertion after “financing of terrorism” of “or proliferation financing”.

25 Amendment of section 19 of Cap. 9:24

The principal Act is amended in section 19 (“Customers not physically present”) in subsection (1)(a) by the deletion of “and financing of terrorism” of “,financing of terrorism and proliferation financing”.

26 Amendment of section 20 of Cap. 9:24

The principal Act is amended in section 20 (“High risk customers and politically exposed persons”)—

- (a) in subsection (1)(a) by the deletion of the words “and financing of terrorism” and substitution of “, financing of terrorism and proliferation financing”;
- (b) in subsection (3) by the deletion of “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”

27 Amendment of section 21 of Cap. 9:24

The principal Act is amended in section 21 (“Customer Identification and account opening for cross-border”)—

- (e) in subsection (e) by the insertion after the words “financing of terrorism” of “,and proliferation financing”;
- (f) in subsection (f) by the insertion after the words “financing of terrorism” of “,and proliferation financing”.

28 Amendment of section 25 of Cap. 9:24

The principal Act is amended in section 25 (“Internal programmes to combat money laundering and terrorist financing”)—

- (a) in the section head by the deletion of the words “and financing of terrorism” and substitution of “, financing of terrorism and proliferation financing”;
- (b) in subsection (1) by the deletion of the words “and financing of terrorism” and substitution of “, terrorist financing and proliferation financing”;
- (c) in subsection (1)(c)—
 - (i) in the second line by the insertion after the words “financing of terrorism” of “,and proliferation financing”;
 - (ii) in the third line by the insertion after the words “financing of terrorism” of “,or proliferation financing”;
- (d) in subsection (4)—

- Principal Act prior to Proposed Amendment
- (i) in the chapeaux by the deletion of “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;
 - (ii) in paragraph (b) by the deletion of “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;

29 Amendment of section 26A of Cap. 9:24

The principal Act is amended in section 26A (“Higher risk countries”) is amended in subsection (3) by the deletion of “and terrorist financing” and substitution of “, terrorist financing and proliferation financing”;

30 Amendment of section 30 of Cap. 9:24

The principal Act is amended in section 30 (“Obligation to report suspicious transactions”)—

- (a) is amended in (1)(b) by the insertion after “finance terrorism” of “ and proliferation”;
- (b) in subsection (4) by the insertion after “terrorist financing” of “or proliferation financing”;

31 Amendment of section 31 of Cap. 9:24

The principal Act is amended in section 31 (“Inapplicability of confidential provisions and prohibition against tipping-off”) is amended—

- (a) in subsection (2) in the third line by the insertion after “financing of terrorism” of “or proliferation financing”;
- (b) in subsection (2) in the fourth line by the insertion after “financing of terrorism” of “or proliferation financing”;

32 Amendment of section 37 of Cap. 9:24

The principal Act is amended in section 37 (“Sharing of information with foreign counterparts”) in subsection (2) by the insertion in the chapeaux after “financing of terrorism” of or proliferation financing or potential proliferation financing”

33 Amendment of section 103 of cap. 9:24

Section 103 (“Regulations”) is amended in subsection (2) by the insertion of the following paragraph—

“(e) any requirements or issues related to the implementation of United Nations Security Council Resolutions as may be required to be prescribed.”

PART III

CONSEQUENTIAL AMENDMENTS

CRIMINAL MATTERS (MUTUAL ASSISTANCE) ACT [CHAPTER 09:06]

34 Amendment of section 2A of Cap. 9:06

The Criminal Matters (Mutual Assistance) Act is amended in section 2A (“Purpose of Act and powers and responsibilities of Prosecutor-General”) in subsection (1) by the deletion of “and financing of terrorism” with the substitution of “,financing of terrorism and proliferation financing”

35 Amendment of section 6 of Cap. 9:06

The Criminal Matters (Mutual Assistance) Act is amended in section 6 (“Refusal of Assistance”) in subsection (3) by the deletion of “and financing of terrorism” and the substitution of “,financing of terrorism and proliferation financing”

