

Presidential Powers (Temporary Measures) (Financial Laws
Amendment) Regulations, 2021

HIS Excellency the President, in terms of section 2 of the Presidential Powers (Temporary Measures) Act [*Chapter 10:20*], hereby makes the following regulations:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the Presidential Powers (Temporary Measures) (Financial Laws Amendment) Regulations, 2021.

PART II

EXCHANGE CONTROL ACT [*CHAPTER 22:05*]

Amendment of section 5 of Cap. 22:05

2. The Exchange Control Act [*Chapter 22:05*] (“the principal Act”) is amended in section 5 (“Offences and penalties”) by the repeal of subsection (4e) and the substitution of—

“(4e) Additionally or alternatively to the prosecution of any offence whose elements are the same or similar to those of any civil default mentioned below, a contravention of—

(a) subsection (1); or

(b) any regulations made under section 2(1);

is a civil default for which the defaulter or alleged defaulter is liable to the civil penalty specified in the Schedule for that default.”.

New section substitution for section 11 of Cap. 22:05

3. Section 11 of the principal Act is repealed and substituted by—

“11 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.

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

(3) When the Minister, after consultation with the President, 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*.”.

Substitution of Schedule to Cap. 22:05

4. The Schedule to the principal Act is repealed and substituted by—

“SCHEDULE (*Section 11*)

CIVIL PENALTY ORDERS

ARRANGEMENT OF PARAGRAPHS

Section

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

Interpretation in Schedule

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

“authorised dealer” means—

- (a) the Reserve Bank of Zimbabwe; or
- (b) any commercial bank or accepting house or any class thereof, which the Reserve Bank, by order, declares to be an authorised dealer for the purposes of this Act; or
- (c) any person licensed by the Reserve Bank for the purposes of undertaking or facilitating foreign exchange transactions;

“citation clause”, in relation to a civil penalty order, is the part of the order in which the Reserve Bank 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;

“civil penalty register” means the register referred to in paragraph 7 (“Evidentiary provisions in connection with civil penalty orders”);

“corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 4(3) and (6));

“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 4(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 employee of the Reserve Bank or other person designated and authorised by the Governor of the Reserve Bank to undertake duties in connection with the implementation of this Schedule;

“foreign exchange auction” refers to an auction of foreign currency conducted by the Reserve Bank of Zimbabwe

from time to time, for purposes of ensuring equitable access to, and efficient utilisation of, the foreign currency resources of Zimbabwe;

“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;

“ruling exchange rate” means the rate determined in the last foreign currency exchange auction before the day in question;

“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 Reserve Bank to issue civil penalty orders

2. 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 Schedule to be leviable, the Reserve Bank 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.

Specific civil infringements

3. (1) A natural or legal person shall be guilty of a civil infringement if he or she without Exchange Control authority, uses the foreign currency obtained directly or indirectly from a foreign exchange auction or an authorised dealer for a purpose other than that specified in the application to partake in the auction or in the application for foreign currency.

(2) In the event of default in complying with subparagraph (1), the civil penalty shall provide for—

- (a) a combination of—
 - (i) a fixed penalty of the amount of one million Zimbabwe dollars or an amount equivalent to the value of the foreign currency obtained (whichever is the greater amount); and
 - (ii) a cumulative penalty over a period not exceeding ninety days of five *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 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.

(3) A natural or legal person shall be guilty of a civil infringement if he or she, being a seller of goods or services not authorised by law to charge for them exclusively in foreign currency, refuses to allow any buyer thereof to tender payment for them in Zimbabwe dollars at the ruling exchange rate.

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

- (a) a combination of—

- (i) a fixed penalty of the amount of fifty thousand Zimbabwe dollars or an amount equivalent to the value of the foreign currency charged for the goods or services in question (whichever is the greater amount); and
 - (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 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.

(5) An authorised dealer shall be guilty of a civil infringement if he or she submits to the Reserve Bank an application for foreign currency or exchange control authority, or a return or any other document in connection therewith, without exercising reasonable due diligence to verify the correctness of the information in or accompanying the application, return or document, with the result that the application, return or document contains information that the authorised dealer knows or ought to have known to be false in any material respect.

(6) In the event of default in complying with subparagraph (5), the civil penalty shall provide for—

- (a) a combination of—
 - (i) a fixed penalty of the amount of five million Zimbabwe dollars; and
 - (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 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.

(7) A natural or legal person shall be guilty of a civil infringement if he or she sells, displays or offers goods or services for sale at an exchange rate above the ruling exchange rate, or imposes (for the predominant purpose of encouraging payment in a foreign currency) a premium on Zimbabwe dollar payments or allows a discount on foreign currency payments.

(8) In the event of default in complying with subparagraph (7), the civil penalty shall provide for—

- (a) a combination of—
 - (i) a fixed penalty of the amount of fifty thousand Zimbabwe dollars or an amount equivalent to the value of the foreign currency charged for the goods or services in question (whichever is the greater amount); and
 - (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 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.

(9) A natural or legal person shall be guilty of a civil infringement if he or she, being a seller of goods or services, issues to a buyer thereof a receipt in Zimbabwe dollars for payment received in foreign currency, or records sales other than in the currency in which the sale was conducted.

(10) In the event of default in complying with subparagraph (9), the civil penalty shall provide for—

- (a) a combination of—
 - (i) a fixed penalty of the amount of fifty thousand Zimbabwe dollars or an amount equivalent to the value of the foreign currency charged for the goods or services in question (whichever is the greater amount); and
 - (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 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

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

(2) A single civil penalty order may (in terms of paragraph 5(4)) 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 Reserve Bank 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

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

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

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

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

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

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

(4) Subject to paragraph 4(2), the designated officer may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Schedule if the defaults in question—

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (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 designated officer may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (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 designated officer to pay the civil penalty in the event that the corporate 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 in the manner directed by the designated officer in the civil penalty order and shall form part of the funds of the Reserve Bank; and
- (b) be a debt due to the Reserve Bank and shall be sued for in any proceedings in the name of the Reserve Bank 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 designated officer has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against 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

6. (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, 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:

Provided that the designated officer shall not entertain ignorance of the law or any alleged impossibility of compliance with it as grounds for withdrawing a civil penalty order;

- (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:

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;
- (c) at the conclusion of the meeting the designated officer may in the presence of the parties (if any) at the meeting verbally—

- (i) confirm that the civil penalty order was properly issued and is to have effect from
 - A. 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; or
 - B. in any other case, post-date the date of commencement of the civil penalty order to the date of his or her decision;

or

- (ii) cancel the civil penalty order; or
- (iii) re-issue the civil penalty order to the same or another defaulter and on the same or different terms with effect from the date of his or her decision;

and, in the case of subparagraph (i) or (iii), may extend the period specified in a civil penalty order for compliance therewith by a further specified period:

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

7. (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 6, then—
 - A. a record or an adequate summary of any representations made at the meeting 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 meeting, 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

8. (1) Any reference to the Reserve Bank in this Schedule shall be construed as a reference to a designated officer.

(2) The Governor of the Reserve Bank shall furnish each designated officer with a certificate signed by or on behalf of the Governor 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 Reserve Bank under this Schedule, exhibit the certificate issued to him or her in terms of subsection (2).”

PART III

BANK USE PROMOTION ACT [*CHAPTER 24:24*]

New section inserted in Cap. 22:24

5. The Bank Use Promotion Act [*Chapter 24:24*] (“the principal Act”) is amended by the insertion in Part III (“Bank Use Promotion”) of the following section after section 22—

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

(1) Additionally or alternatively to the prosecution of any offence against section 10, 10A, 11, 13 or 18, a contravention of section 10, 10A, 11, 13 or 18, is a civil default for which the defaulter or alleged defaulter is liable to the civil penalty specified in the Schedule for that default.

(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 House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*.”

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Amendment of section 41A of Cap. 24:24

6. Section 41A (“Freezing orders”)(1) of the principal Act is amended by the deletion of “not more than fourteen days” and the “not more than ninety days”.

New Schedule inserted in Cap. 24:24

7. The principal Act is amended by the insertion of the following Schedule after the Third Schedule—

“FOURTH SCHEDULE (Section 22A)

CIVIL PENALTY ORDERS

ARRANGEMENT OF PARAGRAPHS

Section

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

Interpretation in Fourth 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 designated officer 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;

“civil penalty register” means the register referred to in paragraph 7 (“Evidentiary provisions in connection with civil penalty orders”);

“continuing default” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;

“corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 4(3) and (6));

“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 4(1);

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

“designated officer” means the Director-General of the Financial Intelligence Unit or an employee of the FIU or other person designated and authorised by the Director-General of the FIU to undertake duties in connection with the implementation of this Schedule;

“officer”, in relation to a corporate defaulter, means a member of its board or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;

“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 designated officer to issue civil penalty orders

2. Where default is made in complying with section 10, 10A, 11, 13 or 18 of the Act, the designated officer 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 paragraph 3(1), (2), (3), (4) or (5) or any combination of such orders as the provision in question may allow.

Specific civil infringements

3. (1) In the event of default in complying with section 10, that is to say, failure to open a bank account, the civil penalty order shall provide for—

(a) a combination of a fixed penalty and potentially two cumulative penalties, of which—

(i) the fixed penalty of twenty thousand Zimbabwe dollars; and

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- (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
 - B. relating to the failure to open the bank account—
 - I. shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the appropriate remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the appropriate remedial action specified in the civil penalty order within the time specified in the order;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

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.
- (2) In the event of default in complying with section 10A, that is to say, failure to avail to customers an electronic means of payment, the civil penalty order shall provide for—

- (a) a combination of a fixed penalty and potentially two cumulative penalties, of which—
 - (i) the fixed penalty shall be an amount of one hundred thousand Zimbabwe dollars; and
- (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on

the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and

- B. relating to the failure to comply with section 10A—
- I. shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the appropriate remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the appropriate remedial action specified in the civil penalty order within the time specified in the order;

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

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) In the event of default in complying with section 11, that is to say, failure to bank surplus cash in a bank account within the time specified, the civil penalty order shall provide for—

- (a) a combination of—
- (i) a fixed penalty of the amount equivalent to a single day's banking of cash, being the estimated average daily banking of cash in a continuous period of seven business days within the last twenty-one days preceding the issuance of the order; and
 - (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;

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

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.

(4) In the event of default in complying with section 13, that is to say, failure to keep records, the civil penalty order shall provide for—

- (a) a combination of a fixed penalty and potentially two cumulative penalties, of which—
 - (i) the fixed penalty shall be an amount of two hundred thousand Zimbabwe dollars; and
 - (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of ten thousand Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
 - B. relating to the failure to comply with section 13—
 - I. shall be twenty thousand Zimbabwe dollars for each day, not exceeding ninety days, that the defaulter fails to take the appropriate remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the appropriate remedial action specified in the civil penalty order within the time specified in the order;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

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.

(5) In the event of default in complying with section 18, that is to say, failure to comply with a disclosure order, the penalty order shall provide for—

- (a) a cumulative penalty of twenty thousand Zimbabwe dollars for each day that the person fails to make the disclosures required by section 18, not exceeding a period of ninety days, which penalty must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the designated officer why the order should not have been issued, that is to say, to show that the order was issued in error:

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.

Service and enforcement of civil penalties and destination of proceeds thereof

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

- (a) by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person, or to a responsible individual at the place of business of the defaulter; or
- (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

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- (c) by electronic mail to the defaulter whose electronic mail address is known to the designated officer.

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

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

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

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

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

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (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 designated officer may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (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 designated officer 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 in the manner directed by the designated officer in the civil penalty order and shall form part of the funds of the Reserve Bank; and
- (b) be a debt due to the Reserve Bank and shall be sued for in any proceedings in the name of the Reserve Bank 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

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- (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the designated officer has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against 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.

Limitation on issuance and enforcement of civil penalty orders

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

(2) A single civil penalty order (in terms of paragraph 6(4)) 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 to a penalty or combined penalties in excess of the equivalent of five million Zimbabwe dollars, the designated officer 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.

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

6. (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, 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:

Provided that the designated officer shall not entertain ignorance of the law or any alleged impossibility of compliance with it as grounds for withdrawing a civil penalty order;

- (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:

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;
 - (i) confirm that the civil penalty order was properly issued and is to have effect from—
 - A. 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; or
 - B. in any other case, post-date the date of commencement of the civil penalty order to the date of his or her decision;

or

- (ii) cancel the civil penalty order; or
- (iii) re-issue the civil penalty order to the same or another defaulter and on the same or different terms with effect from the date of his or her decision;

and, in the case of subparagraph (i) or (iii), may extend the period specified in a civil penalty order for compliance therewith by a further specified period:

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.

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Evidentiary provisions in connection with civil penalty orders

7. (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

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

(2) The Director-General of the FIU shall furnish each designated officer with a certificate signed by or on behalf of the Governor 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 FIU under this Schedule, exhibit the certificate issued to him or her in terms of subsection (2).”

