

Zimbabwe

Exchange Control Act Chapter 22:05

Legislation as at 31 December 2021

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Exchange Control Act
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Zimbabwe

Exchange Control Act Chapter 22:05

Commenced on 1 June 1965

[This is the version of this document from 31 December 2021.]

[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]

[Amended by [Finance Act, 2019 \(Act 1 of 2019\)](#) on 20 February 2019]

[Amended by [Finance \(No. 3\) Act, 2019 \(Act 13 of 2019\)](#) on 31 December 2019]

[Amended by [Finance Act, 2021 \(Act 7 of 2021\)](#) on 31 December 2021]

[Acts 62/1964, 8/1967, 15/1970, 43/1975, 42/1977 (s. 3), 22/2001 (s. 4), 14/2002 (s. 29) 16/2004 (s. 10), 6/2005 (s 29), 3/2009, 5/2014 (s. 33), 1/2018 (s. 43)]

AN ACT to confer powers and impose duties and restrictions in relation to gold, currency, securities, exchange transactions, payments and debts, and the import, export, transfer and settlement of property, and for purposes connected with the matters aforesaid.

1. Short title

This Act may be cited as the Exchange Control Act *[Chapter 22:05]*.

2. Regulatory powers of the President

- (1) Notwithstanding anything to the contrary contained in any enactment, the President may make such regulations relating directly or indirectly to—
 - (a) gold, currency and securities and transactions relating thereto; and
 - (b) exchange transactions; and
 - (c) the control of—
 - (i) imports into and exports from Zimbabwe; and
 - (ii) the transfer or settlement of property; and
 - (iii) payments; and
 - (iv) transactions in relation to debts;and
 - (d) the enforcement of the exclusive use of Zimbabwe dollar for domestic transactions;
[paragraph (d) added by section 31(a) of [Act 13 of 2019](#)]
as he deems fit;
- (2) Regulations made under subsection (1) may provide for—
 - (a) the prohibition or restriction of dealings in or possession of any gold, currency or securities;
 - (b) the prohibition or restriction of the importation into and exportation from Zimbabwe of any property;

- (c) the acquisition by any person or assignment to any person or vesting in any person of any property, other than land, or any right thereto and for the determination of compensation in respect thereof;
 - (d) the prohibition or restriction of any dealing in or in relation to any property with persons resident outside Zimbabwe;
 - (e) requiring any person to make statements or produce documents for the purposes of such regulations;
 - (f) entering on any premises and the search of any premises or person for the purpose of giving effect to any such regulation;
 - (g) empowering such authorities, persons or classes of persons as may be specified in the regulations—
 - (i) to make orders, rules or directions for any of the purposes for which regulations may be made under this Act;
 - (ii) to confer the power to make such orders, rules or directions on any other authority, person or class of persons;
 - (h) the registration or licensing of persons who carry on any business of dealing in currency, and the fees payable in respect of the application for, and issue and renewal of, registration certificates or licences.
- [paragraph (h) inserted by section 29 of Act 14 of 2002]*
- (3) Different regulations, orders, rules or directions may be made under this section for, or in relation to, different persons or classes of persons, countries, and generally, in relation to anything with respect to which provision is made in subsection (1).
 - (4) The power to make regulations, orders, rules or directions under this section shall extend to the making of regulations, orders, rules or directions having extra-territorial operation.
 - (5) Regulations, orders, rules or directions under this section that provide penalties for contraventions thereof may impose upon any person charged with a criminal offence the burden of proving particular facts.

[subsection (5) inserted by Act 3 of 2009]

3. Evidence and presumptions

- (1) Any document purporting to be a permit, authority, permission, direction, notice, order or other instrument made or issued by or on behalf of any person or authority in pursuance of any provision of this Act, and to be signed by or on behalf of any such person or authority, shall be received in evidence, and shall, until the contrary is proved, be deemed to be a permit or other instrument so made or issued and signed.
- (2) *Prima facie* evidence of a document referred to in subsection (1) may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed in regulations made in terms of section two.
- (3) Any person charged with any act or omission which is an offence under this Act if the act is done or omitted to be done without a permit, exemption, permission or other authorization, shall be presumed to have done or to have omitted to do such act without such permit, exemption, permission or other authorization, as the case may be, unless it is proved that he was in possession of such permit, exemption, permission or other authorization, as the case may be, when he performed or omitted to perform the act in question.
- (4) Any person who is required by or in terms of this Act to furnish to any person any information or to produce any books, accounts, documents or any other records shall be presumed to be in possession

or control of, or to have access to, such information or books, accounts, documents or other records unless the contrary is proved.

4. Financial provisions

Any expenses incurred under or by virtue of this Act by the State or any department thereof shall be paid out of moneys appropriated for the purpose by Act of Parliament.

5. Offences and penalties

- (1) Subject to subsection (2), a person who, either within or outside Zimbabwe—
- (a) contravenes or fails to comply with—
 - (i) any provision of this Act other than section eight; or
 - (ii) the terms or conditions of any permit, authority, permission, direction, notice, order or other instrument made or issued under or by virtue of this Act;
 - or
 - (b) for the purposes of this Act, makes any statement or produces any document which is false in any material particular;

shall be guilty of an offence.

- (2) It shall be a good defence to any proceedings against a person in respect of an offence in terms of paragraph (b) of subsection (1) to prove that at the time when the statement was made or the document was produced, as the case may be, he had no knowledge of the falsity thereof.
- (3) Subject to this section, a person convicted of an offence in terms of subsection (1) shall be liable to such fine or to imprisonment for such period as the court deems fit or to both such fine and such imprisonment.
- (4) Subject to subsections (4a), (4b), (4c) and (4d), where a person is convicted of an offence in terms of —
- (a) paragraph (a) of subsection (1) which involves gold, currency, security, goods or any other property whatsoever; or
 - (b) paragraph (b) of subsection (1) and the statement was made or the document was produced for the purpose of or in connection with the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of the provisions of this Act;

the court shall, whether or not it imposes any sentence of imprisonment, impose a fine of not less than the value of the gold, currency, security, goods or other property concerned unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

[subsection (4) amended by Act 3 of 2009]

- (4a) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the unauthorised dealing in (other than the exportation, externalisation or expatriation from Zimbabwe) of any foreign currency, gold or precious stone, the court may, in addition to the fine referred to subsection (4), impose a sentence of imprisonment not exceeding ten years.

[subsection (4a) inserted by Act 3 of 2009 and substituted by section 34 of Act 1 of 2019]

- (4b) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the failure or undue delay by a Zimbabwean resident who has the right to receive foreign currency

outside Zimbabwe that was acquired by him or her by virtue of a trade, business or other gainful occupation or activity carried on by him or her in Zimbabwe—

- (a) to secure the receipt by him or her in Zimbabwe of the whole or part of the foreign currency receivable by him or her in Zimbabwe; and
 - (b) to cause the foreign currency to be offered for sale to an authorized dealer or paid into a foreign currency account as soon as is reasonably possible in the circumstances;
- the court shall—
- (c) impose—
 - (i) a fine not exceeding the value of the foreign currency concerned; and
 - (ii) a sentence of imprisonment not exceeding ten years, the whole of which shall be suspended on condition that the currency concerned is received in Zimbabwe offered for sale to an authorized dealer or paid into a foreign currency account within a period specified by the court;
- and
- (d) in addition to the penalty specified in paragraph (c), impose a fine of three times the value of the currency concerned, unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

[subsection (4b) inserted by Act 3 of 2009]

- (4c) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the unlawful exportation of any of the following items—
 - (a) any Zimbabwean currency, foreign currency or any postal order or money order; or
 - (b) any—
 - (i) certificate of title to any security; or
 - (ii) coupon; or
 - (iii) bill or exchange or promissory note; or
 - (iv) insurance policy;including any such document which has been cancelled and any document certifying the destruction, loss or cancellation of any such document or of any foreign currency document; or
 - (c) any gold, silver or platinum or any article manufactured from or containing gold, silver or platinum; or
 - (d) any precious or semiprecious stone or pearl whose value exceeds such amount as is prescribed in an order made by the Reserve Bank, or any article mounted or set with a precious or semiprecious stone or pearl whose value exceeds such amount as is so prescribed;the court shall—
 - (e) impose—
 - (i) a fine not exceeding the value of the item concerned; and

- (ii) a sentence of imprisonment not exceeding ten years, the whole of which shall be suspended on condition that the item concerned be repatriated to Zimbabwe within a period specified by the court;

and

- (f) in addition to the penalty specified in paragraph (e), impose a fine of three times the value of the item concerned, unless the convicted person satisfies the court that there are special reasons in the particular case, which shall be recorded by the court, why a lesser fine should be imposed.

For the purposes of this subsection, “unlawful” means contrary to the conditions, or outside the scope of any exceptions, prescribed in regulations made in terms of [section 2\(1\)](#).

- (4d) Where the offence of which a person is convicted in terms of subsection (1)(a) or (b) involves the sale within Zimbabwe by a specified registered operator of any commodity in foreign currency without being licensed to do so by the Reserve Bank, the court shall impose a fine of up to level fourteen or five times the value of the commodity concerned, whichever is the higher.

For the purposes of this subsection, “specified registered operator” means a corporate entity that is the operator of—

- (a) a retail shop; or
- (b) a petroleum undertaking; or
- (c) any other class of undertaking specified by order of the Reserve Bank.

[subsection (4d) inserted by Act 3 of 2009]

- (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.

[subsection (4e) inserted by section 31(b) of Act 13 of 2019 and substituted by section 39 of Act 7 of 2021]

- (5) Where an individual is convicted of an offence in terms of—

- (a) subsection (1) which involves a failure—
 - (i) to furnish to any person any information; or
 - (ii) to produce any books, accounts or documents or any other records;
 or
- (b) subsection (1) and he has previously been convicted of an offence, whether similar in nature or not, in terms of subsection (1);

the court shall, in addition to any fine which it might be required by subsection (4) to impose or which it otherwise deems fit, impose a sentence of imprisonment for such period as it deems fit.

- (6) Where a person—

- (a) is convicted of an offence in terms of—
 - (i) paragraph (a) of subsection (1) which involves the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of this Act; or

- (ii) paragraph (b) of subsection (1) and the statement was made or the document was produced for the purposes of or in connection with the exportation from, or acquisition outside, Zimbabwe of any gold, currency, security, goods or other property whatsoever in contravention of this Act;

and

- (b) does not satisfy the court that—
 - (i) foreign currency in an amount of not less than the value of such property which has been exported from, or acquired outside, Zimbabwe has been received in Zimbabwe; or
 - (ii) where the offence involves the exportation from Zimbabwe of such property, such property has been returned to Zimbabwe;

the court may, before passing sentence, adjourn the proceedings for such period not exceeding three months as the court deems fit in order to give the convicted person an opportunity of so satisfying the court on the resumption of the proceedings.

- (7) Where a person convicted of an offence referred to in paragraph (a) of subsection (4) does not satisfy the court as to one or other of the requirements mentioned in subparagraphs (i) and (ii) of paragraph (b) of subsection (6), the court shall—
 - (a) in all cases have regard to that fact as a factor in aggravation of sentence; and
 - (b) if the convicted person is an individual and the value of the property concerned exceeds the amount of a fine of level eight, impose a sentence of imprisonment for such period as the court deems fit in addition to any fine required by subsection (4).

[subsection as amended by section 4 of Act 22 of 2001]

- (8) For the purposes of subsection (4), the fact that a person is not able to pay the minimum fine required by that subsection shall not be regarded as a special reason why such fine should not be imposed.
- (9) Where any gold, currency, security, goods or other property whatsoever has been exported from, or acquired outside, Zimbabwe in accordance with—
 - (a) regulations made under this Act and the person concerned contravenes any requirement contained in such regulations; or
 - (b) a permit, authority, permission, direction, notice, order or other instrument made or issued under or by virtue of this Act and the person concerned fails to comply with any term or condition thereof;

he shall be deemed, for the purposes of this section, to have exported the property from Zimbabwe or to have acquired the property outside Zimbabwe, as the case may be, in contravention of this Act.

- (10) Notwithstanding anything contained in this Act, section 41 of the Reserve Bank of Zimbabwe Act *[Chapter 22:15]* or any other enactment, but subject to subsection (11), a fine payable in terms of subsection (3), (4), (4a), (4b), (4c) and (4d) shall only be payable in United States dollars, euros, British pounds, South African rand or Botswana pula, or any combination of the foregoing as the court may allow:

Provided that where the court denominates the fine in any one of the currencies specified in this subsection, the person required to pay the fine has the option of paying it in any one of the other currencies specified in this subsection at the international cross rate of exchange of the first-mentioned currency for second-mentioned currency prevailing on the day the fine is imposed by the court.

[subsection (10) inserted by Act 3 of 2009]

- (11) A fine payable in terms of subsection (4a)(b), (4b)(d) or (4c)(f) shall, at the option of the person required to pay the fine, be payable in Zimbabwean or foreign currency

[subsection (11) inserted by Act 3 of 2009]

6. Special jurisdiction of magistrates

Notwithstanding anything contained in the Magistrates Court Act [Chapter 7:10] or in any other enactment

-
- (a) a court of a regional magistrate shall have special jurisdiction to impose a fine not exceeding level twelve or imprisonment for a period not exceeding seven years or both such fine and such imprisonment;
- (a1) a court of a provincial or senior magistrate shall have special jurisdiction on summary trial or on remittal by the Prosecutor-General, to impose a fine not exceeding level twelve or imprisonment for a period not exceeding five years or both such fine and such imprisonment;
- (b) a court of a magistrate other than a regional, provincial or senior magistrate shall have special jurisdiction, on summary trial or on remittal by the Prosecutor-General of the case for trial or sentence, to impose a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and such imprisonment;

in respect of an offence in terms of this Act:

Provided that if the court is required by subsection (4) of section five to impose a fine which exceeds the amount specified in paragraph (a), (a1) or (b), the court may impose such fine.

[section as amended by section 4 of Act 22 of 2001 and by section 29 of Act 6 of 2005]

7. Forfeitures

- (1) Where a person is convicted of an offence in terms of section five which was committed by means of or in respect of any gold, currency, security, goods or other property whatsoever, the court shall, unless the convicted person satisfies it that there are special reasons in the particular case, which shall be recorded by the court, why forfeiture to the State should not take place, declare such property or the rights of the convicted person thereto to be forfeited to the State:

Provided that such declaration shall not affect any rights which any person, other than the convicted person, may have to the property in question if it is proved that he was—

- (a) unaware that the offence was being or would be committed; or
- (b) unable to prevent the commission of the offence.
- (2) Subsections (3), (4), (5) and (6) of section 62 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, *mutatis mutandis*, where a declaration is made in terms of subsection (1).

8. Secrecy

- (1) Except for the purposes of this Act or the compilation of statistics or when ordered to do so by a court, no person exercising any functions under this Act shall either within or outside Zimbabwe disclose any information relating to any person, firm or business, acquired in the exercise of such functions.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

9. Use of information for private gain

- (1) No person exercising any functions under this Act shall, for his personal gain, make use of any information which has come to his knowledge in the exercise of those functions.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to—
 - (a) a fine not exceeding level ten or double the amount of the gain, whichever is the greater; or
 - (b) imprisonment for a period not exceeding five years;or to both such fine and such imprisonment.

[section inserted by section 4 of Act 22 of 2001]

10. Recovered foreign currency fund and reward for information

- (1) In this section “Reserve Bank” mean *[Chapter 22:15]*.
- (2) There is hereby established for the purposes of subsection (6) a fund, called the Recovered Foreign Currency Fund, which shall be administered by the Board of the Reserve Bank.
- (3) The moneys of the Recovered Foreign Currency Fund shall consist of—
 - (a) all convertible foreign currency that is declared to be forfeited to the State in terms of section seven; and
 - (b) convertible foreign currency purchased by the Reserve Bank for the purposes of the Recovered Foreign Currency Fund.
- (4) The financial year of the Recovered Foreign Currency Fund shall be a period of twelve months ending on the 31st December.
- (5) Section 30 of the Audit and Exchequer Act *[Chapter 22:03]* shall apply to the Recovered Foreign Currency Fund.
- (6) The Board of the Reserve Bank shall award to any person a monetary reward for information provided or any measure taken—
 - (a) which results in detection and prosecution of an offence in terms of section five and the consequent recovery of convertible foreign currency that is declared to be forfeited to the State in terms of section seven; or
 - (b) which results in the recovery of convertible foreign currency, notwithstanding that no prosecution of an offence in terms of section five is instituted.
- (7) Any amount to be awarded in terms of subsection (6) shall be at the rate of ten *per centum* of the convertible foreign currency that is—
 - (a) declared to be forfeited in terms of paragraph (a) of section seven; or
 - (b) recovered in terms of paragraph (b) of section seven;as the case may be.
- (8) At the end of the financial year of the Recovered Foreign Currency Fund, the balance of the total amount of convertible foreign currency remaining in the Fund after the payment of the amounts awarded during that financial year in terms of subsection (6) shall form part of the Consolidated Revenue Fund.

[section inserted by section 9 of Act 16 of 2004]

11. Amnesty in respect of illegally expatriated property

- (1) An amnesty in respect of illegally expatriated property shall come into force in accordance with the terms of the Schedule.
- (2) Subject to the Schedule, this section and the Schedule shall be deemed to be repealed on the 1st March, 2018.

[section 11 inserted by Act [1 of 2018](#)]

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 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*.

[Please note: numbering as in original.]

[section 11 inserted by section 31(c) of [Act 13 of 2019](#) and substituted by section 40 of [Act 7 of 2021](#)]

Schedule (Section 11)

Amnesty in respect of illegally expatriated property

[Schedule inserted by Act [1 of 2018](#)]

1. Interpretation in Schedule

- (1) In this Schedule, unless the context otherwise requires—
 - “**amnesty**” means, in a general sense, the amnesty for principals and facilitators contemplated by this Schedule that began on the 1st December, 2017, and ended on the 28th February, 2018, and, in a particular sense, an amnesty granted in conformity with this Schedule to an applicant therefor;
 - “**amnestied period**” means any period before the 1st December, 2017;
 - “**Authority**” means the Zimbabwe Revenue Authority as established by the Zimbabwe Revenue Authority Act [*Chapter 23:11*];
 - “**Exchange Control Inspectorate Department**” means the Exchange Control Inspectorate Department of the Reserve Bank, being the department of the Reserve Bank responsible for ensuring compliance with this Act;
 - “**facilitator**” has the meaning given to that word in paragraph 4(4);
 - “**illegal expatriation of property**” means the expatriation of property as described in paragraph 4(2) in contravention of—
 - (a) this Act or any regulation, order or direction made under this Act for which a criminal or other penalty is imposed;
 - (b) any provision of the Money Laundering Act for which a criminal or civil penalty is imposed; and

- (c) any law administered by the Zimbabwe Revenue Authority under the Zimbabwe Revenue Authority Act [Chapter 23:11] for which a criminal or other penalty is imposed;

“**Money Laundering Act**” means the Money Laundering and Proceeds of Crime Act [Chapter 9:24];

“**principal**” has the meaning given to that word in paragraph 4(3).

- (2) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Schedule.

2. Administration of amnesty and powers of Governor of Reserve Bank

- (1) The Exchange Control Inspectorate Department shall be responsible for administering the amnesty and for ensuring compliance by successful applicants therefor with the terms of their amnesties.
- (2) The Governor of the Reserve Bank shall have the authority to do anything necessary for the efficient and effective application or implementation of this Schedule.

3. Non-application of certain criminal and other laws in respect of amnestied conduct

- (1) Subject to this Schedule, for the purpose of this amnesty, the violation of any provision of this Act or the criminal law of Zimbabwe for which an amnestied person would, but for this Schedule, be liable to be prosecuted by the National Prosecuting Authority shall not be deemed to be criminal conduct
- (2) Section 10 of this Act, and section 34B (“Reward for information”) of the Revenue Authority Act [Chapter 23:11] (No. 17 of 1999) shall not apply to any information provided or measure taken which relates to an offence for which an amnestied person is not liable by virtue of this Schedule to be prosecuted by the National Prosecuting Authority.

4. Scope of amnesty

- (1) An amnesty may be applied for in respect of any illegally expatriated property within the scope of this paragraph.
- (2) Illegally expatriated property comprises—
- (a) any currency, gold, precious stones and securities that the applicant for the amnesty has exported, externalised or expatriated from Zimbabwe that originated from Zimbabwe or is the proceeds of any trade, business or other gainful occupation or activity carried on by him or her in Zimbabwe; and
 - (b) any moveable or immovable property acquired domestically or outside Zimbabwe by the use of the currency, gold, precious stones and securities referred to in paragraph (a); and
 - (c) the proceeds of any sale or other alienation of any moveable or immovable property referred to in paragraph (b).
- (3) Subject to subparagraph (5), any person (hereafter in this Schedule referred to as a “principal”) who, before the 1st December, 2017, illegally expatriated property—
- (a) personally; or
 - (b) through or by the use of—
 - (i) a banking institution or other financial institution;
 - (ii) any person in a “designated occupation” as defined in the Money Laundering Act;

- (iii) a company, trust or other entity in which the principal has a controlling or predominant interest; or
 - (iv) any associate of the principal;qualifies for an amnesty under this Schedule.
- (4) In addition, subject to subparagraph (5), any person who facilitated the illegal expatriation of property (hereafter in this Schedule referred to as a “facilitator”), that is to say—
 - (a) an associate of the principal;
 - (b) a nominee acting on behalf of a principal who is the beneficial owner of the property in question; or
 - (c) any of the following—
 - (i) a banking institution or other financial institution;
 - (ii) any person in a “designated occupation” as defined in the Money Laundering Act;
 - (iii) a company, trust or other entity in which the facilitator has a controlling or predominant interest;
 - (iv) any associate of the facilitator;qualifies for an amnesty under this Schedule in all respects as if he or she is a principal:
- (5) An amnesty granted to—
 - (a) a principal under subparagraph (3)—
 - (i) automatically absolves the facilitator of any criminal or liability in relation to property that was illegally expatriated with the assistance of the facilitator, but only to the extent that the property in question is disclosed in the application for the amnesty; and
 - (ii) does not affect the liability for tax of the principal on any property that was illegally expatriated, provided that the principal shall not be subject no any penalty by way of interest or enhanced tax on the property in question;
 - (b) a facilitator under subparagraph (4)—
 - (i) does not thereby absolve the principal unless the principal, either independently or together with the facilitator, applies for an amnesty under this Schedule; and
 - (ii) does not affect the Liability for tax of the facilitator in a representative capacity on any property that was illegally expatriated, provided that the facilitator shall not be subject to any penalty by way of interest or enhanced tax on the property in question;
- (6) Subject to the conditions set out in this Schedule, when an amnesty is granted in terms of this Schedule, it shall preclude the Reserve Bank, the Authority and the National Prosecuting Authority from prosecuting an offender or imposing civil or administrative penalties for any act constituting the illegal expatriation of property or for any activity constituting a misrepresentation or non-disclosure necessary to facilitate the illegal expatriation of property.
- (7) In relation to this Schedule, the acts or omissions specified in the Appendix are indicative (but not exhaustive) of the kinds of acts or omissions in respect of which an amnesty may be sought.

5. Application for and granting of amnesty

- (1) A principal or facilitator who, but for this Schedule, would be liable—
 - (a) to any civil or administrative penalty; and

- (b) to be prosecuted by the National Prosecuting Authority; for the illegal expatriation of property effected during the amnestied period may, no later than the 28th February, 2018, apply for amnesty in terms of this Schedule.
- (2) An application for amnesty shall be in writing and in the form furnished by the Exchange Control Inspectorate Department providing, among other matters, for the following—
- (a) the name of the principal or facilitator; and
 - (b) the amount or value of the property due for repatriation; and
 - (c) in the case of currency, the relevant particulars for the receipt of the currency at a local banking or financial institution; and
 - (d) the particulars of the transaction by means of which or under the guise of which the property was expatriated; and
 - (e) the estimated time within which the repatriation of the property in question will take place
- (3) An application for amnesty shall only be considered if it is lodged with the Exchange Control Inspectorate Department by the 28th February, 2018.
- (4) An amnesty shall be granted only upon the applicant—
- (a) having made full disclosure in respect of the illegally expatriated property; and
 - (b) having provided such supporting documents in connection with the application for the amnesty as may be required; and
 - (c) having repatriated the property in full by the 31st March, 2018, in the case of property consisting of currency, gold, precious stones or securities, or other moveable property capable of being speedily repatriated or converted into currency at the current fair market valuation for such property;
- Provided that the Exchange Control Inspectorate Department may, for good cause shown by the applicant, extend the period for repatriation by a period not exceeding one hundred and eighty days; and
- (d) having, in the case of immoveable property or moveable property not capable of being speedily repatriated or converted into currency, sold or undertaken to sell the property and repatriate the proceeds thereof at the current fair market valuation for such property by such date as may be agreed between the applicant and the Exchange Control Inspectorate Department;
- Provided that the Exchange Control Inspectorate Department may, for good cause shown by the applicant, do either or both of the following—
- (i) extend the period for repatriation by a period not exceeding one hundred and eighty days;
 - (ii) permit the applicant to lease or alienate the property in any other way with a view to ensuring that the proceeds therefrom are repatriated.
- (5) Unless the Exchange Control Inspectorate Department requires further information from the applicant in connection with his or her application, the Exchange Control Inspectorate Department shall determine every application for an amnesty within ten days from the date of receiving the application.

6. Proof and modalities of repatriation

- (1) The receiving local banking institution or financial institution shall immediately notify the Exchange Control Inspectorate Department of the repatriation of any illegally expatriated property, furnishing it with documentary proof of the same.

- (2) The receiving local banking institution or financial institution shall transfer the nostro value of the received funds to the Reserve Bank, which shall transfer an equivalent amount through RTGS, to the banking institution or financial institution for the account of the applicant.
- (3) The Exchange Control Inspectorate Department shall issue a receipt to the applicant confirming repatriation of the property in Zimbabwe.

7. Eligibility for amnesty

Any application for amnesty shall be invalid—

- (a) in respect of any illegally expatriated property not disclosed in the application for amnesty;
- (b) in respect of any action resulting in the detention, seizure or forfeiture of any property, which action commenced on or before the 1st December, 2017;

8. Withdrawal of amnesty

The amnesty granted to applicant shall be withdrawn and thereby nullified if—

- (a) the applicant makes, in relation to the illegally expatriated property for which amnesty is sought, any wilfully false declaration to the Reserve Bank in applying for the amnesty; or
- (b) the applicant fails to timeously repatriate the property in accordance with paragraph 5.

9. Indemnity for facilitators and duty of confidentiality by Reserve Bank, etc.

- (1) Any duty of confidentiality required to be observed by a facilitator (being a facilitator who facilitated the illegal expatriation of property knowing that the property in question was being illegally expatriated) in relation to his or her principal by virtue of any privilege, contract or law is hereby waived in relation to every disclosure made by the facilitator for the purpose of obtaining an amnesty under this Schedule, and no criminal or civil liability will attach to a facilitator who applies for an amnesty under this Schedule and makes any disclosures for that purpose.
- (2) No action shall lie against any facilitator for the doing of any act required to be done to enable any illegally expatriated property to be repatriated for the purposes of this Schedule.
- (3) The Exchange Control Inspectorate Department, the Reserve Bank, and any person employed or retained by either of the foregoing shall not disclose any information acquired by them through the exercise of their functions in terms of this Schedule except—
 - (a) with the consent of the applicant who disclosed the information; or
 - (b) pursuant to an order of court for the purpose of legal proceedings under this Schedule or any other law; or
 - (c) to the extent that it may be necessary to do so for the purpose of this Schedule or any other law to an agent of the Reserve Bank.
- (4) Any person who contravenes subparagraph (3) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

10. Regulatory powers of Minister

- (1) The Minister may make regulations prescribing all matters which by this Schedule are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

- (2) Without derogating from the generality of subparagraph (1) regulations may provide for—
- (a) such forms as may be necessary for the application or implementation of this Schedule;
 - (b) the manner in which applications for amnesty shall be made and what supporting documents must be produced in support of such applications.

Appendix (Paragraph 4(7))

Sample of acts or omissions constituting illegal expatriation of property

[Appendix inserted by Act 1 of 2018]

Illegal expatriation of property refers to illegal transfer/export of foreign exchange and/or assets from Zimbabwe and/or offshore retention of foreign exchange and/or assets due to Zimbabwe, without relevant regulatory authorisations. Listed below are some of the forms of illegal expatriation of property carried out by resident individuals and/or corporate entities—

- (a) non-repatriation of export proceeds due to Zimbabwe;
- (b) non-return of temporary exports and disguised exports of samples;
- (c) payments for imports of goods and services whose corresponding value has not been received in Zimbabwe;
- (d) remittance of funds used for investments offshore without Exchange Control approval;
- (e) offshore retention of funds realised from sale of shares in local companies to foreign residents;
- (f) offshore retention of investment income such as dividends, profits and management fees due to Zimbabwe;
- (g) remittance of funds for “repayment” of fictitious offshore loans;
- (h) settlement of purchase prices offshore, for an immovable property located in Zimbabwe;
- (i) operation of illegal offshore bank accounts funded from Zimbabwe;
- (j) offshore retention of sale proceeds realised from goods or minerals smuggled out of Zimbabwe; and
- (k) any other retention of funds offshore which were supposed to be received in Zimbabwe or which were not sanctioned by Exchange Control or provided for in current Exchange Control policy.

Schedule (Section 11)

Civil penalty orders

[Please note: numbering as in original.]

[Schedule added by section 31(d) of Act 13 of 2019 and substituted by section 41 of Act 7 of 2021]

1. Interpretation in Schedule

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;

“**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 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;

“**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.

2. Power of Reserve Bank to issue civil penalty orders

- (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 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.
- (2) 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.
- (3) In the event of default in complying with subparagraph (2), the civil penalty shall provide for—
- (a) a combination of—
- (i) a fixed penalty of the amount of one 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.
- (4) 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.
- (5) In the event of default in complying with subparagraph (4), the civil penalty shall provide for—
- (a) a combination of—
 - (i) a fixed penalty of five hundred 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.
- (6) 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.
- (7) In the event of default in complying with subparagraph (6), the civil penalty shall provide for—
- (a) a combination of—
 - (i) a fixed penalty 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.
- (8) 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.
- (9) In the event of default in complying with subparagraph (10), the civil penalty shall provide for—
- (a) a combination of—
 - (i) a fixed penalty of five hundred 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.

3. Limitation on issuance and enforcement of civil penalty orders

- (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 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.

4. Service and enforcement of civil penalties and destination of proceeds thereof

- (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 (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 6 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 designated officer 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.

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

- (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.

6. Evidentiary provisions in connection with civil penalty orders

- (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.

7. Designated officers

- (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).