



21 October 2024

**To:** Financial Institutions and Designated Non-Financial Businesses and Professions

**DIRECTIVE IN TERMS OF SECTION 4 AS READ WITH SECTION 5 OF THE MONEY LAUNDERING AND PROCEEDS OF CRIME ACT [CHAPTER 9:24]**

***Civil and Administrative Penalties for Infringement of the Act by Financial Institutions, Designated Non-Financial Businesses and Professions, Competent Supervisory Authorities and their Directors, Principals, Officers, Partners, Professionals, Agents, and Employees***

This Directive supercedes and replaces AML/CFT Directive No.2/2014 on Civil and Administrative Penalties for Infringement of the Act by Financial Institutions, Designated Non-Financial Businesses and Professions, Competent Supervisory Authorities and their Directors, Principals, Officers, Partners, Professionals, Agents, and Employees.

New infringements were added to the Civil Infringement Table following the amendments to the Money Laundering and Proceeds of Crime Act [Chapter 9:24], the enactment of Statutory Instruments 110 of 2021 and 164 of 2023 on Terrorist Financing and Proliferation Financing respectively and Directives that were issued by the Financial Intelligence Unit (FIU).

## **PREAMBLE**

1. The Money Laundering and Proceeds of Crime Act in section 5 (1) empowers the FIU to issue a directive specifying acts of civil infringement arising from a failure to comply with any provision of the Act or of any directive issued by the FIU.
2. When it appears to the Director General of the FIU that there is a prima facie case of an infringement as specified in the table below, the Director General shall notify the institution, in writing, of the particulars of the alleged infringement and give the institution not less than 7 days to make any representations, if it so wishes, showing cause why the institution should not be penalized.
3. Upon receiving the institution's written representations, or upon the expiry of the period within which the institution should have responded, the Director General may:
  - a) request the institution to submit any further information or clarification; or
  - b) summon the institution to a hearing; or
  - c) with or without a hearing, find the institution liable for a specified civil infringement and impose against the institution a penalty or penalties not exceeding the civil /administrative penalty or penalties specified for such infringement.
4. When the Director General finds any institution liable and penalizes it for a civil infringement, he shall notify the institution of the fact, in writing and shall specify the infringement(s) for which the institution has been found liable and the penalty or penalties imposed.
5. The provisions of section 6 of the Money Laundering and Proceeds of Crime Act shall apply to the recovery of any monetary penalty imposed pursuant to this directive.
6. The above provisions shall, with necessary modifications, also apply to alleged acts of civil infringement by any director, principal, officer, partner, professional, agent or employee of a financial institution or designated non-financial business or profession.
7. A director, principal, officer, partner, professional, agent or employee of a financial institution or designated non-financial business or profession may be

charged and be found liable individually or jointly with the institution in question.

8. A director, principal, officer, partner, professional, agent or employee of a financial institution or designated non-financial business or profession who has been found liable of a civil infringement shall be personally responsible for the payment of any penalty imposed on him or her.
9. Without prejudice to any criminal prosecution or criminal sanctions that may be applicable, an act or omission specified in the table below, shall constitute an act of civil infringement and shall be punishable by any one or more of the sanctions specified under section 5(2) of the Money Laundering and Proceeds of Crime Act, i.e. —
  - a) a written warning; or
  - b) an order to comply with any specific instruction as the Director General of the FIU may issue in writing; or
  - c) an order to a competent supervisory authority, financial institution, designated non-financial business or profession to submit reports at specified intervals on such matters concerned with ensuring compliance with this Act as are specified in the order; or
  - d) an order barring individual, for disclosed reasons, from employment within the specified competent supervisory authority, financial institution or designated non-financial business or profession, whether entirely or in a specified capacity; or
  - e) an order to a competent supervisory authority requesting the institution of proceedings in terms of the enactment under which that authority operates for the suspension or cancellation of the licence, registration, permit, permission to practice, or other authority of a specified financial institution or designated non-financial business or profession, whether entirely or in a specified capacity or of any specified director, principal, officer, partners, professional, agent or employee of that institution, business or profession.
  - f) a civil penalty order as follows:
    - a fixed civil penalty for a specified completed and irremediable civil infringement, for which—
      - A. the prescribed penalty shall not exceed a fixed penalty of two hundred and fifty thousand dollars (US\$250 000); and
      - B. the prescribed penalty for each day (beginning on the day after the issuance of the civil penalty order) during which the infringer fails to pay the civil

penalty, shall not exceed a fixed penalty of five hundred dollars (US\$500) per day for a maximum period of one hundred and eighty days; and

(i) a fixed civil penalty for a specified completed but remediable infringement—

A. for which the prescribed penalty shall not exceed a fixed penalty of fifty thousand dollars (US\$50 000); and which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and

B. which (upon the civil penalty becoming operative because of noncompliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in sub-paragraph A, which shall not exceed a fixed penalty of five hundred dollars (US\$500) per day for a maximum period of one hundred and eighty days; and

(iii) a fixed civil penalty for a continuing infringement—

A. for which the prescribed penalty shall not exceed a fixed penalty of five hundred dollars (US\$500) per day for each day during which the infringement continues, not exceeding a maximum period of one hundred and eighty days; and

B. which must be suspended conditionally upon the infringer immediately (that is to say, on the day the civil penalty order is issued) ceasing the infringement; and

(iv) a fixed civil penalty for a specified continuing infringement where the time for compliance is of the essence—

A. for which the prescribed penalty shall not exceed a fixed penalty of two hundred and fifty thousand dollars (US\$250 000); and

B. which must be suspended conditionally upon the infringer taking the remedial action specified in the civil penalty order within the time specified in that order; and

C. which (upon the civil penalty becoming operative because of noncompliance with the requested remedial action) may provide for the prescribed penalty for each day (beginning on the day after the last day on which the infringer should have effected the remedial action) during which the infringer fails to pay the civil penalty referred to in subparagraph A, which shall not exceed a fixed

penalty of five hundred dollars (US\$500) per day for a maximum period of one hundred and eighty days.

### **TABLE: CIVIL INFRINGEMENTS**

Any Financial Institution or Designated Non-Financial Business or Profession that commits any of the acts listed in this table shall be guilty of a civil infringement and shall be liable to any of the penalties specified under (9) in the preamble above.

	<b>INFRINGEMENT</b>
1.	Failure to comply with any obligation relating to customer identification and/or verification including that relating to beneficial owners. (Sections 15-18)
2.	Establishing and maintaining an anonymous account/s or account under fictitious name or business relationship with a shell bank. [Section 14 (1-5)]
3.	Failure to take adequate measures when conducting a transaction with a customer who/which is not physically present (including virtual and remote onboarding). (Section 19)
4.	Failure to identify, assess and understand the ML/TF/PF risks, applying commensurate mitigation measures and maintaining adequate records thereof. (Section 12B subsection 1-2)
5.	Failure to review and update ML/TF/PF risk assessment regularly considering material changes in risk factors and maintaining adequate records thereof. [Section 12B (3)]
6.	Failure to identify, assess and document the ML/TF/PF risk posed by any product, service, business practice or technological innovation for both new and existing products before launch and putting in place adequate measures to mitigate the risk. [Section 12B (4)]
7.	Failure to implement appropriate risk-management systems to identify high-risk customers. (Section 20)
8.	Failure to implement appropriate risk management systems to determine if a customer or beneficial owner is a politically exposed person. (Section 20)
9.	Failure to obtain senior management approval before establishing a business relationship with a politically exposed person; or when a customer or beneficial owner in an already established business relationship is identified as a politically exposed person. [Section 20 (1) (b) (i)]

10.	Failure to take all reasonable measures to identify the source of funds and source of wealth of a customer or beneficial owner who is identified as a politically exposed person. [Section 20 (1) (b) (ii)]
11.	Failure to exercise enhanced identification, verification, and ongoing due diligence in respect of high-risk customers. (Section 20)
12.	Failure to comply with any one or more requirements relating to correspondent banking relationships. (Section 21)
13.	Failure to comply obligations of financial institutions and designated non-financial businesses and professions, relating to customer identification and verification requirements. (Section 22)
14.	Failure to maintain books and records with respect to customers and transactions. (Section 24)
15.	Failure to avail in a timely manner upon request by the Unit, books or records referred to in section 24 or any information contained therein. (Section 28)
16.	Failure to develop and/or implement programmes for the prevention of ML/TF/PF. [Section 25 (1)]
17.	Failure to designate a compliance officer at management level. [Section 25 (2)]
8.	Failure to exercise ongoing due diligence and special monitoring of transactions. (Section 26)
19.	Failure to comply with the requirements relating to wire transfers. (Section 27)
20.	Failure to exercise enhanced due diligence and apply counter measures proportionate to the risk with respect to higher-risk countries. (Section 26A)
21.	Failure to report a suspicious transaction. (Section 30)
22.	Failure to implement targeted financial sanctions as required in terms of FIU directive/s and maintaining records thereof (for terrorist financing and proliferation financing).
23.	Failure to submit a cash transaction report as required in terms of FIU directive/s.
24.	Disclosing to a customer or to any third party that a suspicious transaction report has been, is being, or will be submitted to the Unit or that a money laundering investigation has been, is being, or will be conducted. [Section 31 (2)]
25.	Disclosing any information that identifies or is likely to identify a person who prepared, made a suspicious transaction report, or handled the underlying transaction. [Section 32 (1)]

26.	Disclosing a suspicious transaction report or any information contained in the report or provided in connection with it, or the identity of the person preparing or making such report or handling the underlying transaction, in any judiciary proceeding. [Section 32 (2)]
27.	Intentionally or by gross negligence making and providing false or misleading statement or information as required under the MLPC Act.
28.	Failure to comply with any mandatory requirement or communication issued in terms of the MLPC Act including but not limited to a letter, a circular, directive or guideline.



O. Chiperesa  
Director General  
**Financial Intelligence Unit**

