



AML/CFT Directive No. 2/2014

8 July 2014

The Managing Director

Dear Sir/Madam

**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 or  
Professions, Competent Supervisory Authorities and their Directors,  
Principals, Officers, Partners, Professionals, Agents or Employees**

1. Any words or phrases which are defined in the Money Laundering and Proceeds of Crime Act [Chapter 9:24:], shall bear the same meaning in this Directive as in the Act.
2. When it appears to the Director that there is a prima facie case of an infringement as specified in the table below, the Director 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 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 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.

### **Penalties for Civil Infringements**

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
  - (a) an order to comply with any specific instruction as the Director of the Unit may issue in writing; or
  - (b) 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



- (c) an order barring individuals, 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
- (d) 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.
- (e) a civil penalty order as follows:
  - (i) 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
  - (ii) 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

- 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 non-compliance 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 non-compliance 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

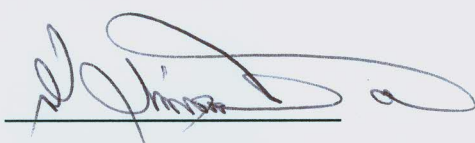


penalty referred to in subparagraph A, which shall not exceed a *fixed penalty of five hundred dollars (US\$500) per day* for a maximum period of one hundred and eighty days;

**TABLE: CIVIL INFRINGEMENTS**

	INFRINGEMENT
1.	Failure to take reasonable steps to identify the beneficial owner of funds or other property that is the subject matter of a transaction. (s.15(3))
2.	Failure to comply with any obligation relating to customer identification and /or verification (s.15-18).
3.	Permitting a customer to open or operate an anonymous account or an account under a fictitious name. (s.14)
4.	Entering into or continuing a business relationship with a shell bank. (s.14)
5.	Failure to take adequate measures as required under section 19 of the Act when conducting a transaction with a customer who/which is not physically present
6.	Failure to implement appropriate risk-management systems to identify high risk customers (s.20)
7.	Failure to implement appropriate risk management systems to determine if a customer or beneficial owner is a politically-exposed person (s.20)
8.	Failure to obtain senior management approval before establishing a business relationship with a politically exposed person or to continue an already established business relationship once a customer or beneficial owner is identified as a politically exposed person.
9.	Failure to take all reasonable measures to identify the source of funds and wealth of a customer who is identified as a politically exposed person. (s. 20)
10.	Failure to exercise enhanced identification, verification and ongoing due diligence in respect of high risk customers (s.20)
11.	Failure to comply with any one or more requirements provided for in section 21 of the Act relating to correspondent banking relationships.
12.	Failure to comply with the requirements of section 22 of the Act relating to the obligations of financial institutions and designated non-financial businesses and professions, in the event of failure to fulfill customer identification and verification requirements.

13.	Failure to maintain books and records as required under section 24 of the Act.
14.	Failure to timely avail to the Unit, upon request, books or records referred to in section 24 or any information contained therein (s.28).
15.	Failure to develop and/or implement programmes for the prevention of money laundering and terrorist financing as required under sub-section (1) of section 25 of the Act.
16.	Failure to designate a compliance officer as required under subsection (2) of section 25 of the Act.
17.	Failure to exercise ongoing due diligence and monitoring as required under section 26 of the Act.
18.	Failure to comply with the requirements relating to wire transfers as set out in section 27 of the Act.
19.	Failure by a financial institution to ensure that its foreign branches or majority-owned subsidiaries implement the applicable requirements of the Act (s 29(1))
20.	Failure to advise the Unit of the fact that the laws of a foreign country, where a branch or majority-owned subsidiary of the institution is situated, prevent the branch or subsidiary from compliance with the requirements of the Act. (s 29(2))
21.	Failure to report a suspicious transaction as required in terms of section 30 of the Act.
22.	Failure to report a suspicious transaction promptly or within the prescribed time period. S. 30
23.	Failure to submit a cash transaction report as required in terms of a directive
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 carried out. (s. 31(2).
25.	Except as required or authorized in terms of the Act, disclosing any information that identifies or is likely to identify a person who prepared or made a suspicious transaction report or handled the underlying transaction (s. 32)
26.	Failure to comply with any mandatory requirement of a circular, directive or guidelines issued in terms of the Act.



**M. E. Chiremba**

**Director: Bank Use Promotion and Financial Intelligence Unit**