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CRIMINAL PROCEDURE AND EVIDENCE AMENDMENT BILL, 2004

MEMORANDUM

There is a prevalence of crimes prejudicing the vital economic interests of Zimbabwe, such as corruption, the laundering of the proceeds of crime, the externalisation of foreign currency (whether directly or through transfer pricing), the smuggling of gold and precious stones and the illegal export of agricultural products controlled under the Grain Marketing Act [Chapter 18:14].

The amendments to the Criminal Procedure and Evidence Act [Chapter 9:07] (“the principal Act”) sought by this Bill are intended to facilitate the investigation and prosecution of these crimes by the State. They re-enact (with modifications) the Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) Regulations (SI 37/04) and the Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) (No. 2) Regulations (SI 41A/04). In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This sets out the Bill’s short title.

Clause 2

This clause amends section 32 of the principal Act (which is concerned with the procedure to be followed after an arrest without warrant) with the following objects in mind:

Firstly, it extends the period of pre-trial detention without possibility of bail for certain serious offences affecting national security and public order from seven to 28 days, if the court before which an accused is initially brought within 48 hours after being arrested is satisfied that the accused was arrested on reasonable suspicion of having committed the offence in question, or committed the offence in the presence of the arresting officer or was found by the arresting officer to be attempting to commit the offence.

Secondly, it provides for pre-trial detention without possibility of bail for up to 28 days for certain offences affecting the national economy, if there is produced to a court before which an accused is initially brought within 48 hours after being arrested, a certificate by the Attorney-General stating that such detention is necessary due to the seriousness and difficulty of the case.

Thirdly, it repeals a redundant provision of section 32 the principal Act.

Clause 3

This clause amends section 34 of the principal Act (which is concerned with the execution of warrants of arrest) with the same objects in mind as those specified in the preceding clause in relation to arrests without warrant.

Clause 4

The amendment sought by this clause is consequential to the amendments sought by the preceding clauses 2 and 3.

Clause 5

This clause seeks to modify a provision of the principal Act which prohibited appeals against orders granting or refusing bail made by judges of the High Court, if the relevant bail application originated in a magistrate's court. The effect of this amendment will be to permit such appeals (whether by the Attorney-General or the accused) in relation to cases involving the security of the State or serious economic crimes.

Clause 6

This clause seeks to re-title a misleadingly labelled provision of the principal Act empowering courts to return an alternative verdict where the offence charged is not proved but the facts proved reveal the commission of some other offence. It also inserts a new section providing (for the avoidance of doubt) that where a court finds that part but not all of the facts of an offence charged have been proved, it must nevertheless convict the accused of that offence if the facts that are proved disclose all the essential elements of that offence.

Clause 7

This provision clarifies the meaning of paragraph 2 of the First Schedule, whose interpretation was the subject of recent High Court rulings.

Clause 8

This clause seek to amend the Fifth Schedule to the principal Act, which forbids a police officer of whatever rank to grant bail to accused persons for certain specified offences. The purpose of this amendment is to co-ordinate the contents of this Schedule with those of the Third Schedule and the new Ninth Schedule.

Clause 9

This clause seeks to add a new Schedule to the principal Act specifying offences which constitute "serious economic crimes", in connection with which the provisions on pre-trial detention referred to in clauses 2 and 3 above may be applicable.

BILL

To amend the Criminal Procedure and Evidence Act [*Chapter 8:07*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and Parliament of Zimbabwe.

1 Title

This Act may be cited as the Criminal Procedure and Evidence Amendment Act, 2004.

2 Amendment of section 32 of Cap. 9:07

Section 32 (“Procedure after arrest without warrant”) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (hereinafter called “the principal Act”) is amended—

(a) in subsection (2)—

(i) by the deletion of “Subject to subsections (3) and (4)” and the substitution of “Subject to subsections (3a), (3b) and (3c)”;

(ii) by the repeal of the proviso;

(b) by the insertion after subsection (2) of the following subsections—

“(3a) Where the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule and the judge or magistrate before whom the person is brought in terms of this section is satisfied that the person was arrested—

(a) while committing the offence in the presence of a peace officer; or

(b) upon reasonable suspicion of having committed the offence; or

(c) while attempting to commit the offence, or clearly manifesting an intention so to do;

the judge or magistrate shall order that person’s further detention or issue a warrant for his or her further detention for a period of twenty-eight days.

(3b) Where the person arrested without warrant is charged with any offence referred to in the Ninth Schedule and there is produced to the judge or magistrate before whom the person is brought in terms of this section a certificate issued by or on behalf of the Attorney-General stating that, in the Attorney-General’s opinion—

(a) the offence in question involves significant prejudice or significant potential prejudice to the economy or other national interest of Zimbabwe; and

(b) the further detention of the person arrested for a period of up to twenty-eight days is necessary for any one or more of the following reasons—

(i) the complexity of the case; or

(ii) the difficulty of obtaining evidence relating to the offence in question; or

(iii) the likelihood that the person arrested will conceal or destroy the evidence relating to the offence in question or interfere with the investigation of the offence or both;

the judge or the magistrate shall, if satisfied that the person was arrested—

A. while committing the offence in the presence of a peace officer; or

- B. upon reasonable suspicion of having committed the offence; or
- C. while attempting to commit the offence, or clearly manifesting an intention so to do;

order that person's detention or issue a warrant for his or her further detention for a period of twenty-eight or the lesser period specified in the certificate.

(3c) A person referred to in subsection (3a) or (3b) shall—

- (a) unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-eight days or the lesser period specified in a certificate mentioned in subsection (3b), as the case may be, from the date when an order or warrant for the person's further detention was issued in terms of the relevant subsection, and no court shall admit such person to bail during that period;
- (b) pending the outcome of investigations into the charge or charges against him or her, remain in detention after the lapse of the period referred to in subparagraph (i), unless a court admits him or her to bail.”;

(c) by the repeal of subsection (4).

3 Amendment of section 34 of Cap. 9:07

Section 34 (“Execution of warrants”) of the principal Act is amended by the insertion after subsection (3) of the following subsections—

“(4) If a person arrested by virtue of a warrant is charged with any offence referred to in—

- (a) paragraph 10 of the Third Schedule, and the judicial officer before whom the person is brought in terms of this section is satisfied that the person was arrested upon reasonable suspicion of having committed the offence, the judicial officer shall order that person's continued detention for a period of twenty-eight days; or
- (b) the Ninth Schedule and there is produced to the judicial officer before whom the person is brought in terms of this section a certificate issued by or on behalf of the Attorney-General in the same terms as those specified in subsection (3b) of section *thirty-two*, the judicial officer shall, if satisfied that the person was arrested upon reasonable suspicion of having committed the offence, order that person's continued detention for a period of twenty-eight days or the lesser period specified in the Attorney-General's certificate.

(5) A person referred to in subsection (4) shall—

- (a) unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-eight days or the lesser period specified in a certificate mentioned in paragraph (b) of subsection (4), as the case may be, from the date when an order for the person's further detention was issued in terms of that section, and no court shall admit such person to bail during that period;

- (b) pending the outcome of investigations into the charge or charges against him or her, remain in detention after the lapse of the period referred to in paragraph (a), unless a court admits him or her to bail.”.

4 Amendment of section 116 of Cap. 9:07

Section 116 (“Power to admit to bail”) of the principal Act is amended in subsection (1) by the deletion of “Subject to this section” and the substitution of “Subject to this section and sections *thirty-two* and *thirty-four*,”.

5 Amendment of section 121 of Cap. 9:07

Section 121 (“Appeals against decisions regarding bail”) of the principal Act is amended by the repeal of subsection (8) and the substitution of—

“(8) There shall be no appeal to a judge of the Supreme Court from a decision or order of a judge of the High Court in terms of paragraph (b) of subsection (2), unless the decision or order relates to the admission or refusal of admission to bail of a person charged with any offence referred to in paragraph 10 of the Third or the Ninth Schedule, in which event subsections (3) to (7) shall apply to such appeal.”.

6 New sections substituted for section 223 of Cap. 9:07

Section 223 of the principal Act is repealed and the following sections are substituted—

“223 Conviction for other crime than that charged

Where a person is charged with an offence the essential elements of which include the essential elements of some other offence, he or she may be found guilty of such other offence, if such are the facts proved and if it is not proved that he or she committed the offence charged.

223A Conviction for part of crime charged

For the avoidance of doubt it is declared that where a court finds that part but not all of the facts of an offence charged have been proved, it shall nevertheless convict the accused of that offence if the facts that are proved disclose all the essential elements of that offence.”.

7 Amendment of First Schedule to Cap. 9:07

(1) The First Schedule (“Specified Offences in Relation to Powers of Arrest”) of the principal Act is amended by the repeal of paragraph 2 and the substitution of—

- “2. Any offence in terms of any enactment in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine.”.

(2) The amendment made by subsection (1) is for the sole purpose of clarifying the meaning of the provision amended and does not affect the validity of anything done in connection with such provision before the date of commencement of the Criminal Procedure and Evidence Amendment Act, 2004.”.

8 Amendment of Fifth Schedule to Cap. 9:07

The Fifth Schedule (“Offences in Connection with Which Bail May not be Granted in terms of Section 132 (1)”) of the principal Act is amended by the repeal of paragraphs 10, 11 and 12 and the substitution of—

- “10. Contravening section 5, 6, 7, 8, 9, 10 or 11 of the Public Order and Security Act [*Chapter 11:17*].”;
 - 11. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 10.
 - 12. Any offence referred to in the Ninth Schedule in respect of which the Attorney-General has issued a certificate referred to in subsection (3b) of section *thirty-two* or paragraph (a) of subsection (4) of section *thirty-four*.”.

9 New Schedule added to Cap. 9:07

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

“NINTH SCHEDULE (Section 32)
OFFENCES INVOLVING CORRUPTION, ORGANISED
CRIME OR HARM TO THE NATIONAL ECONOMY

- 1. Contravening the Prevention of Corruption Act [*Chapter 9:16*].
- 2. Contravening section 63 (“Money-laundering”) of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*].
- 3. The sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [*Chapter 18:14*].
- 4. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
- 5. Contravening section 42 (“Offences relating to banknotes”) of the Reserve Bank Act [*Chapter 22:15*] or committing any offence relating to the coinage.
- 6. Contravening subparagraph (i) of paragraph (a) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with—
 - (a) subsection (1) of section 4 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996 (in this subparagraph and paragraph 7 called “the Exchange Control Regulations”), by dealing in any foreign currency in contravention of paragraph (a) or (b) of that section of the Regulations without the permission of an exchange control authority;
 - (b) subsection (1) of section 10 of the Exchange Control Regulations, by unlawfully making any payment, placing any money or accepting any payment in contravention of paragraph (a), (b), (c) or (d) of that section of the Regulations;
 - (c) paragraph (a) or (b) of subsection (1) of section 11 of the Exchange Control Regulations, by unlawfully making any payment outside Zimbabwe or incurring an obligation to make any payment outside Zimbabwe;

- (d) paragraph (b). (e) or (f) of subsection (1) of section 20 of the Exchange Control Regulations, by unlawfully exporting any foreign currency, gold, silver or platinum, or any article manufactured from or containing gold, silver or platinum, or any precious or semiprecious stone or pearl from Zimbabwe;
 - (e) subsection (2) of section 21 of the Exchange Control Regulations, by unlawfully exporting any goods from Zimbabwe in contravention of that provision of the Regulations.
7. Contravening paragraph (b) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] by making any false statement or producing any false document in connection with a contravention of subsection (2) of section 21 of the Exchange Control Regulations;
 8. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
 9. Theft or forgery of—
 - (a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
 - (b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or
 - (c) any passport, identity document or drivers licence issued by a foreign government; or
 - (d) a vehicle registration plate; or
 - (e) any documentation relating to the registration or insurance of a motor vehicle.
 10. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 9.”.