**BILL WATCH 50/2016**

**[21st November 2016]**

**The National Assembly is Sitting This Week but not the Senate   
The Senate will Resume on 29th November**

**Budget Day will be Thursday 8th December**

**“Bond Notes Bill” Gazetted**

The Reserve Bank of Zimbabwe Amendment Bill [H.B. 12, 2016] was published in a Government Gazette Extraordinary dated 16th November.  It is a Bill from the Ministry of Finance and Economic Development.

The purpose of the Bill is to replace the temporary Presidential Powers (Temporary Measures) (Amendment of Reserve of Bank of Zimbabwe Act and Issue of Bond Notes) Regulations, 2016, with an Act of Parliament covering the same ground, but without limitation of time.

The regulations were published in SI 133/2016 and from now on are referred to in this bulletin as “SI 133” or “the regulations”.

*Both the Bill and the regulations are available on the Veritas website – please click on the following links—*

* [*Reserve Bank of Zimbabwe Amendment Bill*](http://www.veritaszim.net/node/1905)
* *the regulations,* [*SI 133/2016*](http://www.veritaszim.net/node/1887) *.*

**The Bill Is Not Law – Not Yet**

At least one newspaper headline has misleadingly suggested that the Bill is already law.  It is not.  It will not become law until it has been passed by both Houses of Parliament and assented to by the President and then published in the Government Gazette as an Act of Parliament.

All this will take a little time unless the usual preliminary Parliamentary procedure is abandoned.  The usual procedure is that there must be—

* a waiting period of fourteen days after the Bill’s gazetting, i.e., until 1st December, before the Bill can be introduced into Parliament *[National Assembly Standing Order 134]*.  There is a way around this.  A  proviso to the Standing Order allows a Minister,in case of urgency, to apply for and be granted leave to introduce a Bill before the fourteen day period is up, but a formal resolution of the House is required.
* public consultations conducted by Parliament, to comply with section 141 of the Constitution [*“Parliament must … facilitate public involvement in its legislative and other processes and in the processes of its committees … and ensure that interested parties are consulted about Bills being considered by Parliament, unless such consultation is inappropriate or impracticable”*].  These consultations could be conducted before the Bill is formally introduced.

**The Need for a Bill**

Like all regulations made under the Presidential Powers (Temporary Measures) Act, the regulations were only a temporary measure, destined to lapse after 180 days unless earlier repealed or confirmed by Act of Parliament.

A Bill like the present one was, therefore, inevitable, but the Government is not usually so prompt with Bills following up Presidential Powers Regulations.  It has sometimes taken it months for  such Bills to be sent to Parliament to be gazetted.

This Bill, coming just over a fortnight after SI 133/2016, was, therefore, gazetted unusually quickly.

The haste may have been prompted by the immediate and unfavourable reaction to SI 134/2016 in legal quarters, coupled with the general public unease over the whole bond notes affair—

**Veritas reaction**

The day after the SI was gazetted, Veritas issued Bill Watch 48/2016 dated 1st November, which pointed out that the regulations could be legally challenged on at least three grounds—

* That the Presidential Powers (Temporary Measures) Act, under which the regulations were made by the President, is inconsistent with the Constitution and no longer valid, and therefore cannot be invoked by the President to make valid regulations.
* That, regardless of the first point, the resort to the Presidential Powers (Temporary Measures) Act was an obviously inappropriate  and unnecessary and therefore unlawful by-passing of Parliament.
* That there was a fatal inconsistency in the wording of section 3 of the regulations.

*[To read Bill Watch 48/2016 click on the following* [*link to the Veritas website*](http://www.veritaszim.net/node/1892)*.  The Presidential Powers (Temporary Measures) Act is also available –* [*here is the link*](http://www.veritaszim.net/node/184)*.]*

**Court cases challenging SI 133**

Very soon, court applications were lodged, asking the High Court to set aside SI 133 as a legal nullity.  The arguments raised in support of the applications were essentially the first two points made by Veritas in Bill Watch 48/2016 – the unconstitutionality of the Presidential Powers (Temporary Measures) Act and, alternatively, the inappropriateness in the circumstances of the Government’s use of the Act instead of going to Parliament right from the start.

Although the Government’s responding court papers have rejected both arguments, there is a real risk that the court applications might result in SI 133 being invalidated.  That is a risk that the Government obviously wishes to avoid by getting the Bill passed into law as soon as possible.

**The Bill**

The Bill largely follows the wording of SI 133.  Like the SI, it is not easy reading.  But the scheme remains the same—

* there is a new section 44B for the Reserve Bank of Zimbabwe Act which will allow the Minister of Finance and Economic Development to publish a statutory instrument prescribing that a tender of bond notes and coins issued by the Reserve Bank shall be legal tender to the same extent as another currency specified by the Minister
* the new section 44B(3) will also make section 42 of the Act applicable to bond notes as if they were banknotes.  As section 42 penalises amongst other things the wilful defacement, soiling or damaging of banknotes, this should serve as a warning to persons who may feel inclined to express their feelings about bond notes by doing any of those things.
* Clause 4 is a deeming provision closely following the wording of section 3 [which should have been numbered 4] of the SI, so closely that it inevitably attracts the same criticism that Veritas directed against section 3 of the SI in Bill Watch 48/2016 *[see note on clause 4 below].*  The clause must be read together with the definitions in clause 2.

**Backdating**

If the Bill is passed, the new Act of Parliament will be deemed to have come into force on 31st October 2016, the date on which SI 133 was gazetted and came into operation.  This backdating was to be expected.

**Definition of “bond note”**

The term “bond note” is defined twice, once in clause 2 and once in the new section 44B that clause 3 of the Bill proposes to add to the Reserve Bank of Zimbabwe Act.  It is not clear why the definition in clause 2 concludes with the words “and ‘bond coins’ shall be construed accordingly” while the otherwise identical definition in the new section 44B does not refer to bond coins at all.

Both definitions tie the par value of bond notes to the existence of a backing “guarantee extended to the Reserve Bank by one or more international financial institutions”.  But no limit to the amount of bond notes in issue is specified; there is no mention of the limit of US $200 million said to have been stipulated by Afreximbank in extending a guarantee to the Reserve Bank.

**Clause 3 – Legal tender of bond notes and coins**

The new section 44B for the Reserve Bank of Zimbabwe Act is added by this clause.  It empowers the Minister of Finance and Economic Development to gazette a statutory instrument giving legal tender status to bond notes and coins.

At the end of the new section 44B(2) the words “prescribed currency” appear.  In the interests of consistency with the subsection’s earlier reference to “any specified currency”, it is suggested that the words be changed to “specified currency”.

**Clause 4 – the deeming provision**

Although the new section 44B of the Reserve Bank of Zimbabwe Act added by clause 3 empowers the Minister to gazette a statutory instrument giving the go-ahead for bond notes and coins, clause 4(1) makes it unnecessary for him to do so by laying down that this “shall be deemed” to have been done already.  So the idea seems to be that the Minister will not in fact be gazetting any statutory instruments, at least for the bond coins already in circulation and the bond notes due to be issued by the Reserve Bank, so it is said, by the end of this month.

Clause 4’s counterpart in SI 133 was criticised by Bill Watch 48/2016 for a “fatal inconsistency”.  The inconsistency is repeated in clause 4.  The new section 44B which the Bill aims to insert in the Reserve Bank of Zimbabwe Act empowers the Minister to issue notices authorising payments by bond notes which “are exchangeable at par value” with any specified currency.  Clause 4 then says that the Minister is deemed to have issued a notice authorising payment by bond notes “as if each unit of a bond note is exchangeable for one United States dollar”.  In other words, the notice the Minister is deemed to have issued does not say that bond notes are in fact exchangeable for US dollars, which is what he is required to say by the new section 44B.

**Careless slips**

Slips in the regulations pointed out in Bill Watch 48/2016 have been remedied.  But there are new ones—

* in the definition of Reserve Bank in clause 2 the word “Act” needs to be deleted where it appears for the first time
* in the concluding words of clause 4(1) – the words appearing after paragraph (b) – the reference to “section 44B(1)” should be to “section 44B(2)” [section 44B now, unlike its counterpart in SI 133, now has a new subsection (1) defining “bond note” that wasn’t there before].

*Note: Veritas’ own careless slip – in the numbering of Bill Watch 48 in the e-bulletin version – has been corrected in the website version.*

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