**BILL WATCH 9/2019**

**[15th February 2019]**

**From the Horse’s Mouth: Finance Minister Ncube Tells Senators**

**What US Dollar/Bond Note Parity Means when Paying Government or its Agencies**

**Confusing legislative terminology**

The Finance Act, 2019 is expected to be gazetted as law shortly. One knows from the Bill for the Act that the Act will sometimes state amounts of money simply as “dollars” and at other times state them as “United States dollars” or “US $”. Similar inconsistencies occur in other Acts and statutory instruments.

**Must Government accept payment in bond notes of amounts stated in US dollars?**

When the Finance Bill was being considered by the Senate on 30th January, this feature prompted Senators to ask the Minister of Finance and Economic Development [hereinafter simply referred to as “the Minister”] whether an amount payable to the Consolidated Revenue Fund through ZIMRA and stated as a number of US dollars could be paid to ZIMRA by the same number of Reserve Bank bond notes. The Minister said YES. [Clause 24 was under discussion at the time: it provided for a daily civil penalty of “thirty United States dollars” for continuing delay in remitting mineral royalties.]

When pressed on this clause, he agreed that ZIMRA would have to accept payment in bond notes:

*“The bond note is the legal tender. In terms of our policy, it is set at 1:1 to the US dollar. Citizens are paying the Government at this rate. This is in terms of Section 44 of the Reserve Bank Act, there is no confusion.”*

When Senator Makone sought a specific assurance by giving an example:

*“If he is not going to revise this and I fall foul of the law where I am required to pay USD30, I can take my copy of this* [the record of the debate] *to the court and say the Minister said it is the same and here is your 30 bond, it is equivalent to the US dollars. Will that be accepted?”*

The Minister replied: YES

Minister’s statement was only about payments to the Government

But the Minister insisted that discussion of parity in the context of this Bill be restricted specifically to questions about payments to Government:

*“We have a multi-currency regime, we have a parity rate, we are paying to the Government and the Government has set a policy. Surely, were we to deviate from that policy by not accepting the bond note, the citizens have a right to challenge that. This is very clear. There is no confusion, there should not be any confusion.”*

He, therefore, declined to be drawn into a general discussion about the very different value of the bond note when it is tendered in, to quote an example cited by one Senator, a pharmacy.

The Minister’s answers are obviously correct in law.

Clause 27 – Replacement of the Standard Scale of Fines

The monetary amounts of the fourteen Levels in the new Standard Scale of Fines are expressed in a table column headed “US $”, as they were in previous versions on the table. Senators did not ask whether payment of fines in bond notes on a 1:1 basis would be acceptable.

It seems obvious that, if Senators had raised this question, the Minister would have had to say yes.

**The Legal Background**

**The multi-currency system**

The multi-currency system that obtains at present dates from 1st February 2009. The relevant Act of Parliament was the Finance (No. 2) Act, 2009 (No. 5/2009) *[*[*link*](http://www.veritaszim.net/node/1702)*]*. Section 17(1) of this Act inserted a new section 44A into the Reserve Bank of Zimbabwe Act which empowers the Minister of Finance and Economic Development to make regulations prescribing that a specific foreign currency or currencies will be legal tender either in all transactions or in transactions specified in the regulations. But in fact no such statutory instrument exists – because section 17(2) of Act 5/2009 made a statutory instrument unnecessary. It did this by explicitly deeming the British Pound, the Euro, the US dollar, the South African Rand and the Botswana Pula to have been prescribed by the Minister as legal tender for all transactions in Zimbabwe,

**The former Zimbabwe dollar**

The former Zimbabwe currency (both banknotes and coins), not surprisingly, fell into disuse after the introduction of the multi-currency system. It was formally demonetised and ceased to be legal tender with effect from 2015 by SI 70/2015.

When the word “dollar” was used on and after 1st February 2009, therefore, it was generally intended to refer to the US dollar. It would be absurd to contend otherwise.

**Bond notes and coins and the “bond note dollar”**

Bond notes and coins were first issued by the Reserve Bank in 2016 without any specific legal authority. Subsequent steps taken to legitimise them included a set of temporary regulations under the Presidential Powers (Temporary Measures) Act and an Act – the Reserve Bank of Zimbabwe Amendment Act, 2017 (No. 1/2017) *[*[*link*](http://www.veritaszim.net/node/2013)*]* – the purpose of which was to confirm the changes made by the temporary regulations. The amendment to the principal Reserve Bank of Zimbabwe Act was limited to giving the Minister power to make a statutory instrument specifying bond notes and coins as legal tender and specifying their exchangeability with the US dollar. Section 4 of the amending Act deemed the Minister to have made the necessary statutory instrument i.e. to have legalised bond notes and coins, including any issued before the amending Act became law. It also said that:

*“(3) The tender of payment of* ***bond notes*** *issued by the Reserve Bank* ***shall be legal tender in all transactions in Zimbabwe******as if each unit of a bond note is exchangeable for one United States dollar****.*

*(4) Every one hundredth part of a unit of a bond note shall be deemed to be equivalent to and exchangeable for one United States cent.”*

**Do the Minister’s Assurances in the Senate Apply to all Payments to Government ?**

A general rule

The Minister was careful to remind Senators that his assurances were given in the context of the Bill under discussion – the Finance (No. 3) Bill, 2018, which will soon be the Finance Act, 2018. But his assurances, and the reasons he advanced for giving them can be formulated in a broad general rule, as follows:

Government departments and agencies collecting money on behalf of Government must comply with the law as stated in section 4 of the Reserve Bank of Zimbabwe Amendment Act, 2017 (No. 1/2017). They should, therefore, accept bond notes – or the RTGS equivalent – in accordance with section 4, i.e., on a 1:1 basis with the US dollar, unless they can point to another Act of Parliament clearly requiring them to do otherwise.

The Minister – in our view, correctly – accepted that a merely because a statute specifies an amount in US dollars would not be a sufficient basis for rejecting payment in bond notes and demanding actual US dollars. More than that is needed, as indicated below.

What would be a sufficient basis for demanding US dollars?

A possible example of a statutory provision requiring payment in actual US dollars is section 115 of the Customs and Excise Act, which empowers the Minister by statutory instrument to designate goods to be “foreign currency dutiable goods”, a power used in November in respect of a specified class of motor vehicles. Section 115, probably, goes far enough to enable ZIMRA to insist on customs duty in actual US dollars, notwithstanding that bond notes are legal tender.

Another, perhaps clearer, example is provided by the Value Added Tax Act, section 38 of which already lists several situations in which VAT must be paid “in foreign currency”. When the new Finance Act becomes law, the list will be expanded, and a new section 38A will compel the payment of a civil penalty “in foreign currency”.

Official practices involving rejection of bond notes may be unlawful

Some Government departments and agencies are reported to be insisting on payment in US dollars for services for which statutory fees are chargeable and rejecting payment of the same amount in bond notes at a 1:1 parity – or the RTGS equivalent.

Such practices are unlawful – unless clear authority for them can be demonstrated, either in a provision in an Act of Parliament, or in a Statutory Instrument. If an Act of Parliament has an enabling provision simply empowering the making of regulations prescribing fees, those regulations can state the fees in US dollars but cannot, in addition, require payment in real US currency, because that would conflict with section 4(3) of the Reserve Bank of Zimbabwe Amendment Act, 2017 (No. 1/2017) which laid down that bond notes are legal tender at 1:1 parity with the US dollar.