

BILL WATCH 53/2019

[20th October 2019]

Update on Statutory Instruments: Part 2

This bulletin continues where Bill Watch 52 of 16th October ["Statutory Instruments: Part 1"] [\[link\]](#) stopped; it will deal with Government Gazettes from SI 205/2019 of 20th September up to SI 221/2019 of 18th October.

But first we draw attention to Constitution Watch 8/2019 of 19th October [\[link\]](#) commenting on the implications of the High Court decision in the important case of *Mlilo v Minister of Finance and Economic Development* [\[link\]](#). The judgment invalidated SI 2015 gazetted on 12th October 2018 – the statutory instrument that imposed the 2% transaction tax. The government then made it lawful in the Finance No 2 Act gazetted on the 21st August 2019 and backdated it to the time the 2% tax was introduced.

This bulletin indicates three recent statutory instruments which amend Acts of Parliament –their validity could be challenged in the High Court using the *Mlilo* decision as a precedent.

Gazette of 20th September 2019

Correction of maximum income tax rate to 40%

SI 205/2019 [\[link\]](#) which amends the Finance Act is the first of the statutory instrument that are open to challenge on the basis of *Mlilo's* case. The SI amends the income tax bands for the period 1st August to 31st December 2019, correcting the rate for the top taxable bracket to 40% from 45% specified in the Finance (No. 2) Act. It has been plausibly suggested that the 45% may have been a typographical error in the Finance (No 2) Act, because the Budget Presentation itself specified 40%. The change went undetected and uncorrected while the Bill was going through Parliament and a few days later appeared in the Finance (No. 2) Act.

Note: The Minister can easily resolve doubts about the SI's validity by including in the next Finance Bill a clause confirming 40% as the highest income tax rate for the five-month period August-December 2019. He will have the opportunity to do so when he presents the 2020 National Budget during November.

Insurance: Increased minimum prescribed assets ratios for insurers

SI 206/2019 [\[link\]](#) is aimed at registered insurers. It effectively doubles the minimum prescribed asset ratios, i.e., the proportions of an insurer's total assets that must be held in "prescribed securities" such as stocks or bonds issued by the State, statutory bodies and local authorities [including, for non-life insurers, Treasury bills and similar short-term instruments] or other investments approved by the Minister of Finance and Economic Development. The SI replaces SI 24/2016, the previous SI on the subject and goes into far greater detail than its predecessor on the penalties that can be imposed by the Insurance and Pensions Commission [IPEC] for non-compliance.

Note: A "prescribed assets" mechanism for insurers is usually justified as protecting policy holders against the consequences of injudicious investments

by their insurers. Another view, however, is that these prescribed assets were increased so that the State has access to more financial resources that would not otherwise be available to the State from investors from the money market.

High Court civil cases fees: correction of error

SI 207/2019 [\[link\]](#) corrects an error in SI 187/2019 [\[link\]](#) by replacing item 2 of the Schedule of fees [item 2 deals with court fees chargeable for a summons in civil cases claiming payment of money.

Persons who may lawfully acquire, possess and supply industrial hemp

SI 208/2019 [\[link\]](#) is a set of regulations, made by the Minister of Justice, Legal and Parliamentary Affairs in terms of section 161(g) of the Criminal Law Code, listing the following as persons who may lawfully acquire, possess and supply hemp:

- any “farmer” [the term is not defined] so authorised in writing by the Minister of Lands, Agriculture, Water, Climate and Rural Resettlement,
- the State or any of its organs on farms operated by the State or by any State organ,

as long as they are cultivating “industrial hemp” [there is a definition] for industrial purposes. At least, that is how Veritas interprets the regulations, which could – and should – be much more clearly and tightly stated, given that they are intended to create an additional class of persons exempted from the criminal penalties normally associated with possession of cannabis plants, prepared cannabis and cannabis resin.

Gazette of 23rd September 2019

New Standard Scale of Fines in ZWL dollars

SI 209/2019 [\[link\]](#) by the Minister of Justice, Legal and Parliamentary Affairs amends an Act of Parliament – it repeals and replaces the First Schedule to the Criminal Law (Codification and Reform) Act. The enabling provisions cited by the Minister – section 280 of that Act and section 24(1) of the Finance (No. 2) Act, 2019 (No. 7 of 2019) – expressly confer the power to amend Acts of Parliament. This SI, too, is open to challenge on the basis of *Mlilo's* case.

It is important to remember that the new figures apply only to offences committed on or after the date the SI was gazetted, 23rd September. Some examples of the new levels are: level 1 is ZWL\$ 40, level 3 is ZWL\$ 100 [the maximum fine to be imposed by a police officer for a petty offence under the admission of guilt procedure], level 14, the highest level, is ZWL\$ 30 000.

Gazettes of 27th September 2019

ZWL dollar wages and allowances for Cotton Industry

SI 210/2019 [\[link\]](#) records a collective bargaining agreement fixing wages and allowances in the cotton industry, back-dated to 1st June.

Customs duty suspensions (1) disabled persons and (2) commercial tyres imported by approved importers

SI 211/2019 [\[link\]](#) fine-tunes the effect of the suspension of duty for motor vehicles imported for disabled persons by section 4 of the principal regulations, SI 257/2003.

It also modifies the suspension allowed on commercial tyres imported by approved manufacturers by section 9EE of SI 257/2003.

Prohibition on the use of forex in domestic transactions

SIs 212 and 213/2019 have already been covered in Bill Watch 50/2019 dated 29th September [\[link\]](#).

SI 213/2019, which amends the Exchange Control Act under the powers conferred on the President by the Presidential Powers (Temporary Measures) Act, is the third recent SI open to challenge on the basis of *Mlilo's* case.

Gazette of 4th October 2019

Annual registration fees for land surveyors

SI 214/2019 [\[link\]](#) – new fees, stated in ZWL, for land surveyors, land surveyors-in-training and land survey technicians.

Local authority by-laws

SI 215/2017 [\[link\]](#) – Chiredzi Town Council By-laws amending rents and refuse removal charges for the "incorporated area", i.e., the high density township/s administered by the council.

Customs duty

SI 216/2019 [\[link\]](#) – amendment of the duty rebate for food, soap and cosmetics manufacturers.

SI 217/2019 – a lengthy set of Suspension Regulations giving effect to the Economic Partnership Agreement between the European Community (EC) and Eastern & Southern Africa states (ESA). *Veritas is trying to obtain this to post in on the Veritas website.*

Collective bargaining agreement: ZESA

SI 218/2019 [\[link\]](#) – temporary interim hardship allowances for ZESA Grades A1 to D2, January to March 2019.

Gazette of 11th October 2019

No statutory instruments were published in this regular Friday gazette.

General Notices

Those interested in the mining sector should note the 32 General Notices from the Mining Affairs Board. These GNs notified applications to the Board for Exclusive Prospecting Orders for a variety of minerals in most of the country's mining districts. The Board has set a deadline of 1st November for receipt by the Board of any objections to the orders being granted.

Gazette of 18th October 2019

Statutory Instruments

Local authority by-laws – Masvingo RDC and Epworth Local Board

SI 219/2019 [\[link\]](#) – the Masvingo Rural District Council (Environmental and Natural Resources Conservation) By-laws, 2019 is a 32-page set of controls for many aspects of use of land and natural resources within the area of the council.

SI 220/2019 [\[link\]](#) – the Epworth Local Board (Dog Licensing and Control) By-laws, 2019 is marred by a meaningless final section 21 which assumes that section 4 restricts the number of dogs that an individual can own – but neither section 4 nor any other section contains such a restriction.

Defence Forces – Medical Professions Cadets

SI 221/2019 [\[link\]](#) – the Defence (Regular Force) (Nursing, Radiography, Pharmaceuticals, Physiotherapy, Laboratory Science, Veterinary Science and other Medical Professions) (Cadets) Regulations, 2019 is a brief set of regulations for the engagement of cadets studying to qualify for one of the professions listed. Cadets will be engaged as privates, but be subject to specified provisions of the regulations applicable to Defence Force officers. During university/college vacations they will be liable for military duty as determined by the Commander. They will be responsible for all training, registration, living and other expenses incurred while studying. On qualification they will be commissioned and be obliged to serve for a further five years.

General Notices

New Special Economic Zone in Selous for Karo Resources

GN 1838/2019 [\[link\]](#) notifies the declaration by the Special Economic Zones Authority as a special economic zone of "a portion of Selous covering 50 667 hectares located on land covered by special mining grants issued to Karo Zimbabwe Holdings (Pvt). Ltd."

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