AN ANALYSIS OF THE IMPACT OF CURRENCY REFORMS ON INSURANCE CONTRACTS IN ZIMABWE

Written by ***Noah Maringe***

Law Lecturer, School of Law, Zimbabwe Ezekiel Guti University.

ABSTRACT

Zimbabwe has undergone major changes in its currency between 2008 and 2019. This has been largely attributed to macroeconomic challenges which led to the collapse of its own currency, that is, the Zimbabwean dollar in 2008. These changes have affected many aspects of the contract of insurance. The paper examines the changes in the currency which have been effected by the government and how those changes have affected the position of the insurer and the insured. To the insurer, it is clear that the change from the United States dollar to the Zimbabwean dollar has made it difficult for them to adequately compensate the insured. In addition, it has also made it difficult for the insurer to assess the extent of risk that it intends to assume and the payable premiums. To the insured, the changes in currencies have made it impossible to enjoy the true value of their policies thereby defeating the objectives of insurance.

INTRODUCTION

Zimbabwe has seen too many legal instruments and policy pronouncements which have affected its currency between 2008 and 2019. These changes have affected many economic and social spheres. However, this paper focuses on how such changes have affected the business of insurance in Zimbabwe. Therefore, the paper highlights the monetary changes that were brought in Zimbabwe through various legal instruments and policies. It then proceeds to analyse how those monetary changes have affected the position of the insurer and that of the insured.

THE INTRODUCTION OF THE MULTICURRENCY REGIME

In 2008, Zimbabwe experienced an unprecedented hyper-inflation period which led to loss of savings and the collapse of the Zimbabwean dollar. As a result, the government of Zimbabwe introduced the multicurrency system which recognized the United States dollar, South African rand, British pound and Botswana pula as legal tender in Zimbabwe.[i] The Zimbabwean dollar became useless to the extent that it had to be demonetised in 2015.[ii] Initially the South African rand was the most popular currency until it was overtaken by the United States dollar.

THE BOND NOTES, COINS AND THE ELECTRONIC CURRENCY

In 2016 there were serious cash shortages across the economy of Zimbabwe. The dominant United States dollars became scarce. The government then decided to introduce a pseudo currency known as the bond notes and coins in order to ease cash shortages.[iii] When these bond notes and coins were introduced, they were given a value of 1:1 with the United States dollar. The introduction of the bond notes and coins did not cause much problems because all accounts remained denominated in United States dollar. In addition, all transactions were conducted in United States dollars.

However, in October 2018, the Reserve Bank of Zimbabwe ordered the separation of nostro foreign currency accounts from the real time gross settlement (RTGS) accounts. The nostro foreign currency accounts are now exclusively meant for foreign currency and the RTGS accounts are meant for electronic money, the bond notes and coins.[iv] This decision was made after realizing that the bond notes, coins and other electronic balances which had been created through introduction and use could not be equated with powerful currencies like the United States dollar.

It then became apparent that the bond notes, coins and the electronic currency were no longer equal to the United States dollar and required a separate recognition through a legal instrument. In February 2019, the government enacted a law which recognized these forms of currency as the RTGS dollar.[v] The new RTGS dollar did not affect the existing nostro foreign currency accounts. This was an important step as it clearly introduced a local currency with a value which was not related to the United States dollar.

THE INTRODUCTION OF ZIMBABWEAN DOLLAR

The RTGS dollar which had been introduced in February 2019 was a mere addition to a basket of currencies which were already in existence since 2009. However, in June 2019 the government introduced the Zimbabwean dollar as the sole legal tender in Zimbabwe and other currencies were generally put into disuse except in limited circumstances.[vi] The limited circumstances relate the opening and operation of nostro foreign currency accounts, payment of duty on specified imported goods and payment of international airlines which could be done in foreign currency. Since then, authorities have encouraged the use of the Zimbabwean dollar although there has been resistance from some sectors of the economy. As already highlighted, these developments have affected all sectors of the economy as shall be demonstrated through the discussion of the insurance sector.

THE PURPOSE OF INSURANCE

Insurance is all about securing oneself or the third party against the occurrence of an uncertain event or peril. Thus the term "risk" refers to the possibility of harm caused by the metrialisation of the insured event.[vii] Insurance is meant to allay the sense of insecurity that is created by the existence of such risk. [viii] There are two forms of insurance, that is indemnity and non-indemnity insurance. An indemnity insurance seeks to compensate the insured against patrimonial loss proximately caused by the insured event. In the case of *Makher and Malcomess v Kingwilliamstown Fire and Marine Insurance and Trust Co,* [ix] it was held that the insured is not entitled to claim more than his indemnity. It is apparent that the insured enters into an insurance contract for the purpose of being indemnified in accordance with its terms and conditions. Any negative effect on the value of the policy defeats that purpose.

A non-indemnity insurance contract is meant to satisfy or console the insured for a non-patrimonial loss or grief caused by the insured event.[x] With non-indemnity insurance, there is no relationship between the insured loss and the sum insured. An example of no-indemnity insurance is a life policy. The loss of life can never be compensated. However, the insured still requires the full value of his policy upon the metrialisation of the insured risk.

THE EFFECT OF CURRENCY REFORMS ON INSURANCE CONTRACTS

Having canvassed the various reforms which have been undertaken by the government of Zimbabwe on the currency, it is now instructive to analyse their effect on insurance contracts. The purposes of insurance have already been discussed. This part focusses on specific aspects of insurance which were affected by the currency reforms.

(a) **PREMIUMS** - In terms of the Roman-Dutch common-law position, actual payment of the premium is not a requirement for the validity of an insurance contract. The insured should merely undertake to pay the premium.[xi] However, the insurer's obligation to perform depends on the payment of the premium by the insured.[xii] The amount of the premium is determined by the extent of the risk to be covered and the insurer's desire to make profits among other factors.

Since the introduction of the multicurrency system in Zimbabwe, bank accounts were denominated in United States dollars. All the premiums were pegged in United States dollars. These accounts were then converted to RTGS accounts after they were separated from the nostro foreign currency accounts in October 2018. The RTGS dollar was strengthened by its recognition as a currency in February 2019. However, its value was no longer equal to the United States dollars. This diluted the value of premiums which were being paid to the insurers. It further affected the business of insurance which has worsened with the current banning of the use of the United States dollars in insurance contracts. The law now recognizes the use of the Zimbabwean dollar only in such contracts. It has forced insurers to adjust premiums but such adjustments have failed to catch up with the real value of premiums in United States dollars.

(b) MONETARY COMPENSATION OF THE INSURED

One of the ways by which the insured can be indemnified by the insurer is through the payment of money to compensate the insured's loss. However, the insured can only recover up to the 'sum insured'[xiii]. In the case of *Re Wilson and Scottish Insurance Co. Ltd* [xiv] it was held that the insured is entitled to recover the value of the insured property at the time of loss. With the advent of the Zimbabwean dollar, the insured's ability to recover the value of his actual loss has become a pie in the sky. The currency changes have resulted in the erosion of the true value of insurance policies. Even if one is to assume that the insured can claim the equivalent of the United States dollars which he contributed, that has not been an option since the insurers are not in a position to do so in real practice. The insurers are struggling to survive. In addition, it is the same United States accounts which were separated into RTGS accounts and nostro foreign currency accounts. All accounts became RTGS accounts and eventually Zimbabwean dollar accounts and those who wanted to operate nostro foreign currency accounts had to make fresh applications.

(c) REPLACEMENT VALUE

An insurance contract can have a replacement clause which results in a direct or physical compensation of the insured. On the face of it, it does not present challenges to the insured. However , it is clear that the conversion of United States dollar accounts into Zimbabwean dollar accounts meant that insurers are no longer able to replace the insured properties since the value of their savings were eroded.

Every valid insurance contract should contain a term that the insurer will compensate or satisfy the insured for either patrimonial or non-patrimonial loss.[xv] Such an undertaking by the insurer has been subjected to serious threats by the monetary reforms. It could be a supervening impossibility that makes performance difficult or impossible. The same arguments apply to valued policies where the insurer and the insured agreed on a value in United States dollars before the introduction of other currencies and the conversion of the United States dollars to become Zimbabwean dollar accounts. The values which were attached to various properties are no longer claimable from the insurer. Hence the currency reforms have negatively affected insurance contracts.

(d) TECHNICAL UNDER-INSURANCE.

Under-insurance is where the sum insured is less than the value of the property.[xvi] The rate of premiums is usually expressed as a percentage of the sum insured.[xvii] In the event of under-insurance, the insured cannot recover the full indemnity because the principle of average. Therefore, the changes in currency created difficult problems. It is difficult to apply the principle of average where the value of the property was affected by factors beyond the control of the insurer and the insured. On the other hand, the sad reality is that all the policies which were affected by monetary changes became under-insured.

CONCLUSION

In this paper, it has been highlighted that Zimbabwe has undergone many changes in its currency since 2009. Since the introduction of the multicurrency system in 2009, the United States dollar became the dominant mode of transactions. Even bank accounts were denominated in United States dollars. Insurance policies were also concluded in United States dollars. However, all the United States dollar accounts were converted to become RTGS accounts and eventually Zimbabwean dollar accounts. People had to apply for nostro foreign currency accounts if they wished to have them. The Zimbabwean dollar was no longer equivalent to the United States dollar. This affected all aspects of insurance contracts such as premiums and the insurer's obligation to compensate the insured. It is submitted that the only way forward, in the light of what has been discussed in this paper, would be to negotiate new insurance contracts based on new terms which capture the reality on the ground.

REFERENCES

---

i Available at https: //www.parl/zim.gov.zw.

ii Reserve Bank of Zimbabwe (Demonetisation of Notes and Coins) Notice, Statutory Instrument 70 of 2015.

iii Presidential Powers (Temporary Measures)(Amendment of the Reserve Bank of Zimbabwe Act and Issue of Bond Notes) Regulations, Statutory Instrument 133 of 2016.

iv Available at https: // www.chronicle .co.zw.

v Presidential Powers (Temporary Measurers) Amendment of the Reserve Bank of Zimbabwe Act and issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars) Regulations, Statutory instrument 33 of 2019.

vi Reserve Bank of Zimbabwe (Legal Tender) Regulations, Statutory instrument 142 of 2019.

vii Lourens v Colonial Mutual Life Assurance Society Ltd 1986 (3) SA 373 (A).

viii Sydmore Engineering Works (Pvt) Ltd v Fidelity Guards (Pvt) Ltd 1972 (1) SA 478 (W).

ix (1883) 3 EDC 271. See also Ackerman v Loubser 1918 OPA 31.

x M.F.B Reicecke, J.P. van Nierkerk and P.M. Nienaber, South African Insurance Law, LexisNexis, 1st ed, 2013, pp84.

xi Van Niekerk, Insurance Law in the Netherlands, Volume 11, pp 740.

xii M.F.B Reinecke , J.P Van Niekerk and P.M.Nienaber, South African Insurance Law , LexisNexis, 1st ed, 2013, pp 84.

xiii J. Birds, Birds' Modern Insurance Law, Sweet and Maxwell, 9th ed , 2013, pp 308.

xiv [1920] 2 CH.28

xv M.F.B Reinecke, J.P Van Niekerk and P.M Nienaber , South African Insurance LAW, LexisNexis, 1st ed, 2013, pp 82.

xvi Leppard v Excess Insurance Co [1979] 1 W.L.R 512.

xvii Hollet v Nisbet and Dickson (1829) I. Menzies 391.