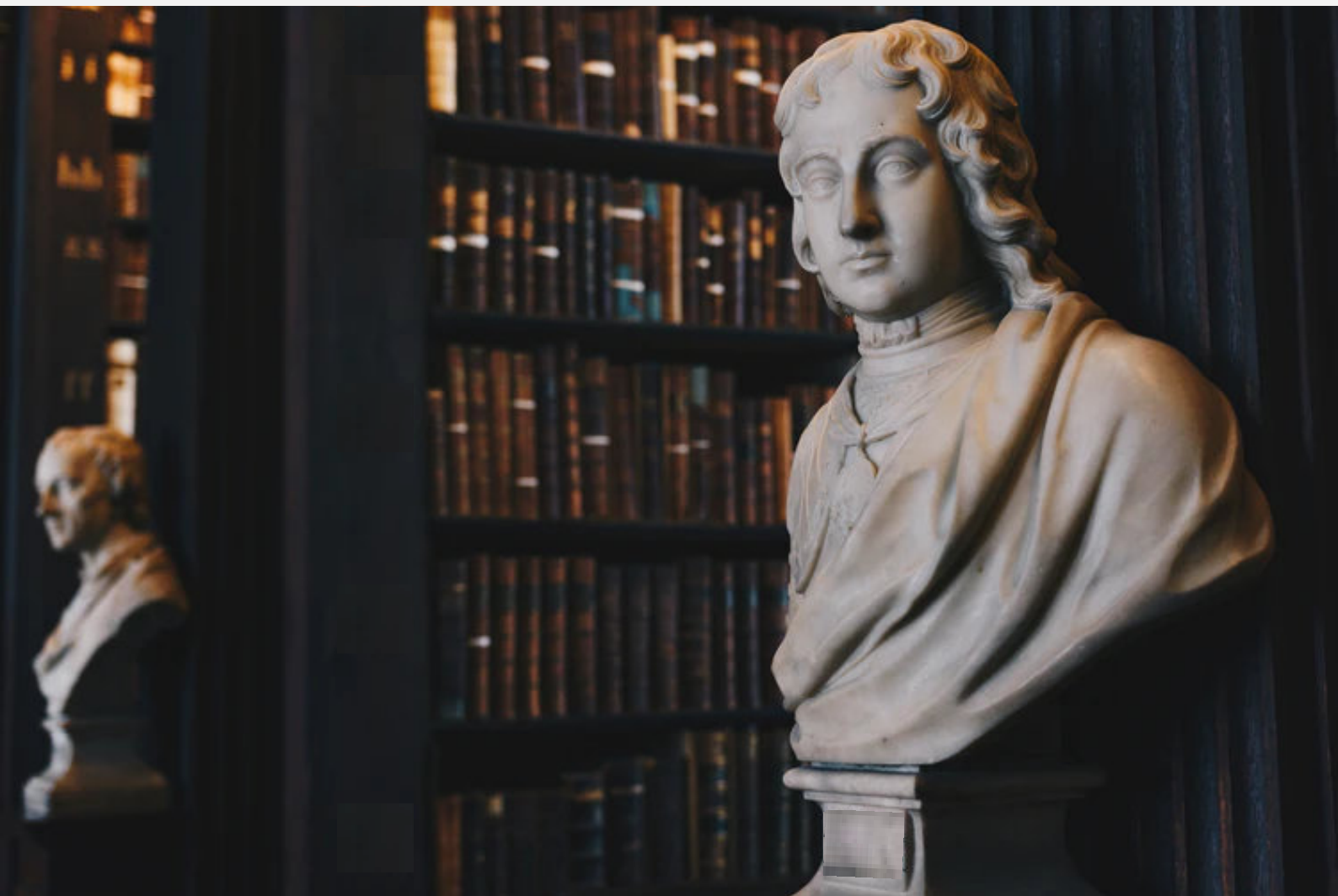


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Confidant

- A quarterly newsletter published by BeraMasamba



Confidant Introduction

We have started 2021 with the country and indeed the world still grappling with the COVID-19 pandemic which continues to impact all our lives. We sympathise with our colleagues who have suffered loss or pain as a result of this pandemic. We indeed hope for a 2021 in which we can all be able to overcome the challenges presented by the pandemic.

As BeraMasamba we would like to express our sincere appreciation to our clients for the valuable support that we received from you in 2020. Our Firm was, with your backing, able to register modest growth in 2020 despite the difficult environment. We look forward to your continued support in 2021 and assure you that we will continuously seek to deliver a world-class service to you.

In this second edition of Confidant we provide you with an update on developments at the Firm, including some plans that we have for this first quarter of 2021. This newsletter features articles on SI 62/2020, the Victoria Falls Stock Exchange and the African Continental Free Trade Agreement, all of which we believe are pertinent issues in our economy. We have also taken the opportunity in this edition of Confidant to provide a snapshot of some key mandates that the Firm was privileged to have dealt with in 2020.

I hope that you will enjoy reading through this edition of Confidant and that you will find it to be informative.

Garikai Bera
Senior Partner
31 January 2021

BeraMasamba News

2020 was a momentous year for us, being our first year of operations.

Although 2020 was a tough year we accomplished some notable milestones.

We have put together a young, vibrant and talented team, both amongst our lawyers and our administrative staff. Our team of lawyers are going through an in-house training program, conducted by internal and external tutors, across a range of subjects, all aimed at sharpening their skills and enabling the Firm to offer good quality service in all our practice areas.

We are proud of the IT infrastructure that we have built. We have procured market-leading technology from reputable international vendors in areas such as practice and document management, billing, accounting and other key aspects of our business workflows. These tools equip us to render an efficient service, and have enabled us to operate remotely, at full scale, when we needed to during the period of the COVID-19 pandemic.

We also signed a lease for our new offices in Belgravia towards the end of last year. We have been readying the offices for occupation. We expect to relocate to the new offices at the end of February 2021.

Lastly, we are very excited to have completed our branding program and to share with you our new logo, which you will see used in this edition of our Newsletter. We will be fully rolling it out shortly, including relaunching our website.

We expect 2021 to have its fair share of challenges. With the support of our clients, we hope to consolidate and build on our gains from last year.

Best wishes to all in 2021

Pride Masamba
Managing Partner
31 January 2021

Remedies for acquired land under SI 62/2020

by
K. Nyajeka, S. Kabaya & J. Smith



On 13 March 2020, the Land Commission (Gazetted Land) (Disposal *in Lieu* of Compensation) Regulations, 2020, Statutory Instrument 62 of 2020 (“SI 62/2020”) was gazetted.

The object of SI 62/2020 is to provide for the restoration of land to persons who are, in terms of Section 295 of the Constitution of Zimbabwe, entitled to compensation for land that was compulsorily acquired under the Land Reform and Resettlement Programme. In seeking this remedy, the applicant must prove their entitlement to such land to the satisfaction of the Minister of Lands, Agriculture, Water and Rural Resettlement (“the Minister”).

The remedy is available to natural persons who are indigenous individuals and persons who were citizens of a country that had concluded a Bilateral Investment Protection and Promotion Agreement (BIPPA) or a Bilateral Investment Treaty (BIT) with Zimbabwe. The remedy is also available to partnerships and companies which are wholly or predominantly owned by indigenous Zimbabweans.

The meaning of “indigenous individuals” is not set out in SI 62/2020. The Indigenisation and Economic Empowerment Act defines an “indigenous Zimbabwean” as any person who, before independence in 1980, “was disadvantaged by unfair discrimination on the grounds of his or her race”. Although it is unclear whether that definition extends to SI 62/2020, it is likely that it will be a persuasive reference point in the interpretation of SI 62/2020.

The application is initially considered by a committee appointed by the Minister. However, the final decision lies with the Minister. In making his decision, the Minister will take into account the recommendation of the committee, as well as other factors, such as whether granting the application would be contrary to the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest.

Where an application is successful, the Minister may order the restoration of the acquired land as a whole or in part. Restoration of the land as a whole shall constitute full and final settlement of any claims that the applicant may have from the State in terms of compensation. Restoration of part of the land shall be a final settlement of a claim for compensation only to the extent granted. Alternatively, the Minister may decide to pay compensation for the acquired land (or part thereof) instead of restoration.

Some concerns have been raised about the lack of a provision in SI 62/2020 which provides an unsuccessful party with recourse against the decision of the Minister. In our view, an applicant has a right of appeal or review which is provided for under the country’s Constitution. In addition, where a statute is silent in this regard, the provisions of the Administrative Justice Act apply. Under that Act, recourse against the decision of the Minister lies with the High Court of Zimbabwe.

It will be of great interest to see how the applications will be handled by the Minister. Government will have to balance the constitutional and statutory rights afforded to eligible applicants who lost their land against the interests of occupants of such land, a significant number of whom have occupied the acquired land for over 20 years.

A Follow-Up on the Victoria Falls Stock Exchange

by
R. Ncube & T. Mashanda



The Victoria Falls Stock Exchange (the “VFEX”) was officially opened on 23 October 2020, with Seed Co International Limited being the first and, so far, only company to be listed on the Exchange. The official launch followed the signing of a Memorandum of Understanding between the Reserve Bank of Zimbabwe (the “RBZ”) and the VFEX on its trade settlement terms.

Some action has been taken to get the VFEX going, including the issuing by the RBZ of Exchange Control Directive Number RV 177 of 2020 on 26 October 2020. The Directive provides for the creation of investment foreign currency accounts (“FCAs”), specifically for the facilitation of payments arising out of the trading of the securities of companies listed on the VFEX.

The FCAs provided for by the Directive have some key features that distinguish them from FCAs already in operation in the banking system. The FCAs will not be subject to any surrender requirements or retention thresholds. Funds can be held by the listed company in the FCAs indefinitely for use in any such manner that the company determines, whether locally or internationally, without the need for Exchange Control Approval.

A further key feature is that any dividends paid out by a company listed on the VFEX to resident investors may be paid into the FCAs of the local investors. Such income shall not be subject to the surrender requirements and may be held for an indefinite period for use to meet local and/or external foreign currency payments in line with Exchange Control provisions.

Any Zimbabwe resident company listed on the VFEX will be required to seek Exchange Control approval before opening an offshore account for receiving investment funds. Non-resident companies shall be entitled to keep offshore, for their own use, the funds raised from listing on the VFEX subject to the general requirement for the reinvestment or employment of 20% of the capital raised if the non-resident company delists from the VFEX within five years of its initial listing.

A VFEX listing also offers some tax incentives, which include exemption from capital gains tax as well as the provision of a favourable withholding tax rate on dividends declared by companies listed on the VFEX.

In spite of the above, the uptake on the VFEX has been slow. Whilst the VFEX has officially opened, the rules for the clearing and settlement of transactions on the Exchange are yet to be published.

Companies have been somewhat slow to embrace the VFEX. Save for Seed Co International, no other company has, to our knowledge, publicly announced plans to list on the VFEX in the near future. It may be necessary for responsible authorities to refine the framework to make this noble initiative more attractive to issuers of securities.

The African Continental Free Trade Agreement

by
K. Nyajeka & T. Mashanda



In 2018, members of the African Union (“AU”) signed the Agreement Establishing the African Continental Free Trade Area (“AfCFTA”). With 54 States as signatories, the AfCFTA is the largest trade agreement (by the number of participating countries) in the world since the formation of the World Trade Organisation (WTO).

The Agreement aims to create a continental market for trade in goods and services, with free movement of persons and investment, leading to the establishment of a continental customs union, somewhat similar to the European Union.

On 1 January 2021 trading on the basis of AfCFTA commenced following the decision of the African Union Assembly at its sitting on 5 December 2020, which set that commencement date.

The AfCFTA envisions a very high level of trade integration between its members. This will be achieved through the progressive removal of the existing onerous tariff and non-tariff barriers (e.g. licencing, labelling, visa requirements, etc) to trade.

The COVID-19 global pandemic appears to have dampened the take-off of AfCFTA. The pandemic seems to have reawakened trade protectionism, thus slowing down progress on the conclusion of negotiations on tariff lines, investment and intellectual property protocols under the AfCFTA.

Fortunately, the approach adopted to implement AfCFTA in progressive phases allows for continuous engagement between members to swiftly adapt to changes in the members’ trading and investment landscape. With commitment and goodwill from participating countries, this should see AfCFTA eventually overcoming any challenges on negotiations for outstanding protocols or issues on implementation.

In 2020, the African Development Bank projected that the continent’s GDP was likely to contract by 1.7% in 2021 as a result of COVID-19. Now that AfCFTA has been launched, it should provide a platform for stimulating and enhancing intra-African trade, as Member States look towards recovery from the negative impact of the COVID-19 pandemic.

The AfCFTA presents an immense opportunity for the Continent at a time of persistent global uncertainty. On full implementation (expected in 2030), AfCFTA will cover a market of 1.2 billion people with a combined GDP of USD2.5 Trillion. This is a good incentive for Member States to expeditiously finalise negotiations on protocols, especially for the progressive removal of tariff barriers, to ensure the success of this great initiative.

BeraMasamba recently acted in the following

Mergers & Acquisitions

The acquisition of a leading player in a neighboring country by a Zimbabwean group in the manufacturing sector to create a regional group.

Structured Finance

A multi-million dollar leveraged facility extended to a local institution by a leading continental multi-lateral financial institution.

Corporate Structures and Governance

Assisted a new entrant in the mining sector with issues relating to corporate governance structures.

Mergers & Acquisitions

The amalgamation of the businesses of two players in the insurance sector.

Agro-sector Investments & Financing

High-impact investment and financing transactions in the agro-sector in Zimbabwe, including a revolving agro-financing facility.

Commercial Litigation

Successfully represented as co-counsel, a group of shareholders in a leading group of companies in Zimbabwe with presence in multiple sectors in litigation relating to shareholding within the group.

Disclaimer:

The information contained in this Newsletter constitutes the brief opinions of the Authors of the Articles. Although we endeavour to provide quality opinions, we provide the information herein in general terms with no warranty of any kind, express or implied, including, but not limited to warranties of fitness for a particular purpose. Should you require substantive legal advice in connection with any of the matters in our Newsletter or any other issues arising therefrom, please feel free to contact us for further assistance.

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