# LEGAL REPORT

*By Marc Carrie-Wilson*

*"You can make a small fortune in farming - provided you start with a large one."* - Anonymous

*"Trade increases the wealth and glory of a country; but its real strength and stamina are to be looked for among the cultivators of the land."* - William Pitt

## Introduction

This year's Congress comes at a time when no significant and apparent changes for the better have been made to the Agricultural business environment, which remains characterized by a lack of competitiveness and poor viability.

Primary Agricultural business remains constrained by amongst other things:

- an inability to access affordable credit for working capital and to retool or develop,
- major deficiencies in national transport and electricity generation infrastructure,
- labour regulations biased in favour of employees,
- unviable high costs of production, (i.e. uncompetitive input costs, electricity costs water costs etc)
- unfair competition with imported commodities (Cheap imported meat, subsidised grains, GMO etc) and
- general uncertainty and insecurity resulting from weak property rights across all categories of land tenure.

Apart from suffering from some of the above mentioned constraints small holder farmers also remain extremely vulnerable to the effects of drought. Conservation agriculture techniques together with irrigation development have not yet been fully deployed to mitigate these risks.

Notwithstanding these constraints since the adoption of the multicurrency system in 2009 there has been a gradual recovery in production of tobacco, wheat and soya production principally facilitated by contract farming companies. However even with the positive increases in production of these commodities it should be noted that local production of food staples especially maize, soya beans and wheat falls woefully short of national demand. Another factor is the skills and technology gap

Response by Government, donors and other stakeholders to the problem of under production has largely been piecemeal. There are perceptions that sustainable reforms to the regulatory and policy framework which ensure long term agricultural recovery are sacrificed in favour of political considerations - particularly those relating to the land question. The broader issues of the land audit, security of tenure and compensation remain so politically sensitive that they are either ignored or no serious movement is made. It is however a fact that positive development of the policies surrounding land is central to building the investor confidence so necessary for overcoming the current liquidity crisis and thereby boosting agricultural production.

In contrast to Zimbabwe regional piers such as Zambia are adequately filling the void left by the decline in our agricultural productivity. Zambian farmers have produced significant surpluses particularly in Maize.

The Legal Affairs portfolio deals with a number of issues including:

- Support to the CFU Labour Department
- General Legal Advice to Members
- Environmental Management Agency Issues
- Issues relating to the Zimbabwe National Water Authority and the Ministry of Water Catchment Councils and Sub Catchment Councils
- Liaison with the Zimbabwe Electricity Transmission and Distribution Company Other miscellaneous Legal, Policy and Regulatory Environment Issues that affect Agriculture (e.g. ZIMRA etc)

This report will focus on three areas of interest namely the issues relating to, Electricity Issues update, a note on Value Added Tax on primary Agricultural Commodities such as wheat, Soya and groundnuts and a note on the formation of the "President's Council"

**Electricity Supply and Billing Issues**

The Union has received numerous reports from members regarding their dissatisfaction with the Zimbabwe Electricity Supply Authority. The reports generally focus on three areas:

1. Confusion over billing and erroneous bills calculated on the basis of estimated consumption.
2. High unviable electricity tariffs
3. Frequent Load shedding and otherwise unreliable supply.

The latter seriously undermines the production of winter cereals.

ZESA Holdings and its subsidiary the Zimbabwe Electricity Transmission and Distribution Company (ZETDC) has for some time been aware of these grievances. In response the following attempts have been made to mitigate these problems.

Every winter since 2009 ZETDC has given preferential Treatment to areas where winter wheat is produced in the so called Wheat Farming Cluster scheme. This year ZETDC has proposed a load shedding exempt status for 4 days per week in all wheat farming areas. The CFU together with the ZCFU and Agritex were engaged in the design of the Wheat farming clusters and were also tasked with the preparation of an optimal calendar showing the progression of the wheat plant through the season. This calendar was used to design the load shedding programme.

Regrettably we have had reports from some wheat farmers this season that ZETDC has not been adhering to the published load shedding schedules.

In so far as the issue regarding disputed bills is concerned, the ZETDC has confirmed their position that all consumption/outstanding bills prior to September 2009 will not be considered (ie has been written off). Reports from certain regions have also indicated that ZETDC is also open to negotiation on larger outstanding bills.

However, the current average tariff is USD 0.12 per Kilo watt hour which is apparently far in excess of other countries in the region (it is reported that in Zambia cost of electricity to agriculture is USD 0.03 per kilo watt hour). The high cost and unreliability of energy supply massively undermines competitiveness of our agricultural industry.

It is clear that the fundamental problem is an inability to locally generate sufficient electricity to meet demand. The table below illustrates the problem:

| | **Dependable Capacity (MW)** | **Current Av. Capacity (MW)** | **Remarks** |
|---|---|---|---|
| Kariba | 750 | 740 | Source |
| Hwange | 780 | 340 | ❖ 3 out of 6 Generators are not functioning properly |
| Small Thermals | 150 | 50 | ❖ Coal Constraints<br>❖ High Operating Costs<br>❖ Supply Ring Fenced |
| Total | 1680 | 1130 | |

This is versus a demand ranging from between 1800 Mega watts to 2200 Mega watts. The deficit must be met by either imports or load shedding. The table below illustrates constraints with regard to the importation of electricity:

| **Supplier** | **Contractual Capacity (MW)** | **Actual Capacity** | **Remarks** |
|---|---|---|---|

| | | | |
|---|---|---|---|
| HCB (Mozambique) | 100 (firm) | 50 | Indebted pressure for payment cut in supply |
| Eskom (South Africa) | 150 (Non Firm) | 0 | ❖ Emergency Source<br>❖ Capacity constraints in RSA<br>❖ High Cost |
| SNEL (DRC) | 50 (Firm) | 0 | ❖ Poor Reliability |
| ZESCO (Zambia) | 150 (non-firm) | 0 | ❖ Low availability at peak period |
| TOTAL | 450 | 0 -50 | |

This problem will clearly require a long term investment, the possible engagement of private sector players and greater efficiency in the Management of the power utility.

**<u>Value Added Tax on some Agricultural Commodities – A potential disaster for viability</u>**

Recently a number of producers of Soya and wheat have been subjected to demands by the Zimbabwe Revenue Authority (ZIMRA) for payment of Value Added Tax on the sale of these and other commodities. To our knowledge ZIMRA has not previously sought payment of VAT from producers of these commodities. Nor has the Grain Marketing Board ever paid out VAT when buying these commodities. This is an alarming development. These commodities are essential raw materials for the production of a number of stable food products and animal feeds (which are ironically expressly 0 rated for VAT e.g. Cooking oil etc). The introduction or enforcement of VAT regulations in so far as these commodities are concerned will further dramatically undermine the competitiveness of local soya and wheat value chains.

NB Any product that is directly exported is zero rated. Thus any agricultural commodity (e.g. flowers) exported directly by a farmer will have a zero VAT rating. However, it must be noted that the zero rating occurs at the export stage and only the exporter derives this benefit.

We are in the process together with other concerned stakeholders of engaging an expert Tax Consultant who must be tasked with the following:

1. The production of a well reasoned opinion on whether or not producers of **Grains**

Wheat
Barley
Sorghum

**Oilseeds**

Soyabeans
Groundnuts
Sunflowers

**Industrial Crops**

Tobacco (not sold on an auction floor)
Cotton
Coffee

**Livestock**

Live animals
Ostriches
Wildlife

should charge VAT on the sale of the commodity and under what circumstances.

*Note that ZIMRA's position is that as these commodities are not listed in schedule 2 of the Act as read with the Customs Tariffs handbook and are therefore VATable at a rate of 15%.

2. In the event that producers must pay VAT what loop holes exist for tax avoidance?
3. What recommendations can be made regarding strategies for producers and producers associations to lobby and advocate for a change in the regulations (either extending of zero rated status or a reduction in the VAT percentage) in so far as these commodities are concerned.
4. The production of an evidenced based position paper showing the impact of VAT on the competitiveness of soya value chains.

**The President's Council**

The fragmentation of Farmer Representation weakens the ability of Farmers organisations to lobby and advocate for improved conditions for farmers. TO this end the Four registered Farmers Union have in the past 6 months re-established the "President's Council" where the Presidents of the 4 Unions together with representatives from the 4 Unions meet together to discuss issues of common interest affecting farmers.

The CFU in collaboration with the Zimbabwean Farmers Union prepared a short framework of issues affecting farmer viability and the required policy interventions to tackle the constraints. The draft framework is as follows:

<table>
<tr><th rowspan="2">5 Key Constraints</th><th rowspan="2">Focus Areas</th><th rowspan="2">Impact</th><th colspan="2">Required Interventions and Policies</th></tr>
<tr><th>SHORT TERM<br>(NEXT 3 MONTHS)</th><th>MEDIUM TO LONG TERM<br>(By 2012/13 Summer Season and beyond)</th></tr>
<tr><td rowspan="3"><u>1. Finance</u><br>Insufficient Finance for Working Capital and medium to Long term equipment purchase and Agricultural Infrastructural Development</td><td>Liquidity Constraints</td><td>a) Shortages of inputs<br>b) Lack of capacity of financial institutions to provide suitable financing for agriculture</td><td>• Increasing budgetary allocation to agriculture</td><td>• Normalising international relations<br>• Sustainable debt management strategies</td></tr>
<tr><td>Security/collateral Constraints</td><td>a) lack of financial support by financial institutions resulting in poor performance of the agricultural sector and the economy as a whole.<br>b) Lack of on farm investment</td><td>Making the land title documents (99 year lease, land permits) bankable and transferable and restoring the land market thereby unlocking the land value and giving the value to the beneficiaries of the land reform. Beneficiaries can contribute to the compensation fund.</td><td>• Land audit<br>• Title surveys<br>• Address the outstanding compensation issues</td></tr>
<tr><td>No Investor Friendly Policy</td><td>Reduced Investor confidence resulting in reduced Foreign Direct Investment (FDI) and Official Development Assistance (ODA)</td><td>• Simplify investor registration requirements</td><td>• Review of indigenisation policies<br>• Government consistency on policy issues<br>• Rebranding Zimbabwe as a safe investment destination</td></tr>
<tr><td><u>2. Poor Viability</u><br>High and uncompetitive costs of production of many agricultural commodities</td><td>Uncompetitive Cost of Labour</td><td>• Hampers investment and growth of the Agricultural Industry.<br>• Undermines ability to compete with neighbouring Agricultural based economies with investor friendly labour laws. I.e. the cost of production of commodities in Zimbabwe will be greater</td><td>• Freeze increments in the current MINIMUM wage to levels where they do not exceed the annual official rate of inflation.<br>• Promulgate legislation which prohibits the retroactive application of Collective Bargaining Agreements. (i.e. no back payments of increased Minimum Wages). Employers</td><td>A process of comprehensive Labour Law reforms which strike a more appropriate balance between the need for growth and development of the Agricultural sector and the rights of workers.</td></tr>
</table>

| | | | | |
|---|---|---|---|---|
| | | than elsewhere. | need reasonable notice of wage increments. | |
| | High Cost of Water and poor service delivery by Water Authorities | Reduced ability to rely on irrigation leading to decreased yields. | Reduce all Water charges to USD 1 per mega litre and simplify payment procedures. | Reforms in Water administration which provides for:<br>(a) the reward of those users who take measures to conserve water (e.g drip irrigation etc) by giving them a preferential rate for use of water.<br>(b) adoption of the principle that farmers pay for water actually consumed as opposed to paying for a full allocation which they are permitted to consume.<br>(c) reward users who take measures to develop and maintain water storage and abstraction infrastructure<br>(d) promotes the effectiveness of localised water administration to manage the potential for conflict between users |
| | High Cost of Electricity and poor service delivery | a) Reduced ability to rely on irrigation leading to decreased yields<br>b) Collapse in viability of the production of winter cereals.<br>c) Increases cost of production of electricity dependent commodities (e.g. Dairy products) because of a reliance on generators which are expensive to run. | Continue prioritisation (i.e. load shedding exempt) of Agricultural sector<br>ZETDC must engage Farmers' Unions to partner in:<br>a) Educating farmers on power saving procedures<br>b) Simplifying Billing procedures and educating farmers on how to manage electricity bills.<br>c) Apply preferential rates to Agricultural Customers | a) Increase power generation Capacity through projects involving Private Public Partnerships<br>b) Upgrade and expand transmission and distribution Infrastructure through Private, Public Partnerships. Including:<br>a. Introduction of individual meters for each farmer to avoid conflicts.<br>b. All Agricultural |

| | | | | |
|---|---|---|---|---|
| | | | | meters should be converted to a "pay as you go" or smart meter system to ensure payment for actual consumption. |
| | High Cost of Rural District Council Levies particularly in Natural Regions IV and V | a) Collapse in the viability of Extensive Cattle farming enterprises in more arid regions of the Country<br>b) Narrowing of the levy base (i.e. inefficiency in collection of maximum potential revenue) | Markedly Reduce Rural District Council rates in Regions IV and V to USD 0.10 per hectare and USD 0.05 per hectare respectively | Redesign the calculation of RDC rates to account for the following:<br>a) the average agricultural production potential in monetary terms of the land in question. The relevant questions would be "what types of agricultural activities is the land suitable for and what levy is therefore appropriate?" How much of the land is arable? etc<br>b) the need to broaden the base of rate payers<br>c) the need to foster a sense of community responsibility towards the maintenance and repair of public infrastructure<br>d) the need to foster a sense of accountability of RDCs to community members |
| | Limited access to bio technology (GMOs) | Potentially Higher costs of production than those countries who use GMO varieties | Begin process of review and research of GMO policy with a view to relaxing the constraints. | Comprehensive review of Zimbabwe's GMO policy. |
| | Competition with cheap imports and GMO products (e.g. | Undermines competiveness of local producers of non GMO varieties. | Impose reasonable seasonal import duty and tariffs on processed GMO commodities which compete with | Comprehensive review of Zimbabwe's GMO policy. |

| | | | | |
|---|---|---|---|---|
| | GMO soya cake for stock feed) | | local producers | |
| | Very High Cost of Environmental Management Agency (EMA) Licences | Increases farmer overheads | Reduce EMA licence fees for agriculture:<br>a) annual Licence for use of inorganic fertilizers, chemicals and fuel for agriculture should be suspended<br>b) annual licence for discharge of dairy effluent should be suspended unless effluent is discharged directly into a major river.<br>c) EMA must assist farmers in planning out firebreaks before levying spot fines. | Review EMA legislation to balance the need for implementation of the polluter pays principle against the need to restore agricultural viability.<br><br>Training farmers on environmentally sustainable agricultural methods e.g. minimal tillage, water conservation and mulching, the use of organic fertilizers etc |
| | High Cost and Shortage of Inputs at crucial times | a) Uncompetitive Costs of production<br>b) Poor yields as a result of unavailability of inputs at critical times (e.g. ammonium nitrate) | • Increased treasury allocations to banks to loan to fertilizer manufacturers<br>• No VAT on any agricultural input | • Train farmers in efficient use of fertilizers, chemicals and Organic fertilizers |
| | High Interest Rates on Loans | Uncompetitive cost of production | Increased treasury allocations to banks to loan to agricultural sector | • Resolve issues of Collateral security and the Land question.<br>• Guarantee externalisation of investments<br>• Review of indigenisation policies<br>• Government consistency on policy issues<br>• Rebranding Zimbabwe as a safe investment destination |

| | | | | |
|---|---|---|---|---|
| **3. Infrastructure**<br>A lack of repair, maintenance and development of critical infrastructure (e.g. roads, rail, electricity cables, communications etc) | Deteriorating Roads | High cost of transport (increased wear and tear on vehicles) in respect of the movement of agricultural inputs and outputs | Improve service delivery of Rural District Councils | Private, Public sector partnerships involving Rural District Councils to repair, maintain and develop Rural road networks |
| | Inefficient and collapsing Rail network | Increased cost of transport of inputs and outputs | | • Privatisation of the NRZ<br>• More stringent criminal penalties for theft of railway infrastructure and equipment |
| | Outdated Electricity infrastructure and a slow rate of rural electrification | a) Higher rate of faults = unnecessary downtime<br>b) Underutilisation of irrigation and agro processing potential in rural areas<br>c) Underperformance and reduced yields | | Private, Public sector partnerships involving ZESA to<br>a) Increase Power Generation Capacity<br>b) Upgrade transmission and distribution infrastructure<br>c) Move all metering to a pre paid system<br>d) Improve and simplify payment mechanisms |
| | Collapsing landline Communications and slow development of affordable internet facilities in rural areas | a) Limitations on Farmers' access to key information, new skills and technology<br>b) Hampers the ability to organise farmers<br>c) Increases costs of information and communication<br>d) Underperformance and reduced yields | | Liberalize regulatory constraints on internet service providers to increase competition<br><br>Privatise Landline service Providers |
| | Slow development of large Water storage infrastructure | Underutilisation of irrigation potential | | Private, Public Partnerships for the development of planned dams irrigation schemes |
| **4. Markets** | GMB Issues, late | Farmers cannot use their | Provide adequate finance to GMB | Privatise GMB and diversify its |

| | | | | |
|---|---|---|---|---|
| Trade barriers, Inability to access key foreign markets, no payments by GMB, | payments | proceeds to buy inputs agricultural activities | | activities to include value addition |
| | Poor systems for the Traceability of Livestock | Cannot meet standards for export markets | Branding of livestock | Training of farmers to meet export standards<br>Revive Breeders Associations<br>Introduce verifiable recording systems in relation to livestock. |
| | Lack of confidence in Disease Control mechanisms in foreign markets | Loss of traditional export markets. E.g. loss of beef export quarter to the EU | Efficient and effective diseases surveillance by the Veterinary department using the available resources<br>Ratification of the IPPC | Rebuilding the confidence of export markets in our Sanitary and Phytosanitary (SPS) standards |
| | Lack of confidence in product quality guarantee and post harvest handling | Failure to exploit local and foreign markets | Strengthening service delivery by the AGRITEX and Veterinary services. | Farm level support for investment in post harvest handling infrastructure ( pack sheds, cold chain facilities) |
| | Difficulties in Exportation of local produce | Negative BOP position | Put in place export incentives | Simplify export requirements and procedures |
| **5. Poor Farmer Skill**<br>The use of inefficient, poor or inappropriate production and farm business management techniques | Lack of knowledge of Conservation Agriculture | Land degradation and reduction soil fertility and reduced productivity | Strengthening extension service delivery by AGRITEX | Provide financing for CA equipment |
| | No appropriate Business Management and Administration | Poor farm viability | Training of farmers in business management and administration | Government support to rehabilitate master farmer training institutions |
| | Little skill in Marketing and business strategy and planning | Poor farm viability | Training of farmers in marketing and strategic planning | Government support to rehabilitate farmer training institutions |