



PARLIAMENT BUDGET OFFICE

STATUTORY AND RETENTION FUNDS: WHAT IS THE WAY FOWARD

Introduction and Background

Zimbabwe could be losing millions of dollars through misuse of retained funds by various Government Departments who are retaining 100% of the funds they are collecting. The Auditor General has raised a red flag over lack of transparency and accountability with regards to most of these statutory and retention funds. This compromise in Public Finance Management Systems is a wakeup call for the country to revert back to the old system where all revenues were deposited into the Consolidated Revenue Fund (CRF) (except in special cases, according to Section 302 (b) of the Constitution), and all allocations and disbursements were made from these subject to the permission of Parliament through the budget process.

Section 302 of the Constitution of Zimbabwe compels government institutions to remit all funds to treasury. The section reads:

“There is a Consolidated Revenue Fund into which must be paid all fees, taxes and borrowings and all other revenues of the Government, whatever their source, unless an Act of Parliament—

(a) requires or permits them to be paid into some other fund established for a specific purpose; or

(b) permits the authority that received them to retain them, or part of them, in order to meet the authority’s expenses.”

It is clearly evident from this section that all retentions which are not backed by an Act of Parliament are unconstitutional. Most of these funds were created before the adoption of the new constitution in 2013 and have no specific enabling legislation. They obtained retention authority from the Minister of Finance and Economic Development through Section 18 of the Public Finance Management Act (PFMA) (Chapter 22:19).

Rationale for revenue consolidation and retention

Consolidated Revenue Fund is a term used in many countries which derived their political systems from the Westminster model to describe the main bank account of the government. All tax and non-tax revenue is paid into the fund unless Parliament has specifically provided otherwise by law. Any money received by the government which is not taxation, and is not to be retained by the receiving department (for example, fines), is classed as a Consolidated Fund extra receipt (CFER). These funds are to be paid into the Consolidated Fund as soon as they are received in order to ensure transparency and accountability. Parliament gives statutory authority for the Government to draw funds from the Consolidated Fund by Acts of Parliament known as the Appropriation Act and Consolidated Fund Act. This ensures transparency and accountability in the use of such funds.

Most of the retention funds in Zimbabwe were created as a survival tactic during the peak of Government fiscal challenges. This was to allow government departments to retain part of their revenue to fund critical operations during the hyperinflationary era where a slightest lag in releasing funds from the CRF would significantly compromise government operations and service delivery due to the rapid loss of value for money. Treasury authorized, albeit without legal backing (before promulgation of the PFMA), certain departments to retain all collected funds to finance critical areas like capitalisation. The proliferation of these funds and reports of lack of transparency in the use of the funds is now a matter of concern. Treasury has since directed all government departments who collect statutory funds or retain other funds to open accounts with the Central Bank with effect from 31 January 2016 to enhance transparency and accountability, failure of which they threatened to revoke the retention authority. All the concerned departments have complied with this directive. However, it should be noted that this has not addressed the issue of abuse of funds and the constitutional requirements provided for in Section 302.

It is reported that the combined revenues collected by government institutions or departments outside the budget could have well reached over \$1 billion in 2016, had they been properly and accurately accounted for. This includes revenues from fines and user charges collected by the Zimbabwe Republic Police, Zinara, Environmental Management Agency, Judicial Services Commission and the Registrar General's Office, among many other government agencies. This comes at a time when Zimbabwe's budget has remained static at US\$4 billion annually as fiscal revenues continue to dwindle. This situation has eroded the stimulus power of the budget to propel the economy and move the country to middle income status.

The increase in cases of abuse of public funds justify calls for Treasury to be the only department entrusted with the responsibility to manage public resources. It has also been noted that a lot of money is spent on non-essential goods and services at the expense of critical issues. This is the highest level of disservice to the citizens and taxpayers when privileged departments splash on luxuries like cars whilst critical service provision like health delivery are underfunded to the extent of failing to provide basic painkillers. It defeats the whole purpose and is illogical for the same institutions with retention funds to then look up to treasury for financial support especially for salaries. Universities are a clear case in point.

Supreme Court ruling on a case involving remission of revenue to the Consolidated Revenue Fund

Reference can be made to the supreme Court of Zimbabwe ruling on a case involving Reserve Bank of Zimbabwe (RBZ) vs Zimbabwe Revenue Authority (ZIMRA) , case number S-44-13. The judgment was delivered on 20 September 2013 by Deputy Chief Justice Luke Malaba with Justice Vernanda Ziyambi and Justice Yunus Omerjee concurring. RBZ had issued a directive to the banks to transfer the money from accounts held with them by ZIMRA. The directive was issued through a monetary policy statement announcement made by the RBZ Governor, and was purportedly made in terms of Section 6(1)(d) of the Reserve Bank of Zimbabwe Act (the paragraph was later repealed), which imposed on RBZ the duty to advance the general economic policies of the Government by doing those things which are permitted by the law.

As a result of this directive, RBZ received into its own account from two commercial banks money held by those banks on behalf of the ZIMRA. ZIMRA demanded the refund of the money, to which RBZ did not respond. Legal proceedings were therefore instituted by the ZIMRA to recover the money. RBZ opposed the claim, on three grounds namely:

- i. That it had a right under Section 6(1)(d) and 8(1) of the Act, to issue the directive;
- ii. That ZIMRA should have sued the commercial banks, as opposed to itself, for the recovery of the money, there being no privity of contract between the two; and
- iii. That Section 18 of the Act granted it immunity from proceedings of this nature.

The Court ruled that the obligation imposed by the Constitution applies to all concerned, including ZIMRA, the commercial banks, and the RBZ. The obligation prohibits, in absolute terms, any transfer of revenue collected by the respondent to any other recipient except the Consolidated Revenue Fund. Any act which has the effect of transferring the money to any other recipient, prior to it getting into the Consolidated Revenue Fund, would be unlawful under the Constitution, regardless of who authorized that transfer. The court also ruled that it would not be a valid defence to say that the money was used by government or that the directive came from Government because the Constitution is binding on the Government.

Policy Options

The following are the policy options available to the Ministry of Finance with regards to retention of funds:

| Option | Likely outcome |
|---|---|
| Revoke the retention authority and enforce the constitutional requirement that all funds must be remitted to the CRF and where appropriate, the concerned departments can be allowed to retain a small percentage, just like what ZIMRA does to | <ul style="list-style-type: none">▪ Enhances transparency and accountability as funds are allocated by the Ministry of Finance under the control of the National Budget system and the supervision of Parliament.▪ Ensures smooth allocation of the funds to various government departments according to priorities.▪ Ensures even distribution of resources and eliminate the current scenario were some government departments with retention funds are well off compared their poor cousins who rely entirely on treasury allocation. (For example ZRP which has upgraded its fleet and spruced up police station using retained revenue yet the |

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| meet fund administration expenses. | <p>Zimbabwe Prison service on numerous occasions has failed to bring prisoners to the courts citing fuel and transport challenges)</p> <ul style="list-style-type: none"> ▪ Enhance transparency unlike the current scenario where money collected by certain departments is difficult to trace upholding the constitution and given the limited resources and the shoestring budget Government is working with. ▪ Critical operations may be underfunded and this may compromise service delivery. |
| Maintain the current scenario with at least 64 statutory and retention funds | <ul style="list-style-type: none"> ▪ The status quo remains ▪ Transparency and accountability difficult to enforce ▪ Abuse of resources and non-priority expenditure ▪ Over-taxation and excessive revenue collection to meet revenue targets (e.g. on fines thrust will be to collect more rather than reduce crime) ▪ Government departments with retention better funded and able to execute their duties timeously |

It is critical, if the first option is selected, to put in place mechanisms to ensure timely exchequer releases, once all revenue is remitted to the CRF. This will enhance the smooth flow of government business and ensure that government operations are not crippled.

Conclusion

It is our fervent hope, as the Budget Office that this matter will be given the consideration it deserves taking into account the merits and demerits of the 2 options. The ultimate aim should be to harness more resources into the system, improve service delivery and reduce revenue loopholes that have continued to drain public funds.

ANNEX 1: SUMMARY OF SOME OF THE 64 STATUTORY AND RETENTION FUNDS IN ZIMBABWE

| NAME OF FUND | RESPONSIBLE AUTHORITY | ESTABLISHING ACT | USE | RETENTION | ANNUAL COLLECTION (2017 EST) |
|---|---|--|---|------------------|-------------------------------------|
| Youth Development and Employment Creation Fund | Ministry of Youth, Indigenization and Economic Empowerment | Section 18 of the PFMA (Chapter 22:19) | Provide loans to Youth income generating projects | 100% | 776 000 |
| Tertiary Education and Training Fund | Ministry of Higher and Tertiary Education, Science and Technology Development | Section 18 of the PFMA (Chapter 22:19) | Finance development and maintenance of service and programmes for industrial training and trade testing | 100% | 60 060 000 |
| Government Pool Properties Fund | Local Government, Public Works and National Housing | Section 18 of the PFMA (Chapter 22:19) | Finance maintenance of Government pool houses | 50% | 4 000 000 |
| New Vehicle Security Registration Number Plate Revolving Fund | Transport and Infrastructural Development | Section 18 of the PFMA (Chapter 22:19) | Financing production and distribution of number plates | 100% | 12 000 000 |
| Special Gold Unit Fund | Mines and Mining Development | Section 18 of the PFMA (Chapter 22:19) | | 100% | |
| Mines and Mining Development Fund | Mines and Mining Development | Section 18 of the PFMA (Chapter 22:19) | Development of mining industry and supporting computerized mining titles system | 100% | 6 625 000 |
| Road Fund ZINARA | Transport and Infrastructural Development | Section 13 Roads Act Chapter (13:18) | Road maintenance | 100% | 204 602 300 |
| Department of Roads Fund | Transport and Infrastructural Development | Section 25 Roads Act Chapter (13:18) | Implementation of road maintenance works | 100% | 42 511 900 |
| Zimbabwe Republic Police Revolving Fund | Home Affairs | Section 18 of the PFMA (Chapter 22:19) | To enable ZRP to discharge its mandate | 100% | 59 391 300 |

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|----------------------------------|---|---|---|--------|------------|
| Registrar General Retention Fund | Home Affairs | Section 18 of the PFMA (Chapter 22:19) | Additional resources for registration exercise, staff development and information dissemination | 100% | 27 000 000 |
| Immigration Services Fund | Home Affairs | Section 18 of the PFMA (Chapter 22:19) | Resource Immigration Department | 100% | 1 200 000 |
| Universal Services Fund | Information Communication Technology, Postal and Courier Services | Postal and Telecommunications Act (Chapter 19:19) | Maintenance of high of postal and telecoms quality and service standardisation | 100% | 14 054 900 |
| Zimbabwe Tourism Fund | Tourism and Hospitality | Section 29 Tourism Act (Chapter 14:20) | | 100% | |
| Lands and Resettlement Fund | Lands and Rural Resettlement | Section 18 of the PFMA (Chapter 22:19) | Provide resources for rural resettlement & estate management | 100% | 3 465 000 |
| Lands Compensation Fund | Lands and Rural Resettlement | Section 18 of the PFMA (Chapter 22:19) | Compensation of former owners for developments | 100% | 10 000 000 |
| Courts Administration Fund | Judicial services Commission | Section 18 of the PFMA (Chapter 22:19) | Enhance justice administration by providing resources to courts | 100%** | 13 724 800 |
| Guardian Fund | Judicial services Commission | Section 18 of the PFMA (Chapter 22:19) | | 100% | |

** Section 32(9) of the NPA Act specifies that the JSC is supposed to retain 40% of revenue, while allocating 30% to the NPA, 20% to the AG's Office and 10% to the Justice ministry. There are reports that the JSC is still retaining 80% and disbursing 20%, in contravention of the Act. Before the NPA Act came into force in January this 2015, the JSC retained 80% of the funds while 20% was disbursed to the AG's Office.

ANNEX 2: Section 18 of the PFMA

Establishment of other public funds

(1) Whenever—

(a) money is appropriated by Act of Parliament for the establishment of a fund for a particular purpose; or
(b) in the opinion of the Minister, it is necessary or desirable for the purpose of facilitating the accounting for public resources that a separate fund be established;
the Treasury shall establish a fund for that purpose.

(2) On the establishment of a fund in terms of subsection (1), the Treasury shall draw up a constitution for the regulation of the affairs of that fund, which constitution—

(a) shall specify the objects of the fund and the money which shall be payable into that fund; and

(b) shall provide for the payments which may be made out of that fund; and

(c) may provide for such other matters as are considered to be necessary or desirable.

(3) A constitution drawn up in terms of subsection (2) may be amended from time to time or replaced as the Treasury thinks fit.

(4) Where a constitution has been drawn up in terms of subsection (2) or amended or replaced in terms of subsection (3) the Minister shall lay a copy of that constitution or the amendment to or replacement of that constitution, as the case may be, before the House of Assembly on one of the ten days on which the House of Assembly sits next after

that constitution was drawn up or after that amendment or replacement of the constitution was drawn up, as the case may be.

(5) Where a fund has been established before the date of commencement of this Act, and is operating on that date in accordance with a constitution drawn up by or with the approval of the Treasury—

(a) that fund shall be deemed to have been established in terms of subsection (1); and

(b) that constitution shall be deemed to be a constitution drawn up in terms of subsection (2) but it shall not be necessary to lay a copy thereof before the House of Assembly in terms of subsection (4); and

(c) if that constitution purported to confer on the fund powers which may only be exercised by a corporate body and the Minister has, by notice in the *Gazette*, declared that the fund concerned shall be a corporate body—

(i) that fund shall be regarded as a body corporate with such powers as may be conferred upon it by or in terms of its constitution, and shall be deemed to have become a body corporate with effect from the date on which the fund was established; and

(ii) any assets or liabilities of that fund shall not be regarded for any purposes as assets or liabilities of the State; and

(iii) any employee of that fund shall not be regarded for any purposes as an employee of the State; and

(iv) the provisions of subsection (3), the proviso to subsection (9) and subsection (10) shall not apply in relation to the constitution of that fund but that constitution shall not be amended without the approval of the Treasury.

(6) Subject to subsection (1), no fund shall be established by an officer in the employment of the State for the deposit

of public moneys unless the establishment of that fund is authorised by or in terms of this Act or any other enactment.

(7) Where a fund administered by an officer in the employment of the State has been established in terms of this Act or any other enactment—

(a) there shall be paid into and credited to that fund any moneys which are—

(i) appropriated by Act of Parliament for the purposes of that fund; or

(ii) required by any enactment or, in the case of a fund established in terms of subsection (1), by the constitution thereof, to be paid into that fund;

(b) there may, subject to the approval of the Treasury, be paid into and credited to that fund any money made available from other sources for the purposes of that fund.

(8) The Minister may, on such terms and conditions as he or she may fix, make loans or advances for a period not exceeding three hundred and sixty days to any statutory fund or fund referred to in this section to enable the functions

that should be carried out by means of the use of the money in that fund to be carried out:

Provided that money loaned or advanced in terms of this subsection shall not be used for capital expenditure unless the Minister has approved such use.

(9) Notwithstanding anything to the contrary contained in this Act, the receipts, earnings or accruals of a statutory

fund or fund referred to in this section shall be paid into and form part of that fund:

Provided that, subject to any enactment by or in terms of which the fund is established or, in the case of a fund established

in terms of subsection (1), the provisions of the constitution thereof, the Treasury may at any time direct that any moneys in such fund shall be paid into the Consolidated Revenue Fund.

(10) Subject to any enactment by or in terms of which a fund is established or, in the case of a fund established in terms of subsection (1), the provisions of the constitution thereof, the Treasury may wind up that fund and shall transfer

any moneys in that fund to the Consolidated Revenue Fund.

(11) Any loan made in terms of subsection (8) shall be paid out of the Consolidated Revenue Fund which is hereby appropriated to the purpose.