

# Compensation Thoughts 2.0 - Hope is not a Strategy...

8 August 2020

Friends, Farmers, Claimants

Much has happened in the fortnight since my letter on 22 July and I've since been asked by family and friends to share some updated perspectives.

In summary, there are still more questions than answers at this stage. Our concerted efforts to apply conditionality to our votes has certainly had impact on the discussion - although many answers remain vague and elusive. There was a considerable amount of quiet diplomacy through various channels over the weekend between the vote and the signing of the deed. Lots of sensible, moderate, pragmatic pleas: to slow things down; to consult properly; to not do anything rash.

Well, we know what happened. Despite all the above, the deed got signed - against an extraordinary backdrop of the Minister of Ag's sudden demise and a widespread clampdown on planned protests. Instead of adapting, our reps went ahead signed and even issued some bizarre reassurances against the contradictory political backdrop.

Personally, I am very disappointed that we didn't see more leadership at this key juncture. But it's also important to emphasise again that the intention here is not to unconstructively criticise the deal - but to encourage some "quality control" and to ask for a reasonable set of "checks and balances" around the process for the wider group of claimants.

And there's no point really in speculating on what is now done - we need to look ahead and ask what this means? What are the next steps and how can we improve the information and consultation in the next stage of this process so that you/we as claimants have a better perspective? And make sure that the next stage is more transparent and less confusing.

I'm not going to dwell on the wider politics in Zim here either - they speak for themselves, and that is not to downplay them. In fact, I suspect they will bring a cold hard reality to the fundraising stage of this initiative, as many others have argued. However, I do want to examine the practical reality of what 'we' as claimants have been signed up to. I.e. what are the technicalities of 'the deed' as it stands and what does that mean for you as a claimant in terms of next steps, obligations, and the likelihood or otherwise of receiving your promised payment in its expected format.

Before jumping into details, big thanks again for all the hard work being done often on a shoestring by the various groups and individuals. We know who they are. I must also re-emphasise my deep concerns and sympathy with claimants in various degrees of desperation and vulnerability, but would again warn everyone that this will be exploited, and that a 'roll of the dice' or a 'lottery ticket' approach here will likely backfire and be used against us as

claimants if we are not very careful in this next stage. It may sound negative, but hope is not a good strategy. Neither is trust in this particular arena. Being polite but sceptical, well-prepared, well-aligned and well-informed – and candidly, being ‘prepared to walk off the pitch’ as Jim Sinclair noted- is a much better approach. And I must note again that I’m not a lawyer, but a fellow claimant, who just happens to have done lots of tricky deals, with tricky counterparties, in tricky locations.

**So where are we now?** The decision to move ahead despite the weaknesses in the deed raises some obvious questions.

**What are the positives?** For a start, open public acknowledgement by GoZ that compensation is due (and due from GoZ). This is new ground and whether it materialises in this initiative (or not) sets an important precedent. Amounts, values and proportion of improvements aside, this is a notable step in actually acknowledging the validity of the compensation process and effectively therefore publicly acknowledging a liability on the part of GoZ.

**Does the final deed include the relevant CPs and safeguards that were being suggested?**

NO is the short answer. Specifically, the proposed safeguards around the following issues are NOT in the agreement:

- 1) USD Payment outside of Zim
- 2) No further taxes or levies
- 3) Clear escape clause with reasonable timeframe for non-performance
- 4) Authority of this deed v statutory law

Because they are not in the deed, they remain key risks.

**So what does that actually mean? Will I get paid in USD wherever I want?** The Deed does state payment in USD into a bank account of choice - but nowhere does it confirm or even mention foreign bank accounts and this cannot be an oversight, as it was raised in the draft.

According to our representatives, this issue is a deal breaker. If so, we need to ask at what stage will it actually become a deal breaker? Presumably in an amendment? And presumably in advance of signing anything as an individual? This is the gist of what I previously described as having to “row back upstream” and was at the heart of Barry Munro’s questions.

On this basis (as per Iain Sheasby’s view and others, and collective experience with interim payments) you should assume that any payment will be into a Zim account, especially if you are a Zim resident. And unless it is explicitly agreed to the contrary, via written amendment, you have to assume the payment(s) will be subject to whatever currency controls, exchange rates and taxes might apply at the time. You should also assume that any outstanding SI6 payments, or those paid but without documented proof will also be deducted.

**When will I be expected to sign up as an individual?** The deed outlines that you will be asked to sign a deed of accession as individual claimants within 9 months (by 23 April 2021, with clock ticking). For some reason this timeline does not tally with the first payment date at 12 months (23 July 2021, with clock ticking). Why would claimants be expected to sign up before the funding is available? And there is still no sight of schedule 2. This is another key issue

that needs to be addressed sooner rather than later. You are being asked to sign away your legal rights before funds are confirmed, let alone paid out.

In my view, this must be amended to align time frames, or at very least a mechanism structured so that any individual signatures are placed into an ESCROW system with a 3<sup>rd</sup> party (external legal firm) and held as such until payment has actually been made? That way you don't officially cede your rights before you get paid.

**Am I being asked to hand in my title deeds?** Not explicitly at this stage, but the deed refers to "documents acceptable to government" which obviously need to be defined as you don't want to suddenly become liable for your title deeds after signing up, before you've been paid?

**So what am I giving away?** Probably of most significance you will be giving up your legal rights to challenge the government on any matter relating to land and indeed any further claims on land. Effectively you will be forgoing your rights on anything above your proportion of the \$3.5 bn of negotiated value for improvements.

**Does this apply even if the payments fail to materialise?** Yes, in the current deed, with the offset timing between signing and payment this will still apply. Unless the signatories to the agreement terminate the deal but that is unlikely without extensions and arbitration first.

**How long will this apply for?** My reading of the deed suggests at least 5 years depending on extensions, arbitration etc but needs to be clarified

**How many farmers need to sign up for this to proceed?** Not clear at this stage and frankly wasn't clear at the last stage - but this needs to be addressed. The agreement implies that it could proceed irrespectively but I think it would suffer reputationally if anything less than a strong majority (75%?) of claimants were to sign up, especially after the 94% referendum?

**What are the next steps on fund-raising?** Not entirely clear aside from the appointment of a Joint task force consisting of 3 farmer reps and 4 govt reps

**Why the uneven number and why fewer farmers at the table?** Not clear, especially under the spirit of a 'partnership' and needs to be explained.

**Who will represent us as claimants on this Joint task force?** Not clear at this stage but the deed says these appointments will be made by the signatories, which are our representative groups CFU, Valcon and SACFA.

**Will we be consulted on these appointments?** Unclear at this stage but would argue strongly that we should be, for reasons to follow.

**Will our appointed individuals be required to declare any conflicts of interest?** I hope so. I'm frankly surprised that conflicts of interest have not been a key disclosure on the process so far - to give claimants a better picture of who is representing them and on what grounds?

**What are the key conflicts of interest?** The two obvious conflicts are:

1) Representative still farming – because if so, you are doing so at the whim of the counterparty. Can you really objectively represent the interests of 4000 predominantly evicted claimants? Can you realistically separate your own local interests/exposure/vulnerability from the equation with genuine credibility?

2) Representative has personal interests in Valcon (and/or) its fee-based revenue stream - I think this is the lesser of the conflicts but should at the very least be declared to relevant extent by ALL key representatives. Needless to say, any representative in a position of both 1 and 2 is obviously compromised?

**So what should we focus on next as claimants?** The obvious next step is to get answers to the long and growing list of relevant questions. Specifically, we should focus on achieving the following before handing over any documents, let alone signing anything:

- assurance of USD payment into foreign accounts
- assurance that there will be no further levies or taxes applied to the settlements
- assurance/clear solution that this agreement has authority over statutory law
- full alignment (or ESCROW) between signing and getting paid
- clear escape clause with better defined timeframe if fundraising fails

There have been some excellent questions and discussions raised in the broader online forums and there is an initiative underway to collect, refine and submit a FULL list of questions formally to our representative bodies, which they will hopefully furnish with a detailed response? They are, after all, our representatives. And for those questions without answers or clarity, we'd obviously be delighted to help find solutions.

I would also suggest that we make every effort to expand the pool of claimants to be aware of the questions being raised. I worry that this important consultation is missing large blocks of the elderly and the less tech savvy, also perhaps the more remote, isolated or even agnostic members of the claimant community. So please do your best to make sure that family and friends, and former neighbours and colleagues are in the loop.

We should remember that this is not a YAY v NAY discussion now – this is about getting clarity on what we've ALL been signed up to. You will have your next YAY or NAY opportunity as an individual down the road, but surely it makes sense for everyone to get as much practical info on the mechanics of this as possible, before making that decision?

Best wishes and good luck,

Angus Selby

Ps - Some broader questions and thoughts in the Question Bank attached

## **WIDER QUESTION BANK**

### **Why the rush to sign the deed despite assurances to the contrary?**

I still have no idea – lots of convenient theories around, none are very compelling. But it seems likely that the deal was agreed and being back-solved for a timetable? The voting was closed on the Friday night before everyone had received their offers and you have to wonder why that would happen? Then the failure to introduce a very short list of very reasonable CPs (deal breakers) seems odd. Walking this back to a meaningful, but much less obligated MOU would also have made more tactical sense in my view? What's done is done but I think some explanation here from our reps would be helpful to settle the conspiracy theories?

### **Why the secrecy?**

Again, not really sure. The two most controversial aspects about the deal are the \$3.5bn amount and the fact that the taxpayer is expected to foot the bill? Both of these issues were out in the public domain already and are already attracting various levels of resistance. The tax payer v beneficiary argument is extremely relevant and interesting to see the GoZ PR machine way ahead of our own.

### **Was there adequate consultation in this process?**

I'll let you be the judge of this. Sure, you can't have 4000 claimants around a single table individually shaping a deal, but that does not mean you shouldn't have adequate time and access to review and discuss drafts and proposals, and then collectively submit questions and suggestions into a process of this magnitude and significance?

### **What is the likelihood of successful fundraising?**

The international reaction to the announcement has been predictably sceptical for obvious reasons, not least the timing. Lending money to a govt with this track record to pay out a bunch of ageing white farmers offshore is hardly a compelling proposition. I'm intrigued by what interest rates a bond of this nature might attract if it had any chance of success? I know Argentinian bonds were raised with a better credit risk profile (if that's possible!) but were still only done at interest rates that were bound to default? Ukraine has an 18% USD bond at a shorter duration but the west actually likes them. I can't see Zim getting a better deal and high interest rates just increase the risk of default? And the double edged sword in that is the taxpayer is being asked to fund this deal. Think of the "7 % over 10 year" rule... double or treble the 7 percent... and roll that out over 30 years?

The World Bank has offered technical assistance, but for me the big test is whether they will actually cornerstone this deal? Personally, I don't see how this flies, short of a much wider USD10bn package that includes extensive rebuilding of Agriculture, but that would be conditional on restoring property rights, implementing other political reforms and meeting the requirements of ZDERA. Which brings us full circle?

**What happens if only some of the funds are raised? Is there a minimum threshold? Not Sure.** But this is a very valid question. Will funds raised above a threshold but below the 3.5 bn be shared pro-rata? What is the logic and rationale behind the 4 deferred payments?

### **Should we compromise principles and standards to get a deal done?**

I agree that you always need to shape your style and tactics to local conditions but I don't agree that you should lower standards or principles or take undue risk. I also agree that you need to compromise, but where do you stop? My valuation chart shows the extent of compromises already made. Jim Sinclair hit the nail on the head - until we are actually prepared to walk off the pitch, we will continue to get rolled over.

### **Should we expect to reopen the valuation discussion?**

Not on this agreement. The deal is done and one of my previous questions is answered. But to be clear my valuation chart in the last letter was not to try and reopen negotiations but simply to illustrate the compromises that we've already made as a base for resisting further compromise. And to be even more clear my FULL valuation was based on conservative figures. The von Pezoldt precedent values the sector much higher.

### **Time value of money?**

I raised this question in my first letter and as yet have not been able to bottom it out, specifically for the 4 deferred tranches of payment. Unless this is included it will represent a further discount.

### **Transfer of value from highly developed farms to ranches?**

Also raised previously. On the land v improvements discussion there is strong support for transferring a value component from highly developed farms to pasture based ranches which is a laudable 'team gesture' and supportive of the fact that we were (and still are?) a community. However, this raises the obvious question that if, as, and when a land component of compensation is raised how will this transfer of value be recovered or reallocated back to the intensive farms? How of the \$3.5bn has been reallocated under this gesture? Is there an accurate register for this? Will there be a time value of money applied?

### **So, what did the vote mean?**

Roughly 2800 (94%) of 2960 votes were comfortable with the valuation they were offered. Does this mean that 94% of claimants were happy to sign up to the deed in its current format? Clearly not, given all the wider clarification, letters and conditional votes out there.

Will 94% of claimants sign up to the deed without the key safeguard clauses? I suspect not. I hope not. I suspect >94% of claimants would like to see the safeguards in before they sign rather than risk getting paid in Zollars. It is not clear how many claimants are actually on the register and I understand that each property carried a vote, so multiple holders carried more votes irrespective of relative property values? It would be really helpful for Valcon to clarify some of this. ie how many properties? how many claimants etc What constitutes a quorum of claimants?

**How will interim payments be addressed?** The assumption has to be that they will be deducted at the official rate on the date. So, you risk of a currency discount on both sides.

**How will SI6 deductions work?** What proof exactly is required for sign off? How will any disputes be arbitrated? Surely this issue should be written off given forcible evictions before the SI6 tactic and before the various retrospective changes to the law?