

# **The rights of the South African Reserve Bank with respect to historic coinage**

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## **EXECUTIVE SUMMARY**

*South Africa's historic coinage is considered an important part of the country's national heritage and it should be given the necessary recognition and protection. The South African Reserve Bank has the sole right to issue coins in the country and it is therefore empowered to provide the necessary protection to legal tender coins. The current rights of the South African Reserve Bank with regards to historic coins are not well understood, however. Of particular interest is which of the historic coins are still considered legal tender and a study was conducted by the author. The legal tender status of most of the historic coins seems to be clear, but it is recommended that a further review of the material be conducted by legal experts. The legal tender status of particularly the Burgersponde and the Veldponde requires further study.*

*The South African Reserve Bank Act (No 90 of 1989) gave the South African Reserve Bank the sole right to issue coins in the country. The Minister of Finance nevertheless retains the right to prescribe the design, type, denominations and mass of coins. Based on Act No. 90 of 1989, as well as historic coinage acts where the Minister or State President had these rights, it is argued that the rights to all historic and current coins **still considered legal tender** belong to the South African Government. It is expected that the South African Reserve Bank will exercise these rights on behalf of the Government and these rights can therefore be considered to indirectly belong to the Reserve Bank. This is a similar principle to the United Kingdom where the copyright for designs and images of decimal coins subsists in the Crown. Authority has been delegated by the Crown to the Royal Mint. Although an explicit statement of this delegation of authority regarding the rights of historic legal tender coins from the*

*South African Government to the Reserve Bank cannot be found, Section 14(1) of Act 90, 1989 is assumed to be an implicit delegation of this authority.*

*The historic “Transvaal coins” are still legal tender. Proclamation No. 135 of 1911, Act 31 of 1922 and Act 78 of 1964, defined legal tender “Transvaal coins” as those coins specifically minted in the Pretoria Mint of the late Transvaal Republic. If these definitions are strictly applied, it excludes the Burgersponde minted in England and the Veldponde minted at Pilgrim’s Rest as legal tender coins. The rights of the Reserve Bank with respect to these coins are therefore in doubt and a further review is required. It is the opinion of the author that the Burgersponde **are legal tender** and the rights belong to the Reserve Bank as ZAR Government Notice No. 1644 of 4 November 1874, which declared them legal tender, was never revoked. Article 15 of Act 14 of 1891 furthermore allowed the ZAR Government to approve coins minted at other mints as legal tender. The Veldponde was minted from almost pure gold during the Boer War and as they do not meet the fineness as stipulated in Act 14 of 1891, it is the opinion of the author that they **are not legal tender**. There is nevertheless a historic precedent in 1903 where the police investigated a person involved in the forgery of Veldponde after the Boer War, implying it was considered of significant value and perhaps even legal tender.*

*The Kruger coins minted in Berlin in 1892 before the Pretoria Mint became operational are also problematic based on the definition of Transvaal coins given above. All the 1892 Double Shaft Kruger coins, most of the 1892 silver coins and all the 1892 Pennies were minted in Berlin. The only 1892 coins minted in Pretoria were 2/- pieces (3483 in Pretoria and 2037 in Berlin) and 1/- pieces (4452 in Pretoria and 2030 in Berlin). As it would be difficult to distinguish between the 1892 2/- and 1/- coins minted in Pretoria and Berlin, it is the opinion of the author that that all the 1892 2/- and 1/- coins can be considered current legal tender. To support this argument, all these coins were considered legal tender in the ZAR irrespective of where they were minted and Article 15 of Act 14 of 1892 allowed the ZAR Government to approve coins minted at other mints as legal tender. If it is assumed*

that some of the Berlin coins are legal tender, the other 1892 coins minted in Berlin cannot be rightfully excluded. The rights of all Kruger coins minted from 1892 to 1900 therefore belong to the Reserve Bank.

All coins minted in South Africa after the formation of the Union of South Africa are legal tender and the South African Reserve Bank owns the rights to these coins. The only exceptions are the British Sovereign and Half-sovereign coins minted at the Pretoria Branch of the Royal Mint from 1923 to 1932. The coins were identical to the sovereigns minted at other mints in the British Commonwealth (except for a small “SA” mint mark). The Royal Mint supplied the dies and the United Kingdom therefore owns the rights to these coins. These sovereigns are protected coins in terms of the Forgery and Counterfeiting Act 1981 of the UK.

The rights of the South African Reserve Bank with regards to historic coins are summarised in the table below.

Summary of the rights of the South African Reserve Bank with regards to historic coins		
Period	SARB <sup>#</sup> rights	Institution owning the rights
<b>1. The Dutch and Batavian period from 1652 to 1805</b>		
A large variety of coins used in the Cape Colony from 1652 to 1805	No	Unknown - Every coin type will have to be researched
<b>2. The pre-Reserve Bank era from 1806 to 1922</b>		
Griqua coins	No	Unknown - Organisations (e.g. The Griqua National Conference) may claim ownership
British gold, silver and bronze coins from 1806 to 1922	No	<b>Royal Mint and UK Treasury</b>
Tokens issued by private institutions and municipalities	No	Unknown - Some private institutions/individuals may claim the rights
Burgersponde	?	To be reviewed - Probably <u>owned</u> by the <b>South African Reserve Bank</b> as ZAR Government Notice No. 1644 of 4 November 1874 was never revoked.
ZAR* 1892 coins minted in Berlin	Yes	<b>South African Reserve Bank</b>
ZAR* gold, silver and bronze coins minted in Pretoria from 1892 to 1900	Yes	<b>South African Reserve Bank</b>
Veldponde minted in 1902 at Pilgrim's Rest	?	To be reviewed - Possibly <u>not owned</u> by the South African Reserve Bank as the fineness was not according to Act 14 of 1891.
Blank ponde issued during the Boer War	No	Unknown - Should be protected by an amended National Heritage Resources Act
Sammy Marks 1898 gold tickey	No	Unknown - Should be protected by an amended National Heritage Resources Act
<b>3. The Union era from 1923 to 1960</b>		
Union of South African silver and bronze coins minted at Pretoria from 1923 to 1960	Yes	<b>South African Reserve Bank</b>
British gold sovereigns minted at Pretoria Branch of Royal Mint from 1923 to 1932	No	<b>Royal Mint and UK Treasury</b>
South African gold sovereigns minted from 1952 to 1960 for collector sets	Yes	<b>South African Reserve Bank</b>
<b>4. The Republic coins from 1961 to present</b>		
Republic gold, silver and brass coins from 1961 to 1964	Yes	<b>South African Reserve Bank</b>
Republic silver, nickel and bronze coins from 1965 to 1990	Yes	<b>South African Reserve Bank</b>
Current coin series	Yes	<b>South African Reserve Bank</b>
*Zuid-Afrikaansche Republiek (ZAR). Also referred to as the Transvaal Republic		
# South African Reserve Bank		

*Two South African acts currently make provision for the protection of historic coins. The National Heritage Resources Act (Act No. 25 of 1999) regulates the export of numismatic items if it is declared a heritage object by the South African Heritage Resources Agency. Numismatic items currently requiring an export permit are South African items of numismatic interest that have been in South Africa for more than 100 years. An amendment of this Act in relation to numismatic items is proposed in the report. The Prevention of Counterfeiting of Currency Act (Act No. 16 of 1965) is the only act that regulates the counterfeiting of historic coins. The historic coins still considered as legal tender is considered as “current coin” based on the definition in this act. It is therefore an offence to make counterfeits of these coins.*

*The Heraldry Act, 1962 was scrutinised to investigate if this can provide protection to the Coat of Arms of the Zuid-Afrikaansche Republiek as used on some of the coins. This coat of arms is still registered in the database of the Bureau of Heraldry, but in the name of the old Transvaal Provincial Administration. It may therefore be difficult to enforce the protection provided by the Heraldry Act.*

*The historic coins minted in, or specifically for, South Africa which are considered as heritage items and currently not protected by legislation are the Griqua coins, the blank ponde issued during the Boer War and the Sammy Marks tickeys. There is also some uncertainty regarding the status of the Burgersponde and Veldponde. It is recommended that legislation be introduced to provide the necessary protection against counterfeiting or the making of unauthorised copies of these historic coins. Consideration should be given to amend the National Heritage Resources Act in relation to numismatic items. Some of the pertinent points are:*

- In its present form the act does not prevent persons from making unauthorised copies of historic coins not protected by Act No. 16 of 1965.*
- In its present form the act is impossible to administer.*

- *South Africa's historic coins have become part of the global numismatic market and only the great rarities should be protected from unauthorised exports. The ZAR coins are plentiful enough to be traded overseas.*
- *Section 32 (24) needs very clear definition and cannot be left to personal opinion.*
- *If incorrectly applied, this act could kill the market for ZAR coins and seriously affect numismatics in South Africa.*

*To encourage interest in numismatics, it is recommended that the manufacturing or the import of imitation historic coins should not be entirely banned in South Africa. To regulate this industry, the country can adopt legislation (by possibly amending Act No. 25 of 1999) similar to the U.S. Hobby Protection Act of 1973. According to this act the manufacture or the importation or the sale of any imitation numismatic item, which is not plainly and permanently marked "copy", is unlawful. In the U.K. the Forgery and Counterfeiting Act 1981 specifies that it is an offence for a person to make or sell an imitation British coin unless the Treasury has consented in writing to the sale or distribution of such imitation British coins.*

## INTRODUCTION

The importance of numismatics (definition below) to historians and archaeologists is well documented. Coins are historical records and coins are sometimes the only means to provide absolute dates at archaeological excavation sites. As described as early as 1836 by Thomsen: *"What especially distinguishes coins is that, generally speaking, they admit of being fixed and referred to a precise time with much greater accuracy and certainty than any other antiquarian objects"*. Kemmers and Myerberg (2011) describe the debate among European historians in the 1930s regarding trade and cultural contacts between Arabian nations and Europeans during the Carolingian period. This was eventually settled through the use of coin finds and not by written sources alone.

Coins are a reflection of society and the rulers of these societies. As argued by Kemmers and Myerberg (2011): “*The production of coins is in most cases linked to some kind of central authority, while the use of coins involves all levels of society. They are thus an excellent source not only for events and personas of the ‘big history’ preferred within the history discipline, but also for the ‘small histories’ increasingly studied within archaeology – which often give a different picture.*” This statement was made in the context of ancient history and archaeology, but it is argued that this is equally true in modern times. An excellent example in South Africa is the Griqua coinage of the early 1800s when the British Empire dominated the Cape Colony. These coins are recognised as the first coins specifically minted for and used (albeit briefly) by indigenous people in this country. A further interesting case study is the change in South African coinage after the transition to democracy in 1994. Nelson Mandela became a global celebrity and South African coins of this period reflect the shift in political power from an Apartheid government to a democratic dispensation. Similar to Roman coins, it is argued that modern coins are still used as a form of communication reflecting society and their rulers.

In summary, South African historic coinage is considered an important part of the country’s national heritage and should be given the necessary recognition and protection. The South African Reserve Bank and its wholly owned subsidiary, The South African Mint, are best positioned to provide this protection in conjunction with the South African Heritage Resources Agency. The current rights of the South African Reserve Bank with regards to historic coins are not well understood, however, and a study was conducted by the author. It is argued in the report that modified legislation will be required to provide enhanced protection to historic South African coins.

### **Definition of the term numismatics**

The National Heritage Resources Act of 1999 refers to “*numismatic objects*” in Section 32, but no definition of numismatics is given in the act. The online Oxford dictionary defines numismatics as “*the study or collection of coins, banknotes, and*

*medals*”. This makes no distinction between collecting and study and it appears that people who study coins as well as collectors, who may not conduct any research, are defined as numismatists. The online encyclopaedia, Wikipedia, describes numismatics as: “*Numismatics is the study or collection of currency, including coins, tokens, paper money, and related objects. While numismatists are often characterized as students or collectors of coins, the discipline also includes the broader study of money and other payment media used to resolve debts and the exchange of goods.*” This definition also includes the option of both “study and collection”. Under the heading of “coin collecting”, Wikipedia nevertheless makes the following differentiation: “*Coin collecting can be differentiated from numismatics in that the latter is the systematic study of currency.*” Headley (2015) defines it as: “*A numismatist is a scholar who studies the science of Numismatics. Among coin collectors, the term numismatist is used to mean anybody who is really serious about their coin collecting, or who grades, catalogues, or sells coins for a living.*”

For the purposes of this study, the definition as described in the Encyclopaedic Dictionary of Numismatics (Doty, 1982) is found appropriate and is adopted. This defines numismatics as: “***The study, science, and collecting of coins, medals, paper money, tokens, and related objects, all of which are linked to one another by economic function or physical appearance.***”

### **Scope of the study**

This particular study only investigated the rights of the Reserve Bank with regards to historic South African coins and tokens none of the other items as listed in the definition of numismatics given above. The large number of banknotes issued by various banks in the pre-Reserve Bank era is therefore not considered in this study.

The forms of payment used by indigenous people in the country prior to the arrival of European settlers in 1652 (see e.g. The South African Mint, 2011) is an interesting numismatic study in its own right, but is considered beyond the scope of the current study.

## **CURRENT LEGISLATION AND THE SOUTH AFRICAN RESERVE BANK**

The South African Reserve Bank has been a private institution since its inception. It is nevertheless accountable to Parliament as Section 32 of Act 90 of 1989 requires it to furnish information on a regular basis to the Department of Finance and Parliament. The *South African Reserve Bank Act (No 90 of 1989)* gave the South African Reserve Bank the sole right to issue coins in the country. As stated in the act:

*“14 (1) The Bank shall have the sole right to issue or cause to be issued banknotes and coins in the Republic: Provided that all coins which at the commencement of the South African Reserve Bank Amendment Act, 1989, were lawfully in circulation and legal tender in the Republic, shall as such remain in circulation until they are withdrawn from circulation in accordance with the provisions of section 19, or are no longer of the current mass prescribed in Schedule 2 in respect of the denomination in question.”*

The Minister of Finance clearly retains the right to prescribe the design, type, denominations and mass of coins as prescribed in Schedule 2 of the act. This right is described in Section 16 (2) and Section 19:

*“16 (2) The Minister may from time to time amend Schedule 2 by notice in the Gazette.”*

*“19 (1) The Minister may from time to time by notice in the Gazette –*

- (a) determine the dimensions of and design for any coin as well as the compilation of any series of coins; and*
- (b) authorises the withdrawal from circulation of-*
  - (ii) coins of a specified date or of specified dates of a specified denomination or of specified denominations.”*



Reference is made in the Act with regards to coins issued under other designations that are still in circulation (Section 15 (2)) namely pounds, shillings and pennies. Reference is also made to the Coinage Act (Act 31 of 1922) in Section 18. The South African Reserve Bank Act (No 90 of 1989) was assented to on 1 June 1989. It is concluded from the information above that:

- The South African Reserve Bank obtained the sole right to issue coins after 1 June 1989.
- The historic coins which were deemed legal tender before commencement of Act 90 of 1989, is still deemed to be legal tender.
- The Minister of Finance, and not the South African Reserve Bank, has the right to authorise withdrawal of coins of a specified date or denomination.
- The Minister of Finance, and not the South African Reserve Bank, needs to give final approval for the design, type and mass of the coins.

With regards to the rights to historic coins, the last two bullet points are of significance. In every act prior to 1989 which authorised the minting of coins, the Minister of Finance or the Government retained the right to decide on the type and design of the coins. The examples that can be listed are:

**Muntwet voor de Zuid-Afrikaansche Republiek (No. 14, 1891)**

*“(13) De vorm, de teekening en het opschrift der munten zullen door de Regeering worden bepaald.”*

*“(13) The shape, design and inscription of the coins shall be determined by the Government”*

**Coinage Act (No. 31 of 1922)**

*“2 (1) The Minister of Finance may cause to be made and issued silver and bronze coins of the denominations specified in the Schedule to this Act.”*

*“6 (1) The Governor- General may, by proclamation in the Gazette do all or any of the following things:-*

*(a) Determine the dimensions of and design for any Union coin;”*

#### **Decimal Coinage Act (No. 61 of 1959)**

*“2 (a) The Minister of Finance may cause to be made and issued gold, silver and bronze coins of the denominations set out in the first column of the table below and the respective values in comparison with the coins issuable in terms of the Coinage Act, 1922 (Act No. 31 of 1922),... ”*

#### **South African Mint and Coinage Act (No. 78 of 1964)**

*“11 (1) The Minister may cause to be made and issued gold, silver, nickel and bronze coins of the denominations set out in the First Schedule to this Act.”*

*“20 (1) The State President may, by proclamation in the Gazette, do all or any of the following things:*

*(a) Determine the dimensions of and design for any Republican coin;”*

Based on the historic coinage acts referred to above and Act No. 90 of 1989, it is argued that the rights to all historic and current coins still considered legal tender belong to the South African Government. This is reinforced by the fact that the South African Mint was a public institution until 1989 and the coins were designed by Government employees or contractors paid by Government. It is nevertheless expected that the South African Reserve Bank, who currently has the sole right to issue coins, will exercise the rights of historic coins on behalf of Government. The remainder of the document will simply refer to *“the rights of the South African Reserve Bank”*. This is a similar principle to the United Kingdom where the copyright for designs and images of decimal coins subsists in the Crown. Authority has been delegated by the Crown to the Royal Mint (The Royal Mint website). Although an explicit statement of this delegation of authority regarding the rights of historic legal tender coins from the South African Government to the Reserve Bank and Mint cannot be found, Section 14(1) of Act 90, 1989 is assumed to be an implicit

delegation of this authority. This is an important conclusion affecting the rest of the conclusions in this document and should be reviewed by legal experts. If assumed correct, a key question to answer, especially in the case of coins of the old Transvaal Republic, is which coins are still considered legal tender. This is explored in the sections below.

## **MAJOR NUMISMATIC PERIODS IN SOUTH AFRICAN HISTORY**

Four major numismatic periods can be identified in South African history after 1652. It is useful to introduce this classification as the Reserve Bank's rights for some of these periods are non-existent while they own the rights to most or all coins in other periods. This classification therefore greatly simplifies the presentation of the information from this study. The major periods are:

1. The Dutch and Batavian period from 1652 to 1805
2. The pre-Reserve Bank era from 1806 to 1922
3. The Union era from 1923 to 1960
4. The Republic coins from 1961 to present

The second era from 1806 to 1922 is the most complex to investigate with regards to the rights of the Reserve Bank. This period is characterised by the dominance of British coins in South Africa, the Griqua coins, the coins of the old Transvaal Republic (Zuid-Afrikaansche Republiek) and a large variety of tokens issued by private institutions and municipalities. A brief description of each period and the Reserve Bank's right to the various coins is given below.

### **THE DUTCH AND BATAVIAN PERIOD FROM 1652 TO 1805**

A large number of different coins were used at the Cape in the period from 1652 to 1805 (e.g. see Engelbrecht, 1987). These included Spanish pillar dollars, Dutch coins, coins minted for the Dutch East India Company, British coins and coins from India

(see Figure 6 for a small sample of these coins). The Reserve Bank has no right with regards to any of these coins and it is not discussed further.

## **THE PRE-RESERVE BANK ERA FROM 1806 TO 1922**

### **The ZAR coins**

The coins of the Zuid-Afrikaansche Republiek (ZAR) is referred to by different terminology in numismatic literature. The coinage acts of the Union and Republic of South Africa only used the term “*Transvaal coins*” although “*ZAR coins*” and “*Kruger coins*” are commonly used by collectors. These coins are the most popular South African numismatic collectibles and the series generating the strongest demand from overseas collectors. They are therefore the series for which the most forgeries and replicas can be found (except probably for the Krugerrand). As these coins are the only pre-Union coins that are still legal tender in the country, the rights of the Reserve Bank with respect to these coins need to be carefully examined. A short description of the various coins is included below. As many texts were written regarding these coins (e.g. Engelbrecht, 1987; Esterhuysen, 1976; Levine, 1974), only information relevant to the legal tender status of these coins and the rights of the South African Reserve Bank are given below.

The first coins minted for the ZAR were the Burgersponde in 1874 carrying the effigy of President T.F. Burgers. President Burgers visited Pilgrim’s Rest in 1874 and bought gold with the intention to provide the Transvaal Republic with its own coins. The gold was forwarded to Mr J.J. Pratt, the Consul-General for the Transvaal in London. Mr L.C. Wyon, engraver at the Royal Mint, produced the dies as a private commission and was paid £42 for the work. The coins were struck by Messrs Heaton & Sons of the Birmingham Mint (Esterhuysen, 1976). This is important for future reference as **these coins were not struck in Pretoria**. In September 1874, President Burgers presented these coins to the “Volksraad”, but they were poorly received. Only after a long debate

was it accepted as legal tender. In the laws of the Zuid-Afrikaansche Republic, the resolution of the House of Assembly 22 and 23 September 1874 stated that:

*“Art. 2 De Raad besluit, om de goudstukken voor den Raad gelegd door ZHed. Den Staatspresident en door ZHed. Verklaard voor de nette en zelfde waarde van een Engelsch pond Sterling.*

*2) aan te neem als een wettige tender in deze Republic.*

*Zie Gouvernements Kennisgeving, No. 1644, Staatscourant 4 November 1874, No. 550, blz 599.”*

Further minting of ZAR coins only commenced in the early 1890s with Paul Kruger as the new President. Act 14 of 1891 allowed for the minting of the Transvaal coins. The coins were based on the British system and the mass of the coins were similar to the corresponding British coins. Kruger was anxious to bring the new coins into circulation because of an election in the offing. The Pretoria Mint was still under construction and he therefore arranged for the first coins to be struck at the Berlin Mint. According to Becklake (1965), all the 1892 coins were minted in Berlin except for 3483 2/- and 4452 1/- silver coins minted in Pretoria. After these coins were released to the public, errors in the designs were discovered on the gold pond, half-pond and silver crown. The wagon on the shield was a continental wagon with two shafts and the die-sinker's initials “O.S.” appeared on Kruger's bust on the gold coins. This was the Dutch word for “ox” and gave Kruger's opponents in the election a reason to ridicule him. All efforts were made to withdraw these error coins. It is important to note for the discussion below that some of the 1892 coins were minted in Berlin and some in Pretoria. In 1893 minting continued in Pretoria until June 1900 when British forces entered Pretoria (although no minting occurred from 1 January 1998 to 30 September 1899).



Figure 1. The double shaft wagon on the left and the corrected single shaft on the right. The coin on the left was struck in Berlin and not Pretoria.

Article 15 of Act 14 of 1891 allowed for the minting of the 1892 coins in Berlin. This states:

*“15. De Regeering mag onderhandelen en onder nadere goedkeuring van den Eersten Volksraad overeenkomsten sluiten met het Gouvernement van een Vreemden Staat of Kolonie over het in zulken Staat of zulke Kolonie als wettig betaalmiddel aannemen van de munten in overeenstemming met deze Wet geslagen en over het in deze Republiek als wettig betaalmiddel aannemen van de munte in zulken Staat of zulke Kolonie geslagen, en mag met het oog daarop, overeenkomen toe te staan, dat gemachtigden van zoodanigen Staat of Kolonie worden aangesteld om tezamen met de beambten in Artikel 14 genoemd, toezicht te houden over de verrichtingen van gezegde Muntinrichting.”*

*“15. The Government may enter into negotiations and conclude, subject to the approval of the First Volksraad, agreements with the Government of any Foreign State or Colony for securing the acceptance as legal tender within such Foreign State or Colony of the coins minted in accordance with this Law, and may declare that coins made in such Foreign State or Colony shall be legal tender within this Republic, and with a view thereto may allow Commissioners of such State or Colony to be*

*appointed to supervise the operations of the said Mint jointly with the officials mentioned in Article 14.”*

The final coin of the ZAR was the crude gold Veldpond “siege pieces” minted at Pilgrim’s Rest in 1902 by the ZAR Government in the field. These coins were therefore also not struck in Pretoria. They were minted from almost pure gold and did not conform to the fineness as specified in Act 14 of 1891. Other interesting coins belonging to this period are the blank pounds which formed part of the gold evacuated from Pretoria before the British forces entered the capital in June 1900. These are blank gold discs of the correct weight and fineness which already went through part of the coining process. They were issued as coins when the Government in the field exhausted their supplies of properly minted coins.

A popular and rare ZAR gold coin is the so-called Sammy Marks tickey (3 pence). Sammy Marks was an advisor of Kruger and for his assistance was granted free use of the Mint for a day. He requested that the lowest denomination silver coin (3d) be struck in gold. These coins are therefore not legal tender, but probably requires protection (e.g. by an amended National Heritage Resources Act) as they are important artefacts from that era and is a popular coin with counterfeiters.

### **Legal tender status of the ZAR coins**

At first glance, it appears that the rights of the South African Reserve Bank are clear with respect to the ZAR coins. These coins were included as legal tender in Proclamation No. 135, 1911 as well as the Coinage Act No 31 of 1922 and were never demonetised. It is therefore considered as “current coin” with respect to the Prevention of Counterfeiting of Currency Act 16 of 1965 and is therefore afforded the appropriate protection. Close scrutiny reveals a more complex issue, however, and an investigation regarding the status of especially the Burgersponde, the Kruger coins minted in Berlin and the Veldponde is required.

The Kruger coins of the ZAR was authorised by the **Muntwet voor de Zuid-Afrikaansche Republiek (No. 14, 1891)** which stated that:

*“7. De munten door gezegde Muntinrichting geslagen en uitgegeven, zullen gangbaar zijn in de Z.A. Republiek en zullen voor alle doeleindes een wettig betaalmiddel zijn, naamlik:”*

*“11. Geen stuk goud, zilver, koper of brons, of ander metaal zal gemaakt of in omloop gebracht worden als munt, of ruilmiddel tenzij door de Muntinrichting. Het is verder verboden eenige munt, medaille of sieraad in goud, zilver, koper, brons of ander metaal te vervaardigen of in omloop te brengen, dat het aanzien heft van een munt door de Muntinrichting vervaardigd.”*

*“7. The coins manufactured and issued by the said Mint shall be current in the South African Republic and shall be legal tender for all purposes, as follows, viz.:”*

*“11. No piece of gold, silver, copper, or bronze, or other metal shall be made or issued as a coin or taken for money except by the Mint. It is further prohibited to make or issue any coin, medal, or ornament in gold, silver, copper, bronze or other metal, which looks similar to a coin manufactured by the Mint.”*

Arndt (1939) gives a comprehensive description of the unsuccessful attempts to demonetise Kruger coins after the Boer War. Shortly after Pretoria was occupied by British troops in 1900, a Proclamation in the Transvaal Government Gazette of 7/11/1900 stated that undefaced Transvaal gold and silver coins would be redeemed at face value from a date to be subsequently announced. Ironically, this assurance helped to spread the coins throughout the Transvaal and Orange River Colony (Free State Province). Act 14 of 1891 was not repealed yet and therefore the Kruger coins were in reality the only legal tender in the Transvaal. A Proclamation of the Orange River Colony (No. 3 of 1901) provided some protection for the Kruger coinage. The



proclamation stated that any person defacing these coins will be guilty of an offence and furthermore stated:

*“2. Whosoever shall coin or make any coin or token resembling any of the gold and silver coin issued by the Mint of the late South African Republic, or any of the King’s current coin, in such a way that the coin or token might pass for coins issued by the said Mint of the late South African Republic, or for the King’s current coins, or whosoever shall utter, put off, tender or circulate any such counterfeit coins or such tokens, shall be liable at the discretion of the Court to be imprisoned for a term not exceeding two years with or without hard labour, and all such counterfeit coins or tokens wheresoever found shall be forfeited to the Crown.”*

The Kruger coins nevertheless became a nuisance in the Cape and Natal as it was not legal tender in these colonies. Lord Milner was keen to demonetise the coins and suggested to the Colonial Office on 15 June 1903 that the coins be withdrawn and shipped to England. He suggested the British Government should bear the cost in view of the profit they will make from the British coin minted to replace the Kruger coins. The British Treasury did not want to incur the expense, but supported the demonetisation provided the Transvaal carries some of the cost.

**Transvaal Ordinance No. 33 of 1903** modified the concession of the National Bank of South Africa. As a result, the bank was not allowed to manufacture coins anymore. The ordinance stated:

*“(4) All clauses of the said Concession as also the provisions of the said Volksraad resolution of the 15<sup>th</sup> June 1899 shall subject to the provisions of paragraphs 1 2 and 3 of these presents remain of full force and effect provided however that the Bank shall not have the right to coin or issue British Sterling from the Mint referred to in said Concession.”*

To resolve the problem of Transvaal coin being the only legal tender in the Transvaal, a Royal Proclamation on 16 February 1906 declared that the British Coinage Act of

1870, with some modification, were to come in force upon publication by the Governor of the Transvaal. As a result, from 1 May 1906, Transvaal coins continued to be current and British coins also became legal tender (Arndt, 1928). The Transvaal coins were, however, still not legal tender in the Cape and Natal and practical problems persisted as a result. The cost of withdrawing the coins became an unsurmountable hurdle for the next 7 years in spite of several proposals to share this cost between the British Government, The Royal Mint and the Transvaal. In the end, events overtook the drive for demonetisation after the colonies were united as the Union of South Africa in 1910.

The South Africa Act of 1909, which led to the formation of the Union of South Africa, made no mention of currency or banking matters. The issue of the Transvaal coins was finally resolved by a Royal Proclamation on 23 January 1911 by King George V. This was published in the Union Gazette on 9 May 1911 by the Governor-General Gladstone and signed by the Minister of Justice, J.B.M. Hertzog. As stated in this **Proclamation No. 135, 1911**:

*“Section four. – A tender of payment of money, if made in coins which are British or Transvaal coins, and have not been called in by any proclamation made in pursuance of this Act, and have not become diminished in weight by wear or otherwise, so as to be of less weight than the current weight, that is to say, in the case of British coins, than the weight (if any) specified as the least current weight in the First Schedule of this Act, and in the case of the Transvaal gold coins than the weight prescribed under article eight of a law of the late South African Republic known as Law No. 14 of 1891, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender –“*

This proclamation ensured that the Transvaal coins became legal tender throughout South Africa and as Arndt (1939) wrote: “...and to this day they have not been demonetised.” In the aftermath of the financial turmoil of the First World War, the South African Reserve Bank, The Pretoria Branch of the Royal Mint and the Rand

Refinery was established. With regards to legal tender, the **Coinage Act (No. 31 of 1922)** specified that:

*“3 (1) A tender of payment of money, if made in coins which are Union coins, British coins, or Transvaal coins of current weight, shall be legal tender –“*

The **South African Mint and Coinage Act (No. 78 of 1964)** defined legal tender as:

*“12 (1) A tender of payment of money, if made in coins which are Republican coins or Transvaal coins of current weight, shall be legal tender-“*

The **South African Reserve Bank Act (No 90 of 1989)** makes no mention of Transvaal coins, but it is clear from the following sections that Transvaal coins are retained as legal tender:

*“14 (1) ...Provided that all coins which at the commencement of the South African Reserve Bank Amendment Act, 1989, were lawfully in circulation and legal tender in the Republic, shall as such remain in circulation until they are withdrawn from circulation in accordance with the provisions of section 19, or are no longer of the current mass prescribed in Schedule 2 in respect of the denomination in question.”*

*“17 (2) A tender, including a tender by the Bank itself, of an undefaced and unmutilated coin which is lawfully in circulation in the Republic and of current mass, shall be legal tender of payment of money – “*

In summary, there is no doubt that “Transvaal coins” are still considered legal tender in South Africa. A more difficult question to answer is which types of coins are considered as “Transvaal coins” and this is explored in the next section.

## **Legal definition of “Transvaal coins”**

As prescribed by the **Muntwet voor de Zuid-Afrikaansche Republiek (No. 14, 1891)**, coins struck by the Mint in Pretoria will be considered as legal tender in the Zuid-Afrikaansche Republiek. The act was very specific that the Mint will be based in Pretoria as stated below:

*“1. Er zal eene Muntinrichting opgericht worden te Pretoria”*

*“1. A Mint shall be established at Pretoria”*

Section 15 of the Act nevertheless made provision for the Government to conclude agreements with a Foreign State regarding the acceptance of coins struck in such a State as legal tender in the ZAR.

Regarding the definition of Transvaal coins, **Proclamation No. 135, 1911** stated:

*“For the purpose of this Act the expression “British coins” means any coins which have been issued by the Mint in accordance with the provisions of this Act, and the expression “Transvaal coins” means any coins which were coined in the Mint established at Pretoria by the Government of the late South African Republic in accordance with provisions of the said law of the said Republic.”*

The **Coinage Act (No. 31 of 1922)** defined “Transvaal coins” as:

*“9. In this Act –*

*“Transvaal coins” mean any coins which were coined in the Mint established at Pretoria by the Government of the late South African Republic in accordance with the provisions of Law No. 14 of 1891 of that Republic, and which have not been called in, in pursuance of that law or this Act;”*

The **South African Mint and Coinage Act (No. 78 of 1964)** included a definition of Transvaal coins:

*1. (vii) “Transvaal coins” means any coins which were coined in the mint established at Pretoria by the Government of the late South African Republic in accordance with the provisions of Law No. 14 of 1891 of that Republic, and which has not been called in in pursuance of that law or of the Coinage Act, 1922 (Act No. 31 of 1922) or of this Act;*

The ZAR coins that require special consideration are the **Burgersponde**, the **Veldponde**, the **blank ponde**, the 1898 **Sammy Marks gold tickeys** and the **1892 Kruger coins minted in Berlin**. All serious numismatists will immediately recognise these coins as part of the ZAR series and they are collected as such. According to the definitions in the acts given above, some of these coins may nevertheless be excluded from the definition of “Transvaal coins” as they were not struck in Pretoria.

If the definitions are strictly applied, it excludes the Burgersponde minted in England as legal tender coins. The rights of the Reserve Bank with respect to these coins are therefore in doubt and a legal review is required. It is the opinion of the author that the Burgersponde **are legal tender** and the rights belong to the Reserve Bank because ZAR Government Notice No. 1644 of 4 November 1874, which declared them legal tender, was never revoked. Section 15, Act 14 of 1891 furthermore allowed the ZAR Government to approve coins minted at other mints as legal tender.

Regarding the Veldponde, it was not minted in Pretoria and a further factor causing it to be disqualified is that they were minted from almost pure gold and therefore not according to the fineness specified in Act No. 14 of 1891. It is therefore the opinion of the author that they **are not legal tender**. There is nevertheless a historic precedent where the police investigated a person involved in the forgery of Veldponde after the Boer War. As described by Wilson (2002), one of the best known Veldpond forgeries is the “High A” counterfeit. This was produced in a shop in Rissik Street, Johannesburg, during 1903 by an immigrant, Mr Meister. The police raided his shop

and although they could not find the dies, he was apparently deported by Lord Kitchener for his illegal activities. Some value was clearly attached to the Veldponde by the authorities, but it is not clear if this was because they fetched high prices as war souvenirs or were considered legal tender.

The Sammy Marks tickkeys were never legal tender and are therefore disqualified by Act No. 90 of 1989. The South African Reserve Bank has no rights with regards to these coins.

The coinage process of the blank ponde was never completed and they are disqualified on the basis that they were never properly “coined”. The South African Reserve Bank has no rights with regards to these coins.

The Kruger coins minted in Berlin in 1892 before the Pretoria Mint became operational are also problematic. All the 1892 Double Shaft Kruger coins, most of the 1892 silver coins and all the 1892 Pennies were minted in Berlin. The only 1892 coins minted in Pretoria were 2/- pieces (3483 in Pretoria and 2037 in Berlin) and 1/- pieces (4452 in Pretoria and 2030 in Berlin). As it would be difficult to identify where the 1892 2/- and 1/- coins were minted, it is the opinion of the author that that all these coins can be considered current legal tender. To support this argument, all these coins were considered legal tender in the ZAR irrespective of where they were minted. If it is assumed that some of the Berlin coins are legal tender, the other 1892 coins cannot rightfully be excluded. The rights of all Kruger coins minted from 1892 to 1900 therefore belong to the Reserve Bank.

In summary, it is concluded that the Reserve Bank cannot claim rights to the **blank ponde** and the 1898 **Sammy Marks gold tickkeys** and the Prevention of Counterfeiting of Currency Act (No. 16 of 1965) may not provide protection to these coins. The **Burgersponde** and **Veldponde** are problematic and a review by legal experts are required to confirm whether the Reserve Bank has any rights with regards to these coins.

## **The British Coins**

The **Coinage Act (No. 31 of 1922)** specified that:

*“3 (1) A tender of payment of money, if made in coins which are Union coins, British coins, or Transvaal coins of current weight, shall be legal tender –“*

The British coins minted in London therefore remained legal tender in South Africa after 1922. An abnormal currency situation arose when Britain abandoned the gold standard in September 1931 and South Africa only followed suit on 28 December 1932. To counter the dumping of British silver in South Africa, an Exchange Dumping Duty of 20% on all British silver in excess of 40s per person imported into South Africa was imposed (Arndt, 1939). The smuggling of British silver into South Africa nevertheless continued and this led the Government to demonetise British silver. A Royal Proclamation, the Union of South Africa (Coinage) Proclamation dated 10 November 1932, was issued followed by a South African Proclamation on 18 November 1932. Thereby British silver coin ceased to be legal tender in South Africa after 14 January 1933. Although South Africa was already off the gold standard by then, the Government persisted and the bulk of British coins were withdrawn by the end of 1933.

The South African Reserve Bank therefore has no rights with respect to British silver coins from 1806 to 1932 as they were demonetised in 1932. These coins are disqualified by Section 14(1) in Act 90 of 1989: *“Provided that all coins which at the commencement of the South African Reserve Bank Amendment Act, 1989, were lawfully in circulation and legal tender in the Republic, shall as such remain in circulation until they are withdrawn from circulation...”*

Copyright for designs and images of United Kingdom decimal coins subsists in the Crown. Authority has been delegated by the Crown to the Royal Mint. The Royal

Mint is responsible for authorising the use of coinage design and the reproduction of images of UK coins.

The gold sovereigns and half-sovereign minted at the Pretoria Branch of the Royal Mint from 1923 to 1932 requires further investigation and is described later in the report.

### **The Griqua coins**

These coins are of numismatic significance to South Africa as it is the first coins specifically minted for South Africa and used by indigenous people. It is also the first, and probably the only, Christian missionary coinage in history.

The Griqua people originated from a mixture of European, slave and Khoikhoi people. They left the Cape and began to lead a nomadic existence south of the Orange River. Eventually they settled at Klaarwater, close to the present Kimberley. The Reverend John Campbell of the London Missionary Society visited the Griquas in 1813. The cultural heritage they brought with them from the Cape impressed Campbell and he attempted to elevate their standard of living. He convened a meeting and it was agreed that they should be called Griquas and the place be called Griqua-town instead of Klaarwater. As they had no circulating medium amongst them to use for purchases, they requested that the Missionary Society should mint silver pieces for them in England.

Back in England, Campbell made arrangements for the manufacture of the requested coinage. It appears he acted on his own initiative as no correspondence regarding this could be found in the archives of the London Missionary Society (Mitchell, 1978). Thomas Halliday was the die-sinker and four denominations were struck. It was a 10 and 5 pence in silver and a half-penny and farthing in bronze. The obverse consisted of the emblem of the London Missionary Society, which was a dove with an olive



twig in its beak. The first batch of coinage was sent to Griqua-town in 1815 and a second consignment in 1816.

There is uncertainty regarding the period of circulation amongst the Griquas in numismatic circles. Mitchell (1978) wrote: *“They had no real use for money and it seems doubtful if the coins ever circulated.”* In contrast, Engelbrecht (1987) stated that the coins were in circulation for about two years. According to Halliday, most of the coins were later returned to England and melted down. Wilson (2005) produced an excellent article on these coins and indicated that these coins must have circulated as coins in uncirculated condition are almost impossible to find.

The Griqua coins were never declared legal tender by the Cape or Union Governments and may possibly even be considered as tokens coins (which were deemed illegal after Act 31 of 1922 was assented to – see the section on token coins below). As the Griqua coins were not legal tender when Act 90 of 1989 was introduced, the South African Reserve Bank has no rights with regards to these coins.

## **Tokens**

By the late 1860s there was a serious shortage of change in South Africa. A number of private institutions, and even some municipalities, resorted to issuing their own token coin to give as change during transactions. It was to the benefit of these issuing firms as the tokens were intended to be used only at the particular firm. In many cases, the shortage of change, however, resulted in the tokens being accepted by the community and a wider circulation resulted. A well-known example in South Africa was the tokens of Strachan & Co which were accepted as payment in southern Natal and Griqualand East from 1874 until 1932 (Engelbrecht, 1987).

The Coinage Act, No. 31 of 1922 explicitly stated that no token shall be issued as coin and made the use of tokens as money illegal. As stated in Section 4 of the Act:

*“4. No piece of gold, silver, copper or of any metal or mixed metal, of any value whatever shall be made or issued as a coin or as a token for money, except by the Pretoria Mint or to the order of the Government of the Union.”*

None of the tokens were ever declared as legal tender by Government, they were issued by private institutions and Act 31 of 1922 clearly stated that they may not be issued as money. The South African Reserve Bank therefore has no rights with regards to these tokens.

## **THE UNION ERA FROM 1921 TO 1960**

The silver and bronze coins issued by the Mint in Pretoria from 1923 are still legal tender and the South African Reserve Bank therefore owns the right to these coins. Furthermore, although the Pretoria Mint was a Branch of the Royal Mint until April 1941, the silver and bronze coins were not deemed to be issued by the Mint in London. This is stated in section 7 of the Royal Proclamation of 14 December 1922:

*“7. Nothing in this Proclamation shall be taken to prevent the coining at the Pretoria Branch Mint of any coins of whatever metal which the Minister of Finance of the Union has power under or by virtue of any Act of the Union for the time being in force to be caused to be made and issued for circulation in the Union, or of any other coins of whatever metal which the Governor-General in Council may from time to time authorise to be coined at the Pretoria Branch Mint:*

*Provided that –*

- (a) Coins, other than sterling gold coins, coined at the Pretoria Branch Mint shall **not**, for the purposes of the Coinage Act, 1870, or for the purposes of any Order in Council or Proclamation relating to the coinage of any part of Our Dominions, be deemed to be coins made at, or issued from, the Mint, or to be coins coined under the direction of the Master of the Mint;”*

Furthermore, Act 31 of 1922 Section 6(1) stated that the Governor-General may by proclamation determine the dimensions and design for any Union coin. The rights of the early Union silver and bronze coins clearly belong to the South African Government and therefore to the Reserve Bank as described above. For completeness, it must nevertheless be added that the Royal Mint retained some oversight with regards to these silver and bronze coins as stated in Section 7 (b) of the 1922 Royal Proclamation:

*“The coining of such other coins shall be carried out subject to and in accordance with such regulations and conditions as may be made and imposed by the Master of the Mint.”*

The gold sovereigns and half-sovereigns minted at the Pretoria Branch of the Royal Mint require further investigation, however. These coins were minted from 1923 to 1932 and were identical (except for a small “SA” mint mark) to the sovereigns minted at the London Mint or other mints in the British Commonwealth. The Royal Mint supplied the dies and the United Kingdom owns the rights to these coins. It is also a protected coin for the purposes of the Forgery and Counterfeiting Act 1981 of the UK. The Pretoria Mint Proclamation of 14 December 1922 authorised the Pretoria Branch Mint in terms of the British Coinage Act 1870 (Arndt, 1939). According to this, “sterling gold coins” identical to the gold coins minted at the London Mint could also be minted in Pretoria and would be deemed to have been issued by the London Mint. Nothing was to prevent the Minister of Finance of South Africa from having coins of any metal struck at the Pretoria Mint, but only sterling gold coins would have been deemed to be issued by the London Mint. The wording of the relevant sections in the Royal Proclamation of 14 December 1922 is:

*“2. Gold coins of the same denominations, designs, weights and fineness as gold coins coined at the Mint may be coined at the Pretoria Branch Mint, and any coins so coined (in this Proclamation referred to as “sterling gold coins”) shall be subject to the allowance of the same remedy as gold coins coined at the Mint*

*3. The Master of the Mint shall prepare and transmit such dies as may be required for the sterling gold coins to be coined at the Pretoria Branch Mint.*

*4. The sterling gold coins coined in pursuance of this Proclamation at the Pretoria Branch Mint shall be deemed to have been issued from the Mint, and shall be current and legal tender in like manner and to like extent as if they had been coined and issued in England.”*

## **THE REPUBLIC COINS FROM 1961 TO PRESENT**

All coins issued by the Mint in Pretoria after 1961 are still legal tender and the South African Reserve Bank owns the right to these coins.

## **LEGISLATION PROTECTING HISTORIC AND CURRENT COINAGE**

### **South African legislation**

Two South African Acts are considered of relevance to protect South African historic coinage.

The *National Heritage Resources Act (No. 25 of 1999)* refers to numismatic objects in Section 32 (1) (d). It regulates the export of these items if it is declared a heritage object by SAHRA (South African Heritage Resources Agency). Regarding this Act, a declaration of types of heritage objects appeared in the Government Gazette (No. 1512, 6 December 1999). A permit is required in terms of the said Act for export from the country. In terms of numismatic items requiring this permit it was defined in the declaration as:

*“South African items of numismatic (medals and coins) and philatelic (stamps and cancellations) interest that have been in South Africa for more than 100 years.”*

With the last coin of the ZAR minted in 1902 and therefore more than 100 years ago, it clearly implies that no coins from the ZAR may be exported from the country without a permit from SAHRA. Section 32 (24) nevertheless make it clear that:

*“In considering an application to export any object of a type listed in Part (1) of the register of heritage objects permanently, an expert examiner and SAHRA must consider whether the object –*

*a) is of an outstanding significance by reason of its close association with South African history or culture, its aesthetic qualities, or its value in the study of the arts or sciences; and*

*b) is of such a degree of national importance that its loss to South Africa would significantly diminish the national heritage,*

*and if satisfied that the object fulfils both these criteria, may not recommend the issue of a permit, or issue a permit, as the case may be, to export the object permanently.”*

Based on these criteria, very few ZAR coins will meet both criteria, however, and an export permit will probably be readily issued for most coins. In contrast, an example of a ZAR coin that should have never been exported is the “Single 9” overstamped 1898/99 coin. This coin is unique and an important numismatic heritage item for South Africa as it symbolises the reopening of the first Pretoria Mint during the Boer war. It was presented to the American Consulate with supporting documentation as proof of this war-time opening of the Mint. This coin was reportedly sold to an overseas collector and its current whereabouts is unknown.

Although the National Heritage Resources Act protects historic coins from export, it does not make any statements regarding the making of any replicas or forgeries. Consideration should also be given to amend the act in relation to numismatic items. Some of the pertinent points are:

- In its present form the act does not prevent persons from making unauthorised copies of historic coins not protected by Act No. 16 of 1965.

- In its present form the act is impossible to administer.
- South Africa's historic coins have become part of the global numismatic market and only the great rarities should be protected from unauthorised exports. The ZAR coins are plentiful enough to be traded overseas.
- Section 32 (24) needs very clear definition and cannot be left to personal opinion.
- If incorrectly applied, this act could kill the market for ZAR coins and seriously affect numismatics in South Africa.



Figure 2. The rare “single 9” over stamped 1998 ZAR coin. This coin was apparently sold to an overseas collector and its current whereabouts is not known (photograph NGC website)

The *Prevention of Counterfeiting of Currency Act (No. 16 of 1965)* is important in relation to this study as it is the only act that may provide for the prevention of the counterfeiting of historic coins. In the definitions of the Act, the following are included:

*“1 (ii) “**counterfeit coin**” means any coin, other than current coin, resembling or apparently intended to resemble or pass for current coin, and includes current coin prepared or altered so as to resemble or pass for coin of a higher denomination;  
(iii) “**current coin**” means any coin the issue and circulation of which, in any State or territory, as money have been authorised by law;”*

Based on these definitions, most of the coins ZAR, which have been authorised by law, are considered current coin. According to the Act, any person who counterfeits these coins or imports it into South Africa shall be guilty of an offence. Examples of counterfeit ZAR coins, and especially Krugerrands (see Figure 3), are occasionally offered for sale on local and international auction and internet sites.



Figure 3. High quality forgeries of Krugerrands. The enscription below the Springbok (top photographs) is different compared to a genuine coin, but the quality is still good enough to deceive the average person. The coins at the bottom are made from gold plated tungsten and may even deceive experts as the weight and dimensions are similar to an actual Krugerrand.

## **Protection in terms of the Heraldry Act, 1962**

The Heraldry Act (Act No. 18 of 1962) was scrutinised to investigate if this act may provide protection to the Coat of Arms used on some of the historic Transvaal coins. A resolution of the ZAR Volksraad of 18 February 1858 approved a coat of arms with a simple description (Bot, 1965):

*“Op een zilveren veld zal een Wagen en een Gouden Anker staan, en op dat Wapen een Arend rusten. Op de regterzijde van dat Wapen een Man in ‘s lands kleederdragt, gewapend met een Geweer en toebehoorden. Aan de linkerzijde een Leeuw.”*

This description was incomplete and variations of the coat of arms was therefore inevitable during the course of years as can be seen on earlier and later Government Gazettes. Anton van Wouw produced a sketch of the coat of arms for submission to the Volksraad in the mid-1890s. This was never approved, however, and this painting of Van Wouw was lost. After the Union of South Africa was constituted, a Royal Proclamation in 1911 granted a British coat of arms to the respective Provinces. In 1951, the Transvaal Provincial Council passed a motion to request the British King to reinstate the coat of arms of the late Transvaal Republic as the coat of arms of the Transvaal Province. The Queen eventually recalled the Royal Proclamation of 1911 in 1954. The Transvaal Province subsequently approached the College of Arms in London to have the coat of arms of 1899 registered as their official coat of arms. This registration finally occurred in 1957.

The database of the Bureau of Heraldry was searched and the Arms of the Transvaal Provincial Administration is still registered (Reference 3 in the database). The remarks under this entry states:

*“(1) Based on the arms adopted by the South African Republic (Transvaal) by Volksraad Resolution on 1858-02-18.*

*(2) Arms as they existed in 1899 recorded in July by the College of Arms.*



*(3) Registered in terms of Section 5(a) of the Heraldry Act, 1962. Certificate issued: 1966-03-01 (Afrikaans)."*

Section 5(a) of the act is mentioned above and is given below for information:

*"5. Register of heraldic representations, names, special names and uniforms.-A register shall be kept in the bureau in which the bureau shall on application and in the manner determined by the state herald after consultation with the council enter the particulars which he determines in respect of-*

*(a) the coat of arms of the Republic, the national flag of the Republic, the coats of arms of the provinces and any other heraldic representation instituted, constituted or created by any law, and any amendment thereof effected by any law;"*

The Transvaal Province ceased to exist after the establishment of a democratic South Africa in 1994 and it is interesting that this registration was maintained. The Heraldry Act (Act No. 18 of 1962) makes provision for deletions as stated below:

*"7 (4) The state herald may, subject to the provisions of section 19 and with the consent of the committee, delete any heraldic representation, name, special name or uniform if he is satisfied that the official or municipal authority, association or institution in whose name it has been registered no longer exists."*

For the purposes of this study, the registration is still intact and the protection provided by the Heraldry Act is still in force. The Act specially states:

*"Any person who-*

*(a) without the written permission of the official or municipal authority in whose name any official or municipal heraldic representation has been registered, or without any other lawful reason, sells, barter or uses for gain or trades in such heraldic representation or any material part thereof or any replica or reproduction thereof or any imitation thereof which might reasonably be confused therewith; or*

*(b) uses a registered name, special name or an abbreviation thereof or a uniform in such a manner that it could reasonably be inferred that he is the owner or lawful user thereof or that he is a member of an association or institution, while in fact he is not such owner, user or member, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.”*

This can be made applicable to replica coins as “*trades in such heraldic representation or any material part thereof or any replica or reproduction thereof*” will include replica coins. It might not be easy to enforce this, however, as the registration was awarded to the Transvaal Provincial Administration which does not exist anymore. It will have to be proved that these rights were transferred to current Government institutions.

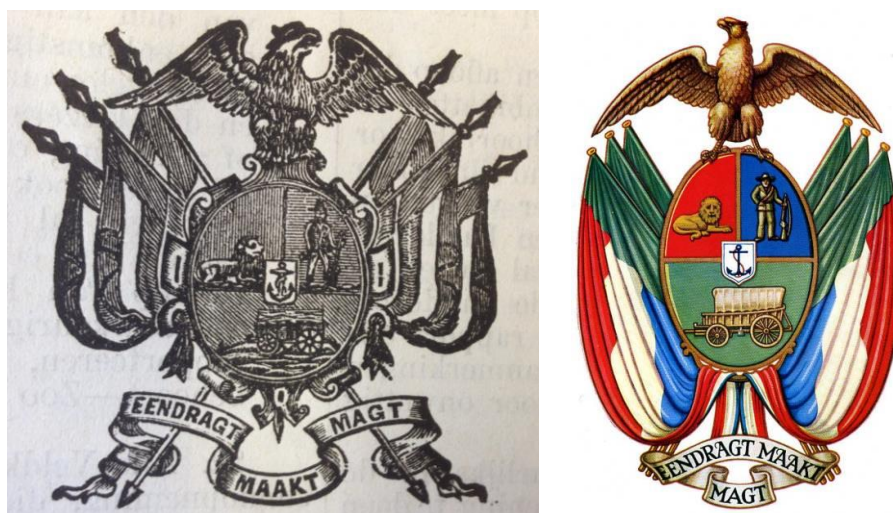


Figure 4. The coat of arms of the ZAR on the left as it appeared on the Government Gazettes of 1891. The rendition on the right was the coat of arms of the later Transvaal Province after 1957. Note that the head of the eagle was turned to the left to make it heraldically correct.

## **Examples of legislation from other countries**

Compared to South Africa, current legislation in the U.S. provides better protection to historic coins. Two areas of U.S. law deal with counterfeit coins. Title 18, Part I, Chapter 25 (Counterfeiting and Forgery) of the U.S. Code, Sections 485, 489, and 492 deal with counterfeits of U.S. and world coins. The Hobby Protection Act of 1973 (Title 15, Chapter 48, Sections 2101 through 2106 of the U.S. Code, plus 1988 amendments) deals with counterfeits of historic and ancient coins.

Regarding Title 18, U.S. Code § 489:

*“Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government shall be fined under this title.”*

On 19 December 2014, the United States of America introduced new legislation to fight counterfeit coins. It is entitled the Collectible Coin Protection Act (H.R.2754). As the biggest collectible coin market in the world, the US collectors are exposed to a large number of counterfeit coins manufactured in the East and appropriate legislation was required to counter this problem. The new law enhances the provisions of the Hobby Protection Act of 1973 which made it illegal to manufacture or import into the United States any imitation numismatic item that was not plainly and permanently marked "copy." The exact wording in The Hobby Protection Act (Title 15, Chapter 48, Section 2101) is:

*“(b) Coins and other numismatic items*

*The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce, or the sale in commerce of any*

*imitation numismatic item which is not plainly and permanently marked “copy”, is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act.”*

The new legislation adds a provision to the Hobby Protection Act by allowing prosecution of any person who provides substantial assistance or support to any manufacturer, importer, or seller knowingly engaging in any act or practice that violates the Act. Further stipulations outline that all steps in the counterfeiting process can be prosecuted — from manufacturing to shipping and sales. All parties may be held accountable no matter their location of business.

In the UK, the Forgery and Counterfeiting Act 1981, provides some protection to selected historic coins. Some of the sections of interest are:

*“14 Offences of counterfeiting notes and coins.*

*(1) It is an offence for a person to make a counterfeit of a currency note or of a protected coin, intending that he or another shall pass or tender it as genuine.*

*(2) It is an offence for a person to make a counterfeit of a currency note or of a protected coin without lawful authority or excuse.”*

*“19 Offences of making etc. imitation British coins.*

*(1) It is an offence for a person—*

*(a) to make an imitation British coin in connection with a scheme intended to promote the sale of any product or the making of contracts for the supply of any service; or*

*(b) to sell or distribute imitation British coins in connection with any such scheme, or to have imitation British coins in his custody or under his control with a view to such sale or distribution,*

*unless the Treasury have previously consented in writing to the sale or distribution of such imitation British coins in connection with that scheme.*

*(2) In this section—*

*“British coin” means any coin which is legal tender in any part of the United Kingdom; and*

*“imitation British coin” means anything which resembles a British coin in shape, size and the substance of which it is made.”*

*“20 Prohibition of importation of counterfeit notes and coins.*

*The importation, landing or unloading of a counterfeit of a currency note or of a protected coin without the consent of the Treasury is hereby prohibited.”*

*“27 Meaning of “currency note” and “protected coin”.*

*“protected coin” means any coin which—*

- (a) is customarily used as money in any country; or*
- (b) is specified in an order made by the Treasury for the purposes of this Part of this Act.”*

The Forgery and Counterfeiting (Protected Coins) Order 1981 listed some protected coins based on the powers conferred on the Treasury by Section 27. The coins listed were:

- Sovereign
- Half-sovereign
- Krugerrand
- Any coin denominated as a fraction of a Krugerrand
- Maria-Theresia thaler bearing the date of 1780

Furthermore, the British Treasury published guidelines intended to assist the public who are considering making coins or tokens for money (HM Treasury, 2004). Any person intending to make imitation British coins in connection with a scheme falling within Section 19 must first obtain the written consent from the Treasury. An application to the Treasury should include, at least, the following information:

- details of the imitation British coin that the person intends to make. This includes which coin the person intends to imitate and what the imitation coins will be made from.
- details of the scheme in connection with which the person propose to sell or distribute those imitation coins. For example, is it for a commercial, promotional, charitable or any other purpose.
- how many imitation coins the person envisage making;
- name and address of the person who will be making the imitation coins and where;
- name and address of the person / persons who will be selling, distributing or having custody of the imitation coins; and
- if relevant, whether Lord Chamberlain's Office and the Royal Mint have granted the person approval to the use of the Royal effigy and copyright of the coin design, respectively.

### **FINDING A BALANCE BETWEEN REGULATIONS AND STIMULATING NUMISMATIC INTEREST**

Numismatic counterfeits are obviously a problem as they are manufactured to defraud collectors and investors. The manufacturing of counterfeits and import of these coins into South Africa should be curbed as far as possible. It will nevertheless be difficult to eradicate as a large number of these coins are currently being manufactured in the East.

In comparison, coin reproductions, clearly marked as a copy, can serve a useful purpose and it may be used to stimulate interest in numismatics. Numismatic collectors occasionally use coin reproductions as substitutes for missing pieces in their collections as the originals may be expensive or difficult to find. Museums, historians, and teachers can also use legal coin reproductions to assist with history lessons.

Replicas of historical coins offer excellent connections to historical periods and specific subjects. Legal coin reproductions have commercial uses for businesses and these can be used as customer gifts, direct marketing and fund raising. Coin replicas can be used as advertising pieces where one side shows a replica of a historic coin or token and the other side presents an advertising message.



Figure 5. Example of a replica of the rare single '9' ZAR pond that is clearly marked as a replica (photograph – APMEX website).



Figure 6. Examples of the Van Riebeeck historic coins sold some years ago in the Van Riebeeck coffee tins. These copies are clearly marked on one side as a replica. These replicas motivated the author to assemble a collection of the genuine coins illustrating their value to stimulate interest in numismatics.

In summary, coin reproductions which are clearly identifiable as copies can be used to stimulate interest in numismatics and it is also a useful aid to teach history. To regulate these copies, it is recommended that South Africa adopts legislation similar to the U.S. Hobby Protection Act of 1973. According to this act, the manufacture or the importation or the sale of any imitation numismatic item, which is not plainly and permanently marked “copy”, is unlawful. In the U.K. the Forgery and Counterfeiting Act 1981 specifies that it is an offence for a person to make or sell an imitation British coin unless the Treasury has consented in writing to the sale or distribution of such imitation British coins. A similar approach can also be adopted in South Africa.

## CONCLUSIONS

South Africa’s historic coinage is considered an important part of the country’s national heritage and it should be given the necessary recognition and protection. The South African Reserve Bank has the sole right to issue coins in the country and it is therefore empowered to provide the necessary protection to legal tender coins. The current rights of the South African Reserve Bank with regards to historic coins are not well understood, however. Of particular interest is which of the historic coins are still considered legal tender and a study was conducted by the author. The legal tender status of most of the historic coins seems to be clear, but it is recommended that a further review of the material be conducted by legal experts. The legal tender status of particularly the Burgersponde and the Veldponde requires further study.

The South African Reserve Bank Act (No 90 of 1989) gave the South African Reserve Bank the sole right to issue coins in the country. The Minister of Finance nevertheless retains the right to prescribe the design, type, denominations and mass of coins. Based on Act No. 90 of 1989, as well as historic coinage acts where the Minister or State President had these rights, it is argued that the rights to all historic and current coins **still considered legal tender** belong to the South African Government. It is expected that the South African Reserve Bank will exercise these rights on behalf of the Government and these rights can therefore be considered to indirectly belong to the



Reserve Bank. This is a similar principle to the United Kingdom where the copyright for designs and images of decimal coins subsists in the Crown. Authority has been delegated by the Crown to the Royal Mint. Although an explicit statement of this delegation of authority regarding the rights of historic legal tender coins from the South African Government to the Reserve Bank cannot be found, Section 14(1) of Act 90, 1989 is assumed to be an implicit delegation of this authority.

The historic “Transvaal coins” are still legal tender. Proclamation No. 135 of 1911, Act 31 of 1922 and Act 78 of 1964, defined legal tender “Transvaal coins” as those coins specifically minted in the Pretoria Mint of the late Transvaal Republic. If these definitions are strictly applied, it excludes the Burgersponde minted in England and the Veldponde minted at Pilgrim’s Rest as legal tender coins. The rights of the Reserve Bank with respect to these coins are therefore in doubt and a further review is required. It is the opinion of the author that the Burgersponde **are legal tender** and the rights belong to the Reserve Bank as ZAR Government Notice No. 1644 of 4 November 1874, which declared them legal tender, was never revoked. Article 15 of Act 14 of 1891 furthermore allowed the ZAR Government to approve coins minted at other mints as legal tender. The Veldponde was minted from almost pure gold during the Boer War and as they do not meet the fineness as stipulated in Act 14 of 1891, it is the opinion of the author that they **are not legal tender**. There is nevertheless a historic precedent in 1903 where the police investigated a person involved in the forgery of Veldponde after the Boer War, implying it was considered of significant value and perhaps even legal tender.

The Kruger coins minted in Berlin in 1892 before the Pretoria Mint became operational are also problematic based on the definition of Transvaal coins given above. All the 1892 Double Shaft Kruger coins, most of the 1892 silver coins and all the 1892 Pennies were minted in Berlin. The only 1892 coins minted in Pretoria were 2/- pieces (3483 in Pretoria and 2037 in Berlin) and 1/- pieces (4452 in Pretoria and 2030 in Berlin). As it would be difficult to distinguish between the 1892 2/- and 1/- coins minted in Pretoria and Berlin, it is the opinion of the author that that all the 1892

2/- and 1/- coins can be considered current legal tender. To support this argument, all these coins were considered legal tender in the ZAR irrespective of where they were minted and Article 15 of Act 14 of 1892 allowed the ZAR Government to approve coins minted at other mints as legal tender. If it is assumed that some of the Berlin coins are legal tender, the other 1892 coins minted in Berlin cannot be rightfully excluded. The rights of all Kruger coins minted from 1892 to 1900 therefore belong to the Reserve Bank.

All coins minted in South Africa after the formation of the Union of South Africa are legal tender and the South African Reserve Bank owns the rights to these coins. The only exceptions are the British Sovereign and Half-sovereign coins minted at the Pretoria Branch of the Royal Mint from 1923 to 1932. The coins were identical to the sovereigns minted at other mints in the British Commonwealth (except for a small “SA” mint mark). The Royal Mint supplied the dies and the United Kingdom therefore owns the rights to these coins. These sovereigns are protected coins in terms of the Forgery and Counterfeiting Act 1981 of the UK.

The rights of the South African Reserve Bank with regards to the various coins are summarised in the table below.

Summary of the rights of the South African Reserve Bank with regards to historic coins		
Period	SARB# rights	Institution owning the rights
<b>1. The Dutch and Batavian period from 1652 to 1805</b>		
A large variety of coins used in the Cape Colony from 1652 to 1805	No	Unknown - Every coin type will have to be researched
<b>2. The pre-Reserve Bank era from 1806 to 1922</b>		
Griqua coins	No	Unknown - Organisations (e.g. The Griqua National Conference) may claim ownership
British gold, silver and bronze coins from 1806 to 1922	No	<b>Royal Mint and UK Treasury</b>
Tokens issued by private institutions and municipalities	No	Unknown - Some private institutions/individuals may claim the rights
Burgersponde	?	To be reviewed - Probably <u>owned</u> by the <b>South African Reserve Bank</b> as ZAR Government Notice No. 1644 of 4 November 1874 was never revoked.
ZAR* 1892 coins minted in Berlin	Yes	<b>South African Reserve Bank</b>
ZAR* gold, silver and bronze coins minted in Pretoria from 1892 to 1900	Yes	<b>South African Reserve Bank</b>
Veldponde minted in 1902 at Pilgrim's Rest	?	To be reviewed - Possibly <u>not owned</u> by the South African Reserve Bank as the fineness was not according to Act 14 of 1891.
Blank ponde issued during the Boer War	No	Unknown - Should be protected by an amended National Heritage Resources Act
Sammy Marks 1898 gold tickkey	No	Unknown - Should be protected by an amended National Heritage Resources Act
<b>3. The Union era from 1923 to 1960</b>		
Union of South African silver and bronze coins minted at Pretoria from 1923 to 1960	Yes	<b>South African Reserve Bank</b>
British gold sovereigns minted at Pretoria Branch of Royal Mint from 1923 to 1932	No	<b>Royal Mint and UK Treasury</b>
South African gold sovereigns minted from 1952 to 1960 for collector sets	Yes	<b>South African Reserve Bank</b>
<b>4. The Republic coins from 1961 to present</b>		
Republic gold, silver and brass coins from 1961 to 1964	Yes	<b>South African Reserve Bank</b>
Republic silver, nickel and bronze coins from 1965 to 1990	Yes	<b>South African Reserve Bank</b>
Current coin series	Yes	<b>South African Reserve Bank</b>
*Zuid-Afrikaansche Republiek (ZAR). Also referred to as the Transvaal Republic		
# South African Reserve Bank		

Two South African acts currently make provision for the protection of historic coins. The National Heritage Resources Act (Act No. 25 of 1999) regulates the export of numismatic items if it is declared a heritage object by the South African Heritage Resources Agency. Numismatic items currently requiring an export permit are South African items of numismatic interest that have been in South Africa for more than 100 years. An amendment of this Act in relation to numismatic items is proposed in the report. The Prevention of Counterfeiting of Currency Act (Act No. 16 of 1965) is the only act that regulates the counterfeiting of historic coins. The historic coins still considered as legal tender is considered as “current coin” based on the definition in this act. It is therefore an offence to make counterfeits of these coins.

The Heraldry Act, 1962 was scrutinised to investigate if this can provide protection to the Coat of Arms of the Zuid-Afrikaansche Republiek as used on some of the coins. This coat of arms is still registered in the database of the Bureau of Heraldry, but in the name of the old Transvaal Provincial Administration. It may therefore be difficult to enforce the protection provided by the Heraldry Act.

The historic coins minted in, or specifically for, South Africa which are considered as heritage items and currently not protected by legislation are the Griqua coins, the blank ponde issued during the Boer War and the Sammy Marks tickeys. There is also some uncertainty regarding the status of the Burgersponde and Veldponde. It is recommended that legislation be introduced to provide the necessary protection against counterfeiting or the making of unauthorised copies of these historic coins. Consideration should be given to amend the National Heritage Resources Act in relation to numismatic items. Some of the pertinent points are:

- In its present form the act does not prevent persons from making unauthorised copies of historic coins not protected by Act No. 16 of 1965.
- In its present form the act is impossible to administer.
- South Africa's historic coins have become part of the global numismatic market and only the great rarities should be protected from unauthorised exports. The ZAR coins are plentiful enough to be traded overseas.
- Section 32 (24) needs very clear definition and cannot be left to personal opinion.
- If incorrectly applied, this act could kill the market for ZAR coins and seriously affect numismatics in South Africa.

To encourage interest in numismatics, it is recommended that the manufacturing or the import of imitation historic coins should not be entirely banned in South Africa. To regulate this industry, the country can adopt legislation (by possibly amending Act No. 25 of 1999) similar to the U.S. Hobby Protection Act of 1973. According to this act the manufacture or the importation or the sale of any imitation numismatic item,

which is not plainly and permanently marked “copy”, is unlawful. In the U.K. the Forgery and Counterfeiting Act 1981 specifies that it is an offence for a person to make or sell an imitation British coin unless the Treasury has consented in writing to the sale or distribution of such imitation British coins.

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