



# OECD Investment Policy Reviews

## ZAMBIA





# **OECD Investment Policy Reviews: Zambia 2012**



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## Foreword

**T**he Investment Policy Review of Zambia is the first review carried out in sub-Saharan Africa on the basis of the OECD Policy Framework for Investment. Undertaken in the context of the “Unlocking Investment Potential in Southern Africa” programme with the support of the government of Finland and the NEPAD-OECD Africa Investment Initiative, it reflects the growing co-operation between the OECD and its African partners.

The Review is the result of a self-assessment undertaken by a national task force composed of government agencies, the private sector and civil society established by the government of Zambia. The review process was launched during an inter-agency workshop in May 2010 in Lusaka chaired by the Minister of Commerce, Trade and Industry. It involved numerous meetings of the task force and the findings of the Review were presented at the NEPAD-OECD Africa Investment Initiative’s Ministerial Conference in April 2011 in Dakar and at the Zambia Investment Day at the OECD in September 2011.

This Review has been prepared by Mike Pfister under the supervision of Karim Dahou, Executive Manager of the NEPAD-OECD Africa Investment Initiative in the Investment Division headed by Pierre Poret. The report has benefited from inputs by Dambudzo Muzenda, Carole Biau, Mi-Hyun Bang, Said Kechida, Hélène Francois, Stephen Thomsen and Takashi Nagatsuji in the Division, John Kasanga and Khalil Hamdani acting as external consultants and the Private Sector Development Group of the Co-operating Partners in Zambia. The secretariats of several OECD bodies, including the Investment Committee, the Committee on Fiscal Affairs, the Committee on Financial Markets, the Committee on Corporate Affairs, the Committee on Competition, and the OECD Working Group on Bribery in International Business Transactions contributed to various chapters of the Review. The views contained within do not necessarily represent those of NEPAD, the OECD or their member governments.



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## Preface

*by the Honourable Mr. Felix Mutati,  
Minister of Commerce, Trade and Industry  
Republic of Zambia, July 2011*

**Z**ambia illustrates the rise of Southern Africa as new investment frontier.

A driver of regional integration through its membership in regional economic communities, such as COMESA and SADC, and sharing a border with eight neighbours, Zambia is a central economic pillar in Southern Africa. It has enjoyed political stability for over 20 years and has now become a “Lower Middle-Income Country” as planned in its Vision 2030.

Zambia needs investment, foreign and domestic, to boost its upward trend even more. Having recognised this, the government has introduced a series of private sector reforms to strengthen its policy framework for investment and to enable private business to grow.

Notable advances have been made in investment policy, where regulations have been harmonised, and multi-facility economic zones and industrial parks with privileged business infrastructure have been established. We are also conforming the legal framework to global standards and have strengthened the institutional landscape for private sector development with specialised agencies such as the Zambia Development Agency. We are making major strides in improving cross-border trading and we dispose of a mature corporate governance system. In terms of infrastructure, Zambia’s primary and secondary road networks are good and we have large power generation potential.

We are very cognisant of the importance of private sector feedback – hence the government has installed a series of consultative mechanisms which actively involve the business community. Also, our policies for responsible business conduct have allowed to better channel civil society expectations; a trend we hope will spur further private sector led growth.

All of these steps have contributed to notable results in the World Bank’s Doing Business rankings over recent years. In fact, Zambia has improved its global ranking to the top ten of surveyed countries, is third in COMESA on

overall ease of doing business, starting a business and paying taxes, and sixth world-wide in access to credit.

Zambia's future relies on stronger implementation of the comprehensive reform package aimed to diversify the economy, improve its infrastructure, and capitalise on its tourism and agriculture investment opportunities. Reform is not an end result, but a continuous process, a permanent challenge. This is what has led Zambia to request the OECD to support the government in self-assessing its investment policy framework against global best practices. I believe that this candid evaluation will allow us to take critical steps towards reaching our development objectives and becoming a diversified economy driven by investment and a vibrant private sector.

## Preface

By Rintaro Tamaki,  
Deputy Secretary-General,  
OECD

Over the past two decades, Zambia has steadily improved its investment environment. After decades of a centrally planned economy, the government launched an ambitious privatization programme in 1992 and, since then, has strived to strengthen its enabling environment for private sector led growth. Over the past years, Zambia has also held regular elections characterized by peaceful political changes. As a result, the country has become an increasingly attractive investment destination in Southern Africa. These achievements are underpinned by improvements in development indicators as manifested by Zambia's recent graduation to a middle-income country.

The government of Zambia has become an active partner of the NEPAD-OECD Africa Investment Initiative, and hosted its second Ministerial Meeting and Expert Roundtable in Lusaka in 2007. It is thus not surprising that it is the first sub-Saharan African country to undertake an *Investment Policy Review* based in the OECD Policy Framework for Investment. This equally reflects the deepening co-operation between the OECD and its African partners.

This *Review* illustrates the important progress made by the government of Zambia in improving its investment climate over recent years. It highlights major initiatives and specific policy measures undertaken, as well as areas that need further reforms to attract more and better investment, both domestic and foreign. While numerous policy advances have been achieved, such as the enhancement of the regulatory framework for doing business through a sweeping reduction and streamlining of business licenses, the *Review* identifies remaining challenges such as the need to harmonize its investment related policies, review its tax incentives system and improve its framework for Public-Private Partnerships in infrastructure development. The *Review* makes recommendations on policy options which can respond to these challenges.

The commitment and ownership the government of Zambia has shown throughout the review process has been remarkable. While the OECD is responsible for the content of the Review, it reflects contributions from many levels of the government of Zambia, from conception to completion. It also further illustrates Zambia's commitment to reform, efforts the OECD and its partners will continue to support.

## List of Abbreviations

<b>AGOA</b>	African Growth Opportunity Act
<b>APR</b>	Annual Percentage Rate
<b>ARIPO</b>	African Regional Industrial Property Organisation
<b>ASYCUDA</b>	Automated System for Customs Data
<b>BDS</b>	Business Development Services
<b>BEDIA</b>	Botswana Enterprise Development and Investment Agency
<b>CACP</b>	Customs Accredited Client Programme
<b>CEEC</b>	Citizens Economic Empowerment Commission
<b>CGPC</b>	Competition and Consumer Protection Commission
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CTI</b>	Commercial Trade and Industrial Policy
<b>CUTS</b>	Consumers Unity and Trust Society
<b>EAC</b>	East African Community
<b>EDF</b>	European Development Fund
<b>EIF</b>	Enhanced Integrated Framework
<b>EPA</b>	Economic Partnership Agreement
<b>ESA</b>	Eastern and Southern Africa
<b>FSDP</b>	Financial Sector Development Plan
<b>HIPC</b>	Heavily Indebted Poor Country
<b>ICSID</b>	International Centre for the Settlement of Investment Disputes
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organisation for Migration
<b>IPPA</b>	Investment Protection and Promotion Agreement
<b>IPU</b>	Intellectual Property Unit
<b>KOTRA</b>	Korea Trade-Investment Promotion Agency
<b>LDCs</b>	Least Developed Countries
<b>LOLR</b>	Lender of Last Resort
<b>MATEP</b>	Market Access and Trade Enabling Policies
<b>MDGs</b>	Millennium Development Goals
<b>MCTI</b>	Ministry of Commerce Trade and Industry
<b>MFEZ</b>	Multi-Facility Economic Zone
<b>MIB</b>	Mauritius Investment Board
<b>MIDA</b>	Malaysia Industrial Development Authority
<b>MIGA</b>	Multilateral Investment Guarantee Agency

<b>MSMES</b>	Micro, Small and Medium Enterprises
<b>OECD</b>	Organisation for Economic Development and Co-operation
<b>PACRA</b>	Patent and Company Registration Agency
<b>PPP</b>	Public Private Partnership
<b>PSDRP</b>	Private Sector Development Reform Programme
<b>RBS</b>	Risk Based Supervisions
<b>RDA</b>	Rwanda Development Agency
<b>SADC</b>	Southern African Development Community
<b>SAG</b>	Sector Advisory Group
<b>SAIED</b>	Strategic Action Initiative for Economic Development
<b>STR</b>	Simplified Trade Regime
<b>TOH</b>	Triangle of Hope
<b>TRIPS</b>	Trade Related Aspect of Intellectual Property Rights
<b>TWGT</b>	Technical Working Group on Trade
<b>TWGTf</b>	Technical Working Group on Trade Facilitation
<b>UNCITRAL</b>	United Nations Commission of International Trade Law
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WAIPA</b>	World Association of Investment Promotion Agencies
<b>WIPO</b>	World Intellectual Property Organisation
<b>WTO</b>	World Trade Organisation
<b>ZACC</b>	Zambia Chambers of Commerce and Industries
<b>ZBF</b>	Zambia Business Forum
<b>ZDA</b>	Zambia Development Agency
<b>ZEGA</b>	Zambia Exporter Grower Association
<b>ZIZABONA</b>	Zimbabwe, Zambia, Botswana and Namibia Interconnector



## Executive Summary

Zambia is one of the dynamic growth poles of Southern Africa, thanks to important progress in recent years in strengthening its policy framework for investment. The economy is landlocked but is strategically land-linked to eight neighbors in the middle of Southern Africa and has significant development potential and good economic prospects.

Zambia boasted a real Gross Domestic Product (GDP) of 5.9% per annum between 2004 and 2010, exports expanded ten-fold and FDI increased eight-fold, reaching USD 1.3 billion in 2007 and hit a record USD 2.4 billion in the first half of 2010. The economy has been relatively resilient in the recent global downturn, benefiting from stable macro-economic policies, good harvests and buoyant demand for copper, especially from emerging markets. Zambia's economy continued to grow in 2010 with real GDP of 7.6%. While extractive industries still attract the bulk of investment, the services sector, especially banking and tourism, and agriculture, have also catalyzed significant volumes of FDI.

Breaking away from the centrally planned economy, Zambia began to liberalise its trade regime in the early nineties, and embarked on a privatization programme in 1992. Zambia, today, is recognised as one of the most open African economies to foreign equity ownership. An ambitious reform agenda was launched in 2004 under the Private Sector Development Reform Programme (PSDRP) to improve the investment climate and boost the private sector's contribution to economic growth. Moreover, the government has articulated the country's long term development objectives in the Sixth National Development Plan (SNDP) and the National Long Term Vision 2030.

The government of Zambia has undertaken with the OECD an *Investment Policy Review* based on the OECD Policy Framework for Investment. The *Review* makes the following main recommendations for further progress in mobilizing investment for the development.

---

### *Develop a harmonised national investment policy*

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Several growth drivers are cyclical: commodity prices and harvests can decline. A key challenge is to sustain the high levels of foreign investment,

spur more domestic investment and enhance economic diversification. Weaknesses in the regulatory framework remain apparent. The investment code of 1994 was amended on numerous occasions and finally incorporated into the Zambia Development Agency Act of 2006. While this has contributed to simplifying the legislative framework for investment by unifying different sets of laws and regulations governing investment and business, it causes confusion over what is the primary piece of legislation for investment, especially when other pieces of legislation still include investment-relevant provisions. While Zambia is a signatory to a range of bilateral and other international treaties that govern international investment, it lacks a harmonised legislation for investment, including provisions on national treatment. Improving investment policy co-ordination should thus be treated as a priority.

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#### *Take better advantage of the investment promotion and facilitation options available*

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In terms of investment promotion and facilitation, the mandate of the Zambia Development Agency (ZDA) is comprehensive in addressing private sector development needs but remains broad. The current ZDA Act and its numerous provisions affect the ZDA's capacity to promote and facilitate investment in a focused manner. If the ZDA is to undertake effective investment promotion, it needs to be given a more streamlined mandate and independent Charter. Revising the ZDA Act to that end should provide the grounds for a more focused and gradually a more autonomous agency. This would imply aligning its mandate to an investment policy, which is currently lacking.

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#### *Undertake a cost-benefit analysis with regards to fiscal incentives*

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Tax incentives have been used by the government as a tool for promoting investment, especially in mining, Zambia's most important export sector. Focussing on a predictable and fair tax system should be the primary objective of the government. In addition to their uncertain effectiveness, particularly in the resource sector, such incentives are costly to administer and invite corrupt practices in tax administration. The government should undertake a cost-benefit analysis of its fiscal incentives, in particular for investment in the mining sector. Also, the process of registering with the ZDA to obtain incentives for investment in certain priority sectors can be a lengthy bureaucratic process, thus costly for both the administration and the investor. Therefore, rationalising the complex incentive scheme would help the

government reach the right balance between domestic resource mobilisation and providing an investor-friendly tax regime.

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### *Improve the consultative mechanisms for policy development*

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The government of Zambia attaches high priority to undertaking consultation throughout the policy development process, a mechanism that is applied in both trade policy through the sector advisory groups (SAGs), and in investment climate reform through the Private Sector Development Reform Programme (PSDRP). The SAGs and the PSDRP Steering Committee and Working Groups are established with fair representation of different stakeholders, which includes the private sector, yet the irregularity and lack of coherent agendas for their meetings have undermined their effectiveness.

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### *Strengthen the framework for PPPs*

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The government has put in place legal and institutional frameworks for Public Private Partnerships (PPPs) to address large scale infrastructure development that is beyond financing capacities of the Treasury. Through the PPPs, the government aims to address energy deficits by facilitating private investment in new hydropower generation plants and in the rehabilitation and expansion of major road networks. These initiatives are important for stimulating increased investment in economic activities and facilitating international trade. The initiative to promote PPPs should be further strengthened by increasing the transparency and disclosure of the bidding process. Also, the institutional framework needs to be revised in order to improve the management and implementation capacity of the PPP unit.

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### *Strengthen the oversight and enforcement mechanisms of the regulatory framework*

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Improving policy oversight and enforcement is a cross-cutting challenge for Zambia's government. This is valid for issues linked to taxation, competition as well as corporate governance and responsible business conduct. Zambia was one of the first countries in the region to establish a competition authority, and continues to be a regional leader in this area, having recently enacted legislation to incorporate consumer protection, the Competition and Consumer Protection Act. The Competition and Consumer Protection Commission (CCPC) requires financial and technical resources to effectively implement its enhanced and expanded mandate. It would also benefit from a

clear demarcation between laws that regard its oversight over different sectoral regulators and jurisdictions. While the CCPC seeks to become more of a promoter of good competition practices, its basic functions should not be neglected.

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*Develop mechanisms to channel industry demands to human resource development agendas*

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Zambia has taken big steps towards meeting its education objectives and the MDG 2 (Achieving universal primary education), reaching close to full primary school enrolment. However, Zambia faces challenges in training skilled personnel that can meet the needs of industry especially in technical functions. This is particularly evident in science education, which can provide a strong platform for technical training. As a result, there is a general shortage of technical skills. A major challenge in this regard is the identification of industry demands and catering to these needs via curriculum development. This weakness has in part contributed to a situation where strategic business linkages between foreign investors with high production and service standards, and local suppliers, are few.

The government is well positioned to follow through on the above challenges in order to fully realize its potential for attracting and benefiting from investment and reaching its socio-economic objectives. Through analyzing different policy dimensions affecting the investment climate, this *Investment Policy Review* has highlighted progress achieved, while identifying remaining bottlenecks to be tackled. The main reforms the government of Zambia is considering as a result of this assessment include the development of a harmonized investment policy, as well as the review of its tax incentives system and its framework for PPPs. Addressing these as well as the other issues highlighted in the review would further contribute to improving Zambia's policy framework for investment.

## Chapter 1

### **Zambia's Ambitious Reform Agenda**

*Thanks to important progress in recent years in strengthening the policy framework for investment, Zambia is one of the dynamic growth poles of Southern Africa. Zambia's trade and investment policies have been anchored in economic diversification and privatisation of state-owned enterprises. This chapter describes the political and economic changes in Zambia since Independence and presents measures that would further improve Zambia's investment framework, for both domestic and foreign investment.*

Zambia, today, is one of the dynamic growth poles of Southern Africa, thanks to important progress in recent years in strengthening the policy framework for investment.

Breaking away from the centrally planned economy, Zambia began to liberalise its trade regime in the early nineties, and embarked on a privatization programme in 1992, initially by targeting a few small-scale companies. A more ambitious reform agenda was introduced in 2004 under the Private Sector Development Reform Programme (PSDRP).

The aim of the PSDRP is to improve the investment climate and boost the private sector's contribution to economic growth. Its first phase (PSDRP I, 2006-09) focused on: strengthening public agencies that support private sector development; improving the investment code and regulatory framework; and encouraging private investment in infrastructure. Emphasis was given to: business facilitation and economic diversification; trade expansion; and citizens' empowerment.<sup>1</sup> The second phase of this programme (PSDRP II, 2009-14) is now underway.<sup>2</sup> Moreover, the government has articulated the country's long term development objectives in the Sixth National Development Plan (SNDP) and the National Long Term Vision 2030.

Zambia's reform efforts are bearing fruit. Between 2004 and 2010, real GDP growth averaged 5.9% per year, exports expanded ten-fold and FDI increased eight-fold, reaching a record USD 1.3 billion in 2007 and USD 2.4 billion in the first half of 2010. The economy has been relatively resilient in the recent global downturn, benefiting from timely policy responses,<sup>3</sup> good harvests and buoyant demand for copper (the major export), especially from emerging markets. Zambia's economy continued to grow in 2010 with real GDP of 7.6% recorded compared with growth of 6.4% in 2009. Inflows of FDI have surged: in fact, in 2009, Zambia attracted more FDI than Malaysia. While extractive industries continue to attract the bulk of investment,<sup>4</sup> the services sector, especially banking and tourism, and agriculture, have also attracted significant volumes of FDI. In addition, Zambia is recognised as one of the most open economies to foreign equity ownership.<sup>5</sup>

As a complement to its privatization programme, Zambia has undertaken reforms that make it easier for enterprises to do business. These efforts have been reflected in Zambia's improved ranking on the Doing Business Index, moving from 90 in 2009 to 76 in 2010 out of 183 economies. The government cut the number of days needed to start a business and the time required to

register property virtually by half, and made notable progress in strengthening legal rights and facilitating hiring processes for companies. Zambia has also been recognised as one of the top ten best reformers in the world in 2010. A snapshot of Zambia's recent achievements in business reforms is provided in Box 1.1.

#### Box 1.1. **Zambia's Doing Business achievements**

- Sixth worldwide in accessing credit;
- fourth best reformer worldwide for starting a business;
- best in COMESA in accessing credit;
- third in COMESA in overall ease of doing business, starting a business and paying taxes;
- second in SADC in starting a business and accessing credit;
- fourth in SADC in paying taxes;
- fifth in SADC in overall ease of doing business; and,
- best among the SADC's least developed economies in overall ease of doing business.

Source: World Bank, *Doing Business*, 2009.

Other recognitions of the reform efforts include: for the first time, the assignment of a sovereign credit rating of “B+ with a stable outlook” by the Fitch Ratings<sup>6</sup> for March 2011, in light of Zambia's improved creditworthiness and ability to repay creditors; and the 2011 UNCTAD Investment Promotion Award for promotion of infrastructure development bestowed upon the Zambia Development Agency (ZDA) for its work with different government entities in promoting Public Private Partnerships (PPPs) and for its role in attracting investment for a renewable energy infrastructure project.

Zambia has been re-classified as a “Lower Middle-Income Country”, an improvement from its previous status of “Least-Developed Country”. Zambia is landlocked but it is strategically centrally land-linked to eight neighbours in the middle of Southern Africa and has significant development potential and good economic prospects. However, several growth drivers are cyclical: commodity prices and harvests can decline. A key challenge is to sustain the high levels of foreign investment, spur more domestic investment and enhance economic diversification. To that end, the government undertook an assessment of Zambia's investment-related policies against the OECD Policy Framework for Investment (PFI, see Box 2) in 2010-11, which allowed for an integrated evaluation of the different policy areas affecting the country's

### Box 1.2. The OECD Policy Framework for Investment

The Policy Framework for Investment (PFI) was developed to help governments “mobilise private investment that supports steady economic growth and sustainable development, and thus contribute to the prosperity of countries and their citizens and the fight against poverty” (PFI Preamble).

Inspired by the 2002 United Nations Monterrey Consensus on Financing for Development, which ascribes to governments the responsibility for creating the right conditions for private investment to flourish, the PFI aims to support development and the fight against poverty and to promote responsible participation of all governments in the global economy.

The PFI represents the most comprehensive multilaterally-backed approach to date for improving investment conditions. It addresses some 82 questions to governments in 10 policy areas to help them design and implement good policy practices for attracting and maximising the benefits of investment. The PFI is based on the common values of rule of law, transparency, non-discrimination, protection of property rights in tandem with other human rights, public and corporate sector integrity, and international co-operation for development.

Several countries participated in developing the PFI, including some 30 OECD and 30 non-OECD governments. Business, labour, civil society, and other international organisations, such as the World Bank, also played an active role, and regional dialogue and public consultations were organised around the world. The PFI was endorsed by OECD ministers in 2006, when they called on the OECD to continue to work with non- member governments and other inter-governmental organisations to promote its active use. Already, Morocco, Indonesia, China, India and Mozambique are some of the countries that have undergone an assessment of their investment framework based on the PFI.

For more information on the PFI please visit: [www.oecd.org/investment/daf/pfi](http://www.oecd.org/investment/daf/pfi).

investment climate. The following chapters provide an assessment by policy area against the PFI, while pointing at the main elements that would support Zambia in achieving its development objectives through more and better private investment.

## 1. Commitment to implementing key economic reforms

A unique feature of Zambia's reform agenda is its broad popular mandate, spearheaded by the Movement for Multiparty Democracy (MMD) which won national elections in 1991 on the pledge to create an enabling environment for the private sector to act as the driver of economic growth.



This was a significant departure from the past and meant a policy shift towards reducing the predominant role of the State in business, liberalizing markets and accelerating privatisation. The extent of reforms that the new government launched involved addressing fundamental restructuring of the economy from a socialist orientation (where the State comprised about 80% of business activity) to one that is market based.

### **Historical context**

At independence in October 1964, Zambia adopted the socialist mode of economic development, ostensibly to redress colonial imbalances and bring about a more equitable distribution of wealth. Blessed with high export prices for its rich copper deposits, the newly-independent State directed efforts at the expansion of social and physical infrastructure, i.e. the construction of schools, hospitals and roads. The socialist approach was also favoured by nearly all other emerging African independent nations.

The socialist model entailed the State taking the lead role in economic activities. This led to the nationalization of most strategic industries, introduction of price controls and agricultural subsidies, and free access to education and health services. In 1972 a one-party state was declared, effectively proscribing other political parties. In addition, the ruling party was declared superior over government, leading to the integration of political party structures into government. By the mid 1970s, the Zambian economy was characterized by highly controlled markets, and, as a result of the rapid implementation of import substitution industrialization strategies, a number of processing industries were established and state involvement in business activities was intensified. Trade policy was inward-looking, with import and foreign exchange controls used extensively to influence imports and trading activities.

The private sector's involvement in farming, commercial trade and light industry was subordinated to State Owned Enterprises (SOEs). Major manufacturing was undertaken by state-owned monopolies under the umbrella of the holding company, the Industrial Development Company, INDECO, set up in 1968. The government, through INDECO and its counterparts in other sectors, served as both leading supplier and competitor to private businesses, thus placing them at a severe disadvantage.

A number of factors further served to crowd out the private sector. Firstly, a rigid price control regime was introduced in 1969, and strictly enforced, with jail sentences for offending businessmen, thereby squeezing profit margins. Secondly, a punitive structure for income taxation also discouraged business and investment.

Thirdly, an overvalued Zambian kwacha and rigid foreign exchange controls constrained new investment in manufacturing or other productive sectors, whether state-owned or privately held. Influenced by the prevailing national philosophy of “Humanism”, the United National Independence Party (UNIP) government was implicitly hostile to private wealth accumulation. Within this ambiguous environment, the private sector was small, fragmented and dependent. The commercial agricultural sector did not fare better. The Land Act of 1975 abolished freehold tenure and introduced renewable leaseholds of 99-year terms. In addition, the government abolished placing a value on land for business purposes other than inexhaustible improvements. This meant that land could not be used as security for borrowing purposes. The government also established a national marketing board for the supply of agricultural inputs and purchasing of the main crop, maize. The government, however, set the floor price for maize, thus dictating the terms of agricultural trade.

From the mid 1970s, the sharp rise in oil prices coincided with the collapse in copper prices on the international market. Given that Zambia's economy was more than 80% dependent on copper exports, this created major balance of payment difficulties. In response, the government opted to borrow from external markets but as the foreign debt rapidly became unsustainable, it was compelled to implement structural reforms from the late 1980s. These included: reduction of subsidies, relaxation of exchange controls, and setting of the kwacha exchange rate. The government also introduced an Investment Act targeting Foreign Direct Investment (FDI) and developed a privatisation strategy for SOEs. However, the economic decline had by 1990 elicited a popular demand for multi-party democracy and change of government. The new party, the Movement for Multiparty Democracy (MMD), overwhelmingly won the general elections in October 1991 and took over government.

### ***Reform agenda of the MMD government***

Upon taking office in 1991, the MMD government immediately started implementing a far-reaching structural adjustment programme. This involved the introduction of fiscal policy and market reforms in order to achieve macro-economic stability and lessen the government's obligation to supply the consumer market under regimes of price controls. Privatization of SOEs was also seen as a critical component of the new economic regime. The reforms covered the following areas:

- abolition of price controls;
- liberalization of interest rates;
- abolition of exchange rate controls;
- 100% repatriation of profits;

- free entry investment in virtually all sectors of the economy;
- privatization of state-owned enterprises;
- trade reforms aimed at simplifying and harmonising the tariff structure; and,
- removal of quantitative restrictions on imports and improvements to the general investment climate.

Among the important developments in this period was the enactment of key pieces of legislation building the legal and regulatory framework for privatisation of SOEs, and the implementation of market-liberalising reforms. The government also withdrew from direct involvement in business.

## 2. Launch of the Private Sector Development Programme

In August 2004, the government launched the Private Sector Development – Reform Programme (PSDRP) to provide an “integrated framework” for systematically addressing interventions required to improve the investment climate, reduce the cost of doing business and stimulate rapid and sustained private sector-led economic growth. The launch of the PSDRP followed a participatory process of intense consultations with key stakeholders, including the private sector and donors, which started in 2002 with the Copper-belt Diversification Conference.

A key element of the government’s approach to implementing the PSDRP also involved the establishment of a framework that integrated the roles and contributions of strategic partners at three levels, namely:

- active engagement of the private sector in constructive policy dialogue in order to identify required enhancements to the economic environment that would, in turn, improve the investment climate and competitiveness of productive sectors. In this regard, the Zambia Business Forum (ZBF) has been recognised by the government as the official representative institution of the private sector in matters related to the co-ordination and implementation of the PSDRP;
- strengthening the delivery capacity of public institutions that provided services required by the private sector and that were therefore critical to the removal of administrative and regulatory barriers and to the improvement of the overall investment climate. To facilitate public sector co-ordination, the PSDRP is hosted by the Ministry of Commerce, Trade and Industry (MCTI); and,
- mobilising the technical and financial assistance of international co-operating partners towards the implementation of PSD reforms.

As a result, a total of about 72 reform areas were identified for removal of administrative and regulatory obstacles to investment and private sector

growth. These then formed the basis for the determination of priority interventions addressed by the PSDRP.

In 2009, the PSDRP was rationalised and focal areas narrowed to the following priority and cross-cutting areas:

Priority areas:

- i) Business licensing and regulatory reform.
- ii) SME Development.
- iii) Labour and labour productivity.
- iv) PPP Development.
- v) Trade Expansion.

Cross-cutting areas:

- i) Capacity building for private sector reform.
- ii) Reform communication.
- iii) Doing Business Reforms.
- iv) Gender Mainstreaming.

### **3. Contribution of multi-lateral and bi-lateral debt relief**

An important milestone in the reform process was attaining the conditions for debt relief and forgiveness. In April 2005, the International Monetary Fund (IMF) and the World Bank's International Development Association (IDA) provided Zambia with significant debt service relief and debt forgiveness under the Heavily Indebted Poor Countries (HIPC) initiative, endorsing a USD 3.9 billion package for Zambia.<sup>7</sup> In July 2005, the Group of 8 industrialized countries (G-8) agreed on a proposal to cancel 100% of Zambia's outstanding debt under the Multi-lateral Debt Relief Initiative (MDRI). As a beneficiary of this debt relief, Zambia was able to shed its status as a "highly indebted poor country".

Under the MDRI, the IMF, the International Development Association of the World Bank and the African Development Fund (AfDF) agreed to cancel 100% of their debt claims on countries that had reached the HIPC completion point. In 2006, all three institutions granted Zambia debt-forgiveness: the IMF wrote off around USD 77 million, the AfDF USD 245 million and the World Bank USD 1.88 billion. Since then, Zambia's external position has improved, allowing the government to build up its foreign-exchange reserves, and lessen dependency on donor aid for budget and balance of payments support.

#### ***Introduction of development planning***

Zambia's attainment of the HIPC completion point in 2005 also meant that resources previously locked up for external debt servicing could be

re-allocated to support economic development programmes. In order to ensure that resource allocation responded to long-term national priorities, the government re-introduced development planning. Amongst these recent policy initiatives has been the formulation of a National Vision for Zambia, which is “to become a prosperous middle-income country by the year 2030”. Vision 2030 identifies a number of development goals, which include:

- reaching middle-income status;
- significantly reducing hunger and poverty; and,
- fostering a competitive and outward-oriented economy.

These goals call for policies that accelerate and sustain economic growth, and which enable the poor to participate in, and benefit from, the growth process as an integral part of Zambia’s poverty reduction strategies. Towards the attainment of the National Vision, the government set out the country’s macroeconomic and social policies and sector plans that are to be implemented during each five-year period. These were set out in the Fifth National Development Plan (FNDP) covering the period 2006-10, with the theme, “Broad Based Wealth and Job Creation through Citizenry Participation and Technological Advancement, while the strategic focus is economic infrastructure and human resources development”.

The FNDP was therefore an important step towards attainment of the Millennium Development Goals (MDGs) by 2015 and the realization of Vision 2030. Apart from macroeconomic stabilization, the FNDP focused on: improving the competitiveness of the economy, strengthening the investment and business climate so as to attract domestic and foreign investment and improving economic infrastructure.

In February 2011, the government launched the Sixth National Development Plan (SNDP), which is intended to build on the achievements of the FNDP, such as Zambia’s progress in World Bank’s Doing Business rankings. The SNDP will be implemented between 2011 and 2015.

Focusing on “sustained economic growth and poverty reduction” the SNDP’s broad objectives are to accelerate economic diversification and meet its MDGs, involving interventions that address:

- i) infrastructure development;
- ii) economic growth and diversification;
- iii) rural investment;
- iv) poverty reduction; and,
- v) enhancing human resources development.

The government therefore intends to scale up investments designed to facilitate the realisation of broad-based, pro-poor growth, employment

creation and human resource development. In line with these objectives and the strategic focus of the SNDP, five growth areas have been identified: agriculture, tourism, manufacturing, mining, and energy. Due to these efforts, Zambia is now classified as a “Lower Middle-Income Country”.

#### 4. Overall performance of the economy

Economic reforms have meant initial adjustments and hardship, but growth processes eventually took hold and Zambia now places among the high-performing economies in Africa. During the initial years of implementing reforms, structural rigidities placed major strains on the government's ability to achieve the twin goals of restoring macroeconomic stability and proper functioning of markets in a liberalised environment. The privatization of SOEs led to job losses that could not be absorbed by private sector investments, while the productive sectors faced the necessity of reorienting their activities in competitive markets. Low investment in modern production technologies exacerbated this challenge. During the first 8 years following the start of reform implementation, growth remained sluggish while the debt burden further inhibited the government's ability to direct resources towards critical social and economic investments that could stimulate sustained growth.

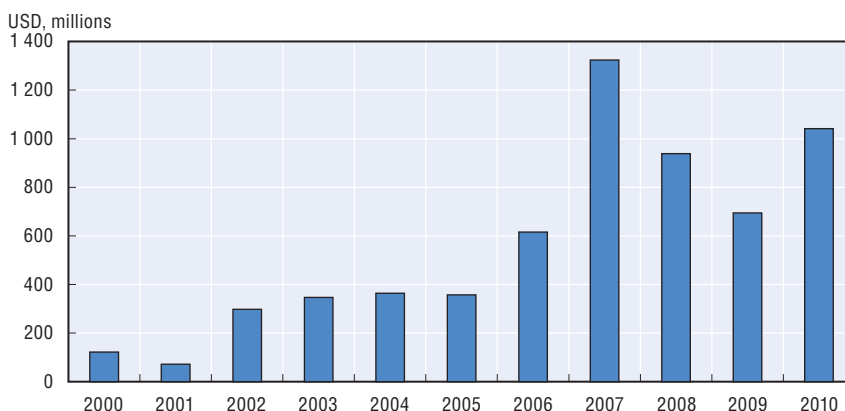
After 2000 the economy however started to rebound. Average annual GDP growth averaged 5.2% from 2002 to 2007, reversing the negative trend of previous years. From 2008 to 2009, GDP growth improved from 5.7 to 6.4% respectively. In 2010, GDP growth further improved to 7.6%. For the first time, Zambia managed to attain single digit inflation in 2007 after ranging between 20% and 50% for many years. In August 2011, the inflation rate was 8.3%. Zambia's economic growth has been further strengthened by increased agricultural production and significant new investments in key economic sectors, especially mining and Non-Traditional Exports (NTEs).

Mirroring global trends, annual FDI inflows increased from about USD 160 million in 2000 to USD 1 300 million by 2007, but slowed down to USD 900 million in 2008. Since 2009, Zambia has however experienced an increased surge in FDI inflows in new mining projects; cement plants; steel processing; tourism; and agricultural ventures. Over the five year period ending in December 2010, Zambia attracted FDI to the order of USD 7 billion, of which a sizeable proportion financed “green field” projects in mining and quarrying, construction, telecommunications (mobile telephony in particular), agriculture, tourism and manufacturing. During the first quarter of 2011, Zambia has also attracted domestic investment and FDI to the order of USD 2 billion mainly into mining, cement production and manufacturing investment ventures. By any measure, this is an impressive performance.

Economic diversification has anchored Zambia's trade policies and investment promotion activities in order to expand the contribution of NTEs and move away from dependency on copper exports.<sup>8</sup> In this regard, NTEs grew from USD 334 million in 2002 to USD 935 million by 2008. NTEs increased by 12.2% between 2007 and 2008, driven by cement, lime, wheat, gas oil, tobacco, gemstones, fruits and vegetables. Total contribution of NTEs has been increasing from 19% in 2006 to 23% in 2010. Zambia's total exports stood at approximately USD 7 billion in 2010.

While FDI inflows remain dominated by mining, there has been diversification, with increasing investment from within Africa and into manufacturing. The patterns of investment flows reported by the Zambia Development Agency (ZDA), responsible for investment promotion, are shown below in Figures 1.1 to 1.3.<sup>9</sup>

Figure 1.1. **FDI inflows to Zambia**

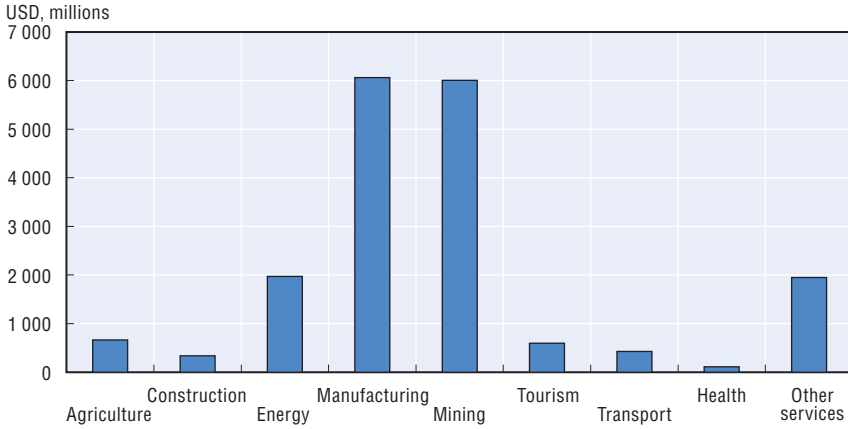


Source: ZDA; Ministry of Commerce, Trade and Industry; UNCTAD.

Zambia has largely attracted investment from outside Africa, particularly from Australia and China among others. This pattern, however, is changing with South Africa and Nigeria increasingly becoming major sources of investment that is directed at mining, retail outlets for chain stores, banking, and cement manufacturing. Figure 1.2 illustrates that investments were largely targeted at mining and manufacturing projects, accounting for about 90% of total pledged investment flows over the period 2000 to 2010.

One of the key goals of the government has been to stimulate formal sector employment which presently stands at less than 500 000 out of a national labour force of about 5.5 million. Presently, most of the labour force unable to gain formal sector employment has been marginalised and operates in the informal sector. In addition, poverty levels stand at about 63% and 75%

Figure 1.2. **Investments in Zambia by sector**

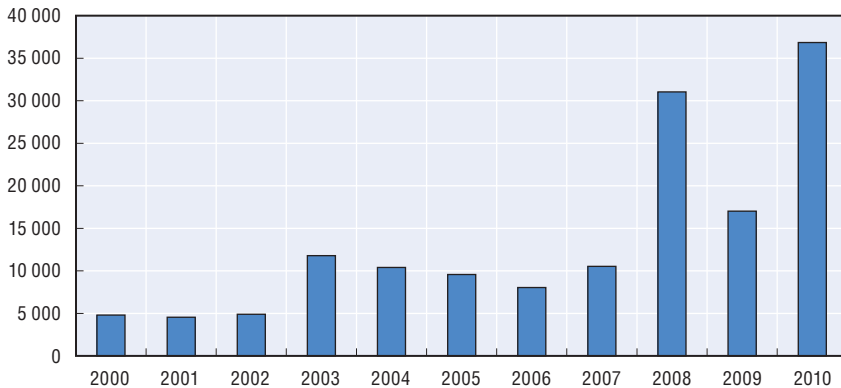


Source: ZDA; Ministry of Commerce, Trade and Industry.

for the urban and rural population respectively. Clearly, the major stimulus to job creation must come from domestic investment, SMEs and entrepreneurship.

Data provided on investment pledges indicate that about 115 000 new jobs in the formal sector were created between 2000 and 2010 (as illustrated in Figure 1.3), suggesting that FDI accounts for about 20% of job creation in the formal sector. However, employment plans do not necessarily materialise, in

Figure 1.3. **Employment generation by investments**



Source: ZDA; Ministry of Commerce, Trade and Industry.

part due to the mismatch between skills required by new investment projects



and the calibre of available human resources. This highlights the importance of prioritising human resource development in the SNDP.

All the same, the government is committed to continue addressing the high cost of doing business and improving the general business climate through the implementation of the PSDRP in close collaboration with the private sector. Other important complementary measures include the maintenance of a competitive exchange rate for overall export development, especially growth in export-led agriculture. The government is also fully aware of the need to ensure that monetary and exchange rate policies are made responsive to broader growth and development goals.

## 5. Investment policy challenges and options

Zambia's efforts and achievements in improving the business and investment climate over the past years are commendable. The government is well positioned to follow through on remaining challenges in order to fully realize the country's potential to attract and benefit from investment, and to reach its socio-economic objectives. Below are some challenges identified through the PFI-assessment (see Chapter 3), followed by proposed recommendations on how to overcome these shortcomings which the government of Zambia is currently considering.

### ***Regulatory framework for investment could be improved further***

While the government has scored tremendous achievements in improving the business and operating environment for companies, especially for foreign investors, weaknesses in the regulatory framework remain apparent.

The investment code of 1994 was amended on numerous occasions and finally incorporated into the Zambia Development Agency Act of 2006. While this has contributed to simplifying the legislative framework for investment by unifying different sets of laws and regulations governing investment and business, it has also caused some confusion over what is the primary piece of legislation for investment. This is especially relevant when one considers that other pieces of legislation, such as the Companies Act or even Zambia's Constitution, still include investment-relevant provisions.

While Zambia is signatory to a range of international treaties that govern international investment and has signed several bilateral investment treaties (BITs), it lacks a harmonised legislation for investment built on a national investment policy, including in particular provisions on national treatment.

This lack of a comprehensive and coherent investment policy can leave legislative loopholes and cause misunderstandings. Addressing this would greatly contribute to improving the regulatory framework for investment, a

step Zambia should consider given its laudable private sector development achievements.

***Take better advantage of the investment promotion and facilitation options available***

Zambia has taken remarkable steps towards facilitating business operations, yet can do more to spur domestic investment and make the country even more attractive as an investment destination for foreign investors.

The mandate of the Zambia Development Agency (ZDA), drawn from the ZDA Act, is comprehensive in addressing private sector development needs but remains broad. The current ZDA Act and its numerous provisions burden the new agency with multiple tasks and affect its capacity to promote and facilitate investment in a focused manner. If the ZDA is to undertake effective investment promotion, it needs a more streamlined mandate and an independent Charter – revising the ZDA Act to this end should provide grounds for a more focused and gradually a more autonomous agency.

This need has been confirmed by international benchmarking exercises (see Chapter on Investment Promotion and Facilitation), which also points to a lack of resources. Indeed, the ZDA faces challenges in raising funds through marketable business development services (BDS). While the issue of resources is being partly addressed through increased government funding, this does not support the need for a more politically autonomous agency.

Also, the ZDA's after-care services are embryonic and their effectiveness has not yet been assessed. These are key for retaining present investors and as well as generating additional investment.

Finally, the tax incentives offered through the ZDA to investors in priority sectors are heavy to administer, while their actual effectiveness in terms of promoting investment is not clear. The agency should rather focus its efforts on actual investment promotion, which may include investor targeting strategies other than incentives. In fact, a fresh look at the tax incentives scheme, as proposed below, could also increase the funding available for better investment promotion and for the monitoring both of investment and of its contribution to key development objectives (see Chapter on Investment Promotion and Facilitation).

***The consultative mechanism for private sector dialogue needs to be strengthened***

The government of Zambia attaches high priority to consultative policy development, a mechanism that is applied in trade policy through both, the

sector advisory groups (SAGs) and the Private Sector Development Reform Programme (PSD-RP).

The SAGs and the PSD-RP steering committee and working groups are established with fair representation of different stakeholders, which includes the private sector, yet the irregularity of meetings and the lack of coherent agenda structures have undermined their effectiveness. The government has also developed and enacted certain trade-related measures independently of both the SAG and PSD-RP mechanisms, which casts doubts on the consultative frameworks in place as a whole.

### ***Inter-agency co-ordination needs to be improved***

The emergence of new statutory agencies regulating business conduct has not been adequately supported by robust co-ordinating mechanisms. This can result in duplication of efforts, for example concerning promotional efforts to attract investment, and may create a vacuum in terms of effective private sector feedback mechanisms to the government.

### ***The tax system needs to be revised in light of addressing the complex and costly incentives scheme***

Tax incentives have been used by the government as a tool for promoting investment, especially in mining, its most important export sector. While the sector accounts for the lion's share of FDI in the country, it is unlikely that this is primarily due to the fiscal incentives offered to investors. In fact, most large-scale investors seek stability and predictability. Focussing on a predictable and fair tax system should thus be the prior objective of the government.

The government of Zambia can rely on a strong bargaining position *vis-à-vis* investors, especially foreign investors, as these do not base their investment decisions solely on the magnitude of available tax holidays. In addition to the general ineffectiveness of incentives, particularly in the resource sector, these are costly to administer and invite corrupt practices on the part of tax administration officials with power to grant or deny them. The process of registering with the ZDA to obtain incentives for investment in certain priority sectors can be a lengthy bureaucratic process, thus costly for both the administration and the investor.

At the same time, while Zambia has identified certain priority sectors (see the chapters on Investment Policy and Taxation), they are numerous and cover a large part of the economy, thus contradicting the purpose of targeting promotion measures at a selected range of economic activities.

Therefore, rationalising the complex incentive scheme would enable the government to strike the sensitive balance between mobilising domestic resources and providing an investor-friendly business environment.

### **Public Private Partnerships and infrastructure development**

The government has put legal and institutional frameworks in place for Public Private Partnerships (PPPs) to address large scale infrastructure development that is beyond the financing capacities of the Treasury. PPPs are an important initiative for infusing private sector management disciplines and efficiency into the development and delivery of public infrastructure and services. Through the PPPs, the country is addressing energy deficits by facilitating private investment in new hydro-electricity energy generation plants and in the rehabilitation and expansion of major road networks. These initiatives are important for stimulating increased investment in economic activities and for external trade facilitation.

The initiative to promote PPPs should be further strengthened by increasing the transparency and disclosure of the bidding process (including the application mechanisms for PPP projects and the identification and selection of private sector partners). Also the institutional framework linked to the PPP unit needs to be reconsidered in light of improving co-ordination and management of PPPs.

### **Oversight and enforcement for an environment that spurs competition and good corporate conduct**

Ensuring oversight and better enforcement is a cross-cutting challenge in Zambia's economic framework. This is valid for issues linked to taxation and competition, as well as corporate governance and responsible business conduct.

Zambia was one of the first countries in the region to establish a competition authority, and continues to be a regional leader by having recently enacted legislation for consumer protection. The ZCC requires financial and technical resources to effectively implement its enhanced and expanded mandate. It would also benefit from clear demarcation of laws covering its oversight on different sectoral regulators, so as to avoid disagreements over jurisdictions. While the Commission seeks to focus on promoting good competition practices, its basic functions should not be neglected.

In terms of corporate governance and responsible business conduct, good initiatives abound, many of which remain voluntary (see Chapters on Corporate Governance and Responsible Business Conduct). International treaties should be fully domesticated, with appropriate efforts to secure the necessary resources. Also, since accountability and political autonomy go hand in hand, it is important for State Owned Enterprises, or agencies such as the ZDA, to adhere to best practice reporting and disclosure standards.

Another major challenge to be addressed is the level of direct involvement by the central government in the functions of regulatory agencies. It is important to ensure that investors face fair standards of treatment that are consistent with the regulatory procedures in place. The executive arm of government can facilitate this by resisting direct involvement in facilitating investors and by limiting itself to policy oversight. If investors are on the contrary encouraged to by-pass regulatory compliance procedures and obligations by obtaining direct sanction from the executive arm of government, the authority of statutory agencies can only be further undermined.

***Human resource development strategies need to be better aligned with industry demands***

Zambia has taken big strides towards meeting its education objectives and the MDG 2 (Achieving universal primary education), reaching close to full primary school enrolment. However, Zambia faces challenges in producing skilled personnel that can meet the needs of industry, especially in technical functions. This is particularly evident in science education, which can provide a strong platform for technical training. As a result, there is a general shortage of technical (and especially engineering) skills.

A major challenge in that regard is the identification of industry demands and reflecting these needs in curriculum development (see Chapter on Human Resource Development). There is no coherent national mechanism used for determining priorities across the range of specialized skills required by the key industrial sectors of the economy, and human resources training and development. There are also no mechanisms for clearly distinguishing between skills training and education.

This weakness has in part contributed to a situation where few strategic business linkages exist between foreign investors with high production and service standards, and local suppliers. This is especially the case in export-oriented activities, with some exceptions in the agriculture sector. This in turn weakens the avenues for technology and knowledge transfer from larger investors to local suppliers.

***Policy options to address these challenges:***

- **Continue streamlining the business licensing regime.** This measure has greatly improved the operating environment for investors, and has also translated into improved perceptions of Zambia as an investment destination. These efforts also need to include special measures to facilitate domestic investment.

- **Develop a harmonised national investment policy.** Provisions of national treatment for foreign investors need to be clearly included in a piece of legislation that governs investment. Zambia would benefit from a harmonised investment policy prepared by government and approved by Parliament, which would greatly improve its regulatory and legislative framework by unifying investment-related provisions. This would also provide ZDA with a framework for its own activities, while also supporting its investment promotion efforts.
- **Strengthen the ZDA investment promotion and facilitation mandate.** The Zambia Development Agency Act of 2006 and its broadness does not provide sufficient direction for the ZDA to fulfil its functions as Zambia's IPA. This recommendation follows from the need for a national investment policy which would also include specific provisions for investment promotion and facilitation on which the ZDA could anchor its activities. This would also address concerns of duplication with regards to the promotional activities of other institutions.
- **Increase ZDA revenue by developing marketable BDS.** In order to become politically independent, the ZDA needs to generate more revenue to and to diversify its financing sources (which currently depend heavily on the government). This in turn means that specific and marketable BDS need to be developed, ranging from investor-supplier match-making to best practice after-care services for investors.
- **Create ombudsman services for investors.** This would provide investors with an avenue to channel their concerns to the government. At the same time it would contribute to improving investor after-care services. Where this service is to be located needs to be defined carefully, as specific existing structures may benefit from such an additional mandate. The ombudsman services provided by the Commission for Investigations (see Chapter on Policies for Promoting Responsible Business Conduct) could be elaborated in that regard in close collaboration with the ZDA.
- **Develop competitive clusters around MFEZs.** While the MFEZs are developed to attract larger investors, they can provide new opportunities for local business in geographical proximity to the zones. Cluster concepts should be envisaged to attract domestic companies into clusters, along with the necessary training and supportive policy measures to help them meet the demand and requirements of larger investors.
- **Develop backward linkages.** Concepts similar to some of the successful business linkages arrangements in Zambia's agriculture sector need to be replicated in other sectors. This is particularly true for the mining sector, where Zambian companies need to tap into strategic services and higher-value activities in the copper value chains of foreign investors. The tourism

industry also provides ample opportunities in this regard, as does the establishment of MFEZs as mentioned above. Targeted capacity building measures however need to be implemented to make local enterprises partnership ready.

- **Continue to develop cross-border trading.** Given the regional context and Zambia's land-locked geographical position, initiatives such as the Chirundu one-stop border post can greatly enhance cross-border trading and regional integration.
- **Undertake a cost-benefit analysis with regards to fiscal incentives.** Zambia needs to channel more economic benefits from its natural resources, and copper in particular, towards its local economy. The current incentives scheme seems heavily bureaucratic and difficult to administer while depriving the government of valuable resources. Undertaking a cost-benefit analysis of the current incentives scheme would offer the government with valuable options for revising the scheme to its benefit. The private sector should show openness to considering such options.
- **Strengthen the capacity of tax officials.** Following from the previous recommendation, the Zambian government needs to have the appropriate technical resources to manage a revision of tax incentives, as well as to improve tax administration.
- **Develop mechanisms to channel industry demands to human resource development agendas.** The private sector in Zambia has so far not significantly contributed to developing technical skills in a systematic manner. Mechanisms should involve private companies in identifying skills, needs and expectations of the industry so as to upgrade the curricula of vocational training institutes. This would also provide opportunities for companies to contribute financially to training initiatives. These need to be integrated in the framework of the TEVET Development Programme.
- **Strengthen the enforcement mechanisms of the regulatory framework.** This recommendation would go hand-in-hand with a fresh look at legislation and providing clear jurisdictions. In particular, this is relevant for taxation, where carefully selected incentives would be included in the tax law, and law enforcement strengthened.
- **Promote Responsible Business Conduct.** Following from the previous recommendation, the government could legislate initiatives to strengthen vital actors to promote RBC, such as the Institute of Directors. Alongside strengthening the legal framework and enforcement mechanisms, policies and programmes that would motivate companies to go beyond the bare minimum of legal adherence could also be considered. The *OECD Guidelines for Multinational Enterprises* can provide useful guidance in this regard.

- **Strengthen the capacity of local officials to manage PPP projects.** The specialised units established to promote and facilitate PPP projects, including the Office for the Promotion of Private Power Investments, should have adequate financial and technical resources to enable them to carry out their mandates fully. The specialised PPP units require adequate capacity to carry out long term project planning while also ensuring that these are consistent with the national development plans and priorities. They need to work with some predictability rather than responding to changing short-term priorities. This is particularly important in that the planning of infrastructure development projects is a complex process that requires time and resources for: conducting feasibility studies; packaging investment profiles; and soliciting interest among the private sector. This often involves carrying out promotional activities in local, regional and international markets. This may also be addressed by reconsidering the current institutional set-up of the PPP unit.
- **Communicate reform efforts more effectively.** While the government has undertaken numerous reforms and laudable steps towards strengthening the policy framework for investment, all relevant pieces of legislation need to be made available to the public. This would include developing an effective communication strategy, for instance by organising public awareness campaigns on crucial issues such as intellectual property. The line Ministries' websites could also be improved and continuously updated. Government should use existing structures under the Ministry of Information to make communication more effective.

## Notes

1. Siame (2007).
2. The results of PSDRP I are summarized in Chapter 3, Box 3.1.
3. IMF (2011), Recent IMF Staff Missions, [www.imf.org/external/country/zmb/index.htm](http://www.imf.org/external/country/zmb/index.htm).
4. WTO (2009), Although the available data is rather weak It is estimated that the mining sector attracts more than half of the FDI entering the country. *WTO Trade Policy Review of Zambia*.
5. World Bank Group, *Investing Across Sectors in Zambia*.
6. Ratings provided by Fitch range from the highest level of AAA to the lowest level of D. Securities in this range of ratings are classified as either investment grade or non-investment grade. Investment grade issues are securities rated from AAA to BBB because of the relatively low chance of default by the issuer. On the other hand, securities rated below BBB are considered as non investment grade due to the relatively higher possibility of default by the borrowers.
7. Zambia was the 17th country to reach the HIPC completion point.



8. The need to move away from copper exports lessened in the current period with the resurgence of copper prices on the world market.
9. The investment data available from the ZDA mainly captures pledges (i.e., announcements rather than actual investments).



## Chapter 2

### Investment Policy

*This chapter charts Zambia's progress in improving its investment climate. Commitment by the government of Zambia to strengthening the investment policy framework has resulted in the enactment of new laws, regulations and policies over the past decades. The launching of the Private Sector Development Reform Programme in 2004 and its related measures has been a key milestone in that regard. Although notable improvements in the investment climate have been recorded, Zambia nevertheless still faces some regulatory challenges, including the lack of an investment policy. This chapter also provides recommendations for Zambia to fully capitalise from investment in its resource-rich economy.*

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.

### 1. Steps taken to simplify Zambia's investment regimes

What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens?

A major challenge to which the government has accorded priority is that of simplifying the investment regime by aligning regulations and procedures that result in administrative bureaucracy and unnecessary compliance costs. A key step taken has been to spearhead regulatory reforms across all government ministries and agencies that provide services to facilitate investment. Legislative reforms have aimed at removing restrictive or discriminatory provisions that are inconsistent with a liberalised market environment, and at simplifying regulations and procedures that govern the establishment of business ventures.

Another major focus of the reforms has been the reduction of discretionary treatment of investors concerning their eligibility for or receipt of investment incentives, such as: tax relief (or holidays), work permits, access to land, etc. All these have been documented and standardised, according to the value of investment and sector. Packages of incentives have therefore been standardised and published for all priority growth sectors, which presently include: agriculture, tourism, and value-added manufacturing including mineral processing. Negotiated or special incentives are also provided for investments in large-scale projects which have long payback periods and higher investment risk thresholds, such as in mining, power generation and infrastructure development.

The primary piece of legislation that regulates investment is the Zambia Development Agency Act of 2006, which incorporated elements of the outdated Investment Act (last amended in 1996). Other provisions containing

elements regulating the activities of both foreign and local investors are the Company Act and the Constitution of the government of Zambia.

### ***Rationalisation of public institutions regulating and facilitating investment***

In 2006, the government established the Zambia Development Agency (ZDA) under an Act of Parliament (the Zambia Development Act of 2006). This involved the merger of five institutions that were separately engaged in investment facilitation and export promotion: the Zambia Investment Centre (ZIC); the Export Board of Zambia (EBZ); the Zambia Privatization Agency (ZPA); the Zambia Export Processing Zones Authority (ZEPZA); and the Small Enterprises Development Board (SEDB).

The ZDA, which commenced operations in July 2007, is a semi-autonomous institution with its own Board. Meanwhile, policy oversight is carried out by the Ministry of Commerce Trade and Industry (MCTI). The core functions of the ZDA are carried out through three divisions, namely: Investment Promotion and Privatisation; Exports Promotion and Market Development; and Micro and Small Enterprises.

The rationale for establishing the ZDA was to bring under a single authority the different roles carried out by regulatory and export-promotion business agencies, all critical to facilitating investment and economic diversification.

The ZDA was therefore intended to provide a “one stop shop” where investor services can be obtained. Apart from issuing Investment Certificates, the ZDA also provides access to other public institutions and regulatory agencies from which investors may require approval to establish and operate business ventures (see also the chapter on investment promotion and facilitation).

### ***Addressing the specific needs of Small and Medium Enterprises***

The ZDA’s organisational structure has a dedicated Directorate for Micro Small and Medium Enterprises (MSME). Recently the government, with assistance from co-operating partners, developed the MSME Policy. One of the aims of this policy is to develop the entrepreneurship, innovation and technological capacity of MSMEs. In this regard, the ZDA is also in the process of implementing the National Business Incubator Programme aimed at harnessing the creative and innovative potential of MSMEs in the country.

In 2006, the Citizens Economic Empowerment Commission (CEEC) was established to support MSMEs with low cost and flexible project finance for their business ventures. The CEEC operates under decentralized structure and

Table 2.1. **Priority economic sectors guiding the ZDA**

Sector	Sub-sectors	Products
Agriculture	Floriculture	Fresh and dried flowers
	Horticulture	Fresh and dried vegetables
Agro-processing	Processed foods	Wheat flour and other processed foods
		Tea and tea products
		Coffee and coffee products
	Textiles	Cotton Cotton yarn Fabrics Garments
	Leather	Cattle hides Crust leather Leather products
Manufacturing	Engineering products	Copper products
		Iron ore and Steel
		Cobalt
Other engineering products		
	Beneficiation of phosphates	Fertiliser
	Beneficiation of rock materials into cement	Cement
Forestry	Timber products	Processing of raw timber into wood products
Energy	Electricity	Building of mini-hydropower stations
Education		Education and skills training

has offices in all provincial centres of the country. The CEEC is supported by the Citizens Economic Empowerment Act of 2006.

While many policies and acts are available online, some newly enacted laws such as the Intellectual Property Rights Policy have not yet been uploaded. Communicating reform efforts is however an important part of government outreach. As seen earlier, numerous efforts have been made in terms of designing policies to improve the business climate, and these should now be more effectively communicated by the government.

In addition to increasing the accessibility to these important documents for investors, both local and foreign, communicating such efforts publicly would moreover send a strong signal of commitment to reform. One should nonetheless note that, in order to strengthen the implementation of reform measures, the MCTI now requires all of its related laws to be accompanied by an implementation plan.

## 2. Steps taken to improve processes of property and land ownership registration

What steps has the government taken towards the progressive establishment of timely, secure and effective methods of ownership registration for land and other forms of property?

Amongst the challenges that the government has faced is that of matching investment promotion efforts with the streamlining of regulatory regimes conducive for private investment. The system of property registration in Zambia has however become relatively efficient – it takes 5 steps to register property, very close to the OECD average of 4.8 steps. Also, it takes an average of 40 days to complete the procedures, steps having been synchronized to speed up the process. This is significantly below the sub-Saharan African average of 67.9 days.

The situation remains more complex with regards to the issue of land ownership. Despite Zambia having abundant land for agriculture and other purposes, the process of its acquisition and registration is amongst the major obstacles that investors face for a number of reasons:

- about 85% of available land is under traditional ownership. Its acquisition involves negotiations with traditional leaders (chiefs) who also have to balance the demands of their subjects and pressures to convert such land for commercial purposes;
- most of the land has not been surveyed and mapped. Where this has been done, records are either outdated or difficult to retrieve from the Ministry of Lands;
- the Ministry of Lands is centralized in Lusaka and is faced with problems of poor record keeping and slow processing of title deeds. This is exacerbated by limited funding which restricts its ability to improve its administrative system; and,
- incidences of corruption at the Ministry of Lands and at the local authority level where building permits and processing of applications for change of land use for commercial purpose is administered. This is exacerbated by the inability of local authorities to secure the provision of basic services, such as roads, water supply, sanitation, and electricity. Ultimately, investors that successfully acquire land are also confronted with the cost of installing basic municipal services.

In addressing these challenges, the government, with the support of international co-operating partners, has been implementing a number of activities that have included: development of land policy; modernisation of the Lands department of the Ministry of Lands; establishment of Land Banks; establishment of a Land Development Fund; demarcation of Land for MFEZs and Industrial Parks; and, development of farming blocks.

### **Land policy**

In 2007, the draft Land Policy was finalized following wide consultations with all key stakeholders including traditional rulers. The Land Policy is however yet to be launched as it is being reviewed by Cabinet.

### **Modernisation of the Ministry of Lands**

With the support of the Millennium Challenge Account (MCA) Zambia Threshold Project, records at the Ministry of Lands were computerized and processing systems upgraded. This included the establishment of a dedicated customer care centre based on “banking hall” structure. All enquires and processing of applications is now done more transparently within the customer care centre. As part of the MCA support, the Ministry developed a customer charter and established an Integrity Committee to address corrupt practices and infuse ethical practices.

The Ministry of Lands has additionally opened two provincial offices in Ndola (Copperbelt province) and Livingstone (Southern province) in an effort to decentralize the Land delivery system. The government has also been providing earmarked budgetary allowances for National Mapping and surveying of land, including the demarcation of international and local chiefdom boundaries.

### **Establishment of Land Banks**

As an initiative promoted under the PSD-RP framework, a land audit was conducted and a total of 178 land banks were secured and reserved for investment purposes in Northern, Southern, Copperbelt and Central provinces by the end of 2010. This followed intense advocacy and negotiations with respective chiefs.

### **Establishment of the Land Development Fund**

As a programme supported through the national budget, the Land Development Fund has been established. Launched in 2008, this Fund is intended to support district councils that have demarcated land for commercial development and to help meet the costs of providing municipal services. This initiative also encourages economic empowerment as citizens can access serviced plots through local councils. By the end of 2010, about ZMK 5.6 billion was released to 16 qualifying districts under the Land Development Fund.

### **Demarcation of land for MFEZ development and Industrial Parks**

As part of the collaborative programmes of the ZDA, industrial land is being identified for the establishment of Multi-Facility Economic Zones (MFEZ) and of industrial parks for domestic and foreign investment purposes. All MFEZ's will ideally contain or have in close proximity, the following desirable features and services which investors would pay for:

- i) Industrial land, cleared, zoned and ready for construction; speedy approval of building plans; grant of titles, etc.



- ii) Road and/or rail linkages to ports (air and sea) and major internal markets.
- iii) Electricity – adequate, without voltage fluctuations, blackouts, etc.
- iv) Water – uninterrupted supply, treated or untreated and depending upon needs.
- v) Telecommunications – international direct dialling, fax, direct computer linkage to parent company overseas, etc.
- vi) Waste disposal systems – both toxic and non-toxic wastes.
- vii) Executive housing for expatriate and senior staff (and adequate housing for other local staff).
- viii) International school for expatriate children – before these can function independently, initial government support will be required until sufficient numbers of students are reached.
- ix) First-class hotel facilities in proximity to zone, for visiting senior official and staff on temporary assignments.
- x) Adequate medical facilities.

Four MFEZs have so far been declared and are under construction, whilst several other areas have been identified for such similar MFEZs in Zambia.

Table 2.2. **Registered Multi-Facility Economic Zones**

MFEZ	Location	Developer	Description of core activities
Chambeshi	Copperbelt	Zambia-China Co-operation Zone (ZCCZ) Limited	This MFEZ has a total area of 4 100 hectares located in Chambeshi in the Copperbelt Province of Zambia. Already several enterprises mainly Chinese businesses have established in the area, including a copper smelter.
Lusaka East	Lusaka	Zambia China Economic and Trade Co-operation Zone (ZCCZ) Limited	As a sub-zone of the Chambeshi MFEZ, this zone is located on about 130 hectares of land situated in the southern part of Lusaka International Airport. The MFEZ was declared in June 2010.
Lusaka South	Lusaka	GRZ, Japanese International Co-operation Agency (JICA) and the Malaysian Kulim Hi-Tech Park (KTPC)	Planned on a 2 100 hectares piece of land located in the southern part of Lusaka; about 15 kilometres from Lusaka City. The government of Zambia has finalized a Development Master Plan for the launching of the Lusaka South.
Luwmana	North-Western	Lumwana Mine	Anchored on 35 000 Ha of Lumwana Mine land in Solwezi District, this zone should facilitate investments of USD 1.2 billion by over 90 enterprises in various sectors, employing 13 000 people by the year 2020.

These areas are: Ndola and Kasumbalesa, both in the Copperbelt Province; and Nakonde in the Northern Province.

In response to the need for value addition on raw materials and to boost the manufacturing sector, the government has also begun setting up Industrial Parks around the country. The Industrial Parks have the same features as the MFEZ, including approval processes for their development, but they are smaller in size. The minimum size of the industrial parks is 6 hectares. By the end of 2010, two Industrial Parks had been approved, as follows:

### ***The Roma Industrial Park***

The Roma Industrial Park is located about 20 km northeast of the Lusaka International Airport on 130 hectares of land. The industrial park was approved in June 2010 and is being developed by CPD Investments Limited, a private company. The park will consist of a residential village, retail park, office accommodation, warehousing facilities, a light industrial area and specialized husbandry.

### ***The Sub-Sahara Gemstone Exchange Industrial Park***

This Industrial Park is located on about 115 hectares of land in Ndola District in the Copperbelt Province of Zambia, about 300 kms north-west of Lusaka. It was approved in June 2010 and is being developed by a wholly-owned private company, Sub-Sahara Gemstone Exchange Limited Zambia. The park will house gemstone-related businesses such as lapidaries, and mineral-processing businesses such as copper electro winning and processing.

### ***Development of farming blocks***

As a specific programme aimed at attracting large-scale investments in the agricultural sector, the government has embarked on a land development programme which involves opening up new farming blocks for commercial development and expansion of the agriculture sector. Each farming block is designed to have at least one core large-scale farm (core venture) of 10 000 hectares, several commercial farms of 1 000 to 5 000 hectares, and small farm holdings of between 30 to 3000 hectares (preferably under out-grower arrangements). As of December 2010 the following farm blocks have been identified for potential investors (Table 2.3).

Farm blocks afford both local and international investors with ready access to already surveyed land for agro-production purposes. Currently, the government has identified three priority Farm Blocks – the Nansanga, Kalumwange and Luena blocks that are ready for allocation to investors. The

Table 2.3. **Designated farming blocks for investors**

Farm block	Province	District	Size of land (ha)
Nansanga	Central	Serenje	155 000
Musakashi	Copperbelt	Mufulira	100 000
Mwase Mphangwe	Eastern	Lundazi	100 000
Luena	Luapula	Kawambwa	100 000
Muku	Lusaka	Kafue	100 000
Manshya	Northern	Mpika	147 000
Mikelenge/Luma	North- Western	Solwezi	100 000
Simango	Southern	Livingstone	100 000
Kalumwange	Western	Kaoma	100 000
Total area			1 002 000

other farm blocks are still being developed and will be allocated once complete.

Major strides have been taken to improve access to land for investment purposes, involving close collaboration with traditional rulers. Improvements in the systems of processing land acquisition applications and registration of titles are being implemented, as well as addressing the decentralisation of the Lands Department. The issues are admittedly complex and the pace of these reforms could be enhanced through further strengthening of administrative systems in order to root out corruption and improve transparency and accountability at the Ministry of Lands. At the same time, issues related to ownership of targeted land remain which need to be resolved.

### 3. Protection of intellectual property rights

Has the government implemented laws and regulations for the protection of intellectual property rights and effective enforcement mechanisms? Does the level of protection encourage innovation and investment by domestic and foreign firms? What steps has the government taken to develop strategies, policies and programs to meet the intellectual property needs of SMEs?

The MCTI and the Patents and Company Registration Agency (PACRA) are the leading institutions with regards to the design and implementation of intellectual property laws. Considerable effort has been made to modernise and align Zambia's intellectual property legislation with international standards. Consequently, the Intellectual Property Rights Policy and its implementation plan, aimed at merging Intellectual Property and Copyrights Laws, were launched in 2010. These measures are expected to improve the

environment required by the private sector in order to foster creativity and innovation.

Other Bills proposed to strengthen the regulatory framework and which are to be tabled before Parliament include:

- i) Trademarks Act, Cap 401 of the Laws of Zambia. This will provide for the registration and protection of trademarks, service marks, defensive marks, collective marks, certification marks, well-known marks, geographical indications, trade names and other distinctive signs. It is also expected to encourage producers and operators to maintain the reputation of their trademarks and guarantee the quality of goods and services.
- ii) The amendments are also intended to give effect to the provisions of the Madrid Protocol Relating to International Registration of Marks; the Paris Convention for the Protection of Industrial Property; the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights; and, other international treaties or conventions to which Zambia may be party to with the ultimate objective of benefiting consumers.
- iii) Patents Act Cap 400 of the Laws of Zambia. This will ensure that Zambia's patent laws conform to the requirements of the Paris Convention for the Protection of Industrial Property, to which Zambia is a signatory. Presently, it takes a minimum of four months to patent an item or process. Duplicative searches are not done, but patent awards may be appealed on grounds of infringement.

The amended and strengthened Patents Act will provide for and improve the protection and administration of patents including undisclosed information. Another objective will be to promote and encourage innovative and inventive activities and local generation of technologies, as well as facilitate technological transfer and development.

Apart from promoting the use of patent information and technological knowledge, the amendments will also give effect to the provisions of: the Paris Convention for the Protection of Industrial Property; the Patent Co-operation Treaty; the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS); and other relevant international treaties or conventions to which Zambia is party.

- iv) Layout-Designs of Integrated Circuits Bill. This will provide for the protection of layout designs (topographies) of integrated circuits and give effect to the provisions of the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights, and of other relevant international treaties or conventions to which Zambia is or may be party.

- v) Traditional Knowledge, Genetic Resources and Expressions of Folklore Bill. This aims to provide a legal regime for the protection of traditional knowledge, expressions of folklore and genetic resources. This intended to recognise the spiritual, cultural, social, political and economic value of these resources to their holders. The Bill aims to promote the preservation, wider application and development of traditional knowledge, expressions of folklore and genetic resources.

Among the intentions of the proposed changes is to confer rights on holders and promote conservation and sustainable utilization of the country's biodiversity resources, as well as to give effect to the ARIPO Protocol on the Protection of Traditional Knowledge and Expressions of Folklore.

In line with the above, Zambia has joined other African Regional Intellectual Property Organisations (ARIPO) members and the French Speaking African Countries Organisation for African Intellectual Property (OAPI) in signing the "Swakopmund" Protocol for the protraction of Traditional Knowledge and Expression of Folklore.

Zambia is also a signatory to a number of international agreements on patents and intellectual property, including: the World Intellectual Property Organisation (WIPO); Paris Union; Bern Union; African Regional Industrial Property Organisation (ARIPO); and the Universal Copyright Convention of UNESCO. Enforcement procedures governing intellectual property are co-ordinated by the Intellectual Property Unit (IPU) of the Zambia Police Service.

National laws are generally adequate in protecting intellectual property rights, and there has been effective recent enforcement against pirated musical and video recordings, cosmetics, as well as software. Fines for revealing business proprietary information are also imposed. However, small-scale trademark infringement occurs for some packaged goods through copied or deceptive packaging. Copyright protection is presently limited and does not cover products such as computer applications. Despite adequate legislation and political will being in place, protection of property rights is limited by insufficient law enforcement resources.

Needs of Micro, Small and Medium Enterprises (MSMEs) have been addressed in the Intellectual Property Policy and the Implementation Plan. For example, awareness-raising and outreach programmes will be undertaken on the role of Service Marks in MSMEs. Through PACRA and under the Integrated Circuit Layout, the government intends to train at least 50 MSMEs in establishing an industry that can develop Integrated Circuit Layouts. Under Trade Secrets, the government intends to educate at least 200 MSMEs annually on the benefits of Trade Secrets. The government also intends to promote the

registration of novel Industrial Designs among MSMEs and the local handicraft industry through awareness campaigns on the benefits of ownership of Intellectual Property Assets, using provisions under Registered Industrial Designs.

#### 4. Contract enforcement and alternative dispute settlement systems

Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?

Traditionally, contract disputes have been settled by way of litigation in the courts of law. The processes and procedures are however cumbersome, lengthy and costly. The Zambian Justice system has backlogs of civil cases that compound the time taken to resolve disputes. In addition, small enterprises tend to find the cost of prosecuting complaints beyond their reach, especially the cost of hiring lawyers. For established business enterprises, the lengthy processes discourage suing as at times the costs cannot be covered by the remedy sought.

In response to the concerns relating to judicial processes, a number of initiatives have been taken to address backlogs of cases and to modernise the Judiciary's case-handling system: a small Claims court has been established as a fast-track cheaper alternative, and an Alternative Dispute Resolution (ADR) mechanism is being promoted.

##### **Modernisation of the judiciary**

In 2008, with the support of the government and of international co-operating partners under the Access to Justice Programme, the Judiciary finalised its Judiciary Strategic Plan and Development Programme (covering: 2009-13). This programme, which is currently under implementation, is computerising court proceedings and records (the Zambia Justice Information Management System). The staffing establishment of the Judiciary has also been revised to provide for an increased number of High Court Judges. 10 High Court Judges have since been appointed. In addition, permanent High Courts are being established in all provinces and major towns in urban areas.

### **Establishment of a Small Claims Court**

In August 2009, the Small Claims Court was launched in Lusaka as a fast-track and low cost process of adjudicating commercial disputes. The Small Claims Court is also expected to help decongest the mainstream civil courts.

### **Promotion of Alternative Dispute Resolution (ADR) mechanisms**

There are presently two main ADR mechanisms being promoted in Zambia: Arbitration, and Mediation. Until 2000, Arbitration was largely not utilised as an ADR mechanism until enactment of the Arbitration Act (No. 19 of 2000). This provides for parties to a contract (that have expressly indicated that any dispute arising before the High Courts would be resolved by way of Arbitration) to utilise this mechanism and to recognise and enforce this right. The Arbitration Act is also based on the United Nations Commission of International Trade law (UNCITRAL) Model, and infuses international best practices. In addition, all persons eligible for appointment as Arbitrators must be certified by a UK Professional body. This enables foreign investors, especially, to utilise Arbitration procedures that are also internationally recognised. Likewise, the enforcement of awards can be registered in other judicial territories.

The Zambian justice systems also provides for “court-annexed” mediation under the High Court (Amendment Rules of 1997). This form of ADR is modelled along the lines of the Washington DC Superior Court Mediation System. In this regard, the High Courts are encouraged to promote mediation where the case does not involve constitutional issues and the dispute is likely to be amicably resolved if the parties use a more informal and open approach to address grievances. This ADR mechanism is based on a judge’s referral and where Mediation fails, the parties may still proceed with a formal trial in the High Court.

### **Other formal dispute settlement mechanisms**

Apart from Arbitration and mediation, the Zambian Justice system also provides other mechanisms for settling commercial or trade related disputes. For example, an Industrial Relations Court is in place to address disputes arising out of the enforcement of Contracts of Employment. A Revenue Appeals Tribunal addresses disputes arising out of taxation assessments made by the Zambia Revenue Authority. A Lands Tribunal also exists to address disputes related to land. All these mechanisms allow for legally enforceable awards and appeals to also be lodged to the High Court.

## 5. Compensation mechanisms for expropriation

Does the government maintain a policy of timely, adequate, and effective compensation for expropriation also consistent with its obligations under international law? What explicit and well-defined limits on the ability to expropriate has the government established?

The ZDA Act includes specific clauses for the protection of property rights of investors. Under these provisions, investments can only be expropriated by an Act of Parliament relating to the specific property expropriated. In such a case full compensation must be made at fair market value, convertible at the ruling exchange rate.

Land, which is held under 99-year leases, may in turn revert to the government if it is ruled to be undeveloped. So far, no privately held land has been reverted. Zambia is also a party to the World Bank's Multilateral Investment Guarantee Agreement (MIGA) and the African Trade Insurance Agency, both of which provide insurance against political risks.

As seen in Section 7 below, Zambia is a member of the International Centre for the Settlement of Investment Disputes (ICSID) and the United Nations Commission of International Trade Law (UNCITRAL). Furthermore the government does sign Investment Protection and Promotion Agreements (IPPAs) with private companies undertaking significant investments in the economy (amounting to USD 10 million and above), which protect their investment against political risk. Since 2008, the government has signed IPPAs with 36 private companies (between the year 2008 and 2010) for investments in the priority sectors. The total pledged investment by these companies is USD 6 billion, which generated employment of 37 000 over a period of 3 to 10 years.

The Investment Promotion and Protection Agreements promote investments by granting assurances to investors on the safety of their investments and the government's commitment not to expropriate without due process of law.

Zambia has signed eleven (11) Bilateral Investment Treaties (BITs) with other countries since 1966. However, only two have so far been ratified (see table below). Efforts are being made to initiate proposals with top priority countries with which Zambia wishes to sign agreements, and to ratify pending agreements.

While IPPAs and BITs can be used to promote investments, these also reveal some weaknesses in the general investment regime. Since most of



Table 2.4. **Status of Zambia's BITs**

	Date signed	Date ratified
Germany	1966	1972
Switzerland	1994	1995
China	June 1996	Not ratified
Croatia	2000	Not ratified
Egypt	2000	Not ratified
Cuba	2000	Not ratified
Belgo-Luxembourg Economic Union	May 2001	Not ratified
France	August 2002	Not ratified
Netherlands	April 2003	Not ratified
Italy	April 2003	Not ratified
Finland	September 2005	Not ratified
UK and Northern Ireland	December 2009	Not ratified

Zambia's BITs have not yet been ratified, they do not yet contribute to strengthening the legal framework for investment from the perspective of countries with which Zambia signed the treaties. However, Zambia is currently reviewing the signed IPPAs to bring them to current developments with a view to ratifying them.

## 6. Principle of non-discrimination on laws relating to investment

Has the government taken steps to establish non-discrimination as a general principle underpinning laws and regulations governing investment?  
Has the government reviewed restrictions affecting the free transfer of capital and profits and their effect on attracting international investment?

Non-discrimination is a general principle underpinning laws and regulations governing investment in Zambia. In this regard, the ZDA Act does not give preferential treatment on the basis of origin of the investor. Local or foreign investments are treated equally for access to incentives and other facilitation services, and there are no restrictions on sectors in which international investments can be made.

In fact, Zambia qualifies as one of the most open countries to foreign equity ownership, and has been acknowledged by renowned international programmes such as the Investment Across Borders indicators of the World Bank. These indicators point to the fact that all 33 sectors covered are fully open to foreign equity ownership. Nonetheless potential obstacles for foreign investors are identified in certain monopolistic market structures in specific sectors, such as electricity transmission (see Chapter on Competition Policy).<sup>1</sup>

A foreign investor can register either a public company or a private company (which may be private limited by shares, or limited by guarantee, or unlimited companies). However, should a foreign registered company wish to, it may register as a private company in Zambia and lodge an application for this, accompanied by:

- a certified copy of the charter, statutes, regulations, memorandum of and articles of association or other instrument consulting or defining the constitution of the company;
- in relation to each documentary agent and local director, a statement signed by that person accepting appointment of such;
- a statement regarding property acquired in Zambia by the company.

The Immigration and Deportations Act CAP 123 requires that the foreign investor provides proof of finance of not less than USD 250 000 in order to qualify for a self-employment permit. In addition, Zambia has no foreign exchange controls and foreign investors are free to repatriate 100% of profit and capital after settlement of all local obligations.

Meanwhile, the Citizens Economic Empowerment Act of 2006 provides for an Empowerment Fund which can be accessed only by economically disadvantaged Citizens of Zambia. The Act is defined as, “an integrated broad based and multifaceted strategy aimed at substantially increasing the meaningful participation of targeted citizens and companies in order to decrease income inequalities. It is anchored on the following nine (9) pillars: Equity/Ownership, preferential procurement, skills development, access to finance, transformation of society, Corporate and Social Responsibility, Good political and Corporate Governance, Greenfield investments and Foreign Direct Investment.”

In practice however, the implementation of the non-discrimination principle is often clouded with misunderstandings and is not always adhered to. For example, Zambian investors consider the eligibility thresholds for Investment Licenses and attendant incentives to be too restrictive. The ZDA requires investment proposals of at least USD 500 000 for special incentives and USD 10 million for additional incentives. These thresholds are considered as beyond the reach of most local investors that are not able to enter into joint ventures for foreign partners. This has led to a perception that the investment regime favours foreign business to the exclusion of local enterprises.

While no government unequivocally applies national treatment, and laws and regulations rightly allow a country to make qualifications, it is important that any exceptions where the scope of national treatment is limited be transparent and clearly defined in law.<sup>2</sup> In this regard, it has to be observed that Zambia currently lacks an investment policy that is anchored in an Act clearly enshrining the principles of national treatment and most-

favoured-nation (MFN) provisions (although in principle foreign and local investors do receive equivalent treatment). This can be described as major weakness in Zambia's regulatory framework for investment.

Addressing this weakness by amending the primary laws regulating investment, such as the ZDA Act, or by developing an investment code according to international best practices, would strengthen the regulatory environment and create more clarity within the legal framework. It would also be more cost-effective for the government, which currently relies on numerous bilateral arrangements with trading and investment partner countries and companies – thus devoting a great deal of resources to compensate for a structural weakness. Given Zambia's impressive advances in other areas of business climate reforms, this issue deserves priority consideration.

## 7. International co-operation in the promotion and protection of investment

Are investment policy authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment?

Zambia is a signatory to a number of international conventions and treaties that facilitate investment protection and trans-boundary enforcement of commercial contracts. For example, Zambia has Avoidance of Double Taxation Treaties with most trading partners. Zambia is also an active participant of and signatory to regional programmes and arrangements of SADC and COMESA relating to the establishment of a “Common Investment Area”, i.e. allowing rights of establishment of international investments and use of standard provisions that protect such investment.

Zambia is a member of the International Centre for the Settlement of Investment Disputes (ICSID) and the United Nations Commission of International Trade Law (UNCITRAL). The investment code stipulates that disputants must first resort to the Zambian High Court for internal dispute settlement. Failing that, the parties may go to international arbitration, which the State recognises to be binding.

In practice, there are only few recorded cases where Zambia has used sovereignty provisions to countermand its international obligations related to investment and settlement of disputes arising out of asset expropriation. For example, in December 2010, the government through the Bank of Zambia took over the ownership and management of Finance Bank using the provisions of

the Banking and Financial Services Act. This step included the unilateral award of a management contract to a competitor bank, and announcement of the intention to sell the bank.

### **Notes**

1. World Bank Group, Investing Across Sectors in Zambia.
2. OECD PFI Toolkit, Investment Policy Chapter, [www.oecd.org/document/61/0,3746,en\\_39048427\\_39049358\\_41368893\\_1\\_1\\_1\\_1,00.html#policypractices](http://www.oecd.org/document/61/0,3746,en_39048427_39049358_41368893_1_1_1_1,00.html#policypractices).

## Chapter 3

### Investment Promotion and Facilitation

*Over the past decade Zambia has taken important steps in building a more efficient framework for setting up businesses, hence addressing some of the structural and operational bottlenecks inherited from the centrally planned economy prior to 1990. This chapter examines various measures adopted by the government to reduce administrative burdens on investors and to increase the role of the Zambia Development Agency in promoting investment. This chapter also illustrates that while reforms such as the Business Licensing Reform Programme are showing impact, Zambia could take better advantage of various investment promotion options available so as to become a more competitive investment destination.*

**I**nvestment promotion and facilitation measures, including incentives, can be effective instruments to attract investment provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment.

## 1. Investment promotion and facilitation strategy

Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures?

The government's economic reforms are anchored in the provision of an enabling environment that should stimulate sustained private investment and economic growth. The strategy has involved reducing the cost of doing business and implementing incentive regimes for economic diversification and full exploitation of Zambia's resource base. In this regard, the two major initiatives are the PSDRP and establishment of the ZDA.

The Private Sector Development Reform Programme (PSD-RP), launched in 2004, provides a structured process for identifying constraints in the business and investment environment, and for determining appropriate reforms. The initial phase of PSD-RP was structured to address obstacles to investment around six reform areas, as follows:

- i) Policy environment and institutions.
- ii) Regulations and laws.
- iii) Infrastructure.
- iv) Business facilitation and economic diversification.
- v) Trade expansion.
- vi) Local empowerment.

From the above six reform areas, a number of reform priorities were identified which were implemented by 17 working groups, committees, and other bodies constituted by the private sector and government officials. Highlights of the reforms and key results achieved during the operative period

of the PSD-RP Phase 1 (between 2006 and 2009) are set out at Box 3.1 further below.

The second phase, PSDRP II which runs from 2009 to 2014, targets the fast tracking of reforms in a number of key sectors that are identified as critical for establishing an improved competitive business environment. The priority areas for PSDRP II are:

- i) Business licensing and regulatory framework.
- ii) MSME development.
- iii) Labour reform and labour productivity.
- iv) Public Private Partnerships development.
- v) Trade expansion.

Another programme aimed at improving the investment climate which the government has embarked on is the Strategic Action Initiative for Economic Development (SAIED), commonly referred to as the Triangle of Hope (ToH), supported by the government of Japan through the Japan International Co-operation Agency (JICA). This programme is working towards addressing issues relating to the high cost of doing business in Zambia and to transparency and accountability. The ToH was modelled on the Malaysian and East Asian development experiences, whereby sector-specific taskforces were established to identify both constraints to and opportunities for development of certain sectors and industries.

## 2. Establishment of the Zambia Development Agency

Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed by and benchmarked against international good practices?

Prior to 2006, investment promotion activities were undertaken by the Zambia Investment Centre (ZIC), a statutory body established under the Investment Act of 1991. The Centre's primary functions were: to promote both local and Foreign Direct Investment (FDI) in targeted sectors of the economy; to assist investors in meeting regulatory requirements for establishing business ventures (including obtaining various permits from central and local government); and to monitor the implementation of investment projects.

The Centre was responsible for processing investment applications and issuing Investment Licenses. Holders of Investment Licenses were eligible for a range of incentives that included: tax holidays, reduced rates of duty for the

import of plant equipment and machinery; and employment of expatriate labour outside the stricter provisions of the Immigration Act.

The ZIC was increasingly expected to play a critical role in attracting private investment and economic diversification, at a time when the government was also gearing up privatisation of state enterprises.

In 2006, the ZIC was merged with four other statutory bodies to form the Zambia Development Agency (ZDA), established under the Zambia Development Agency Act Number 11 of 2006. The rationale for establishing the ZDA was to place under a single institution the functions of: investment promotion and facilitation; privatisation; SME development; export promotion; and, the regulation of processing zones. It was envisaged that establishing the ZDA would strengthen the institutional framework for facilitating private sector development.

The ZDA became operational in 2007 with the key mandate of fostering economic development through the promotion and facilitation of both direct investment and export trade. The ZDA has a dedicated division, Investment Promotion and Privatisation, which is directly responsible for investment promotion, privatisation, Public-Private Partnerships (see the chapter on infrastructure development), and for regulating the establishment of Multi-Facility Economic Zones (MFEZs). However, it has to be noted that the broad mandate provided by the ZDA Act fails to provide adequate direction for the agency to fulfil well defined investment promotion functions.

### **Benchmarking against international best practices**

Since Zambia is competing for FDI with other emerging economies, a number of benchmarking exercises have been undertaken with other Investment Promotion Agencies (IPAs), notably:

**Table 3.1. Investment promotion agencies**

	Regulatory Agency
Malaysia	Malaysia Industrial Development Authority (MIDA)
Rwanda	Rwanda Development Agency (RDA)
Mauritius	Mauritius Investment Board (MIB)
Botswana	Botswana Export Development and Investment Authority (BEDIA)
Korea	Korean Trade-Investment Promotion Agency (KOTRA)

The benchmarking exercises highlighted the different mandates of the various IPAs. For example, the mandate for BEDIA encompasses investment promotion and export development, while for MIB and MIDA, the mandates focus on investment promotion. The mandate of the RDB is broader and includes such activities as ICT promotion and regulation, Environment Impact



Assessment approvals, investment promotion, and the promotion of tourism. In comparison the mandate of the ZDA is also fairly broad and covers promotion of investment, exports and development of SMEs.

With regard to reporting channels, like the ZDA all the agencies fall under the ministries responsible for trade and industry. However, the RDA is directly under the Office of the President and only reports to the Ministry for administrative purposes. This has given the RDA the required political support for obtaining adequate funding and some level of authority when working with line ministries and other regulatory agencies.

The exercise also showed that all agencies benchmarked against had higher funding than the ZDA. Following the benchmarking exercises, the government has acknowledged the need to improve its funding of the ZDA. From 2012 onwards, the ZDA will receive its administrative budget from MCTI whilst the allocation for operations will not only be increased but will be funded directly by the Ministry of Finance and National Planning. It should also be noted that the President has actively promoted investment in Zambia.

### 3. Adequacy of government funding to the ZDA

Is the IPA adequately funded and is its performance in terms of attracting investment regularly reviewed? What indicators have been established for monitoring the performance of the agency?

Funding is a major challenge for the new ZDA. After its establishment in 2006 and the merger of the 5 statutory agencies, the ZDA was expected to quickly implement operational capacities under its unified structure. However in 2006, the ZDA did not receive direct funding from the national budget and had to defer the commencement of operations to 2007.

The table below analyses the government's actual allocations of funds against the ZDA's budget or the financing requirements submitted to cover its establishment and operational costs, between 2007 and 2010.

Funding to the Agency has not been adequate during its three years of existence. There is general lack of the manpower and financial resources required for the ZDA to perform its duty of effectively promoting investment in the country. The funds from government largely cover emoluments and administrative costs. Programme funds are largely donor dependent and may not necessarily be in line with the Agency's objectives, as the donors specify their own priority areas for the use of their funds. More specialized services, such as effective match-making, top-class market market-information provision, and investor after-care services, should be enhanced on a

Table 3.2. **ZDA funding**

	Allocations (ZMK '000)			Year on year change in actual allocations (%)
	ZDA budget	Actual	Variance (%)	
2007	29 110 000	17 000 000	-42	
2008	14 500 000	10 500 000	-28	-38
2009	19 810 000	11 500 000	-42	+14
2010	20 600 000	10 000 000	-51	-13
Total	83 420 000	49 000 000	-41	

marketable basis to open up new sources of funding including independent funding streams from business development service (BDS) provision. These funds would eventually also strengthen the agency's political autonomy.

These funding constraints limit the activities that the ZDA can undertake. As a result, no formal indicators have been developed for monitoring the performance of the ZDA and for impact analysis, despite being in operation for three years now. MCTI is in the process of formulating a mechanism for monitoring the performance of statutory bodies.

#### 4. Reducing the cost of establishing new investment ventures

One of the key outcomes of the Private Sector Development Reforms Programme II (PSDRP II) has been the streamlining of licensing procedures through a comprehensive Business Licensing Reform Programme (BLRP). The BLRP commenced in 2009 by initially taking stock of all the business licenses in Zambia and asking the following critical questions:

- Is the license legal?
- Does it serve a regulatory purpose?
- Does it protect the environment, public safety, security and health?

The exercise established that there were a total of 517 business licenses in Zambia, and made the following recommendations:

- i) Elimination of 170 licenses, which serve no legitimate regulatory purpose.
- ii) Reclassification of a total of 57 licenses and permits as levies, reports or notifications.
- iii) Amalgamation of 99 licenses into 21 licenses to avoid license duplication or overlapping licensing requirements.

By December 2010, 92 business licences were eliminated while 43 were reclassified and 13 amalgamated into 4 licences. Furthermore, 38 Local Authority licences were re-classified into a single direct levy. The rest are earmarked for the 2011 Parliamentary session's amendment of Laws. This

exercise is expected to benefit the private sector by reducing the time and costs needed to comply with regulations.

The programme has also facilitated improvements in various other administrative processes relating to business establishments. As a result, Zambia's rank on the World Bank's "Ease of Doing Business" ranking of 183 economies has moved up from 90th in 2009 to 76th in 2010.

However, more work still needs to be done to improve the investment climate and general business environment. In this regard Zambia has committed to work on making significant progress in four reform areas:

- Dealing with construction permits – all construction requirements should be approved in the Local authorities within 30 days and if not, deemed approval is granted.
- Improving trading across borders – streamline and simplify border regulations between Zambia and its neighbours.
- Registering property – decentralize so that Land registration can be done anywhere in the country.
- Closing a business – centred on improvements to the Companies Act.

Another initiative implemented to further streamline procedures and to reduce the cost of doing business has been the establishment of the One Stop Shop (OSS) for investment facilitation. The OSS was launched in June 2010 and aims to provide both local and foreign investors with fast, efficient and business-friendly services and assistance at the start-up stage. This includes providing registration forms and information on business licences application requirements.

Operating under the auspices of the ZDA, the OSS uses the "one door, one roof model" which combines in one location: the Patents and Companies Registration Agency (PACRA); the Zambia Revenue Authority (ZRA); the National Pensions Scheme Authority (NAPSA); the Citizens Economic Empowerment Commission (CEEC); the Immigration Department; and the Zambia Public Procurement Authority (ZPPA).

Services under the OSS will include: provision of general information on requirements for business establishment and operation; processing of business registration application forms; and receipt of required fees. A client can therefore register a business name, incorporate a company, register taxes, and register for the mandatory employee pension scheme registration with NAPSA, all under one roof. PACRA, ZRA and NAPSA will offer this first level of service. The second level comprises CEEC, the Immigration Department and ZPPA for clients seeking: loans, particularly, small and medium entrepreneurs (SMEs); immigration permits required by foreign investors; and provision of information on government procurement. While the establishment of the OSS

is laudable, it is as yet too early to effectively evaluate its operations, especially with regards to whether it actually speeds up delivery of investor services.

## 5. Consultative framework between government, ZDA and investors

To what extent does the IPA promote and maintain dialogue mechanisms with investors? Does the government consult with the IPA on matters having an impact on investment? What mechanisms has the government established for the evaluation of the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the economic interests of other countries?

The ZDA Act requires registered investors to provide the ZDA with annual information on the implementation of investment projects. The agency is therefore compelled by law to monitor investment projects by the licensed investors, and to undertake monthly project performance monitoring exercises to measure the extent to which the investment and employment pledges made by the companies with Investment Licences have been fulfilled or actualized. The monitoring exercises also measure the extent to which the investment projects have impacted the domestic economy through contribution to employment creation, export earnings, government Treasury, use of the various licences and permits obtained, and contribution to Gross Domestic Product (GDP). The database of the monitored companies is continuously updated as and when companies are monitored.

The monitoring exercise also serves as a mechanism through which the agency gathers information on investor concerns and perceptions with regard to the general business environment and investment climate. The Report on Project Monitoring is presented to the ZDA Board's Sub Committee on Project Performance Monitoring. However, this exercise is not undertaken systematically and investor concerns captured through this exercise are often not addressed by the line ministries and/or regulatory agencies responsible for hindering the investments. In addition, there are no established procedures for reviewing Investment Licences for which the project implementation plan is not adhered to or has been varied. The monitoring undertaken is therefore not intended to enforce compliance to the provisions of the Investment License.

The ZDA also holds formal consultations with the private sector on matters affecting investments, through meetings and other dialogue

mechanisms such as newsletters and web-based queries by users of its web site. However, these are not regular or systematic.

In terms of consultations with government and other statutory agencies, the ZDA participates in a number of interagency networks with different stakeholders. Because of the cross cutting and multi-sectoral nature of its work in national development matters, the institution provides input for a number of consultative processes among different stakeholders at the policy-making level. In the same regard, the institution provides opinions to other sector-specific regulatory government Departments and Statutory Bodies on the general business effects of various policies and regulations.

In addition, the ZDA is a member of the Balance of Payments Statistical Committee – an inter agency committee comprised of: the Bank of Zambia; the Central Statistical Office; the Lusaka Stock Exchange Commission; the Ministry of Finance and National Planning; the Ministry of Tourism, Environment and Natural Resources; the Zambia Development Agency; and the Zambia Revenue Authority. The committee is mandated to compile and reconcile the nation's balance of payments statistics.

As for Zambia's incentives scheme, it is transparent and has been included in the WTO's trade policy reviews, to which all WTO members have access. The incentive packages are also subject to reviews by the Board of the ZDA and to periodic reviews by the Parliamentary Accounts Committee.

## 6. Promoting investment linkages

What steps has the government taken to promote investment linkages between businesses, especially between foreign affiliates and local enterprises? What measures has the government put in place to address the specific investment obstacles faced by SMEs?

Government developed an MSME policy which was launched in May 2010 and includes an implementation plan for the development of business linkages between MSMEs and large business enterprises.

The ZDA has a dedicated division for Micro and Small Enterprises which is implementing a linkage programme developed with the support of the United Nations Conference on Trade and Development (UNCTAD), currently in collaboration with the International Labour Organisation (ILO). So far, the ZDA has signed agreements with 4 locally based multinational firms to procure goods and services from the MSMEs. Government through the ZDA is also facilitating the Marketing Support Services Programme designed to enhance MSMEs' access to broader markets through initiatives such as participation in

International Trade Fairs, National Shows, and Business Exhibitions and Fairs, at which MSMEs can make contacts for developing formal business linkages.

Through the Citizens Economic Empowerment Commission (CEEC) the government is also providing incentives such as preferential procurement for companies that have local participation. Foreign investors seeking joint venture partners are able to access the ZDA register for project profiles of domestic investors seeking foreign investor partnerships.

Government, through the ZDA, organises business delegations and trade missions to other countries. The ZDA also supports local companies to participate in international Trade fairs and exhibitions. In addition, the ZDA does bring various potential investors into the country for matching and creation of linkages with local investors. Steps are also taken to identify areas of need and then search for investors who can partner with the local investors.

In order to address the specific investment obstacles faced by SMEs, the ZDA through its Micro and Small Enterprises division promotes aggregation programmes, empowerment schemes, and other business development services. Other issues dealt with include support in starting and expanding a business, funding opportunities, and training.

However, evidence shows that linkages between foreign and local businesses remain limited. While the mining industry is linked to some support sectors that provide maintenance and basic machinery, the strategic activities are still undertaken in-house rather than outsourced to local businesses. This is a common feature of capital-intensive industries. Agriculture, by contrast, has provided evidence of more linkages between foreign investors and local producers, such as in the cotton and horticulture sectors. In particular, linkages have been established through the use of out-grower schemes.

The ZDA, as Zambia's investment promotion agency, could play a more active role in investor-supplier match-making beyond the organisation of business delegations and international trade missions to other countries. In particular, strengthening local support industries around the MFEZs to promote linkages with investors located in the zones should be considered as an avenue for building competitive clusters in Zambia.

## 7. International and regional initiatives for strengthening investment promotion expertise

Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks?

Given the resource limitations faced by the ZDA, the government has been collaborating with international development agencies that are able to provide the assistance required to build the ZDA's capacity for investment promotion and facilitation. Examples of such initiatives included recent training in various aspects of investment promotion and marketing by the International Law Development Organisation (IDLO). In particular, IDLO provided training in the following areas:

- i) Training on Investment Negotiations.
- ii) Technical Assistance on Introduction of Best Practice Management Procedures into the ZDA.
- iii) Training on Carbon Investment.
- iv) Training on Improving Marketing Skills and Practices within the ZDA.

In addition, the International Finance Co-operation (IFC) has been providing technical assistance to the ZDA in the establishment of the One Stop Shop facility, while the World Bank has facilitated experience-sharing programmes with other developing countries, mostly in East Asia. UNCTAD provided support to the agency by enabling it to train staff in the development and implementation of the Client Charter. Furthermore, the Japanese International Co-operation agency (JICA) has also supported capacity-building programmes relating to investment promotion and facilitation.

While the ZDA is also a member of WAIPA, collaboration with international development agencies allows the ZDA to access information (including tools and techniques) for strengthening its investment facilitation functions, and for the monitoring of cost structures of investment projects. The ZDA has also been working closely with MIDA–Malaysia in developing plans and strategies for the promotion of MFEZs.

Table 3.3. **The PSD reform action plan and results achieved: 2004-11**

Item	Reform area	Reform objectives	Priority reform actions	Results achieved
1	Policy Environment and Institutions	Create the enabling macroeconomic environment, strengthen the public agencies that support PSD and enhance public/private dialogue.	<p>Ensure BOZ operational independence by implementation of the BOZ Act amended to incorporate best practices.</p> <p>Ensure delineation of responsibilities between BOZ and MoFNP.</p> <p>Review the Commitment to reduce Govt. borrowing as provided for in the medium-term expenditure framework.</p> <p>Ensure implementation of the FSDP by appointing a committee to oversee its implementation.</p> <p>Establish the credit reference bureau as called for in the FSDP.</p> <p>Formalise quarterly meetings of the Domestic Business Council as the vehicle for public/private dialogue on PSD.</p>	<p>ZDA established and operational.</p> <p>Small Claims Court established.</p> <p>Credit Reference Bureau established.</p> <p>Credit Guarantee Scheme for MSMEs established at Development Bank of Zambia.</p>
2	Regulations and Law	Improve regulatory frameworks and revise investment code to foster PSD.	<p>Provide incentives for accelerating investment in priority economic sectors.</p> <p>Form review committee (including private sector) to review contradictions between Investment Act and related legislation.</p> <p>Review and amend all investment-related legislation to ensure alignment with revised Investment Act.</p> <p>Streamline procedures and set clear approval criteria and time-based targets for immigration procedures, and accelerate review of Immigration Act.</p> <p>Accelerate current initiatives to review SIs 2 and 3 of 2002 to address restrictive retirement and termination issues.</p>	<p>Acts Parliament passed, relating to:</p> <p>Zambia Tourism Board Act.</p> <p>Tourism and Hospitality Act.</p> <p>Small Claims Court Act.</p> <p>Labour and Industrial Relations Act.</p>
3	Infrastructure	Enhance the infrastructural platform for PSD by encouraging private investment in infrastructure (PPI).	<p>Accelerate revision of the Telecom Act and the licensing framework.</p> <p>Liberalise the international telecommunications gateway.</p> <p>Monitor the commercialisation of ZESCO.</p> <p>Review energy policy.</p> <p>Complete the power rehabilitation project.</p> <p>Implement recommendations of the 2002 Transport Policy and subsequent enabling legislation for the trunk, main and district roads, and improve construction of urban and feeder roads.</p> <p>Introduce Municipal Housing Bonds.</p> <p>Provide incentives to financial institutions involved in housing development.</p>	<p>ICT Act passed.</p> <p>International Gateway liberalised.</p> <p>PPP Policy approved.</p> <p>PPP Act passed.</p> <p>PPP Unit established at Ministry of Finance and National Planning.</p> <p>Information and Communications Technology (ICT) Policy approved.</p> <p>Postal Services Act.</p> <p>Electronic Communication Transactions (ECT) Act.</p> <p>Energy Policy approved.</p>



Table 3.3. **The PSD reform action plan and results achieved: 2004-11** (cont.)

Item	Reform area	Reform objectives	Priority reform actions	Results achieved
4	Business Facilitation and Economic Diversification	Remove administrative barriers to business entry and operation, and facilitate development of high-growth sectors (tourism, gemstones, agribusiness, manufacturing).	<p>Review, rationalize and simplify all registration and licensing/ inspection procedures and set service delivery standards.</p> <p>Establish First Stop Shop (Zambia Development Agency, encompassing ZIC, EBZ, ZPA, ZEPZA, ZNTB) as opposed to One-Stop Shop to facilitate investment.</p> <p>Rationalise and consolidate licenses required to operationalise tourism enterprises.</p> <p>Rationalise with other laws as necessary and streamline environmental assessment.</p> <p>Procedures and fees while preserving essential protections.</p> <p>Develop strategy for expanding the industry, formalize the gemstone sector.</p>	<p>Computerisation of Department of Immigration, Ministry of Lands and PACRA undertaken.</p> <p>International Gateway liberalised.</p> <p>170 Business Licenses identified for elimination and rationalisation.</p> <p>E – Registry at ZDA established.</p> <p>PACRA is in the process of establishing on-line systems for name search and filing of registration forms.</p> <p>E-payment scheme introduced by ZRA with Access Bank to speed up settlement of customs payments.</p>
5	Trade Expansion	Create greater opportunities for access to regional and international markets by Zambian businesses.	<p>Develop a national export strategy, mainstreaming trade policy and placing export strategy/promotion/diversification at the centre of national development policy.</p> <p>Enhance capacity of our trade and investment promotion officers in missions abroad.</p> <p>Establishment of liaison offices to facilitate trade activities at priority border points.</p> <p>Review and update EPZ strategy and business plan and revise/finalize EPZ legislation and incentives accordingly.</p> <p>Strengthen capacity in MACO to provide SPS services for export of fresh horticultural/floriculture products, livestock and aquaculture products and enhance capacity for disease eradication/control.</p>	<p>One Stop Border Post established at Chirundu, <i>i.e.</i> main border for road cargo between Zimbabwe and Zambia.</p> <p>Pre-clearance system established by ZRA.</p> <p>Scanners installed for goods inspections at major borders by ZRA.</p> <p>Simplified trade regime established for MSMEs.</p>
6	Local Empowerment	Unlock the growth potential of the MSME sector through business development support and local empowerment initiatives.	<p>Negotiate with co-operating partners for mechanisms that will favour the participation and build capacity of local firms through tendering for donor funded projects.</p> <p>Develop preferred procurement policy for local businesses in tendering for government contracts.</p> <p>Review existing support to and develop strategy for MSMEs development.</p> <p>Develop incentives for voluntary migration from informal.</p>	<p>MSME policy approved.</p> <p>Citizens Economic Empowerment Act.</p> <p>MSME division established at ZDA.</p>

## References

- Assessment of ZESCO Against Key Performance Indicators, Energy Regulation Board, March 2011.
- Bank of Zambia (2010), *Government Gazette*, Notice No. 815, Enforcement Decision and Order on Finance Bank, Lusaka.
- Chigunta, Phil (2007), "Testing the Draft PFI Users' Toolkit Guidance to Zambia for the Self-Assessment Phase of the APRM Process", in Background Paper for the Regional Roundtable on Strengthening Investment Climate Assessment and Reform in NEPAD Countries, Lusaka.
- Financial Standards Foundation, *Country Brief: Zambia*.
- Government of Zambia (1957), *Patents Act*, Chapter 400, Lusaka.
- Government of Zambia (1991), *Constitution of the Republic of Zambia*, Part VI, Lusaka.
- Government of Zambia (1995), *Companies Act*, Lusaka.
- Government of Zambia (1999), *Judicial Act*, Number 13, Lusaka.
- Government of Zambia (2010), Ministry of Finance and National Planning, *Public-Private Partnership's: Key Definitions and Projects*, Lusaka.
- Government of Zambia (2011), Ministry of Finance and National Planning, "Sixth National Development Plan: 2011-2015", Lusaka.
- Government of Zambia (2011), *Budget Address 2011*, delivered to the National Assembly by the Minister of Finance and National Planning, Lusaka.
- Government of Zambia (2008), *Public Procurement Act*, Number 12, Lusaka.
- Zambia Association of Manufacturers (2010), *The Zambian Manufacturer*, 2nd Edition, January-April 2010, Lusaka.
- Zambia Business Survey (2010), *Profile and Productivity of Zambian Business*, Lusaka.

## Chapter 4

### Trade and Competition Policy

*This chapter investigates Zambia's reforms in terms of two policy frameworks that strongly influence the investment climate: trade policy and competition policy. In terms of trade policy, the chapter explores how Zambia has been enhancing trade policy consistency, and aiming to diversify its trading structure away from mining. A major challenge nonetheless remains the competitiveness of domestic companies, especially SMEs, which affects their ability to benefit from increasing trading opportunities achieved through sound trade policy. In terms of competition policy, the chapter analyses how the recent Competition and Consumer Protection Act aims to enhance enforcement powers of the Competition Commission and further protect consumer welfare, and what implementation challenges remain in this respect.*

## 1. Trade policy

As a landlocked country, Zambia relies on the regional trading setup both for access to the larger regional market, and for accessing global trading links. The government has thus been a driver of regional integration, and various measures to increase intra-regional trade have been launched. In fact, Zambia chaired the LDC Group during the WTO Doha Round negotiations. The DRC, South Africa and Zimbabwe are Zambia's main regional trading partners, which is reflected in its strong efforts to facilitate trade with these economies. Meanwhile most of Zambia's overall trade remains with the European Union and Switzerland.

### 1.1. Efforts made to reduce compliance costs of customs procedures

What recent efforts has the government undertaken to reduce the compliance costs of customs, regulatory and administrative procedures at the border?

Trade policy has seen substantial liberalization in the early nineties with: the removal of exchange controls, price controls and subsidies; the reduction of import duties; and the cancellation of the import and export licence requirements. In line with the government's overall objective of reducing the cost of doing business a number of programmes are being implemented by the Zambia Revenue Authority (ZRA) to reduce transit times and compliance costs of customs and regulatory and administrative procedures, especially at major borders of Zambia (such as Chirundu, Nakonde, Kasumbalesa and Lusaka International Airport). Examples of such initiatives include the following:

- I. Construction of modern border infrastructure and implementation of One Stop Border Ports (OSBPs) between Zambia and its neighbours. For example, the Chirundu OSBP with Zimbabwe was launched in 2008. Other OSBPs are being constructed at: Kasumbalesa bordering DR Congo (this facility is under a public-private partnership arrangement); and Nakonde bordering Tanzania. Plans are also at an advanced stage for extending this concept, which is supported by modern infrastructure, at Katimamulilo in Sesheke district bordering Namibia and at Kazungula

bordering Zimbabwe and Botswana. These developments are expected to induce greater efficiencies and improve service delivery at border posts.

- II. Setting up of electronic systems to facilitate clearing of imports and exports. The systems include the introduction of Electronic Payment (E-payment) for all customs duties and taxes whereby importers and exporters are allowed to pay electronically, and customs authorities do the receipting electronically. This has helped to reduce delays at the border posts as well as the costs associated with travelling to and from the entry point to settle payments.
- III. At Chirundu and Livingstone border posts, introduction of ASYCUDA++ systems and electronic scanners has facilitated border agency co-ordination in terms of electronic filing systems, and accelerated inspections of cargo goods. The latter has drastically reduced the time taken to inspect the cargo as this is now done electronically unless there is significant difference between the declared goods and what is in the container.
- IV. With the support of donors, the ZRA is implementing the Customs Accredited Client Programme (CACP) for importers who pose a lower risk to customs obligation. Currently there are 16 large importers participating in the pilot phase of this programme. Under this programme, the client is given GREEN lane treatment for its cargo, meaning that its cargo will not be subjected to rigorous inspections once it arrives at the border. Such importers are also given a credit facility which allows them to accompany their cargo without paying duties, and to make payments five days later.

The CACP is an international programme under the WTO with standards that are recognised by all WTO members. The programme is not based on the size of the company but on the ability to meet standards including the following:

- proper ordering system;
- proper accounting system;
- proper governance system; and,
- proper security system.

With regard to regulations, the government has signed the Revised Kyoto Protocol (RKP), which outlines international best practices in trade. The government has enacted legislation to align practices with the RKP. In the 2011 National Budget, the government has introduced a bill to allow the pre-clearance and pre-lodgement of entries before the cargo actually arrives. This is intended to further reduce delays at the border, as the import clearance papers are already completed prior to the arrival of the cargo goods.

The government has also started implementing programmes to facilitate regional integration through cross border trading. It is implementing the COMESA Simplified Trade Regime (STR) for quick movement of goods across the borders. The STR under implementation includes Malawi and Zimbabwe, and STR discussions have also been initiated with the DRC.

In the 2011 National budget, the legal provisions of the law on the engagement of customs clearing agents were revised. The threshold at which an individual is now required to use a clearing agent for customs clearance is USD 2 000 (up from USD 500). For small-scale cross-border traders, the cost in agency fees of appointing a clearing agent for the import of any goods worth USD 500 or more could exceed their business turnover.

Challenges still remain in the area of border agency co-ordination and the establishment of the single window system, which would enable single entry payments for the importers and exporters of goods and services. Once in place, this should also drastically improve the efficiency of clearing cargo at border posts.

## **1.2. Enhancing trade policy consistency and predictability**

What steps has the government taken to reduce trade policy uncertainty and to increase trade policy predictability for investors? Are investors and other interested parties consulted on planned changes to trade policy?

A structured consultative process involving the direct participation of the private sector has been set up under the Ministry of Commerce Trade and Industry (MCTI). The objectives are: to involve the private sector in the continuous review of the impact of trade policies, regulations, and administrative procedures on the competitiveness of the private sector; and to identify opportunities for trade expansion and economic diversification.

Given the diverse nature of trade, 6 sub-working groups have been set up so far. Sub-working groups are chaired by the private sector while the ministry provides the secretariat.

The main consultative structure is the Sector Advisory Group (SAG) chaired by the Permanent Secretary at MCTI. Members of the SAG include representatives of the private sector, civil society, donor community, and government ministries. The SAG is a standard approach introduced by the government for all sectors as a mechanism for monitoring the implementation of the FNDP. Under this arrangement, two Technical Working

Groups (TWGs) have been established to respectively deal with trade and manufacturing issues.

- i) Technical Working Group on Trade covering: Services, Trade Facilitation, Trade Related Aspect of Intellectual Property Rights, Trade Expansion, which is also one of the pillars of Private Sector Development Reform Programme (PSD-RP), the Cotonou Agreement, trade in goods, and finally the Enhanced Integrated Framework (EIF).
- ii) Technical Working Group on Manufacturing: Economic diversification away from base metal mining and towards value-addition manufacturing and processing is a top priority for the government. The aim is to promote Non-Traditional Exports (NTEs) and to stimulate investment towards technology transfer and formal sector employment generation, drawing on the multiplier effects of a strong manufacturing sector. In this regard, six sub-working groups have been established, with each allocated a manufacturing sub sector:
  - processed foods;
  - textiles and garments;
  - gemstones;
  - leather and leather produces;
  - wood and wood products;
  - engineering.

This consultative framework enables the private sector to help shape the government's trade policies and economic diversification programmes. It also enables the government to assess "supply response" to the trade measures being implemented, and to identify policy gaps, incompatible regulations, and administrative procedures hindering business and investment growth. Despite this well intentioned consultative framework, there are however some weaknesses in how it is facilitated and the extent to which it influences trade policies.

MCTI provides secretarial facilities and co-ordinates the meetings of the main SAG, TWGs and Sub-Working Groups. The main SAG meetings take place quarterly and are generally well co-ordinated. However, the scheduling of TWG and Sub-Working Group meetings is sometimes erratic, with the agenda and timings controlled by MCTI although Working Groups are chaired by the private sector. As a result, some meetings are called at short notice to address an issue of government interest rather than the structured programme of activities set out by the respective Working Groups. This affects the attendance of Working Group members, especially private sector representatives who have limited time to divert to unscheduled meetings.

This problem is exacerbated by the cost of attending meetings, as these favour Lusaka-based members of the private sector. In addition, there is no mechanism for the wider dissemination of information on the activities of the main SAG and the Working Groups.

Some of the Working Group's activities involve participation in regional negotiations. Where the private sector representatives are invited to participate, they are required to meet their own costs of travel. Together with the need for effective preparation ahead of such activities, this factor limits their participation.

Some decisions taken by the government on trade issues nonetheless do not flow from the consultative process provided by this framework. For example, in March 2011, the Zambia Bureau of Standards (ZABS) announced the re-introduction of mandatory Pre-Shipment Inspections (PSIs) for a wide range of manufacturing inputs and finished products. This measure was introduced without prior consultations or assessment of the PSIs' impact on the cost of doing business. This proposed re-introduction of PSIs, pegged at USD 350 per consignment, was also going to lead to delays in the processing of shipments. About 400 trucks originate from South Africa everyday bringing goods to Zambia. The time needed to conclude the PSI and attendant inspective charges would only increase the cost and delays of shipments.

The implementation of this scheme, which was to begin in May 2011, has been deferred following intense lobbying by the private sector. Such unilateral actions critically risk reversing the gains already made in market liberalisation and in reducing the cost of doing business. It also has the potential of lowering investor confidence.

Stances on regional trade and multi-lateral negotiations are also at times taken by the government without due regard to the private sector that will be affected by the resulting trade regime (*e.g.* Zambia's position on the EPA negotiations and on multiple memberships to SADC and COMESA). In other cases, individual private sector companies approach the government by-passing the consultative framework. This at times can result in the government adopting measures that favour a sub-sector at the expense of others.



### 1.3. Expanding Zambia's markets through regional and multi-lateral engagements

How actively is the government increasing investment opportunities through market-expanding international trade agreements and through the implementation of its WTO commitments?

Copper remains Zambia's leading export commodity, accounting for three quarters of total exports. Diversification is an objective of the government, and some advances in non-traditional exports can be observed. These products include wire, electricity cables, cement, scrap metal, gemstones, as well as high value crops such as flowers, which have been growing at an average annual rate of 20% since 2002. Agricultural exports registered the strongest growth amongst non-mineral exports.

To support this trend, Zambia is engaged in regional and international integration programmes aimed at expanding its trading links and volume to spur further diversification. Zambia is a member of a number of regional and international groupings aimed at expanding markets for domestically produced goods and services. These include membership to both Common Market for Eastern and Southern Africa (COMESA), which is currently a customs union, and the Southern Africa Development Community (SADC) Free Trade Areas (FTA). Zambia is also actively participating in the establishment of the Tripartite Free trade Area between COMESA, SADC and the East Africa Community (EAC). Besides these regional programmes, the government has also signed and is currently implementing a number of bilateral trade initiatives aimed at expanding trade, such as with China, Canada and Japan.

At the multi-lateral level, Zambia is a member of the World Trade Organisation (WTO) and currently chairs the LDC group at the WTO. Under the Cotonou agreement, Zambia has benefited from duty-free quarter free-market access from the European market and from the Generalized System of Preference (GSP) in the US market under AGOA. For further market access, Zambia has also been negotiating economic partnership agreements (EPAs) with the European Union under the Eastern Southern Africa (ESA) group.

Zambia is also a member of a number of regional and international organisations dealing with investment issues such as: UNCTAD, WAIPA, SADC, COMESA and MIGA. Amongst the various other international bodies regulating and facilitating trade, Zambia has been playing a leading role in a number of international trade arrangements. For example, Zambia chaired the LDC group in the DOHA Round and ESA-EPA group over the last two years.

Zambia hosted the International AGOA Forum in June 2011, providing a further opportunity to place the country's investment and trade potential in the international spotlight.

Membership to the above organisations has led to improved market access under preferential trade terms for the private sector that can invest and take advantage of larger foreign markets. The major challenge has however been the low productive capacity of the private sector and its difficulty to meet the competitive demands and standards of regional and international markets so as to take advantage of their increased market access.

#### **1.4. Harmonising trade distortions amongst industries**

How are trade policies that favour investment in some industries and discourage it in others reviewed with a view to reducing the costs associated with these distortions?

Currently six sectors have been considered as priorities, and have concentrated specific efforts in terms of attracting investment. These sectors are: processed foods, textiles and garments, engineering products, gemstone, leather and leather products, and wood products. In order to attract investment in these priority sectors, incentive packages have been provided that include: lower taxes, accelerated access to land (*e.g.* MFEZs and farming blocks) and simplified licensing procedures.

Distortions however occur when import tariffs are adjusted to suit particular industries. For example, in 2010 the government increased tariffs for a range of steel products, ostensibly to protect the newly established steel manufacturing plant. Resulting from this measure, tariffs for imported steel products that were previously classified as raw materials or as processed or intermediate products were increased (for instance a 15% customs duty was imposed on cold rolled coils, and a further 25% duty was placed on deformed bars and galvanized cold rolled coils). This has increased the cost of imported steel for other manufacturers, mining and construction companies that depend on the importation of the above raw materials. This can also be observed in the pharmaceutical industry where the government has imposed trade taxes on raw materials while zero-rating finished products. This has to a large extent discouraged investment in the sector because of the higher production costs resulting from trade taxes.

The government also increased the tariff for imported wheat in order to protect local farmers. This has however created a "pricing war" between

wheat farmers and milling companies who feel that local wheat is overpriced, amid intense lobbying for the banning of wheat imports.

Another example is the government's decision to restrict imports of sugar that is not fortified with Vitamin A. This has "crowded out" imports of sugar, giving local producers the advantage for setting quality standards and the prices of sugar sold on the local market.

The consultative process that has been established to deal with the priority sectors under the national export strategy document should therefore consider in advance the potential costs associated with the distortions created through measures designed to encourage investment in these priority sectors.

Trade taxes have often been used to discourage outsourcing of raw materials from cheaper sources, and this has raised the cost of production for the private sector previously reliant on imported inputs. This discourages investment in those sectors. The government should examine the economy-wide effects of proposed trade measures favouring particular industries, and ensure that the terms of reference for reviews of existing measures pay proper attention to potential effects on trade and investment activity. This would minimize the risk of impairing liberalisation commitments.<sup>1</sup>

### 1.5. Addressing market access restrictions

To what extent does trade policy support and attract investment through measures that address sectoral weaknesses in developing countries (*e.g.* export finance and import insurance)?

As an LDC, Zambia has sought to obtain maximum preferential market access conditions via the international trading system, such as the EBA Initiative and the Duty Free Quota Free arrangements of the interim EPA signed with the EU. Zambia has also been actively pursuing opportunities for expanding exports under the AGOA framework.

Regionally, Zambia has fully acceded to both the COMESA Customs Union and the SADC Free Trade Area. These arrangements enable Zambian goods meeting Rule of Origin criteria to enter both COMESA and SADC markets duty- and quota-free. Zambia is also participating in the SADC-COMESA EAC Tripartite FTA negotiations that are expected to result in the harmonisation of trade regimes in the sub-continent. Under COMESA and SADC, rigorous procedures are in place for reporting NTBs and other restriction practices. In the same vein, Zambia is obliged to adhere to regional trade policies and to avoid imposing unjustified restrictions.

In all the above arrangements, the Zambian business sector has access to wider regional and international markets. Yet simultaneously, the COMESA and SADC trade regimes have exposed the Zambian private sector to more intense competition, especially for manufactured goods originating from the more technologically-advanced producers in South Africa and Kenya. Other distortions relate to the restrictions resulting from applying SPS measures against imports, as these are often used as an indirect way of restricting imports rather than as a means of addressing actual health and safety concerns.

Amongst the main challenges faced by the Zambian private sector is the access to affordable finance for both short and long-term investment purposes. Lending base rates are at around 20% whilst few financial service institutions offer long-term finance. In addition, no explicitly structured export pre-financing products and services are easily accessible by the private sector. Export financing is largely by way of “over drafts” rather than term lending. On the other hand, insurance services are better structured to support the export sector, although this does not adequately cover needs for importing inputs used in export production.

This situation is not helped by the lack of a structured export finance strategy in Zambia. Nevertheless, short-term projects targeting MSMEs have in the past been implemented under specific donor-funded projects, such as the Market Access Trade and Enabling Policies (MATEP).

Also, The ZDA has established the Zambia Insurance Export Development Fund (ZEDEF), to support MSMEs in meeting their financing needs for export-oriented production. The ZEDEF loan programme is a rapidly disbursing credit facility and is disbursed through producer associations. The fund was part of a programme originally established and funded by the EU, and features under the Export Development Programme II. The fund is now operated by ZDA through an appointed committee.

Access to this credit facility by members of Producer Associations is on a group basis, i.e. by the Producer Association which also assumes joint responsibility for the total debt, irrespective of whether individual members repay or not. The types of loans financed include:

- Short-term loans for pre and post shipment finance for up to six months.
- Medium term loans for production and/or seasonal inputs for up to 12 months.
- Systems, assets and other internal development or capacity-building activities for the benefit of all members.

- A revolving line of credit for up to twelve months for any purpose of benefit to all members, with an appropriate debt ceiling as approved by the ZEDEF Steering Committee.

Loans are foreign currency dominated and interest is pegged at the London Inter-Bank Overnight Rate (LIBOR). Borrowers must also demonstrate capacity to generate the foreign currency with which to service the loan. This facility however has limited capacity to meet the demand from export producers.

## 2. Competition policy

Competition policy helps consumers by promoting competition between suppliers, resulting in lower prices, greater supply and better quality. Competition also contributes to the economy in general, increasing growth by promoting innovation and helping to achieve a sound business environment to attract investment.

Zambia was a pioneer in Africa in introducing competition policy. Zambia has recently significantly improved its competition framework by repealing the Competition and Fair Trading Act (CAP 417 of 1994) and replacing it with the Competition and Consumer Protection Act No. 24 of 2010 to enhance enforcement powers and further protect consumer welfare. However, implementation of its competition policy still requires Zambia to confront challenges such as the application of the Act to regulated sectors and financial and human resources constraints.

### 2.1. Clarity of competition law

Are the competition law and its application clear, transparent, and non-discriminatory? What measures does the competition authority use (e.g. publishing decisions and explanations on the approach used to enforce the laws) to help investors understand and comply with the competition law and regulations?

Competition Law in Zambia is enshrined in the Competition and Fair Trading Act (CAP 417 of 1994) which came into force in February 1995. The Act mainly aims to promote competition and consumer welfare by prohibiting cartels, abuses of dominant positions, anti-competitive mergers and restrictive trade practices. The Competition and Consumer Protection Commission formerly known as the Zambia Competition Commission (ZCC) was established in 1997 as a statutory agency to enforce the provisions of the Competition and Fair Trading Act before replacement by the current Act.

In 2010, the Competition and Fair Trading Act was repealed and replaced by the Competition and Consumer Protection Act (No. 24 of 2010). The current Act has been strengthened and includes provisions that address comprehensive consumer protection issues such as products liabilities and consumer safety, and has also granted increased investigative powers to the Commission (now designated by the 2010 Act as the “Competition and Consumer Protection Commission”). The Act seeks to promote increased transparency and non-discrimination by providing for wide stakeholder consultations in relation to *e.g.* mergers and acquisitions, consumer protection and safety, unfair trade practices, and the like. The Competition and Fair Trading Act of 1994 gave the Minister of Commerce, Trade and Industry discretionary powers to stop the Commission from carrying out investigations. These powers have been removed under the new law as decisions of the Commission can now only be reversed by the High Court.

Previously it was a requirement under the 1994 Act that all mergers and acquisitions be notified and approved by the Commission before being undertaken. This provision however tends to be enforced amongst firms already established and operating in Zambia. Foreign companies without a presence in Zambia taking over local firms do not have to comply with this requirement as ZCC has not established disclosure requirements for foreign companies setting up or acquiring existing businesses in Zambia.

The Commission has also not yet developed guidelines that address outreach programmes for compliance with the Act, however, its annual reports provide the decisions and explanations on the approaches used to enforce the competition law in the country. The Commission also holds regular workshops highlighting the procedures and guidelines that it follows. Radio and television are also used to highlight the enforcement activities on competition and consumer protection provisions. The Commission holds consultative workshops on a regular basis with other government agencies including sector regulators, private sector businesses and the judiciary to discuss and gather information on anti-competitive practices and consumer protection issues. Since the amendment of the Act in 2010, the Commission has been conducting various awareness campaigns, mainly addressing consumer protection issues.

The Zambian competition law applies to all entities, regardless of whether private, public or foreign. Although the Commission largely opens investigations when a complaint has been filed to it, it opens investigations on its own initiations as well. Zambian competition law can also be enforced by civil lawsuits in court by private parties and criminal prosecution by the Commission became possible in cartel cases without the involvement of the Director of Public Prosecution under the 2010 Act. However it is further perceived that the Commission may sometimes be restricted in applying the

competition law against government agencies and State Owned Enterprises (SOEs), especially protected by other laws.

## 2.2. Financial capacity and operational autonomy of the commission

Does the competition authority have adequate resources, political support and independence to implement effectively competition law?

Operationally, the Commission has a Board comprising appointees from independent institutions. Members of the Board elect persons to act as chairperson and vice-chairperson and, have put in place procedures for guiding their oversight functions. The Board of the Commission is also responsible for appointing a chief executive who also reports directly to the Board.

Operational autonomy of the Commission is however compromised by its reliance on government subventions to cover its costs.<sup>2</sup> The budgetary resources that it receives are normally less than its planned programmes, a factor that limits the activities that it actually undertakes. The Commission is also generally accorded low priority in the allocation of budgetary resources as can be noted from the analysis of budget releases over the period 2006-10:

Table 4.1. **National budget funding to the Zambia Competition and Consumer Protection Commission**

	ZMK million				
GRZ grants	2006	2007	2008	2009	2010
Requested budget	2 246	3 260	4 229	5 939	7 340
Treasury grant release	1 672	1 800	2 050	3 124	2 101
Deficit	574	1 460	2 179	2 815	5 239
Proportion released	25.6%	45.8%	51.5%	47.4%	71.4%

Source: Zambia Competition and Consumer Protection Commission.

As can be noted, the Commission received less than 30% of its requirements during the 2010 financial year. On the other hand, it does have limited provisions for raising revenues through Statutory Fines and Fees charged for services. The Commission charges a fee equivalent to 0.1% of the combined turnover or value of assets (whichever is the higher) affected by the merger for companies seeking approval for proposed mergers and acquisitions. Through these charges, the Commission raised about ZMK 3.1 billion in 2010, about 6 times more than was raised in 2009, but only equivalent to 42% of its budget as be noted below.

Table 4.2. **Internally generated fee income**

ZMK million

Fee category	2006	2007	2008	2009	2010
Mergers, takeovers and acquisitions	81.1	724.7	464.3	364.9	2 898.9
Relocation	64.4	201.6	182.9	145.4	95.9
Other charges	54.0	167.8	113.8	38.6	93.6
<b>Total</b>	<b>199.5</b>	<b>1 094.1</b>	<b>761.0</b>	<b>548.9</b>	<b>3 088.4</b>
Proportion of budget (%)	8.9	33.6	18.0	9.2	42.1

Source: Zambia Competition and Consumer Protection Commission.

Income generated from fees does not cover the deficit in budget financing. This revenue flow is also unpredictable as it depends on economic factors that drive mergers and acquisitions, and the skills of its staff to meet the complex business arrangements that result in the contravention levies.

Like many statutory bodies, the Competition and Consumer Protection Commission lacks adequate human and financial resources to carry out its mandate fully. Due to inadequate resources, the Commission is only present in Lusaka and does not cover other parts of the country. It largely relies on donor support to address institutional capacity development needs.

In addition, the Commission operates from the premise that it cannot apply the law against the government. The Commission consults the government on issues on which it should act upon independently. Invariably, accountability of the Commission remains diffused, especially in cases where alleged contraventions of competition law directly or indirectly involve public institutions.

### 2.3. Addressing anti-competitive practices

To what extent, and how, have the competition authority addressed anti-competitive practices by incumbent enterprises, including state-owned enterprises, that inhibit investment?

The Commission has tended to deal firmly with incumbent enterprises, whenever anti-competitive practices are reported or come to its attention. This has resulted in the Commission imposing cease and desist orders in some instances where practices have been deemed as conducts restricting or distorting competition, *e.g.* cartel cases in poultry sector in 1999 and in oil marketing sector in 2001.

The Commission however faces significant challenges in cases where SOEs are protected by related legislations. For example, the Commission



engaged government to have the international gateway and landline phone sector liberalised. Whereas the gateway has been liberalised, the landline phone sector is still state-owned. The Commission has however still continued to engage the government on this as it cannot make SOEs in the sector comply with the law without government endorsements.

The Commission also lacks specific powers to overrule decisions of other regulatory agencies where the resulting actions will contravene the Competition and Consumer Protection Act. For example, after the privatisation of Zambia Telecommunication (Zamtel) in 2010, the regulatory agency, ZICTA imposed a moratorium on the licensing of new entrants into the mobile telephone market for the next five years up to 2015 and the Commission has seen itself unable to stop this development.

The Commission has therefore been more effective in addressing anti competitive practices by private companies but less so with SOEs and those that have sector regulators.

#### **2.4. Capacity of the commission to evaluate impact of other policies on the establishment of competitive markets**

Does the competition authority have the capacity to evaluate the impact of other policies on the ability of investors to enter the market? What channels of communication and co-operation have been established between competition authority and other government agencies?

Antitrust agencies sometimes have an uneasy relationship with sector regulators. Sectoral regulators may see an antitrust agency as a potential threat for funding and prestige. This threat of competition authority may cause a sector regulator to seek a greater control over its own regulated industry. In Zambia, the broad mandate and jurisdiction over all sectors of the economy present the Commission with challenges of overlapping jurisdictions. This situation is particularly complex where other sector regulators, such as the Energy Regulation Board (ERB) and the Zambia Information Communications Technology Authority of Zambia (ZICTA), have mandates for oversights.

The Commission works with such sector regulators by referring specific issues relating to their jurisdictions to them. However, with the exception of the agencies covered by the Energy Act and the Financial and Banking Services Act, no other regulators are obliged by statute to consult with the competition authority when handling such issues. This presents difficulties of

overlap and jurisdictional conflicts between sector regulators and competition authority in Zambia.

The Commission presently lacks adequate financial and human resources to carry out assessments and to engage external experts that can address technical aspects and provide it informed advice when needed. Where time and resources permit, local business associations are consulted on mergers and acquisitions. This is however not institutionalised by the Commission, again due to resource constraints.

Presently, the competition law does not give the competence to the Commission to nullify anti-competitive practices authorized by sector regulators. The Commission has however established informal and formal channels of communications with other government agencies to strengthen its evaluation activities. For example, the Commission plans to enter into agreements with all other sector regulators as well as some government agencies in order to strengthen co-ordination and collaboration in the implementation of the Act. When communicating with the central government, the Commission however needs to go through the Ministry of Commerce, Trade and Industry who then also has to assess whether the issue merits from the perspective of the Cabinet with the reviews of other ministries. This is clearly a complex and time-consuming process that could be revised.

### **2.5. Evaluating the costs and benefits of industrial policies**

Does the competition authority periodically evaluate the costs and benefits of industrial policies and take into consideration their impact on the investment environment?

The Commission has carried out studies in cement, poultry, beef, cotton, aviation, inland port, fertiliser, maize and maize cereal sectors to assess the costs and benefits of industrial policies. Notable evaluations were also done to assist government to review the policy and law relating to the telecommunications sector (international gateway).

As a result of this review, a more competitive environment has been nurtured in the mobile telecommunications. For example, one mobile cell phone service provider slashed international call rates by about 40% in Zambia after the reduction in the licensing fees for international gateway facilities from USD 12.5 million to USD 300 000 per year. Others have since reduced roaming charges for calls within Southern Africa. Inter-connectivity costs amongst the different mobile telephone operators and Internet service

providers still remain high, however, and some mobile telephone operators have made complaints to the Commission requesting it to investigate the underlining costs for local calls in order to bring down the high charges of inter-connectivity.

The Commission is also a member of the Sector Advisory Group (SAG) Committee on industry and trade and uses this opportunity to make contributions during the review of policies being proposed. Due to resource constraints, the Commission is not able to carry out periodic evaluations on the effects of those policies that could also enable it to influence activities of the SAG. Also due to resource constraints, the Commission does not deal with all violations of the competition law, and impacts of changing industrial structures on competition.

## **2.6. Roles of the commission in privatisation activities**

What is the role of the competition authority in case of privatizations? Have competition considerations had a bearing on investment opportunities, such as not permitting market exclusivity clauses, been adequately addressed?

The Commission's role in the privatisation process has been advisory in terms of market structure and reviewing the preferred bidders before the purchase is done. In this regard, the Commission works closely with the ZDA during the privatisation process to ensure non-infringements of the competition law. Depending on the structure of the market, the Commission does have powers to impose sector wide conditions on exclusivity clauses. The Commission was also recently co-opted into a government committee that is negotiating Investment Promotion and Protection Agreements (IPPAs). Through this committee, the Commission is able to advise the governments to have IPPAs which are based on free market principles.

## **2.7. International co-operation**

To what extent is the competition authority working with its counterparts in other countries to co-operate on international competition issues, such as cross-border mergers and acquisitions, related to the investment environment?

The Commission is an active member in regional competition groupings. The Commission is a member of the Southern and East African Competition

Forum; the SADC Competition and Consumer Committee; and, the COMESA competition regime. The Commission has been assisting other African countries in reviewing their laws and regulations, and has helped formulate Competition Laws in countries that had no legislations on competition.

The Commission co-operates with other authorities on cross border issues. For the COMESA region, cross border issues can in theory be dealt with under the COMESA competition rules and regulations, although no cases have been heard to date. Co-operation under SADC is voluntary (although a new mechanism of co-operation is contemplated beyond the SADC Competition and Consumer Committee). The Commission also recently actively participated in the inaugural meeting of the African Competition Forum formed in 2011.

The Commission has been strengthening its technical capabilities through staff development and exposure to overseas competition and consumer protection authorities. This has included the Australian Competition and Consumer Commission (ACCC) and the US Federal Trade Commission (FTC), which have helped develop internal capacity among staff. The Commission has continued to expose its staff to seminars and training workshops to develop in-house expertise.

## Notes

1. OECD, PFI Toolkit, Trade Policy Chapter, [www.oecd.org/document/61/0,3746,en\\_39048427\\_39049358\\_41368893\\_1\\_1\\_1\\_1,00.html#policypractices](http://www.oecd.org/document/61/0,3746,en_39048427_39049358_41368893_1_1_1_1,00.html#policypractices).
2. Reliance on government subventions to cover agencies' costs is common among competition authorities.

## References

- Friedrich Ebert Stiftung (2003), *Trade Union Country Report: Zambia*, Lusaka.
- Government of Zambia (1957), *Patents Act*, Chapter 400, Lusaka.
- Government of Zambia (1958), *Trademarks Act*, Chapter 401, Lusaka.
- Government of Zambia (1991), *Constitution of the Republic of Zambia*, Part VI, Lusaka.
- Government of Zambia (1993), *Customs and Excise Act*, Chapter 332, Lusaka.
- Government of Zambia (1994), *Competition and Fair Trading Act*, Chapter 417, Lusaka.
- Government of Zambia (1995), *Companies Act*, Lusaka.
- Government of Zambia (1995), *Value Added Tax*, Chapter 331, Lusaka.
- International Trade Union Confederation (2011), *List of Affiliated Organizations*, Brussels.
- OECD and IBD (2010), *Peer Review: Competition Law in Panama*.
- World Trade Organisation (2009), *Trade Policy Review: Zambia*, Geneva.

Zambia Association of Chambers of Commerce and Industry (2011), *The ZACCI Journal*, Volume 1, Issue 6, Lusaka.

Zambia Association of Manufacturers (2010), *The Zambian Manufacturer*, 2nd Edition, January-April 2010, Lusaka.

Zambia Bureau of Standards (2011), *Pre-Shipment Verification of Conformity*, Lusaka.

Zambia Business Survey (2010), *Profile and Productivity of Zambian Business*, Lusaka.



## Chapter 5

### Tax Policy

*Zambia has undertaken significant efforts in reducing the tax burden for investors. This chapter investigates to what extent the Zambian tax burden is linked to broader development objectives, how tax planning benefits from international collaboration, and what influence tax incentives have on tax-planning activities. This analysis suggests that Zambia needs to do more to increase its domestic resource mobilization through simplifying and unifying its tax structures, which would notably include taking a fresh look at its fiscal incentives schemes.*

To fulfil their functions, all governments require tax revenue. However, the level of the tax burden and the design of tax policy, including how it is administered, directly influence business costs and returns on investment. Sound tax policy contributes to governments' reaching the correct policy mix between increasing domestic resource mobilization and supporting a favourable investment environment.

### 1. Linking the tax burden to broader development objectives

Has the government evaluated the level of tax burden that would be consistent with its broader development objectives and its investment attraction strategy? Is this level consistent with the actual tax burden?

The government's strategy is that of providing a taxation regime that generates sufficient income to meet national development needs, while also attracting sustained investment and economic growth. Taxation provides a predictable and stable flow of revenue to finance development objectives. Certainty and consistency of tax treatment, the avoidance of double taxation, and efficient tax administration are all important considerations for business. Perhaps the most inherently difficult challenge for governments is how to find the optimal balance between a tax regime that is business and investment friendly, while at the same time leveraging enough revenue for public service delivery (which, in turn, would make the economy more attractive to investors).

The legislative framework of taxation in Zambia is provided for under the Income Tax Act, Chapter 323, VAT Act, Chapter 331, and the Customs and Excise Act, Chapter 322 of the Laws of Zambia. The taxation of companies in Zambia is however marked by multiple rates resulting from investment incentives and favourable treatment accorded to priority sectors.

The Income Tax Act provides a definition of what income is liable to tax. The main tax provisions are consistent with international tax practices. The Zambian Income Tax law is also based on the English Law which is common in all Commonwealth countries. In addition, the taxation system does not discriminate between local and foreign investors.



The standard corporation tax rate applicable in Zambia is 35% whilst profit on income from selected economic sectors (such as farming, NTEs and manufacturers of chemical fertilizer) s lower rates of up to 15%. As a further incentive for rural enterprises, the tax chargeable on income is reduced by one-seventh for a period of 5 years. SMEs with an annual turnover of less than ZMK 250 million can also opt to pay a Presumptive Tax at 3% of turnover instead of tax being based on the assessed profit from income. In the case of commercial banks and mobile telephone operators, profits in excess of ZMK 250 millions are taxed at 40%. Listed companies on LuSE pay lower tax rates of 33%, as opposed to the general tax rate of 35%.

In addition, holders of Investment Certificates issued by the ZDA and those that have entered into special arrangement directly with the government also enjoy tax holidays (e.g. mining and electricity power generation projects). The standard and preferential tax rates presently applicable are summarized below.

Table 5.1. **Tax rates applicable in Zambia**

Corporate taxes	General	Mining	Agriculture and NTEs	ZDA incentives
Income Tax	35%	30%	15%	0% – for 5 years 50% of tax – year 6-8 75% of tax – year 9-10 Full tax afterwards
Variable Profit Tax		15% on profits exceeding 8% of turnover		
Mineral Royalty Tax	3%			
Withholding Tax on dividends, royalties and management fees	15 % (except for dividends from mining that are taxed at 0%)			
Value Added Tax	16%		Option to deferment on capital equipment and machinery	
<i>Import duties :</i>				
Capital goods and raw material	0-5%		0% on capital goods, machinery and equipment for 5 years	
Intermediate goods	15%			
Finished goods	25%			
Export duty	Export duty is exempt on all products produced for export with the exception of Copper concentrates (taxed at 15%), Cotton seed (20%) and Scrap metal (taxed at 25%).			

Mining companies also enjoy 100% capital allowance. The export duty rates charged on selected products are largely intended to encourage local value addition through processing and exporting of finished products. For

example, the export of copper concentrates attracts 15% duty as a way of encouraging mining companies to use local refinery capacities and to stimulate increased job creation in the economy.

Meanwhile personal income tax (*i.e.* Pay As You Earn – PAYE) is charged at 35% for income above ZMK 4.2 million. The applicable structure effective from April 2011 is indicated below.

Table 5.2. **Personal income tax schedule in Zambia**

Personal income tax schedule	Rate (%)
On income from zero (0) to ZMK 1 000 000	0
On income from ZMK 1 000 001 to ZMK 1 735 000	25
On income from ZMK 1 735 001 to ZMK 4 200 000	30
On income above ZMK 4 200 001	35

In order to widen the tax net, the ZRA has streamlined its tax administration systems through the introduction of improved ICT based tax assessments and through specialized training of Tax Inspectors. The ZRA has also established separate Large, Small and Mining Tax Payer offices. Compliance enforcement however remains a major challenge, especially amongst the taxpayers in the informal sector as they are not registered for tax and as conducting field audits is costly. In addition, tax contributions from mining companies have remained low despite high international copper metal prices. The mining companies are still paying low taxes due to the Development Agreements (DAs, see below), and subsequent revisions of the mining tax regime still offer them more than 20 years' exemption from paying Income Tax. Despite attempts at widening the tax base, such as the reintroduction of the Windfall Tax on Copper and Cobalt export earnings which was discontinued after only a few months of its introduction (discussed further below), sources of actual tax revenues remain narrow (below 17% of GDP). For example, in the 2011 budget tax revenues (*i.e.* Direct taxes, VAT, Customs and Excise) accounted for about 75% the total government revenue sources which were allocated to finance national development programmes. The composition of each tax revenue source is indicated below.

The contribution of PAYE to direct tax revenue in the 2011 budget is about 24%, which is collected from less than 500 000 formal sector employees. In comparison, company tax amounts to 9% and the mining sector's contribution to direct taxes is 12% and this despite the high copper metal prices on international markets that have substantially increased the profit profile of copper mining companies.

The actual tax burden faced by investors holding ZDA Investment Certificates (also see Chapter on Investment Promotion and Facilitation) is

Table 5.3. **Contribution of tax revenues to total resources: 2011 budget**

Revenue source	Amount (ZMK billion)	% of total tax	% of total revenues
<b>Direct taxes</b>			
Company tax	1 337.1	9	
Other income tax	894.7	6	
Pay As You Earn	3 710.6	24	
Mining tax	1 858.4	12	
<b>Subtotal</b>	<b>7 800.8</b>	<b>51</b>	<b>38</b>
<b>Value added tax</b>			
Domestic	828.5	5	
Import	3 170.3	21	
<b>Subtotal</b>	<b>3 998.8</b>	<b>26</b>	<b>19</b>
<b>Customs and excise duty</b>			
Customs	1 674.5	11	
Excise	1 442.2	9	
Fuel levy	313.8	2	
<b>Subtotal</b>	<b>3 430.5</b>	<b>23</b>	<b>17</b>
Total tax revenue	15 230.1	100	
Non-tax revenue	539.0		<b>3</b>
Domestic financing	1 219.8		<b>6</b>
<b>Foreign grants</b>			
Grants – Budget support	586.6		
Project support	780.6		
SWAPS	220.5		
<b>Subtotal</b>	<b>1 587.7</b>		<b>8</b>
<b>Foreign loans</b>			
Project financing	1 762.0		
Budget financing	198.8		
<b>Subtotal</b>	<b>1 860.8</b>		<b>10</b>
<b>GRANT TOTAL</b>	<b>20 537.40</b>		<b>100</b>

further reduced by the capital allowances and 5 year tax holiday that they enjoy.

The ZDA Act provides a wide range of other tax allowances packaged as investment incentives, as listed below.

Existence of tax incentives and other sector specific rebates has reduced the corporate Income Tax burden to 2.7% of GDP, i.e. slightly lower than the regional average of 2.94%. The tax burden is kept low largely to attract Foreign Direct Investment (FDI) by providing more attractive incentives than what is offered elsewhere in the region.

**Box 5.1. Tax allowances provided for holders of investment licenses**

- Implements, machinery and plant used for farming, manufacturing or tourism qualify for wear and tear allowance of 50% of the cost per year in the first two years;
- building used for manufacturing, mining or hotel qualify for wear and tear allowance of 10% of cost in first year and 5% of cost per year in subsequent years;
- duty free importation of most capital equipment for the mining and agriculture sectors;
- farm works allowance of 100% of expenditure on stumping, clearing, prevention of soil erosion, bore holes, aerial and geophysical surveys and water conservation; and,
- development allowance of 10% of the cost of capital expenditure on growing of coffee, banana plants, citrus fruits or similar plants.
- Farm improvement allowance – capital expenditure incurred on farm improvement is allowable in the year of incurring the expenditure.
- Initial allowance of 10% on capital expenditure incurred on the construction or improvement of an industrial building is deductible.
- Foreign exchange losses of a capital nature incurred on borrowings used for the building and construction of an industrial or commercial building are tax deductible. This is intended to mitigate foreign exchange losses resulting from the volatility of the Zambian Kwacha for investors borrowing from foreign capital markets and earning in the local currency.
- Dividends declared by companies assembling motor vehicles, motor cycles and bicycles are exempt for the first five years of initial declaration of dividends.
- The carrying forward of losses for tax purposes are restricted to 5 years, except for hydro and thermal power generation companies that are allowed up to 10 years.

## 2. Link between average tax burden on domestic projects and policy goals

What is the average tax burden on domestic profits, taking into account statutory provisions, tax-planning opportunities and compliance costs? Is the tax burden on the business enterprises of investors appropriate given the policy goals and objectives of the tax system?

The average tax burden on profits is 10%, allowing for incentives and compliance as in the calculations of the “Marginal Effective Tax Rate (METR)” illustrated below:<sup>1</sup>

Table 5.4. **Marginal effective tax burden per sector in Zambia**

Sector	Marginal Effective Tax Rate (METR), %
Agriculture	10
Tourism	5
Mining	0
Manufacturing	5
Finance	30
<b>Average effective tax rate</b>	<b>10</b>
SME Sector	22.5

Source: ZRA.

The above breakdown shows that mining companies are effectively paying 0% Income Tax due to the tax holiday that they enjoy. The sectoral tax burden also indicates the government’s priority of providing tax incentives in order to stimulate investment in selected sectors. Tourism, Mining, Agriculture and Manufacturing currently form the core of government’s policy for accelerating private sector-led economic growth. Thus lower tax burdens in targeted sectors are in line with the government’s policy of attracting FDI.

The average marginal effective tax rates for SMEs are however higher than that for large companies, as most SMEs do not enjoy the tax incentives and other tax relief schemes enjoyed by the large corporations. For example most SMEs are not registered for VAT exemption, as they do not meet the minimum VAT threshold of turnover of ZMK 200 million per annum, and are therefore unable to make input tax claims for their purchases and costs of production. As a result of the above, only a few SMEs utilise available rebates, such as import duty exemptions on their capital expenditure. In addition, the presumptive tax of 3% on SMEs is calculated on their turnover and not on profit, meaning that the SMEs are not able to deduct operating expenses from

their taxable income. This is because the majority are in the informal sector and cannot afford accounting assistance in the preparation of tax returns. It is also difficult to audit the accounts of SMEs as their records are not computerised and regularly updated.

Meanwhile the 0% METR on mining resulting from the special incentives that have been given to this sector has created distortions in the taxation system and transferred the burden to other sectors, putting pressure on maintaining high PAYE rates in order to compensate for weak resource mobilization. The situation of low effective taxation for mining is a result of the Development Agreements (DAs) signed by the government and mining investors in 2000 when Zambia Consolidated Copper Mines (ZCCM) was being privatised. The government needed to offer long term incentives in order to encourage the private sector to purchase the assets of ZCCM and invest in new mining ventures, at a time when copper prices were low. In this regard, the government signed Development Agreements providing a number of special incentives that were subsequently included in the mining taxation schedules appended to the Mining and Minerals Development Act of 2005. These included such conditions as a Mineral Royalty Tax of 0.6%; Corporation Tax at 25%; a tax holiday of 20 years; full rebates on VAT and import duties on all plant equipment; and limits on duties payable on consumables used for mining over a period of 10 years.

When the international metal prices of copper rebounded in 2007, the government decided to review the mining taxation regime and subsequently amended the Mining and Minerals Development Act in April 2008. The changes included: a Mineral Royalty Tax of 3%; the introduction of a Variable Profit Tax at 30%; and the Windfall Tax on copper and cobalt which used the international base metal prices as reference prices (see Table 5.5 below).

Table 5.5. **Windfall tax price triggers in Zambia**

Rate (%)	Copper	Cobalt
25	Price exceeding USD 5 512/MT	Price exceeding USD 55 116/MT
50	Price exceeding USD 6 614/MT	Price exceeding USD 77 162/MT
75	Price exceeding USD 7 716/MT	Price exceeding USD 88 185/MT

The Windfall Tax was payable quarterly and computed on the gross sales revenue whilst reference prices were based on the London Metal Exchange (LME) for copper, and on the Metal Bulletin for cobalt. No deduction for refinery costs was allowed. The Windfall Tax was also not deductible for income tax purposes.

The changes to the mining taxation regime introduced after April 2008 created disputes with the mining companies that felt that the measures

abrogated the Development Agreements. This dispute is still to be resolved although in January 2009, the government suspended the Windfall Tax.

The current mining taxation regime has become a source of discord amongst the general population who feel that Zambia is not receiving a fair share of benefits from mining, given the buoyant international prices. Some members of the business community also feel that the mining sector is enjoying inequitable favourable treatment and not sharing the tax burden. There is a general feeling that tax rates could be lowered further if the mining sector made commensurate contributions.

### 3. Limitations of tax policy when framework conditions and market characteristics are weak

If framework conditions and market characteristics for investors are weak, has the government evaluated the limitations of using tax policy alone to favourably influence investment decisions?

The long-term expectation of the government is to re-align the taxation structure away from dependency on import tariffs, and towards consumption and profit taxes. The worsening of some economic fundamentals has however not provided conditions for substantial re-aligning of the tax systems. While the government uses tax policy as a tool for investment attraction, it acknowledges its limitations. In this regard, the government has been simplifying the administrative procedures involved in obtaining licenses and acquiring land. In addition, the government has been developing farm blocks and industrial zones (see also Chapter on Investment Policy), which makes physical infrastructure available (such as feeder roads, telecommunications facilities, public services, and electricity supply). These initiatives are intended to diminish the need to rely on tax incentives to compensate the cost of establishing and operating business ventures.

This strategy is consistent with the government's efforts to create a conducive regulatory environment and to provide the basic infrastructure to enhance private sector investment. An important element is that of maintaining policy and regulatory certainty. In this regard, the government faces the challenge of ensuring that social and infrastructural investments are able to complement private sector investment initiatives (see also the Chapter on Infrastructure Development).

#### 4. Influence of targeted tax incentives on tax-planning activities

Have targeted tax incentives for investors and others created unintended tax-planning opportunities? Are these opportunities and other problems associated with targeted tax incentives evaluated and taken into account when assessing their cost-effectiveness?

Incentives declared under the Ministry of Finance and National Planning are evaluated through the National Budget process, and gains and losses are announced during the National Budget presentation. However, there is no current report that details revenue losses arising from tax incentives.

Differential tax rates are intended to attract firms to locate in certain parts of the country or invest in certain sectors where they would not normally set up operations. Though attempts to boost investment in priority sectors of the economy, it could also lead to resource misallocation in the economy. Also multiple tax rates are not a desirable tax system as they tend to burden tax administration as well as encourage tax avoidance activities.

It is therefore not surprising that multiple tax expenditures – principally in the form of multiple and lower-than-standard corporate rates – reduce the Corporate Income Tax (CIT) yield to 2.7% of GDP, which is lower than the unweighted average for SADC and EAC. Overall, Zambia is collecting revenues at lower than 17% of GDP.

Tax incentives have negative effects on government revenue through tax planning activities. There is a growing trend of companies engaging in several business activities, some of them encompassing sectors that have incentives and some in sectors without. In this way, companies may engage in tax planning activities whereby more profits are declared in sectors with tax incentives. Companies also set up businesses in sectors in which they would not have invested had the incentives been absent, often closing shop once the window of these incentives comes to an end, and re-establishing again in sectors with other tax incentives.

In addition, the administration of tax incentives is a major challenge, as companies that hold Investment Licences issued with incentives must undergo a lengthy bureaucratic process to access these. For example, access to the incentives provided under the ZDA Act involves two main stages:

##### **Stage 1:**

- The company submits to the ZDA a list of capital goods (machinery and equipment) that it will be importing in the course of implementing the investment project.
- The ZDA submits the list to the Ministry of Finance and National Planning for approval.



- The Ministry of Finance scrutinizes the list in line with approved definitions and HS codes<sup>2</sup> for capital goods, to assess whether the items on the list qualify for the duty exemptions, and eliminates un-qualifying items.<sup>3</sup>
- The approved list is sent back to the ZDA which liaises with the investor with regards the items approved on the list.

### **Stage 2:**

- When the investor undertakes to import a batch/consignment of any of the items on the approved list, he/she then submits the list of the imports expected in that batch/consignment (with invoice values and source country information) to the ZDA, which prepares a letter of rebate of the batch/consignment for the client to present to ZRA at the point of entry, enabling the clearance of the items.
- A copy of this letter is sent to ZRA for validation.<sup>4</sup>

The Stage 2 process of obtaining letters of rebate for the import batches is necessary in order to avoid abuse of the incentive facility, as there is a possibility that some companies could forge the initial approvals issued by the Ministry of Finance and use them for unauthorized/illegal import duty exemption claims.

While the ultimate policy shift should be towards a downscaling of fiscal incentives, in the short-term there is a need to streamline and lessen the processes of access to the incentives, for the convenience of investors. This could include enhancing co-ordination among the ZDA and ZRA on the administration of tax incentives, by linking the two organisations' information management systems and tax incentives databases so that tax incentive approvals issued by the ZDA and validated by the Ministry of Finance can easily be reconciled on-line by ZRA.

## **5. Reporting of tax expenditure accounts for budget purposes**

Are tax expenditure accounts reported and sunset clauses used to inform and manage the budget process?

Tax expenditure and tax revenue accounts are not prepared and reported in the same manner. However, sunset clauses and revenue losses arising from tax incentives are used in making projections in the budgeting process. Several sunset clauses in the Income Tax Act are normally included in the tax schedules published as Practice Notes by the ZRA each year.

## 6. International collaboration and countering abusive tax planning strategies

Are tax policy and tax administration officials working with their counterparts in other countries to expand their tax treaty network and to counter abusive cross-border tax planning strategies?

Officials from the Ministry of Finance and National Planning together with the ZRA are working closely with their counterparts in other jurisdictions through double taxation agreements and organisations such as: the African Union; OECD; African Tax Forum; World Customs Organisation; SADC; COMESA Technical Committees on Customs; etc. Zambian Officials are often invited to attend discussions on issues pertaining to tax administration and customs border control organised by international organisations.

An example of the outcomes of networking on tax treaties are the double taxation agreements that Zambia has signed with a number of countries. These treaties, or agreements, eliminate double taxation for people who would otherwise have to pay tax on the same income in two countries. Double taxation agreements form a vital part of the investment framework. They become even more important for a country aiming to moving away from a costly incentives scheme. The list of countries with which Zambia has signed double taxation agreements is shown below.

Table 5.6. **Double taxation agreements**

Country
Canada
Denmark
Finland
France
Germany
Netherlands
India
Ireland
Italy
Japan
Kenya
Norway
Romania
Sweden
Tanzania
Uganda
United Kingdom
South Africa
Mauritius
Yugoslavia
Zimbabwe

Double taxation agreements with Mauritius, Yugoslavia and Zimbabwe have not yet been ratified.

### Notes

1. The METR is calculated by determining actual effective rates of tax paid, after taking into account tax rebates and other sector specific allowances, etc.
2. HS Codes are standard industrial classifications and coding systems used in international trade of goods and services.
3. There are sometimes inconsistencies in classifying the capital items by the Ministry. For example, one company may have an item disqualified as a capital item where as another may have a similar item approved as a capital item.
4. The investor may not import all the approved capital items at once, and therefore is required to obtain supporting documentation as above for all the piecemeal imports of the approved items inventory.

### References

- Government of Zambia (1991), *Constitution of the Republic of Zambia*, Part VI, Lusaka.
- Government of Zambia (1993), *Customs and Excise Act*, Chapter 332, Lusaka.
- Government of Zambia (1995), *Companies Act*, Lusaka.
- Government of Zambia (1995), *Value Added Tax*, Chapter 331, Lusaka.
- Government of Zambia (2011), Ministry of Finance and National Planning, "Sixth National Development Plan: 2011-2015", Lusaka.
- Government of Zambia (2011), *Budget Address 2011*, Delivered to the National Assembly by the Minister of Finance and National Planning, Lusaka.
- International Monetary Fund (2010), *Zambia: Fifth Review Under the Three-Year Arrangement under the Extended Credit Facility, Requests for Waive of Non-observance of Performance Criteria and Modification of Performance Criteria, and Financing Assurance Review*, Washington, DC.



## Chapter 6

### Corporate Governance

*Although there is no official policy framework for corporate governance in place in Zambia, some corporate governance standards have been enshrined in critical legislation. This chapter notably investigates the strengths and limitations of the Companies Act and of its implementing agency the Patents and Company Registration Agency (PACRA). Regulation of state-owned companies is also covered.*

The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets, and ultimately the development of more sustainable sources of financing. Zambia has a good corporate governance framework, as well as a number of voluntary initiatives that, if strengthened, could improve law enforcement and companies' compliance to governance principles.

### 1. Entrenching corporate governance standards in regulatory frameworks

What steps have been taken to develop a corporate governance framework that promotes overall economic performance and transparent and efficient markets? Has this been translated into a coherent and consistent regulatory framework, backed by effective enforcement?

The government has recognised the importance of entrenching high corporate governance standards in the conduct of business affairs. Although there is no official policy framework in place, some corporate governance standards have been enshrined in critical legislation that is used to regulate the establishment and operation of business undertakings, such as the following:

- the Companies Act for the formation, administration, and winding up of registered corporate bodies, implemented by the Patents and Company Registration Agency (PACRA);
- the Banking and Financial Services Act (BFSA), implemented by BOZ;
- the Securities Exchange Act, implemented by the Securities Exchange Commission (SEC);
- the Pensions and Insurance Authority Act, implemented by the PIA; and,
- the Zambia Institute of Chartered Accountants (ZICA) Act, which regulates the conduct of all professional accountants and auditors.

Zambia also scores high on a range of global corporate governance indicators. In particular, Zambia's legal framework is recognised to effectively protect shareholder rights. Table 6.1 below provides some highlights of

Table 6.1. **Selected** **Zambian** **indicators** **on** **OECD** **Principles** **on** **Corporate** **Governance**, **2006**<sup>1</sup>

OECD Principle	Fully implemented	Broadly implemented
Ensuring the basis for an effective corporate governance framework		
Overall corporate governance framework		x
The rights of shareholders and key ownership functions		
Elect and remove board members of the board	x	
Share in profits of the corporation		x
Amendments to statutes, or articles of incorporation	x	
Authorization of additional shares	x	
Extraordinary transactions, including sales of major corporate assets	x	
Shareholders AGM rights		
Sufficient and timely information at the general meeting		x
Availability to vote both in person or in absentia		x
Control arrangements allowed to function		
Transparent and fair rules governing acquisition of corporate control		x
Anti-take-over devices		x
Shareholders allowed to consult each other		x
Equitable treatment of shareholders		
Equality, fairness and disclosure of rights within and between share classes	x	
Minority protection from controlling shareholder abuse; minority redress		x
Custodian voting by instruction from beneficial owners	x	
Equitable treatment of all shareholders at GM		x
Role of stakeholders in corporate governance		
Legal rights of stakeholders respected		x
Redress for violation of rights		x
Performance-enhancing mechanisms		x
Disclosure standards		
Financial and operating results of the company		x
Company objectives		x
Responsibilities of the board		
Board oversight of general corporate strategy and major decisions		x
Selecting/compensating/monitoring/replacing key executives	x	
Aligning executive and board pay		x
Exercise objective judgment		
Clear and transparent rules on board committees		x
Board commitment to responsibilities		x
Access to information		x

1. Principles are Fully Implemented if the OECD Principle is fully implemented in all material with respect to all of the applicable Essential Criteria. Where the Essential Criteria refer to standards, all material aspects of the standards are present. Where the Essential Criteria refer to corporate governance practices, the relevant practices are widespread. Where the Essential Criteria refer to enforcement mechanisms, they are adequate, effective enforcement mechanisms. A Broadly Implemented assessment is likely appropriate where one or more of the applicable Essential Criteria are less than fully implemented in all material respects.

Source: World Bank, *Corporate Governance Country Assessment, Zambia, 2006*.

Zambia's corporate governance achievements and observance of OECD Corporate Governance Principles.

Under the Companies Act, minimum standards have been set relating to the corporate governance practices that must be included in the provisions of the Articles of Association before a company can be registered. These cover aspects such as: role and functions of Directors including limits on their powers; requirement to hold annual general meetings for shareholders not later than 3 months after the end of the financial year; reports to be presented during the annual general meeting, which must include financial statements (profit and loss accounts and balance sheet); and disclosure of payments made to directors. Each company is also required to appoint external auditors whose reports should be tabled at the annual general meeting. The Companies Act also includes directly enforceable sanctions that can be applied to the directors for failure to comply with its provisions.

The main limitation of the Companies Act is that there are no mechanisms for monitoring compliance. Annual returns made to PACRA must not necessarily include minutes of the annual general meeting and audited financial statements. Another limitation is that very few SMEs can meet the compliance costs associated with preparing audited accounts and appointing independent directors. In practice, companies that comply with the governance provisions of the Companies Act largely do so on a voluntary basis. The Companies Act mainly prescribes mandatory minimum standards that enable the inclusion of checks and balances among the key stakeholders, *i.e.* the members of a company, directors and the company itself, relating to their rights and powers.

Financial institutions regulated under the BFSA are subject to more stringent corporate governance standards enforced by BOZ. Amongst the standards set are the following: all directors are required disclose interest in all financial transactions undertaken on their behalf by the institution on whose board that they sit; an individual cannot hold more than 25% interest in a bank; the Chief Executive Officer (CEO) or an employee of the institution cannot chair the board, regardless of their shareholding; audit and loans committees of the board have to be established; and the board must include persons that are neither employees nor shareholders of the business undertaking. In addition, the BFSA sets out minimum qualifications for persons that may be appointed as CEO, which is a condition for the issuance and continued validity of the operating licence. Compliance to the BFSA provisions is rigidly enforced by BOZ. Failure to comply attracts punitive sanctions that may include repossession of the institution by BOZ or the disqualification of shareholders from continuing to own the undertaking.



To the extent that a financial institution regulated under the BFSA must have initially registered and obtained a Certificate of Incorporation issued under the Companies Act from PACRA, the corporate governance standards enforced by BOZ do fill the limitation gaps of the Companies Act. Zambia recently adopted the Southern African Development Community (SADC) Central Bank Model law. The law has enshrined 3 pillars of central banking, which are independence, accountability and transparency. BOZ has already embarked on a process of reforming and modernizing the BFSA and the Bank of Zambia and National Payment Systems Acts, as part of the process of domesticating the SADC model law.

As with the BFSA, the Securities and Exchange Act has a range of corporate governance provisions with which all publicly listed companies must comply, including the exercise of prudential and fiduciary responsibilities. This also applies to the Pensions and Insurance Authority (PIA) Act relating to businesses providing pensions and insurance services. As with the BFSA, the companies subject to these regulations are firstly required to have registered their business undertaking with PACRA, which reduces the limitations of the Companies Act.

Legislative frameworks regulating the majority of economic sectors (*i.e.* other than those highlighted above) do not include explicitly stated corporate governance provisions. All companies that subject themselves to external audit by ZICA-registered accountants and auditors are however required to comply with corporate governance provisions set out in the International Accounting Standards (IAS) adopted by ZICA. If corporate governance failings have a material influence on the financial position of the company, however, the enforcement of these requirements is limited to the accounts not being certified.

Although challenges remain, in particular with regards to harmonising and updating existing laws and regulations, some important reforms have been recorded. For example, the enactment of the Public Disclosure (Protection of Whistleblowers) Act in 2010 (also see Chapter on Public Governance) is an important step towards strengthening the legal framework.

## 2. Corporate governance framework and treatment of shareholders

How does the corporate governance framework ensure the equitable treatment of shareholders?

The Companies Act is premised on the philosophy that internal relations in a company should be democratic. Discretion is left to the members of the

companies to determine how they will govern their affairs. The Act therefore only stipulates the minimum rights enjoyable by shareholders, such as: the right to be notified, to be given adequate notice, to attend, speak and vote at meetings. Specific provisions are however included in the Act that are aimed at protecting minority shareholders and at guaranteeing their effective participation in decision making, particularly where the intended actions are likely to adversely affect them. For example, amendment of the Articles of Association which may affect shareholder rights requires a special resolution. Similarly, altering a company's share capital can only be done by special resolution. A special resolution must be passed by a majority of at least three fourths of votes cast by such members of the company as are entitled so to do (the vote can be in person or by proxy at a meeting duly convened and held). A notice of 21 days is also required for a meeting at which a special resolution is to be passed. Shareholders can also requisition for an ordinary general meeting. Lastly, shareholders can alter the Articles of Association at a duly convened general meeting, provided they meet the minimum threshold *vis-à-vis* voting rights.

### 3. Legal redress where shareholder rights are violated

What are the procedures and institutional structures for legal redress in cases of violation of shareholder rights? Do these function as a credible deterrent to such violations? What measures are in place to monitor and prevent corporate insiders and controlling owners from extracting private benefits?

All rights created by the Companies Act are legal rights and are therefore enforceable in the courts of law. In this regard, an action taken contrary to the provisions of the Companies Act can be annulled by the courts for being *ultra-vires* to the Act. Once declared as such, actions are deemed to have no legal effect. Similarly any omission may be enforced through a court order, and violation of articles of association (depending on the nature of the violation) may be enforced as a breach of contract, and damages or other appropriate equitable remedies ordered. Where the act has a criminal element, such as fraudulent trading, the offender and the accomplices may equally be prosecuted. Such offenders are liable on conviction to a fine or custodial sentence or both.

With regards to abuse of leadership positions, Sections 218-220 of the Companies Act prohibits directors from using their positions at the expense of the company and shareholders, and from acting in their own interest. In

addition, Sections 3.1 and 3.2 of the Institute of Directors of Zambia Corporate Governance Code, though voluntary, give company directors fiduciary duties of care to the company and loyalty to its shareholders.

The Lusaka Stock Exchange (LuSE) is moreover well-regulated by the Securities and Exchange Commission (SEC) to ensure insider trading is not practiced. Punitive measures are enforced should this be identified in PLCs.

#### 4. Procedures and institutions enabling shareholders to influence company affairs

What procedures and institutions are in place to ensure that shareholders have the ability to influence significantly the company?

The Companies Act prescribes several requirements that are intended to guarantee shareholder involvement in managing the company's affairs. Firstly, shareholders appoint and reserve the right to remove board members who are responsible for the management of the company. Secondly, there is a mandatory requirement for board members to convene annual general meeting and to report to shareholders. Also where appropriate, shareholders can request Annual General Meetings. They also have a statutory right to be notified of any general meeting, and to speak and vote at general meetings. To facilitate the attendance, there is a further requirement that meetings be held within Zambia. The enforcement of these rights is however mainly exercised through the courts of law. Annual general meetings are held to allow all shareholders have a say in the direction of the company.

#### 5. Company information disclosure requirements

By what standards and procedures do companies meet the market demand for timely, reliable and relevant disclosure, including information about the company's ownership and control structure?

All information held in the company's register maintained by PACRA is public and therefore accessible to the general public. In order to ensure accurate and up-to-date information, the Companies Act makes it mandatory for all companies to furnish the registry with an annual return containing vital information on the state of the company. This includes information relating to public shareholding. For public limited companies annual returns should be accompanied by financial statements. Aside from annual returns,

developments in the company such as allotment of shares, change of directors and change of company name have to be notified to the Registrar of Companies at PACRA.

The BFSA requires all banks and some non-bank financial institutions to publish their quarterly financial statements in the print media. They are however not obliged to publish information related to the company shareholding structure. Publicly listed companies, meanwhile, have to comply with additional reporting requirements that include publishing cautionary notes in the print and electronic media concerning any changes to ownership, major investments, or anticipated adverse conditions that the company may face and that could affect its share price or rights of its shareholders.

## 6. Oversight role of boards

How does the corporate governance framework ensure the board plays a central role in the strategic guidance of the company, and in the effective monitoring of management, and that the board is accountable to the company and its shareholders? Does the framework also recognise the rights of stakeholders established by law or through mutual agreements, and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises?

The Companies Act vests a broad range of powers in the board of directors, including the legal mandate to manage the company's affairs. The board is empowered to appoint the company's CEO to shoulder responsibility for the day-to-day running of the company's affairs. It is also empowered to exercise, on behalf of the company all the powers under the Act and/or the Articles of Association. These may include borrowing and charging company assets and conferring powers of attorney. While shareholders can remove directors, the removal procedure is stringent in that there must be justification. Prior notice of intention to place a resolution at a general meeting proposing to remove a director must obtain the director's written response to any charges levelled, and be read at the general meeting. In order to ensure accountability, boards are also obligated to convene annual general meetings at which the reports detailing the performance of the company are tendered.

The corporate governance framework ensures that the Board plays a central role in the strategic guidance of the company by convening quarterly board meetings. The Board of Directors is usually non-executive and remains accountable to shareholders. Properly-run Boards ensure sustainable wealth

and job creation by networking and interacting in the market place through established laws and regulations.

## 7. Inculcating good corporate governance culture in private companies

What has been done, and what more should be done in terms of voluntary initiatives and training to encourage and develop a good corporate governance culture in the private sector? Has a review been undertaken of the national corporate governance system against the *OECD Principles of Corporate Governance*? Has the result of that review been made public?

The Institute of Directors of Zambia (IODZ), a professional body established in 2000 which is also accredited to the UK Institute of Directors, offers training in corporate governance. The IODZ has also been conducting advocacy campaigns to encourage companies to introduce “Board Charters” aimed at promoting high ethical practices. On request, the IODZ also works with individual companies to help them set and implement good corporate governance practices. In fact, it is in the area of training and capacity building for directors and IODZ trainers that great improvements have been recorded in recent years. For instance, between, July 2010 and April 2011, 46 trainers and 180 directors have been trained.

The IODZ is however not a legislated body and relies on voluntary compliance to the corporate governance standards that it advocates. In addition, there is no mechanism for harmonising the standards that are included in the legislative frameworks of regulatory agencies. On the other hand, a number of companies, especially public ones, are increasingly adopting international best practice standards promoted by the IODZ on a voluntary basis and with the direct encouragement of the SEC. However overall, the standards of corporate governance in the country need to be improved in particular the legal framework needs strengthening as concerns the fiduciary duties of directors. Similarly, there is need for measures to encourage training, performance appraisal, and a better skills mix for board members.

PACRA is presently conducting a review of the Companies Act in order to benchmark current corporate governance provisions, but not necessarily in the context of *OECD Principles of Corporate Governance*. However, other globally recognised standards, such as the World Bank’s principles and guidelines for effective insolvency and creditor rights system, are being considered for inclusion in the Companies Act.

## 8. Regulation of State Owned Enterprises in a competitive market environment

How is the ownership function of State-Owned Enterprises (SOEs) structured to ensure a level playing field, competitive market conditions, and independent regulation? What are the processes in place to ensure the state does not interfere in day-to-day management of SOEs and that board members can effectively carry out their role of strategic oversight, rather than to serve as a conduit for undue political pressure? How are SOEs effectively held accountable to the government, the public, and to other shareholders (if any)?

Zambia has essentially two categories of State Owned Enterprises (SOEs), namely: those incorporated under the Companies Act; and, those established by particular statutes, also referred to as “statutory corporations”. As a result of the privatisation programme, over 260 SOEs have been privatized since the early nineties. A few SOEs remain in the energy, building, finance and insurance services.

In 2007, the World Bank assessed that the Zambia SOE framework lacked a co-ordinating ownership unit: the oversight of individual SOEs tends to reside with portfolio ministries that also have regulatory and executive responsibilities in the SOEs’ areas of operation. The state-owned sector also remains opaque, even to segments of the government that should be able to access information on SOEs.

The government has relinquished management control to appointed boards of directors, whose composition includes a mix of private sector, civil society and government representatives in all SOEs and statutory corporations. Their independence is however limited as most boards have an overwhelming majority of government officials, and as Members of boards appointed from the private sector and CSOs do not have security of tenure, as the portfolio minister can have them removed and appoint new persons.

In principle, SOEs do not enjoy preferential treatment by virtue of government ownership. They do however obtain protection where they are not able to compete or face adverse market conditions. For example, the ZICTA Act has a provision restricting the private sector from undertaking postal services that would directly compete with the Zambia Postal Services.<sup>1</sup> It is important that the government restrains from shielding SOEs from competition, as this reduces any incentive they may have to improve competitiveness.

Transparency and accountability go hand-in-hand with autonomy. They reassure investors that government agencies, including SOEs, exercise their powers responsibly and help to instil confidence that investors entering new markets compete on an equal basis. Following some basic corporate governance principles, including abiding by the same accounting and auditing standards as for listed companies, can help SOEs to raise their standards of accountability and transparency. SOEs should develop efficient internal audit procedures and be subjected to an annual independent external audit based on international standards. Adequate disclosure of material information is also important to foster accountability, in particular relating to any financial assistance received from the state, to commitments made on behalf of the state, and to any material transactions with related entities. Such transactions are often an important cause of an uneven playing field for investors, particularly in weak institutional environments. Annually publishing an aggregate report on SOEs, focusing on their financial performance and their valuation, and giving an overview of their evolution also helps to ensure public accountability of SOEs.

### Note

1. This is not only specific to Zambia – this is the state of affairs in most OECD countries as well, where the national postal service generally retains a monopolistic system for the distribution of letters under a certain weight.

### References

- Chigunta, Phil (2007), “Testing the Draft PFI Users’ Toolkit Guidance to Zambia for the Self-Assessment Phase of the APRM Process”, in *Background Paper for the Regional Roundtable on Strengthening Investment Climate Assessment and Reform in NEPAD Countries*, Lusaka.
- Civil Society for Poverty Reduction, Lusaka, [www.cspr.org.zm](http://www.cspr.org.zm).
- Eastern, Central and Southern Africa Federation of Accountants (2002), *Governance in the Public Sector-An ECSAFA Perspective*.
- Financial Standards Foundation, *Country Brief: Zambia*.
- Government of Zambia (1999), *Judicial Act*, Number 13, Lusaka.
- International Financial Corporation (2011), “Global Corporate Governance Forum: SmartLessons – real experiences, real development”.
- OECD (1999), *OECD Principles of Corporate Governance*, Paris, [www.oecd.org/dataoecd/9/23/44931152.pdf](http://www.oecd.org/dataoecd/9/23/44931152.pdf).
- OECD (2007), *PFI Toolkit and OECD Principles of Corporate Governance*, Paris.
- Transparency international (2003), *National Integrity Systems Country Study Report: Zambia*.
- World Bank (2007), *Corporate Governance of State-Owned Enterprises in Zambia*, Washington, DC.





## Chapter 7

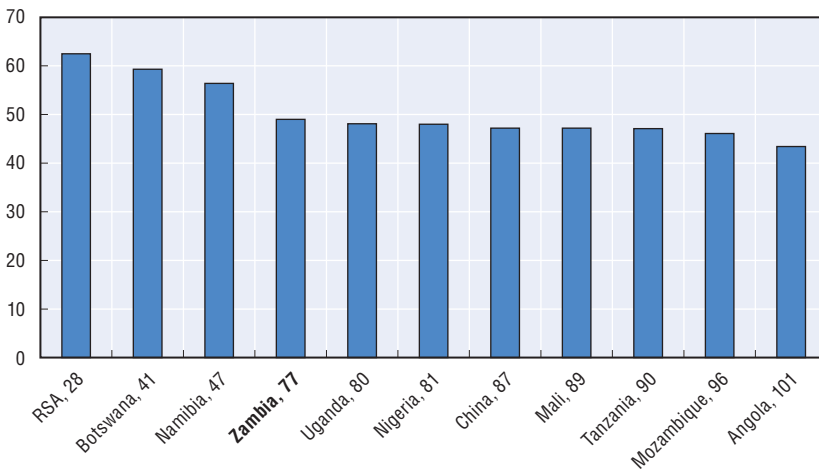
### **Policies for Promoting Responsible Business Conduct**

*Zambia's economy has shown relatively strong performance since the 1990s, and the recently launched private sector development reforms are expected to help maintain a positive momentum. The government limits its direct involvement in business to strategic investments deemed critical for the delivery of public goals and services, and seeks to maintain high standards of consumer protection. Moreover it engages the private sector on policy and regulatory reforms. Yet, clearly formulated and well-implemented RBC policies should be considered to help raise the contribution to society of strongly performing sectors of the economy. This chapter highlights this progress, and concludes that the main remaining challenges are those of domesticating international practices and strengthening regulatory capacities.*

Public policies promoting recognised concepts and principles for responsible business conduct, such as those recommended in the *OECD Guidelines for Multinational Enterprises*, help attract investments that contribute to sustainable development. Such policies include: providing an enabling environment which clearly defines respective roles of government and business; promoting dialogue on norms for business conduct; supporting private initiatives for responsible business conduct; and participating in international co-operation in support of responsible business conduct.

Zambia is a high-performer among low-income countries in terms of RBC, scoring better than larger economies such as Nigeria and China in Accountability's Responsible Competitiveness Index (see Figure 7.1).

Figure 7.1. **Zambia in the Responsible Competitive Index ranking, 2007**



Source: Adapted from Accountability, "The State of Responsible Competitiveness".

Clearly formulated and well-implemented RBC policies would thus help raise the contribution of strongly performing sectors, beyond their impact on GDP figures. Especially, their positive impact on environmental standards and workers' health and safety could generate positive spill-over effects on the Zambian workforce and overall welfare.

## 1. Separation of roles between government and business sector

How does the government clarify for investors the distinction between its own role and responsibilities and those ascribed to the business sector? Does it actively assume its responsibilities (*e.g.* by effectively enforcing laws on respecting human rights, environmental protection, labour relations and financial accountability)?

The broad policy approach is that of providing the enabling environment for private sector-driven investment in economic activities. The principle adopted by the government has been to limit its direct involvement in business to strategic investments deemed critical for the delivery of public goals and services. These mainly cover investment ventures that are of a commercial nature but are either risky or, unable to offer a profitable return if undertaken by the Private Sector, but are of strategic importance to the economy. These mainly cover investments in physical infrastructure (*e.g.* road networks, energy and water supply systems). Even with such investments, the government has been promoting Public-Private Partnerships (see also the Chapter on Infrastructure Development).

Other investments undertaken directly by the government are in order to improve access by the vulnerable and disadvantaged members of the population. Examples of such interventions include the Farmer Input Support Programme (FISP) started in 2002, whereby the government subsidises fertiliser and seed inputs to small-scale farmers. More recently, this form of support was extended to the supply of veterinary drugs and services to small-scale livestock farmers. The government also participates in crop marketing targeting small scale farmers, by offering more attractive producer prices for staples (particularly maize) purchased through the Food Reserve Agency (FRA). These interventions are largely driven by the recognition that about 60% of the population is dependent on small-scale agriculture and therefore that structured government support can be an important element in poverty reduction.

Apart from involvement in strategic public investment activities, the government has placed priority focus on the implementation of legislative and regulatory reforms. These are aimed at achieving a number of objectives that include:

- Aligning regulatory frameworks to a market-oriented economy.
- Domesticating of international conventions related to the conduct of business activities, particularly covering: protecting the environment, and

strengthening human rights, health, and safety measures associated with labour and employment, etc.

- Strengthening capacities of regulatory institutions to match the changing environment and needs for efficient and effective compliance enforcement.

Amongst the notable measures accompanying most investment ventures is that of making Environmental Impact Assessments (EIAs) an integral pre-requisite for the approval processes. For some investment sectors, such as insurance, banking and financial services, the submission of annual audited financial statements are a licensing condition. In the case of financial services, quarterly publication of financial statements is compulsory and rigidly enforced by the Bank of Zambia (BOZ).

The challenge faced by the government is that of ensuring that regulatory agencies are provided with adequate resources to carry out their functions in an efficient and effective manner. Most statutory institutions that rely on budget support do not receive subventions matching their operational needs, a factor that limits their capacity to fully implement approved policies and programmes. In the realm of environmental protection for instance, while mining companies' Environmental Management Plans commit them to monitoring their pollution levels, most of this takes the form of self-monitoring since the Environmental Council of Zambia cannot spare the resources to double-check companies' assessments. Self-reporting is difficult to coherently regulate and allows companies to take advantage of a lack of common investment standards and reporting formats. Additionally, salaries in the Ministry of Mines and ECZ remain particularly low and uncompetitive, making it "difficult for regulatory bodies to hire and retain skilled inspectors".

Moreover, it is necessary to ensure that RBC regulations themselves are sufficiently strict (and regularly updated) so as to encourage responsible company behaviour. Again in the mining sector, the requirements on air pollution addressed by companies' Environmental Management Plans (EMPs) were for instance initially designed primarily to cater to company needs rather than based on minimum safety standards: since no companies could meet stringent air regulations at the time the EMPs were first designed, a phased approach was chosen under which firms were expected to progressively reduce sulphur-dioxide emissions from a baseline of their initial level of pollution. This baseline level of emissions used exceeds the legal limits of pollution under the period of nationalisation, and is "25 times more than the level recommended by the World Health Organisation (WHO)". Regulations are also at times outdated, or fines too minimal. Fines imposed by the Environmental Council of Zambia (ECZ), for example, have in the past been ineffective deterrents for mining companies. The average on-the-spot ECZ

fine in 2007 was only ZMK 140 000 (USD 27), generating little positive change in corporate behaviour.

The effectiveness of regulatory agencies is further impacted by a lack of robust co-ordination mechanisms. Cases abound of regulatory conflicts faced by the business sector, where statutory institutions introduce measures that countermand the laws and regulations of their counterparts. There is therefore no clear framework for inter-agency collaboration, especially as concerns investment promotion and communication between investors and other government agencies. In other cases, there is inadequate co-ordination of parallel investment promotional activities undertaken by different Agencies, such as between the ZDA and the Tourism Board, although these can have similar views on business conduct.

Another challenge faced by the government is that of providing the technical and financial resources required to revise local laws and regulations in order to fully domesticate international conventions. This creates gaps in ensuring that adequate policy instruments are in place for regulating business conduct.

### **Human rights, labour standards and relations**

Zambia has ratified a number of international human rights conventions, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities. At the national level, the lead authority for upholding human rights norms is the Human Rights Commission (HRC). In 1996, the Human Rights Commission Act No. 39 was enacted and the HRC was established to address human rights violations by investigating human rights abuses and by providing aid to victims. The Act provides for, *inter alia*, the autonomy of the Commission, its composition, functions and powers, as well as a mechanism for addressing complaints.

Zambia joined the ILO in 1964 and has since ratified 43 ILO conventions relating to workers' protection. These include all core conventions, such as the Forced Labour Convention; the Freedom of Association and Protection of the Right to Organise Convention; the Right to Organise and Collective Bargaining Convention; the Abolition of Forced Labour Convention; and the Worst Forms of Child Labour Convention. Also, Global Compact Zambia was launched in 2003.

At the national level, labour issues are addressed by the Industrial and Labour Relations Act. The Act provides the legal framework for trade unions, employers' organisations, their federations, the Tripartite Consultative Labour Council and the Industrial Relations Court.

The Employment Act, Chapter 268, is the basic employment law, while the Minimum Wages and Conditions of Employment Act makes provisions for the regulation of minimum wage levels and minimum conditions of employment. Currently, the minimum wage per month for employees in Zambia is ZMK 268 000 (approximately USD 53).

The Factories Act, Chapter 442, aims at framing workers' health, safety and welfare in their working environment. For example, its Section 69 states that all practicable measures should be taken to protect workers in every factory where dust, fumes or other impurities are expelled during the course of operations, which are likely to be injurious or harmful to the workers.

### **Consumer protection**

The government of Zambia seeks to maintain high standards of consumer protection by for example following the *United Nations Guidelines for Consumer Protection*. The Competition and Fair Trading Act of 1994 stated the following main objectives:

- encourage competition in the economy,
- protect consumer welfare,
- strengthen the efficiency of production and distribution of goods and services,
- secure the best possible conditions for the freedom of trade,
- expand the base of entrepreneurship, and
- regulate monopolies and concentrations of economic power.

When the Act went into effect in 1995, the Zambia Competition Commission was established to prevent anti-competitive and restrictive business practices and promotes consumer welfare (see Chapter on competition policy). The Act was superseded in 2010 by the Competition and Consumer Protection Act which includes specific consumer protection provisions and renames the Commission as the "Competition and Consumer Protection Commission". The Board of Commissioners is composed of representatives from different ministries and professional associations.

Another regulatory institution is the Zambia Bureau of Standards (ZABS), established by the Zambia Bureau of Standard Act No. 22 of 1982. ZABS aims to provide efficient and effective standardisation, quality assurance and metrology services to industry and consumers to improve the quality of products and services and to promote sustainable socio-economic development in Zambia.

In addition to ZABS, there are several other regulatory boards. These regulatory institutions are intended to protect and promote consumer interests. For example, the Energy Regulation Board was established to

regulate the energy sector in line with the provisions of the Energy Regulation (Amended) Act 2003 in order to safeguard the interests of all stakeholders.

A strong legal and institutional framework for RBC would also include effective implementation and enforcement of the law. Grievance mechanisms should effectively investigate, punish and redress issues that companies bring forward. In Zambia, while Part VI of the Constitution provides for the judiciary, RBC is compromised in a situation where the government is not able to enforce laws and cannot provide remedies to parties affected by company operations.

## 2. Communication of responsible business practices

What steps does the government take to promote communication on expected responsible business conduct to investors? How does the government endeavour to protect the rights framework that underpins effective communication?

The PSD-RP framework provides an important mechanism for the government to engage the Private Sector on policy and regulatory reforms. As a matter of practice, all statutory agencies are encouraged by the government to regularly engage in stakeholder consultations whenever new laws and regulations are being considered. In other cases, public hearings have been institutionalised and made integral to the consideration and implementation of measures that affect business. This approach encompasses considerations such as:

- i) requests for submission of proposals from the private sector associations prior to the finalisation of taxation measures included in the national budget each year;
- ii) public hearings held by the Energy Regulation Board (ERZ) during the consideration of electricity tariff adjustments;
- iii) prior to the implementation of new property rates, Local government Councils are mandated by law to publish amendments to Valuation Rolls and to take into account submissions of stakeholders, especially owners of properties that will be affected;
- iv) the ZRA issues “Practice Notes” that are available to all tax payers setting out changes passed by Parliament in the national budget each year. This is normally supplemented by consultative workshops conducted by the ZRA in all provincial centres to explain taxation measures and receive comments from taxpayers; and,

- v) public hearings held by the Water Board of the Ministry of Energy and Water Development prior to and during the consideration of applications for water rights affecting national water courses.

Apart from the above, opportunities are made available to the business sector to access information related to the proceedings of Parliament and Local Councils. In both cases, the public is permitted to attend meeting sessions and can access minutes and/or verbatim records of proceedings (e.g. through live broadcasts of Parliamentary proceedings and access to the printed transcripts in the Hansard).

The overall approach of the government has been that of promoting transparency and the active participation of the private sector in matters that affect their business affairs. Through this framework, instances have been noted where the submissions of the business sector have influenced policy measures and laws in the country.

### 3. Facilitating financial and non-financial disclosure

Does the government ensure that an adequate framework is in place to support the financial and non-financial disclosure that companies make about their business activities?

Generally, all regulatory agencies that issue operating licenses have statutory reporting requirements which businesses operating under their laws and regulations must meet. Since 1995, major studies have been taken to strengthen disclosure provisions, especially for financial institutions. For example, the Banking and Financial Services Act has stringent reporting provisions that require all Commercial Banks to submit weekly returns indicating their liquidity position. Late submission of the weekly returns or failure to meet the minimum core liquidity and statutory reserves attract punitive penalty interest, and may lead to the placement of non-compliant commercial banks under direct supervision of BOZ, closure of the undertaking, or the prosecution of directors.

The Zambia Revenue Authority (ZRA) has strict reporting deadlines for the submission of various tax returns (i.e. monthly PAYE, VAT and Excise returns, as well as quarterly and annual returns of income and profit). Whilst ZRA is strict in the enforcement of deadlines for the submission of returns, it does offer some flexibility for companies to select either monthly or quarterly periods for submitting VAT returns on a case by case basis. The Companies Act also obliges all companies to submit annual returns confirming changes to share holdings, appointment of Directors, and address of business premises.



The Securities and Exchange Commission (SEC) also enforces strict reporting and disclosure requirements for all publicly listed companies based on international best practice standards. This includes the annual publication of financial statements and issuance of “cautionary notes” whenever any significant change or occurrence is envisaged by the respective company.

### **Financial disclosure**

In 1993, the Lusaka Stock Exchange (LuSE) was established in Zambia with the support from the International Finance Corporation and the World Bank. The LuSE’s rules and listing requirements are rooted in the Securities Act No. 38 of 1993, which aims to ensure adequate investor protection and to support the smooth operation of a securities market. All listed companies are obliged to publish interim and annual financial statements within 3 months after the financial year. Listed companies are also required to disclose in the national printed media any information that can affect the value of the price of their securities.

According to the Companies Act, Chapter 388, company directors need to generate annual account reports after the end of each financial year. The annual account, the auditors’ report or reports on the accounts, and the directors’ report should be sent to each person entitled to receive notice of the annual general meeting and to each registered debenture holder of the company. A foreign company needs to submit annual accounts and an auditors’ report to the Registrar.

### **Non-financial disclosure (the environment)**

Companies in Zambia are required to report their environmental performance to the ECZ by law. Authorization from the ECZ is necessary for all projects but those to be carried out in the service sector. As required by the EPPCA, an Environmental Project Brief (EPB) or an Environmental Impact Statement (EIS) is to be submitted to the ECZ before a project is undertaken, to anticipate its impacts on the environment. The EPPCA also allows the ECZ to request information on projects proposed, planned or in progress by any person anywhere in Zambia. The ECZ may publicize all relevant information on any aspect of the environment.

Part 11 of the Act stipulates that the Council may establish an Environmental Inspectorate to administer, monitor and enforce measures for the protection of the environment and the prevention of pollution in the environment. An inspector is authorized to enter any place in which he/she believes there is activity that may cause pollution. The inspector is also authorized to order the person in charge to produce for inspection any books, documents or papers concerning any matter relevant to the Act.

## 4. Supporting companies to comply with the law

How can the government support companies' efforts to comply with the law?

Governments can facilitate and motivate companies' efforts by seeking out companies' views on laws and enforcement practices. They can provide conciliation and ombudsman facilities so that employers, workers and others have an avenue for complaining about government decisions that they believe to be unjust.

Stakeholder consultations and public awareness/educational campaigns have been institutionalised by regulatory agencies. This is in line with the government's policy of promoting transparency and improving compliance as alternatives to legal enforcement and/or prosecutions. Laws and regulations are simplified and/or modified regularly to suit the practical circumstances that the business sector face, and as a way of improving regulatory compliance, especially amongst SMEs. Examples of these initiatives include:

- i) Introduction of an Alternative Investment Market for SMEs on the Lusaka Stock Exchange. This offers more simplified and less stringent listing rules for SMEs.
- ii) Providing informal cross-border traders with a "Simplified Trade Regime (STR)" that removes the need for completion of customs import declaration documents at Zambia's borders for goods valued at less than USD 500.
- iii) Waiver of requirements to hire a customs clearing agent and complete full import declaration documents for goods valued at USD 2 000 or less.
- iv) Introduction of a "Pre-assumptive Tax" option for SMEs with annual turnover of less than ZMK 200 million. These are only required to pay income tax at a flat rate of 3% of turnover, using simplified documentation procedures.

The Bank of Zambia (BOZ) is in the process of setting up a Financial Intelligence Unit (FIU), which will provide an additional framework for monitoring business conduct, especially as concerns money laundering and corruption.

### **Labour dispute settlement**

The Ministry of Labour and Social Security is the main institution dealing with labour issues. The Ministry also advises the Zambian government on how to promote a safe working environment, and is responsible for the maintenance of industrial peace by playing a third party role in conflict

resolution, through the Labour Commissioner. However, the Commissioner has no legal power to intervene in collective negotiations unless he/she is asked to do so by the trade unions, the employers or both. The Industrial Relations Court is the second stage of the third party dispute settlement system. The Court has the jurisdiction to hear and determine any industrial relations matters and any dispute between employer and an employee.

Employers' and workers' organisations (see Box 7.1) can also interact with the government, through mechanisms such as the Tripartite Consultative Labour Council, stemming from the Industrial and Labour Relations Act. The Council consists of representatives of trade unions, employers, and government representatives nominated by the Minister of Labour. It allows the participants to discuss labour market issues and social and economic issues that impact employment conditions. However, the role of the Council is purely advisory, and its decisions are not binding on the government.

### Box 7.1. Employers' and workers' organisations

**Employers' federation.** The Zambia Federation of Employers was established by the Industrial and Labour Relations Act in 1966. Objectives of the federation are the establishment, promotion, development and maintenance of good relations between employers and employees. The federation also aims to be the central organisation representing employers to Labour and the government.

**Workers' federations.** In Zambia, there are two workers' federations. The first, the Zambia Congress of Trade Unions (ZCTU) was founded in 1964. There was no trade union federation other than the ZCTU until 1993, since all trade unions were required to affiliate to it. However, at the ZCTU's conference in 1994, five of the biggest unions including the Mineworkers Union of Zambia disaffiliated, leading to the establishment of the Federation of Free Trade Unions of Zambia (FFTUZ). The ZCTU is the first and largest federation with 350 000 members,<sup>\*</sup> followed by the FFTUZ. The ZCTU represents the majority of trade unions in nearly all the sectors of the Zambian economy.

The objectives of the ZCTU are to promote and safe-guard the interest of both workers and trade unions in Zambia, as well as the health, safety, welfare and social security of union members. For example, it launched the Corporate Social Responsibility and Working Conditions in the Public Sector Trade Union Policies to promote knowledge and understanding of its members' rights.

\* List of Affiliated Organisations, ITUC, [www.ituc-csi.org/IMG/pdf/No\\_13\\_-\\_List\\_Affiliates\\_08GC-2.pdf](http://www.ituc-csi.org/IMG/pdf/No_13_-_List_Affiliates_08GC-2.pdf).

## **Ombudsman**

In Zambia, the duties of the ombudsman fall under the jurisdiction of the Commission for Investigations, established pursuant to Article 90 of the Constitution.<sup>1</sup> The Commission consists of an Investigator-General, appointed by the President, and three Commissioners.<sup>2</sup> The Commission is mandated to redress grievances of abuse of power such as arbitrary decisions, improper uses of discretionary powers, decisions made with poor motives, unnecessary or unexplained delays, and misapplication and misinterpretation of laws. The Commission has jurisdiction over:

- any person in the service of the Republic;
- the members and persons in the service of local authority;
- the members and persons in the service of any institution or organisation, whether established by or under an Act of Parliament or otherwise, in which the government holds a majority of shares or exercises financial or administrative control; and,
- the members and persons in the service of any Commission established by or under the Constitution or any Act of Parliament, with the exception of the President.

The Commission is required to submit a report of every investigation it has conducted to the President. In addition, the Commission needs to submit a report on its operations to the National Assembly as soon as possible after the 31st of December.

Other mechanisms include the Police Public Complaints Authority and the Judicial Complaints Authority, both of which are mandated to investigate alleged misconduct by police or judicial officers.

## **The role of civil society**

Civil society organisations, including Non-governmental organisations (NGOs) and trade unions have become particularly active in the area of RBC, and for some Lusaka is also a base for regional activities.<sup>3</sup> They are crucial actors in supporting policy-setting, and in monitoring and evaluating both public and private performance.

## **NGOs**

The number of NGOs active in Zambia has dramatically increased since the early 1990s. By 2004, there were some 600 NGOs. To improve co-ordination and efficiency, they established several networks, such as the Civil Society for Poverty Reduction (CSPR). The CSPR is an advocacy network of more than 140 organisations in Zambia. In particular, it conducts the Research and Policy Analysis programme which helps civil society monitor and track expenditures

of the Zambian government as well as to assess government initiatives and programmes.

### **Trade unions**

Trade union movements have had their influence on the Zambian government and companies since their inception in the 1920s. Major strikes were organised in 1925 and 1940 against industrial exploitation and colonialism. In 1980s, the labour movement played a significant role in reintroducing multiparty democracy. This movement culminated in 1991 when Frederick Chiluba, who was the ZCTU (see Box 7.1) Chairman General at that time, was elected president.

About two-thirds of the workers in the formal sector are union members. Workers may engage in collective bargaining, and strikes and lockouts are also allowed by law. Trade unions can influence their employers through their own activities as well as through the government. However, trade union actions are only lawful if all legal recourse is exhausted. In reality, a number of requirements make it difficult for trade unions to organise a legal strike. In addition, foreign investors sometimes refuse to have their workers represented by a trade union. For example, taking advantage of loophole in laws, some of them divide workplaces so that the number of workers does not reach the minimum level needed to organise a union.

Trade unions can also communicate with the government through workers' federations. The ZCTU is very influential and has a strong composition of full-time staff unlike individual trade unions. In 2006, when the new government was formed, the ZCTU demanded a restructuring of the mining sectors by, for instance, improving the working conditions while at the same time emphasizing that investors should formulate a corporate social responsibility code of conduct to ensure that communities benefit from mining operations. This is an important, ongoing public concern, particularly given increased FDI in mining.

## **5. Measures taken to strengthen responsible business practices**

How does the government through partnerships (*e.g.* by participating in the development of standards that lower costs of adopting responsible business policies) and through promotion (*e.g.* by improving the information on responsible business practices available to customers and the public) help to strengthen the business case for responsible business conduct?

Over the past 15 years especially, the economy has experienced a surge in new investment flows across a wide range of sectors. Some of the investments

have occurred in emerging sectors such as mobile telephony and Internet services that previously never existed or were provided by public institutions under monopolistic conditions. The implementation of market reforms has therefore introduced a wide range of goods and services on the Zambian market, for which regulatory provisions are either lacking, out dated, inappropriate or, inherently weak.

Regulatory inadequacies are being actively addressed, especially related to consumer protection and anti-competition practices. Financial and technical constraints are however impacting the pace of regulatory reforms. In other cases, the business sector is being encouraged to adopt practices that promote responsible business conduct on a “voluntary basis”. For example, the IODZ has been actively advocating the introduction of “Board Charters” that set out good corporate standards (such as ethical conduct) that business enterprises will implement and be associated with.

The CEEC is also promoting the adoption of “Sector Codes” by the business sectors that commit themselves to supporting citizen’s economic empowerment. More recently, the majority of mining companies acceded to the Extractive Industries Transparency Initiative (EITI) adapted in February 2009 for Zambian conditions, and are allowing independent audits of their operations and financial reporting. The results of the EITI audits are being made available to the general public. In addition, a number of public institutions have established Integrity Committees that address the strengthening of internal policies and procedures for combating corruption. The private sector is also being encouraged to either establish similar Integrity Committees or to strengthen their corporate governance standards to effectively address corruption.

Most local manufacturers of consumer products are also submitting to voluntary product testing and certification by the Zambia Bureau of Standards (ZABS). The ZABS certification is also embossed on the product labels, as a “mark of quality” indicating the product’s suitability for consumption. Legislative measures have also been agreed with food processors and drug manufacturers to indicate product manufacturing and expiry dates. A number of supermarket chains have also adopted bar-coding of products which facilitates not only stock control but also tracing of each product that is stocked and sold to consumers.

## 6. Adoption of international best practices

Does the government participate in inter-governmental co-operation in order to promote international concepts and principles for responsible business conduct, such as the *OECD Guidelines for Multinational Enterprises*, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies, and the United Nations Global Compact?

The government is a signatory to and has ratified most UN conventions relating to business conduct. The government has also subscribed to a range of other international conventions that it wishes to domesticate in Zambian law. The domestication of all these conventions has however been protracted, thus limiting the effects of the measures. Aside from direct actions initiated by the government, two complementary developments are taking place that are also enabling Zambia to create internationally comparable business operating conditions. These are:

- i) the increased presence of multi-national corporations that are domesticating their international corporate governance standards, including Corporate Social Responsibility (CSR) programmes implemented amongst the communities in which their businesses are established; and,
- ii) local institutions adopting international practice standards. Examples include the Zambia Institute of Chartered Accountants (ZICA) that now follows International Accounting Standards. ZICA has also been very influential in the revision of domestic legislation relating to financial disclosure and responsibilities of Directors. The Judiciary and the Zambia Association of Arbitrators have also adopted international practices that have shaped domestic legislation.

The government fully supports measures that encourage responsible business conduct and has recognised the importance of adopting international practices. The main challenges faced are those of domesticating international practices and strengthening regulatory capacities. To an extent, reliance has been placed on voluntary compliance, unofficial intermediation, consultation with stakeholders, and showcasing of best practice.

### Notes

1. Article 90 of the Constitution, [www.parliament.gov.zm/downloads/VOLUME%201.pdf](http://www.parliament.gov.zm/downloads/VOLUME%201.pdf).
2. Appointed in consultation with the Judicial Service Commission. An Investigator-General must be qualified to be appointed a judge of the High Court.

Commissioners are also appointed by the President subject to ratification by the National Assembly.

3. Such as the CUTS Africa Resource Center.

## References

- Afrol News, "Zambian Trade Unions Increasingly Met with Violence".
- Bank of Zambia (2011), News Letter, "Zambia given B+ Sovereign Rating by Fitch", Lusaka.
- Chigunta, Phil (2007), "Testing the Draft PFI Users' Toolkit Guidance to Zambia for the Self-Assessment Phase of the APRM Process", in *Background Paper for the Regional Roundtable on Strengthening Investment Climate Assessment and Reform in NEPAD Countries*, Lusaka.
- Civil Society for Poverty Reduction, Lusaka, [www.cspr.org.zm](http://www.cspr.org.zm).
- Dymond, Abi (with contributions from Lambrechts, Kato and Chase, Simon) (2007), "Undermining Development? Copper Mining in Zambia". Action for Southern Africa (ACTSA), Christian Aid and SCIAF.
- Eastern, Central and Southern Africa Federation of Accountants (2002), *Governance in the Public Sector-An ECSAFA Perspective*.
- Financial Standards Foundation, *Country Brief: Zambia*.
- Friedrich Ebert Stiftung (2003), *Trade Union Country Report: Zambia*, Lusaka.
- Government of Zambia (1991), *Constitution of the Republic of Zambia*, Part VI, Lusaka.
- Government of Zambia (1994), *Competition and Fair Trading Act*, Chapter 417, Lusaka.
- Government of Zambia (1995), *Companies Act*, Lusaka.
- Government of Zambia (1999), *Judicial Act*, Number 13, Lusaka.
- Haglund, Dan (2008), "Regulating FDI in weak African states: a case study of Chinese copper mining in Zambia", Mine Watch Zambia Conference.
- Lusaka Stock Exchange, *Requirements and Fees*, Lusaka.
- OECD (1999), *OECD Principles of Corporate Governance*, Paris.
- OECD (2007), *PFI Toolkit and OECD Principles of Corporate Governance*, Paris.
- Tayo Fashoyin (2008), "Employment relations in Zambia", *Employee Relations*, Emerald.
- The Zambia Federation of Employers, Lusaka.
- Times of Zambia (2009), *Zambia: Foreign Investors to Be Regulated*.
- Transparency international (2003), *National Integrity Systems Country Study Report: Zambia*.
- United Nations (2003), *United Nations Guidelines for Consumer Protection*, New York.



## Chapter 8

### Infrastructure Development

*The government of Zambia has integrated infrastructure investment into broader economic growth objectives under the five-year national development plan. This chapter maps progress in developing and attracting investment in all key infrastructure sectors: telecommunications, electricity, transport, and water and sanitation. It indicates that Zambia has a relatively good network of primary and secondary roads, although it is significantly weaker in rural areas. The deteriorating rail networks are also a crucial issue because as a land-locked mineral-exporting country, Zambia has to rely on regional transport infrastructure. While private investment in telecommunications and the energy sector is relatively recent, it carries strong potential. This chapter also analyses the regulatory and institutional framework for infrastructure development, including how the government evaluates the country's most pressing infrastructure needs.*

**S**ound infrastructure development policies ensure that scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Developing Zambia's infrastructure is a priority for the government and it features prominently in the SNDP. An improved regulatory framework for infrastructure development, including the setting up of a Public-Partnership Unit, offers the government avenues to better address infrastructure bottlenecks, in particular by attracting private investment.

### 1. Process used to evaluate infrastructure investment needs

What processes does the government use to evaluate its infrastructure investment needs? Does the national government work in co-operation with local and regional governments to establish infrastructure investment priorities? Does the government have clear guidelines and transparent procedures for the disbursement of public monies funding infrastructure projects? Are the regulatory agencies that oversee infrastructure investment and the operations of enterprises with infrastructure investments independent from undue political interference?

The government has integrated infrastructure investment into broader economic growth objectives under the five-year national development plan. Therefore, emphasis is placed on infrastructure options that are most capable of stimulating economic growth by, for example, facilitating trade and commerce, increasing access to health and education facilities, and opening up new areas of investment. It is also important to the government that infrastructure raises growth by increasing social returns without crowding out other productive investments. While capital development is important, the government is also committed to upgrading physical infrastructure across the country. This process also allows infrastructure to help open up and develop rural areas, thereby curbing the rural to urban drift.

#### **Guidelines and procedures for the disbursement of public funds**

Zambia spent about USD 700 million per year between 2001 and 2006 on its infrastructure, with USD 457 million derived from tax revenues and user charges for utility services. Two-thirds of this spending is for capital

expenditure, while the rest goes to operations and maintenance. However, while this level of spending – about 10% of GDP – is high, it remains below the estimated 20% of GDP that Zambia needs to spend over the next decade in order to catch up to the infrastructure levels in other developing countries. Public resources make a significant contribution and official development assistance (ODA) is an important, but relatively small, source of finance. Private investment, at 15% of the total contribution, is on par with ODA, but there is greater scope for an increase. Zambia recently received a B+ credit rating from Fitch, which places it on par with Nigeria and Angola and could allow it to tap into international capital markets. Indeed, President Banda has recently expressed a goal to issue a global bond, of which the proceeds would benefit infrastructure development in Zambia. Such innovative financing mechanisms can help to close the country's infrastructure funding gap.

In addition to increasing financing, the government can also address inefficiencies in the public management of infrastructure, by improving cost-recovery in the power sector, improving capital budget execution in the transport sector, and improving operational efficiency in the water sector. These measures could save about USD 315 million a year – a sizeable amount given current spending levels and the significant financing needs.

The government has put in place a framework for public funding of infrastructure projects, including procurement guidelines. It advertises tenders for infrastructure projects both in the public, private and international media, depending on the size of the project. Bidders are then invited to attend the opening of the bidding document and responses to all the queries are made available to the bidders following tender evaluation. The ZPPA, ZCCP, ACC, ZDA and other related government agencies promote the principles of transparency and procedural fairness through public tender and bidding processes of public infrastructure contracts.

Where financing and administrative anomalies exist, corrective actions have been taken. For instance, in 2010, following a special audit of the Road Development Agency (RDA) by the Auditor General's Office, the Boards of the RDA and NFRA were disbanded and replaced, and disciplinary actions were taken against some members of staff. Moreover, measures are being undertaken to enhance inter-agency co-ordination and the government has been working on enhancing capacity in internal audit, procurement, financial management, and monitoring activities at the RDA. It is also working with stakeholders to draw-up a bankable ROADSIP II programme, which aims to rehabilitate the nation's roads over the course of ten years.

### **Establishment of Public Private Partnerships for infrastructure development**

The government has recognised that the ability to encourage private investment is key to stronger economic performance. Indeed, the national treasury has limited resources for the rapid implementation of infrastructure development projects critical to stimulating economic growth. The government has therefore identified Public Private Partnerships (PPPs) as a viable means of infrastructure development that can effectively address the finance and management constraints faced by the public sector. In this regard, a PPP policy was launched in 2008 to provide an institutional and legal framework for encouraging the private sector to play a larger role in procuring and financing public infrastructure projects and services that have traditionally been the direct responsibility of the public sector. The main objectives of introducing PPPs are to:

- forge strategic partnerships with the private sector for improved service delivery and infrastructure development;
- enhance transparency, accountability, equity, fairness and “value for money” in public infrastructure development and service delivery;
- supplement fiscal revenues and expenditure through appropriate risk transfer to the private sector who can infuse increased competitiveness and innovation; and,
- improve the overall maintenance and management of public assets by infusing private sector efficiency and effectiveness.

In 2009, the government went further to enact the Public Partnership Act (no.14 of 2009) in order to provide a legal and institutional framework for PPPs. The government also established a PPP Unit under the Ministry of Finance and National Development (MFND). Its main function is to identify and promote opportunities for the engagement of the private sector in the development and delivery of infrastructure and services. The main MFND schemes include: Build Operate and Transfer (BOT), Build Own and Operate/Transfer (BOO/T), or management of public infrastructure under special management contracts or concessions. The Unit has a full time technical team of seven (7) members of staff, headed by a Director. As a further step, the government has also established a Public Partnership Council (PPC) chaired by the Minister of Finance and National Planning. Its membership includes four other Ministers and four persons appointed by Cabinet, whilst the Permanent Secretary responsible for Budget and Economic Affairs at MFNP acts as the secretary of the Council.

A PPP Technical Committee reports to the PPC, chaired by the Secretary to the Treasury that is constituted by senior government officials, namely: the Attorney general, and Permanent Secretaries responsible for Works and

Supply, Commerce, Trade and Industry and Local government and Housing. Other members of the Technical Committee include representatives drawn from: the Engineering Institute of Zambia, Economics Association of Zambia, national Construction Council, and the Environmental Council of Zambia. The PPP Unit works directly under the supervision of the Technical Committee.

Following its establishment, the PPP Unit has taken direct responsibility for supervising a number of on- going and new infrastructure development and management projects, undertaken in partnership with the private sector. These include the following projects:

**Table 8.1. Examples of PPP projects**

Type	Examples of projects	PPP type	Status
Roads	Lusaka – Ndola Kitwe-Chingola Chingola- Jimbe Lusaka – Livingstone Kafue – Chirundu	BOOT/Tolling	Invitations for tender have been advertised and some projects awarded
Rail	Zambia Railways network	Concession	Has been operational since 2003
Border Post Infrastructure	Kasumbalesa border with DRC Kazungula border with Botswana Nakonde border with Tanzania Mwami border with Malawi Jimbe border with Angola Kipushi border with DRC	BOOT	Kasumbalesa is being developed whilst invitations for tender are being processed for the other borders
Energy	Kafue Gorge Lower Itzhitezhi Hydro Upgrade of Indeni oil refinery and Tazama oil pipeline	BOOT	A developer for Kafue Gorge Lower has been identified
Estates and Housing	Government office complex UNZA hostels and Business Park	Maintenance contract has been agreed for the Government office complex whilst UNZA will involve BOT arrangements.	Completion of the Office Complex is in progress whilst the UNZA hostels have been completed. A feasibility study for the UNZA Business park is in progress.

The aim of the government is to engage the private sector in funding and managing such projects under structured strategic partnerships so as to leverage national resources that can then be channelled into other areas where direct public investment and intervention are required. Whilst the PPP concept has received wide recognition and support from the private sector, the government faces the challenge of establishing a more transparent and consistent framework for identifying infrastructure projects that should be floated as PPPs and selecting private sector partners that will be given development and management contracts. At present, these processes have been implemented administratively largely using executive orders rather than through public tenders. In addition, the government needs to strengthen its

contract negotiation and management capabilities so as to ensure that national interests are protected at all times and that selected contractors are subjected to enforceable regulatory standards. Meanwhile direct involvement of the executive in the determination of what compliance standards may be waived for particular investors should be lessened. By addressing such challenges, the processing of PPP contracts can be then made more transparent and engender wider public confidence.

### ***Independence of regulatory agencies***

The official government policy is that regulatory agencies overseeing investment and operations of enterprises must be independent from undue political interference and supervised by independent Boards. In practice, however, processes applied to appoint and revoke appointments of board members are not as transparent as would be desired. Ministry posts are periodically reshuffled by the President, preventing the accumulation of institutional memory in regulatory agencies. In most instances, each new Minister tends to reconstitute boards of agencies under their portfolio. In some cases, reconstituting boards can open the door for nepotism if appointed members are beholden to the dictates of the appointing authority, instead of serving the public interest.

In addition, portfolio ministries have a tendency to issue directives to the regulatory agencies, by-passing the boards and on some occasions going against internal procedures and official policy. In addition, the composition of some boards does not always take into account members' technical and managerial competencies, which could undercut the managerial efficiency of the agency.

## **2. Measures taken to uphold transparency and procedural fairness in contracts**

What measures has the government adopted to uphold the principle of transparency and procedural fairness for all investors bidding for infrastructure contracts, so as to protect investors' rights from unilateral changes to contract terms and conditions? What steps have been taken to attract investors to supply infrastructure at fair and reasonable prices, to ensure that investor-state contracts serve the public interest, and to maintain public support for private involvement infrastructure?

Over the last five years, the government has implemented a number of initiatives to streamline procedures for public procurement, including for

infrastructure projects. The initiatives are aimed at enhancing transparency, protecting public assets against conversion, ensuring cost effectiveness, and preventing corruption. As part of this effort, the Zambia Public Procurement Act was passed in 2008. It repealed the Zambia National Tender Act and transformed the Zambia National Tender Board (ZNTB) – until then the public procurement entity – into the Zambia Public Procurement Authority (ZPPA), a regulatory agency.

The new Act has stronger checks and balances and makes provisions for independent persons that sit on the Procurement Committees. Previously, Committees of the ZNTB were constituted by senior government officials, who were also the consumers of the goods and services being procured, thereby presenting a conflict of interest. The ZPPA will be expected to provide more stringent oversight on all public entities that use public resources to procure goods and services, while also increasing spending thresholds that were imposed on Ministries, Provinces and Spending Agencies (MPSAs) under the ZNTB Act.

Another measure taken by the government is to restrict “single sourcing” of suppliers unless dictated by the situation (i.e. when there are no other suppliers or in response to national emergencies). Under the new Act, all MPSAs are required to advertise tenders in the press with expressly stated tendering instructions, including closing dates and times for the receipt of tenders. The advertisements are sometimes also placed in the international media, depending on the scale and technical complexity of the project.

Where tender conditions change or particular bidders request clarification, the response of the entity receiving tenders must be circulated to all other potential bidders and where site visits or technical specifications are to be provided, all purchasers of tender documents must be invited or given equal access to the information. The opening of tenders is also done in public with all bidders in attendance. In addition, tender awards for all major infrastructure projects are to be published in the press, including the range of bids received and reasons for the selection of successful bidders. So far, the main challenge faced in the implementation of the Act and regulations has been ensuring that MPSAs adhere to these procedures.

### 3. Telecommunications sector

In the telecommunications sector, does the government assess market access for potential investors and the extent of competition among operators? Does the government evaluate whether telecommunication pricing policies are competitive, favouring investment in industries that depend on reliable and affordable telecommunications?

Since 1994, when the ICT sector was liberalised, Zambia has experienced rapid growth of private service providers of mobile telephony, Internet, radio, and television broadcasting services. International suppliers of ICT hardware and software have also set up local branches in order to respond to the liberalised market and to growing demand for efficient and cost-effective services.

In 2009, an ICT policy was developed and a new Information and Communication Technology (ICT) Act No. 15 was passed by Parliament, both of which helped spur the growth of mobile telephony and Internet services. Other than the ICT Act, the Electronic Communication and Transaction (ECT) Act and the Postal and Courier Services Act were also passed in 2009 and placed the Zambia Information and Communication Technology Authority (ZICTA) under a single regulatory authority. These changes were undertaken in response to the convergence of Internet and telecommunications technologies, which had previously been considered as two different platforms. All ICT services are now placed under a single regulatory framework with a unified licensing regime administered by ZICTA. The regulatory aspects of the sector are more clearly defined under ZICTA, which licenses and regulates tariffs charged by all service providers.

Though the provision of fixed telephone lines and international voice services was liberalised, until 2010 investment in these services by the private sector was severely limited due to high license fees, leaving Zambia Telecommunications Corporation (ZamTel) as the only service provider. For example, until 2010, the international gateway fee was USD 12.5 million per annum. The change in the regulatory framework has further opened up the sector and reduced the market dominance of ZamTel in the provision of the microwave “back bone” for both domestic and international gateway services. In addition, the international gateway fees were reduced from USD 12.5 million to USD 300 000 per year, effective from 2010. This has created a more attractive and competitive investment environment. It has also led to the sharp reductions in tariffs paid by customers and to the modernisation of ICT services, such as migration to broadband from dial-up Internet services and the promotion of more competitive roaming services for mobile telephony.

### ***Assessing market access for potential investors***

ZICTA monitors subscriber growth trends for ICT services. In this regard, ICT service providers are required to submit quarterly returns providing market data, and yearly reports with detailed information on the range of services that they provide and proposed tariffs which must be approved by ZICTA.



Table 8.2. **Mobile telephony: Subscriber base growth trends**

	Subscribers	Growth rate (%)
2000	49 957	31.5
2001	97 900	96.0
2002	139 258	42.2
2003	204 150	46.6
2004	413 120	102.4
2005	949 558	129.8
2006	1 663 051	75.1
2007	2 639 026	58.7
2008	3 539 003	34.1
2009	4 165 101	17.7

Source: ZICTA.

Under this environment, mobile telephone service providers have established communications infrastructure country-wide. Rural communities have access to mobile telephones at more competitive rates. As a result, there has been a decrease in fixed line subscriptions, although ZamTel has migrated to digital systems. Also, despite the rapid growth of a mobile telephony subscriber base, Internet services have been largely restricted to corporations and public institutions.

Table 8.3. **Internet services: Subscriber base growth trends**

	Subscriber base by type			Growth rate (%)
	Dial up	Broadband	Total	
2001	7 627	621	8 248	
2002	10 826	821	11 647	41
2003	10 857	1 143	12 000	3
2004	15 334	954	16 288	36
2005	10 179	703	10 882	-33
2006	10 067	1 929	11 996	10
2007	12 578	5 368	17 946	49.6
2008	12 586	5 703	18 289	1.9
2009	6 684	10 720	17 754	-2.9

Source: ZICTA.

In relative terms, there has been a rapid migration from dial-up services, which imposed a higher cost and slow data processing, to broadband which is cheaper and faster. In addition, mobile telephone service providers are increasingly including Internet facilities that their customers can access using open platform mail services such as Yahoo, Gmail and Google. Such facilities have also helped to increase access to Internet services for individual users.

All the same, Zambia's ICT network is concentrated along the north-south area, where most of the mining activities are contained. In order to promote increased access and usage of ICT services throughout Zambia and to bridge the digital divide between urban, peri-urban and rural areas, a Universal Access and Services Fund has been established by the ICT Act of 2009. This fund, administered by ZICTA, aims to improve the provision of electronic communications services in unserved or under-served areas and communities. The fund is currently being built through turnover charges levied against ICT service providers. Mobile telephone service providers, for instance, are required to pay to ZICTA 5% of their sale turnover while Internet service providers need only pay 4%, following a recent reduction. However, it is perceived that the transparency of operation of the Universal Access and Services Fund could be improved, as the ICT service providers are not involved in monitoring or accounting for its use. In addition, this charge has made entry difficult for new entrants that wish to become Internet Services Providers (ISPs), especially given that this segment of the ICT market is growing much more slowly.

### **Monitoring competitiveness of pricing policies**

ZICTA is empowered by the Act to approve all tariffs charged by ICT service providers. It also regularly monitors and evaluates whether telecommunication pricing policies are competitive, and whether they favour investment in industries that depend on reliable and affordable telecommunications. Section 40 (4) of the ICT Act also places an obligation on ZICTA to publish guidelines on the definition of the electronic communication market and approved rates in the daily newspapers. It also carries out evaluations of license-holders perceived to hold a dominant position in the market.

The process of tariffs approval, however, has rather demanding disclosure requirements. Service providers are required to provide detailed financial projections of income, expenditure and profit margins in support of their proposed tariff adjustment schedules. This poses the danger of reintroducing price controls rather than allowing the market forces of demand and supply to prevail.

## **4. Electricity sector**

Has government developed a strategy to ensure reliable access to electricity services by users, and economic incentives to invest in and supply electricity? What programmes exist to ensure access to electricity services by a wide range of users and on a least-cost basis? Are these programmes time-bound and based upon clear performance targets?

Of all the infrastructure sub-sectors in Zambia, power has the greatest investment needs – an estimated USD 600 million annually to rehabilitate existing generation facilities and to develop an additional 1 700 MW in new capacity. These investments are sorely needed given that the inadequate functioning of the power sector poses one of the biggest constraints on economic growth and business activities. In the early 2000s, for instance, this reduced per capita growth by 0.13 percentage points, while firms have reported that infrastructure constraints, mainly in power, are the biggest obstacle for firm productivity. Since 2008, the country has experienced a series of power outages, which occur about 50 days a year and are more frequent than in other middle-income (6 days/year) and resource-rich (15 days/year) countries. Moreover, power provision is mainly directed at the mines and only 22% of the population has access to electricity. Access rates, at 3.5%, are particularly low in rural areas and this could undercut the potential for agriculture to move up the value chain.

Belying its power shortage problems, Zambia enjoys abundant hydropower resources. Out of a total installed capacity of 1 760 Mega Watts (MW), 1 672MW is produced by hydro generation plants while 88 MW is produced by thermal power plants. Moreover, Zambia has the potential to substantially increase electricity generation and become a major exporter to the Eastern and Southern African regions. For example, the country has about 4 000MW in untapped hydro-power generation capacity that can be immediately exploited and exported.

Exploiting its enormous energy potential presents an opportunity for Zambia to meet growing demand, which stands at around 1 500 MW. Moreover according to one projection, consumption from new mining operations will increase by 40% over the 2010/2011 period. However, despite the potential and the growing demand, generation capacity has stagnated for decades. The national utility, ZESCO, does not have sufficient resources to develop new capital projects, nor can it access international financial markets. Moreover, it remains a vertically integrated state monopoly, although private sector participation has been in place since the Electricity Act was passed in 1995. At present, in addition to ZESCO, the Copperbelt Energy Corporation, a private company, generates and transmits electricity domestically and in the region through the Southern African Power Pool (SAPP). It accounts for 50% of power consumed in Zambia, mainly by mines. Lunsemfwa Hydro Power Company, an independent power producer, operates at a smaller scale and supplies power to ZESCO through a Power Purchase Agreement. Additional private sector involvement in the power sector could help to boost generation and improve operations, although the low tariff structure has impeded private investment so far.

### **Stimulating private investment for increased and reliable electricity services**

Government has recognised that in order to ensure reliable access to electricity services, there is need to encourage private sector investment in the development of new power generation infrastructure and distribution. This however requires a legal and institutional framework that would give confidence to the private sector, especially given that the pricing and supply of electricity has generally been regulated under a state monopoly.

In 1994, a National Energy Policy (NEP) was put in place for the electricity sector. Among the key strategies outlined in the NEP was the opening up of electricity power generation and its distribution to the private sector. In this regard, the Zambia Electricity Supply Act, which had entrenched the monopoly of ZESCO, was repealed and replaced by the new Electricity Act of 1995. In the same year, the Energy Regulation Act was also introduced and provided for the establishment of the Energy Regulation Board (ERB) in 1997. The ERB is the sole licensing authority for operators in all the energy sectors (i.e. including petroleum, bio-fuels and solar power).

In 2008, a new National Energy Policy was launched to bring into line energy sector development objectives in line with priorities of the country's Vision 2030, which commits the government to ensuring: "universal access to clean, reliable and affordable energy at the lowest total economic, financial, social and environmental cost, consistent with national development goals". It also provides for the development of 5 year intermediate energy sector programming according to national development plans. The new Energy Policy has guided the formulation of the Power Systems Development Master Plan (PSDM). This plan aims to co-ordinate the preparation and implementation of least cost expansion options for the generation, transmission and interconnection of electricity supply in the country. The immediate aim is to achieve stabilization of supply in the power sector and implementation of new projects that would add a total of 4 337 megawatts to the national electricity grid. Implementation of the PSDM, which is to be launched in June 2011, is expected to cost about USD 12.1 billion by the year 2030.

The PSDM is also guiding the implementation of other electricity sector development initiatives, such as the following:

- i) The Rural Electrification Master Plan: This aims to increase electricity access from 3.1% to 51% in rural areas and from 48% to 90% in urban areas by the year 2030 in order to foster economic development. The plan also aims to raise the nationwide electrification from the current 22% to 66%. The Master Plan, estimated at USD 50 m per year, is mainly targeting rural

areas not connected to the national grid and encompasses schools, health facilities and communities that are active in agriculture.

- ii) Electricity Strategy: This strategy identifies and prioritizes power projects for short, medium and long term development.

In addition to the above measures, the Office for Promoting Private Power Investment (OPPI) was established in 2000. The OPPI, which operates as a “stand-alone” unit of the Ministry of Energy and Water Development (MEWD), is tasked with the responsibility of promoting and facilitating private investment in hydro-electricity development. Among its main functions, the OPPI closely monitors electricity generation capacities in the country and identifies new hydro-power development investment opportunities. In this role, it facilitates the preparation of technical feasibility studies and of project financing proposals. It also co-ordinates the identification of potential investors and assists them in procuring the necessary permits and investment incentives, working closely with both the ERB and ZDA.

The OPPI, however, operates with a limited budget and is not able to initiate and update surveys on the country’s hydro-power generation potential which could be floated for private investment. It is also unable to facilitate the preparation of the necessary pre-feasibility studies that could then be packaged for investment promotion. Instead, a number of current initiatives that have resulted in new private investment in hydro-power development have been facilitated directly by the government engaging the private sector through bi-lateral co-operation arrangements. This has included the implementation of the Power Rehabilitation Project, which focuses on rehabilitating and upgrading the large hydropower stations presently operated by ZESCO. However, this process has exacerbated load shedding, as happened in May 2011 when the generators at Kariba North Bank hydro-power station were shut down for maintenance works, thus reducing the national capacity by 180 MW.

As a way of alleviating this situation, government Policy is to encourage and attract not only private investors but also to empower public companies. This is being done through the following:

- Promoting Public – Private Partnerships (PPPs) such as the Kafue Gorge Lower and Itzhi – Tezhi Power Projects. These are being financed and constructed by the private sector under Build, Own, Operate and Transfer (BOOT) arrangements.
- Promotion of Public Investments such as the Kariba North Bank Extension (wholly owned by ZESCO).
- Promotion of Private Investments such as the Kalungwishi and Kabompo Projects.

- The Multi – Year Electricity Tariff Adjustment Framework – this is aimed at attracting further investment into the sector by ensuring that tariffs allow for cost recovery.

Government has recently supported a strategy to ensure reliable access to electricity by users, while providing economic incentives to invest in and supply electricity. By June 2010, a total of 67 rural electrification projects out of this plan had been completed while 24 projects were ongoing. The Rural Electrification Authority (REA) is rolling out the Rural Electrification Master Plan (REMP) whose cost had been estimated at about USD 50 m per year and is mainly targeting rural areas not on the national grid. Schools, health facilities and communities that are active in agriculture are also included. As part of these efforts, government is now implementing its REMP.

Both the cost of producing power in Zambia (at USD 0.08 per kilowatt-hour [kWh]), and the tariffs charged to consumers, are some of the lowest in Africa. However, the low tariffs are not high enough for full cost-recovery, which has severely impeded private investment. Over the past few years, this has begun to change as the Energy Regulation Board has approved tariff increases, although the raises always fall short of ZESCO's requests. This is now beginning to attract private investors in power generation as the tariffs are becoming cost reflective, but additional revisions to the power tariff structure may be needed if Zambia hopes to attract even more investment in the sector.

The government's plan is to upscale installed capacity to 3 000 MW by 2016. Set out below is a table showing the projects being implemented aimed at the expanding national electricity generation capacity.

Table 8.4. **Expansion of hydropower generation capacities**

Station	Current capacity	Planned capacity	Status of major works
Power Project Kariba North Bank	600 MW	720 MW	Completed
Kariba North Bank Power Extension Project (NBE)	Nil	360 MW	Due for completion in 2012
Kafue Gorge Hydropower Project	900 MW	990 MW	Completed
Kafue Gorge Lower Project	Nil	750 MW	Due for completion in 2016
Itezhi-tezhi Project	Nil	120 MW	Due for completion in 2015
Kalungushi Hydro-electric Project	Nil	218 MW	Due for completion in 2016
Kabompo Gorge Hydro-electric Project	Nil	40 MW	Due for completion in 2015
<b>Total</b>	<b>1 500 MW</b>	<b>3 198 MW</b>	

The proposed Kafue Lower (700 MW), Itezi Tezi (120 MW), Kabompo (440 MW) and others are scheduled to come on line by 2016. The above

programmes are clearly time bound. For mini-hydro- generating projects the ZDA provides some incentives, while the REA also gives subsidies on merit.

### **Programme for ensuring least cost basis to electricity services**

The government's objective is to align electricity tariffs with economic costs of supply whilst also enabling ZESCO to invest in the rehabilitation and expansion of its generation and distribution capacities. In this regard, the Energy Regulation Board (ERB) has established Key Performance Indicators (KPIs) that it uses to monitor the performance of ZESCO. The KPIs framework is a regulatory mechanism used to induce efficiency by directly relating tariff awards to the utility's performance.

In August 2010, ZESCO was awarded a tariff increase of 17% and a further adjustment of 17% in 2011. Electricity tariffs so far approved for ZESCO have however not been correlated to its performance. ZESCO was given a 3 year grace period to address efficiency improvements and align its performance incrementally, according to the agreed targets under five criteria, as shown below.

The results of the performance monitoring exercises conducted by the ERB against ZESCO's KPI are published in the print media as a condition of the Multi-Year Tariff Framework. The scores awarded to ZESCO against each of the above KPIs covering the period January 2008 to June 2010 are also shown below. The results indicate that ZESCO is not achieving the set targets although it has made notable progress in some areas, such as in bill collection. ZESCO faces serious challenges in collecting payments from public institutions, a situation that affects its cash flows and ability to invest in the timely rehabilitation and expansion of infrastructure. Moreover, while ZESCO is able to disconnect private consumers that default, it cannot apply this principle to the government. For example, in December 2010 ZESCO was negotiating a debt swap with the government to the order of ZMK 209 billion. ZESCO may also have to reconsider its staff tariffs, which the ERB has found to be uneconomical and unfair to regular customers, who have been bearing the cost rather than ZESCO itself. The Multi-Year Tariff Framework could also be revised to include mines, which consume the bulk of electricity in Zambia but pay relatively lower tariffs.

Another factor affecting the company is management instability. This is due to frequent replacements of both board members and senior management through government directives. The company is not able to operate with adequate autonomy despite being the dominant producer and distributor of electricity supply in the country (i.e. accounting for about 95% of all generated power and 90% of distribution).

**Table 8.5. Key performance indicators and assessment results, December 2010**

No.	Key performance indicators	Standards/Targets	Actual performance levels
1.	Metering	<p>ZESCO is required to meter all newly connected customers.</p> <p>Reduce the number of days it takes to connect new customers to 30 days by March 2011.</p> <p>Reduce backlog of 126 unmetered customers to 21 120.</p>	<p>Between January 2008 and December 2009, ZESCO connected a total of 58 284 customers, out of which only 10 562 were metered. This translated to only 18% of new connections being metered.</p> <p>In 2008, ZESCO recorded a marginal two-day reduction, while in 2009 a notable reduction of 15 days was recorded.</p> <p>As of June 2010, the backlog was 114 364.</p>
2.	Cash management	<p>Reduce the amount of money owed in unsettled bills by customers to less than 17% of total turnover by March 2011, from 45.37% in December 2007.</p> <p>Reduce trade receivables to not more than 17% of turnover by March 2011.</p> <p>Reduce debtor days, <i>i.e.</i> related to the time ZESCO takes to collect money from customers, which in January 2008 stood at 155 days. The utility was expected to reduce debtor days by an average of 32 days per annum.</p>	<p>ZESCO's total receivables for the first quarter of 2010 were 63% of turnover against a target of 24.7% set for that period. In the second quarter, the turnover was 50% against the target of 22.4%.</p> <p>In December 2008, trade receivables stood at 61% against a target of 48%. In the first 6 months of 2010, the receivables were 32% against a target of 23%.</p> <p>This target was not met in 2008, where only a reduction of 7 days was recorded, while in 2009 debtor days were reduced by 18 days. In 2010, debtor days were reduced by 7 days in the first quarter and by 5 days in the second quarter. This was against the set targets of 14 days per quarter.</p>
3.	Staff productivity	Measures the number of customers against each ZESCO employee. The target is 100 customers to one member of staff by March 2011.	In January 2008, the ratio was 63 customers to one ZESCO employee. June 2010, the ratio was 92 customers per employee.
4.	Quality of service	Measures improvements in ZESCO's quality of service in relation to the duration of unplanned outages, which are unexpected power outages excluding scheduled load shedding.	Unplanned outages in the first quarter of 2010 reduced by 30.1 hours, ending the first quarter at 22.2 hours against 52.3 hours recorded in December 2009. However, performance declined in the second quarter of 2010, which closed at 23.9 hours.
5.	Systems losses	Transmission losses, which are energy losses that occur during transmission of power, should not be above the 3% target.	Distribution losses (energy lost during distribution on 66 kv and below lines) stood at 15% at the end of both the 1st and 2nd quarters of 2010.

Source: Energy Regulation Board – December 2010.



For the foreseeable future, ZESCO will remain the dominant supplier of electricity in Zambia. The company will therefore have to ensure that its operations are managed in an efficient and effective manner. As the results of the most recent monitoring exercise carried out by the ERB in December 2010 indicate, ZESCO's performance is far below expected standards, a factor that translates into poor reliability of supply. This situation also increases the cost of access for consumers, especially the business sector, that could otherwise be mitigated if the company operated more efficiently. Priority therefore needs to be accorded to improving accountability and transparency in the management and operations of the company. This should also include infusing enhanced corporate governance standards and lessening political interference.

## 5. Transport infrastructure

What processes are followed to make informed decisions on the development of new transport facilities, and to maintain existing investment in transport infrastructure? Are the requirements for all modes of transport regularly reviewed, taking into consideration investor needs and the links between different modes of transport infrastructure?

As a land-locked country, Zambia is heavily dependent on road, rail and air transportation systems for the movement of goods and persons. The reliability and efficiency of these transportation systems is therefore critical to national and regional development, especially in the facilitation of trade. Road and rail transport are traditionally the most widely used modes, although some inland and trans-boundary water transport systems are also in place.

### **Road transportation**

The state of Zambia's roads is mixed. On the one hand, 83% of its paved road system is in good condition, which is much better than other resource-rich African countries. The core road network covers 40 113 km and its maintenance has however been a daunting challenge for the government. Moreover, there is evidence to suggest that about 65% of Zambia's roads are over-engineered, meaning they are paved in spite of low traffic volumes. This may suit the largely urban structure of Zambia's population (the country has a 50% urbanisation rate) but rural roads have been neglected, with only 21% in good or fair condition and only 17% of the rural population enjoying access to an all-season road. Moreover, with an unreliable rail network system, roads are the most common mode of transporting goods and persons.

Table 8.6. ZESCO performance against KPIs' January 2008 to June 2010

%

Indicator	2008					2009					2010	
	First quarter weighted score	Second quarter weighted score	Third quarter weighted Score	Fourth quarter weighted score	2008 weighted score	First quarter weighted score	Second quarter weighted score	Third quarter weighted Score	Fourth Quarter weighted score	2009 weighted score	First quarter weighted score	Second quarter weighted score
Customer metering	3	6	8	18	8.72	9	30	30	0	30	30	0
Cash management	10	0	0	0	0.00	0	0	0	0	0	3	10
Staff productivity	9	14	15	15	15.00	8	10	0	15	9	10	11
Quality of service	20	20	0	0	11.96	20	20	20	0	0	20	0
System losses	0	0	25	25	14.88	0	25	25	0	7	25	4
<b>TOTAL</b>	<b>41.63</b>	<b>40.37</b>	<b>47.87</b>	<b>58.16</b>	<b>50.55</b>	<b>37.46</b>	<b>85.35</b>	<b>75.40</b>	<b>15.00</b>	<b>45.56</b>	<b>87.73</b>	<b>24.52</b>

Source: Energy Regulation Board, December 2010.

To rehabilitate and develop road infrastructure, the government launched the Road Sector Investment Programme (ROADSIP I) in 1997 to provide a framework for the mobilisation of both domestic and external resources required to meet road network investments. ROADSIP has received support from external donors who agreed to use it as a basket funding mechanism for their contributions. In addition, the government introduced a Fuel levy whereby 3% of the price paid by consumers was earmarked for transfer to ROADSIP.

As a result of these efforts, Zambia has enough resources for the maintenance and rehabilitation of its roads and indeed, spends much more (3% of its GDP) than other countries in the region like South Africa and Namibia. In 2004, the government established the National Road Fund Agency (NRFA) which is responsible for the collection and management of ROADSIP funds. Around the same time, the government also established the Road Development Agency (RDA) to spearhead the implementation of ROADSIP. Under this arrangement, local authorities no longer have direct responsibility for mobilising resources and carrying out road works in their jurisdiction, including township roads. In addition, the Roads Department of the Ministry of Works was disbanded and its role taken over by the RDA. All road works are now undertaken by the private sector contracted by the RDA across the whole country. Local authorities can only be sub-contracted by the RDA to provide supervisory services.

In 2005, the government, together with co-operating partners started developing the ROADSIP II which enhances its precursor by including a more elaborate programme of bankable road projects. By the end of 2010, about 6 600 km of road networks had been rehabilitated (i.e. about 16.5% of Zambia's total road network). Amongst the major challenges faced in the implementation of road rehabilitation and expansion projects has been that project co-ordination is centralised in the RDA, which is based in Lusaka. However, the RDA has too wide a span of responsibility over the country's road networks. Presently the capacities of the RDA are stretched and mired in contract administration. The ideal situation would be to allocate major trunk road networks to the RDA, and to allow local authorities to take direct responsibility for district and township road networks.

In 2010, senior management of the RDA and the NRFA were dismissed and the Boards of the two agencies dissolved by the government, in response to the Auditor General's report that highlighted gross mismanagement of contracts and abuse of resources. New boards have since been appointed together with senior management of the two agencies. Additionally, measures are being undertaken to enhance inter-agency co-ordination and implementation of more rigorous internal audit, procurement, financial management and road-works monitoring systems.

### **Development of regional trade facilitation corridors**

As a land-locked country, Zambia places importance on the development of transport corridors linking the country to the sea ports of Eastern and Southern Africa. The North-South Corridor, together with its adjacent spurs, services a number of countries, with Zambia as the central “hub”. For example, the Southern side of the Corridor links the Copperbelt to the Southern ports in South Africa, and also interconnects with the Trans-Kalahari linking to Botswana and Walvis Bay port in Namibia. It also interconnects through Zimbabwe to the ports of Beira and Lobito in Mozambique. On the Northern side, it interconnects to the port of Dar-es-Salaam in Tanzania and Katanga in the DRC, which is also a major regional market for Zambia.

In this regard, Zambia has been working closely with regional governments and international co-operating partners in order to address development and investment needs of priority regional corridors and to improve border transit systems so as to facilitate trade and commerce. Much of the collaboration has been in the development of road and rail transport corridors, transboundary electricity inter-connections, and One-Stop Border Posts (OSBPs). For example, works to build the Kazungula Bridge over the Zambezi River linking Zambia to Botswana are due to start soon, together with the implementation of the Nacala Development Corridor agreement signed between Malawi and Mozambique in 2003.

In addition, Zambia hosted the North-South Corridor – International Financing Conference held from 6th to 7th April 2009 in Lusaka. This was showcased as an example of an “Aid for Trade” development initiative, linking infrastructure to trade programmes. This conference, attended by the member states and Secretariats of COMESA, EAC and SADC, and the International Community, achieved the following results, among others:

- i) generation of strong financial and technical support for the North South Corridor whereby about USD 1.2 billion of funding was committed by development partners for upgrading road, rail, ports and energy infrastructure and to support implementation of trade facilitation instruments;
- ii) emphasis on the need to develop similar Aid for Trade programmes in respect to other priority regional transport and transit corridors, notably improving: the Central Corridor from the Port of Dar es Salaam in Tanzania to Rwanda and Burundi; the Northern corridor from Mombasa in Kenya to Uganda, Rwanda, Burundi and DRC; and the Lamu – Southern Sudan – Ethiopia Corridor;
- iii) identification of the need for Member States to show greater commitment to the identified projects and programmes by both providing counterpart

funding and implementing and harmonising supporting policies and regulations, so as to trigger additional and sustained funding from development partners; and,

- iv) underscoring of the need to put in place an institutional arrangement to programme and manage the North South Corridor Pilot Model for Trade Programme; put in place a mechanism to access and disburse the committed funds; identify funding gaps; propose a sequence of implementation; prepare bankable projects; and seek ways in which the private sector can come on board and complement public sector investment and financing for implementation of infrastructure projects.

The government has also endeavoured to introduce relevant legislation in order to harmonise the road traffic and safety standards in conformity with regional and international protocols. The aim is to improve the efficiency of road transport and transit systems. Particular attention is given to the harmonisation of transit charges and of axle load control. Zambia is also part of regional efforts to simplify border crossing and checkpoints for transportation, and to establish adjacent border posts to reduce the waiting time for truck drivers and transit formalities. The One Stop Border Post concept has been adopted and implemented at Chirundu Border Post between Zambia and Zimbabwe and similar structures are already being constructed at Kasumbalesa border with the DRC and at Nakonde, the main road border post with Tanzania. This will help to assuage traffic jams and long delays at the Chirundu border.

### **Railway transport networks**

Presently, Zambia has two main railway networks, the Tanzania-Zambia Railways (TAZARA) jointly managed by the two countries, and Zambia Railways managed under concession by Railway Systems of Zambia (RSZ), a private operator. TAZARA links Zambia from Kapiri Mposhi (located about 200kms from Lusaka towards the Copperbelt) and the Port of Dar-es-Salaam in Tanzania. Zambia Railways links Zambia to the DRC and Angola in the North, and Zimbabwe/South Africa in the South. In 2010, the Chipata-Mchinji rail line was inaugurated, a joint venture of the governments of Zambia and Malawi. The Chipata-Mchinji rail line, which is about 30 km long, is intended to pass through Malawi and to provide the shortest sea route link from Zambia's Eastern Province to the ports of Beira and Nacala in Mozambique.

The government has been concerned with the increased use of road transport networks for moving bulk commodities, such as copper, fuel, coal and cement, which is accelerating the degradation of road infrastructure. As part of the privatisation policy, the management and operations of the Zambia Railways network were concessioned to Railway Systems of Zambia (RSZ) in

early 2003, a South African consortium comprising New Limpopo Project Investments and Spoornet. The objectives of the concession (which is for a period of 20 years) was to allow the private sector to inject capital and modern railway transport management systems in order to improve the competitiveness of this mode of transportation, especially as the bulk of Zambian imports and exports use Southern African ports. However, traffic volumes are currently quite low, and this has for now made revenue-collection challenging, especially for maintenance; this may pose additional challenges for the profitability of the concession.

The government recently approved an initiative by Zambian members of the private sector to construct a 220 km rail line linking the Copperbelt to North-Western province with possible expansion to Angola. North-Western province has become an important investment hub for large new copper and uranium mines being developed, and Lumwana will for instance be Africa's largest copper mine once fully operational.

Zambia's railway transport systems are both inadequate and unreliable, forcing the business sector to use more costly road and air transportation. This also contributes to congestion at borders and degradation of trunk road networks. This moreover makes Zambia uncompetitive through the high costs of moving goods by road and air. This problem extends beyond poor physical infrastructure systems, and includes discriminatory tariff-setting policies such as for exports from the DRC, which are charged USD 2.00 per tonne-km compared to the normal USD 0.05. As a result, exporters choose to transport their goods by road rather than by rail. As for TAZARA, the governments of Zambia and Tanzania are exploring opportunities of establishing a joint venture with private investors in order to recapitalise the network and take over its management. A Parliamentary inquiry was also recently carried out to establish the benefits of granting a concession of Zambia railways to RSZ, as the expected improvements in efficiency and reliability, as well as in terms of rapidly recapitalising the network's operating infrastructure, are yet to be achieved.

Among the contributory factors to the concessioning arrangement has been the lack of an appropriate regulatory framework that would address operational standards, safety, and the rigorous enforcement of investments into rehabilitation and expansion of track and rolling stock, which should be undertaken by RSZ. This is exacerbated by lack of enforcement capabilities on the part of Zambia Railways Limited, which is tasked with monitoring the operations and overall performance of the concession company. For example, Zambia Railways Limited can only act through the Ministry of Communications and Transport when trying to obtain the co-operation of RSZ. On the other hand, RSZ is able to deal directly with government over issues for which it should be accountable to Zambia Railways Limited, and

uses this to leverage decisions and special dispensations outside of the full framework and spirit of the concession agreement and its objectives.

### **Air transport systems**

In December 1995, the government liquidated the national carrier Zambia Airways, and since then air transportation services have been left to the private sector. The government has instead operated an “open sky” policy and focused on the establishment of a regulatory framework to encourage private investment and the rehabilitation and expansion of airport infrastructure. As part of the improvement of infrastructure, a major programme of rehabilitating and expanding airport buildings and runways is being implemented across the country. This has included the reclassification of Livingstone Airport into an international airport with a longer runway (extended from 2.3 km to 3 km) in order to facilitate the landing of large aircraft into the tourism capital of Zambia.

Since the government divested from directly running the national airline, a number of private operators have attempted to establish and operate airlines. Several have however collapsed mid-stream, largely due to the high cost of fuel. Zambia’s aviation fuel costs are the highest in the region and discourage investment in airlines whilst also increasing the cost of goods transported by air. Indeed, the problem reached such an unsustainable level that the flag carrier, Zambian Airways, suspended operations at the beginning of 2009. In response to the expansion of trade and investment, a number of foreign airlines are nonetheless increasing the frequency of their flights into Zambia, thereby providing reliable access and linkages with regional international markets.

## **6. Enhancing water supply to meet development goals**

Has the government evaluated the investment needs in water required to support its development goals? To what extent is the private sector involved in water management, supply and infrastructure financing?

Zambia has abundant water resources, covering 8 700 m<sup>3</sup> per capita per year, which is higher than the Sub-Saharan African average of 7 000 m<sup>3</sup> per capita per year. Water resources comprise lakes (*e.g.* Kariba, Tanganyika, Mweru and Bangweulu) as well as a number of rivers (*e.g.* Kafue, Zambezi, Chambeshi and Lungwa rivers). Zambia’s water courses account for about 60% of water resources in the SADC region. Access to reliable and safe water supplies is, however, a major challenge. Rapid urbanisation and demand from

industries, especially mining and manufacturing, have stretched supply capacities. The situation is exacerbated by low investment in water and sanitation supply systems. For example, daily demand for water in Lusaka is around 350 000 m<sup>3</sup> whilst production by the Lusaka Water and Sanitation Company (LWSC) is about 240 000 m<sup>3</sup> per day, leaving a supply deficit of about 31%.

Industries and more affluent households are forced to invest in sinking bore holes in order to guarantee adequate and reliable water supply for their needs. However, this practice is putting pressure on the underground water that supply companies can harvest for distribution to the population and industries. Most bore holes are sunk without assessment and planning permission, resulting in the degradation of underground water quality.

### ***Assessment of water supply needs***

An assessment to determine the demand for water in various sectors was carried out between 1992 and 1995 and showed that total water demand was 40km cubed; about 36 km<sup>3</sup> per year or an average of 1150 m<sup>3</sup>/s is used for hydropower generation. Out of the remaining 3 km<sup>3</sup>/year, agriculture uses about 3.31 km<sup>3</sup>, industry 0.21 km<sup>3</sup>, and households 0.48 km<sup>3</sup>. According to more recent estimates made by the Ministry of Energy and Water Development (MEWD), national access to safe and reliable water supply is presently at 60.1%.

As for water resources for agriculture, a total of 55 projects have been selected and categorized as short, medium or long term at an estimated cost of USD 3 649.04 million. However, no comprehensive study has been conducted to date to evaluate the water needs of the sub sector. It is clear that Zambia is not using its water resources to their full potential – only 27% of its 6 000 MW hydropower potential has been tapped, for instance. Moreover, only 3% of agricultural land is under irrigation although there is enormous potential, especially in the Copperbelt area and around Lake Kariba.

### ***Responding to challenges of securing adequate supplies of reliable and safe water***

In response to these challenges, the government has set improving access to reliable and safe water supply, regarded as both a social and economic good, as one of its priorities. As such, water supply should be developed and managed in a manner that both provides economic benefits, and promotes human dignity and the social well being of all citizens. The government has also recognised that water and sanitation are critical factors to the alleviation of poverty and hunger, the promotion of sustainable development, and to environmental integrity and human health.



In this aim, the government has committed itself to meeting the MDG target of increasing access to adequate, safe and cost effective water supply to 80% of the population by 2015, and 100% by the year 2030. In the case of the commercial sector, the government has also committed itself to facilitating adequate supplies that match current and future requirements, considered as a critical contribution to the establishment of an enabling environment for investment and growth of the economy.

In order to achieve these objectives, the government has adopted principles of Integrated Water Resources Management (IWRM) that take into account competing demands and uses of water resources. In this regard, a National Water Policy was approved and launched in February 2010. Its overall objective is to promote sustainable water resources management and development in order to facilitate equitable provision of adequate quantities and quality of water, both for water supply and for sanitation. This was an important milestone in the water sector, as the policy embraces modern principles of water resource management.

The policy has further provided a platform for the implementation of the Water Resource Management (WRM) Bill, which repealed the Water Act of 1949. Once enacted, the new WRM Bill will provide for the equitable utilization of water resources, as well as for sustainable protection, preservation, conservation, management and development of the resource and its ecosystems. The Bill will specifically address:

- controlling indiscriminate drilling of bore holes;
- developing sustainable practices in the management and exploitation of the country's water resources so as to avoid degrading ground water; and,
- strengthening regulatory provisions used to penalise industries and households polluting or vandalising water supplies.

The current Water Act (1949) does not provide for the management of transboundary water resources. This has made it difficult for Zambia to effectively address challenges related to this important resource. The new Bill, once in place, will therefore allow for an integrated approach in dealing with management of water resources, as well as with climate change.

### **Current framework for water management and supply**

Until the mid-1990s, water supply and sanitation services were mainly provided directly by central government through the Ministry of Works and Supply and local authorities (i.e. Councils). The principle law governing water supply and sanitation service provision in Zambia is the Water Supply and Sanitation Act No. 28 of 1997. This Act mainly deals with the regulation of the service provision and provides for powers of service providers. It also provides

for the establishment of an autonomous Regulator, the National Water Supply and Sanitation Council (NWASCO), which operates as a statutory body.

The Water Supply and Sanitation Act mandates NWASCO to regulate water and sanitation providers for efficiency, reliability and cost effectiveness of their services. Amongst the main areas of concern being addressed by NWASCO is water pollution, especially from mining activities which are affecting the quantity and quality of urban water supply. This is also posing a danger to health and increasing water treatment costs faced by service providers. In addition, NWASCO is concerned with the strategies applied by service providers in addressing “unaccounted” water losses resulting from vandalism and poor maintenance as this is lowering supply whilst increasing production costs. Currently, distribution losses by utilities are 45% of total water supply, while only 65% of total costs are recovered. Indeed, total losses stand at 236% of all current sector revenues. These inefficiencies are a major drawback to service provision and indeed undercut the financial resources of utilities.

The Water Supply and Sanitation Act also delegates and mandates the local authorities to provide water and sanitation services in their respective areas. There are currently two types of Water Supply and Sewerage service providers in Zambia, which are Commercial Utilities (formed by joint ventures among Local Authorities) and Private Schemes (companies supplying water and sewerage services as a fringe benefit to employees). Urban water supply and sanitation service provision has also been fully transferred from local authorities to commercial utilities with the aim of increasing efficiency and sustainability in operations. For the rural districts that are not served by commercial utilities, the Ministry of Works and Supply has continued to provide this service.

All 72 local authorities have established commercial water utilities (either as joint ventures or single entities) to provide water and sanitation services. There are presently 11 Commercial Utilities and seven Private Schemes currently licensed by NWASCO to provide water supply and sanitation services. All these institutions are by law required to obtain an operating licence from NWASCO which also monitors and regulates their activities. Out of the total urban population of about 5.4 million, 99% (or about 5.3 million) live in the service areas of the eleven commercial utilities. Each province has one Commercial Utility except for the Copperbelt Province where there are three such providers, as indicated below.

Through these interventions, water supply in urban areas increased from 45% in 2002 to 74% in 2010. On the other hand, sanitation coverage only increased from 28% in 2004 to 34% by 2010. Meeting the growing demand for adequate, reliable and safe water and sanitation services, especially in the

Table 8.7. **Water and sanitation utilities in Zambia**

Name of utility	Province	Year started	No. of towns covered
Nkana Water and Sewerage Company	Copperbelt	2000	3
Lusaka Water and Sewerage Company	Lusaka	1989	3
Kafubu Water and Sewerage Company	Copperbelt	2000	3
Southern Water and Sewerage Company	Southern	2000	17
Mulonga Water and Sewerage Company	Copperbelt	2000	3
Chambeshi Water and Sewerage Compagny	Northern	2003	12
Eastern Water and Sewerage Company	Eastern	2009	8
North Western Water and Sewerage Company	North-Western	2000	7
Western Water and Sewerage Company	Western	2000	6
Lukanga Water and Sewerage Company	Central	2007	6
Luapula Water and Sewerage Company	Luapula	2009	7
<b>Total number of towns served</b>			<b>75</b>

urban areas, still remains a major challenge for the government given the investments required compared to the limited resources.

In addition, commercial utilities face serious liquidity challenges largely attributed to their inability to enforce the collection of payments for services provided to public institutions. In the case of defaulting private consumers, utility companies are able to disconnect service until all arrears have been settled. The government however frowns upon any attempt to disconnect supplies for public institutions, and may even issue directives countermanding such actions. This has also led to the substantial undercapitalisation of utility companies as they cannot mobilise adequate resources to sustain existing supply systems or invest in the rehabilitation and expansion of infrastructure. This has also contributed to the increasing costs of water and sanitation services faced by private consumers, as the utility companies attempt to mitigate unreliable payment streams due from the public institutions.

### **Financing for water and sanitation**

Infrastructure funding to the sector has been a major concern despite the sector policies in place to facilitate infrastructure development. Another major challenge is that the legal and institutional frameworks are weak or inadequate and do not encourage private investment, especially as the government, which is the major consumer of water and sanitation services, can default in settling bills at will. There are also growing imbalances between investments taking place in the development and management of water resources in the urban compared to the rural areas, largely due to the fact that

urban areas have larger numbers of private consumers that pay for services. By contrast, rural areas are dominated by public institutions that are able to access piped water, and the economic returns of expanding supply infrastructure into villages are generally negative.

The government has however acknowledged the need to address the undercapitalisation of commercial utilities by strengthening public management and financial accountability amongst the Ministries and Spending Agencies. In addition, the government has put in place a deliberate public investment policy for the water and sanitation sector so as to increase funding and address deficits in infrastructure development.

Amongst the measures taken to address water and sanitation financing, the government issued a Statutory Instrument (SI) under the Water Supply and Sanitation Act (SI No. 65 of 2001), enabling NAWASCO to establish the Devolution Trust Fund (DTF), as a basket funding instrument. The DTF, which became operational in September 2003, is a non-profit making body but aims to accelerate the mobilisation of investment funds for projects to meet the growing needs for water and sanitation services by both the urban and rural population. It also promotes technology, offers the best in terms of quality of service to cost ratio, is commercially viable and is able to service a high number of the poorer members of society in both urban and rural areas.

Since its establishment, the DTF has so far mobilized ZMK 92.2 billion from the government and external partners (i.e. European Union, DANIDA and KfW of Germany). In addition, the government obtained a loan from the African Development Fund for the Rural Water Supply and Sanitation Project to provide adequate and sustainable water supply and sanitation projects and services in five Districts of Central Province, namely: Chibombo, Mumbwa, Kapiri Mposhi and Serenje.

Out of the total amount mobilized by the DTF, ZMK 75.4 billion had been disbursed by 2009 for rural and peri-urban water- supply projects. By 2010, the DTF had financed 67 water projects, benefiting a population of about 836 000 in peri-urban communities in Lusaka, Eastern, Southern, Northern and North-Western provinces.

## **References**

- Assessment of ZESCO Against Key Performance Indicators, Energy Regulation Board, March 2011.
- Government of Zambia (1997), *Water Supply and Sanitation Act*, Number 28, Lusaka.
- Government of Zambia (1998), Ministry of Energy and Water Development, *Framework and Package of Incentives for Private Sector Participation in Hydropower Generation and Transmission Development*, Lusaka.

Government of Zambia (2008), Ministry of Finance and National Planning, *National Public-Private Partnership Policy*, Lusaka.

Government of Zambia (2010), Ministry of Finance and National Planning, *Public-Private Partnership's: Key Definitions and Projects*, Lusaka.

Government of Zambia (2011), Ministry of Finance and National Planning, *Sixth National Development Plan: 2011-2015*, Lusaka.

Government of Zambia (2011), *Budget Address 2011*, Delivered to the National Assembly by the Minister of Finance and National Planning, Lusaka.

Government of Zambia (2008), *Public Procurement Act*, Number 12, Lusaka.

Shuller Habeenzu (2010), *Zambia ICT Sector Performance Review 2009/2010*, Research 101 Africa. Vet.

World Bank (2007), *Corporate Governance of State-Owned Enterprises in Zambia*, Washington, DC.

Zambia Business Survey (2010), *Profile and Productivity of Zambian Business*, Lusaka.



## Chapter 9

### Other Aspects of the Policy Framework for Investment

*This chapter examines other policy areas shaping Zambia's investment climate, including financial sector development and human resource development strategies, as well as public governance. Analysis of the financial services sector mostly focuses on evaluating areas of oversight and regulation, as well as on protection of the rights of borrowers and creditors. Meanwhile in the human resource development realm, this chapter highlights a number of achievements in primary education, which result from Zambia having placed high priority on education and skills development. However producing adequate skills to meet industry demands remains a weakness. Finally as pertains to public governance, the chapter charts the Public Service Reform Programme (PSRP) and the comprehensive re-structuring process aimed at realigning the role of government and the public service that followed the introduction of multi-party democracy from 1990. Anti-corruption efforts are also evaluated, suggesting that more effective measures and stricter enforcement remain necessary to prevent and combat corruption.*

## 1. Financial sector development

Effective financial sector policies enable enterprises and entrepreneurs to realise their investment ideas within a stable environment. The development of the financial services sector contributes to improved economic outcomes by channelling resources to appropriate projects, by stimulating saving and investment and by minimizing transaction costs, among other functions and contributes to create jobs – one of the major challenges for developing economies. A solid financial sector can contribute in particular through providing financial services and possibilities for local financing targeting large investors but also specific credits for smaller entrepreneurs. It is important for governments to understand the challenges SMEs and financial institutions are facing and subsequently conceive policies aiming at developing and deepening their financial markets to better suit their needs. This requires a focus both on the supply and the demand side, by strengthening elements such as financial literacy that increase investment readiness of smaller economic agents.

### 1.1. Processes used to evaluate capacities of the financial sector

What process does the government use to evaluate the capacity of the financial sector, including the quality of its regulatory framework, to effectively support enterprise development? What steps has the government taken to remove obstacles to private investment in the development of the financial sector, including restrictions on participation by foreign institutions?

Regulation of Zambia's financial sector is undertaken by three institutions, namely: Bank of Zambia (BOZ) which regulates banks and financial institutions; Securities and Exchange Commission (SEC) which regulates the securities market and stock exchange; and, the Pensions and Insurance Authority (PIA) which specifically regulates the establishment and operations of pension schemes and insurance businesses.

Access to affordable and efficient financial services have been recognised by the government as critical elements of sustained enterprise development.



Reforms of the financial services sector co-ordinated through BOZ have therefore focused on a number of objectives that include:

- ensuring financial and price stability;
- deepening financial products and services available on the Zambian market so as to suit the different needs of consumers;
- improving the efficiency and effectiveness of payment systems; and,
- promoting fair competition and transparency in the financial sector.

The main legal instruments governing the financial services and functions of BOZ are: Banking and Financial Services Act; the Bank of Zambia Act; the National Payment Systems Act; and the Prohibition and Prevention of Money Laundering Act. The regulatory frameworks underpinning these pieces of legislation implemented by BOZ are segmented to address the five broad categories of the financial services sector, namely: Commercial Banks; Micro Finance Institutions (MFIs); Lease Finance Institutions; Housing Finance Institutions (HFIs); and Development Finance Institutions (DFIs), covering the Development Bank of Zambia (DBZ). For each category, specific regulations have been developed that are used to guide their establishment operations and the monitoring functions of BOZ. As regulator of financial service institutions, BOZ uses a number of international standards that have been adapted to suit domestic needs. These include the use of Risk Based Supervision (RBS) based on “Basel II” guidelines. BOZ enforces strict capital adequacy and liquidity requirements amongst all commercial Banks as part of the measures for ensuring financial stability. BOZ has also set out Anti-money Laundering directives and corporate governance guidelines that must be observed by financial institutions.

The cost of accessing finance is analysed regularly by BOZ: movements in lending interest rates and other financial charges faced by borrowers are regularly monitored, as are the performance of commercial bank loans and “bad debt” provisioning. BOZ publishes regularly its analysis of charges, fees and commissions levied against all categories of the financial sector, which also helps borrowers to make informed decisions.

A major concern of the government and BOZ is that of improving access to affordable short and long-term credit by the private sector. Lending rates remain well above inflation (*i.e.* base rates are around 20% whilst the inflation rate is above 10%), making credit expensive. Presently, very few financial institutions are offering long-term finance to the private sector. This is stifling the growth of private investment required to modernize and expand production infrastructure.

Controlling government borrowing has been identified as one of the critical steps that can unlock access to affordable credit by the private sector.

In this regard, BOZ has to closely monitor levels of government borrowing so as to ensure that this is kept within set annual targets and does not “crowd out” the private sector.

The financial sector is fully liberalised and there are no restrictions on foreign investment into the sector. Any local or foreign entity can establish a commercial bank or non-bank financial institutions as long as they comply with licensing regulations administered by BOZ. There are presently about 17 commercial banks; 12 Leasing and Finance institutions; 23 Micro Finance Institutions (MFIs); 44 Bureaux de Change; 3 building Societies; a Development Bank; and a National Savings and Credit Bank. More recently, the Credit Reference Bureau (CRB) was launched to support the banking and financial services sector by providing customer credit reference services. Amongst the 17 commercial banks, 12 are subsidiaries of multinational corporations whilst the remainder are either locally owned or have state shares (i.e. the government has shares in Indo-Zambia bank and Zambia National Commercial Bank).

### ***Capacity of the financial sector to support enterprise development***

The regulatory frameworks used in Zambia to evaluate the capacity of the financial sector comprise: the Banking and Financial Services Act; the Bank of Zambia Act; the National Payment Systems Act; the Prohibition and Prevention of Money Laundering Act; the Bank of Zambia Anti-Money Laundering Directives; and the Bank of Zambia Corporate Governance Guidelines. For the evaluation and enhancement of the capacity of the financial institutions, the regulator has adopted Risk Based Supervisions (RBS) for the legislative framework and the determination of capital adequacy.

These supervisions are conducted based on the Basel II principles and there has been an introduction of a deposit insurance scheme. Meanwhile the central bank is enhancing the lender of last resort function. There has also been an enhancement of cross-border co-operation through consolidated supervision of financial institutions, and work is continuing on improving the financial sector through the implementation of the second phase of the Financial Sector Development Plan. The latter seeks mainly to boost market infrastructure, increasing competition and access to finance, and also to deal with longer-term issues including the harmonisation of financial sector laws, the full establishment of an independent Financial Intelligence Unit, and the implementation of a national switch.

Zambia has also adopted the Southern African Development Community (SADC) Central Bank Model law and is in the process of implementing it domestically. The law has enshrined 3 pillars of central banking – independence, accountability and transparency. The Bank of Zambia has

embarked on a process of reforming and modernizing its legislation based on this model law.

This exercise has resulted in a draft Bank of Zambia Act with the following features: provisions to strengthen the legal basis, ownership and structure of the Bank of Zambia as a modern central bank capable of regulating the financial sector; provisions relating to adequate power; provisions relating to preservation of confidentiality and handling of possible offences; and adequate mechanisms for good governance; measures to better manage and apply monetary policies, including the role of lender-of-last-resort and interest rate policies.

## 1.2. Protecting the rights of borrowers and creditors

What laws and regulations are in place to protect the rights of borrowers and creditors and are these rights adequately balanced? Is a registry system in place to support the use of property as collateral and to expand business access to external sources of credit? What data protection and credit reporting laws have been enacted to facilitate the flow of information and improve financial sector stability, thereby enhancing the investment environment?

### Confidentiality

The Banking and Financial Services Act provides for confidentiality of information relating to the banking services procured by a customer. This includes information that is not supposed to be disclosed to the public, concerning:

- the nature, amount or purpose of any payment made by or to the person;
- the recipient of a payment by the person;
- the assets, liabilities, financial resources or financial condition of the person;
- the business or family relations of the person; or
- any matter of a personal nature that the person disclosed to the bank in confidence.

In this regard, a bank or financial institution and every director, chief executive officer, chief financial officer, manager and employee are obliged to maintain the confidentiality of all information obtained in the course of service to the bank or institution and shall not divulge the same except :

- a) in accordance with the express consent of the customer, or the order of a court;

- b) where the interest of the licensee itself requires disclosure; or
- c) if the Bank of Zambia, in carrying out its functions under this Act, so requests.

Under the provisions of the Anti-money Laundering Act, financial institutions are also required to carry out necessary inquiries to satisfy themselves that sources of funds that they process on behalf of customers come from lawful sources. Notwithstanding the provisions of any law to the contrary, in any case where evidence of commission of an offence is to be found in the books, accounts or records of a bank or financial institution, such evidence shall not be sought or obtained from the bank or institution other than in accordance with the provisions of any other written law.

In the operations of commercial banks, BOZ is the official “Lender of Last resort”. In this regard, use of Risk Based Supervision (RBS) is rigorously applied. Banks are required to ensure that at all times they are able to meet minimum reserve and liquidity ratios as well as bad debt provisioning rules. These measures are supplemented by the recent introduction of deposit insurance schemes. The law against the issuance of promissory notes and other forms of payments (e.g. cheques) against an account that has no funds to meet the obligation has been strengthened. It is now a criminal offence to issue a cheque against an account without funds.

### ***Registry system to support the use of property as collateral and to expand business access to external sources of credit***

Commercial banks and non-bank finance institutions normally register collateral provided by borrowers, which can be liquidated in case of default of meeting loan repayment obligations. In this regard, a registry system, administered by the Ministry of Lands, is in place to pledge property as collateral. The Agricultural Credits Act (Cap. 224) also facilitates the borrowing of money on security in farming stock or other agricultural assets, and provides for the registration of these security interests. This Act enables farmers to create a charge on farming assets or their future marketable output as security for seasonal credit to cover inputs or other items required for production.

The PSDRP Ease of Doing Business Reforms is also considering the establishment of a Unified Collateral Registry. This is aimed at centralizing the source of information on registered collateral to make it easier for financial institutions and other relevant stakeholders to verify the status of a borrower’s collateral commitment. Once this is done, it reduces the risk for lending institutions, thereby increasing access to finance as well as reducing the cost of borrowing.

### **Data protection and credit reporting laws to enhance the investment environment**

Zambia has introduced credit reference services, as necessitated by the poor credit culture in the country identified under the FSDP. The Credit Reference Bureau (CRB) was launched in 2006 following the introduction of the Credit Reference Services (Licensing) Guidelines and Credit Data (Privacy Code) 2006. As a follow-up to the establishment of the CRB, a Directive was issued by the Bank of Zambia on 10 December 2008 mandating all credit providers to use the services of a credit reference agency before issuing any loan, and to provide credit data to a credit reference agency. The Bank of Zambia is currently developing a comprehensive credit reference law, which will have jurisdiction over all credit providers and data sources. Currently most, if not all, banks are using CRB to check on borrowers' credit ratings.

## **2. Human resource development**

Policies that develop and maintain a skilled, adaptable and healthy population, and ensure the full and productive deployment of human resources, are essential to identify and seize investment opportunities, and to support a favourable investment environment. Many countries under-invest in human resource development due in part to a range of market failures; in least developed countries with widespread poverty, the sheer magnitude of the task can overwhelm the capacity of governments.

### **2.1. Human resources development policy framework**

Has the government established a coherent and comprehensive human resource development (HRD) policy framework consistent with its broader development and investment strategies, and its implementation capacity? Is the HRD policy framework periodically reviewed to ensure that it is responsive to new economic developments and engages the main stakeholders?

Zambia faces daunting challenges of producing skilled personnel that can meet the needs of industry, especially in technical functions. This is particularly evident in science education, which can provide a strong platform for technical training. As a result, there is a general shortage of technical skills, especially in engineering. The 2005 Labour Force Survey, conducted by the Central Statistical Office and disaggregated by industry and occupation, showed that the highest percentage of skilled Zambians were found in the finance, insurance and real estate sectors, while the lowest number of

qualified staff were in mining, construction, and quarrying, accounting for only 0.3% of total employment in those sectors. This was also the case for the manufacturing, transport and communication sectors, where skilled employment accounted for only 1.4% of the total.

The 2010 Constraints Analysis, conducted by the Millennium Challenge Account Co-ordinating (MCC) office in Zambia, also observed that there are “imbalances for specific skills such as: managers, engineers and other highly trained professionals”. These trends could partly be explained by the absence or inadequacy of local skills to meet the demands of the new, more technology-intensive systems and processes in the productive sectors of the economy. The experiences of industry indicate that there is an oversupply of lowly skilled personnel against an acute shortfall of highly trained and skilled workers. Consequently, the economy is increasingly dependent on the importation of skilled labour, especially in the technical skill areas.

In response to these imbalances, the government has set a number of policy objectives that include the prioritisation of investment in education and in technical, vocational and entrepreneurship training. In this regard, the stated long-term “Vision” of the education sector is: “innovative and productive lifelong education and training for all by 2030.” Its goal is to increase equitable access to quality education and skills-training, to enhance human capacities for sustainable national development.

### ***Human resource development policy framework***

During the FNPD period (i.e. 2006 to 2010), the strategic focus of interventions was to expand access to high school and technical education. The government has also sought to improve the quality of education at all levels so that appropriate skills, knowledge, attitudes and values required for social and economic development are imparted to the learners. From 1995, the government launched a policy of integrating technical and vocational training with entrepreneurship development. The idea behind this approach was to strengthen the fit between technical training and the needs of job markets, to provide basic skills to those graduates who cannot be absorbed by the formal sector to engage in self employment. This was supported by the development of the Technical Education, Vocational and Entrepreneurship Training (TEVET) policy in 1994.

In 1995, the government established the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA) which took over the functions of regulating and supervising technical and trades training institutions previously carried out by the Ministry of Science, Technical and Vocational Training (MSTVT). Underfunding of technical colleges and trades training institutions however lessened the expected impact of the TEVET

policy and limited the level of influence that TEVETA could have in addressing skills development so as to match the needs of industry.

More recently, the government together with TEVETA launched the TEVET Development Programme in order to harmonise interventions supported through the national budget, donor resources and private sector investments. The objective of the TEVET Development Programme is to facilitate a “demand driven, self-sustaining technical education and entrepreneurship training system that can improve the skills of the human resources produced for the formal and informal sectors of the economy, whilst also promoting equity”. It is therefore expected to mobilise domestic and international sources to strengthen technical training skills so that they can match needs of industry whilst also improving access for students.

Limited formal sector employment opportunities are also resulting in large numbers of youths joining the growing volume of the unemployed population. This situation is also inducing pressure on the government’s ability to stimulate increased investment in economic activities that will result in accelerated job creation. Limited technical skills amongst Zambians are also a disincentive to investors seeking to employ highly productive local labour but at a regionally competitive cost. This has been identified as one of the main constraints to national development and requires urgent attention by all key stakeholders, especially the private sector and the government.

## **2.2. Increasing participation in basic schooling and improving quality of instruction**

What steps has the government taken to increase participation in basic schooling and to improve the quality of instruction so as to leverage human resource assets to attract and to seize investment opportunities?

The government is on track to meet the MDG of universal primary education for all children by 2015. In this regard, free primary education was introduced from 2002 whilst school going girls who become pregnant are also allowed to return and continue with their studies (“re-entry policy”). As a result of these interventions, primary school enrolment increased from about 68% in 2000 to 92% by 2006. Furthermore, about 80% of children enrolled compete in the final year of primary school education. However, access to secondary school places remains limited to around 18% of those leaving primary school.

Three priority areas were identified in the FNDP to guide interventions, as follows: recruitment of teachers, procurement of educational materials, and

construction of classrooms and teachers' houses. During the FNDP implementation period, 5 000 additional teachers were to be recruited each year in order to reduce the high pupil teacher ratios and eliminate systems of double and triple shifts. The government had also planned to increase funding to education from 3.4% of GDP in 2005 to 4.4% of GDP by 2010.<sup>1</sup> The government also committed itself to scale up annual budget allocations to education from 16.3% of total expenditure in 2006 to 22.4% by 2010.

The prioritisation and direction of efforts towards the attainment of the MDG of universal primary education has stretched budgetary resources, thus limiting expenditure in TEVET. The government had envisaged scaling up spending on TEVET to at least 0.6% of the national budget by 2010, from 0.3% in 2006. The focus of the increased expenditure was to expand training facilities and learning requisites in order to improve absorption capacities of institutions. The shortfall has meant that whilst there has been an increase in access to basic and primary education, absorption capacities of higher-learning institutions have remained virtually static. In addition, insufficient attention has been given to addressing qualitative improvements to curricular and education/training delivery standards.

### **2.3. Incentives for private sector investment in higher education and return of foreign based nationals**

Is the economic incentive sufficient to encourage individuals to invest in higher education and life-long learning, thereby supporting the improvement in the investment environment as a result of better human resources? What measures are being taken to ensure the full benefit of a country's investment in its own human resources accrues within the country, and that nationals who have completed their studies abroad are attracted to return? What mechanisms exist to promote closer co-operation between education institutions and business, and to anticipate future labour force skill requirements?

The government is currently concerned with the financial impact of its assumed obligation to subsidize all public training institutions. This is done in order to improve access for ordinary Zambians without the means to meet the cost of privately-run tertiary education facilities. This has placed pressure on the government to accommodate "over-enrolment" in public institutions, also reducing capacities for upgrading infrastructure and improving the quality of instruction. Investments required to improve training infrastructure are also beyond current capacities of the government. On the other hand, access to training needs to be affordable, especially given that demand for places in



school already outstrips available capacities. Another challenge is that of meeting the cost of upgrading the skills of trainers; indeed, the poor quality of lecturers and institutors, exacerbated by poor training infrastructure, is also as a major contributory factor to the current deficiencies in training.

In addition to the drive to put more government-sponsored students in universities and colleges, there has been a substantial increase in both public-private partnerships for funding higher education, and in the number of private institutions for higher learning in the country. There are now over two dozen private colleges in Zambia that offer training in areas as wide-ranging as public administration, education, marketing, agriculture and natural resources management.

Training institutions however tend to offer general training, leading to increasing mismatches between supply and demand for skilled personnel. At the same time, the education system is producing large numbers of students who cannot be absorbed by limited capacities of tertiary institutions.

Poor conditions of service and limited employment opportunities have given the impetus to Zambian professionals to emigrate to more developed economies. This further increases gaps locally as it is mostly the highly qualified professionals who emigrate. On the other hand, the government has not yet put measures in place that can effectively reduce the brain drain. Currently, appeals are being made to nationals in the Diaspora urging them to return home. In collaboration with the International Organisation for Migration (IOM), the government is also supporting the award of grants for professionals in the Diaspora to relocate to Zambia.

### **Co-operation between educational institutions and business sector**

The government's policy especially envisages the development and implementation of programmes focused on education and training for the delivery systems that are responsive to the formal sector. Policy focus is however also supposed to be anchored on the development of strong and dynamic linkages between vocational and technical educational facilities and business in order to increase the relevance of training to private sector employment.

In this regard, the Ministry of Science Technology and Vocational Training (MSVT) is encouraging and engaging various stakeholders to support the introduction of a Training Levy, considered to be critical to the sustainable financing of the skills training sector and to the provision of incentives to compliant institutions.

## 2.4. Evaluating the effectiveness of training programmes

To what extent does the government promote training programmes and has it adopted practices that evaluate their effectiveness and their impact on the investment environment? What mechanisms are used to encourage businesses to offer training to employees and to play a larger role in co-financing training?

Presently, business is not directly involved in the processes of developing curriculum, training and assessing candidates. This is partly because there is no clear policy on the role of industry in technical training, especially the recognition of investments made by industry, largely to fill gaps in skills competency. For example, TEVETA has a Learnership scheme adapted from the 1965 Apprenticeship Act which is however not structured or linked to the needs of industry: there is no mechanism for assessing the effectiveness of learning contacts between trainees and industry, and no industry-based assessors are appointed by TEVETA.

Currently, there are very few identifiable “centres of excellence” that offer specialised skills training. Close attention is therefore required to review how Learnership schemes can be used more effectively under a formal process, *i.e.* by strengthening linkages between practical training and skills acquired, and formalising them under certification systems. For example, the construction industry has specific production and competency levels that are used in the employment of technical personnel, the determination of their remuneration, and in performance assessment. Existing mismatches can be addressed through modular training with strengthened links to industry competency standards.

In order to develop confidence in Zambia’s certification systems, a number of specific steps need to be taken that can include the direct involvement of employers in trade testing components of the certification process. Prior to graduates being placed in industry, they can initially be issued with certificates of attendance by training institutions until their competence levels have been tested in the work setting. As part of this, TEVETA should consider appointing industry-based assessors and developing certification systems that recognise:

- on the job training;
- formal training at dedicated institutions; and,
- informal sector self learning.

Under such a structure, companies providing in-service training can also register and receive accreditation from TEVETA. A key area is that of developing credible systems of trade testing and examinations that support the certification framework.

International equivalences of Zambia's qualification standards should also be clearly elaborated and published by TEVETA. As part of this, TEVETA should work closely with international accreditation institutions in order to ensure that Zambia's curriculum and certification standards are not only internationally recognised but keep up with technological advances. Amongst the benefits of such an effort will be the creation of a link in the curriculum to show defined modular levels of skills. The qualifications framework should also define equivalences that can then be refined down to skill-based standards. Were Zambia to adopt international curriculum-setting standards, such as for artisans, this would provide recognised systems of training and certification of specialised skill categories.

A National Employment and Labour Market Policy (NELMP) was launched in 2004 to provide a labour market management mechanism that can respond to the demands of a liberalized market, i.e. protection of jobs or workers and promotion of job creation by firms in the so-called efficiency-equity trade-off (particularly when the long-term benefits of increased employment and wages are likely to be clouded by short-term concerns for job and wage security). Zambia also subscribes and is a signatory to International Labour Organisation (ILO) and other international labour conventions that support job creation whilst identifying child labour and other unacceptable labour practices.

### **2.5. Strategies for tackling the spread of pandemic diseases and public health expenditure**

Does the government have a coherent strategy to tackle the spread of pandemic diseases and procedures to evaluate public health expenditures aimed at improving both health outcomes and, through inter-linkages, the investment environment?

The FNDP also prioritised increasing funding of the health sector and mobilising government and private resources to develop and implement awareness and treatment campaigns, including special programmes for workplace peer-education and counselling. In this regard, during the FNDP implementation period the government planned to raise total health spending to 3.6% of GDP from both government and donors by 2010, from 2.9% in 2006.

The annual budget of the health sector was also expected to be scaled-up to at least 11.5% of budget by 2010, from 7.0% in 2006. The health budget (both government and donor) would be increased to around 14.1% by 2010 from 10.6 per cent in 2006. The key interventions in the sector would be human resource development, medical supplies and infrastructure.

Particular progress has been made in fighting HIV/AIDS, where to-child transmission has virtually been eliminated. The government has prioritised addressing the HIV and AIDS epidemic, and has been promoting a multi-sectoral response under a national strategic framework co-ordinated by the National Aids Council (NAC).

The government has however faced difficulties in scaling up funding for health. For example, the 2011 budget allocated only 8.6% of the national budget to health, far lower than the target of 14.1%. In 2011 this situation was adversely affected by the withdrawal of donor funding to health following the Auditor General's report and the Global Fund, which both highlighted cases of poor accounting for resources.

## **2.6. Mechanisms for promoting and enforcing core labour standards**

What mechanisms are being put in place to promote and enforce core labour standards?

Zambia has ratified eight (8) core labour standards of the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work (1998). The core labour standards are a fundamental series of rules and principles relating to the minimum standards recognised by the international community for treating workers humanely, and are considered to protect basic human rights in the workforce. The ILO's core labour standards aim to, among other goals: eliminate all forms of forced or compulsory labour; effectively abolish child labour; eliminate discrimination in respect of employment and occupation; and ensure the freedom of association and the right to collective bargaining.

Through an ILO initiative the government, supported by social partners, prepared a coherent and focused programme for Zambia to contribute to the promotion of Decent Work throughout the economy. The "Decent Work Country Programme (DWCP)" was established to co-ordinate and align technical assistance, support and resources around an achievable set of priority outcomes. It is in line with the promotion of core labour standards.

The major issues being addressed by the DWCP are: job creation for women, young people and people with disabilities; prevention and mitigation of HIV and AIDS in the world of work; and elimination of the worst forms of child labour. These components of the DWCP are also seen as contributions towards achieving the objectives of Zambia's Millennium Development Goals (MDGs) and of Vision 2030.

## **2.7. Role of labour market regulations**

To what extent do labour market regulations support job creation and the government's investment attraction strategy? What initiatives have been introduced that support policy co-ordination, the balancing of social objectives, the goal of a competitive workforce, and the incentives for business to invest?

The business sector is currently concerned with the redundancy provisions in Labour and employment legislation. The legislation specifies the minimum payment structure that is deemed by the business sector to be excessive and to discourage them from investing in new technologies that involve deployment of labour.

In addition, the legislation places a burden on employees to provide a number of social and welfare facilities whose costs they are expected to cover. These include: housing, education, health and medical, and funeral grants that also apply to registered dependents. Employees are likewise expected to self-fund transport or allowances. Where the employer cannot provide these facilities, they are however obligated to cover the associated expenses by way of allowances. As a result, the costs of non-cash benefits of employment tend to be very high and to discourage employers from taking on labour. Instead, the practice of offering casual employment has become more prevalent as employers are not obliged to offer any benefits apart from the agreed wage.

The government is currently addressing the challenges of casualisation of labour by facilitating public debate on the issue. While employers feel that using casual employment contracts lessens the burden of uncompetitive costs of labour, job seekers consider this approach to limit employment opportunities to pay low wages. Following intensive consultations with stakeholders, a formal definition of "Casualisation" has been agreed as: "the practice by an employer or agent of engaging an employee on a short-term employment contract for a job of a continuous nature with terms of conditions applicable to a casual employee."

The Ministry of Labour and Social Security has further proposed to define casual employee as, “any person whose job is not of a continuous nature and whose terms of employment provide for payment at the end of the work assignment or end of each day, as the case maybe, and also is engaged for a period not exceeding three (3) months”. This new definition of Casual Employee, if implemented, will shorten the period over which a person can be employed on a continuous basis (from 6 months currently, to a period of 3 months).

Amongst the other policy and regulatory reforms needed are those of according a distinct status for trainees when employed by industry. Presently, the labour laws do not offer adequate protection to either employers or trainees. A better situation would be that of allowing employers to introduce a “trainee wage” category in the remuneration schemes that does not also place on them normal obligations of standard employment contracts. This would encourage industry to employ trainees under special schemes that also protect this category of employees.

## **2.8. Labour adjustment and employment of expatriate labour**

Do laws and regulations restrict the deployment of skilled workers from an enterprise investing in the host country? What steps have been taken to unwind unduly restrictive practices covering the deployment of workers from the investing enterprise and to reduce delays in granting work visas?

The broad policy position of the government is to permit the employment of expatriate labour only in the sectors where there is scarcity of local personnel. In this regard, the Department of Immigration has a special Committee that assesses applications for work permits and consults sector representatives, such as ZICA (accounting professional body) and the Zambia Council for Construction (ZCC) for comments before approving Work Permits. Foreign persons can however obtain self employment permits where they show proof of having resources of at least USD 50 000 in business venture. Under the current investment incentives offered by the ZDA, firms that invest at least USD 250 000 are permitted to automatically employ up to 5 expatriate staff in specialist technical skills. Investors promoting large scale investments can negotiate the number of work permits that they can obtain from the Department of Immigration to employ expatriates.

### 3. Public governance

Regulatory quality and public sector integrity are two dimensions of public governance that critically matter for the confidence and decisions of all investors and for reaping the development benefits of investment. While there is no single model for good public governance, there are commonly accepted standards of public governance to assist governments in assuming their roles effectively. As in other PFI areas, Zambia has undertaken significant effort in this field and should maintain its progress.

#### 3.1. Regulatory framework

Has the government established and implemented a coherent and comprehensive regulatory reform framework, consistent with its broader development and investment strategy?

Prior to the end of 1990 and before the re-introduction of multi-party democratic governance, the ruling party was deemed to be superior over the government. Under the one-party system of government, the political party reporting structures were embedded in the way the public service conducted its affairs. This environment was further influenced by the national “state of emergency” introduced in 1965 and only removed in 1990. By and large, public service administrative practices were also aligned to a controlled environment, where the state played a dominant role in business and regulated markets. In this environment, political expedience influenced governance practices, as the state did not feel disposed to open itself to public accountability and transparency.

After the introduction of multi-party democracy from 1990, the implementation of economic reforms was followed by a comprehensive restructuring process aimed at realigning the role of government and the public service. In October 1993, the government launched the Public Service Reform Programme (PSRP), aimed at “right-sizing” and re-orienting the role of the civil service under a liberalised market environment. As part of the public sector reforms, the government also initiated a major exercise to rationalize statutory boards and state enterprises that played roles that were incompatible in a liberalised market environment. The government, keen to move away from direct involvement in business, also implemented a privatization programme. Another critical consideration was the need to reduce government costs by limiting subsidies provided to public institutions.

The above was followed by regulatory reforms aimed at infusing increased participation of the private sector and Civil Society Organisations

(CSOs) on the boards of statutory institutions and public enterprises. All Boards of Statutory institutions and State Owned Enterprises were re-structured to include proportionately higher numbers of “independent” non-state actors. With the exception of a few regulatory agencies and Commissions, the boards are also chaired by representatives from non-state actors. This approach was intended to achieve a number of objectives that included:

- lessening the state’s influence in the way in which public institutions are managed by devolving powers hitherto exercised by Cabinet Ministers and Permanent Secretaries to appointed boards composed of mainly non-state actors;
- improving transparency and accountability; and,
- infusing high-level private sector management practices as part of the measures aimed at improving the efficiency and effectiveness of public institutions. It was also expected that this would lessen the administrative burden faced by the government in its provision of subsidies to public institutions.

The intentions of the government are therefore clearly aimed at strengthening the infusion of standard public governance principles of transparency and accountability, as well as high performance. In practice however, the government is still grappling with the challenge of allowing boards of public institutions to operate independently. The constraints placed on public boards include:

- i) poor security of tenure for the non-state actors serving on the Boards. The portfolio Minister can arbitrarily dissolve and appoint new members of boards;
- ii) in circumstances where the public institution has no legally prescribed board composition, where inadequately qualified persons may be appointed to serve on boards;
- iii) under-funding of public institutions compromise operational autonomy and encourages interference from portfolio ministries who may claim unfettered access to their operating assets; and,
- iv) certain public boards have inordinate numbers of civil service personnel who are not always available to attend Board meetings, or able to always act in the interest of the institution if this happens to be in conflict with the expectations of the political executive. At times proxies are also used who are not adequately familiar with relevant issues.

These practices are to an extent a carryover from the period of the one-party state where the political executive freely directed the governance of public institutions. The public sector reforms remain incomplete in terms of



infusing the intended performance improvements and their overall effectiveness is affected by financial resource constraints. The public service is considered to perform below levels needed for fostering a more competitive environment.

Part of the challenge faced is the weakness in the legislative framework, as seen in earlier sections. Currently, the political executive has unfettered discretion to establish new public institutions and to hire and fire personnel outside the public service appointment system. Political cadre placement in the public service by the ruling party has persisted even under the multi-party dispensation. Nonetheless, the “scheme of service” established to guide the technical and managerial development of staff has largely been abandoned.

### **3.2. Mechanisms for co-ordinating regulatory reforms**

What mechanisms are in place for managing and co-ordinating regulatory reform across different levels of government so as to ensure consistent and transparent application of regulations and clear standards for regulatory quality?

The Cabinet Office has directly been co-ordinating most public service reform initiatives and regulates the establishment of public institutions. The PSP-RP, which has focused on reducing the cost of doing business in Zambia, is co-chaired by a private sector representative and the Deputy Secretary to the Cabinet. This framework is intended to secure improved co-ordination in the identification and prioritization of reforms, and in implementation of corrective measures at line ministry level. Another important mechanism used in the Co-ordination of regulatory reforms is that of the Sector Advisory Group (SAG) under MCTI (described in the Chapter on Trade Policy), which co-ordinates a number of Technical Working Groups (TWGs) addressing trade and manufacturing related issues.

Co-ordinating mechanisms for key regulatory reforms are therefore in place. The main challenge faced at the implementation level is largely associated with resource constraints and low levels of prioritization accorded to changing public administrative systems. Most co-ordinating frameworks involve public service personnel that face other competing demands on their time. On many occasions, this results in a loss of continuity with different persons sharing co-ordinating roles.

### 3.3. Regulatory Impact Assessments

To what extent are regulatory impact assessments used to evaluate the consequences of economic regulations on the investment environment? Are the results of these assessments made public on a timely basis?

The government does not presently have a coherent and consistent framework in place for the regular conduct of regulatory impact assessments. Most of the regulatory reforms being undertaken that are associated with the business environment were motivated by independent studies commissioned by international development partners. For example, the focus of the PSD-RP was largely shaped by two major World Bank studies commissioned between 2002 and 2003 addressing: Administrative Barriers to Investment; and the Investment Climate Assessment.

In practice, the implementation of regulatory reforms has been heavily reliant on the availability of financial resources. For example, ZDA commenced full operations in July 2007, about 1.5 years later than was earlier envisaged because operational funds could not be appropriated. On the most part reforms have only been implemented according to set plans where earmarked donor resources have been applied.

### 3.4. Effectiveness of public consultations

What public consultation mechanisms and procedures, including prior notification, have been established to improve regulatory quality, thereby enhancing the investment environment? Are the consultation mechanisms open to all concerned stakeholders?

The practice of engaging stakeholders in consultations over regulatory reforms is commonly applied by the government and public institutions. The consultative process takes place at a number of levels that include:

- engagement of stakeholders when conducting studies supporting regulatory reforms are being conducted and at the time of disseminating results and the review of recommendation;
- engagement of stakeholders in the review draft Legislation supporting intended reforms. This includes public hearings and/or stakeholder workshops held to receive comments;

- presentations to the portfolio Committee of Parliament reviewing the draft Bill. During this occasion, stakeholders may raise objections to the contents of the bill that may be addressed by Parliament; and,
- engagement of stakeholders by the government's implementation agency to discuss proposed regulations and administrative guidelines prior to the portfolio minister issuing the Statutory Instrument (SI) to make them operational.

These consultative processes have engendered greater stakeholder participation and transparency in policy formulation and in the implementation of regulatory reforms.

### **3.5. Processes for identifying and reducing unnecessary administrative burdens**

To what extent are the administrative burdens on investors measured and quantified? What government procedures exist to identify and to reduce unnecessary administrative burdens, including those placed on investors? How widely are information and communication technologies used to promote administrative simplification, quality services, transparency and accountability?

The PSD-RP framework was primarily focused on the identification and prioritisation of reforms required to reduce the cost of doing business. Amongst the priority areas identified for reform has been the simplification of administrative procedures and reduction of compliance costs faced by the private sector. Some of the administrative burdens have been measured and qualified studies have been undertaken directly under the auspices of the PSD-RP and through donor initiatives, such as the USAID-funded Country Threshold Project of the Millennium Challenge Account (MCA). Resulting from such studies, a number of reforms are being implemented, including:

- i) review of the multiplicity of business licenses (elaborated in the Chapter on Investment Promotion and Facilitation);
- ii) reduction in the time required to register a business;
- iii) establishment of a dedicated customer care centre at the Immigration department as part of streamlining procedures for processing applications for permits;
- iv) computerisation of immigration records and entry/exit formalities at the Lusaka International Airport; and,

- v) establishment of a dedicated customer care centre at the Ministry of Lands to speed up processing of applications relating to land acquisition, transfer of titles, and other registration formalities.

Introduction of ICT processing capabilities have accompanied the reforms of administrative procedures. The establishment of customer care centres with banking-hall-type settings have improved transparency and reduced corruption as the processing of applications is now carried out in the open. A number of public institutions that facilitate investment and business services have adopted the customer care centre model, including ZRA, PACRA, the Immigration Department, the Ministry of Lands and the ZDA. Each of these institutions is also introducing modern ICT platforms for records management and for processing applications. This has led to notable improvements in the quality and timelines of services that they provide. The ZRA, PACRA and Immigration department have gone a step further by facilitating Internet-based processing and submission of applications and returns. For example, applicants for work permits and entry visas can now also apply outside the country on-line.

### **3.6. Domestication of international conventions on corruption**

To what extent have international anti-corruption and integrity standards been implemented in national legislation and regulations? Do penal, administrative and civil law provisions provide an effective legislative and regulatory framework for fighting corruption, including bribe solicitation and extortion, and promote integrity, thereby reducing uncertainty and improving business conditions for all investors?

Zambia has long scored low on the Corruption Perception Index (CPI) of Transparency International, oscillating between the 9th and 11th categories of the most corrupt countries in the world. In 2009, the CPI score for Zambia improved marginally to 3.0 from 2.8 in 2008.

The government has accordingly taken significant steps towards strengthening the framework to tackle corruption. Zambia ratified the SADC Protocol Against Corruption in 2003. This was followed by the ratification in 2007 of both the UN Convention Against Corruption, and of the African Union Convention on Preventing and Combating Corruption. To domesticate these international conventions, the National Anti-Corruption Policy (NACO) was launched after Cabinet approval. The government has also taken measures to enhance protection of whistleblowers and witnesses with the enactment of the Public Disclosure (Protection of Whistleblowers) Act, as well

Table 9.1. **Zambia's world ranking against the CPI: 2001-09**

	Rank	Category – CPI	Score
2001	9	–	90
2002	11	2.6	102
2003	11	2.5	133
2004	11	2.6	146
2005	10	2.6	159
2006	9	2.6	163
2007	13	2.6	180
2008	17	2.8	180
2009	19	3.0	180

Source: Transparency International (Zambia).

to strengthen protection of citizens against false reports in line with Article 32 of the UN Convention. Zambia participates in the Joint African Development Bank/OECD Initiative to Support Business Integrity, and in 2011 endorsed the principles in the .

The Zambia Chapter of Transparency International also undertakes another assessment on corruption, the Bribe Payers Index (BPI). In 2007, the BPI results indicated that despite the above efforts, demand for bribes by public officials remained endemic and systemic. 90.1% of the business sector surveyed, and over 80% of the civil servants who responded to the survey concerning the public sector, indicated that demand for bribes was either common or very common.

Nevertheless, in 2007, Zambia's score for the Control of Corruption improved to 34.37 (up from 27.7 in 2006), enabling the country to qualify for the Millennium Challenge Account (MCA) Compact Status. The World Bank Doing Business Survey for 2007 also stated that the percentage of business firms ranking corruption as a serious and major obstacle to their business dropped from 47% in 2003 to 16% in 2007. These achievements result from various efforts undertaken by the government to fight corruption, some of which are described below.

### 3.7. Measures taken to promote anti-corruption practices in public institutions

Do institutions and procedures ensure transparent, effective and consistent application and enforcement of anti-corruption laws and regulations, including bribe solicitation and extortion, and integrity in the public service? Have standards of conduct by public officials been established and made transparent? What measures are used to assist public officials and to ensure that expected standards are met? Are civil society organisations and the media free to scrutinize the conduct of public officials' duties? Are "whistle-blower" protections in place?

The government has promoted a policy of "zero tolerance" for corruption and strengthened the legislative and regulatory framework supporting the role of the Anti-Corruption Commission (ACC). This specialised anti-corruption agency follows the "multi-purpose model with law enforcement powers". This means the agency is empowered with roles of prevention and awareness-raising, detection and investigation, and prosecutorial powers. Amongst the steps taken, the ACC has developed manuals to guide the proper conduct of investigations and prosecutions. The ACC has also recruited additional State Advocates and is decentralising its offices to all the 9 provincial centres of the country in order to improve its presence.

Initiatives have also been taken to develop codes of conduct/ethics for civil servants and public officials, including members of Parliament. For example, in 2003, the Civil Servants' Code of Conduct was revised, together with the provisions in the General Orders that stipulate how civil servants should behave as public officers. These guidelines are set out in two sets of documents, the Service Commission Regulations and the Terms and Conditions for Employment in Civil Service.

More recently, in 2008, the Management Development Division of the Cabinet Office developed and disseminated the Code of Ethics for civil servants. The elements included in the Code are generic and are expected to be adopted and adapted into sector-specific codes of ethics by all Ministries and/or public institutions. The ACC has also been promoting the establishment of Integrity Committees (ICs) in public institutions. The initiative to establish ICs is intended to promote ethical conduct as one of the strategies for preventing corrupt practices and improving service delivery to the public. By mid-2010, 13 public institutions had established ICs and drawn up customer service charters, such as ZRA, Department of Immigration, Ministry of Lands and the Lusaka City Council. Also, the government has set up a legal framework to combat bribery (see Box 9.1 below).

### Box 9.1. Legal framework to combat bribery in Zambia

- **Domestic Bribery:** Bribery and corruption offences are addressed under the **Anti-Corruption Commission Act (ACCA)**. Active bribery of a public official is criminalised under **Section 29(2)**. Accordingly, any person who directly or indirectly promises, gives or offers any gratification to any public officer, whether for the benefit of that public officer or any other officer as an inducement or reward for doing or forbearing to do anything in relation to any matter or transaction, be it actual or proposed, which any public body is or may be concerned, commits an offence. Passive bribery is criminalised under Section 29(1) of the ACCA. The term “gratification” is defined as any corrupt payment, whether in cash or in kind, any rebate, bonus deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift... other than a casual gift (**Section 3**). The term “public officer” is defined as any “person who is a member of, or holds office in, or is employed in the service of a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid” (**Section 3**).
- **Foreign Bribery:** Zambia criminalises the bribery of foreign public officials under Section 3 of its new Anti-Corruption Act, as provided for under the UNCAC.

Source: Anti-Corruption Commission Act (ACCA) of the Republic of Zambia.

The Zambian chapter of Transparency International (TIZ) together with other CSOs have been actively involved in advocacy campaigns against corrupt practices. The ACC has also been collaborating with such organisations by engaging them to carry out sensitization campaigns as well as research on corruption monitoring and prevention. The ACC has also set up “toll free” Call Centres accessible by the general public in order to encourage them to report incidences of corruption. Legislation is also being drafted for the protection of “whistle blowers”.

However, the public institutions that have begun developing codes of ethics so far have only expressed statements of good intent and do not yet have provisions of sanctions for noncompliance to the standards that have been set out. The Parliamentary and Ministerial Code of Conduct Act for instance affects only 150 public officials (i.e. Members of Parliament and Cabinet) and excludes civil servants.

The Parliamentary and Ministerial (Code of Conduct) Act requires individuals to declare their assets and liabilities when they become MPs and/or appointed as Ministers. The current practice is however for MPs and

ministers to make declarations every five years, and none has faced any sanctions for non-declaration of assets, liabilities and interests. There is also no requirement under this Act for senior public officials to lodge the same information (on assets, interests and liabilities) at the time of leaving office. It is therefore difficult for authorities to ascertain whether these former public officials illicitly earned any income beyond their known and/or declared means. The Chief Justice as receiver of the declarations also has no capacity to verify the accuracy of the declarations.

In general, governance reforms that seek to eliminate opportunities for corruption are often frustrated by inaction by officers with vested interests, especially through delays in the adoption of good governance best practices. For example, although Section 10 of the ACC Act requires the Controlling Officer to respond within 30 days of being written to, it does not prescribe any sanctions if the officer does not adhere to this requirement. The same weakness affects service charters as there are no sanctions against institutions for failing to meet the purported standards of service.

An issue of concern is the recent amendment to the Anti-Corruption Act (passed in 2010) that removed the “abuse of office” clause. Previously, public servants could be compelled to explain their source of wealth and where this was deemed to be unsatisfactory, they could be charged for corruption. The government decided that civil servants (including members of the political executive) should not be subject to anti-corruption provisions that are presumptive on the wealth that they acquire through private activities. The government has also limited the requirement for all public officials to provide regular returns disclosing their assets to members of the political executive.

A major challenge presently being faced by the government is therefore the public perception that corruption is being tolerated, especially where it involves the political executive and persons deemed to be sympathetic to the ruling party. This perception has gained ground due to a number of decisions taken by the government, such as the dissolution of the Special Task Force on Corruption established to investigate, prosecute and recover assets corruptly obtained by a number of high profile individuals associated with the government before 2002, including the second Republican President.

The government would also need to act on the reports by the Auditor-General relating to abuse of resources by public officers and to shortcomings in adherence to Financial Regulations by Controlling Officers. As a result of such failures to enforce financial accountability, in 2009 the Global Fund and donors suspended budget support to the Ministry of Health. The government has widely acknowledged that more effective measures are required to prevent and combat corruption, yet many of them remain to be put in place and effectively enforced.



## Note

1. The Southern African sub-region's average expenditure on education is between 5% and 6% of GDP.

## References

- African Peer Review Mechanism (2011), *Zambia: Country Self Assessment Report*, Johannesburg.
- Bank of Zambia (2010), *Government Gazette*, Notice No. 815, Enforcement Decision and Order on Finance Bank, Lusaka.
- Eastern, Central and Southern Africa Federation of Accountants (2002), *Governance in the Public Sector – An ECSAFA Perspective*.
- Geloo, Zarina (2004), "Health-Zambia: NGOs in the Hot Seat", IPS.
- Government of Zambia (1957), *Patents Act*, Chapter 400, Lusaka.
- Government of Zambia (1958), *Trademarks Act*, Chapter 401, Lusaka.
- Government of Zambia (1991), *Constitution of the Republic of Zambia*, Part VI, Lusaka.
- Government of Zambia (1994), *Banking and Financial Services Act*, Lusaka.
- International Trade Union Confederation (2011), *List of Affiliated Organizations*, Brussels.
- Lusaka Stock Exchange, *Requirements and Fees*, Lusaka.
- Transparency international (2003), *National Integrity Systems Country Study Report: Zambia*.
- United Nations (2003), *United Nations Guidelines for Consumer Protection*, New York.
- World Bank (2007), *Corporate Governance of State-Owned Enterprises in Zambia*, Washington, DC.



## ANNEX A

Table A.1. **Members of the PFI Technical Implementation Team appointed by Cabinet**

Name	Position	Organisation
Mr. Siazongo D. Siakalenge	Director – Industry	Ministry of Commerce, Trade and Industry (MCTI)
Mr. Shuller Habeenzu	Chief Executive Officer	Zambia Business Forum
Ms. Priscal Chikwashi	Chief Executive Officer	Zambia Association of Chamber of Commerce and Industry (ZACCI)
Mr. Patrick Chengo	Centre Co-ordinator	Consumer Unity and Trust Society (CUTS)
Mr. Chola Abel Mwitwa	Manager – Planning and Policy	Zambia Development Agency (ZDA)
Mr. Boniface Kunda	Chief Economist – IDP	Ministry of Commerce, Trade and Industry (MCTI)
Mr. Mateyo Kaluba	Chief Planner	Ministry of Commerce, Trade and Industry (MCTI)
Mr. Hillary Kumwenda	Trade and Investment Promotion Officer	Ministry of Commerce, Trade and Industry (MCTI)
Mr. Chibwe Chisala	Senior Economist – IDP	Ministry of Commerce, Trade and Industry (MCTI)
Mr. Ernest Chirwa	Senior Officer – Planning and Policy	Zambia Development Agency (ZDA)
Mr. Chrissy C Simukonda	Economist – IDP	Ministry of Commerce, Trade and Industry (MCTI)
Ms. Misozi Samboko	Investment Promotion Officer	Zambia Development Agency (ZDA)
Mr. John Kasanga	Technical Co-ordinator of the Task Force	Independent Management Consulting Services Limited (IMCS)



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