SOLUTION DRIVEN.
SERVICE FOCUSED.
WELL CONNECTED.
In this 2017 edition of the Manokore Attorneys Doing Business in Zimbabwe guide we note that in a year following contraction of FDI and the economy, the country on the whole continues to make strong steps towards making investment easier. We are proud to present an interview with the Zimbabwe Investment Authority in this report and, as always, we welcome queries from international and local investors looking to do business in Zimbabwe.
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Manokore Attorneys is pleased to present our latest Doing Business in Zimbabwe Guide (2017 edition). The Guide is intended to provide a general perspective on the practicalities and considerations relating to investment and the business opportunities in Zimbabwe.

The Guide presents, in highlighted format, the different economic sectors and the commercial and regulatory aspects pertaining to the ‘rules of engagement’ based on our understanding of the market. The overall premise of the Guide is to signify the on-going efforts of the Government to revive the economy through targeted “Ease of Doing Business Reforms” and to improve Zimbabwe’s national competitiveness in respect of investment in the country. Our firm is guided by the central themes that we believe are affecting Zimbabwe today, being: **re-engagement** (reaching out to key development partners and investors); **re-calibration** (refocusing the economy); and **re-capitalisation** (mobilising sufficient financial resources to drive economic growth).

We have had the pleasure and privilege of collaborating in the production of this document with various key investment stakeholders, most notably, the Zimbabwe Investment Authority, who have also shared their informed perspective on the business and investment landscape as well as their outlook on the future.

Disclaimer: The information contained in this Guide is reflective of the position as at the date of publication and may be subject to change. Manokore Attorneys does not take liability for any losses incurred by reliance placed on the information contained therein.

**National GDP (purchasing power parity):**

<table>
<thead>
<tr>
<th>Year</th>
<th>GDP</th>
<th>FDI net inflows (million $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>$28.11 billion</td>
<td>399.5</td>
</tr>
<tr>
<td>2013</td>
<td>$28.41 billion</td>
<td>400</td>
</tr>
<tr>
<td>2014</td>
<td>$28.33 billion</td>
<td>544.8</td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td>421</td>
</tr>
</tbody>
</table>

Source: United Nations Conference on Trade and Development

**GDP Growth Rate:**

- 2014 est: 3.9 percent
- 2015 est: 1.1 percent
- 2016 est: -0.3 percent

Member of the Southern African Development Community

Member of the Common Market for Eastern and Southern Africa

Member of the African Caribbean and Pacific nations

Member of the World Trade Organisations
Confirmed: Botswana, Bulgaria, Canada, China (pending ratification), France, Germany, Malaysia, Mauritius, Namibia, Netherlands, Norway, Poland, South Africa, Sweden and the United Kingdom

Pending agreements: Indonesia, Singapore, Seychelles, Switzerland, Tanzania, Thailand, Tunisia, Zambia and the Democratic Republic of Congo.

**Power generation capacity**
- **1,507 MW**

**Access to electricity**
- **1990**: 29.9% of the population
- **2014**: 32.3% of the population

**High quality coal reserves**
- **30 billion tonnes**

**Estimated Coal Bed Methane reserves**
- **765 billion cubic metres**

**Energy investments approved and licenced by ZIA**
- **in 2016**: $1.7 billion tonnes

**Agriculture investments approved and licenced by ZIA**
- **in 2016**: $88.5 million
THE RIGHT TIME TO INVEST

Interview with Richard Mbaiwa

CEO
Zimbabwe Investment Authority
The Zimbabwe Investment Authority is Zimbabwe’s official investment promotion body set up to promote and facilitate both foreign direct investment and local investment. The institution was borne out of the merger of the Export Processing Zones Authority and the Zimbabwe Investment Centre. This was done to create a one-stop investment shop for the quicker and easier facilitation of investment.

What is your organisation’s role in facilitating investment in Zimbabwe?

The Zimbabwe Investment Authority’s role in investment promotion involves dealing with applications for investment licenses; and promoting, facilitating and coordinating investment by domestic and foreign investors in Zimbabwe. It also includes promoting joint ventures between domestic and foreign investors. The ZIA promotes decentralisation of investment and advises the Minister of Macro-Economic Planning and Investment Promotion on investment policy and on all matters relating to investment in Zimbabwe.

In your experience, what has been the biggest challenge for investors seeking to invest in Zimbabwe?

From the feedback we get from investors, one of the biggest challenges is the lack of clarity on indigenisation rules and regulations. Other investors point to policy inconsistencies by government ministries and departments. This is, however, being addressed through some upcoming legislative initiatives and measures to harmonise the investment related laws.

Can you comment briefly on the government’s efforts to manage the perception of ‘risk’ and make Zimbabwe a more attractive investment destination?

In order to improve the business environment and encourage investment, the government of Zimbabwe has embarked on a number of Doing Business Reforms. A number of achievements have been realised so far. Some of these are:

- Number of days to start a business has been reduced from 90 to 15 days
- Time for approval of construction permits has been reduced from 448 days to 120 days
- Property registration now takes 14 days, down from 36 days
- Time taken to pay taxes has been reduced from 242 hours to 160 hours
- Companies no longer need to advertise when applying for shop licences in municipalities
- Collateral Registry establishment to increase access to credit and strengthen financial services industry.

What would be your advice to would-be investors looking at Zimbabwe as an area of opportunity?

We always advise investors that Zimbabwe is a safe investment destination and it is very peaceful. It is advisable to seek the guidance of trained professional such as lawyers and accountants rather than middlemen of questionable credentials. The regulatory authorities can also be approached directly for advice, apart from actual licencing procedures. At ZIA, through the One Stop Shop Investment Centre, we also stand ready to take any investor through the investment process in Zimbabwe, and we will render required assistance.
1. Corporate Entities

The constitution, incorporation, registration, management, administration and winding up of companies in Zimbabwe is governed by the Zimbabwean Companies Act [Chapter 24:03]. The types of available corporate entities include private companies limited by shares; private companies limited by guarantee; private unlimited companies and public limited companies. Investors have the option of registering their commercial presence in Zimbabwe in various forms including limited liability companies, partnerships, foreign companies and Special Purpose Vehicles for joint ventures with the Government.

Private & Public Companies

The most common entity established by new businesses is the private company limited by shares. A private company can have membership between two (2) and fifty (50) persons, while a public company may have as little as two (2) with no maximum number on membership. The key difference between the two entities is that the private company restricts the transfer of its shares by shareholders, and cannot invite the public to subscribe for any shares or debentures of the company; whereas public companies are publicly traded entities with their shares and debentures being open for transfer in the public domain.

Partnerships

This is a less controlled form of business vehicle, whose formation and rules regarding the operations are governed by common law. Complex legal formalities - more familiar with companies - are not required. A partnership will be legally formed once essential common law requirements are met - that is - the right number of people agreeing to do business for a profit and to share losses is constituted. Partnerships are normally governed by a deed of partnership, which becomes very useful in resolving partnership disputes. The applicable regulatory frameworks for partnerships will be dependent on the sector-specific licencing requirements.

Foreign Companies

A company incorporated outside of Zimbabwe can establish a place of business within Zimbabwe and proceed to carry out its activities as a foreign company either as a branch or a representative office. To set up a branch, a foreign company is required to make an application to the Minister of Justice and Legal Affairs in order for that foreign company to operate in Zimbabwe as a foreign entity with a branch. Once a foreign company obtains authority by way of a certificate from the Minister, it would then register this branch with the Registrar of Companies.

Special Purpose Vehicles

In joint venture projects involving the Government and private sector entities, Special Purpose Vehicles (“SPV’s”) are normally used to achieve the purpose of the project. These entities are often registered as private companies with the Government as a co-shareholder. This is the normally preferred vehicle for investors participating in Public Private Partnerships (“PPP’s”) in this market.
2. Investment Framework Regulations

2.1 Zimbabwe Investment Licensing

All foreign investment is regulated under the Zimbabwe Investment Authority Act [Chapter 14:30] (“the ZIA Act”). Accordingly, a foreigner wishing to establish operations in Zimbabwe is advised to obtain an investment licence in terms of the ZIA Act for the reasons detailed below.

Obtaining a ZIA license accords the investor, protection of the laws of Zimbabwe. In addition, the incentives in terms of the ZIA Act and the Special Economic Zones Act (canvassed below) can only be granted to licensed investors. For purposes of enabling repatriation of income, obtaining taxation, export and import tariff dispensations, and exchange approvals, it is highly recommended that any foreign investor obtains prior investment approval and be in possession of a valid investor license.

Once approval is obtained, a licensee (investor) must implement the approved project within a period of six (6) months or risk cancellation, suspension or withdrawal of the license by the Authority. A license is valid for a fixed period (generally two (2) years) as per consideration by the ZIA board. Renewals of the license are subject to the granting of an extension of the initial license upon application by the investor, which application is to be made at least three (3) months before expiry of the license, together with payment of a license renewal fee.

There has been a key development in respect of investor incentives. The Special Economic Zones Act [Chapter 14:34] (“SEZ Act”) has recently been enacted for the purpose of designating special economic zones in order to attract Foreign Direct Investment (“FDI”) to the economy. The SEZ Act, although currently in force, is in the process of being implemented in terms of its operational framework and the constitution of the statutory bodies that shall administer and enforce the provisions of the Act.

The SEZ Act provides that any person who wishes to obtain approval to invest in a special economic zone; or for his or her business activity to be approved as an ‘activity in a special economic zone area’; it required to submit an application to the SEZ Authority for an investment licence. A prospective developer may apply for a developer’s permit in order to develop an area as a special economic zone area, in which licence investors will establish and conduct their operations. The SEZ Act provides that no property, interest or right of a licensed investor to whom an investment licence has been issued shall be compulsorily acquired.

Further, the SEZ Act also exempts investments that are established in the SEZs from applications for import and export permits and exchange control restrictions with respect to the moving of funds for prior-approved activities.

Sectors Reserved for Domestic Investors

In terms of the Indigenisation Regulations and its new Frameworks, the following sectors are deemed to be reserved against foreign investors: Valet Services, Cigarette manufacturing, fuel retailing and Artisanal Mining of all minerals (except diamonds). This further includes:

- Agriculture forestry
- Agriculture primary production
- Transportation
- Estate agencies
- Retail and wholesale trade
- Milk processing
- Provision of local arts and crafts
- Hairdressing and beauty salons
- Grain milling and bakeries
- Tobacco grading and packaging
- Tobacco processing
- Advertising agencies
- Marketing and distribution
- Employment agencies

Source: Third Schedule of the Indigenisation and Economic Empowerment Regulations
The provisions of the ZIA Act relating to the “reserved sectors” shall be amended to effect these changes and make the Reserved Sector List consistent with the indigenisation frameworks. Under these new frameworks, no new foreign investment in these sectors would be allowed, unless prior approval has first been obtained from the line ministries on a special case basis and subsequently approved by the Cabinet. Accordingly, foreign investors would be required to partner with domestic investors in order to operate in the afore-mentioned reserved sectors. Once project approval has been obtained, a reserved sector compliance certificate will be issued.

ZIA has introduced a “One Stop Shop” for processing investment proposals, which includes the Ministry of Youth Development, Indigenisation and Economic Empowerment, the Registrar of Companies, Zimbabwe Revenue Authority, the Ministry of Mines and Mining Development and other relevant government departments that one needs to obtain approvals or permits from.

2.2 Indigenisation and Economic Empowerment

It is our observation that the Government’s current policy on indigenisation is a move from equity-based empowerment, to broad-based economic empowerment, focusing on economic development in the investment areas. It is however important to note that, notwithstanding, there remains in place the primary law and regulations aimed at local equity participation in Zimbabwe.

The purpose of Indigenisation is to deliberately involve indigenous Zimbabweans in the economic activities of the country in order to ensure the equitable ownership of the nation’s resources.

The statute that regulates indigenisation and economic empowerment in Zimbabwe is the Indigenisation and Economic Empowerment Act [Chapter 14:33] (“the Indigenisation Act”). A foreign investor wishing to conduct business ventures in Zimbabwe would be required to partner with an indigenous Zimbabwean in such a manner that would see the latter acquiring a shareholding of at least fifty-one (51) percent and the former with, at most, forty-nine (49) percent shareholding. In terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010 (published in Statutory Instrument 21 of 2010), an employee share ownership scheme or trust, a managerial share ownership trust and a community share ownership trust may be taken into consideration when assessing the extent to which a business that is a company has achieved (or exceeded) the minimum indigenisation and empowerment quota. Managerial employees may benefit from the employee trust, as long as that benefit makes up no more than 5 percent of the shares or interests in the employee share ownership scheme or trust.

It should be emphasised that it is a criminal offence in terms of the law to create ‘fronting structures’ or fraudulent structures for purposes of avoiding compliance with the indigenisation laws.
On 11 April 2016, the President of Zimbabwe, in a Press Statement titled “Presidential Statement to Clarify the Government Position on the Indigenisation and Economic Empowerment Policy”, stated the following salient points:

**Natural Resources Sector**

The Government and its designated entities will hold a 51 percent stake in the business in this sector with the foreign investors holding the remaining 49 percent. However, for existing businesses, where the Government does not already own 51 percent of the business, compliance shall be achieved through the efforts of the business to ensure that the local content retained in Zimbabwe by such business (i.e. wages, salaries, taxes, community share ownership schemes, procurement, and linkage programmes et cetera) is not less than 75 percent of the value of the exploited resource.

**Non-Resource Sector**

Businesses in the non-resource sectors will achieve compliance through the pursuing and implementing of the following socio-economically desirable strategic objectives which are awarded “empowerment credits”, including the following:

- Technology transfers;
- Creation of local employment and imparting of new skills/skills development; and projects, employee empowerment schemes, linkage programmes and other financial empowerment facilities as may be directed by the Reserve Bank from time to time;
- Beneficiation of raw materials for purposes of value addition;
- Granting ownership to local Zimbabweans or through employee share ownership schemes as may be negotiated between the foreign investor and the indigenous partners;
- Creating linkage programmes, enterprise developments and value chains within the relevant sectors that the business is operating in.

The Presidential Statement further clarified that the Financial Services Sector and institutions aligned to the insurance sector shall remain under the jurisdiction of the Reserve Bank in terms of the Banking Act and the Provident and Insurance Act respectively in order to ensure financial sector stability. These institutions are, however, required to achieve compliance through the provision of financing facilities for key sectors and projects, employee empowerment schemes, linkage programmes and other financial empowerment facilities as may be directed by the Reserve Bank from time to time.

The empowerment credits are sector-specific and thus do not apply similarly across the board, with the proviso that there is a minimum threshold in each sector within which the direct equity must be held by indigenous Zimbabweans. Therefore, indigenisation proposals are considered on a case by case basis, with negotiations between investors and the relevant line ministries. The role of the Ministry of Youth Development, Indigenisation and Economic Empowerment is to co-ordinate the efforts of the line Ministries in the implementation and fostering of compliance with the policy.

The new frameworks for compliance with the Indigenisation policy is set out by General Notice 9 of 2016, and highlights the following salient points:

- Indigenisation applications must be submitted to ZIA and must articulate how the businesses will achieve compliance with the indigenisation laws within five (5) years;
- Exception Applications that do not conform to the guidelines will be lodged by the National Indigenisation and Economic Empowerment Board (“NIEEB”) to the Ministry of Youth, Indigenisation and Economic Empowerment in consultation with the line Ministries for consideration by Cabinet through the Cabinet Committee on Indigenisation and Economic Empowerment;
- All new investments must incorporate an Indigenisation and Economic Empowerment Plan.

It is a criminal offence in terms of the law to create ‘fronting structures’ or fraudulent structures for purposes of avoiding compliance with the indigenisation laws.
2.3 Exchange Control


- All applications in the following categories require prior exchange control approval from the External Loans and Exchange Control Review Committee ("ELECRC") who are responsible for inter alia, considering and making decisions on all applications relating to the inflow and outflow of funds:
  - Equity acquisition by foreign investors in unlisted local companies is limited to 40 percent for existing projects, for which Exchange control approval is required.
  - Where foreign investors want to participate on the Zimbabwe Stock Exchange ("ZSE") in addition to compliance with the ZIA Act.
  - Disinvestment proceeds arising from any investments post-1993 which can only be remitted after exchange control approval has been granted. Investors may remit offshore any capital plus appreciation, as well as dividends in full as and when they accrue.
  - Exchange Control generally considers up to 49 percent equity participation in existing companies by foreign investors, which threshold is in line with ZIA and ZSE policies aimed at promoting growth of investment in new operations rather than in existing ones.

Exchange Control approval is not required for remittance of dividends to foreign shareholders in the company. However, notification by the authorised dealer (banking institution) is required. On investment in listed companies, investment proceeds qualify for one 100 percent remittance right, subject to the deduction of the relevant withholding tax. Any amounts arising from capital appreciation and capital gains made on disposal of investments will be freely remittable subject to the deduction of capital gains tax.

Authorised Dealers can process external loans and trade credits of up to USD $20 million without prior approval by the ELECRC. All applications for external loans in excess of the stipulated threshold must be submitted to the Reserve Bank of Zimbabwe for approval. Approved loans shall be for financing export oriented projects, and no external borrowing shall be approved by ELECRC and Exchange Control to finance non-productive activities.

In its Monetary Policy Statement ("MPS") of January 2017, which contains the Exchange Control Policy for the year, the Reserve Bank highlighted the following Exchange Control policies pertaining to investments in Zimbabwe:

**Service Agreements between Related and Unrelated Companies**

Provisions have been put in place to guard against Illicit Financial Flows ("IFFs") through payments arising from service agreements between related and unrelated companies, indicating that the aggregate of service payments by local companies to all related and unrelated companies shall not exceed 3 percent of audited gross annual revenue. Exchange Control shall also conduct on-site and ex-post validation of the companies involved in such arrangements.

**Investments on the ZSE**

The Single Investor Limit has been increased from then 10 percent to now 15 percent on the Zimbabwe Stock Exchange. For the promotion of portfolio investments by foreign investors on the Zimbabwe Stock Exchange, a single investor is now permitted to acquire up to 15 percent of listed shares per counter. In order to align the Exchange Control threshold of 49 percent to the Indigenisation and Economic Empowerment regulations, foreign investors can now acquire listed shares on the Zimbabwe Stock Exchange up to 49 percent per counter.

**Review of Pricing of External Loans**

To encourage long term external borrowings for productive purposes, the pricing structure for external loans has been aligned with the domestic interest rates ranging from 6 percent to 10 percent per annum. However, tobacco financing, shareholder loans and notional vendor finance shall remain the same as per the following existing external borrowing which is 5 percent per annum.
2.4 **Taxation**

A new business is required to be registered with the Zimbabwe Revenue Authority ("ZIMRA") within thirty (30) days of incorporation. All companies are required to appoint a public officer of the company within one (1) month of the establishment of such office or place of business, who must be approved by the Commissioner General, and is answerable for all company tax matters.

Corporations are subject to corporate tax at a rate of 25.75 percent on their taxable income, and is payable by both private and public companies as well as private business corporations.

Every employer is obliged to register for Pay As You Earn ("PAYE") within fourteen (14) days of becoming an employer. A non-resident employer is required to appoint a resident representative to secure registration.

Any entity whose annual taxable turnover exceeds (or is likely to exceed) USD $60,000 per annum is obliged to register for Value Added Tax ("VAT") as an operator, not later than thirty (30) days after becoming so liable.

The 2017 National Budget Statement at Chapter 6: Revenue Measures ("the 2017 National Budget"), together with The Finance Act [Chapter 23:04] ("the Finance Act") (collectively "the Tax Amendments") which was released in the early part of 2017, made several amendments in respect of taxation in Zimbabwe. As iterated by the 2017 National Budget, the Finance Act amended the definition of a “specified asset" as defined in The Capital Gains Tax Act [Chapter 23:01] ("the CGT Act"), and now includes such rights or title to both tangible and intangible property which is registrable in terms of various legislation as listed in the Finance Act. The 2017 National Budget rationalised the expansion on the definition in order to minimise tax avoidance and thereby enhancing revenue collections.

Amounts distributed by a licenced investor having a qualifying degree of export orientation which arises from its operations in a special economic zone now fall under the definition of a “dividend" for purposes of Non-Resident and Resident Shareholders Tax in terms of the Income Tax Act [Chapter 23:06] ("the Income Tax Act"). The Finance Act now also provides for an adequate definition of a "Permanent Establishment" in the Income Tax Act to protect the tax base and eliminate non-taxation of income accruing to some foreign business enterprises.

One especially important aspect addressed by the 2017 National Budget was the provision of tax incentives for Special Economic Zones, in light of the enactment of the Special Economic Zones Act. In order to enhance the attractiveness of the Special Economic Zones, the 2017 National Budget proposed to provide various tax incentives effective from 1 January 2017, as detailed in the table below:

<table>
<thead>
<tr>
<th>Tax Head</th>
<th>Proposed Incentive</th>
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<tbody>
<tr>
<td>Corporate Tax</td>
<td>Exemption from Corporate Income Tax for the first five (5) years of operation. Thereafter, a corporate tax rate of 15 percent applies.</td>
</tr>
<tr>
<td>Special Initial Allowance</td>
<td>Special initial allowance on capital equipment to be allowed at the rate of 50 percent of cost from year one, and 25 percent in the subsequent two years.</td>
</tr>
<tr>
<td>Employees’ Tax</td>
<td>Specialised expatriate staff will be taxed at a flat rate of 15 percent.</td>
</tr>
<tr>
<td>Non-Residents Withholding Tax on Fees</td>
<td>Exemption from Non-residents tax on Fees on services that are not locally available.</td>
</tr>
</tbody>
</table>
Non-Residents Withholding Tax on Royalties

Exemption from Non-residents tax on royalties.

Non-Residents Withholding Tax on Dividends

Capital equipment for Special Economic Zones will be imported duty free.

Customs Duty on Raw Materials

Inputs which include raw materials and intermediate products imported for use by companies set up in the Special Economic Zones will be imported duty free. The duty exemption will, however, not apply where such raw materials are produced locally.

Furthermore, the services of a licensed investor in respect of its operations in a special economic zone are now considered to fall under the definition of “fees” for purposes of non-residents’ tax. The Income Tax Act was also amended to make companies which are not resident in Zimbabwe subject to taxation with effect from 1 January 2017.

Effective 1 January 2016, Zimbabwe enacted new policy on transfer pricing aligned with the principles and rules of transfer pricing as developed by the Organisation for Economic Operation and Development ("OECD"). The Transfer pricing amendments in Zimbabwe’s tax legislation are aimed at ensuring that there are legislative measures designed to combat transfer pricing manipulation.

Double Tax Agreements

An investor can structure his investment in a manner that ensures tax efficiency, particularly through the use of tax deductions provided by Double-Taxation Agreements ("DTAs") between Zimbabwe and particular countries. Any income derived from an investment which is subject to a DTA will allow the investor receiving that income to pay a lower rate of tax by virtue of the DTA. Zimbabwe has entered into comprehensive DTAs for the avoidance of double taxation on the same income with the following countries: Botswana, Bulgaria, Canada, France, Germany, Malaysia, Mauritius, Namibia, Netherlands, Norway, Poland, South Africa, Sweden and the United Kingdom.

Zimbabwe has signed a DTA with China, which is still to be ratified, and has pending DTAs with Indonesia, Singapore, the Seychelles, Switzerland, Tanzania, Thailand, Tunisia, Zambia, the Democratic Republic of Congo and South Africa.
3. Employment and Labour

Zimbabwe labour laws are aimed at safeguarding employees from arbitrary or unfair treatment and to ensure fair contracting between employers and employees. Zimbabwe has a well-regulated labour landscape. The primary enactments are the Labour Act [Chapter 28:01] ("the Labour Act"), which was amended on 26 August 2015; and the Regulations made thereunder, commonly referred to as Statutory Instrument 15 of 2006. The Labour Act also allows for enactment of sector-specific working conditions or standards through registered Collective Bargaining Agreements ("CBAs") whose provisions are negotiated by employment councils and/or trade unions and employer organisations. Some of the labour issues covered under these CBAs pertain to: minimum and maximum hours of work, minimum wages/salaries, payment for overtime and payment for gratuity at termination of employment.

Any employer and employee disputes are referred to conciliation through Ministry of Labour officials who, after the new amendment to the Act, now have the powers to make a decision which is then registered with a Labour Court, which has the constitutional mandate to deal with all labour or employment issues. If the employer and employee fall under a registered National Employment Council ("NEC"), then their dispute is referred to that particular NEC for determination. This is a departure from the previous position prior to the Labour Amendment Act 5/2015, wherein the labour officer (or NEC official) did not have the powers to make any determination, such that any dispute not resolved by the parties themselves was referred to compulsory Arbitration. A party aggrieved by the ruling of an arbitrator previously had the right to appeal to the Labour Court, with further recourse available through the right granted to appeal to the Supreme Court if aggrieved by the ruling of the Labour Court.
4. Intellectual Property

The Trade Marks Act [Chapter 26:04] deals with the with protection of a mark, and prescribes that such a mark is protected for a duration of ten (10) years, renewable from time to time in terms of the legislation. Intellectual Property is regulated and protected in terms of several Intellectual Property laws, the main ones being:

- the Copyright and Neighbouring Rights Act [Chapter 26:06] (“the Copyright Act”);
- the Patent Act [Chapter 26:03] (“the Patents Act”);
- the Plant Breeders Rights Act [Chapter 18:16] (“the Plant Breeders Act”);
- the Trade Marks Act [Chapter 26:04] (“the Trade Marks Act”).

Zimbabwe is a member of several conventions pertaining to the protection of intellectual property rights, namely the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the World Intellectual Property Organisation (“WIPO”), the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) and The Madrid Protocol.

In early 2017, Zimbabwe passed resolutions approving the draft Trademarks (Madrid Protocol) Regulations. The Madrid Protocol and the Trademarks (Madrid Protocol) Regulations aim to streamline the procedure in terms of where a trademark registered in countries which are party to the Madrid Protocol are automatically deemed to be legally effective in the other member countries. The rationale is to mitigate and circumvent often costly and bureaucratic trademark registration processes and to avoid duplication of process.

For the purpose of the Trademarks (Madrid Protocol) Regulations, the Trade Marks Regulations, 2005 and the Trade Marks Act apply, to the extent applicable and with all necessary modifications, to any holder of an international registration designating Zimbabwe, and to any applicant of an international application originating from Zimbabwe.

The Patents Act confers that protection for a patent that is registered with the Registrar of Patents shall endure for a period of twenty (20) years in Zimbabwe. Zimbabwe is also member of the African Regional Industrial Property Organisation (“ARIPO”), which has the authority to grant patents in Zimbabwe as well as several of its regional neighbours, which ultimately has the effect of the patent being protected in each of the territories. By virtue of being a member of ARIPO, where an application is filed in one member state, such application has the same effect as filing it in the other member states. Member states also have the advantage of economies of scale which also provide for the ease of access of the national resources between them, whilst at the same time protecting their sovereignty.

The Copyright Act makes provision for protection of literary works, musical works, artistic works, audio-visual works, sound recordings, broadcasts, programme-carrying signals and published editions. Protection is granted to the creator of such works for a period of generally fifty (50) years, whose start date is dependent upon the relevant category. This protection entails control of use by the public over the work created by the creator. Protection of foreign works in this regard is provided for by virtue of Zimbabwe being a member of the Berne Convention, granting protection to foreign nationals’ copyrights who are also members of the Convention.
5. **Corporate Mergers and Acquisitions**

Mergers and acquisitions have become a growing trend in the Zimbabwean economy, with sectors such as manufacturing, agro-processing, technology and energy being of particular interest to investors.

The main regulatory considerations of importance in respect of corporate mergers and acquisition in Zimbabwe are investment licensing, requisite regulatory approvals, Exchange Control considerations, Taxation and notification to the Competition and Tariffs Commission of Zimbabwe ("CTC").

5.1 **Competition**

Competition is regulated by The Competition Act [Chapter 14:28] ("the Competition Act") through the Competition and Tariff Commission. The Competition Act prohibits restrictive practices and unfair business practices which are sanctioned by fines and/or imprisonment.

A "merger" in terms of the Competition Act includes horizontal mergers and vertical mergers. It however does not include pure conglomerate mergers, unless they have horizontal or vertical elements.

It also does not include joint ventures resulting in the establishment of 'green field' enterprises. All mergers that fall within a prescribed threshold, based on the combined annual turnover or assets in Zimbabwe of the merging parties, must be notified to the Commission for examination "within thirty days of (a) the conclusion of the merger agreement between the merging parties, or (b) the acquisition by any one of the parties to that merger of a controlling interest in another ".

With regards to merger notifications, the CTC also pays particular attention to public interest considerations when evaluating proposed mergers. The Competition Act applies to all economic activities within or having an effect within Zimbabwe, but indicates that it must not be applied as to limit any right acquired under specific intellectual property rights unless such right is used for the purpose of enhancing or maintaining prices or as any other restrictive practices.

The merger control provisions of the Competition Act override any powers given to any sector regulator in considering and approving mergers and acquisitions. Accordingly, any sector regulator that regulates mergers and acquisitions are required under the Act to apply to the Commission for the final authorisation of the merger. The provision of the de minimus rule in the Competition Act effectively exempts small and medium-sized enterprises from its application, and prohibits those restrictive practices that restrict competition to a material degree.

The Commission is an autonomous body that does not refer any of its competition decisions to any other authority in Zimbabwe, and orders made by the Commission against any anti-competitive practices can be lodged with the High Court of Zimbabwe for registration as an order of the High Court to enable it to have the effect of a civil judgement of the High Court. Appeals against any decision of the Commission are made to the Administrative Court. However, so far none of the Commission’s decisions have been appealed against. Subsequently, the Commission has not yet established any case law.

In 2012, Zimbabwe participated in a Tripartite Peer Review (in conjunction with Zambia and Tanzania), undertaken under the United Nations Conference on Trade and Development ("UNCTAD"). One of the recommendations that emerged from the Peer Review was that a Competition Policy be crafted to provide broad guidance on the treatment of social, economic and legal issues facing the Zimbabwean competition legal framework. Other goals of the Competition Policy were to allow the enforcement of experiences in the course of implementing the law and the reviewing of the current competition law for Zimbabwe. In this regard, the Commission engaged a consultant to produce the new Competition Policy under the auspices of UNCTAD and a draft is now in place – although it is still currently under consideration by various stakeholders.
6. Banking and Finance

6.1 Overview of the Banking Sector

Zimbabwe’s financial institutions are governed by the Banking Act [Chapter 24:01] and the Microfinance Act [Chapter 24:29], whilst being regulated by the Reserve Bank of Zimbabwe.

The architecture of the Banking sector is as follows:

- Commercial Banks
- Building Societies
- Savings Bank
- Deposit-taking Micro Finance Institutions ("MFI’s")
- Credit-only-MFIs
- Development Financial Institutions

6.2 Change of Laws

The Banking Act [Chapter 24:20] has been amended to tighten banking supervision, monitoring and control whilst at the same time diluting individual or bank holding shareholder influence on banks. Part of the amendments prohibit individuals or body corporates from holding more than 25% of voting shares in banks or in their holding companies. The latest restrictions or conditions relating to shareholding or bank holding entities seek to curtail risks associated with owner-managed banks or institutions which have, in the past, resulted in the abuse of depositors’ funds.

The new Banking Act also prohibits the acquisition of a banking institution or controlling company or the voting rights of a banking institution or controlling company which acquisition exceeds 5 percent or more to the total share capital or voting rights of members of the banking institution or controlling company.

Furthermore, the new amendments seek to attach liability on directors of financial institutions for carrying on the banking business recklessly, negligently, or in any other illegal manner. A director found not in compliance with the above provisions may face imprisonment for a minimum period of ten (10) years. In summation, the amendments to the Banking Act seek to strengthen corporate governance systems in the financial sector.

Notwithstanding the fact that all the Banks in the country are fully capitalised across the sector, the banking sector is experiencing underlying physical United States Dollars cash challenges on the back of high demand for cash by the banking public. However, the Reserve Bank of Zimbabwe is now promoting the use of plastic money resulting in significant use of same, and a corresponding decline in the demand for physical cash. Furthermore, as a mechanism of hedging the challenges posed by the lack of the United States Dollar, the Reserve Bank has introduced Bond Notes. The Reserve Bank Amendment Act 1 of 2017 was introduced to give effect to the introduction of Bond notes and Coins as legal tender in Zimbabwe. The amendment alters Section 44B of the Reserve Bank Act [Chapter 22:25] and creates a Bond note (surrogate currency) that is at par value with the United States Dollar.

"The new amendments seek to attach liability on directors of financial institutions for carrying on the banking business recklessly, negligently, or in any other illegal manner."
7. Projects and Infrastructure

7.1 Energy

As the world moves towards the new mind-set of green energy, Zimbabwe too is making the shift to exploring alternative methods of producing energy to address the severe energy deficit that currently prevails in the country and the region. Zimbabwe has very comprehensive Energy laws which are accommodative of private sector participation and investment.

Zimbabwe’s National Energy Policy of 2012, which is currently in the process of being updated, outlines the current energy strategy, with government’s objective being focused on the assurance that the energy sector drives economic growth. This has led to a focus on improving the institutional framework and governance of the sector in order to ensure that the private sector becomes the engine for provision of energy services.

The electricity supply industry comprises three distinct market segments:

- generation;
- transmission and bulk supply;
- distribution and retail supply.

Traditionally, these three business segments have been owned and operated by a single, vertically integrated state enterprise (ZESA Holdings). ZESA’s main investments were two interconnections with Cahora Bassa (Mozambique) and South Africa, which have provided much-needed imports to compensate for the lack of investment in local generation. The segments have, however, recently been unbundled and private companies can now also participate.

The energy sector presents an opportunity for investment in Zimbabwe as the availability of electricity remains a major challenge. Most activity in energy projects is from Independent Power Producers seeking to establish on and off grid power generation plants from either thermal or hydro sources. Zimbabwe has a power requirement of 2600 MW, but at present, it is only producing between 750 MW and 800 MW, due to the existent power stations having a very low maximum rating.

Currently, vast opportunities lie in the development of generation and transmission infrastructure such as the proposed MoZiSa power line, which is anticipated to flow from Mozambique to South Africa through Zimbabwe as an interconnector. The view is that Zimbabwe can become a major energy contributor in the region, as Zimbabwe is located centrally in the Southern African Development Community (“SADC”) region which best places investors or key energy players to be able to exploit the South African Power Pool (“SAPP”) interconnection network to its maximum.

Zimbabwe has established a legislative framework for independent power producers of renewable energy and is actively encouraging and supporting IPPs in this sector, especially in respect of solar energy. Being a land-locked country, Zimbabwe is endowed with some of the best conditions for solar PV plants. A number of local promoters are seeking partnerships to roll-out Solar PV plants in various parts of the country with the proposed plants ranging from 5 MW to 200 MW.

7.2 Public Private Partnerships

The Zimbabwean government seeks to partner with the private sector in public private partnership (PPP) arrangements in various infrastructure activities which include roads, dams, bridges, ICT infrastructure and housing developments. To that end, the government enacted a Joint Venture Act [Chapter 22:22] in 2016. The government is looking to rehabilitate most of the existing infrastructure. Contractors and/or investors under the Act may enter into the following types of arrangements with the government or a statutory entity on commercially agreed terms:

- Build Operate Transfer (“BOT”);
- Build Own Operate Transfer (“BOOT”);
- Build Transfer Operate (“BTO”);
- Lease Arrangement, and/or;
- Concessions.

Investors who invest in these type of projects usually enjoy a tax holiday for the first five (5) years, and will be taxed at 15 percent for the second five (5) years.
“ZIMBABWE IS ENDOWED WITH SOME OF THE BEST CONDITIONS FOR SOLAR PV PLANTS”
7.3 Project Financing

Project Financing involves raising finance for the design, construction and development of a project’s infrastructure and the procurement of any equipment and assets required for the operation of the project. In the absence of corporate guarantees and assets, as well as financial resources from the government, a combination of debt and equity is used to raise capital for both private and PPP projects, instead of relying on project cash flows that may be subject to market fluctuations. The opportunities for investment in projects financing are mostly through participation in either public or privately issued long and short term debt instruments which are ordinarily by way of Bonds, Treasury Bills, and other short term special Notes.

The Zimbabwe Stock Exchange announced in 2015, its plans to re-introduce a bond market or fixed income securities market. This could be a positive development to provide further alternatives to Zimbabwe’s financial markets, thus providing varied sources of debt finance for projects.

The energy sector presents an opportunity for investment in Zimbabwe as the availability of electricity remains a major challenge.
Mining

Zimbabwe is a mineral-rich country, endowed with a wide range of mineral resources. The Mines and Minerals Act [Chapter 21:05] (“the Mining Act”) governs the mining sector, and is regulated by:

- The Ministry of Mines;
- The Minerals Marketing Corporation of Zimbabwe (“MMCZ”), which is the body responsible for marketing all the country’s minerals and metal products except gold and silver which are sold through the Reserve Bank, and;
- The Chamber of Mines.

In terms of Section (2) of the Act, all minerals are vested in the President, and in order to acquire mineral rights one therefore needs to make an application to the Mining Commissioner of the relevant mining district. Mining companies enjoy a number of incentives, including:

- special flat income tax rates of 15 percent, as compared to the standard rate of 25 percent;
- on liquidation gold proceeds are liquidated at market rates;
- royalties which are not deductible for income tax purposes are calculated at a percentage of the gross fair market value of minerals produced;
- all expenditure on exploration, development and operating incurred wholly and exclusively for mining operations is allowed as a deduction in full;
- there is no restriction on carry-over of tax losses - these can be carried forward for an indefinite period;
- special initial allowance on capital equipment is allowed at a rate of 100 percent;
- taxable income of a holder of a special mining lease is taxed at a special rate of 15 percent;
- a mining claim holder confers on the holder the exclusive right to mine the mineral resource for which the claim was registered and to prospect for other minerals on the claim;
- ordinary claims are up to 25 hectares, whilst special claims are between 26 and 150 hectares.

The following types of mining licences are currently available in Zimbabwe:

- A special/normal prospecting licence
- Exclusive Prospecting Orders
- A mining lease
- A special mining lease
- A special grant

Updates on the Mining regulations

There have been several updates in the Mining Sector in Zimbabwe, which include the following:

- Reduction in the mining license fees, including custom milling license fees, special fees as well as export permit fees, mining leases and prospecting licenses for select minerals, including diamonds and platinum, through the Mining (General Amendment) Regulations, 2016 (No.19);
- The introduction of the Minerals and Exploration and Marketing Corporation Bill, which if passed, shall have the effect of repealing the Minerals and Marketing Corporation of Zimbabwe Act, and therefore re-establishing the Minerals Marketing Corporation of Zimbabwe (“MMCZ”) and providing the creation of the Minerals Exploration and Marketing Corporation (“MEMC”). The MEMC will have the main mandate and objectives of controlling and regulating the export, sale and stockpiling of minerals as well as governing all matters related to the prospecting and exploration of minerals in Zimbabwe as well as the marketing of minerals.
- The Mines and Minerals Amendment Bill of 2015 (“the Mining Bill”) proposes to replace the current...
(and outdated) Mines and Minerals Act [Chapter 21:05] (“the Mining Act”), containing several provisions that are aimed at addressing the inefficiencies that the current legislation presents. The Mining Bill proposes to make provision for “Strategic Minerals” which will be inclusive of platinum group metals, natural gas or coal bed methane, coking coal, iron ore, chrome, et cetera. The effect of the classification is that unique conditions may be provided for with regards to the exploration, ownership, beneficiation, marketing and development of the mineral. One of the most crucial aspects which the Mining Bill proposes is the obligation of public mining companies to be listed on a securities exchange in Zimbabwe, failing which no mining rights or title shall be granted or issued to it. The Mining Bill has not yet been passed into law, and therefore the ramifications are yet to be fully discussed.

The mining projects which ZIA granted Investment Licenses for in 2016 totalled approximately US$160 million.

[Source: Zimbabwe Investment Authority]
Oil and Gas

There has been an increased interest in the exploration and exploitation of oil and natural gas, despite the prospects of the resources being deemed minimal in the past. This is primarily due to the increasing energy demand in Zimbabwe as well as in the region, presenting exciting new prospects on the energy frontier. According to ZIA, Zimbabwe has a vast natural resource endowment which is awaiting the deployment of capital towards full exploitation. With an excess of over 30 billion tonnes of known high quality coal reserves — particularly in the north-western region of the country — and as such coal is Zimbabwe’s prime energy source.

Exploration and exploitation of Coal-Bed Methane (“CBM”) in particular, is especially a prime investment opportunity. It is estimated that the Hwange/Lupane basins have over 800 million cubic metres of CBM per square kilometre, totalling to about 765 billion cubic metres of sulphur free CBM.

Despite the fact that Zimbabwe is endowed with a variety of renewable and fossil energy sources, according to Zimbabwe’s National Energy Policy of 2012, such resources are heavily under-explored and hence, its true potential is yet to be discovered. **If proven, this could result in untrammelled capital investment and economic growth for the country.**

To accelerate this sector, the Zimbabwean Cabinet has approved various investment models for CBM exploration and extraction, including Joint Venture/Public Partnerships, Special BOT arrangements and Private Sector, as well as various investment incentives in the form of tax holidays, National Project Status (which provides for exemptions on import duty and other taxes), exemption from payment of withholding tax, guaranteed dividend payment and repatriation, cost reflective tariffs and other incentives provided under the Mines and Minerals Act.
10. Real Estate

10.1 Registration of Title

In Zimbabwe, ownership in land is transferred from one entity/person to another through a deed of transfer prepared by a conveyancer, and executed (or attested) by the Registrar of Deeds. The conveyancer lodges all the requisite transfer documents at the Deeds Registry Office in Harare (or Bulawayo, depending on where the property to be transferred is located). In accordance with the Deeds Registries Act [Chapter 20:05], the Registrar examines the deed and other documents lodged by the conveyancer before he or she executes or attests and registers the deed. The Deeds Registry Offices in Harare and Bulawayo are fairly efficient in ensuring that all deeds lodged are usually processed and registered within seven (7) days.

The registration system is meant to provide an efficient system, and affords security of title to land and rights in land, and buttresses the right to property as entrenched in the current Constitution. The dependable cadastral system in place is intrinsically linked to the deeds registry system. Title is evidenced by a deed of transfer (or title deed), notarial deeds (required for long term leases, other types of deeds as well as other limited real rights such as servitudes) and all these deeds are registered in one of the two deeds registries. The Deeds Registries operate under the auspices of the national government’s Ministry of Justice and Legal Affairs.

The inviolability of property rights, and the speed and transparency of registration of these rights is a key focus for the government’s current programme on improving the Ease of Doing Business in Zimbabwe. The Deeds Registry is thus currently undergoing a review with the assistance of the World Bank and digitisation from its current manual registration system will be the highlight of the proposed changes.

10.2 Competency of Encumbrances

The Deeds Registries Act allows for the registration of encumbrances against the title to land. Thus, in terms of the Deeds Registries Act, the encumbrances that may be registered against title to land are Bonds, Notarial Deeds of Hypothecation, Long leases, Servitudes and Caveats. The registration of any of these encumbrances — save for caveats — would constitute a real right in the land and is therefore security against the landowner in favour of the person/entity holding the real right.

The Deeds Registry is a public register and is therefore updated every time a deed or other form of encumbrance is registered in relation to a piece of land. Encumbrances such as mortgage bonds and/or real rights are endorsed on the title deeds, and once a person or entity becomes the registered owner in the deeds registry, the information is updated with the owner’s details and is accessible to the public. Transfer cannot therefore take place without the consent of the holder of a real right in the land.

The registry system highlights the value and security placed on title to land. The reliability of the system of registration is thus the framework within which the interests of holders of rights in the land are secured. There is no restriction on the ownership of land by foreign persons — nor is there a restriction on the registration of encumbrances on land by foreign persons. This means the system of registration of encumbrances may be used as the security underpinning a debt (or similar transaction) wherein one party wishes to hold collateral security which they can easily liquidate in the event of non-performance by the owner of the land.

Lenders requiring security may therefore rely on one of the following forms of security:

- Mortgage bonds over immovable property
- Notarial bonds (both general and special) of movable property, such as plant and equipment
- Cession of rental income and any other proceeds derived from a property
- Pledge of shares in a property owning entity
10.3 Enforceability of Encumbrances

A lender cannot enforce a system of parate execute (or summary execution) in respect of the repossession of immovable property over which it holds a registered mortgage. The lender will by law have to obtain a court judgment against the borrower to proceed to a sale in execution of the immovable property. As a result of a mortgage bond in its favour, the lender will however not have to first execute against the movables of the borrower, but can apply for an order of special execution against the property and then proceed with the sale in execution.

In cases of insolvency, a registered mortgage bond holder ranks very high in preference, exceeded only by ZIMRA, local authorities and property owners associations. Mortgage bonds are however ranked according to the time of registration except in situations where a bondholder issues a waiver of preference. The Lender is also entitled to claim from the insolvent estate on a secured basis, without having to pay contributions if there is a shortfall in the insolvent estate.
11. **Agriculture**

Agriculture has been the mainstay of Zimbabwe’s economy from a historical perspective. There are vast investment opportunities in agriculture in Zimbabwe, including crop production, mechanisation, horticulture and agro-processing. Investment in agriculture is heavily supported by the Government, given that agriculture and food security have been designated a priority sector in Government’s efforts to turn around the economy and to sustain food security. Fiscal incentives in agriculture include:

- special deductions over and above the normal deductions;
- farming inputs are zero rated for Value Added Tax purposes; and
- importation of agricultural equipment as duty-free.

A major concern for investors is the risk of expropriation of agricultural land. According to the Constitution of Zimbabwe, no compensation shall be payable where agricultural land is expropriated by the State under the land redistribution scheme, and that matters to do with the acquisition of agricultural land are not justiciable before a court of law. However, investors whose land has been expropriated by the Government, may be able to recover its investment in respect of improvements made before the compulsory acquisition. The extent, however, will be subject to any treaties entered into between Zimbabwe and the respective foreign country of investment. This however, does not preclude investors from being able to acquire agricultural land for commercial exploitation.

Subsequently, Joint Ventures arrangements and Management Agreements tend to be a preferred investment method in the agricultural sector — without investors necessarily obtaining title to land, thereby mitigating risk. Entities wishing to invest in this sector would also benefit from the aforementioned investment licences issued by the ZIA, since the ZIA Act provides that property or interest or right therein of every investor to whom an investment licence has been issued in terms of this Act shall be accorded every protection afforded by the laws of Zimbabwe.

12. **International Trade**

Zimbabwe’s National Trade Policy is the key guideline on the principles by which Zimbabwe stands regarding trade facilitation and regional integration. The policy is designed to direct Zimbabwe to export led industrialisation, which will be further achieved on the guidelines of the Industrial Development Policy.

Zimbabwe is strategically located in the centre of the Southern African region, well-positioned to be the investment hub of Southern Africa. It has access to world markets as facilitated by a number of Bilateral Trade Agreements, as well as its membership in the Southern African Development Community (“SADC”), Common Market for Eastern and Southern Africa (“COMESA”), African Caribbean and Pacific nations (“ACP”) and World Trade Organisations (“WTO”).

South Africa is Zimbabwe’s largest trading partner, with most of the trade being imports into Zimbabwe. The two countries are set to consummate their deep cemented trading relationship on conclusion of the Zimbabwe South Africa Simplified Trade Regime as a means of facilitating and formalising small-scale trade between the two countries. The EU is the country’s second biggest trading partner.

Zimbabwe has partially liberalised its current account, which allows for the easier flow of trade. As a result of an appreciating US dollar relative to the South African rand, there has been a loss in external competitiveness. In addition, the National Competitiveness Report which was published by government in 2015 highlights the key challenges to Zimbabwe’s competitiveness, and seeks to address these challenges by presenting solutions that facilitate trade and investment in the country.
Dispute Resolution

Based on case law reported from January 2013 to date, most commercial litigation disputes relate to:

- administrative or tax cases
- contractual disputes arising out of loan agreements, credit facility agreements, payment for services rendered
- voluntary and involuntary liquidations and judicial management
- disputes emanating from Arbitration awards
- property disputes

In some instances, involvement in such high level corporate transactions results in the necessity to engage in dispute resolution processes, including conducting litigation on behalf of our clients.

13.1 Alternative Dispute Resolution

Alternative Dispute Resolution ("ADR") may be described as a range of procedures that serve as alternative to litigation through the courts for resolution of disputes. It generally involves the intercession and assistance of a neutral third party and is used when parties are trying to avoid public proceedings in a court of law. The advantage is that it places emphasis on informality of proceedings and speedy resolution. ADR is vital in modern commercial and labour agreements, and investors find it as an alternative to submission to foreign laws.

Conciliation, mediation and arbitration are three basic forms of ADR that have been developed. Arbitration should be resorted to when other ADR mechanisms have failed. The Arbitration Act [Chapter 7:15] ("the Arbitration Act") is the model law on arbitration used for labour (where applicable) and commercial disputes in Zimbabwe.

13.2 Enforcement of Arbitral Awards and Judgements

Zimbabwe has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the Convention"), which requires courts of contracting states to give effect to private agreements to arbitrate and to recognise and enforce arbitration awards made in the contracting countries. Under the Convention, an arbitration award issued in any other contracting state can generally be freely enforced in any other contracting state (save that some contracting states may elect to enforce only awards from other contracting states — the "reciprocity" reservation).

The Civil Matters (Mutual Assistance) Act [Chapter 8:02] allows for the registration of a foreign judgement in Zimbabwe - provided the judgement was handed down in a designated country.
14. Investment Risks

Based on the holistic regulatory framework which this document outlines, and our encounters with potential investors in the international market, our research has revealed that some of the major concerns regarding investment risk include the unpredictability in the change of laws, the possibility of expropriation of property, as well the implementation of sanctions on Zimbabwe. Investors are thus encouraged to seek specific professional advice prior to undertaking any proposed investment in Zimbabwe.

14.1 Change of Laws

A principal concern for investors pertains to the sporadic change of laws in Zimbabwe. Generally, the process followed by Parliament when there is a material amendment being made to legislation is extensive, as such amendment must be effected through statute. In some instances, this is fast tracked in Parliament under certain special circumstances. Owing to the ordinarily lengthy process before statutes are enacted, it is advisable for the investors to familiarise themselves with the laws of Zimbabwe, and to monitor any prospective changes in the laws, such that investors will then be able to assess and restructure their business plans accordingly.

In Zimbabwe, the process for any changes in laws takes place as follows:

<table>
<thead>
<tr>
<th>Stage</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill is drafted</td>
<td>Stakeholders in the country are invited to comment and make submissions on the bill</td>
</tr>
<tr>
<td>Bill is published</td>
<td>The public to give its opinions and comments</td>
</tr>
<tr>
<td>Bill is passed as an Act</td>
<td>President is required to assent to it</td>
</tr>
<tr>
<td>President assents to the Act</td>
<td>The Act then comes into operation</td>
</tr>
</tbody>
</table>

NB: Investors typically possess Zimbabwe Investment Licences, such that, in the event of a change in law, their recourse will lie in the numerous investment treaties and Bilateral Investment Promotion and Protection Agreements that Zimbabwe is a signatory to.

14.2 Expropriation

Generally, the Government of Zimbabwe is vested with the authority to take or expropriate privately owned property for public use and benefit.

However, Zimbabwe is a party to numerous treaties with various countries which are aimed at the encouragement and reciprocal protection of investments between the respective countries, and which provide immunity against expropriation to certain member States - such as:

- Bilateral Investment Treaties (“BITs”);
- Zimbabwe’s Treaties with Investment Provisions (“TIPs”);
- Investment Related Instruments (“IRIs”).

The extent of protection must be analysed in respect of the relevant country concerned. Therefore, it is extremely important for prospective investors to familiarise themselves with the various treaties that Zimbabwe is a party to, in order to establish the extent of protection offered.

Some of the major concerns regarding investment risk include the unpredictability in the change of laws, the possibility of expropriation of property, as well the implementation of sanctions on Zimbabwe.
14.3 Sanctions: The Office of Foreign Assets Control

The Office of Foreign Assets Control (“OFAC”) of the US Department of the Treasury is responsible for administering and enforcing economic and trade sanctions based on US foreign policy and national security goals directed at foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

OFAC implemented a sanctions program against Zimbabwe on 7 March 2003. This has been implemented by the US Executive Orders issued by the President, namely E.O 13288, E.O 13391 and E.O 13469. The sanctions apply to the property and ‘interests in property’ of the individuals and entities listed in E.O 13391.

Should any member on the Specially Designated Nationals and Blocked Persons List violate, conspire to violate or cause a violation of the named Executive Orders or their Regulations, such violation will result in a civil monetary penalty or imprisonment in some circumstances. According to the Code of Federal Regulations certain types of activities and transactions are exempt from the prohibitions.

Recent Legislative Developments

In September 2015, the office of the President of Zimbabwe and Cabinet (“OPC”) embarked on the Ease of Doing Business Reform, in collaboration with development partners, civil society, the private sector, academia and various interest groups.

The main objectives of the reforms are directed towards improvement of the business operating environment in order to promote foreign and local investment, improve quality of service delivery in the public sector, reduce the cost of doing business in the country, and to create value. Ten global indices were identified by the OPC, and the reforms were then concentrated on these indices; namely:

- Starting a business
- Protecting minority investors
- Enforcing contracts
- Resolving insolvency
- Getting credit
- Paying taxes
- Trading across borders
- Construction permits
- Registration of property
- Access to electricity

In a recent update by the OPC entitled “Progress Report on the Ease of Doing Business Reforms”, which was released on 3 March 2017, the OPC recorded several milestones on both the legislative and administrative fronts in order to facilitate the ease of doing business.
To date, nine bills have been drafted for approval by Cabinet, as fully detailed below:

**Deeds Registry Act**

The Deeds Registries Bill was gazetted in August 2016 and seeks to amend the principal act so as to restrict the execution of powers of attorney only to those witnessed and signed by a legal practitioner, notary public or justice of the peace in the presence of the person executing the Power of Attorney. Additionally, the bill seeks to provide for the establishment of an electronic registry which will supplement the existing paper-based one. The intention is to expedite and facilitate the registration and administration of deeds.

**Movable Property Security Interest Bill**

This Act will revolutionise security for the purpose of obtaining loans, and will make provision for movable property to be used as security. Should the Bill be enacted, it would thus create a greater scope for lenders’ activities. A Collateral Registry will also be enabled through this legislation, whose purpose will be to enable registration of security interest over movable property by receiving and storing the notices of the debtor or the creditor and registering them in respect of security interests.

**Judicial Laws Ease of Settling Commercial Disputes Bill**

This Bill aims to increase the financial jurisdiction of the small claims court as well as to establish a Commercial Court. The creation of this court is aimed at reducing the time frames in resolution of commercial disputes.

**Shop Licencing Act**

This Bill will modernise and update the process and the regulations involved in the licencing of shops in Zimbabwe.

**Insolvency Act**

The Insolvency Bill aims to reduce the timeframe for settlement of insolvency matters, which currently are very tedious and time consuming. The update will provide clearer regulations in order to streamline the process.

**Estate Administrators and Insolvency Practitioners Act**

This Bill will update the current administration of estates and aims to fine tune the process in line with international best practices. The Bill will address the requirements for registration and de-registration of insolvency practitioners.

**Regional Town and Country Planning Act**

This Bill is aimed at reducing the time and procedural aspects involved in obtaining construction permits. Only qualified practitioners will be allowed to approve building plans, and where new settlements are implemented, environmental protection will be mandatory.

**Public Procurement Act**

The idea behind this Bill is to create more transparency and accountability thought the decentralising of procurement to the ministries. A National Procurement Authority will also be established who will be mandated to evaluate procurement as well as the setting of standards and guidelines.
Our firm is a highly specialised firm tailored for complex investment transactions with a well exposed personnel who are well resourced in their areas of specialisation. By applying their well trained and seasoned minds, the team has the highly sought after ability to deliver practical business solutions. It is our quest to help our clients see and exploit new opportunities in our market.

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