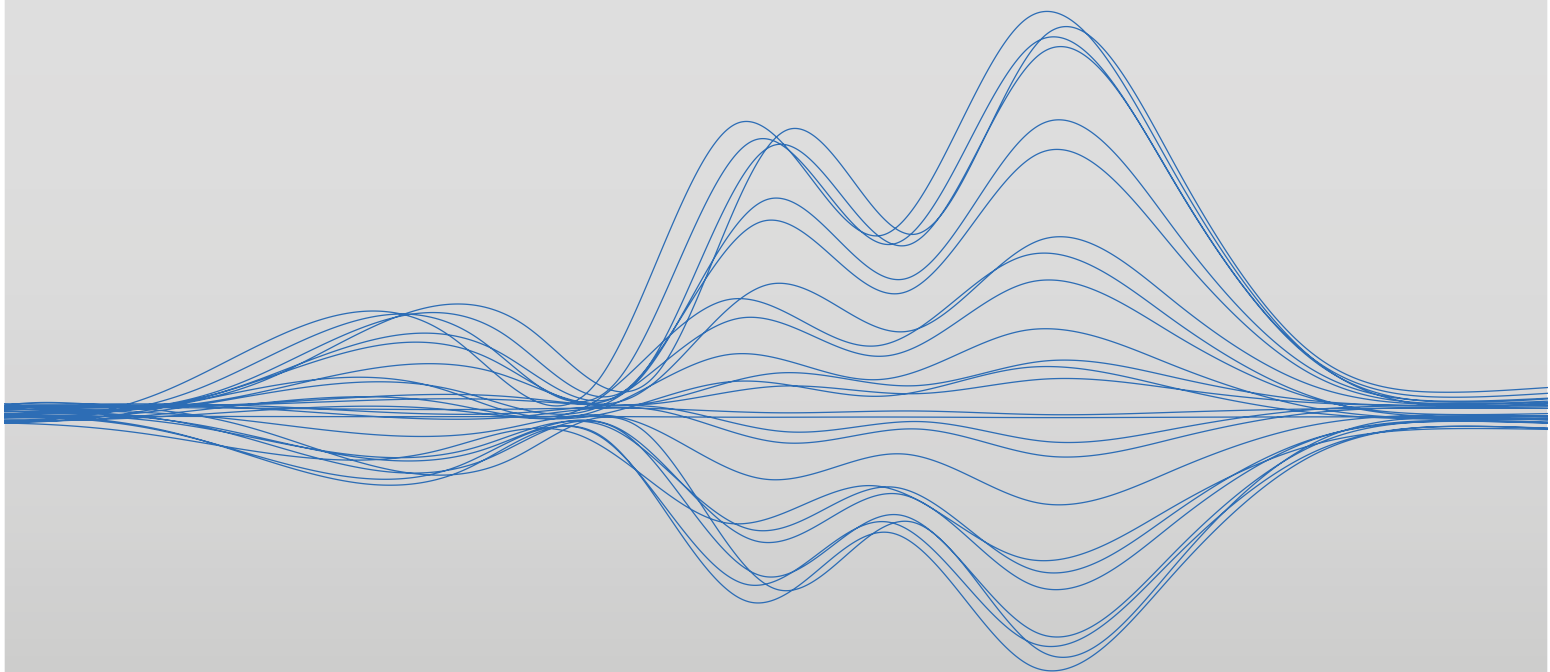


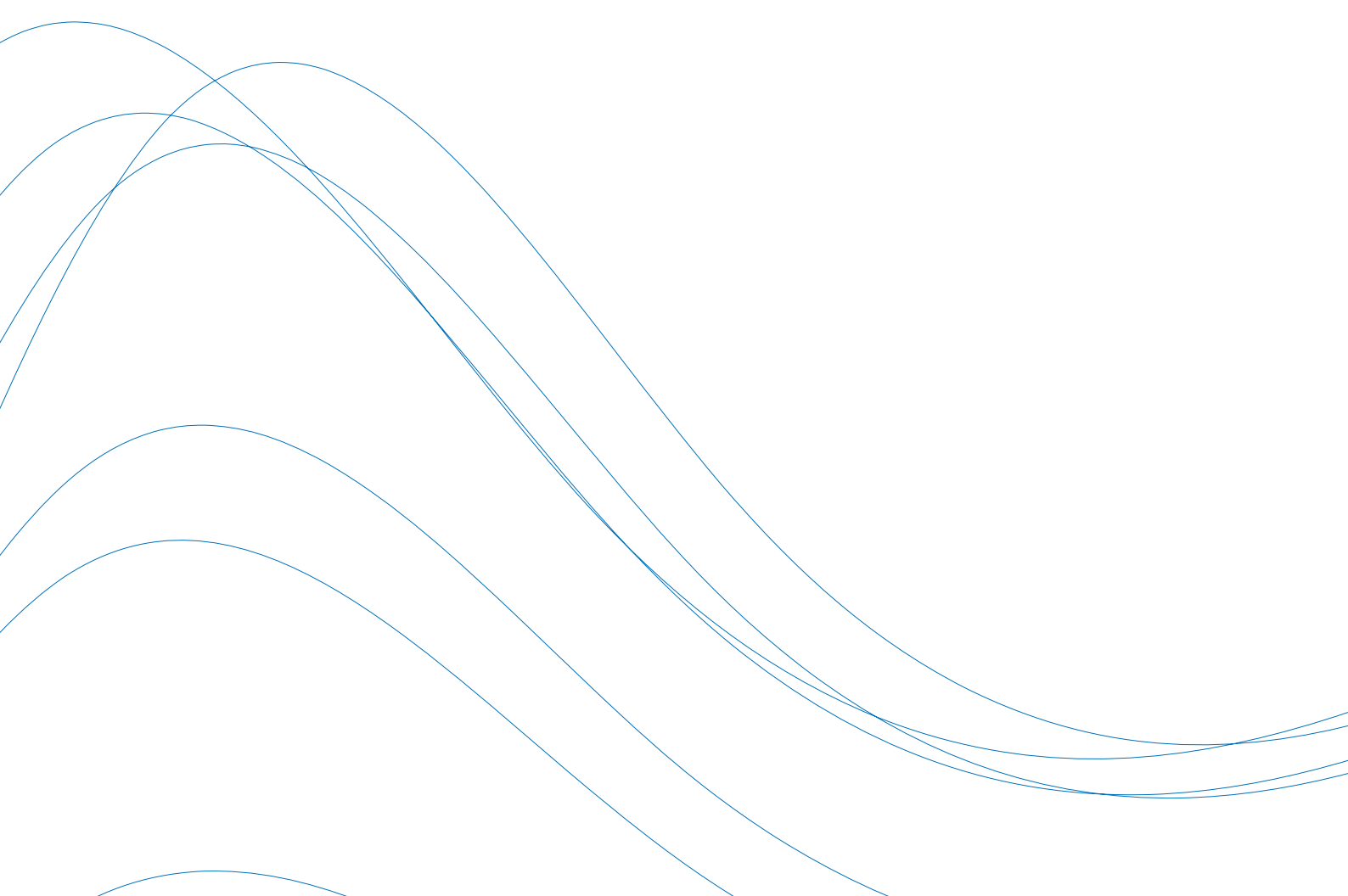
Doing Business in Zimbabwe

AUGUST 2021



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Country overview

- Name – Zimbabwe
- Capital city – Harare
- Total land area – 390,757 km²
- Population (2021) – 15,080,740
- Population growth (2020-2021) – 1.54%
- Urban population (2020) – 5,700,460
- Languages spoken (three most popular) – English, Shona, Ndebele
- Neighbouring countries – South Africa, Zambia, Botswana, Mozambique
- Independence – 18 April 1980

Business environment

The sectors attracting investment include energy, agriculture and agro-processing, infrastructure development, tourism and hospitality (particularly in the Victoria Falls), fintech and mining. Increasingly, real estate has taken on an important role as an area of value in Zimbabwe for investors.

Government type and structure

- Head of State – Emmerson Mnangagwa
- Time in power – Three years and seven months
- Type of Government – Democracy
- Main political party – Zimbabwe African National Union – Patriotic Front (ZANU-PF)
- Main opposition party – Movement for Democratic Change-Tsvangirayi (MDC-T)
- Administrative divisions – 10 provinces as follows: Matabeleland North, Matabeleland South, Mashonaland East, Mashonaland West, Mashonaland Central, the Midlands, Masvingo, Bulawayo, Manicaland, Harare
- Legal system: The Zimbabwean legal system consists of the common law which is based in Roman Dutch law, legislation, case law, customary law and the Constitution of Zimbabwe, which is the supreme law of the country.

Economy

- GDP – USD20.56 billion (nominal 2020 estimate)
- Percentage of Africa's GDP – 0.829% (2018)
- GDP growth rate – -8% (2021)
- Per capita GDP PPP – USD1,128.2 (2020)
- Inflation: CPI – 2, 874.85% (May 2021)
- Inflation: Rate – 106.6% (June 2021)¹
- Value add by kind of economic activity
- Agriculture – 12%
- Industry – 22.2%
- Services – 65.8%
- Net inflow of FDI (2019) – USD280 million
- Top three exports by value – Nickel Mattes (USD168.9 million), semi-manufactured gold (USD76.33 million), nickel ores (USD76.31 million)
- Top three import sources (2020) South Africa, Singapore and China
- Top three export destinations (2020) South Africa, United Arab Emirates, Mozambique
- Imports – Mineral fuels, vehicles, machinery and mechanical appliances, fertilizers, cereals plastics, pharmaceuticals
- Currency – Zimbabwean Dollar (ZWL) or United States Dollar (USD)

Infrastructure

- Major international airports:
- Robert Gabriel Mugabe International Airport
- Joshua Nkomo International Airport
- Victoria Falls International Airport
- Major ports:
- Chalala Harbor, Binga Harbour
- Kariba Harbour
- Port of Chiredzi

¹The announcement of annual inflation figures has been suspended by the Minister of Finance until February 2020 due to the excessive rise of inflation from 97.9% in May 2019 to 175.6% in June 2019.

Business vehicles/structures for doing business

Introduction

Investment in Zimbabwe usually takes place through the purchase of shares or assets in an existing company or through the incorporation of a new company – whether a local company or a foreign branch office.

Presence of foreign entities

In terms of the Companies and other Business Entities Act, [Chapter 24:31] (COBE), foreign companies are required to make an application to the Minister of Justice to operate in Zimbabwe as a foreign entity with a branch. It usually takes approximately two weeks to secure approval from the Minister of Justice for the establishment of a branch in Zimbabwe. Once a foreign company obtains authority by way of a certificate from the Minister of Justice, it would then register the branch with the Registrar of Companies by submitting the parent company's registration documents, a completed form of the particulars of the directors or principal officer representing the company in Zimbabwe (the CR6), the Zimbabwean physical address for the branch (the CR5) and the accompanying application fee. All documents are required to be certified at the parent company's local embassy in Zimbabwe, and if the documents are in a foreign language, certified translated copies must be submitted. The current statutory fees for registration of a representative branch is USD1,300.00.

Foreign investment can also be made through the incorporation of a local private limited company. In order to register a private limited company, an application will need to be made for name approval and reservation. Secondly a Memorandum and Articles of Association, CR6 and Form CR5 will need to be lodged at the Registrar of Companies. The current statutory fees for the registration process is ZWL 1,100.00.

Setting-up and registration requirements and level of protection offered to shareholders, of the various business vehicles

The incorporation and registration of companies in Zimbabwe is governed by COBE. Applications are made to the Registrar of Companies at the Companies Office.

PRIVATE AND PUBLIC COMPANIES

A private company is limited by shares and is the most common entity established by new businesses. A private company can have membership of between 2 and 50 persons, whilst a public

company should have a minimum of 2 with no maximum membership prescribed. A private company restricts transfer of its shares by shareholders and cannot invite the public to subscribe for any shares or debentures, whereas public companies' shares can be publicly traded with their shares and debentures being open for transfer in the public domain.

In order to register a public company, an application will need to be made for name approval and reservation, thereafter a Memorandum and Articles of Association, CR6, CR5, CR20 (Consent to act as a director of a public Company) and CR21 (List of persons to act as directors) will need to be lodged at the Registrar of Companies. In Zimbabwe, both private and public companies offer shareholders limited liability. This means that shareholders will only be legally responsible for the debts of the company, only to the extent of the amount of capital they invested.

PARTNERSHIPS

Governed by a deed of partnership, this is a less controlled form of business vehicle, whose formation rules regarding the operations are governed by the common law. A partnership will be legally formed once essential common law requirements are met (e.g. the right number of people agreeing to do business for a profit and to share losses is constituted).

The applicable regulatory frameworks for partnerships will be dependent on the sector specific licensing requirements.

SPECIAL PURPOSE VEHICLE (SPV)

In Zimbabwe, an SPV will be structured and incorporated as a private company. An SPV is the preferred vehicle for investors participating in public private partnerships (PPPs) in this market, for joint venture projects involving the government of Zimbabwe and private sector entities. This entity will usually be registered as private company with the government of Zimbabwe as a co-shareholder.

Ease of doing business

The ease of doing business is an assessment of a country's overall business environment based upon a set of indicators compiled by the World Bank Doing Business project. The index ranks the countries against each other based on how the regulatory environment is conducive to business operations stronger protections of property rights.

With "Zimbabwe is Open for Business" as the new mantra, a concerted effort has been made to improve Zimbabwe's Ease of Doing Business index ranking which is currently 138 out of 190. This has been done through streamlining the regulatory and compliance framework for investments coming into Zimbabwe.

A critical body facilitating the ease of doing business in Zimbabwe is the Zimbabwe Investment Development Agency (ZIDA). ZIDA was established by the Zimbabwe Investment Development Agency Act [Chapter 14:37], (ZIDA Act). ZIDA is the country's investment promotion body set up to promote, protect and facilitate both foreign direct investment and local investment. ZIDA provides a One Stop Investment Services Centre (the Centre) for quicker and easier facilitation of investment. The Centre consists of representative desks for various government departments which include but are not limited to the Immigration Department, Zimbabwe Revenue Authority, Reserve Bank of Zimbabwe, Ministry of Mines and Minerals and the Zimbabwe Tourism Authority. This streamlines the processes and timelines required to establish and operate

a business in Zimbabwe. There have also been efforts towards digitalising processes such as tax registration and company name searches, so these can be done online as opposed to in person.

As a one-stop investment shop for quicker and easier facilitation of investment. Together with other regulators, ZIA will ultimately become a one-stop-shop which will streamline the process and timelines required to establish and operate a business in Zimbabwe. There have also been efforts towards digitalising process such as tax registration and company name searches, so these can be done online as opposed to in person.

Typically, the following is required when starting a business in Zimbabwe:

- company registration;
- tax registration;
- setting up and opening a bank account;
- ZIDA licensing (available for both foreign and domestic investors);
- operational permits (sector specific);
- residence and work permits issued by immigration; and
- approval of the Exchange Control Authority of the Reserve Bank of Zimbabwe (where foreign funds or obligation are involved).

Business rights and regulatory environment

Licenses and regulatory

REQUIREMENTS TO TRADE

All new foreign investment into Zimbabwe requires an investment licence issued by the ZIDA. ZIDA was established by the ZIDA Act [Chapter 14:37] for the purposes of providing the promotion and coordination of investment into Zimbabwe. ZIDA is the prime investment promotion body that deals with greenfield projects.

In addition to obtaining a ZIDA license, any business entity is required to obtain a sector-specific license to operate or trade in Zimbabwe, register for tax with the Zimbabwe Revenue Authority, and register its employees with the National Social Security Authority (NSSA).

CAUTIONARIES AND LIMITATIONS IN THIS CATEGORY

Foreign investors must be aware of the restrictions applicable to the type of business vehicle/entity used when doing business in Zimbabwe. A foreign branch office is limited to facilitating trade and the business activities but cannot fully engage in business activities as is the case with a private limited company. A foreign branch will require permission from ZIDA on a case to case basis if they wish to engage in commercial activities outside the scope of what they had initially advised.

COMPETITION

Competition is regulated by the Competition Act [Chapter 14:28] (the Competition Act) and regulated by the Competition and Tariffs Commission (CTC). The CTC is an autonomous body empowered in terms of the Competition Act and is mandated to investigate and approve a merger. The Competition Act prohibits restrictive practices and unfair business practices which are sanctioned by fines and/ or imprisonment.

CONSUMER PROTECTION

Zimbabwe recently introduced the Consumer Protection Act [Chapter 14:44] (the Consumer Protection Act). The Consumer Protection Act replaces the now repealed Consumer Contracts Act [Chapter 8:03] which previously regulated unfair consumer contracts but was generally regarded by many as not being comprehensive enough. It establishes the Consumer Protection Commission, regulates Consumer Advocacy Organizations, and provides for alternative dispute resolution mechanisms. Thus, the Consumer Protection Act moves away from the position in the repealed Consumer Contracts Act by establishing regulatory bodies that regulate and supervise consumer interests.

The Act seeks to protect consumers by ensuring there is a fair, efficient, and transparent marketplace for both consumers and businesses.

Further, the Act deals with a wide range of issues. For example, it looks at contracts, language written on products, complaints and how complaints will be handled as well as conditional spelling on products. It also checks prices on commodities.

DATA PROTECTION AND PRIVACY

The protection of privacy is a principle enshrined in Zimbabwe's Constitution. While there is no designated national legislation dealing with data protection for private persons in Zimbabwe yet, there are existing laws that have a bearing on the right to privacy and protection of personal information for specified types of data, or in relation to specific activities.

The Access to Information and Protection of Privacy Act [Chapter 10:247] is the law which contains the most provisions on data protection. However, this generally only regulates the use of personal data by public bodies. The Data Protection Bill, if enacted, is intended to govern the processing of personal information by private and public bodies.

Other laws refer to the protection of information as a function of other activities or the protection of specific types of data such as the Courts and Adjudicating Authorities (Publicity Restrictions) Act [Chapter 07:04], the Census and Statistics Act [Chapter 10:29], Banking Act [Chapter 24:20], National Registration Act [Chapter 10:17] and the Interception of Communications Act [Chapter 11:20].

ENVIRONMENTAL LAW

Environmental management is regulated under the Environmental Management Act [Chapter 20:27]. The Environment Management Act establishes the Environmental Management Agency ("EMA"). The functions of the Environmental Management Agency are to provide for the sustainable management of natural resources and protection of the environment; the prevention of pollution and environmental degradation; the preparation of a National Environmental Plan and other plans for the management and protection of the environment. In terms of the Environmental Management Act, certain projects can only be carried out after the submission of an Environmental Impact Assessment Report to the director of EMA and obtaining an Environmental Impact Assessment License, (EIA License). The following projects may not be carried out before obtaining an EIA License:

- construction on a wetland
- the construction of dams and man-made lakes;

- irrigation;
- forestry;
- manufacturing;
- infrastructure – such as the construction of highways, airports, railway, new towns or townships, industrial sites, billboards, telecommunications projects for the laying of fibre optic cables;
- mining and quarrying;
- petroleum production, storage and distribution;
- oil and gas exploration and development;
- power generation and transmission;
- tourist resorts and recreational developments;
- waste treatment and disposal; and
- water supply.

INTELLECTUAL PROPERTY (IP)

Intellectual Property is regulated and protected in terms of several intellectual property laws in Zimbabwe. The main laws are the Copyright and Neighbouring Rights Act [Chapter 26:06]; the Patent Act [Chapter 26:03]; the Plant Breeder Rights Act [Chapter 18:16] and the Trademarks Act [Chapter 26:04].

Patents are registered with the Registrar of Patents in terms of the Patents Act and are protected for a period of 20 years. While the Copyright Act makes provision for the protection of literary works, musical works, artistic works and publications, this protection is generally granted for a period of 50 years.

ANTI-BRIBERY AND CORRUPTION

Anti-bribery and corruption is combatted by Criminal Law (Codification and Reform) Act, [Chapter 9:23] (known as the Criminal Code) and the Prevention of Corruption Act, [Chapter 9:16].

The government has established an independent anti-corruption commission, the Zimbabwe Anti-Corruption Commission (ZACC), whose function is to investigate, together with the Zimbabwe Republic Police, instances of corruption. In terms of the Constitution of Zimbabwe, once the ZACC has investigated a case of corruption, it directs the Zimbabwe Republic Police (“the ZRP”) to investigate the alleged corrupt activity. Once the ZRP has completed its investigations they refer the matter to National Prosecuting Authority.

MONEY LAUNDERING

The Money Laundering and Proceeds of Crime Act [Chapter 9:24] (Money Laundering and Proceeds of Crime Act) is the main act that regulates money laundering in Zimbabwe. This Money Laundering and Proceeds of Crime Act provides for the suppression of the abuse of the financial system and enables the unlawful proceeds of all serious crime and terrorist acts to be identified, traced, frozen, seized and eventually confiscated. The regulatory body that monitors and enforces compliance with anti-money laundering legislation is the Financial Intelligence Unit of the Reserve Bank of Zimbabwe. Commercial banks, micro finance institutions and bureaux de change (collectively known as authorised dealers) and some professional bodies are required to follow strict Know Your Customer procedures and record keeping conditions.

Land rights

REGULATION OF THE REGISTRATION OF RIGHTS IN LAND AND OTHER IMMOVABLE PROPERTY

The registration of rights in land and other immovable property must be registered in the Deeds Registry. Such rights include ownership, leasing rights, securities access or rights of use. Where rights have not been registered, they may be disputed. In a sale of property transaction, delivery of ownership rights is effected by registration at the Deeds Registry, while long leases of at least ten years and over may also be registered at the Deeds Registry.

Securities including mortgage and notarial bonds must also be registered in the Deeds Registry for them to be legally recognised and enforced. Legal recognition and enforceability of access rights including servitudes may also only be perfected through registration at the Deeds Registry.

The primary legislation for the regulation of title in immovable property is the Deeds Registries Act [Chapter 20:05].

There are no restrictions or prohibitions on the acquisition and ownership of immovable property by foreigners or non-residents in Zimbabwe.

STATUTORY LIMITATIONS IMPOSED ON LAND TRANSACTIONS

In terms of the Regional Town and Country Planning Act [Chapter 29:12], the sale of a portion of a piece of land is prohibited, except where a subdivision permit has been issued.

SYSTEM OF LAND REGISTRATION

In Zimbabwe the Deeds Registry, which is physically located in Harare and Bulawayo, is the repository of all registered rights and interests in respect of immovable property. The Deeds Registry contains the central register of title deeds and registered rights and interests over immovable property, which includes leases, bonds and servitudes.

Registration within the Deeds Registry is summarily effected through the lodging of the requisite transfer documents which include the seller and purchaser's declarations, the power of attorney, the seller's original deed, the draft deeds in duplicate, the Rates Clearance Certificate and proof of payment of stamp duty.

The Deeds Amendment Bill 2016 introduced the concept of E-Conveyancing which will see the recording of documents electronically as stipulated in bill. Clauses 3 and 4 of the Deeds Amendment Bill 2016 states that:

"The amendments sought by these clauses will permit the digitization of the deeds Registries and the eventual establishment of an electronic deeds Registries which will supplement the paper-based one....."

The condition precedent to the Bill becoming operational as stipulated in section 80(2) is that, the electronic Registries shall become operational from such date as the Registrar, in consultation with the Minister, shall specify by notice in a statutory instrument. There has been however no statutory instrument authorizing the operation of e-conveyancing as of yet.

RELEVANT TAXES/TRANSFER DUTY AND EXEMPTIONS

The taxes that are applicable in transfers of immovable property are the following:

- The purchaser pays VAT at the rate of 14.5% upon transfer of land that is being sold by a developer.
- The seller is liable for payment of capital gains tax in respect of gains realised from the sale of property. This is calculated by the Zimbabwe Revenue Authority in terms of section 6 of the Capital Gains Tax Act [Chapter 23:01] as follows;
 - For specified assets acquired by the seller or transferor before the 1st of February 2009, the rate of CGT shall be 5% (five percent) of the capital gain received from the sale or

disposal. The capital gain shall be determined by deducting the cost of the specified asset and other allowable deductions from the gross proceeds received from the sale or disposal.

- For specified assets acquired by the seller or transferor after the 1st of February 2009 but before the 22nd of February 2019, the rate of CGT shall be 5% of the consideration received for the asset.
- For specified assets acquired by the seller or transferor after the 22nd of February 2019, the rate of CGT shall be 20% of the capital gain derived from the sale or disposal. The capital gain is determined by deducting the cost of the specified asset and other allowable deductions from the gross proceeds received from the sale or disposal.
- The donee may be liable for payment of income tax where a property has been acquired through a donation. Income tax is charged in terms of the Income Tax Act [Chapter 23:06].
- The acquisition of real estate for deceased estates is subject to estate duty and the amount is calculated in accordance with the Estate Duty Act [Chapter 23:03].
- Where a deduction is to be made for the purpose of a subdivision or a partition, deduction fees are payable to the office of the Surveyor General as follows:
 - Up to 400 square metres: ZWL1 000
 - 401 – 1000 square metres: ZWL1 250
 - 1001 – 5000 square metres: ZWL1 500
 - 5001 square metres – 1 hectare: ZWL2 000
 - Above 1 hectare – 10 hectares: 2 500
 - Above 10 hectares: 5 000
- The purchaser in a transfer of property transaction is liable for payment of stamp duty in terms of the Stamp Duties Act [Chapter 23:09. Stamp Duty is calculated on a sliding scale against the purchase price.
- The purchaser in a transfer of property transaction is also liable for payment of legal (conveyancing) which are levied in terms of the Law Society (Conveyancing Fees) By-Laws, 2013.

Employment

Introduction

Zimbabwe employment 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 main sources of employment laws are the Constitution of Zimbabwe 2013, the Labour Act [Chapter 28:01] (the Labour Act), which was amended on 26 August 2015; and the Labour (National Employment Code of Conduct) Regulations, 2006 (the NEC Regulations) made thereunder. The Labour Act also allows for enactment of sector-specific conditions of employment 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.

Employment of foreign nationals

Foreign nationals may be employed in Zimbabwe provided they obtain a temporary employment permit. It enables the holder to work in Zimbabwe and is typically granted for a period of 3 to 6 months or 12 to 18 months depending on the one applied for by the concerned individual. To qualify for a Temporary Employment Permit, the applicant must possess a critical skill that is not available or is in short supply in Zimbabwe. This permit is renewable upon application.

Cautionaries and limitations in this category

Foreign employees wishing to work in Zimbabwe are required to apply for a temporary employment permit before travelling to Zimbabwe. Furthermore, companies wishing to employ foreign employees are required to place an advert in the local press; show that after a diligent search there was no Zimbabwean resident who possessed the desired skill; and commit to employ a local understudy who will work with and learn from the foreign employee.

Retrenchment and transfer of business

In terms of a 2015 amendment to the Labour Act, every employee is guaranteed a retrenchment package of not less than one month's pay for each two years of service (and proportionate payments for lesser periods of services) – unless better terms are agreed between the parties.

Upon the transfer of a business, an employee shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are no less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

Corporate governance

The Zimbabwe National Code of Corporate Governance and the Companies and other Business Act [Chapter 24:31] (COBE) provide for the duties of the directors of a company. Additional duties, with respect to the fiduciary duties of directors are found in the common law.

The Corporate Governance Code provides that directors should commit themselves to meet the legal duties of good faith, loyalty, care, skill, diligence and avoid conflicts of interest. Section 200(1)(d) of the COBE provides that any person who has at any time been convicted, whether in Zimbabwe or elsewhere of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced to a term of imprisonment without the option of paying a fine shall be disqualified from being appointed a director of a company.

Who is allowed to be company directors?

WHO QUALIFIES TO BE A SHAREHOLDER OR DIRECTOR OF A COMPANY

In terms of the COBE, a natural person may only be permitted to be a director of a company after the lodging of the registration of the articles of the company, or the publication of the prospectus. These documents must have been signed by the natural person or by their agent authorized in writing. The COBE further provides that every company shall have not less than two directors, at least one of whom must be ordinarily resident in Zimbabwe.

ANCILLARY CONSEQUENCES IF THE SHAREHOLDERS ARE FOREIGN

Bonds, stock and listed securities may be issued or transferred to a foreign resident if the security is paid for out of funds transmitted to Zimbabwe through normal banking channels subject to obtaining prior Reserve Bank of Zimbabwe approval. In the event that the issue or transfer of the bond, stock or security will result in a foreign resident holding more than 49% of the bonds or stock in the same issue or 49% of the total equity of the company issuing the security, the permission of the Reserve Bank of Zimbabwe (RBZ) is required. Furthermore, a foreign shareholder may obtain a licences in terms of the Zimbabwe Investment and Development Agency Act [Chapter 14:37] (ZIDA Act) in order to be afforded the protected granted to foreign investors.

MINIMUM NUMBER OF DIRECTORS

The COBE states that every company shall not have less than two directors and at least one must be ordinarily resident in Zimbabwe.

Banking and finance

Which legislation covers this sector

OVERVIEW OF THE BANKING SYSTEM

The banking sector is regulated by the Reserve Bank of Zimbabwe (the RBZ) which has oversight responsibility over banking institutions. Banking institutions are any institutions which perform a banking activity including, inter alia, (i) receiving deposits, extending credit including consumer and mortgage credit and factoring; (ii) financing of commercial transactions and (iii) the recovery of the above-mentioned amounts once extended.

RELEVANT LEGISLATION

The main piece of legislation governing the banking sector is the Banking Act [Chapter 24:20]. There are other ancillary laws which regulate the banking sector including the Reserve Bank Act [Chapter 22:15] and the Exchange Control Act [Chapter 22:05] (the Exchange Control Act).

INTERNATIONAL BEST PRACTICE

The RBZ has pledged to adhere to international best practices in its regulatory and supervisory role.

FOREIGN COMPANIES AND NON-RESIDENTS

It is possible for individual non-residents and foreign companies to open non-resident current accounts. If these accounts are for the receipt of foreign currency then such accounts must fall into any one of the categories of designated Nostro Foreign Currency Accounts.

Foreign exchange regulations

FOREIGN EXCHANGE REGULATION

The main piece of legislation regulating exchange control in Zimbabwe is the Exchange Control Act and various regulations made in terms thereof.

WHO IS SUBJECT TO THE REGULATION OF TRANSACTIONS INVOLVING FOREIGN EXCHANGE?

Entities within and outside Zimbabwe are subject to exchange control regulations.

WHO IS RESPONSIBLE TO ADMINISTER THE EXCHANGE CONTROL SYSTEM?

The RBZ is responsible for implementing and monitoring exchange control regulations.

THE ROLE OF LOCAL BANKS WITH REGARD TO ADMINISTERING THE EXCHANGE CONTROL SYSTEM

The exchange control regulations make reference to authorised dealers, which means the RBZ or any commercial banks, accepting houses or any class thereof. Applications for exchange

control approval must be made through an authorised dealer and are submitted to the RBZ's Exchange Control Department by such an authorised dealer.

In terms of section 35 of the Exchange Control Regulations Statutory Instrument 109 of 1996 (Exchange Control Regulations, 1996) the RBZ has a general power to issue binding directives to authorised dealers (commercial banks) for the treatment and use of foreign currency and the performance of their functions.

HOW CAN FOREIGN CURRENCY BE INTRODUCED INTO THE COUNTRY?

The most common way of introduction of foreign currency is through inward telegraphic transfers; however, foreign currency may be brought in through other means, including foreign currency notes and foreign credit cards. It must be noted that due to severe foreign currency shortages, withdrawals of cash may not be possible in Zimbabwe, therefore, electronic means of settlement are generally preferred or conversion of foreign currency into local Zimbabwean Dollars with a Bureau de Change at the prevailing interbank market rate.

WITHDRAWALS OF FOREIGN CURRENCY AND PAYMENT INTO NON-RESIDENT FOREIGN BANK ACCOUNTS

A non-resident can open a Nostro foreign currency account. Payment of foreign currency can then be made through direct deposits or Nostro to Nostro account transfers into the said account and can be withdrawn from the account at any given time, subject to availability of foreign currency. Funds shall be freely remittable provided that the funds deposited into the Nostro FCA emanate from offshore sources. Should the funds be derived from local activities then remittances will only be done subject to obtaining exchange control approval.

RULES/REGULATIONS APPLICABLE TO THE IMPORT OF GOODS AND SERVICES

Exchange Control Regulations 109 and 110 of 1996 set out regulations for the importation and exportation of goods utilising foreign currency allocated to an individual for this purpose. For instance, section 20(1) of Exchange Control Regulations 109 of 1996 provide that any gold, silver or platinum or any article manufactured from or containing gold, silver or platinum; or any precious or semiprecious stone or pearl whose value exceeds a prescribed amount, or any article mounted or set with a precious or semiprecious stone or pearl whose value exceeds a prescribed amount may not be exported outside of Zimbabwe without prior Exchange Control approval. In terms of section 13(1) of the Exchange Control Regulations 110 of 1996, the maximum value of any precious or semi-precious stone or pearl, or article mounted or set with one or more such stones or pearls, that may be exported from Zimbabwe without Exchange Control approval is USD5,000.00.

Investment regulation

Regulatory framework

Foreign investment is licensed and administered by the Zimbabwe Investment and Development Agency Act [Chapter 14:37] which came into effect on the 7th of February 2020, ("the ZIDA Act"). T Foreigners wishing to set up business operations in Zimbabwe are required to obtain an investment license which will accord the investor protection of the laws of Zimbabwe. The ZIDA license will further enable the foreign investor to acquire investor residence permits (for investments over a USD100,000.00 threshold), to enable repatriation of income as debt or equity, obtaining duty rebates on capital, equipment, export and import tariff dispensations. An investment license is valid for two years.

In 2018 the Indigenisation and Economic Empowerment Act [Chapter 14:33] was amended to the effect that the Indigenisation Act would no longer apply to any business other than businesses involved in the diamond and platinum extractive sectors (designated extractive businesses) and businesses in the Reserved Sectors. However, this has recently been amended by the Finance (No. 2) Act, 2020, which now provides that:

- the scope of the indigenisation provisions have been extended to any extraction of minerals generally and no longer only to platinum and diamond mining; and
- (ii) the Minister of Industry, Commerce and Enterprise Development in terms of section 3(6) of the Indigenisation Act is empowered to relax the 51% State-ownership quota by permitting a business in the designated extractive sector to achieve the quota through the use of credits, and for such a period as the Minister of Industry, Commerce and Enterprise Development shall prescribe.

The Ministry of Finance and Economic Development and the Ministry of Mines then issued a Joint Statement on 2 February 2021 to clarify the intent of the section 36 amendment in the Finance Act (No. 2), 2020. According to the Joint Statement, there are no minerals the extraction of which require a business extracting same to have 51% of its shareholding being owned by a designated entity. The Joint Statement further noted the Zimbabwean government's position that there is no mineral, the extraction of which, the government considers requires mandatory shareholding participation through a designated entity and confirmed that the wording inserted by the section 36

amendment would be deleted. On 24 February 2021, the Deputy Minister of Finance and Economic Development is quoted in the local press to have said that the legal effect of the statement of 2 February 2021 alluding to the deletion of the clause would be effected by amending the Finance (No.2) Act, 2020 when the Minister of Finance and Economic Development issues the midterm budget review statement later this year.

Private equity

The main regulatory bodies that regulate share transactions are the Companies Office, the Securities and Exchange Commission of Zimbabwe and the Competition and Tariff Commission.

Foreign investment and business activity

TO WHAT EXTENT IS FOREIGN INVESTMENT APPRECIATED IN THE COUNTRY AND RESPECTED BY LAW?

Zimbabwe has embarked on a drive to lure foreign investment into the country under the slogan "Zimbabwe is open for business." The ZIDA Act was enacted to incentivise both domestic and foreign investment in the country. It established the Zimbabwe Investment Development Agency ("ZIDA") and its Board and the One Stop Shop Investment Services Centre. The Act harmonizes all investment laws in efforts to reduce bureaucracy and cut the cost of doing business in Zimbabwe, and thus repealing the Zimbabwe Investment Authority Act [Chapter 14:30], the Special Economic Zones Act [Chapter 14:34] and the Joint Ventures Act [Chapter 22:22].

TO WHAT EXTENT FOREIGN INVESTMENTS ARE PROTECTED BY LOCAL LAW?

Section 71 of The Constitution of Zimbabwe (the Constitution) enshrines the right to property. In terms of section 71(3) of the Constitution no person may be compulsorily deprived of their property except where the deprivation is necessary to safeguard the national security of Zimbabwe or where such deprivation is for a purpose beneficial to the community. Under section 71(3)(c), compulsory deprivation of property shall only be done where reasonable notice is provided to the property owner, fair and adequate compensation is paid to the owner and if the acquisition is contested, an order of the court is granted confirming the deprivation of the property. The only exception to these general principles of compulsory deprivation is agricultural land which is vested in the state and which may be compulsorily

acquired in order to address “the unjust and unfair pattern of land ownership that was brought about by colonialism.” Under these circumstances, such land may, in terms of section 295 of the Constitution, be compulsorily acquired by the state with fair and adequate compensation for improvements on the agricultural land but not for the land itself.

Other pieces of investment-oriented legislation also acknowledge that property may not be expropriated without compensation. Section 17 of the ZIDA Act provides guarantees to licensed investors against nationalization and direct or indirect expropriation of investments. It also provides that no investor shall be compelled to “cede” an investment to any person, “except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of prompt, adequate and effective compensation.” In the event of expropriation, the compensation shall be equivalent to fair market value. The Act further provides that valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.

The government of Zimbabwe has also undertaken to uphold several Bilateral Investment Protection and Promotion Agreements which provide for, among other things, the protection of foreign investment in Zimbabwe. A list of Zimbabwe’s BIPPAS can be found by following the link: <http://www.zimfa.gov.zw/index.php/bippas/list-of-ratified-bippas>.

WHICH REGULATIONS MUST BE RECOGNISED IN THE CASE OF A MERGER?

The main regulations which must be recognised in the case of a merger are: The Companies and other Business Entities Act [Chapter 24:31] (the COBE) which speaks to mergers undertaken under a scheme of arrangement between an indebted company and its creditors and mergers undertaken through a contract; the Competition Act [Chapter 14:28] (the Competition Act) which gives the Competition Commission the power to investigate and ascertain whether any merger that has been or is proposed to be made constitutes restrictive or anti-competitive conduct.

In the case of a company listed on the Zimbabwe Stock Exchange (the ZSE), the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 (the Listing Rules) provide further regulations on mergers involving listed companies which may give rise to the requirement to make a mandatory offer to minority shareholders and/or issue notices and public announcements.

On the other hand, there are certain acts which are relevant for mergers in particular sectors: section 45(2) of the Postal and Telecommunications Act [Chapter 12:05] places a requirement for a local internet service provider licensee in Zimbabwe to notify the Postal and Telecommunication Regulatory Authority of Zimbabwe (POTRAZ) of any transfer to or by any single person of more than 10 % of the shares of the local licensee. Further, the Internet Access Provider Service Specifications (issued in terms of section 34 of the Postal and Telecommunications Act) require POTRAZ’s approval for the change in any threshold in shareholding. Further, in terms of section 15A and 15B of the Banking Act [Chapter 24:20] acquisition of a significant interest in a banking institution or the control of the company of such a banking institution is restricted without the permission of the Registrar of Banks. However, these provisions do not extinguish the need for compliance with a merger notification under the Competition Act.

At the regional level, the COMESA Competition Commission Regulations apply in Zimbabwe as it is a member state of the Common Market for Eastern and Southern Africa (COMESA).

ARE THERE ANY PROVISIONS REGARDING PUBLIC TAKEOVERS?

Public takeovers are regulated under the Listing Rules which provide for the procedure to be undertaken before a possible takeover transaction is implemented. This procedure includes notifying the ZSE of the possible take-over and the making of preliminary announcements as is more fully set out in the Twenty-Ninth Schedule of the Listing Rules.

In terms of the Twenty-Ninth Schedule of the Listing Rules, a preliminary announcement must be issued in the press at the earliest possible moment, not later than 48 hours after the offer, in the event of a takeover bid by a listed or unlisted company, or a takeover bid being received by an issuer. Furthermore, any person who controls a company and who contemplates transferring control must not (other than in special circumstances, the existence of which is in the sole discretion of the ZSE) do so unless the buyer of control undertakes to extend, within a reasonable period of time, a similar offer to the holders of the remaining equity share capital.

Tax

Local tax system

The Zimbabwean tax system is a source-based tax system which utilises a combination of direct and indirect taxes on income earned from a source within or deemed to be within Zimbabwe. Duties and tariffs are also levied on the importation of goods

and services in accordance with ZIMRA tariffs. The source-based nature of the Zimbabwe tax system means that residents and non-residents of Zimbabwe may only be assessed for taxes on income from a source or deemed source in Zimbabwe.

Taxation of various legal entities

PERSON	RATE OF TAX	
Individuals (natural persons)	Up to 40%	The main form of individual tax is Pay as You Earn (PAYE) which is taxed on a sliding scale depending on the amounts earned.
Local companies	24%	Corporate tax is levied at a flat rate.
Local branch of foreign company	24%	Taxed in the same manner as a local company.
Trusts	24%	Levied at a flat rate. All trusts are taxed the same, if the trust has beneficiaries with a vested right then the beneficiaries are taxed directly but at the rate of 24%.
Small business corporations	24%	There is no distinction between companies and small business corporations.
Micro business	10% or varying monthly contributions.	Presumptive Taxes may apply to certain categories of small businesses and self-employed professionals based on fixed monthly contributions or percentages on income earned.
Personal service providers/ employment companies	24%	No distinction in our law between personal service providers and ordinary companies.
Other	0-15%	Certain entities by virtue of their approved investment statuses are given preferential tax treatment.

Tax rates

TAX RATE/REQUIREMENTS APPLICABLE TO FOREIGN INVESTORS

A company not resident in Zimbabwe is liable to tax in Zimbabwe if it establishes a permanent establishment in Zimbabwe.

A permanent establishment includes a fixed place of business where the company's business is carried out and an agent acting on behalf of the company who habitually concludes contracts on behalf of the company. Once a permanent establishment is established in Zimbabwe, it shall be subject to the normal tax rates applicable to companies at 24%.

CAPITAL GAINS TAX

20% of the capital gain (depends on when property was purchased).

VALUE ADDED TAX

14.5% of the value of the supply.

RELEVANT TAX TREATIES

Double tax agreements are in place between Zimbabwe and various other countries as more fully broken down in the below table:

IN FORCE	NOT YET IN FORCE
Botswana	Democratic Republic of Congo
Bulgaria	Federal Government of Serbia
Canada	Iran
France	Kuwait
Germany	
Mauritius	
Malaysia	
Netherlands	
Norway	
Poland	
Republic of China	
South Africa	
Sweden	
United Kingdom and Northern Ireland	

Dispute resolution

Types of courts and how long it takes to resolve a dispute

The Zimbabwe Courts System comprises of the following:

- The Customary Law courts, which courts have less formalities and in which disputes may be resolved in a matter of weeks.
- Small Claims courts, which adjudicate claims for minimal sums of money (which sums change from time to time through the enactment of a Statutory Instrument). The Small Claims courts also have very few formalities and disputes are resolved in a matter of weeks.
- Magistrates courts, which adjudicate criminal matters as a court of first instance and civil matters with a monetary value below that of proceeding to the High Court. Civil matters have less formalities in the Magistrates Court and generally may be resolved within one year.
- The High Court, and specialised courts such as the Special Court for Income Tax Appeal, the Fiscal Appeal Court, the Administrative Court and the Labour Court. The government of Zimbabwe recently established the Commercial Court which adjudicates on purely commercial disputes. There are new High Court (Commercial Division) Rules, 2020 which came into force on 1 June 2020. Applications in the High Court may be resolved within 12 months, failing a delay peculiar to the case. Should a matter be required to go to trial it will take not less than 24 months to resolve and may take several years to resolve.
- Appeals from the High Court and specialised courts of equal status are heard by the Supreme Court, which is the apex court for all non-Constitutional matters. The Supreme Court generally resolves matters within eight months.
- Lastly, the apex court for matters involving Constitutional issues is the Constitutional Court. The timeframe within which matters are resolved in the Constitutional Court varies depending on the complexity of the matter.

CIVIL COURTS

The Magistrates Court may determine matters up to a monetary sum of ZWL3,000,000 although parties may agree in a contract to submit to the authority of the Magistrates Court for sums above this amount. There are new Magistrates Court Rules which took effect in February 2019 which allow for more efficiency such as electronic service of process and an electronic file management system.

The majority of commercial disputes are heard in the High Court as a court of first instance, although they are now heard by the Commercial Court which allow for fast-track litigation of commercial matters and also increase efficiency through electronic filing, which is yet to be implemented. Labour matters are adjudicated by the Labour Court, and tax matters to the Fiscal Appeal Court (in respect of VAT) and the Special Court for Income Tax Appeals (with respect to income tax and CGT).

The Supreme Court is the apex court for all non-constitutional matters and commercial matters are finally determined in the Supreme Court.

CRIMINAL COURTS

Criminal cases are tried in either the Magistrate Courts or the High Court as the Customary Law does not have the legal authority to adjudicate any criminal matters. Crimes such as murder and large-scale fraud are prosecuted in the High Court, and the High Court has the authority to impose the death penalty in certain circumstances.

The Magistrates Courts adjudicate less serious cases such as assaults and thefts; however, the Regional Courts have the authority to adjudicate over rape cases.

ADR

Zimbabwe has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Executed at New York on 10 June 1958) (the Convention), which requires the courts of contracting states (of which Zimbabwe is one) to give effect to private agreements to arbitrate and to recognise and enforce arbitration awards made in other contracting states.

The ratification of the Convention is confirmed in the Arbitration Act [Chapter 7:15] (the Arbitration Act) (attached hereto), which provides that the Act is intended to “give effect to domestic and international arbitration agreements; to apply, with modifications, the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on the 21 June, 1985, thereby giving effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on 10 June 1958.”

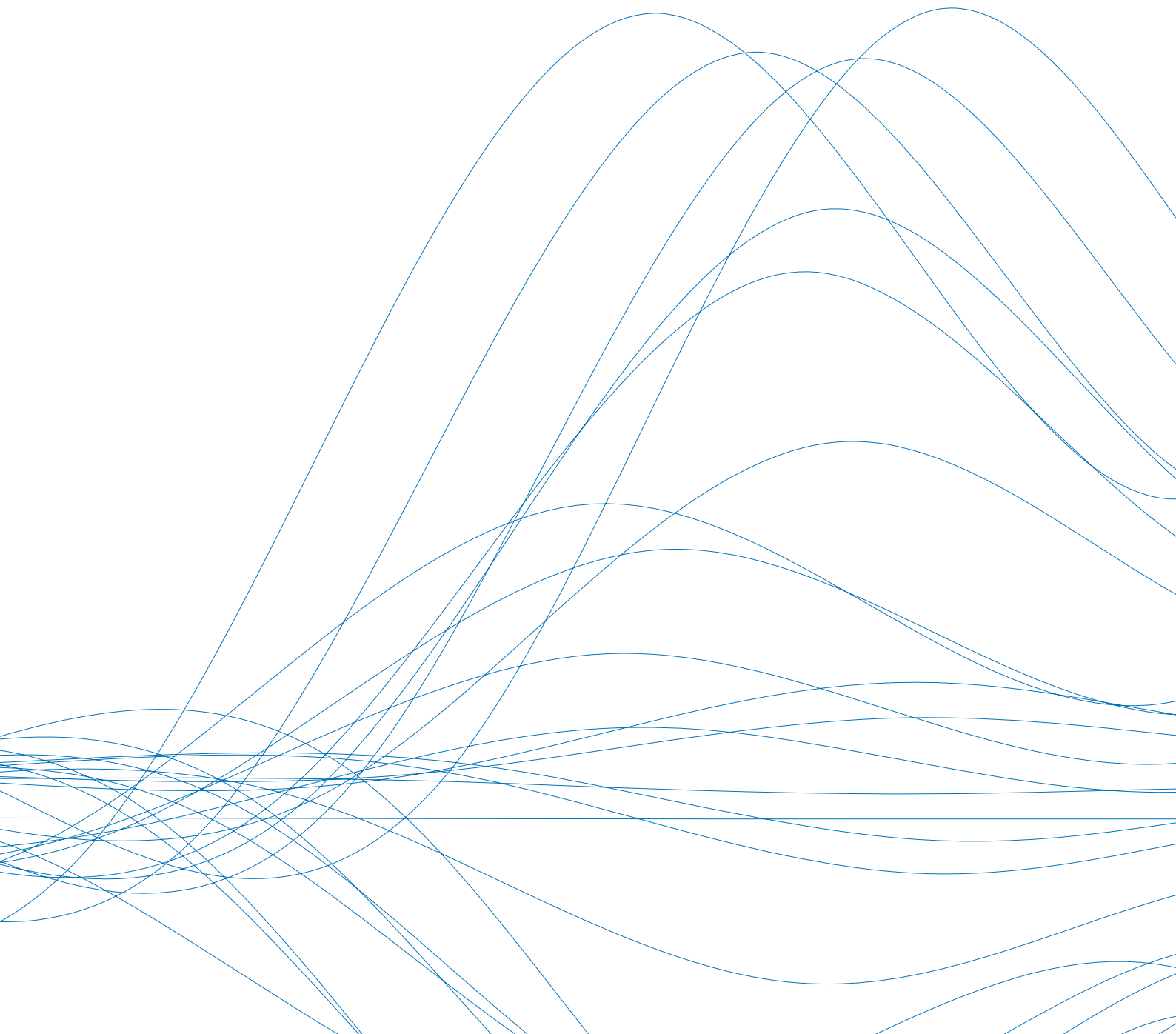
Foreign arbitral awards are recognized as binding in Zimbabwe according to Article 35 of the Arbitration Act [Chapter 07:15] and may be enforced upon written application to the High Court of Zimbabwe.

There has been a growing trend of parties opting for ADR as opposed to litigation for the following reasons:

- litigation is time consuming and is often burdened by procedural requirements and the backlog of the court proceedings and hence, certain forms of ADR can be quicker than going to court;
- court proceedings are often inflexible as parties are given a court date and there are strict rules of jurisdiction that determine where and when a case must be heard;
- going to court can often escalate the severity of a dispute;
- ADR is more private than litigation, as courts are open to the public;

- in ADR methods parties are free to choose an expert in the field in order to mediate or arbitrate the process whereas, with litigation, the court appoints a judge who may not be an expert on the matter; and
- accordingly, ADR is growing in popularity, although it is not as popular as litigation. Many more recent contracts contain clauses to refer disputes to arbitration.

It is not compulsory to refer any disputes to arbitration at present, although there may be requirement to do so in family matters soon as court annexed arbitration has been proposed for such matters.



Exiting an investment

Listing

The principal stock exchange is the Zimbabwe Stock Exchange (the ZSE). The ZSE is regulated by the Securities and Exchange Commission of Zimbabwe, (the SECZ) in terms of the Securities Act (Chapter 24:25). Transactions on the ZSE are regulated by the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, Statutory Instrument 134 of 2019 (ZSE listing rules).

All the stocks traded on the ZSE are now done electronically on what is called the ATS (Automated Trading System). ATS electronically matches and executes “buy” and “sell” orders that stockbrokers would have brought into the system. The main categories of listings on the ZSE are equity and bonds.

The Victoria Falls Stock Exchange (the VFEX) was founded in 2020 as a subsidiary of the ZSE and was established to kick start the Offshore Financial Services Centre (OFSC) earmarked for the special economic zone in Victoria Falls. The VFEX trades exclusively in USD in terms of clearing and settlement and provides a host of incentives to investors trading on the platform. These include 5% withholding tax on dividends for foreign investors and no capital gains withholding tax on share disposals. Presently, there are only two counters listed on the VFEX, however, it is anticipated that the incentives introduced by the GoZ will lure more investment and more companies on to the VFEX.

Stock acquisition, asset acquisition, business acquisition

Acquisition of listed securities is regulated by the provisions of the ZSE listing rules. Investors can acquire listed stock only through a registered stockbroker. Investors must ensure they have deposited sufficient cash to cover trades in a “broker-controlled” account with a settlement bank. The acquisition of businesses that are not listed is regulated by the provisions of COBE. Whenever shares in a company are transferred from one person or entity to another, a valid instrument of transfer must be executed and the transfer must be noted in the relevant company’s share register together with the issuance of the relevant share certificates in order to complete the transfer. A return of allotment must also be filed at the Companies Office. Furthermore, in a business acquisition which is regarded as a notifiable merger in terms of the Competition Act (Chapter

14:28), (the Competition Act), one is required to seek approval of the Competition and Tariff Commission. Asset acquisitions (which are not notifiable) are generally unregulated. Parties to an asset acquisition agree contractually to the terms and conditions of the transaction. However, where a company is under corporate rescue in terms of the Insolvency Act, a company’s business assets cannot be sold unless such sale is in terms of an approved corporate rescue plan.

Upon the transfer of a business, an employee shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are no less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

Investment protection

There are various ways in which investment in Zimbabwe can be protected or securitised. Immovable property can be securitised by registering mortgage bonds in favour of a lender against the title of such immovable property. Notarial bonds are also registerable against movable assets and such notarial bonds are filed in the deed’s registry. Mining rights in Zimbabwe may also be hypothecated and investors into a Zimbabwean mining business can secure their interest by registering a hypothec against a borrower’s mining title. Such hypothec is registered in the Provincial Mining Directors office where the mine is located.

Zimbabwe’s commercial banks also offer various structured finance solutions as alternatives to traditional debt instruments. Some structured finance solutions offered by commercial banks are: factoring and reverse factoring; order finance; invoice discounting; and contract farming/mining.

In terms of the ZIDA Act, investments made by investors, including foreign investors, are protected from compulsory acquisition by the state. Accordingly, foreign investors may consider having their investments licenced by ZIDA as a way of further protecting their proprietary interests. Section 71 of the Constitution of Zimbabwe also protects one from compulsory of acquisition of property without due process and compensation. The government of Zimbabwe has also undertaken to uphold several Bilateral Investment Protection and Promotion Agreements which provide for, among other things, the protection of foreign investment in Zimbabwe.

Firm overview

Introduction

Manokore Attorneys, a member of DLA Piper Africa, is a dynamic Pan-African law firm with a core focus on corporate, commercial and financial transactions. Our team consists of diverse lawyers with extensive experience in both local and cross-border transactions. Our key strengths include investment inflows from foreign capital source markets, and a comprehensive understanding of corporate and financial transactions and structuring in various spheres of the commercial sector. We are a service focused and solution driven law firm. Our firm comprises of 14 legal practitioners.

Practice areas and sectors

Practice areas	Sector specific skills/experience
<ul style="list-style-type: none">• Alternative dispute resolution and litigation• Corporate• Finance and banking• Labour• Projects and infrastructure• Real estate• Regulatory and compliance• Tax	<ul style="list-style-type: none">• Energy and natural resources• Financial services• Government contracting• Real estate• Technology

Clients

Our client profile ranges from small to medium-sized entities to large companies located locally, regionally and internationally.

These include: A real estate development company, a number of banking institutions, manufacturing companies, private equity firms (local and international), large regional and international mining houses, infrastructure companies; and agro-processing businesses.

Website

www.dlapiperafrica.com

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