THE EFFECTIVENESS OF THE ZAMBIAN REGULATORY FRAMEWORK ON FOREIGN DIRECT INVESTMENT.

BY

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A dissertation submitted to the University of Zambia in partial fulfillment of the requirements of the Bachelor of Laws Degree.

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The effectiveness of the Zambian regulatory framework on Foreign Direct Investment.

DECLARATION

I, Leah Nanyangwe Ngulube, Identity Number 25053922, do declare that I am the author of this dissertation entitled "The effectiveness of the Zambian regulatory framework on Foreign Direct Investment." I further declare that this dissertation represents my own work and that due acknowledgement has been made where other people's work has been used. I truly believe that this dissertation has not been previously presented for a degree program at the University of Zambia or any other University.

I therefore, bear the full responsibility for the contents, errors and omissions that may be found in this dissertation.

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Leah Nanyangwe Ngulube

CERTIFICATION

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I recommend that this Obligatory Essay prepared under my supervision by:

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ABSTRACT

Before 1991 the Zambian economy was mostly state controlled. After 1991 the economy was liberalized as evidenced by a number of state enterprises which were privatized. In Zambia the advent of the enhanced Foreign Direct Investment (FDI) focus could therefore be linked to the dawn of democratic transition which was characterized by a shift from the era of one party state to multi party state.

Zambia has endeavored to create a good investment climate by enacting Investment codes, such as the Zambia Development Agency Act, No. 11 of 1996 which provides for various incentives to the investors.

Investors are also guaranteed that investments will not be adversely affected by any changes in the investment Act for a specified period of time. Zambia is a signatory to the Multilateral Investment Guarantee Agency (MIGA) , and at bilateral level, Zambia has signed reciprocal promotional and protection of investment protocols with a number of countries. In addition to the above incentives, Zambia could also be considered an attractive destination to FDI because of its social and political stability. Since independence, the country has never experienced any civil strive.

However, despite all the incentives Zambia has tried to put in place, it appears that as a nation we have not managed to attract and retain FDI adequately. We continue to see investors come and go after benefiting from the given incentives. It could be that, there are other factors that need to be addressed to ensure that Zambia benefits adequately from FDI.

DEDICATIONS

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To all my friends you are a good team, thank you for your support and encouragement throughout my LLB studies.

Leah Nanyangwe Ngulube.
Lusaka, Zambia.

April, 2010.

LIST OF STATUTES.

1. Zambia Development Agency Act No. 11 of 2006.
2. Chapter 1 of the Laws of Zambia.
3. Chapter 388 of the Laws of Zambia.
4. Chapter 123 of the Laws of Zambia.
5. Chapter 184 of the Laws of Zambia.
6. Chapter 189 of the Laws of Zambia.
7. Chapter 155 of the Laws of Zambia.
8. Chapter 387 of the laws of Zambia.
9. Chapter 392 of the Laws of Zambia.
10. Chapter 412 of the Laws of Zambia.
11. Chapter 662 of the Laws of Zambia.
12. Chapter 269 of the Laws of Zambia.
13. Chapter 268 of the laws of Zambia.
14. Chapter 276 of the Laws of Zambia.
15. Chapter 270 of the Laws of Zambia.
16. Chapter 270 of the Laws of Zambia.
17. Chapter 417 of the Laws of Zambia.
18. Foreign Investment Act of Namibia Act No. 27 of 1990.

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1. Kuwait v. American Independent Oil Co. (Aminoil), 21 LL.M. 976 (1982)

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CHAPTER ONE

1.0 INTRODUCTION.

1.1 BACKGROUND INFORMATION.

Foreign Direct Investment (FDI) is defined as a company from one country making a physical investment into things like building a factory in another country[1]. Its definition can be extended to include investments made to acquire lasting interest in enterprises operating outside of the economy of the investor.[2] The direct investment in buildings, machinery and equipment is in contrast with making a portfolio investment, which is considered an indirect investment.[3] As such, it may take many forms, such as a direct acquisition of a foreign firm, construction of a facility, or investment in a joint venture or strategic alliance with a local firm with attendant input of technology, licensing of intellectual property.

Foreign direct investment plays an extraordinary and growing role in global business. It can provide a firm with new markets and marketing channels, cheaper production facilities, access to new technology, products, skills and financing. For a host country or the foreign firm which receives the investment, it can provide a source of new technologies, capital, processes, products, organizational technologies and management skills, and as such can provide a strong impetus to economic development.

The Zambian Government welcomes investors across sectors and the laws relating to investment have provided for incentives in the Zambia Development Agency (ZDA) Act,[4] in the form of allowances, exemptions & concessions aimed at increasing levels of investment and international trade, as well as increased domestic economic growth. Incentives are given generally and specifically to various categories of investors. On one

1. International Monetary Fund (IMF), 1993, Balance of Payments Manual, fifth edition (Washington, DC).
2. Foreign Direct Investment, United Nations Conference on Trade and Development, www.unctad.org.
3. Ibid.
4. Zambia Development Agency Act No. 11 of 2006.

hand these incentives may be seen as a way of attracting FDI but on another hand, it could be viewed that in fact they lead to lose of revenue. It has also been said that incentives actually constitute lose of revenue in so far as they do not play an important role in attracting FDI and merely exacerbate the problem of shortage of capital in developing countries.[5]

1.2 STATEMENT OF THE PROBLEM

The overall problem addressed in this study is that despite Zambia putting in place incentives to attract foreign direct investment, we have a situation where we have Investors coming in for a short while and exiting when they want. The Zambian economy seems not to have been bettered by these trends. Studies carried out show that when investors come in the country to invest they enjoy a number of incentives; such as the tax holiday and most of them exit immediately the tax holiday expires.

This in the long term will make the nation lose a lot of revenue at the expense of local entrepreneurs who do not enjoy incentives such as the tax holidays. Therefore, this study will identify the weaknesses in the current investment codes and try to suggest remedial measures which could be instituted to improve the investment climate in order to make Zambia an attractive and preferred investment destination for FDI.

1.3 RESEARCH QUESTIONS.

The basic research questions to be considered for this study are:

a) How good is the investment climate in Zambia?

b) What factors deter foreign direct investment in Zambia?

c) How can good governance help attract foreign direct investment?

[5] Dr. Mwangala Kamuwanga,, " Negotiating Investment Contracts" Investment law in the Context of development, P 8.

1.4 RESEARCH OBJECTIVE.

This study is aimed at analysing the current Zambian investment codes and also looking at the incentives provided for under the ZDA Act in an effort to create a good investment climate. There is need to identify what factors deter FDI and also look at how good governance can help enhance FDI. Though much has been written about making Zambia an investment destination not much has been achieved.

Moreover, despite the many incentives offered to investors what we see is that we have investors who come and go when they want. The reasons for this may not be easily available hence the need for this study.

1.5 SIGNIFICANCE OF THE STUDY.

Before 1991 the Zambian economy was mostly state controlled. After 1991 the economy was liberalized as evidenced by a number of state enterprises which were privatized. In Zambia the advent of enhanced FDI focus could therefore be linked to the dawn of democratic transition which was characterized by a shift from the era of one party state to multi party state. The democratic agenda also came generally with the neo-liberal economic dispensation.

Zambia has endeavored to create a good investment climate by enacting Investment codes, such as the Zambia Development Agency Act[6], and provide for incentives to the investors. The Zambia Development Agency (ZDA) comprises five defunct institutions. These are the Zambia Export Processing Zones Authority (ZEPZA), Export Board of Zambia (EBZ), Zambia Privatization Agency (ZPA), Zambia Investment Centre (ZIC) and the Small Enterprises Development Board (SEDB).The merger of five different institutions into one was to eliminate redundancies and streamline trade and investment promotion and facilitation in Zambia. The Agency is expected to enhance efficiency in business and also provide better services related to investment facilitation to the business community.

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[6] Zambia Development Agency Act No 11 of 2006

Regulation and Taxation is another way governments can shape a good climate investment. Sound regulation addresses market failures that inhibit productive investment and reconciles the interests of firms with social goals. Sound taxation generates the revenue to finance the delivery of public services that improve the investment climate and meet other social objectives.[7] Reacting to changes in technology, growing liberalization of the national regulatory framework governing investment in enterprises could also help create a good investment climate.[8]

The ZDA has been trying to make itself a' one stop shop'. Other efforts linked to the ZDA have involved for example, investment guarantees under which the development Act assures investors that property rights shall be respected and that no investment of any description can be expropriated unless Parliament has passed an Act relating to the compulsory acquisition of that property. Moreover, in case of expropriation, full compensation shall be made on the market value and must be convertible at the current exchange rate.[9]

Investors are guaranteed that investments will not be adversely affected by any changes in the investment Act for a specified period of time. The country has gone further by being a signatory to the Multilateral Investment Guarantee Agency (MIGA) and other international agreements which guarantees foreign investment protection in cases of civil strife, disasters, as well as other disturbances. [10]At the bilateral level, Zambia has signed reciprocal promotional and protection of investment protocols with a number of countries. [11]

In addition to the above incentives, Zambia could also be considered an attractive destination to FDI because of its social and political stability. Since independence, the country has never experienced any civil strive. [12] However, when Late President Mwanawasa died, investor's confidence seemed to have been shaken, there was a lot of

[7] World Development report, 2005- A Better Investment Climate for Everyone. The World Bank Washington, D.C.
[8] Jeffrey P. Graham and R Barry Spaulding ,Foreign direct Investment.
[9] CUTS, 2003 Investment Policy In Zambia – Agenda for action
[10] Ibid.
[11] Ibid
[12] Ibid

uncertainty in the nation. Could it be that social and political stability is linked to a party in power or a person who is the head of state at a given time?

Many Scholars have written about The Zambian Investment Codes and how these are suppose to attract FDI. The case at hand is that not much physical investments have been made as anticipated. The major ones being in the Mining sector. For instance, in 2007 FDIs were concentrated in the mining sector accounting for 59 percent with major source countries being Australia, Canada, Switzerland, India and Netherlands.[13] Other Sectors have not recorded significant results.

However, a case of the mining investments pulling out after the end of the tax holiday is a good example of inadequate FDI. An example of Banani group, Luanshya Copper mine and Anglo American Corporation – Vedanta (Konkola Copper Mines) is an indication of either some weakness in our Investments codes or an un conducive investment climate.

Therefore, this study is important in trying to identify factors that deter FDI and what measures government can put in place to ensure that incentives such as tax holidays are not abused. Existing investments codes also need to be examined and necessary recommendation made to try and find ways of strengthening them so as to ensure that Investors do not come and go immediately after the expiry of the tax holiday. There is also need to give an analysis on how conducive the Zambian investment climate is.

Furthermore, despite all the incentives that Zambia has tried to put in place it still appears that as a nation we have not managed to attract and retain FDI adequately. We continue to see investors come and go. It could be that there are other factors that need to be addressed to ensure that the intended objectives are met. This is an area that I think needs further detailed research.

[13] The Balance of Payments Statistical Committee of the Government of the Republic of Zambia, Foreign Private Investment and Investor perception s in Zambia 2007/8.

1.6 THE ZAMBIAN INVESTMENT CLIMATE.

Zambia has adopted an open door policy towards FDI hoping to benefit from the advantages that come with it. Some of these benefits could be the tax revenue that government would receive when investors pay tax. An increase in foreign exchange and employment assuming investment is in the mining or manufacturing sectors. A reduction in the cost of imports would also be experienced where there is local manufacturing. FDI promotes good diplomatic relations calling for more future investments. The Government has a major role to play to make the investment climate conducive and attractive to foreign investors.

Government can build a good investment climate by improving on infrastructure, telephone systems, roads, railways investment codes and incentives necessary to attract FDI. It is actually sad that Zambia has not got the expected returns from FDI even with the numerous incentives given out to investors. It has been said that this country has given heed to the wrong propositions regarding how to attract investment flows over the year.[14] This is what has led Zambia into whittling away performance requirements and demands on investors, among other lost benefits, which should have otherwise served to enhance national development.[15] In this paper a detailed discussion of the adequacy of the legal framework regulating the Zambian Investment climate and benefits Zambia has drawn from FDI will be done.

1.7 METHODOLOGY.

The material relating to the study was obtained from various sources within Zambia and from the internet. The study methodology was based on secondary data, desk study and interviews focusing on literature review, court judgments and studies written by various scholars and organizations such as, World Bank Reports and other Investment related Text books and articles.

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[14] J Lungu and A Fraser. 'For whom the windfalls? Winners and Losers in The Privatisation of Zambia 's Copper Mines'.

[15] Ibid

This paper is divided into five chapters. Chapter one is dealing with the introduction and giving a background to the research topic. In Chapter two an analysis of the Zambian Investment Climate with a focus on the existing regulatory framework on FDI has been made. This is done in comparison with the investment codes in selected jurisdictions for learning purposes. In Chapter three the factors that seem to deter FDI in Zambia have been examined. Chapter four is focusing on research findings and an analysis of how conducive the Zambian investment climate is. In Chapter five a conclusion using an analysis of how good governance can help attract FDI has been made and recommendations based on the findings of the research problems have been given.

CHAPTER TWO

THE REGULATORY FRAMEWORK OF THE ZAMBAIN INVESTMENT CLIMATE.

2.0 INTRODUCTION

The Zambian Investment Climate is regulated mainly by the Zambia Development Agency Act,[16] which provides a regulatory framework for various investment opportunities available in Zambia. The Zambian Government actively seeks foreign investment through the Zambia Development Agency (ZDA), which was established on January 1, 2007 by consolidating a number of trade and investment promotion entities to be a one-stop resource for international investors interested in investing in the Zambian economy.[17]

2.1 THE ROLE OF THE ZAMBIA DEVELOPMENT AGENCY.

The Zambia Development Agency is geared towards building Zambia's economy by supporting businesses and enterprises at all levels. From its strong understanding of the challenges faced by small businesses and entrepreneurs to its ability to support large-scale corporate investments in the mining sector. The Zambia Development Agency has opened doors to investments in various sectors of the economy. Zambia being a landlocked country located in the central sub-Saharan Africa can act as a regional hub and a powerhouse of agricultural and mineral production.[18]

Its efforts to facilitate economic growth and development are channeled towards three key groups: Investments; Exports; and Small Businesses. ZDA understands that while large-scale investments and arranging bi-lateral joint ventures bring significant opportunities to Zambia, so too does supporting small businesses as they grow in to

[16] Zambia Development Agency Act No 11 of 2006.
[17] 2009 Investment Climate Statement- Zambia, Bureau of Economic, Energy and Business Affairs February 2009.
[18] www.zda.org.zm

medium or large businesses. It also realises the value that exports bring to our nation, and focus effort on providing help and advice to those wishing to export or import from Zambia as part of business development plans.

The ZDA board screens all investments for which incentives are requested and usually makes its decision within 30 days.[19] The reviews appear routine and non-discriminatory, and applicants have the right to appeal against investment board decisions.[20] The ZDA compiles data on investment commitments from investors who obtain investment licenses at ZDA. Investors in mining projects do not invest through ZDA but instead work with the Ministry of Mines and Mineral Development.[21]

Foreign investors wishing to invest in Zambia are required to register a company in accordance with the Companies Act[22] and comply with other applicable legislation as will be discussed later. This Act[23] provides that a foreign company must, within 28 days of establishing operations in Zambia, provide the Registrar of Companies with a list of its directors, a copy of its constitution, and the name of its local representative. It also provides that a foreign company shall have at least no more than nine local directors in Zambia. And it shall appoint a local Director resident in Zambia as the local Chairman[24]. At least one local director shall be resident in Zambia. If the Company has more than two local Directors, more than half of them shall be residents of Zambia.[25]

Furthermore, there is no distinction in law between foreign and domestic investors. In the privatization process, foreigners are eligible to bid on state-owned companies. Foreigners may also invest in the Lusaka Stock Exchange without restriction and on comparable terms to Zambians. Companies seeking licenses or concessions or investors bidding for privatized companies are encouraged to commit to local participation. It is not clear how

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19 Interview: Ms. Yadika Mkandawire, 19th February 2010.
20 2009 Investment Climate Statement- Zambia, Bureau of Economic, Energy and Business Affairs February 2009,
21 Ibid.
22 Chapter 388 of the Laws of Zambia.
23 Ibid.
24 Chapter 388, Section 248 (5).
25 Chapter 388, Section 248 (2).

such commitments are weighed when decisions are made by the Zambia Development Agency.

2.2.0 OTHER PIECES OF LEGISLATION THAT AFFECT FOREIGN DIRECT INVESTMENT IN ZAMBIA.

There are also other pieces of Legislation in Zambia that have provisions that need to be observed by the Foreign Investors and among them we have;

2.2.1 **Immigration and Deportation Act**[26], which provides that no person shall engage in paid employment under an employer resident in Zambia unless issued with a work permit.[27]No person shall engage in any prescribed trade, business or other occupation without any entry permit.[28]

2.2.2 **Lands Act**[29]**,** which provides that the president may alienate land to a non-Zambian if the following is applicable: An investor under the Investment Act can. Obtained president's consent in writing, if land is to be alienated to a company. A company under the companies Act and less than 25 percent of issued shares are owned by non-Zambian. A co-operative society under the co-operative societies Act and less than 25 per cent of members are non Zambian. If it is a commercial bank registered under the Companies act and Banking and Financial Services. A concession under the National Parks and Wildlife Act can also be given by the president.[30]

2.2.3 **Lands acquisition Act**[31], which provides that government can acquire land under the Lands acquisition by compulsory means. This may appear to be a deterrent to would be investors but Government also provides for adequate compensation when such a need arises.

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[26] Chapter 123 of the Laws of Zambia
[27] Chapter 123, section 19 (1)
[28] Chapter 123, Section 19 (2)
[29] Chapter 184 Section (3)
[30] Ibid
[31] Chapter 189 of the Laws of Zambia.

2.2.4 **Tourism Act**[32], which provides that no person shall operate as a tour operator, travel agent of any tourist enterprises in Zambia unless he has obtained a licence from Zambia Tourism Board. An investor in tourism should also advise its clients to ensure that they have a tourist visa and pay twenty United States dollars airport tax when leaving the country.[33]

2.2.5 **Banking and Financial Services Act**[34], gives guidelines to would be investors wishing to invest in Financial services business. Some of the requirements are that such an investment Company would need to apply to the Registrar of Banks and Financial Institutions for a license to enable carry on financial services business. Every Bank is required to maintain a principal administrative office in Zambia.[35] The Act also provides that a person, shall not, without approval of Bank of Zambia acquire any beneficial interest in the voting shares of a bank that would enable him to control more than twenty-five per cent of the total votes that can be cast on any general resolution at a meeting of the bank. [36] To open a branch or office outside Zambia an investor would need prior consent from Bank of Zambia.[37]

2.2.6 **Insurance Act**[38], provides that to operate as a Registered Broker or transact in insurance business an investor will need to be registered as such, with a valid licence and maintain a principal office in Zambia.[39]

2.2.7 **Building Societies Act**[40], provides that no person shall do business in Zambia as a building society unless registered under the provisions of this act. It also provides that a person not resident in Zambia shall not be Director of a building society.[41] A building society shall also not make advances on the security of property situated outside Zambia.

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[32] Chapter 155 of the Laws of Zambia, section (13)
[33] An Investment Guide to Zambia, Opportunities and conditions, August 2006.
[34] Chapter 387 of the laws of Zambia
[35] Chapter 387 of the Laws of Zambia, section 43(1)
[36] Ibid, section 23 (2)
[37] Ibid.
[38] Chapter 392 of the Laws of Zambia
[39] Chapter 392 of the Laws of Zambia, section 24(1)
[40] Chapter 412 of the Laws of Zambia
[41] Ibid, section 26 (h)

2.2.8 **The Mines and Minerals Act of 1995**, offers a number of incentives to investors and these will be outlined in full under the incentives given to investors, in the third chapter of this dissertation.

2.2.9 **Bonded factory Act**[42], which provides that a persons may apply to be appointed and licensed by the controller to establish and operate a bonded factory under section 55 of Customs and Excise Act.

2.2.10 **The Industrial and Labour Relations Act**[43], provides for the conduct of industrial relations, establishment of workers/employers organization, their registration and administration, and the settlement of disputes and consultative machinery.

2.2.11 **The Employment Act**[44] , is the basic employment law and provides for the basic employment contractual terms such as, minimum contractual age, establishment of employment contracts and settlement of disputes.

2.2.12 **The Pensions Act** provides for all employees and employers, unless exempted to contribute pension to National Pensions Scheme Authority (NAPSA).

2.2.13 **The Minimum wages and conditions of Employment Act**[45], enables the Minister to determine conditions of employment for categories of employees not effectively covered through collective agreement bargaining.

2.2.14 **Employment (Special Provisions)**[46] , this is an enabling protection and may be activated only when a state of emergency is in place. Under this Act, various regulations may be promulgated with regard to labour and employment.

2.2.15 **Employment of Young persons and Children Act**[47] is a major law against child labour and abuse.

2.2.16 **The Multi-Facility Economic Zones (MFEZ)** provides for attractive incentives to be enjoyed by Investors as well as assistance in obtaining relevant licenses, permits and facilities available to those who want to invest in MFEZ.

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[42] Chapter 662 of the Laws of Zambia.
[43] Chapter 269 of the Laws of Zambia.
[44] Chapter 268 of the laws of Zambia
[45] Chapter 276 of the Laws of Zambia.
[46] Chapter 270 of the Laws of Zambia.
[47] Chapter 270 of Laws of Zambia.

Competition and Fair Trading Act,[48] requires parties providing similar goods and services to seek authorization from the Competition commission, so as to avoid unnecessary trade conflicts.

The interests of the Zambian citizens have been considered and taken care of in various ways among which we have, The Citizens' Economic Empowerment Act [49](CEA) which aims at provide business opportunities to Zambian citizens. The Act is broadly worded and gives the Government of the republic of Zambia (GRZ) latitude in defining the targets and beneficiaries of the Act. One of the first accomplishments of the Citizens Economic Empowerment Commission (CEEC) was the harmonization of a number of government empowerment funds in the Citizens Economic Empowerment Fund, designed to be a revolving loan fund to support entrepreneurialism.

2.3 Dispute Settlement

The ZDA Act assures investors that property rights shall be respected. No investment of any description can be expropriated unless Parliament has passed an act relating to the compulsory acquisition of that property. Also, in the case of expropriation, full compensation is made at fair market value and is convertible at the then current exchange rate.[50]

Zambia has a judicial system which seeks to uphold the sanctity of contracts. Although investors perceive the courts in Zambia to be reasonably independent, they also feel that the contractual and property rights enforcement is weak, and final court decisions can take a long time .[51]

Moreover, Zambian courts are relatively inexperienced in the area of commercial litigation. This, coupled with the large number of pending commercial cases, keeps the

[48] Chapter 417 of the Laws of Zambia
[49] Act No. 9 of 2006.
[50] 2009 Investment Climate Statement-Zambia.
[51] Ibid.

regulatory system from being prompt and transparent. However, some measures to promote resolution of disputes by mediation have been implemented in an attempt to clear the backlog. The courts support alternative dispute resolution, including a mechanism for binding arbitration. In 2004, the High Court established a commercial division to adjudicate high-value claims, and a Small Claims Court[52] established in 2008 to settle disputes involving amounts less than USD 400. This fee-based system has accelerated resolution of such cases.

There have been relatively few investment disputes since the Movement for Multi-party Democracy (MMD) government took office in 1991. The investment code stipulates that disputants must first resort to the Zambian High Court for internal dispute settlement. Failing that, the parties may go to international arbitration, which the state recognizes to be binding. Zambia is a member of the International Center for the Settlement of Investment Disputes (ICSID) and the United Nations Commission of International Trade Law (UNCITRAL).[53]

Disputes have arisen over issuance of game management area permits and awards of hunting concessions, and investors have complained that procedures in this sector lack transparency.[54] In the mining sector disputes have also arisen from government failure to honour development agreements and also issues of wind fall tax which have brought about a lot of protests from investors in the mining sector.

The legal framework for trademark protection is also adequate. There are fines for revealing business proprietary information, but fines are not large enough to penalize disclosure adequately. Copyright protection is limited and does not cover computer applications.[55] Zambia's patent laws conform to the requirements of the Paris Convention for the Protection of Industrial Property, to which Zambia is a signatory. It takes a

[52] 2009 Investment Climate Statement-Zambia.
[53] Ibid.
[54] Ibid.
[55] Ibid.

minimum of four months to patent an item or process. Duplicative searches are not done, but patent awards may be appealed on grounds of infringement.[56]

A comparative study of the regulatory frameworks governing FDI in the neighbouring countries such as; Botswana and Namibia will be discussed below. This is an attempt to try and assess the adequacy of the Zambian regulatory framework to make the Zambian investment climate more attractive to FDI.

2.4 BOTSWANA FOREIGN DIRECT INVESTMENT REGULATORY FRAME WORK.

The Government of Botswana is committed to creating an attractive climate for foreign investment. It has continued to develop a regulatory framework favorable to investors. The Registrar of Companies has progressed in implementing its commitment to reduce the turnaround time to register a company from twelve weeks to ten working days.[57] Foreign investors wishing to invest in Botswana are required to register the company in accordance with the Companies Act and comply with other applicable legislation. In addition, the Government provided assistance to investors through investment incentive schemes, including grants and tax relief. Although Botswana has always been open to Foreign Investment, it has never had a foreign investment law.[58] It relies on various laws, which regulate and govern the various independent or related sectors to implement policy as well as regulate entry of FDI.[59]Therefore, unlike Zambia there is no Agency, which screens foreign investors for approval to invest in Botswana.[60]

However, the promotion and facilitation of FDI is a function of the Botswana Export Development and Investment Authority (BEDIA).[61]BEDIA is an autonomous organization established in 1998 to promote investment in Botswana with a special

[56] 2009 Investment Climate Statement-Zambia.
[57] Untited Nation Conference on Trade and Development, 'Investment Policy review- Botswana 2003, p25.
[58] Ibid p 25.
[59] ibid
[60] Ibid
[61] Ibid

emphasis on export-oriented manufacturing industries.[62] BEDIA serves as the primary government contact point for both domestic and foreign investors.[63] Through its One Stop Service Center, BEDIA provides services for investor needs and aftercare to both new and existing foreign and citizen-owned enterprises. The Center focuses on enabling investors in both the manufacturing and service sectors to secure all clearances and approvals as quickly as possible under one roof. BEDIA promotes the sectors through incoming and outgoing missions as well as through direct mailing campaigns in the targeted markets, such as the European Union, South Asia, and southern Africa.

In order to help position Botswana favorably in the face of increased global competition for FDI, BEDIA is in the process of developing a national FDI strategy including the drafting of a FDI Bill, which will articulate the country's investment climate. BEDIA continues to support and give momentum to efforts towards attracting FDI and developing export markets including a branding exercise to create a comprehensive 'Brand Botswana' strategy for Botswana, which was launched in November 2007.[64]

Botswana has attempted to strike a balance between the interests of the nation with those of investors by excluding certain selected businesses, namely, retail trade, services and manufacturing from FDI in order to protect local entrepreneurs.[65] With regard to mining, Botswana has deliberately chosen not to offer a highly competitive fiscal regime.

While generally open to foreign participation in its economy, Botswana does reserve some sectors solely for citizen participation and has a number of citizen-empowerment programs that are closed to foreign investors. Unlike the situation in Zambia where there is no discrimination in law between foreign and domestic investors. Most laws in Botswana were imposed by Parliament out of a fear that other non-citizen African and South Asian residents were opening businesses in areas traditionally controlled by the Batswana. The restrictions are not retroactive, and businesses in existence prior to the law's passage remain in the hands of their non-citizen owners. In addition, many foreign

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[62] 2009 Investment Climate Statement-Botswana, Bureau of Economic, Energy and Business Affairs February 2009

[63] Ibid

[64] Ibid

[65] ibid

investors have continued to invest in certain areas, such as gas stations, through franchising to Botswana citizens.[66]

Foreign investors are given equal access to general investment incentive schemes for medium and large projects in most economic sectors. Foreign investors do not, however, have access to Botswana Government assistance loans and grants designed for citizen-owned contracting firms or for small enterprises. [67] This position is similar to the Zambian citizen empowerment commission mandate.

The foreign investment climate in Botswana calls for foreign investors to be law-abiding, identify with Botswana's national principles and objectives, assist in the diversification of the economy, and share Botswana's commitment to maintenance of a democratic, open, and non-racial society. Botswana has little tolerance for corruption.[68]

The Constitution of Botswana prohibits the nationalization of private property. The Government of Botswana has never pursued a policy of forced nationalization, and there is no reason to believe that it would consider expropriating actions.[69]

Botswana is a member of the Multilateral Investment Guarantee Agency (MIGA). MIGA offers investors protection against inconvertibility or transfer of currency, expropriation, breach of contract and war and civil disturbance.[70] It is also a member of the International Center for the Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA), and as such accepts binding international arbitration of investment disputes.[71]

The Botswana constitution provides for a judiciary, which is independent of both the executive and legislative authorities. Civil law is based on Roman-Dutch law while criminal law is built on familiar tenets of the English legal system. The legal system is sufficient to conduct secure commercial dealings. Foreign and domestic parties have

[66] 2009 Investment Climate Statement-Botswana
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.

equal access to and standing under the judicial system. Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case.[72]

When it comes to labour matters, it is the official policy of the Government to encourage foreign firms to hire qualified Botswana nationals rather than expatriates, and the granting of work permits to expatriates can in some instances be made contingent upon establishment of demonstrable "localization" efforts. Furthermore, FDI entails transfer technology and transfer skills to Batswana by promoting citizen involvement and participation in positions of supervisory, middle and senior management levels in the company in an effort to localize the companies within an agreed period. There are no ownership transference requirements. These initiatives are aimed at securing citizen involvement in the development of Botswana's private sector.[73]

The Botswana government adheres to transparent policies and maintains effective laws to foster competition and establishes clear rules of the game. Bureaucratic procedures are streamlined and open, although somewhat slow, and not excessively overbearing compared to other African countries.

There is no political violence in Botswana.[74] The Government of Botswana is also seriously concerned about the increasingly detrimental effects of the growing crime rates which were seen to be limiting the country's development and affecting its social structures, depriving it of considerable revenue, and damaging the country's reputation. Legislation to combat corruption and economic crime was put in place, and the Directorate on Corruption and Economic Crime (DCEC) was established in 1994.[75]Similarly, Zambia has the Anti Corruption Commission and Drug Enforcement Commission to handle issues of such crime.

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[72] 2009 Investment Climate Statement-Botswana
[73] ibid
[74] ibid
[75] ibid

2.5 NAMIBIAN FOREIGN DIRECT INVESTMENT REGULATORY FRAME WORK.

The Government of the Republic of Namibia (GRN) is committed to stimulating economic growth and employment through attracting foreign investment.[76] The Foreign Investment Act[77] is the primary legislation that governs foreign direct investment in Namibia. The Ministry of Trade and Investment is the governmental authority which is primarily responsible for carrying out the provisions of the Foreign Investment Act. Under the act the Ministry established the Namibia Investment Center (NIC).[78] The NIC serves as Namibia's official investment promotion and facilitation office. It is often the first point of contact for potential investors. The NIC is designed to offer comprehensive services that range from the initial inquiry stage through to operational stages. The NIC also provides general information packages and advice on investment opportunities, incentives, and procedures.[79] The NIC is also tasked with assisting investors minimize bureaucratic "red tape" by coordinating work with government ministries as well as regulatory bodies.[80]

The Registrar of Companies in the Ministry of Trade and Industry is responsible for managing, regulating, and facilitating the formation of businesses. The Registrar's office encourages investors to seek professional advice from legal practitioners, auditors, accounting officers, or secretarial firms when registering their businesses. [81] The laws which provide the legal framework for the establishment of business entities are; the Companies Act and the Close Corporation Act.

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[76] 2009 Investment Climate Statement-Namibia, Bureau of Economic, Energy and Business Affairs February 2009.
[77] Foreign Investment Act No 27 of 1990.
[78] Ibid.
[79] Ibid.
[80] Ibid.
[81] Ibid.

Namibia is generally a stable multi-party and multi-racial democracy.[82] The protection of human rights is enshrined in the Namibian constitution, and the government generally respected those rights. Political violence is rare, but there were some political confrontations and violent incidents in 2008 between supporters of the Rally for Democracy and Progress (RDP) and SWAPO party members. Nevertheless, damage to commercial projects and/or installations as a result of political violence is considered unlikely.[83]

Namibia like Zambia, has been traditionally perceived as a secure country with satisfactory macroeconomic indicators[84].In addition, The Foreign Investment Act of Namibia was enacted in 1990 and came into effect in 1992. The preamble of the Act simply states that it is an act "to make provisions for the promotion of foreign investment in Namibia'.[85] It is similar to the Zambian development Act which has sought to create a one stop facility for investment purposes, in a number of ways as will be discussed later.

The Act[86] does not discriminate between a national of Namibia and a foreign national. This is similar to the Zambian scenario, as the Act provides that a foreign national may invest or engage in any business activity in Namibia which any Namibian may undertake.[87] Therefore, in respect of Taxation a foreign nation is placed in the same position as a Namibian except as otherwise provided in the act.[88] However, unlike the Zambian Development Agency, the Namibian Act does not offer incentives to companies

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82 2009 Investment Climate Statement-Namibia.

82 State Department's 2008 Human Rights Report for Namibia: http://www.state.gov/g/drl/rls/hrrpt/2008/af/119016.htm.

83 Ibid.

85. Mwilima. FDI in Africa , 38

86. Foreign Investment Act of Namibia Act No. 27 of 1990. section 2

87 Ibid

88Ibid section 3

89 Ibid section 3(2)

just because they account for investment inflows and are called Investors; incentives are only available to Manufacturers and exporters. Such restrictions or strategies help the country achieve strategic objectives related to such aspects as employment; technology transfer, exports and development of a particular area can be quite beneficial to the nation in general.

Targeting has proved advantages because it is cost effective. A focused approach to attract export-oriented investment is likely to be less costly than where a country attempts to attract FDI in all sectors at the same time.[89] The Namibian Statute compared to the Zambian Regulatory framework shows that Namibia has a more strict and conservative investment regime than Zambia. Yet it has been ranked very highly an investment destination in the Sub-Sahara Africa and is preferred before Zambia.[90]Namibia has also achieved that envied position without employing tax rebates and other incentives to attract investors. Unlike Zambia, Namibia collects taxes from investors at the same rate as all other businesses entities operating in the country, with an exception to investors who have specially been granted incentives as manufacturers or exporters.[91]

The Act[92] states that "foreign nationals shall be in no different position than any Namibian." The act guarantees foreign investors' treatment equal to that given to Namibian firms, fair compensation in the event of expropriation, international arbitration of disputes between the investors and the government, the right to remit profits and access to foreign exchange. Furthermore, Investment incentives and special tax incentives are also available for the manufacturing sector[93]. While there is a pool of qualified workers in varying professions in Namibia, there is a shortage of highly skilled labor. Employers often cite labor productivity as their biggest challenge. The Government offers manufacturing companies special tax deductions of up to 25 percent if they provide technical training to employees. The Government will also reimburse companies for costs directly related to employee training under approved conditions.

[89] Miwilima, FDI in Africa
[90] Morisset, Foreign Direct Investment in Africa', 7/Appendix
[91] Foreign Investment Act of Namibia Act No. 27 of 1990. section 3(2).
[92] Ibid
[93] 2009 Investment Climate Statement-Namibia.

Government expropriations are rare. According to the Foreign Investment Act, foreign investors who have received a Certificate of Status Investment (CSI) are entitled "just compensation without undue delay and in freely convertible currency" if the government expropriates the investor's property. Furthermore, the courts are generally independent and uphold contracts[94]

The Foreign Investment Act [95]allows for the settlement of disputes by international arbitration for investors that have obtained a Certificate of Status Investment (CSI). The CSI must also include a provision for international arbitration. The Act stipulates that arbitration "shall be in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at the time when the Certificate was issued" unless the CSI stipulated another form of dispute resolution.[96] Namibia is also a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA). MIGA has so far not issued any guarantees for investment, but Namibia has been an active beneficiary of MIGA's technical assistance services.

Namibia's legal system, based on the Roman Dutch Law, is similar to South Africa's legal system. The system provides effective means to enforce property and contractual rights. The Company's Act of 2004 governs company and corporate liquidations while the Insolvency Act 61 of 1936 governs insolvent individuals and their estates. The Insolvency Act details sequestration procedures and the rights of creditors. [97] Namibia signed but has not ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.[98]

Transparency International ranked Namibia 61 out of 180 countries in its 2008 corruption perceptions index, which measures the perceptions of businesses and country analysts about the degree of corruption in a country. A score of 10 reflects a "highly clean" and 0

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[94] 2009 Investment Climate Statement-Namibia.
[95] Foreign Investment Act of Namibia Act No. 27 of 1990
[96] Ibid.
[97] Ibid.
[98] Ibid.

reflects a “highly corrupt” nation. Namibia scored 4.5 just behind Turkey, Lithuania, and Poland’s score of 4.6. Only four sub-Saharan African countries (Botswana, South Africa, Mauritius and Seychelles) ranked higher.[99] The Namibian Government has adopted a policy of “zero tolerance” for corruption.

2.6 CONCLUSION.

From the above analysis it is clear that there is a lot that Zambia needs to do to ensure that adequate FDI is attracted at both macro and micro level. The current scenario of having Investor pull out of Zambia after the tax break is quite detrimental to the Zambian Economy. For instance there is no need to continue giving wholesome incentives at the expense of the Zambian citizens.

Botswana has a distinction in it laws between Foreign and Domestic Investors. It does reserve some sectors of its economy solely for citizen participation and has a number of citizen empowerment programmes that are closed to foreign investors. Namibia also has a strict and conservative investment regime and selective incentives in specific investment sectors. Furthermore, other countries have managed to enact stronger laws to protect local industries and have an effective enforcement mechanism system, while still attracting the necessary FDI.

[99] http://www.transparency.org/policy_research/surveys_indices/cpi/2008

CHAPTER THREE

THE FACTORS THAT DETER FOREIGN DIRECT INVESTMENT IN ZAMBIA.

3.0 INTRODUCTION

Foreign Direct Investment is good for economic development to the host nation as well as to the foreign investor as a source of revenue. However, as much as investors would want to maximize there returns it is not always easy for them to go outside their countries and invest in other countries because of the many challenges they are likely to face as will be discussed later.

The World Bank's annual doing business Survey provides data on the relative ease or difficulty for that matter with which business can be conducted around the world. The results are well too revealing, and do much to explain why Africa a continent where Zambia is located remains at the bottom of any FDI list.[100] Globally Africa has a bad reputation, The former UN Secretary-General , Kofi Annan, put it this way: 'For many people in other parts of the world, the mention of Africa evokes images of civil unrest, war , poverty, disease and mounting social problems. Unfortunately these images are not just fiction. They reflect the dire reality in some African countries, though certainly not all.' [101] Unless Africa as a whole does something about it, this image is bound to remain fixed in the minds of investors.

African policy makers will therefore do well to remember that there are other developing regions where it is much easier to generate similarly attractive returns with considerably less hassle. This is probably not accidental, their leadership just happens to care more.[102]

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[100] The World Bank's doing Business Project provides objective measures of business regulations and their enforcement across 178 economies and selected cities at the sub national and regional level. http://www.doingbusiness.org/.

[101] Foreword to Kofo Annan(former Secretary-General of the United nations), 'UNCTAD Foreign Direct investment in Africa: Performance and Potentail', Newyork, June 1999. http://www.focac.org/eng/.

[102] Dambisa Moyo, Dead Aid Why Aid is not working and How there is another way for Africa, first edition 2009. p. 100

There are several factors that could discourage prospective investors from investing in a country such as Zambia. These factors may be political factors, economic factors, and socio-cultural factors or technological factors.[103] A discussion of some of these will be given below as follows:

3.1 Political Factors.

Generally, Zambia is a politically stable country. Some of the important indicators of this political tranquility include a peaceful transition from a de jure one-party political system to a multi-party political system in 1991.[104] The observance of basic principles of human rights in the process of Zambia's transition to a multi-party system is unprecedented on the continent, compared with what happened in other countries such as; Kenya which experienced massive violations of human rights in their political transition to multi-party politics.[105] Similarly, in Nigeria the president-elect M. Abiola, who was supposed to take over office from the military government of General Babanginda, was placed under detention until he died. There were some social upheavals in Lesotho too before multi-party politics were re-introduced. Moreover, Zambia, unlike most other countries in the northern and western parts of Africa, has never been under a military government[106].

In Zambia the poor state of the economy could have significant effects on the future political stability of the country. Firstly, the unemployment levels arising from the privatisation programme have led to major political spill-off such as the rising rate of crime in Zambia. [107] Secondly, the wage ceiling has led to reduced purchasing power of the workforce. This, in turn, could threaten industrial unrest in the economy. Thirdly, the Zambian Government has radically abolished subsidies on consumer goods. This has led to some form of cultural shock in the majority of the low and average-income earning people. [108]

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[103] J. Clark and C. Allison, Debt and Poverty, (Oxford: Oxfam, 1989).
[104] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999)
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] Ibid

Again this creates the threat of social upheavals in the country. The reduction of state expenditure on social, educational and health facilities after the privitisation programme has already been met with hostile reactions from pressure groups such as university student bodies and the women's' lobby group in Zambia. All these factors affect Zambia's political climate to attracting foreign investors to Zambia.

Investors would only be wiling to invest in a country where they know there investment will be safe. Despite Zambia's effort to assure investors of the safety of their investment when the late president Mwanawasa died there appeared to be some uncertainty in the economy. Zambia experienced a rise in foreign exchange rates and falling prices in stocks, which is a clear indication that political instability is a deterrent to FDI.

3.2 Economic Factors.

Some of the important economic factors that could discourage foreign investment inflows are the following;

- Convertibility of the local currency: The Zambian Kwacha is not an internationally convertible currency. [109]
- Devaluation of the local currency: The stability of the value of the Kwacha in relation to the values of internationally convertible currencies is not guaranteed. It is in fact unpredictable, for instance we see an improvement in the Zambian currency when the copper prices increase and a weakening when copper prices go down. [110]

Furthermore, the fact that Zambia has no control over copper prices even makes the Zambian currency more unpredictable. Therefore, it is not easy to establish investor confidence in the domestic market when Zambia's currency does not have a stable

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[109] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999)
[110] Ibid.

exchange value. Investors will not feel confident and secure in a country that has a weak currency with an exchange rate that fluctuates constantly. [111]

3.3 Social-Cultural factors.

Under this head, the following are some of the important factors that could deter foreign investors from investing in Zambia will be discussed as follows:

- Tribalism: This feature has become quite rife under the leadership of the Movement for Multiparty Democracy (MMD) government. The traditional distancing between groups such as the Bembas and the Lozi could discourage foreign investment if prospective investors take into account issues such as the need for team spirit and collective efforts within the workforce.[112]
- Crime: This is deterrent as issues of security could threaten investors who need to have confidence in the security wings of the nation such as the police. They need to know that that their lives and investments will be safe. Therefore, Crime is also a social problem that can deter foreign investors from investing in Zambia. [113]
- Unemployment: Unemployment in Zambia has affected the general purchasing power of the people.[114] It follows logically that prospective investors (e.g. merchant traders) would feel discouraged if they were to target largely financially disenfranchised buyers such as the Zambian public. [115]
- Conflicting cultures: Culture is a broad term[116] and it encompasses factors such as menti-facts, socio-facts and arti-facts. Culture could generally be understood as a way of life. An organisation such as a multinational corporation will obviously

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[111] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999).
[112] Ibid.
[113] Ibid.

[114] J.C. Clark and C. Allison, op. cit.

[115] Ibid.

[116] For a detailed understanding of the term see C. Handy, Understanding Organisations, (London: Penguin Books, 1993), pp. 145, 186, 195-197, 201-208, 210-216, 330-331 and 405; see also R.L. Flood, Beyond TQM, (Chichester: John Wiley & Sons, 1993), pp. 118-123.

have its own corporate culture. Within that broad paradigmatic way of doing things, there will be sub-cultures of various sub-units in the organisations. All these cultures have distinct characteristics, some of which could have a negative effect on corporate culture. There could be some common elements between these cultures and there could be some entirely different elements. [117] It is these different elements in different cultures that provide a source of conflict. In particular, the corporate culture of a multinational corporation may not be in conformity with the culture of the local people from whom the majority of the workforce is drawn. When this happens, cultural conflict could prove to be a deterrent factor in attracting foreign investment to a country such as Zambia. [118]

- The literacy levels of the local people: Generally, Zambia has a good literacy level in the urban areas.[119] It is important to stress that since foreign investors usually employ their workforce from the host country, the level of literacy of the local people is an important factor in attracting foreign investment to Zambia. Ideally, the level of literacy of the local people serves two functions. First, it enables the workforce to manage the information technology in the organisation and secondly, it leads to the evolution of a common corporate culture. [120]
- Corruption: Like crime and unemployment, corruption is both a political and social problem. However, it would be utopian to imagine a society entirely free of corruption. What matters most is to look at the levels of corruption. Although on the average corruption was not a major problem in Zambia, it is now rising fast and a lot of dubious characters are ascending the echelons of political power. Corruption is a deterrent to FDI as it increases the cost of doing business.

[117] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999).

[118] Ibid

[119] United Nations, Statistical Yearbook, Thirty-ninth issue, (New York: United Nations, 1994).

[120] Ibid.

3.4 Techonological Factors

In most of the industries in Zambia, there is a use of both capital-intensive and labour-intensive technology. [121]With the privatization of the state-owned business entities and with the government's pronouncement of a free-market economy, Zambia has experienced a shift towards a more capital-intensive orientated economy. There is need here to evaluate the extent to which factors such as capital-intensity would complement with the level of literacy of the workforce and the general development requirements of the country.[122]

Investors operating in high technology and services sectors will be looking for availability of skilled labour and protection of intellectual property rights. Therefore, to attract FDI there is need to enlarge the pool of skilled workers. Those interested in simple labour intensive assembly operations will be more sensitive to labour costs and labour markets flexibility.[123]

3.5 Other Factors

3.5.1 **Bureaucracy.**

Other Factors that deter the flow of FDI in Zambia is red tape. Africa generally remains at the bottom of any FDI investors' list because of bureaucracy. In Zambia the time it takes for an investor to do the paper work and get going is about one month. Examples have been given in countries like Cameroon where it takes an investor who seeks a business licence on average 426days to perform fifteen procedures.[124] Whilst in china it takes 336 days and an investor need to complete thirty seven procedures, in the USA an investor would only need forty days and completion of nineteen procedures.[125] Therefore, how can an investor want to spend 119 days filling out forms to complete twelve procedures?

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[121] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999).
[122] Ibid
[123] Harry G Broadman, African Silk Road, China and India's New economic
[124] Dambisa Moyo, Dead Aid Why Aid is not working and How there is another way for Africa, first edition 2009. p. 100
[125] Ibid, p 100.

An investor is likely to find South Korea a much more attractive business culture, as it will only take him seventeen days to complete ten procedures.[126]

3.5.2 Opacity.

Another factor that deters FDI flow is opacity. Investors do not know where to go, or who to ask. In a number of mining dependant countries, rather than the government offering parcels of Land in open auction, prospective investors are expected to provide the government with specific land coordinates.[127] The geological survey office knows where the ores lies, but they just can't be bothered to help the investors along. Though the countries' livelihoods depend significantly on such entrepreneurs coming in. given the nature of doing business it is hardly surprising that this much needed investment stays away. [128]

3.5.3 Poor Infrastructure.

Poor infrastructure makes investments expensive as investors have to do it themselves. For instance, if investors wants to prospect for minerals in an area where there are no roads and other amenities they will be forced to work on these amenities in order to manage their investments. It can therefore, be seen that the quality of infrastructure services is a crucial component of a business- friendly climate that facilitates both FDI flow and participation in international production network.[129]

3.5.4 Instability in Legislation.

Government's failure to provide for stable legislation could deter FDI. Investors need to be confident and assured that if they are going to be given an incentive for say, no tax in a certain area or no tax on extra profits (windfall tax) it shall be so tomorrow as well. Uncertainty in Legislation should be avoided as this could deter FDI.

3.5.5Trade Facilitating Infrastructure

This refers to the performance of administrative functions, such as the performance of the customs administration and the quality of transportation and communication networks.[130]

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126 Dambisa Moyo, Dead Aid, p 100.
127 Ibid, p 100.
128 Ibid.
129 Harry G Broadman, African Silk Road, China and India's New economic Frontier, World bank 2007 , p 355
130 Harry G Broadman, African Silk Road, p354

Long delays at the border and high variance time make it difficult for potential foreign investors to commit to a particular delivery time. This is a deterrent largely because of the existing link between FDI and trade. Corruption yet again at border crossings increases the cost of doing business, thus lowering the competitiveness in world markets of locally produced goods. [131] The poor condition of transport network increases the cost and time needed for shipping goods. High costs of communication, whether through fixed-line telephone, cellular networks, or internet increase the cost of doing business. [132]

3.6 Conclusion.

This chapter has examined critical factors that deter foreign direct investment in Zambia. It was argued that legislation on its own is not sufficient to attract foreign direct investment[133]. In order to attract foreign direct investment to Zambia there is need to look at the socio-economic, political and cultural climate of the country to alleviate the deterrent factors discussed above and also consider the terms and conditions of technology transfer. [134]

This may all sound insurmountable, but just like a click of a switch it is perfectly possible and easy for an enterprising government to reduce paperwork, supply coordinates, and speed up the process.[135] Unfortunately, the reality may not be as simple as that, but it has been shown that improving regulation for business could lift GDP by 2.3 percent a year. [136]For instance, the commission for Africa notes that Uganda's economy grew by around 7 per cent between 1993 and 202 when the country improved its regulatory climate. It also reduced the number of people living on less than a dollar a day from 56 percent in

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[131] Harry G Broadman, African Silk Road, p 354
[132] Ibid, p355
[133] Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia(December 1999).
[134] Ibid.
[135] Dambisa Moyo, Dead Aid Why Aid is not working and How there is another way for Africa, first edition 2009. p. 101
[136] Djankov, Simeon,Caralee Mcliesh and Rita Ramalho, Regulation and Growth, Economic letter, 92,3, pp. 395-401.

1998 to 32 percent in 2002 after the government introduced measures to attract investors.[137] It is therefore possible to create a conducive investment climate.

[137] Dambisa Moyo, Dead Aid, p 101.

CHAPTER FOUR

AN ANALYSIS OF THE CONDUCIVENESS OF THE ZAMBIAN INVESTMENT CLIMATE.

4.0 Introduction.

Generally Zambia has a positive investment climate, although progress toward a more open economy has been sporadic over recent years.[138] During the 1990s, the Zambian Government (GRZ) opened its doors to foreign investment, reduced government intervention in commercial activities, privatized over 250 enterprises, and eliminated many market distortions. [139]

The impact of these progressive policies, however, was undermined by persistent fiscal deficits and widespread corruption at all levels of government. This led many Zambians to lose confidence in the efficacy of economic liberalization and caused the Zambian government to seek alternatives in 2002 and 2003 to privatization of the national owned companies. [140]Beginning in 2003, the Zambian government increased dialog with the private sector and placed a new emphasis on attracting investment. However, the government implemented a new mining tax regime in early 2008 thus abrogating elements of existing privatization agreements. With the late 2008 downturn in copper prices and production, the government initiated a policy to discourage job cuts in response to economic conditions.[141]

Zambia is also endowed with abundant natural resources - minerals, arable land, rivers, forests, water falls, lakes and wildlife - and with the country sufficiently underdeveloped it offers potential and profitable openings for investors.[142]

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[138] 2009 Investment Climate Statement-Zambia, Bureau of Economic, Energy and Business Affairs February 2009.

[139] Ibid

[140] Ibid.

[141] Ibid.

[142] Zambia Development Agency Act No 11 of 2006.

The level of inflation in Zambia, once over 300%, is now in single figures. Wage ceiling is one of the measures adopted by the Zambian Government to curb inflation. It must be observed, however, that due to factors such as wage ceiling and a weak currency in Zambia, labour is generally cheap to employ. The low cost of employing labour is an incentive to attracting foreign investors to invest in Zambia.

4.1 INCENTIVES GIVEN TO INVESTORS UNDER THE ZDA ACT.

The Zambian Government welcomes investors across sectors and the laws relating to investment have provided for incentives in the ZDA Act in form of allowances, exemptions & concessions aimed at increasing levels of investment and international trade, as well as increased domestic economic growth. Incentives are given generally and specifically to various categories of investors. On one hand these incentives may be seen as a way of attracting FDI but on another hand, it could be viewed that in fact they lead to lose of revenue. It has also been said that incentives actually constitute lose of revenue in so far as they do not play an important role in attracting FDI and merely exacerbate the problem of shortage of capital in developing countries.[143] Before discussing the general incentives given to investors, there will be need to look at the various categories of investors provided for in the Act who are likely to benefit from these specific incentives.

4.2 CATEGORIES OF INVESTORS

There are five categories of investors who can be considered under the ZDA Act[144].

The first category is investors who invest not less than US$ 10 million: This category of investors is entitled to negotiate with the government for additional incentives other than what they might already qualify for under the ZDA act.[145]

The second category is investors who invest not less than US$500,000 in the Multi Facility Economic Zones (MFEZ) and /or in a priority sector or product. This category, in

[143] Dr. Mwangala Kamuwanga,, " Negotiating Investment Contracts" Investment law in the Context of development, P 8.

[144] Zambia Development Agency Act No 11 of 2006.

[145] Ibid Section 58.

addition to being entitled to the general incentives, is entitled to the following incentives:[146]

- Zero percent tax rate on dividends for 5 years from year of first declaration of dividends.
- Zero percent tax on profits for 5 years from the first year profits are made. for year 6 to 8, only 50 percent of profits are taxable and years 9 & 10, only 75 percent of profits are taxable.
- Zero percent import duty rate on raw materials, capital goods, machinery including trucks and specialized motor vehicles for five years.
- Deferment of VAT on machinery and equipment including trucks and specialized motor vehicles.

The third category of investors relates to investors who are designated as micro or small enterprises under the ZDA Act[147]. Like the second category, this category is also, in addition to the applicable general incentives, entitled to the following incentives:

- For an enterprise in an urban area the income shall be exempt from tax for the first three (3) years.
- For an enterprise in a rural area the income shall be exempt from tax for the first five (5) years.

The fourth category is that of investors who invest less than US$500,000 in a sector or product provided for as a priority sector or product under the ZDA Act[148]. This category is only entitled to general incentives.[149]

The fifth and last category is that of investors who invest any amount in a sector or product not provided for as a priority sector or product under the Act.[150] This category of investors is also only entitled to general incentives provided under the various pieces of

[146] Zambia Development Agency Act No 11 of 2006.
[147] Ibid.

[148] Ibid.
[149] Ibid.
[150] Ibid.

legislation as will be discussed below.

4.3 GENERAL TAX INCENTIVES.

The main general tax incentives include the following:

4.3.1 Income Tax:

1. Income earned by companies in the first year of listing on the Lusaka stock exchange qualifies for a 2% discount on the applicable company tax rate in the particular sector, however companies with more than 1/3 of their shareholding in the hands of Zambians qualify for a 7% discount;[151]
2. Implements, machinery and plant used for farming, manufacturing or tourism qualify for wear and tear allowance of 50% of the cost per year in the first two years;[152]
3. Building used for manufacturing, mining or hotel qualify for wear and tear allowance of 10% of cost in first year and 5% of cost per year in subsequent years;
4. Duty free importation of most capital equipment for the mining and agriculture sectors;
5. Corporation tax at 15% on income from:

a. farming;
b. fertilizer production;
c. non-traditional exports;

6. Farm works allowance of 100% of expenditure on stumping, clearing, prevention of soil erosion, bore holes, aerial and geophysical surveys and water conservation[153]; and
7. Development allowance of 10% of the cost of capital expenditure on growing of coffee, banana plants, citrus fruits or similar plants.
8. Farm improvement allowance - capital expenditure incurred on farm improvement is allowable in the year of incurring the expenditure.
9. Dividends paid out of farming profits are exempt for the first five years the

[151] Ibid.
[152] Ibid.
[153] Zambia Development Agency Act No 11 of 2006.

distributing company commences business.[154]

10. Initial allowance of 10% on capital expenditure incurred on the construction or improvement of an industrial building is deductible;

11. Foreign exchange losses of a capital nature incurred on borrowings used for the building and construction of an industrial or commercial building are tax deductible.[155]

12. Dividends declared by companies assembling motor vehicles, motor cycles and bicycles are exempt for the first five years of initial declaration of dividends;

4.2.2 Carry Forward Losses Years.[156]

Copper and Cobalt mining 10 years

Other mining 5 years

Non-mining 5 years

Farming and non-traditional exports 5 years

4.3 Value Added Tax (VAT)[157] :

1. Relief for VAT registered enterprises on imports of eligible capital goods. (VAT deferment);
2. Zero rate on export of taxable products;
3. Relief of VAT on transfer of business as a going concern;
4. Equal treatment of services for vat-reverse vat;
5. Cash accounting for specialized associations e.g. association of building and civil engineering contractors;
6. VAT relief on input tax paid for purchases made by registered suppliers.
7. Input tax claim for three months prior to vat registration for businesses that have

[154] Zambia Development Agency Act No 11 of 2006.
[155] Ibid.
[156] Ibid.
[157] Ibid.

already commenced trading;

8. Reduction of VAT rate for investors in tax free zones.[158]

Under VAT Incentives there are also sectors specific incentives meant to encourage investments in specific sectors as will be outlined below.

4.3.1 VAT Sector-Specific Incentives.[159]

Agriculture.

1. Input tax claim for three months prior to vat registration for businesses that have already commenced trading;
2. Reduction of VAT rate for investors in tax free zones.

Manufacturing.[160]

1. Refund of Zambian VAT on purchase and export of Zambian products by non-resident businesses under the commercial exporters scheme;
2. Input tax claim for three months prior to registration for businesses that have already commenced trading.
3. Input tax claim for two years prior to commencement of production.

[158] Zambia Development Agency Act No 11 of 2006.
[159] Ibid.
[160] Ibid.

Mining.

1. Input tax claim for five years on pre-production expenditure for exploration companies in the mining sector; [161]
2. Zero rate on mining products for export.

Tourism .

1. Zero rate - accommodation in Livingstone district up to 2009.[162]
2. Zero rate - tour packages;
3. Zero rate-other tourist services;
4. Refund to non-resident tourists and visitors;
5. No import vat on all goods temporarily imported into the country by foreign tourists.

4.3.2 Customs Duty Incentives.[163]

Most capital equipment attracts duty rates of 0 to 5 %.
Further, relief is granted under the Duty Draw Back scheme to qualify for the scheme, the following conditions must be met:

- the company or individual must be in the manufacturing business
- the company or individual must be an exporter or intends to start exporting
- The company must be in any sector other than the mining sector.

4.3.3 Non –Fiscal Incentives.[164]

Other than the generous tax incentives, the ZDA Act also provide for non –fiscal incentives. Investors, who invest at least US$250,000 and employ not less than 200 local

[161] Zambia Development Agency Act No 11 of 2006.
[162] ibid.
[163] ibid.
[164] ibid.

persons, are entitled to a self employment permit and employment permits for up to five (5) expatriates.[165]

4.4 Other Incentives.

4.4.1 Facilitation Services.[166]

Besides providing the fiscal and non-fiscal incentives the ZDA provides facilitation services to its clients. In this regard, the ZDA facilitates registered investors to:

· Acquire land;
· Obtain water, electric power, transport, and communication services and facilities required for their investments;
· Regularize their immigration status;
· Acquire other licenses required to operate a business in any particular sector; and
· Access any other after care assistance that may be required.

In addition to the tax incentives and services that the ZDA provides to investors, there are other benefits that investors enjoy when they invest in Zambia. Investors who invest in Zambia also enjoy the following guarantees:

- Free repatriation of profits & dividends.[167] This is allowed after payment of the relevant taxes.
- Protection against non-commercial risks, as Zambia is a signatory of multilateral investment guarantee agency (MIGA and Africa trade Insurance Agency.) [168]

Moreover, a business cannot be compulsorily acquired by government, except by an act of parliament in extreme circumstances.[169] In most cases nationalisation has to be done in

[165] Zambia Development Agency Act No 11 of 2006.
[166] Ibid.
[167] ibid Section 20.
[168] Ibid.
[169] Ibid.

national interest and compensation is paid in full,[170] although Article 16 of the Zambia constitution[171] provides for adequate compensation to be paid when nationalisation occurs. Therefore, nationalization can either be legal or illegal depending on the purpose and agreement entered into between the state and investor. In the case of Kuwait v. American Independent Oil Co. (Aminoil)[172], nationalization was held illegal as it was in breach of an agreement between the state and investor. In this case the ruler of Kuwait had given Aminol oil an oil concession for sixty years from 1948. There was an agreement to explore and exploit Kuwait's reserves. This agreement was later amended in 1961, amended to 50/50 type of agreement in line with all other mid east agreements. Within this agreement there was a stabilization clause. In 1970 the prices of oil quadrupled, The government of Kuwait nationalized the asset and said they were not going to pay any compensation to Aminoil. The issue of breach agreement arose and whether the stabilization clause rendered the nationalization act null and illegal. Kuwait argued that the stabilisation clause said nothing about nationalization. It was held that stabilization clauses was meant to protect foreign investors from confiscatory taking, there has to be an express agreement not to nationalization.

Therefore, it is important to have express provisions in the investment agreement as a way of securing investments from nationalisation and any other breach.

4.5 AN ANALYSIS OF THE INCENTIVES GIVEN TO INVESTORS.

Zambia is well placed to attract FDI with so many incentives and unexploited resources, But in practice what we see are investors coming in and pulling out at the end of the tax

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[170] Ibid, Section 19(2)
[171] Chapter 1 of the Laws of Zambia.
[172] 21 I.L.M. 976 (1982)

break. There is a lot Zambia need to work on to have an environment that will attract and retain FDI. It is therefore clear to point out that all incentives are positive steps towards establishing investor confidence in order to attract more FDI into the country. It has been said that in theory FDI is a good thing.[173] This is essentially because it brings economic development, creates jobs and fosters the transfer of new technology. This is how it should work in theory however, at least in Zambia's case this is not how it has worked.[174] In fact, FDI is supposed to bring much needed development capital to developing nations. This capital may be used for various development projects such as building hospitals, schools, roads and other forms of infrastructure.[175]

However, once profits are earned this capital seldom remains in the Republic of Zambia. A large bulk of it is externalized. This is largely because the Act provides for free repatriation of profits and dividends. According to the CIA World bank fact book, Zambia's main exports partner is Switzerland and a large bulk of these exports consists of currency. In addition, according to the Zambia Development act, most investors are given a five year tax break. This essentially means that the only avenue through which the government could benefit from the inflows of capital is left unutilized for half a decade-a period after which many of these investors pull out of Zambia anyway.[176]

FDI also has an advantage of creating employment and with these jobs also comes transfer of expertise from developed countries to develoing ones. Although multinational corporations do create jobs; they usually employ Zambian citizens for but a pittance. To add insult to injury sometimes even the most basic jobs are given to non Zambian workers. This practice is particularly apparent in Chinese owned corporations where a majority of the employees are nationals of the aforementioned country.[177] However, this practice is also common in western owned corporations where seldom does one find

[173] Sangwani Patrick Ng'ambi. "Is Zambia Full benefiting from Foreign Direct Investment?" Commerce Gazette (May – June 2009).
[174] Ibid
[175] Ibid
[176] Ibid
[177] Ibid

indigenous Zambian citizens in the upper echelons of Management.[178] According to the World Banks World Development Report in 2005 investors commonly argued that there is a serious skills shortage in Zambia, and as such Zambians simply do not possess the necessary skills to occupy these jobs. This could just an excuse as there are a plethora able Zambians who are qualified to do these jobs.[179]

These problems of skills shortages, could be addressed if the government were to impose a vocational training levy on both national and multinational corporations. Countries like Namibia have adopted this approach and it seems to be working quite well. This arrangement could ensure that members of staff are equipped with the necessary skills they need in order to progress in multinational corporations.[180]

With FDI comes also comes a transfer of modern technology. However, this has not always been the case in Zambia. Some of the equipment used in some Zambian mines for example can only be described as dated.[181] There are no real benefits in form of technology transfer derived from such arrangements.

It is important that Zambia recognizes that it must woo FDI investors, who are used to being courted by all manner of other emerging nations. Attractive incentives such as those discussed above are one way of attracting investors, but these investors will also needs to know and believe that they have some means or recourse- somewhere to go if and when their contracts falter.[182] Having a reliable judicial and dispute resolution system could therefore be necessary.

Furthermore, an effective way for Landlocked countries remotely located countries such as Zambia to attract larger FDI inflows is to improve the quality of governance and

[178] Sangwani Patrick Ng'ambi. "Is Zambia Full benefiting from Foreign Direct Investment?" Commerce Gazette (May – June 2009

[179] Ibid

[180] Ibid.

[181] Ibid

[182] Dambisa Moyo, Dead Aid Why Aid is not working and How there is another way for Africa, first edition 2009. p. 102

cooperate on arrangements that would reduce transaction costs associated with moving shipment through theirs respective territories.[183] This is because to some extent sound governance can compensate for distance to major markets. Also engaging in regional trade agreements that effectively increase the size of the market and foster regional integration can be a strong counterweight to poor proximity to markets.[184]

4.6 CONCLUSION

Looking at the incentives discussed above and the flow of FDI experienced in various investment sectors it could be concluded that Zambia has not fully benefited from FDI in a way that it is anticipated to. The current investment climate in Zambia seems to highly favour the interests of foreign investors, much to the detriment of ordinary Zambian citizens. Almost in the same breath, it can be said that at the end of the day investors are here to make profit and if they can take advantage of the system in its current state- they will.[185]

Therefore, for Zambia to derive the necessary benefits from FDI it is up to government to put in place the necessary measures to ensure that the Zambian people benefit from FDI. The government could do this by passing stronger employment legislation and having a more stringent but not draconian policy on the outflow of capital. In addition, we need stronger institutions to enforce these laws for without them stronger laws are impotent.[186]

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[183] Harry G Broadman, African Silk Road, p354
[184] Ibid.
[185] Sangwani Patrick Ng'ambi. "Is Zambia Full benefiting from Foreign Direct Investment?" Commerce Gazette (May – June 2009)
[186] Ibid

CHAPTER FIVE

HOW CAN GOOD GOVERNANCE HELP ATTRACT FOREIGN DIRECT INVESTMENT?

5.0 INTRODUCTION.

The concept of governance refers to the process of decision-making and the process by which decisions are implemented or not implemented. Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance.[187]

Good governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.[188]

Bad governance is the opposite of good governance, and is being increasingly regarded as one of the root causes of all evil within our societies. Major donors and international financial institutions are increasingly basing their aid and loans on the condition that reforms that ensure good governance are undertaken.[189]

Since governance is the process of decision-making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision-making and implementing the decisions made and the formal and informal structures that have been put in place to arrive at and implement the decision.[190] Issues of corporate governance have a number of actors or players as will be discussed below.

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[187] http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp
[188] Ibid
[189] Ibid
[190] Ibid

5.1 ACTORS IN GOVERNANCE.

Government is one of the actors in governance. Other actors involved in governance vary depending on the level of government that is under discussion. In rural areas, for example, other actors may include influential land lords, associations of peasant farmers, cooperatives, NGOs, research institutes, religious leaders, finance institutions political parties, the military etc. The situation in urban areas is much more complex. At the national level, in addition to the above actors, media, lobbyists, international donors, multi-national corporations, etc. may play a role in decision-making or in influencing the decision-making process. [191]

Therefore, investors wishing to invest in various locations and sectors may come across the different actors mentioned above. On one hand, there is the law or policy and on the other hand there are implementers which investors need to be aware of.

5.2 INVESTOR'S PERCEPTION.

Investors are skeptical of opaque corporate governance structures both at firm and micro levels because of the attendant risk to their investments in an environment of weak legal system and poor human rights records. Most economies have realized the importance of good governance systems and the need to signal transparency and accountability both at firm and country levels and have embarked on significant corporate governance reforms.[192] The flow of FDI is therefore likely to improve when investor confidence is boosted.

It is therefore clear that Good Governance trumps all.[193] In a world of bad governance the cost of doing business is much higher, at every level. This is true even when investors are

[191] Ibid.
[192] http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp
[193] Dambisa Moyo, Dead Aid 'Why Aid is not working and How there is another way for Africa ', first edition 2009. p. 100.

securitized (that is backed by a specific asset), since the risk premium associated with the unpredictable behavior of bad government always looms large.[194]

As long as issues of bad governance linger overhead, the cost of investing in Zambia will always be exorbitantly high even when the social benefits such as skill transfer, education and infrastructure are taken into account. Yet in a world of Good Governance, the cost of doing business will be lower whether investment is securitized or not.[195] This is the kind of investment climate every investor would need as their risk will be minimized some how.

Improving governance will also require strengthening well-functioning institutions that facilitate contract enforcement.[196] Efficiency in settlement of commercial disputes is generally limited by length procedures, lack of qualified and independent judges, weak enforcement mechanisms.[197] Policies towards the simplification and cost reduction of formal legal
procedures will strengthen contract sanctity and property rights and improve the level of confidence that investors have in the investment environment of the region.[198]

5.3 GOVERNMENT INTERVENTION TO GOOD GOVERNANCE.

Zambia implemented a 24.3 United States million dollar Millennium Challenge Account (MCA) Threshold Program from 2006 to 2008 that targeted three important areas, namely:

- addressing administrative corruption by helping to streamline business processes at the Ministry of Lands, the Department of Immigration, and the Zambia Revenue Authority;[199]

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194 Dambisa Moyo, Dead Aid, p143.
195 Ibid, p143.
196 Ibid, p228
197 Ibid
198 Ibid
199 2009 Investment Climate Statement Bureau of Economic, Energy and Business Affairs, February 2009 U.S. Department of State.

- improving the environment for doing business in Zambia, by helping the newly-created Zambia Development Agency to simplify business registration, licensing, and inspection procedures, and to rationalize the economic regulatory framework, and by supporting Provincial offices of the Patent and Companies Registration Office (PACRO) to facilitate greater investment outside of the capital;[200]
- facilitating trade by helping to increase the efficiency of procedures at the borders through modernization of customs and border control.

As a result of the Threshold program, Zambia met its anti-corruption target and was determined in December 2008 by the Millennium Challenge Corporation to be Compact eligible.[201]

Zambia has the Anti-Corruption Commission (ACC), which investigates allegations of misconduct. In 2002, the government also formed a Task Force on Corruption to spearhead efforts to hold accountable high level officials from the previous administration.

Zambia also ratified the Southern African Development Community protocol against corruption in 2003. In 2007, Zambia became a party to the United Nations Convention against Corruption and ratified the African Union Convention on the Prevention and Combating of Corruption. However, these have not yet been put into force, and Zambia lacks adequate asset forfeiture, whistleblower protection, anti-money laundering, asset disclosure, evidence, plea bargaining, and freedom of information laws. Furthermore, transparency International has an active Zambian chapter.[202] This chapter tries to put pressure on various actors to ensure that they do not turn a blind eye towards issues of bad governance and corrupt practices whether it involves an official at a high level of public, private sector or otherwise.

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[200] 2009 Investment Climate Statement Bureau of Economic, Energy and Business Affairs, February 2009 U.S. Department of State.

[201] Ibid.

[202] Ibid.

5.4 GOVERNMENT'S EFFORT IN FIGHTING CORRUPTION.

During the 1990s, corruption undermined the economic stability of Zambia. The problem pervaded Zambia ranging from senior government officials abusing the privatization process to local policemen committing extortion.[203] The current and previous administrations have supported a campaign to uncover past abuses, punish perpetrators, and recover assets, with mixed results. Petty corruption remains common, as low salaries for government employees undermine efforts at reform, and extensive regulations create opportunities for bribes. The issuance of land titles has also been singled out as a process particularly susceptible to corruption.[204]

In Zambia the fight against corruption is quite evident for instance, at former President Mwanawasa's urging, Parliament lifted former President Frederick Chiluba's immunity from prosecution, and he is among those charged with various offenses. In October 2006, the Task Force secured a conviction against former managing director of Zambia National Commercial Bank, Samuel Musonda, for 44 counts of abuse of office. Two other convictions were secured in 2007 against Dr. Kashiwa Bulaya, former permanent Secretary in the Ministry of Health, and former Zambia National Service Commandant Brig. Gen. Wilford Funjika, both for abuse of office. In 2008, former Zambia Privatization Agency Chairman Francis Kaunda was given a two-year jail sentence for abuse of office. The former Air Force Commander Lt. Gen. Christopher Singogo was given a six-year prison term for abuse of office in January 2009.[205]

5.5 CONCLUSION.

It is important to note that good governance and the rule of law should prevail to the required degree so as to make Zambia an attractive investment destination. This also applies to corporate, societal, and criminal law[206] Corruption and bad governance will always be a deterrent to FDI if not addressed adequately. In this paper reference has

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[203] 2009 Investment Climate Statement-Zambia.
[204] Ibid.
[205] Ibid.
[206] http://www.usafricainvestment.com/

already been made to the fact that corruption increases the cost of doing business to a great extent. It is therefore necessary that it is not tolerated at any level.

5.6 RECOMMENDATIONS

5.6.1 Legislation Review.

The current legislation seems to favour investors in a number of ways. For instance, Investors are given tax breaks and generous incentives for specific investments values in a bid to encourage the flow of FDI. Some of these minimum investment levels are beyond the reach of most Zambian, at the end of the day Zambian are automatically cut off from such benefits. Reducing these limits so as to accommodate the Zambian citizens would be of great benefit to the citizens and the nation as a whole.

5.6.2 Development agreements

Development agreements also need to be respected by both government and investors. Changing the terms after signing the agreement in the long run may lead to loss of confidence in government and also loss of revenue if the investors decide to take legal action and the outcome of such action turns out to be in their favour.

5.6.3 Law enforcement.

Enforcement mechanisms should be strengthened. For instance investors who willfully flout labour laws by paying wages below the prescribed minimum should be prosecuted accordingly so that the interests of Zambians can be protected. It has also been observed by other writers that we need stronger institutions to enforce the existing laws for without those stronger laws are impotent.[207]

5.6.4 Incentives.

[207] Sangwani Patrick Ng'ambi. "Is Zambia Full benefiting from Foreign Direct Investment?" Commerce Gazette (May – June 2009).

There is need for incentives such as Tax breaks to be given out selectively and also to specific strategic sectors. This is the only way government can save its resources as the current wholesome package of incentives has not proved beneficial to the nation. Investors still go after getting their returns. Taking a leaf from what is obtaining in Namibia would be of great benefit to the nation as a whole. Unlike the Zambian Development Agency, the Foreign Investment Act of Namibian[208] does not offer incentives to companies just because they account for investment inflows and are called Investors; incentives are only available to Manufacturers and exporters. Such restrictions or strategies help the country achieve strategic objectives related to such aspects as employment; technology transfer, exports and development of a particular area can be quite beneficial to the nation in general.[209]

5.6.5. Improvement of Administrative infrastructure.

Institutions that deal with investors such as the ZDA, Immigrations and various ministries should be equipped with the required manpower and skills to ensure that bureaucratic tendencies are minimized.

5.6.5 Social responsibility programs.

Government should also have a deliberate policy to compel investors to have a social responsibility program agenda. A good example of this is what Lumwana mine has done in North western province. It has built houses and provided social amenities to the people in that area. Therefore, even if they will only start paying tax after a long time (Tax Break) they would still have contributed in one way or another to the development of the nation.

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[208] Foreign Investment Act of Namibia Act No. 27 of 1990.
[209] 2009 Investment Climate Statement-Namibia.

BIBLIOGRAPHY

A. Books

1. Dambisa Moyo, Dead Aid . 'Why Aid is not working and How there is another way for Africa,' first edition 2009.
2. Harry G Broadman, African Silk Road. China and India's New economic Frontier, World bank 2007.
3. Dr. Mwangala Kamuwanga, "Negotiating Investment Contracts" Investment law in the Context of development, Muiltmedia publication, 1995.
4. J Lungu and A Fraser. 'For whom the windfalls? Winners and Losers in The Privatisation of Zambia's Copper Mines'.

B. Publications, Reports, Print Media and Electronic Media.

1. International Monetary Fund (IMF), 1993. Balance of Payments Manual, fifth edition (Washington, DC).
2. Foreign Direct Investment, United Nations Conference on Trade and Development, www.unctad.org
3. World Development report, 2005- A Better Investment Climate for Everyone. The World Bank Washington, D.C.
4. Article by Jeffrey P. Graham and R. Barry Spaulding, Foreign direct Investment
5. CUTS, 2003 Investment Policy in Zambia – Agenda for action.
6. http://www.investopedia.com/terms/t/tax-holiday.asp.
7. http://www.investopedia.com/terms/w/windfalltax.asp.
8. Article by Muweme Muweme, Foreign Direct Investment in Zambia - Business and Economy on 9th March , 2004.
9. The Balance of Payments Statistical Committee of the Government of the Republic of Zambia, Foreign Private Investment and Investor perception s in Zambia 2007/8.
10. http://www.usafricainvestment.com/

11. 2009 Investment Climate Statement- Zambia, Bureau of Economic, Energy and Business Affairs February 2009. U.S. Department of State.
12. http://www.zda.org. zm.
13. An Investment Guide to Zambia, Opportunities and conditions, August 2006.
14. Untited Nation Conference on Trade and Development, 'Investment Policy review- Botswana 2003, p
15. 2009 Investment Climate Statement-Botswana, Bureau of Economic, Energy and Business Affairs February 2009. U.S. Department of State.
16. 2009 Investment Climate Statement-Namibia, Bureau of Economic, Energy and Business Affairs February 2009. U.S. Department of State.
17. N. Mwilima. 'FDI in Africa' , Africa Labour Research Network. Social Observatory Pilot project 2003.
18. Morisset, 'Foreign Direct Investment in Africa', 7/Appendix
19. http://www.transparency.org/policy_research/surveys_indices/cpi/2008
20. State Department's 2008 Human Rights Report for Namibia:
21. http://www.state.gov/g/drl/rls/hrrpt/2008/af/119016.htm
22. The World Bank's doing Business Project provides objective measures of business regulations and their enforcement across 178 economies and selected cities at the sub national and regional level. http://www.doingbusiness.org/.
23. Foreword by Kofi Annan(former Secretary-General of the United nations),
24. 'UNCTAD Foreign Direct investment in Africa: Performance and Potential', Newyork, June 1999. http://www.focac.org/eng/
25. J. Clark and C. Allison, Debt and Poverty, (Oxford: Oxfam, 1989)
26. Kenneth Mwenda, Legal Aspects of Foreign Direct Investment In Zambia (December 1999).
27. C. Handy, Understanding Organisations, (London: Penguin Books, 1993), pp. 145, 186, 195-197, 201-208, 210-216, 330-331 and 405; see also R.L. Flood, Beyond TQM, (Chichester: John Wiley & Sons, 1993), pp. 118-123.
28. United Nations, Statistical Yearbook, Thirty-ninth issue, (New York: United Nations, 1994).
29. The Economist, Vol. 332, Issue 7872, July 16th 1994, p. 38.

30. Djankov, Simeon,Caralee Mcliesh and Rita Ramalho, Regulation and Growth, Economic letter, 92, 3, pp. 395-401.
31. Sangwani Patrick Ng'ambi. "Is Zambia Full benefiting from Foreign Direct Investment?" Commerce Gazette (May – June 2009)