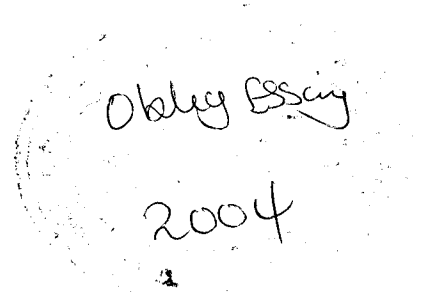


THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



**THE ROLE OF THE LAW IN ATTRACTING FOREIGN DIRECT
INVESTMENT IN ZAMBIA**

By Christopher Mumba

**A paper submitted to the University of Zambia in partial fulfilment of the
requirements for the award of the degree of Bachelor of Laws of the
University Of Zambia**

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that this obligatory essay under my supervision,

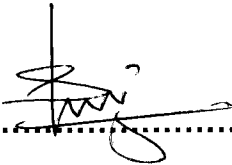
By Christopher Mumba

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**be accepted for examination. I have checked it carefully and I am
satisfied that it fulfils the requirements relating to the format as laid
down in the regulations governing obligatory essays.**

Date: 19/7/2025

Supervisor: 

Stephen. M.Lungu

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Dedication

The expectation from the readership is that a piece of work of this sort should be dedicated to my mother, father or a close family member. Because of the importance of the content of this work, I can only dedicate it firstly to my country, Zambia and secondly to all who are willing and able to show grace and pardon to my country, Zambia. My country, among others especially in Africa , is so afflicted with unexplained economic trouble and there is little hope that this trouble would ever fade away from my country.

ACKNOWLEDGMENT

I would like to thank a lot of people who have contributed to this obligatory essay in different ways

Mr Stephen Lungu: He has not only been my mentor but he also accepted to supervise this work. He offered me with valuable direction which has been become manifest in the finish of this essay.

Mrs Patricia Lungu (Bana Ngosa): Despite Mr Stephen Lungu being my mentor he vehemently refused to supervise this work because he had become overwhelmed with work of sorts and types. She persuaded him to supervise my work and he later obliged. I will be eternally grateful to her.

Mrs Irene Nachilobe: I do not know what I could have done without her. She helped me with resource materials and I acknowledge that her help was beyond her duty as a librarian.

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Mr Mumba Malila: I am grateful to him as well because he allowed me to change from the topic that I had earlier chosen to this not only value adding but fulfilling topic.

There are still several other persons who helped me in to accomplish this work and I am not able to particularly thank them because of limited space on this paper, but I with due sincerity do thank them in truth and in spirit. My prayer is that God will abundantly bless all those who have helped me in this cause.

PREFACE

I decided to write on this topic because of the crucial role that foreign direct investment currently occupies in Zambia in the quest to revitalize the economy of the country. Further that on the local scene especially, there is not so much writing to provide the government, the citizens and indeed the scholars with sufficient literature that would help them balance their views when dealing with issues regarding foreign direct investment.

It is the authors view therefore that this writing would not only provide excitement to the reader but also that it would impart wisdom, that is if there is any wisdom in this writing, to the person who so reads it.

It is also acknowledged that not so many University of Zambia law students do not normally choose topics on investment law because this course is usually taught in the second semester of the academic year, by which time the students would have chosen the topics on which to write their obligatory essays.

The above factors put together moved the author of this document to choose a topic on investment law as it particularly applies to Zambia.

This essay is in three chapters .

The first chapter defines what foreign direct investment is and why foreign direct investment is a better source of capital for Zambia, comparing with other sources of capital.

The second chapter discusses the implementations that have been made in Zambia and also what the key results have been. It also deals with issues that Zambia needs to address in order to improve the investment climate of the country.

The third and last chapter looks at a country that must be a role model for Zambia. It not only looks at the policy of this role model but also the legal framework that governs investment in that country. A comparison is also drawn between this country and Zambia in terms of the Investment Acts.

CHAPTER ONE

The Quest For Foreign Direct Investment

1.1 Introduction

There has been a desire by the government of Zambia to attract foreign direct investment (or FDI) in Zambia.

The Chairman of the Lusaka Chamber of Commerce and Industry (LCCI) also expressed sadness that Zambia had lagged behind in the foreign direct investment sector¹. He said that foreign direct investment is the key to economic development in Zambia. The LCCI Chairman noted that every country needs² FDI in order to develop, as jobs would be created while taxes to government would also increase. While these benefits will be available to the country there are still some more indirect benefits that abound. FDI also enables other companies to benefit as their products like raw materials and services could be bought. The LCCI Chairman gave an example of South Africa as one country in the region that was ahead in attracting the FDI.

From the foregoing it can be seen that Zambia, as a country, has serious aspirations to attract foreign direct investment in the country, as the government and the business community are desirous to doing so. Attracting foreign direct investment in Zambia now occupies a very central role in both the political and economic spheres because it an imperative tool that would in

¹ Chisulo J as quoted by the business reporter in the Times Of Zambia newspaper of Friday November 14th, 2003

² Asiedu E in her article entitled Foreign Direct Investment to Africa said that the answer to the question why FDI is important to a country will depend on the needs of a country

the sense of development take Zambia forward, according to the diagnosis carried out by the local economics experts.

1.2 The Definition Of Foreign Direct Investment

What is foreign direct investment? This is one important question that we need to answer. There would be no point for us to continue talking about foreign direct investment if people or indeed the stakeholders do not understand what it is. We need to draw a clear understanding of what it is before we can move forward in this discussion. Some economics experts have attempted to define what foreign direct investment is. Foreign direct investment may be defined as international interest in which a resident in one country obtains a lasting interest in an enterprise resident in another country. It is a situation where a foreign country creates a subsidiary to provide goods and services³.

FDI is an investment that crosses national borders. It may have the following characteristics:

- **Equity capital**-The foreign direct investor would purchase shares in an enterprise in a country other than its own.
- **Reinvested earnings**-The investor's share of earnings would not be distributed as dividends by affiliates.
- **Intra company loans or intra company debt transactions**- this is the short term or long term borrowing and lending of funds between direct investors and affiliate enterprises.

³ This is how Makola Mosima defines foreign direct investment in the article entitled The Attraction of Foreign Direct Investment by the African Countries

1.3 The Investor's Motivation To Invest In A Foreign Market

In most countries FDI serves as one of the engines of successful transition. It is the primary means of transferring private capital ⁴, technology, personnel and access to brand names and marketing advantage.

While we make attempts to attract the FDI it is also necessary to know what reasons would make the investor to come and establish his undertaking in our country. The investor undertakes FDI in a foreign market for a number of reasons, some of which are here below. However the investor would undertake FDI in a foreign market if there is assurance of ownership advantage over the local competitors. We now assign some reasons why investors would decide to invest in a foreign market, as opposed to their local market. These reasons are as follows:

- There is a shortage of raw materials in the home country and there is need to obtain them from a foreign country
- Transferring investment to a foreign market would yield more profits for the investor (i.e. this is akin to the rule of comparative advantage)
- There is a pledge arising from mere moral duty, to help a specific foreign market by transferring investment into this foreign market
- The competition in the export market is threatening a firm and so the firm now desires to protect its market share by positioning it self well in this export market
- As a consequence of the foreign investor desiring to enter a foreign market

⁴ This capital could either be physical or financial

- The situation in the home country offers some risks and so the investor desires to either mitigate probable loss or prevent loss by taking it to a host country where the risks are not as high as in the home country.

Despite the fact that there would be the transfer of investment, the ownership of the investment will still vest in the investing home country⁵.

1.4 Trans National Companies And The Concept Of Foreign Direct Investment

The foreign direct investment has become to be widely accepted as an engine for growth, although the needs for FDI will vary from country to country⁶. FDI has indeed been a major source of capital in many developing countries in the world. Since many developing countries do not have adequate domestic capital, they adopt measures to attract capital from external sources.

Institutions such as the trans national corporations (TNCs) may be used to transfer this much desired FDI. This position has been enhanced by the globalisation policy which in effect has given impetus to this worldwide trend towards integration of markets, and has led to a change in the FDI strategies of the TNCs. The United Nations Conference on Trade And Development (UNCTAD) report of findings⁷ reveal that FDI continues to increase at global level as TNCs integrate their business through out the world⁸. It is also a great phenomenal feature that foreign entities tend to be more export oriented than

⁵ As asserted by Makola Mosima in the article entitled The Attraction of Foreign Direct Investment by the African Counties

⁶ Muweme M in the article Foreign Direct Investment Per JCTR Bulletin No 50, Fouth Quarter 2001 said that FDI has played a significant role in the economic development of countries

⁷ This report was made in 1999

⁸ The UNACTAD 1999 report confirms that the FDI transfers technology as well as firm specific assets to host countries

local firms as they have better access to internal production than distribution networks.

It is also recognised that foreign firms are often more efficient than smaller local firms and have the resources to attract workers and finance away from host firms⁹.

1.5 Foreign Direct Investment As An Engine For Economic Growth

There is a clear basis that motivates the use of FDI as an engine to stimulate economic growth, as opposed to other alternatives that may be available to a country, such as Zambia. The following are some of the reasons that motivate the use of FDI an engine for growing an economy.

- There is usually no domestic capacity to provide financial resources that are required to stimulate economic growth hence the need for externally sourced finances
- There is no assurance of both the continued flow and continued sustainability of foreign aid and grants from donors. Giving of aid and grants is a prerogative of the donor and for him to give he must have both the resources and the desire to donate. A donee neither has the discretion to determine the quantum of the donation nor when the donation must flow.
- Loans impose a burden on a party to do business, as the party must create enough money to service the loan.

⁹ Mosima,M ,The Attraction of Foreign Direct Investment by the African Countries pg2

- A country may not be loan worthy, that is, if it fails to meet the usually stringent loan borrowing conditions. The consequence of this is that the country will fail to access the loan(s)
- The foreign indirect investment (i.e. which includes bond finance and portfolio investment) is unavailable to most African countries-most of the countries in the region cannot raise funds from international capital markets. As a consequence, a bulk of external resources needed for poverty alleviation has to come from the FDI¹⁰.

1.6 Zambia's Economic Back Ground

In order for us to appreciate the need for foreign direct investment, it is necessary for us to understand how the Zambian economy has either progressed or indeed retrogressed from the time of independence up to date. Zambia is a landlocked country¹¹. The distance from the nearest border town to the sea is at least 1,000km.Zambia gained her independence from Britain in 1964.In the first decade of her independence, Zambia gained considerable economic growth. During that period Zambia's socio economic sector manifested substantial rates of growth, especially in the manufacturing sector. The government pursued the policy of diversification of the manufacturing industry. Prior to its independence, however, Zambia depended heavily on manufactured goods imported from South Africa. The diversification policy

¹⁰ Asiedu,E,Foreign Direct Investment To Africa

¹¹ The Southern African Regional Poverty Network, April 2004 reports that despite the disadvantage of being land locked Zambia was one of the wealthiest countries in Sub Sahara. This position begun to change in the early 1970's

pursued achieved considerable success in this regard, despite the acute shortage of skilled manpower and a serious transport bottleneck¹².

Some statistics are given here below in order to give us a picture of the economic progress that Zambia made between 1964 and the 1970s¹³.

- The index of industrial production for all manufacturing sectors increased from 124.4 in 1964 to 221.2 in 1967
- The Sectors GDP increased from K28m(US\$40.3m) in 1964 to K95.5m(US\$136m) in 1967¹⁴
- Employment expanded from 268,000 in 1964 to 372,130 by June 1970
- Employees also enjoyed a 97 percent pay rise in earnings ranging from 1964 to 1969. In the same period the consumer price index rose only by 37 per cent.

Resources which Zambia had were also used during the first decade of independence to expand the economic infrastructure due to fears of effects of the Unilateral Declaration of Independence (UDI) which Rhodesia had declared in 1965. When Rhodesia declared its Unilateral Declaration of independence in 1965, the Zambian Government responded with a policy of disengagement from the inherited southern neighbours by adopting actions such as

- The completion of the oil pipeline from Dar Es Salaam port in 1968
- Completion of the Tazara (i.e. the rail linkage to Dar Es Salaam) by 1974
- Mining of its coal deposits

¹² Southern African Regional Poverty Network, April 2004

¹³ The source of these statistics is the Southern African Regional Poverty Network December 2004

¹⁴ The Southern African Regional Poverty Network December 2004 affirms that the copper price was very high thereby giving result in a 13 percent on average in the growth of the economy

- Air traffic control etc...

In short, Zambia divested itself from its reliance on its southern neighbours for certain goods and services which Zambia was normally obtaining therefrom.

When the Rhodesian Government decided to close the border with Zambia in 1973, the said policy actions proved very effective¹⁵. The border was closed, as the Rhodesian Government believed that Zambia was supporting 'terrorist' freedom fighters against the former. The first ten years of Zambian independence will also go down in the history as the period during which considerable foreign direct investment came into the country under many bilateral agreements.

Aside from the resources that were spent to create infrastructure, Zambia had to put up substantial defence lines and humanitarian support to help the vast of her neighbours who were either fighting internal post independence wars or were fighting the colonising powers for political liberation¹⁶.

While the government also had to grapple with the problem of localisation of manpower in the civil service and the mines, it needs to be recognised that considerable economic growth came about due to two main factors below:

- The deliberate government policy of filling the indigenous business gap through nationalisation and investments into formerly foreign-owned corporations operating in Zambia following the 1968 Economic Reforms. The Government was able to perform this investment

¹⁵ Southern African Regional Poverty Network December 2004 publication

¹⁶ Congo (formerly Zaire) was fighting internal post independence wars while Angola, Namibia, South Africa, Mozambique and Zimbabwe were fighting for political liberation. This period witnessed sabotage on Zambia's infrastructure such as bridges, buildings and installations and resources had to be put up in order to restore the status quo. It also needed resources for security and providing welfare services to refugees and other displaced citizens of Zambia

function from the copper sales proceeds due to the prevailing high prices at the time

- When the Government of Southern Rhodesia declared a UDI, Zambia disengaged itself from that country. As a result, firms that previously exported to Zambia sought to safeguard their markets by investing directly into Zambia.

Things began to deteriorate in the mid 1970s, due to the fall in the export price of copper and an increase in the prices of imported petroleum products.

This external shock had the following consequences:

- The depletion of the Country's external reserves
- The rise in external borrowings
- The rise in foreign aid

The external borrowings and foreign aid were not only inadequate but also not sustainable in the long run because it increased the country's indebtedness. Since then, Zambia has experienced down turns, largely due to little or no investment in many sectors of the economy, especially the state dominated parastatal sector, which controlled over 80 per cent of the economy, including the mainstay, the mining sector, until the 1990s¹⁷. Further the little investment that took place continued to be in the traditional raw material production, an area that is very sensitive to the adverse impacts of the lowering prices and competition from synthetic products. In short, limitations to value-added production have continued to haunt the economy.

¹⁷The Southern African Regional Poverty Network December 2004 reports that Zambia's external debt rose from US\$814m in the early 1970's to US\$3,244m at the end of the decade. The situation further deteriorated with Zambia's external debt more than doubling to US\$6,916m at the end of the 1980's decade

In 1991 the country moved from the one party participatory democracy to a plural parliamentary democracy. A new government committed to a free market capitalist system was elected.

The socio challenges that abound the country in the face of the daunting economic scenario have largely had a negative impact on the people. In this regard, we observe therefore that¹⁸:

- The human development index has continued to deteriorate and nearly three quarters of the population has been categorised as poor.
- Zambia's average annual population growth rate ranges between 2.7 and 3.1 percent in rural and urban areas.
- The country's population below the age of 15 was estimated to be 49 percent in 1977, a figure that underlines a high dependency ratio to overall population.
- By 1993, about 42 per cent of the population density was as low as 13.6 persons per square kilometre.
- The life expectancy, according to the official estimates of 2002 is 50 years and almost a quarter (i.e. 23 per cent) of the population cannot read or write. Whereas the water and sanitation facilities have remained inadequate, food security has not been guaranteed over the years.
- Zambia has a dual economy, dominated by an industrial copper mining and processing enclave, while the rest of the country is dependent on rain fed smallholder agriculture.

¹⁸ Southern Africa Regional Poverty Network, December 2004

- The Gross National Income (GNI) is estimated to be around 3US\$bn and the capital income is US\$300. In terms of international comparison, Zambia is classified as a least developed country (LDC) and rated as an externally highly indebted and internally distressed poor country, under HIPC categorisations.
- According to the World Bank Group Report 2002, 73 percent of the population has been classified as poor¹⁹

It is on the basis of the foregoing that the people of Zambia are seeking a way forward in tackling poverty and deprivation.

1.7 Foreign Direct Investment As The Option For Zambia

An empirical analysis of the past shows that FDI helped to improve Zambia's economy, that is from the time of independence in 1964 to the early 1970's, whereas loans and grants which became the source of finance from the early 1970's to date have not brought economic prosperity to Zambia but only worsened Zambia's position. This empirical data therefore presupposes that FDI is the way to go and there is desperate need for Zambia to attract it as source of capital.

¹⁹ The source of this data is the Southern Regional Poverty Network December 2004 publication

CHAPTER TWO

Attracting The Foreign Direct Investment

2.1 Washington Consensus

In the preceding chapter we have mentioned that when the economy of the country started to decline due to factors such as the declining copper prices²⁰ and the escalating petroleum importation prices, the country had to turn to the IMF and the World Bank for economic support. As part of meeting the conditionalities of these donor and aid organisations, the Government of Zambia had to make certain implementations as prescribed to it by the World Bank and the IMF.

While the IMF and the World Bank gave loans and aid in certain instances, the two institutions also recognised that FDI was very crucial in the development of countries, Zambia included. They therefore gave conditions that had to be fulfilled by any members or countries if they had to access these loans or aid.

In the 1990's decade the world had been under the impression that there was a clear and robust consensus about what a poor country should do to become more prosperous²¹. The answer to the poor countries economic desires laid in the Washington consensus²², a term which was coined by the economist John Williamson. He listed the ten policy recommendations for countries willing to

²⁰ Zambia solely depended on copper as a major revenue earner of the country

²¹ Naim M, Fads And Fashion In Economic Reforms Pg1

²² In the early 1990's the IMF and the World Bank came up with prescriptions that have had a serious impact on the Zambian economy. These conditionalities or indeed recommendations are now commonly referred to as the Washington Consensus.

reform their economies²³.The following are the ten listed policy recommendations of the Washington consensus.

- Fiscal discipline
- A reduction of public expenditure
- Tax reforms
- Interest rates liberalization
- A competitive exchange rate
- Trade liberalisation
- Liberalisation of inflows of foreign direct investment
- Privatisation of public undertakings
- Deregulation to abolish barriers to trade
- Secure property rights for investors

It was not a question of what the government thought was in the interest of Zambians or indeed the economy, that was to be implemented but these prescriptions of the IMF and the World Bank. If this was not done, Zambia was not going to see favour in the eyes of the multilateral partners for any loans or aid that it required.

2.2 The IMF And World Bank Recommendations For Zambia

The following are the recommendations or the prescriptions of the IMF and the World Bank that Zambia had to embrace and implement.

Reduction Of Public Expenditure

It was a conditionality of the IMF for the Government of Zambia to curb public spending if the government was to receive favourable support of the IMF in

²³ Naim M, Fads And Fashion In Economic Reforms Pg2

recovering the economy of the country. The Zambian government implemented this conditionality and it still remains in force.

In order to achieve the above policy prescriptions the government came up with certain interventions. We here below append some of these interventions²⁴:

- The government strengthened the laws and institutions of accountability. Due attention was given to laws dealing with accountability so that they would be strengthened. The government re-echoed Parliament's responsibility of controlling government expenditure.
- The government felt that the best way to curb public expenditure was to firstly get the budget allocation right. Therefore budgeting occupied a very important role in addressing public expenditure as it constituted a very important starting point.
- The government also came up with a plan of ensuring that funds went where they supposed to go. Cash rationing was later abolished and replaced with expenditure controls. Payrolls were also put in a place where they could be effectively monitored.
- There was also a realisation that it needed to improve government spending. Government's annual expenditure was in the region of US\$485m, representing 15% of the GDP. It was felt that if government saved about 10% on its expenditure then a prize of US\$50m would be saved every year. The government became desirous to strengthen public procurement in order to effectively deal with this element.

²⁴ As extracted from a document dubbed improving delivery of public services , Zambia, February 2004

- This prescription, as a consequence of its implementation, also forced the government of Zambia to abandon plans to provide a living wage to the public sector workers for it feared to increase its budget deficit from 1.55% to 3%²⁵

Trade Liberalization

Trade in Zambia was liberalised although this proved disastrous for Zambia's manufacturing sector²⁶. The textile manufacturing, among other sectors was so badly hit. The lowering of tariffs on textile products, and particularly the removal of all tariffs on used clothes led to large increases in imports of cheap used clothing from industrialised countries²⁷. The Zambian textile industry could not compete with these imports and therefore the sector has all but vanished. Local statistics show that there were some one hundred and forty textile manufacturing firms in 1991 and remained a paltry eight of them by the year 2002. Even those companies which had survived had their capacities significantly reduced. We draw the example of Swarp Spinning Mills which in 1991 had a labour force of 250 employees who produced 3.5tons of product but by the year 2002 the labour force of the company had reduced to 25 employees and could only do less than 500tons of product ²⁸. The collapse of the manufacturing sector is a clear testimony that the liberalisation of the sector is not sufficient by itself to attract foreign direct investment.

²⁵ Colludo, Zambia Condemned To Debt, pg3

²⁶ ibid Pg5

²⁷ ibid Pg2

²⁸ ibid Pg2

As a consequence of the policy of trade liberalisation a lot of companies opened up only to do quick business, realised some profits which were immediately externalised, and thereafter these companies closed off business in the country. This did not operate in the interest of the country at all as it did not inspire economic growth.

Privatisation

Privatisation was one of the strongest features of the IMF and the World Bank²⁹, arising from the Washington consensus. In Zambia, the Privatisation Act was enacted and it provided the legal framework for the privatising of companies. Privatisation was about transferring of state run enterprises into private hands³⁰. This was meant to make them operate more effectively. Previously Zambia ran a political economy which worsened her debt position as we saw in Chapter one. Now she runs a market economy which emphasises private enterprise and free market forces³¹.

The privatisation programme in Zambia came with the advent of plural politics in 1991. All state owned and or run companies were lined up for sale and were bunched in the tranches so-called. Guidelines for the sale of these companies were made³². It was however regrettable that the process of privatisation was not only designed to bring in private ownership into the business sector but also to generate revenue for the government through the sale of the enterprises. While the investors quickly went for those companies that were doing well, others also went for those that had large and attractive assets. In

²⁹ Colludo, Zambia Condemned To Debt Pg2

³⁰ *ibid*

³¹ Mwenda, Legal Aspects Of Foreign Direct Investment In Zambia Pg7

³² The Privatisation Act provided the legal framework for the sale of the state owned or run enterprises

any case, these investors only bought off these undertakings very cheaply. Sadly, as if this is not unfair, some of them took the newly purchased assets away from the country without lawful authority. Excuses of diverse nature were given for taking these assets away. Some said they wanted to have them reconditioned and that they would eventually return them, others said the equipment was only scrap metal as it was obsolete and that they would bring in proper equipment for production and so forth. The privatisation exercise therefore to a large extent only ended up being a shopping spree for the investors so-called instead of it being a lever that was to advance Zambia's desire to grow the economy. Carefulness should have been exercised in the selling of the state run companies so as to give a benefit to the local economy. It required to look at some issues very carefully before commencement of the process to sale the companies. Some of these issues are like

- The pricing of companies and assets,
- The selection of investors by checking their credibility,
- The protection of assets given away
- And also ensuring that the businesses acquired did not close the following day so as give room to other foreign companies in which investors had interest to start exporting into Zambia.

President Mwanawasa notes that the privatisation programme that Zambia had embarked on pursuant to the Washington consensus has not brought any benefits to the country. Instead it has led to poverty, asset stripping and job losses³³. In fact the foreign investors who purchased the privatised companies

³³ Colludo, Zambia Condemned To Debt, Pg2

only took over the already existing companies especially those that were vibrant³⁴

Fiscal Policy

The government of Zambia in order to address runaway inflation problems and budget discipline problems in the early 1990's had to address the cash budget so called³⁵. In this practice of cash budget, the government domestic spending became limited to domestic revenue and there was no room left for over spending. In any case the developing countries have argued that the World Bank and the IMF prescriptions for fiscal austerity have more to do with pleasing international creditors than with long term growth prospects of the economy³⁶.

In UK, a UK spokesman said that the UK was not going to accept a stability pact from the IMF, the European Commission or anybody else and that the IMF had an ideological opposition to public spending. Unfortunately, Zambia does not have the same luxury of being able to ignore the IMF³⁷.

Tax Reforms

There have been tax reforms in favour of the aliens coming to invest in Zambia³⁸. Part IV of the Investment Act 1993 of Zambia lists the various tax concessions and initiatives that are available to a foreign investor. These tax incentives are not only meant to make the investor come to Zambia but also

³⁴ Muweme M, Foreign Direct Investment Pg3

³⁵ Dihn&Adugna The Impact Of Cash Budgets On Poverty Reduction In Zambia

³⁶ GPF Global Policy Forum, The World Bank And IMF At Sixty Pg1

³⁷ Colludo, Zambia Condemned To Debt Pg3

³⁸ Mwenda ,Legal Aspects Of Foreign Direct Investment In Zambia Pg3

to stay³⁹. These tax reforms were part of the Washington Consensus prescriptions.

Tariff Barriers

Tariffs in Zambia which ranged between 40 to 60 per cent were reduced to 0,5,15 and 25 per cent pursuant to the Washington policy which also stems from the four line tariff system devised by the IMF⁴⁰.

While this implementation had the sad effect of the government losing revenue and also giving protection to the local industries by encouraging production, the government had to do it any way because it wanted to draw the sympathy of the multilateral partners.

Exchange Rates And Interest Rates

These are now market driven according to the demand and supply patterns obtaining in the market place. They are no longer centrally controlled or dictated nor are they politically driven as the case was before the implementation of the Washington Consensus recommendations.

2.3 The IMF And World Bank Recommendations Failed

The Washington consensus has failed to realise its ideals for Zambia and elsewhere it has been implemented. Audiences world over seem to believe that the consensus is a set of neo liberal policies that have been imposed on hapless countries and that these countries have been led to crisis and

³⁹ ibid pg4

⁴⁰ Colludo, Zambia Condemned To Debt, Pg4

miser⁴¹. All the requirements of the Washington consensus were implemented by the Zambia government, as it was desperate to reform its economy although the recommended policies did not bring the desired FDI as was envisaged. There have only been investment promises in the form of investment pledges and they have not translated into actual investment⁴². To confirm failure of the Washington consensus, the World Bank president James Wolfenson says that critics should stop going back to things that were addressed five years ago. The bank says it has moved from the Washington consensus to the post Washington consensus⁴³.

2.4 How Much Foreign Direct Investment Has Zambia Attracted

The Lusaka chamber of commerce and industry expressed sadness that Zambia has lagged behind in the FDI sector which is key to economic development in every country⁴⁴. It has also been said that much of the talk about FDI particularly in as far as factors attracting it to Zambia has been more or less perfunctory⁴⁵. There is a thesis that there are factors other than economic policies that need to be given attention if Zambia is to be an attractive FDI destination.

⁴¹ Global Trade Negotiations, Washington Consensus pg1

⁴² Muweme M, Foreign Direct Investment Pg3

⁴³ GPF Global Policy Forum, The World Bank And IMF At Sixty Pg1

⁴⁴ Chisulo, in the Times Of Zambia publication of November 14,2003

⁴⁵ Muweme M, Foreign Direct Investment Pg1

The following table shows the investment flows for Zambia from 1993 to 2004

Sector	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total
Agriculture	137,015,177	69,663,201	63,224,778	101,641,396	26,066,439	43,305,299	28,713,098	8,492,824	26,399,539	12,036,605	37,120,802	31,545,862	43,305,299
Construction	10,239,542	1,262,657	3,590,900	13,713,915	20,357,193	33,018,688	2,130,552	10,355,628	4,772,615	13,065,184	10,148,500	2,801,340	33,018,688
Consultancy	685,889	257,143	0	0	0	0	0	-	0	325,800	0	0	0
Engineering	5,664,991	1,959,098	137,000	0	0	0	0	-	0	476,000	0	0	0
Financial Institutions	17,775	2,140,700	0	3,000,000	0	0	0	340,000	0	0	106,500	0	0
Fisheries	5,531,400	379,287	810,0350	53,000	1,075,000	90,000	57,000	630,000	0	0	0	0	90,000
Health	105,352	4,634,180	895,000	0	0	526,400	1,600,000	0	340,000	628,250	0	0	526,400
Manufacturing	164,709,386	193,841,249	77,836,506	40,507,128	86,881,836	114,250,491	28,261,419	31,597,666	30,476,557	7,397,227	31,382,430	45,019,710	114,250,491
Mining	24,611,964	23,016,138	2,380,438	0	5,530,000	245,000,000	10,221,000	2,322,363	14,658,945	6,900,000	656,766	14,547,563	245,000,000
Service	2,634,111	14,001,089	15,610,573	19,031,325	59,561,076	501,511,979	68,779,570	9,925,274	26,526,594	41,574,226	3,829,468	14,014,383	501,511,979
Tourism	31,430,629	9,514,903	23,820,044	9,734,272	63,549,497	92,099,796	8,850,296	18,835,420	13,956,040	645,175	17,541,500	4,736,545	92,099,796
Transport	68,907,859	7,498,533	67,865,988	640,000	2,032,500	14,795,712	1,360,000	2,580,099	0	0	20,160,968	3,685,292	14,795,712
Total	451,554,075	328,168,178	256,171,577	188,321,036	265,053,541	1,044,598,365	149,972,935		117,130,290	83,048,467	120,946,934	116,259,695	1,044,598,365

Source: The Zambia Investment Centre

The table on the preceding page shows the total investment that constitutes both the foreign direct investment and local investment component. However, the local investment in the table above ranges between 1% and 5%, leaving the other as foreign direct investment. From this table, we are able to form a picture of how much FDI we have attracted as a country and as such we draw the following observations:

- The average FDI that has come into the country from 1993 to 2004 has been at the average of US\$267million per year
- The highest FDI ever in this period was in 1998 which has been explained by the privatisation of the mines and the coming in of service industries that sought the anticipated boom in the economy following this take over of the mines by the private investors.
- The FDI in the earlier years of privatisation was slightly higher but it has now been all time low

2.5 Why Zambia Has Failed To Attract Substantial Foreign Direct Investment

Rich Countries: The most active destination of the FDI still is the rich countries⁴⁶. The reason is of course very obvious. There is established infrastructure, stable currency, consistent and transparent government policy, skilled labour, large market etc...Further investors bringing in FDI hail from these rich countries and as such are more comfortable to invest in their own countries or region.

⁴⁶ Muweme M, Foreign Direct Investment Pg 3

Land Locked Position: Zambia's land locked position makes it inevitably a high cost area. Looking at statistics for 1999 for example, Zambia attracted FDI of K150million while Tanzania and Mozambique each had attracted FDI of K183million and K384million respectively. There is more favourable FDI attracted by Tanzania and Mozambique because they both have easy access by sea transportation⁴⁷. If Zambia has to meet the favourable cost expectations of investors it needs to lay transport infrastructure which will provide cheaper transport solutions to the Investors.

Poverty in Zambia: Zambia is also caught up in the poverty trap. Reports that eighty percent of the people live below the poverty line make it difficult to attract investment⁴⁸. The country must address itself to the poverty problem especially by enhancing local productivity and make Zambia an attractive place to work and live in.

HIV Aids Pandemic: The HIV/Aids situation in Zambia does not give assurance to the investors that they will retain skilled personnel⁴⁹, let alone coming out of Zambia alive. Investors are not comfortable to bring investment to a country where there is a pandemic of this magnitude not only for psychological reasons but also for reasons that operating costs are bound to be large due to escalated medical costs, illness down time, pensions for the dying employees etc... In this vein institutions and organisations dealing with aids should also be less sensational but be more factual in their reporting about Aids/HIV because the wrong picture painted scares away investors.

⁴⁷Muweme M, Foreign Direct Investment Pg 3

⁴⁸ ibid

⁴⁹ ibid

High levels of corruption: There has been some publicity that Zambian leaders are corrupt and a perception index survey made by Transparency International places Zambia on number seventy-six out of ninety countries surveyed⁵⁰. Not only must there be moral cleansing of corrupt leaders and elements in society but the laws dealing with corruption must also be sufficiently reinforced according to the principles of the rule of law. Further that pursuant to the principle rule of law the law must not be selective but visit all offenders.

Crime: Zambia should also address the social issue of crime⁵¹. Crime deters investment flows in a country, as investors would not want to go to a place where their assets and or life would be unsafe. The government's legal institutions must be called upon to sternly punish criminals with a view to deter them from conducting criminal acts. Further the government must also deal with issues of unemployment as the bulk of the unemployed citizens take to crime, not forgetting about aliens from the neighbouring countries who also come to perpetuate this vice. Stating it differently, the country must address the root causes of crime.

2.6 How Can Zambia Attract Foreign Direct Investment

There is a question that we must deal with. This question is whether FDI can ever come to Zambia. Many studies have been carried out to establish what

⁵⁰ Muweme M, Foreign Direct Investment Pg3

⁵¹ Mwenda, Legal Aspects Of Foreign Direct Investment In Zambia Pg13

factors would make a particular country an FDI destination⁵². It has been observed that the distribution of the FDI is primarily taking place in developed countries or high income countries. The World Bank reports that in 1999 the value of the FDI quoted in US Million Dollars in high-income countries was 723,130 compared to low-income countries which had only 9,750⁵³. Another serious observation made is that the distribution of FDI is disproportionate among low-income countries, with Africa having the least share of the FDI .It is also the case that even within Africa the distribution of the FDI is unproportional .For example in 1999 South Africa attracted FDI of 1,376 million dollars while Cameroon only attracted a paltry 40m dollars in FDI⁵⁴.

There is a notion that FDI is attracted into Africa because of its vast natural resources. This obviously means that countries without much natural resources will not attract the FDI⁵⁵.

While Zambia may have abundant natural resources this may not solely drive attraction of the FDI .It is necessary that the government plays an important role by ensuring that there is political stability, institutions of governance are in place and that there is openness in the way that things are done⁵⁶. Further the domestic market must be large enough with an educated labour force⁵⁷,it must have favourable labour costs and it should also have good infrastructure for doing business⁵⁸.We have already listed some factors that can deter the

⁵² Mwenda, Legal Aspects Of Foreign Direct Investment In Zambia Pg1

⁵³ Ibid Pg2

⁵⁴ Ibid Pg 2

⁵⁵ Asiedu E, Foreign Direct Investment To Africa Pg4

⁵⁶ ibid

⁵⁷ Educated labour force means skilled human resource as per Muweme M, Foreign Direct Investment pg1

⁵⁸ Asiedu E, Foreign Direct Investment To Africa Pg7

attraction of FDI but now we list here below some factors which can help to attract FDI.

Attractiveness of the host country's market: A large market implies greater demand for goods and services and therefore makes the host country more attractive for FDI. This argument is good where goods are produced and sold in the local market⁵⁹.

Infrastructure development: Good infrastructure increases productivity of investment and therefore stimulates FDI flows⁶⁰. We therefore need to sufficiently develop our infrastructure.

Macroeconomic stability: Higher inflation should be negatively related to FDI flows⁶¹. Where there is run away inflation investors become scared and so there will not be any FDI in flows into the country. Another measure of macro economic uncertainty is the exchange rate volatility⁶².

Openness to FDI: Several studies have shown that countries that are open will attract FDI⁶³ in terms of policy and law.

Incentives: One undeniable fact is that Zambia has tried to make itself an attractive destination for FDI by improving standards of treatment given to foreign firms coming to invest in Zambia. Key to this success has been the

⁵⁹ ibid Pg 10

⁶⁰ Asiedu E, Foreign Direct Investment To Africa Pg10

⁶¹ ibid Pg10

⁶² ibid pg10

⁶³ ibid Pg10

Zambia Investment Centre which has been trying to make itself a one-stop shop for investors.⁶⁴ Even in the privatisation process there was not so much emphasis given to Zambians to invest or indeed take over some parastatal companies⁶⁵ and the purpose of this deliberate move was to allow for FDI inflows.

Homely Environment: Every investor would want to sit his investment in a society where there is tranquillity and order. A very high standard of discipline among citizens and hygiene are necessary. Relevant legislation must be enacted to ensure that the ideal society is realised. The legislation would therefore need to cover aspects as environmental issues, public nuisance, town and country planning with respect to beauty and order etc...

Property Rights Protection: Other efforts linked to the Zambia Investment Centre incentives have involved providing guarantees under which the Investment 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 compulsory acquisition of that property⁶⁶ and for public purposes. Moreover full compensation shall be made on the market value and must be convertible at the current exchange rate⁶⁷.

Zambia has gone further to sign the MIGA agreement and other agreements which guarantee foreign investment protection from civil strife, disasters as well as disturbances⁶⁸. Protection of property rights is one factor that can attract investment.

⁶⁴ Muweme M, Foreign Direct Investment Pg2

⁶⁵ Ibid Pg 2

⁶⁶ Investment Act s35

⁶⁷ Muweme M, Foreign Direct Investment Pg 2

⁶⁸ Ibid Pg3

It may also be submitted that at bilateral level, Zambia has signed reciprocal promotion and protection of investment protocols with a number of countries⁶⁹.

Comfort is also to be drawn from the fact that there is a good practice that must continue. This good practice is that the Laws of Zambia per Cap 42, the Investments Disputes Convention, has adopted the international settlement of disputes between states and nationals of other states.

Social Political Stability: Zambia could be considered an attractive FDI destination because of its social and political stability for since independence Zambia has never experienced any civil strife. If a country has to attract FDI, there must not be coup detats, riots, revolutions etc...⁷⁰

Investment Opportunities Advice: While the Zambia Investment Centre may now undertake market surveys and consultancy on behalf of the investors and arising from these studies, investment opportunities are shown to the investor⁷¹, the government must adequately fund the Investment Centre so that it can effectively carry out its mandate.

As a submission in respect to attracting the FDI, the Investment Laws of Zambia must also recognise and codify the changing roles of pressure groups such as the opposition political parties, Non Governmental Organisations (i.e. NGO's so-called), the institutions of Former Republican Presidents etc...Other

⁶⁹ Ibid Pg3

⁷⁰ Asiedu E, Foreign Direct Investment To Africa Pg13

⁷¹ Ibid Pg2

than these groups merely criticizing the government of the day⁷² for wrongs being done, they must also help to campaign for the government to the various bilateral and multilateral cooperating partners so that these partners can support the economic development process of the country.

⁷² This does not mean that the government of the day should now be immune to criticism for wrongs done, the government still remains accountable for any wrongs that it commits

CHAPTER THREE

Foreign Direct Investment And The Law

3.1 How The Law Influences The Flow Of Foreign Direct Investment

We have seen the nice policies that a country can implement in order for that country to be an attractive FDI destination. We stand convinced that the policy itself can do little to attract FDI but it must be backed by a good law if we have to attract the much needed FDI. This good policy, beautiful as it may be, does not give assurance to the investors. Assurance is not given to the investors through policy itself in the following respects:

- That their property shall be protected
- That the promise as in the government policy shall not be violated by anyone who is amenable to the law
- That the promise would not change overnight, that is soon after the investors has commenced his business in the country
- Also that the policy would be dynamic. The policy must be flexible to change with the changing times and seasons

It is the law and not the policy that can provide this assurance. There must be a sound legal framework in which this policy must thrive, otherwise the policy is just a mere piece of paper, because it does not have the force of law that would compel the government to execute its promise.

The legal framework that shall give the necessary assurance desired by the investors will also put obligations on the country in respect of the FDI being brought in by the investors. The regulatory framework for FDI in Zambia is chiefly as seen in the Investment Act. Other pieces of legislation such as

- The Mine And Minerals Act
- The Privatisation Act
- The Securities Act

also have provisions relevant for the purpose of investment in Zambia.

It can therefore be seen that where there is assurance made to the investor in the form of law, the investor will gain the comfort and shall thus be attracted to investment in a country.

3.2 Ghana: The Role Model For Zambia

The role model for Zambia in terms of investment policy and legislation is Ghana⁷³. Another country which would be a model for Zambia is South Africa. However, when we look at a number of factors, we find it unreasonable to compare Zambia with South Africa. The following reasons make it unreasonable to compare Zambia with South Africa:

- South Africa is more technologically advanced than Zambia
- South Africa has more developed infrastructure than Zambia
- South Africa is capable of taking FDI out into other countries and Zambia has no such capacity
- Although South Africa may be younger than Zambia in terms political independence, South Africa is a more established manufacturing and trading society, comparing with Zambia.

⁷³ An interview was made with some of the Zambia Investment Centre staff. Their belief is that Ghana must be a role model for Zambia although they did not elaborate on the full context of areas where Ghana has excelled unlike Zambia. However the Ghana Investment Promotion Centre in its document the entitled the *Investment environment* says that reputable surveys rate Ghana as one of the most attractive locations for doing business in Africa

From the above we see that this country (i.e. South Africa) that has done very well in attracting FDI is not in the same league with Zambia and as such there would be no comparisons to make between the two countries. Comparing the two countries would be like comparing eggs with apples and not eggs with eggs or apples with apples.

We shall therefore in this discussion endeavour to compare some features in terms of the investment policy and the legislation between Zambia and Ghana.

3.3 The Investment Policy For Ghana As A Mirror For Zambia

The will of the Government of Ghana to attract FDI can be seen from the way it has performed in order to attract foreign direct investment into that country.

Besides implementing the implementations as recommended by the Washington Consensus and other policy recommendations that are advised by the multilateral partners, the Government of Ghana has committed itself to creating a Golden Age of Business for Ghana. The President of Ghana says that he will create this golden age of business before the end of his tenure of office⁷⁴. He says that the essence of this vision is to energise the private sector enough to serve as the propellant from which economic growth is fuelled and thereby improving the worth of the people⁷⁵. The Ghanaian government says that it will offer the following in order to improve the investment climate of Ghana:

- A stable political environment

⁷⁴ The President however in the promotional material for the Ghana Investment Promotion Centre entitled *investment environment* does not indicate when his term of office shall come to an end

⁷⁵ Ghana Investment promotion centre, investment environment

- a sound macroeconomic policy
- 100% foreign ownership will be permitted
- On-going privatisation programme
- A large Economic Community Of West African States (ECOWAS) market (i.e. of 250million people)
- A good and ever improving infrastructure
- Availability of good and trainable labour
- Competitive labour cost
- Quota free access to the USA and European markets
- Proximity to European Union (6 hours flight time) and USA markets(9 hours direct flight time)
- Fast developing infrastructure
- High degree of personal safety
- Warm and friendly people
- Fairly high quality of life

Besides the above, Ghana has established the following as matter of endeavour to make the climate more favourable for investment

- A good investment legal framework as we shall see later in this discussion
- The establishment of tax free zones to encourage production at least cost
- A quick dispute settlement process
- Credit lines with a number of commercial banks to help investors and citizens with short term liquidity where it is needed (please see page 35)

- Low tariffs on customs duty, and other taxes (please see page 37)
- The government of Ghana has also provided adequate funding to the Ghana Investment Promotion Centre so that it could effectively and efficiently carry out its mandate. The enabling law has also been put in place so as to empower the Ghana Investment Promotion Centre to carry out its mandate.

Below is a table of the credit offer for Barclays Bank Ghana as extracted from Ghana Investment Promotion Centre promotional materials

Facility	Amount Available	Minimum (Cedi)	Maximum (Cedi)	Maximum Term	Interest Rate/Fees	Security
Corporate Loans And Revolving Overdrafts	Open Ended	50mn	26Bn(Unsecured) 65Bn(Secured)	3 years	Cedi base +8% pa	Various including: -Personal guarantee -Corporate guarantee -Mortgage -Insurance
Executive Loan		50mn	200mn	5 years	Cedi base +5% pa	Cash, Treasury bills, landed property
Barclay loan		2.5mn	50mn	4 years	46% pa	Salary payments

NB:

There are a number of banks that are participating in the credit scheme. Individuals and corporations who need cash resources would have access and the measures in place for accessing this cash are not as stringent as

in ordinary bank lending transactions. They have been flexed up in order to allow for borrowing so that corporations and citizens can have capacity to buy the goods and services being produced. There is a realisation that if there were no money in the market, the goods so produced would not be purchased.

Comparison of the Customs duty structure between Ghana and Zambia

Item Description	GHANA		ZAMBIA	
	Import Duty Rate (%)	Vat Rate (%)	Import Duty Rate (%)	Import Duty Rate (%)
Knives and cutting blades	5	0	15	17.5
Automatic data processing machines	0	12.5	15	17.5
Thermal generator sets	5	0	15	17.5
Air conditioners, carpet, TV sets	10	0	25	17.5
Sawn chipped timber	0	12.5	25	17.5
Aluminium ingots	5	12.5	15	17.5
Floats nets and accessories	0	12.5	15	17.5
Recording instruments for music industry	0	12.5	15	17.5
Cars	10	12.5	25 In addition 10% excise duty is paid	17.5
Small utility vehicles	10	12.5	15	17.5
Trucks	5	12.5	15	17.5
Buses	0	12.5	15	17.5

Source: Ghana Investment Promotion Centre promotion materials and The Zambia Customs And Excise Tariff book

3.4 Comparisons Of Provisions In The Investment Acts Of Zambia And Of Ghana

We now compare some legal provisions in respect of the investment flowing into both Zambia and Ghana.

- The Investment Act of Ghana does specify what the minimum amount of investment is⁷⁶. The Zambian Act does not. The Ghana Investment Act sets out the minimum sum of US\$50,000 for one to qualify for incentives and investment benefits. To encourage partnering with local Ghanaians, the sum is reduced to US\$10,000. The effect of setting up these threshold amounts is to give space to investment policy makers and implementers to concentrate on people or undertakings that were bringing in meaningful sizes of investments, otherwise a lot of time and resources would even have to be spent on persons or undertakings which only brought in little value.
- Both the Zambia Investment Act⁷⁷ and the Ghana Investment Act⁷⁸ recognise the need to coordinate the investment promotion effort through an Institution. They have therefore created the investment promotion centres and clothed them with authority to undertake duty as required of them. However the Ghanaian Government has walked its talk. It has not only given the Ghana Investment Promotion Centre the duty to promote and carry out all tasks incidental to investment promotion but it also ensures that the Investment Centre is adequately

⁷⁶ As per article 19(2) (a) and (b)

⁷⁷ See articles 4,5,6 and 7

⁷⁸ As per articles 1,2 and 3

funded. The Zambia Investment Centre has not been well funded and as such its effort to carry out duty becomes impeded.

- The Ghana Investment Act⁷⁹ has a broad range of incentives and these incentives are a matter of law and not policy. Policy is normally subject to wilful amendment and change while law is not. The incentives range from low import duties (i.e. generally), lower taxes, corporate tax exemptions in respect of the age of the investment, location of the investment and the sector in which the investment has been made. There are also incentives in terms of tax holidays. All these incentives apply to all investors. The case in Zambia is different. There are only general incentives⁸⁰ and these incentives are not as attractive as the ones in the Investment Act for Ghana. Where there are to be any special incentives, the Investor must negotiate with the government. Special incentives previously existed but because of gross abuse by the importers and the business community which abuse had the effect of government losing revenue, these special incentives had to be abolished⁸¹. However, the Investment Act of Zambia is being amended and it is expected that the incentives will be in line with those in other Southern Africa Development Community(SADC) and the Common Market for Eastern and Southern Africa(COMESA)⁸².
- The Ghana Investment Act as per s24 provides that where plant or machinery comes in the country by way of investment and if this machinery is not zero rated when it should be zero rated, then the

⁷⁹ Articles 23,24 and 25

⁸⁰ see Part IV of the Investment Act of Zambia

⁸¹ PartV of the Act was repealed by SI No.5 of 1996

⁸² FDI Magazine, October 20,2004

investor has the option to apply to the Ghana Investment Promotion centre for waiver of the duties. This is a good law. The Investment Promotion Centre would be the most competent authority to deal with this as they have a good knowledge of who the investors are and what value that each investment will bring into the Country. In the case of Zambia, the practice is that such an application can only be made to the Minister of Finance to waive any assigned import duties taxes. The Investment centre which is the hub of all investment can only be an agent to ensure that the Investor gets the duty waiver and they can not compel the Minister to approve or disapprove this application so made.

- The Ghanaian Investment Act also provides for expatriate staff remitting sums externally up to a sum not exceeding the total wages earned from employment with the Investor. This is silent in the Zambia investment laws. Although the exchange restrictions have been eased, this provision would also serve as a role model for Zambia. It would minimise the back flow of resources from Zambia to the FDI home countries where one is restricted to remitting only up to a maximum of what he earned from the investing enterprise.
- Both the Zambia Investment Act per s36 and the Ghana Investment Act per s27 allow investors to remit 100% of money earned by way of profits or dividends issuing from their investments. While this may be attractive to the Investor, it does not fully help an economy. Both laws(ie Zambia and Ghana) should have provided for retention of some amount so it could revolve in the economy and help to boost the economy. Countries such as Zambia and Ghana should not have the

luxury of allowing for 100% remittance of money so earned. Infact this practice is an easier way to siphon money out of an economy.

- It has also been noted that in both the Zambian and the Ghanaian Investment Acts there is no provision to compel the existing domestic companies or indeed companies coming into the country to declare the investment that they are bringing into the country .In Zambia for instance, a lot of existing undertakings bring in substantial investment annually but they do not declare this investment to the Investment Centre. A law must be enacted to compel them to make declarations of investment that they are bringing in.However,the sanctions for not meeting this requirement of the law should not be too harsh. The effect of not rendering this report to the Investment Centre distorts the annual value that the Investment Centre would act on as the true and correct value of the FDI.Stating it differently, it under declares the FDI for a particular year.
- In terms of the transfer of technology, the Investment Act as per s5(2)(e) merely recognises the Zambia Investment Centre to be the depository of the technology transfer agreements. As for the Ghana Investment Act it provides pursuant to s3 (k) of the Investment Act of Ghana says that the role of the Investment Promotion Centre shall be to keep records of all technology transfer agreements relating to this investments under the Act .Further s33 (1)(2) and (3) also provides that a person who establishes an enterprise may enter into such technology transfer agreement, as he considers appropriate for his enterprise. It also makes it mandatory that all transfer agreements must

be registered with the centre .It also provides that all technology transfer agreements shall be governed by any regulations for the time being in force relating to such agreements. From the above provisions of the law, we see therefore that the role of the Centres (i.e. both in Zambia and Ghana) in as far as technology transfer is concerned is merely to be depositories of the agreements. The centres cannot regulate on any technology that is coming into the country be it inappropriate or otherwise. This is a departure from what the position of the law was previously⁸³. The positive aspects of the law on technology transfer have now been repealed both in Zambia and in Ghana.

- To express the serious intentions that the Government of Ghana has about attracting the FDI, the government has created a ministry dubbed the Ministry for Private Sector Development. In the terms reference ministry has been given a challenge to facilitate the development and growth of a competitive and vibrant private sector and also to help reduce the cost of doing business in Ghana⁸⁴.
- Both the Zambian and the Ghanaian constitutions make similar pledges on this issue. Their pledge as incorporated in the Acts is that they shall not nationalise or expropriate any investment unless for public purpose and where such is the circumstance, the governments pledge to payment adequate, prompt and effective compensation as per international standard. This is very positive about the two Acts. It

⁸³ Mwenda KK in his article entitled legal aspects of foreign direct investment in Zambia praises the 1985 Investment Act of Ghana which has since been repealed. This Act gave to the Centre powers to determine the appropriateness of the technology going into the country and also to advise the investors with regard to the suitability of the technology. As for the Investment Act of Zambia he also comments by indicating the restrictions that applied on the technology transfer agreements such as on supply sources of inputs, volume and structure of production etc...

⁸⁴ GIPC promotional materials, investment environment

gives assurance and comfort to would be and indeed existing investors that the investment shall eternally remain theirs.

- Another interesting feature about the Investment Act of Ghana is that the centre has responsibility to the President⁸⁵. Appointments and disappointments are to be made by the President of the Republic.

While this process may have the following advantages:

- Adequate funding
- Efficiency
- Quick resolution of emergent problems

It also has the disadvantages. Some of the disadvantages are as follows:

- Officers can easily operate in fear because every work done is to be evaluated by the President.
- Another disadvantage is that there is likely to be misplacement of professionalism because of political influence and indeed interference from the President
- The other disadvantage is that officers can easily operate 'in the name of the President' and thus abuse other partners in the development process of the country.

Therefore, our submission in this respect is that a law of this sort needs to be carefully looked at before it can be enacted as law. In Zambia this law cannot be encouraged and the current arrangement of constituting the board and the centre suffices⁸⁶.

⁸⁵ s10 of the Investment Act of Ghana

⁸⁶ The Officers of the Zambia Investment Centre are appointed and they serve as per Schedule I of the Investment Act

- The Investment Act of Ghana per s26, unlike the Investment Act of Zambia also goes ahead to indicate the priority areas in the country. This is good for the country because it guides the investors on the sectors in which to direct their investment. It does not help the economy to have investors in the sectors which would not give economic mileage to a country.
- Both the Zambia⁸⁷ and the Ghana⁸⁸ laws have identified the need to quick and efficient settlement of disputes. This is positive to the process of attracting FDI .It points to the fact that the government does not want to engage in practices that would bring disputes so as to cause discomfort to the investors.
- The Ghanaian Investment Act also provides for the immigration quota pursuant to s30. Expatriate workers would be engaged but the number of these expatriate workers depends on the size of the investment, the ceiling being four immigrant workers. While the concept of mapping the number of workers to the size of the undertaking is positive, the provision that limits the initial number of immigrant workers to the maximum of four is not positive as this may pose a problem for the investor who initially needs a number greater than four in respect of immigrant workers. The Investment Act of Zambia in any case only says per s30(1) and (2) that if an investor makes an investment of more than US\$250,000.00 then the Investment Centre can help him to acquire work permits for up to five people. This is also not positive as

⁸⁷ Dispute resolution may be made pursuant to Arbitration Act Cap 40 Laws Of Zambia which is a domestication of ICSID .Mediation is also provided for per s4 and 5 of the High Court Act Cap 27 Laws of Zambia.

⁸⁸ Investment Act s29

the investor who needs less than five immigrant staff can easily abuse the process and further that there might be a business need to engage more than five immigrant workers.

- The Ghana Investment Act also gives powers to the Ghana Investment Promotion Centre to initiate support measures that would enhance the investment climate in the country both for Ghanaian and the non-Ghanaian companies. This provision is positive as this function is so important in the quest to attract investment in a country, in this case in attracting the FDI. The Act in Zambia can also import this provision from Ghana and appropriately empower our Investment Centre in this respect.
- It is also appreciated that Zambia is making steps to amend the current Investment Act in order to better address the FDI problem⁸⁹. The amended Investment Act will look at the following issues inter alia⁹⁰:
 - Broaden the 1991 Act with regard to the incentives
 - Empower the Zambia Investment Centre to be responsible for developing the Investment package
 - Make the Zambia Investment Centre a one-stop support facility for investors
 - Create an ideal investment climate in Zambia

⁸⁹ Business And Leisure News, Issue No 28, Noember 2004

⁹⁰ The Post Newspapers, Monday 27 November 2003

4.CONCLUSION

It is well settled that FDI is the answer to Zambia's economic ills. This FDI usually resides in the developed world and we need to attract it if it must come to Zambia. It is only in limited instances that it would come on its own. It is also recognised that it is not only Zambia that needs this FDI but there are a number of African and Asian etc... countries that are also attracting it. The process of attracting it therefore becomes competitive .In order to be first, we need to provide a climate in which the investment will thrive and give returns to the investor. A good investment climate is one in which there is an enabling environment in terms of society, politics, culture, economics and indeed the law.

It also needs to mention that various implementations have been made in order to attract FDI and lo, these implementations have not yielded positive results for Zambia. We must nevertheless maintain the endeavour to keep searching on better ways to attract this much needed FDI.

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