ZAMBIA
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Zambia is a landlocked state located in southern Africa. Since the African Growth and Opportunity Act (AGOA) Forum was hosted in Lusaka in 2011, U.S. trade and investment has made significant strides– in part, due to the formation and growth of the local American Chamber of Commerce. However, the United States still has a relatively small commercial presence in Zambia. Foreign direct investment remains dominated by large mining investments from Canada, Australia, the UK and China. Agriculture and mining continue to be the headlining sectors of Zambia's economy and, while American companies continue to incrementally grow their presence in the agricultural sector – with major, new U.S. agricultural investments during 2015 – American participation in the mining industry remains at the exploration stage.

While the investment environment is generally conducive to U.S. investment, the past year has seen increased economic policy uncertainty following the government's decision to impose a new mineral royalty tax regime which risks damaging the prospects of Zambia's mining industry. The ongoing tax impasse between the government and the mines has reduced the flow of foreign direct investment, particularly in the mining sector, and has caused a general slowdown in economic activity.

The government of Zambia (GOZ) made its second foray into international debt markets in April 2014 by issuing its second-ever sovereign bond and raising USD 1 billion. The 10-year dollar-denominated Eurobond was issued at 8.625 percent, a full three percentage points higher than Zambia's first Eurobond. Due to changes in global bond demand and concerns about Zambia's economic governance, its borrowing costs are up. Detailed plans for use of the second Eurobond were not announced. The government's erratic economic policies, along with continued fiscal problems, have led to increased pressures on private industry. If unchecked, a deterioration of the investment climate could slow the pace of recent gains in the U.S.-Zambia trade relationship and further negatively impact foreign direct investment.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Zambia is actively seeking foreign investment through the Zambia Development Agency (ZDA), which was established in January 2007 through the consolidation of a number of trade and investment promotion entities into a one-stop resource for international investors interested in Zambia. There are no laws or practices that discriminate against foreign investors by prohibiting, limiting or conditioning foreign investment in any sector of the economy.

Other Investment Policy Reviews

The GOZ conducted an investment policy review through the OECD in 2012. The review was the first in sub-Saharan Africa to be conducted on the basis of the OECD Policy Framework for Investment. The OECD review made the following main recommendations regarding Zambia's investment environment: 1) develop a harmonized national investment policy; 2) take better advantage of the investment promotion and facilitation options available; 3) undertake a cost-benefit analysis with regard to fiscal incentives; 4) improve the consultative mechanisms for policy development; 5) strengthen the framework for Public Private Partnerships (PPPs); 6) strengthen the oversight and enforcement mechanisms of the regulatory framework, and; 7) develop mechanisms to channel industry demands to human resource development agendas. Following the review, the government is considering new investment reforms, including development of a harmonized investment policy and a review of its tax incentive system and framework for PPPs. Zambia is also committed to drawing up an inclusive Green Growth Strategy. The GOZ has not conducted a trade policy review through the WTO or investment policy review through UNCTAD in the past three years.

References
http://www.oecd.org/daf/inv/investment-policy/zambia-investmentpolicyreview-oecd.htm

Laws/Regulations of Foreign Direct Investment

Laws affecting foreign investment in Zambia include:
- The Zambia Development Agency Act of 2006 (ZDA Act), which offers a wide range of incentives in the form of allowances, exemptions and concessions to companies.
- The Companies Act of 1994, which governs the registration of companies in Zambia.
- The Zambia Revenue Authority’s Customs and Excise Act, Income Tax Act of 1966 and the Value Added Tax of 1995, which provide for general incentives to investors in various sectors.
- The Employment Act Cap 268, Zambia’s basic employment law that provides for required minimum employment contractual terms.
- The Immigration and Deportation Act Cap 123, regulates the entry into and residency in Zambia of visitors, expatriates and immigrants.

The ZDA Act promotes foreign investment and defines investor protections. The Act states that investments may only be legally expropriated by an act of Parliament relating to the specific property expropriated. In instances where there is a public purpose for acquisition, compulsory acquisition may be allowed, provided payment is made to the investor. Compensation must be made at fair market value and should be fully transferrable at the applicable exchange rate in the currency in which the investment was originally made. Although the ZDA Act states that compensation must be at market value, the method for determining fair market value is poorly defined. The ZDA Act also makes provision for the ownership of land by investors. Leasehold land, granted under 99-year leases, may revert to government if it is ruled to be undeveloped after a certain amount of time (generally five years). Land title is sometimes questioned and land is re-titled to other owners. The government of Zambia is considering investment reforms, including development of a harmonized investment policy and a review of its tax incentive system and framework for PPPs.

The Zambian Development Agency website, detailing investment opportunities, and providing online access to certain investment applications is found at: http://www.zda.org.zm.

The website of the Patents and Companies Registration Agency, which administers the registration and protection of commercial and industrial property, including business registrations, is found at: http://www.pacra.org.zm

Industrial Promotion

The sectors where government has programs to attract investment include agriculture, construction, building and heavy equipment. Agriculture is at the core of the Zambian government's strategy for rural development and poverty reduction. Only about 15 percent of Zambia's arable land is currently cultivated. Government has invested in the national road network and rural feeder roads so as to create additional opportunities for agricultural growth. Government is setting aside significant tracts of land in each province to develop commercial farm blocks to attract large-scale private investment into the industry. The Nansanga Farm Block in Central Province was the first block to be put out for tender in December 2010.

There is increasing demand for agricultural equipment, ranging from new and used tractors, harvesters, land clearing equipment, and irrigation devices. New farming blocks such as the proposed 155,000 hectare Nansanga Farming Block in Serenje District will create opportunities for exports of U.S. agricultural equipment. Tourism opportunities also abound with Zambia's 19 national parks and 34 game management areas, as well as 23 million hectares devoted to the conservation of animals. Government has identified tourism development as a central pillar in its strategy to diversify the economy away from an over-reliance on the extractive industries. Tourism infrastructure investment has concentrated on the town of Livingstone, home of Victoria Falls, which now receives direct flights from Johannesburg. The Zambian government intends to develop further the tourism sector in Livingstone, which already enjoys VAT free status.

Limits on Foreign Control

The government requires all internationally licensed firms operating a domestic cellular telephone network to offer ten percent of shares on the Lusaka Stock Exchange, per commitments made by agreement prior to entering the market. Telecom investors are required to disclose certain proprietary information to the ZDA as part of the regulatory approval process. Further information regarding information and communication regulation can be found at the website of the Zambia Information and Communication Technology Authority, located at: http://www.zicta.zm.

Privatization Program

There are no sectors or companies targeted for privatization in 2015. The privatization of parastatals that began in 1991 reduced state monopolies and saw the dismantling of INDECO and the Zambia Industrial and Mining Corporation conglomerate (ZIMCO), including Zambia Consolidated Copper Mines (ZCCM). The Zambia National Commercial Bank was privatized in 2007, with Rabobank of the Netherlands holding a controlling stake of 45 percent and the government holding 22 percent. The remaining few state-owned companies, such as the Zambia Electricity Supply Company (ZESCO), have been partially privatized and placed under private sector management, with the state retaining a majority share. In 2012, the government reversed the 2010 privatization of the Zambia Telecommunications Company (Zamtel), a 75 percent shareholding in which had been sold to Libya's LAP GreenN for USD 257 million. Citing corruption and flaws in the privatization process, the government unilaterally reversed the sale and re-appropriated the telecom company. LAP GreenN has since challenged the decision in the courts of law.

Screening of FDI

The ZDA board screens all investments proposals and usually makes its decision within 30 days. The reviews appear routine and non-discriminatory and applicants have the right to appeal the investment board decisions. The ZDA board is comprised of 16 members, including representatives from various government and private sector stakeholders. An investment application is subjected to a screening mechanism to determine, among other things: the extent to which the proposed investment will help create employment and the development of human resources; the degree to which the project is export oriented; the impact the proposed investment is likely to have on the environment and, where necessary, proposed environmental mitigation activities, in accordance with the Environmental Protection and Pollution Control Act; the possibility of the transfer of technology; and any other considerations the Board considers appropriate. The outcome of the review could reject the investment or impose additional requirements, especially where adverse environmental issues arise. Reviews are generally completed in a timely manner. An investor may, within fourteen days of receiving a Board decision, appeal the decision to the Minister of Finance and National Planning. Within thirty days of receiving the appeal, the Minister may confirm, set aside or amend the decision of the Board. An investor dissatisfied with the decision of the Minister may, within thirty days, appeal to the High Court of Zambia against the decision. No negative reports have been received from U.S. firms concerning this process.

Competition Law

The Competition and Consumer Protection Commission (CCPC) is a statutory body established with the dual mandate to both protect the competition process in the Zambian economy and protect consumers. The CCPC reviews transactions for competition-related concerns both domestic and international in nature, but is considered ineffectual and lacks legislative influence.

Investment Trends

The ongoing tax impasse between the government and the mines over the new mineral royalty tax regime has reduced the flow of foreign direct investment, particularly in the mining sector, and has caused a general slowdown in economic activity. One large mine announced plans to hold back USD 1.5 billion in new investment. The government's erratic economic policies, along with continued fiscal problems, have led it to increase pressures on private industry, beginning a deterioration of the investment climate, which could further negatively impact foreign direct investment generally.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	85 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	111 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	121 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 1,810	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) or USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

There are currently no restrictions or limitations placed on foreign investors in converting or transferring funds associated with an investment (including remittances of investment capital, earnings, loan repayments and lease payments) into freely usable currency and at a legal market-clearing rate. Investors are free to repatriate capital investments, as well as dividends, management fees, interest, profit, technical fees, and royalties. Foreign nationals can also transfer and/or remit wages earned in Zambia. Funds associated with investments can be freely converted into internationally convertible currencies. The Bank of Zambia pursues a flexible exchange rate policy, which generally allows the currency to freely float. The national currency, the Kwacha (ZMK), exchange rate fluctuates daily or regularly. Transfers of currency are protected by Article VII of the International Monetary Fund (IMF) Articles of Agreement (http://www.imf.org/External/Pubs/FT/AA/index.htm#art7).

Remittance Policies

There are no recent changes or plans to change investment remittance policies that either tighten or relax access to foreign exchange for investment remittances. Foreign investors can remit through a legal parallel market, including one utilizing convertible, negotiable instruments such as dollar-denominated government bonds issued in lieu of immediate payment in dollars. There are no limitations on the inflow or outflow of funds for remittances of profits or revenue and there is no evidence to show that Zambia engages in currency manipulation tactics. Zambia is a member of Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), and assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) measures in Zambia was conducted by ESAAMLG. ESAAMLG coordinates with other international organizations concerned with combating money laundering, studying emerging regional typologies, developing institutional and human resource capacities to deal with these issues, and coordinating technical assistance where necessary. Zambia has demonstrated some commitment to establish a strong AML/CFT framework. The enactment of the Prohibition and Prevention of Money Laundering Act and the Anti-Terrorism Act, as well as the establishment of the Anti-Money Laundering Investigations Unit (AMLIU), reflect this commitment.

3. Expropriation and Compensation

Investments may be legally expropriated by an act of Parliament that specifically names the property being expropriated. Leasehold land, which is granted under 99-year leases, may revert to the government if it is ruled to be undeveloped after a certain amount of time (generally five years). Land title is sometimes questioned and land is re-titled to other owners. In 2012, the GRZ took several actions similar to expropriation, reversing the privatization of one state owned enterprise (SOE) and terminating two government concessions. In all three instances, full compensation for GRZ actions has yet to be finalized, though GRZ figures for 2012 foreign direct investment reflect a significant offset for the return of foreign acquisition capital. In January 2012, the GRZ reversed the June 2010 sale of the SOE Zambia Telecommunications Company (Zamtel) to Libya's LAP GreenN, which acquired a 75 percent shareholding in Zamtel for USD 257 million. The GRZ unilaterally reversed the sale and re-appropriated the telecom company, citing corruption and flaws in the privatization process. LAP GreenN has since challenged the decision in the courts of law. In September 2012, the GRZ terminated and re-acquired its concession agreement with the country's largest railway operator, Railway Systems of Zambia (RSZ). The GRZ said termination of the concession, which had been expected to last until 2023, was necessitated by RSZ's inefficiencies, including high levels of derailments and the loss of life and property. The concession was returned to Zambia Railway, the parastatal former operator of Zambia's railway networks. There is no pattern of discrimination against U.S. persons by way of an illegal expropriation by the government or authority in the country. There are no high-risk sectors prone to expropriation actions.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Zambia has a dual legal system made up of general or statutory law, as well as tribe-specific customary laws. The general law is based on the English Common law system while customary is based on the various norms and cultures of different tribes of Zambia. The courts in Zambia are somewhat independent, but contractual and property rights enforcement is weak and final court decisions can take a prohibitively long time. Zambia has a written commercial law. The Commercial Court, a division of the High Court, deals with disputes arising out of commercial transactions. All commercial matters are registered in the Commercial registry and judges dealing with matters in the Court are experienced in commercial law. Appeals from the Commercial Court lie with the Supreme Court. The Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76, of the Laws of Zambia (cited as the Act) makes provision for the enforcement in Zambia of judgments given in foreign countries that accord reciprocal treatment. The registration of a foreign judgment is not automatic.

All land in Zambia vests in the President on behalf of the people of Zambia. The President may alienate land vested in him to any Zambian. The Lands Act, Chapter 184 of the Laws of Zambia, places a number of restrictions on the President's allocation of land to foreigners. The ZDA Act makes provision for ownership of land by investors. The ZDA, in consultation with the Ministry of Lands, assists an investor in identifying suitable land for investment, as well as assisting the investor to apply through the Ministry of Lands.

Bankruptcy

The Bankruptcy Act Cap 82 of the Laws of Zambia provides for the administration of bankruptcy of the estates of debtors and makes provision for punishment of offenses committed by debtors. It also provides for reciprocity in bankruptcy proceedings between Zambia and other countries and provides for matters incidental to and consequential upon the foregoing. This applies to individuals, local and foreign investors. Bankruptcy judgments are made in local currency, but can be paid out in any internationally convertible currency. Bankruptcy is criminalized in Zambia.

Investment Disputes

The Zambian Investment Code stipulates that claimants must first file internal dispute settlements with the Zambian High Court. Failing that, the parties may go to the international arbitration, which the state recognizes as 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). Relatively few investment disputes involving U.S. companies have occurred since Zambia's economy was liberalized following the introduction of multi-party democracy in 1991. Previous disputes involved delayed payments from state-owned enterprises to U.S. companies for goods and services and the delayed deregistration of a U.S.-owned aircraft that was leased to a Zambian airline company that went bankrupt.

International Arbitration

The Zambian Arbitration Act Number 19 of 2000 applies to both domestic and international arbitration and is based on the UNCITRAL Model law. Arbitration agreements must be in writing and parties may appoint an arbitrator of any nationality, gender or professional qualifications. Foreign lawyers cannot be used to represent parties in domestic or international arbitrations taking place in Zambia. There are no facilities that provide online arbitration, although there is an arbitral institution, the Zambia Institute of Arbitrators, which promotes and facilitates arbitration and other forms of Alternate Dispute resolutions (ADR). Arbitration awards are enforced in the High Court of Zambia, and judgments enforcing or denying enforcement of an award can be appealed to the Supreme Court.

Foreign arbitral awards are recognized and enforced in Zambia under the Arbitration Act, Section 27 of which provides for the recognition and enforcement of foreign arbitral awards. It takes about 18 weeks to enforce a foreign award. The U.S. has a Bilateral Investment Treaty with Zambia through the African Growth and Opportunity Act (AGOA) and through the Common Market for Eastern and Southern Africa (COMESA) of which Zambia is a member. There have been no claims under these agreements.

Zambia is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which entered into force on June 7, 1959, and party to the Convention of the Settlement of Investment Disputes between States and Nationals of Other States of 1965 and entered into force on October 14, 1966. These are being enforced through the Investment Dispute Convention Act Cap 42 of the Laws of Zambia.

ICSID Convention and New York Convention

Zambia is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention) and a signatory to the United Nations Commission of International trade Law (UNCITRAL Model Law). In 2002, Zambia ratified the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York convention).

Duration of Dispute Resolution

On average, it takes14 weeks to enforce an arbitration award rendered in Zambia – from filing an application to a writ of execution attaching assets. The Arbitration Act, Number 19 of 2000 is the domestic legislation that enforces arbitration. Arbitration awards are enforced in the High Court of Zambia and judgments enforcing or denying enforcement of an award can be appealed to the Supreme Court of Zambia. The Foreign Judgment (Reciprocal Enforcement) Act, Chapter 76 of the Laws of Zambia, provides that certain foreign judgments are enforceable in Zambia if they originate from countries whose courts are recognized under the Act. For a foreign judgment to be recognized by Zambian courts under the Foreign Judgment Enforcement Act, it has to be registered in the High Court of Zambia. Section 4 of the Act sets out the rules detailing the application for registration, which should generally be made within six years from the date of judgment or from the date of determination of the appeal.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

The GRZ strives to be consistent with Trade Related Investment Measures (TRIMs) requirements and generally abides by the WTOs TRIMs obligations.

Investment Incentives

The ZDA Act provides for a number of incentives available to both local and foreign investors. These incentives are valid for five years from the time the license is granted by the ZDA. An investor who invests not less than USD 500,000 or equivalent in convertible currency in a priority sector or product is entitled to tax incentives as specified under the Income Tax Act, Chapter 323 of the Laws of Zambia or the Customs and Excise Act, Chapter 322 of the Laws of Zambia. Any machinery or equipment acquired by a business conducting business in a priority sector or product or rural enterprise is also entitled to emption from Customs duties, as specified by the Customs and Excise Act. For major investments, the Minister of Finance may specify additional incentives for investment in an identified sector or product of not less than USD 10 million or equivalent in convertible currency in new assets that qualify for those incentives.

Research and Development

Foreign firms can participate in government financed and or subsidized research and development programs. The ZDA does not give specific incentives for research and development but there is a possibility of a company operating in a multi-facility economic zone (MFEZ) to qualify for such incentives.

Performance Requirements

The GOZ favors the use of local employment for unskilled workers as well as for skilled middle or senior management workforce.. Under the ZDA Act, any foreign investor who invests a minimum of USD 250,000 or its equivalent and employs a minimum of 200 employees of certain technical or managerial levels is entitled to self-employment permit or resident permit. The ZDA assists the qualifying investor to obtain work permits for up to five expatriate employees. Any entry permit holder can apply to be granted a dependent's pass for each of his dependents. The ZDA is also in the process of developing standards regarding investment performance benchmarks which it seeks to put in place within an MFEZ in order to assist the government in monitoring company performance against the commitments made when investment incentives are granted.

Data Storage

The GRZ does not follow forced localization, but encourages investors where possible to use domestic content in goods or technology if available. There is no requirement for foreign IT providers to turn over source code and or provide access to surveillance. The telecommunications sector is governed by the Information and Communications Technology Act No. 15 of 2009 (ICT Act) and falls under the Ministry of Transport, Works, Supply and Communications. The Zambia Information and Communication Technology Authority (ZICTA) regulates the provision of electronic communication services and products and monitors the performance of the sector, including the levels of investment and availability, quality, cost and standards of the electronic communication services. Under the ICT Act, any person may apply for a telecommunications license, either a service license or a supplier's license.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities have the right to establish and own business enterprises and engage in all forms of remunerative activities. No business ventures are reserved solely for the government. Although private entities may freely establish and dispose of interests in business enterprises, investment board approval is required to transfer an investment license for a given enterprise to a new owner. Private enterprises have occasionally complained that the playing field is not level when they compete for licenses or concessions with public enterprises.

7. Protection of Property Rights

Real Property

Property rights and the regulation of property are well defined in principle, but face problems in practical implementation. Contractual and property rights are weak. Courts are often inexperienced in commercial litigation and are frequently slow in reaching their decisions. The ZDA Act ensures investors' property rights are respected. Secured interests in property both movable and real are recognized and enforced. Property can be owned individually, jointly in undivided shares, or by an entity such as a company, close corporation or trust or similar entity registered outside Zambia. The ZDA Act provides for legal protection and facilitates acquisition and disposition of all property rights such as land, buildings and mortgages.

Land held under customary tenure has no title, but where a sketch plan of the area exists, the chief can give written consent to an investor and a 14-year lease can be obtained for traditional land. Despite Zambia having abundant land for agriculture and other purposes, the process of land acquisition and registration is a major obstacle for investors. About 85 percent of available land is under traditional ownership. Its acquisition involves negotiations with traditional leaders who have to balance the demands of their subjects with the pressure to convert land for commercial purposes. Most available land has not been surveyed and mapped and, where this has been done, records are often outdated or difficult to retrieve from the Ministry of Lands.

The Ministry of Lands is centralized in Lusaka and faces problems of poor record keeping and slow processing of title deeds. To address these challenges, the government with the support of donor partners has been working to reform land policy, including modernization of the Lands Department at Ministry of Lands, establishment of Land Banks, establishment of a Land Development Fund, demarcation of Multi Facility Economic Zones and industrial parks, and development of farming blocks.

Intellectual Property Rights

The legal framework for trademark protection in Zambia is adequate, however, enforcement of intellectual property rights is weak and courts have little experience with commercial litigation. Copyright protection is limited and does not cover computer applications. Currently, there are no reform bills pending for enactment. Recent enforcement has been effective against pirated musical and video recordings, cosmetics and software. Small-scale trademark infringement occurs for some packaged goods through copied or deceptive packaging. The Zambia Police Service Intellectual Property Unit (IPU) carries out raids in shops and markets to confiscate counterfeits and pirated materials. The IPU tracks and reports of seizures of counterfeit goods but no consolidated record is available. There are fines for revealing business proprietary information, but they are not large enough to penalize disclosure adequately.

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 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. Zambia is a signatory to a number of international agreements on patents and intellectual property, including the World Intellectual Property Organization (WIPO), Paris Union, Bern Union, African Regional Industrial Property Organization (ARIPO), and the Universal Copyright Convention of UNESCO. Zambia is not listed in USTR's Special 301 report and neither is it listed in the notorious market report.

The Ministry of Commerce, Trade and Industry and the Patents and Company Registration Office (PACRA) are the leading institutions regarding the implementation of intellectual property laws in Zambia. The industrial property registration system at PACRA underwent an upgrade, which has seen the electronic documentation management system linking to the WIPOs WIPOSACN which provides for digitization of intellectual property records. For additional information about treaty obligations and points of contact at local IP offices please see WIPOs country profiles at: http://www.wipo.int/directory/en.

Resources for Rights Holders

Contact at Post:

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Country/Economic Resources: www.amchamzambia.com;
http://zambia.usembassy.gov/business.html;
http://zambia.usembassy.gov/servicesforamericans.html#attorneys

8. Transparency of the Regulatory System

The GOZ has made strides towards introducing transparent policies to foster competition, although complaints arise from time to time. In the agricultural sector, government interventions through the purchase of maize (corn) at subsidized prices and the distribution of subsidized fertilizer undercut the private sector’s capacity to enter these markets. The unpredictability of import and export bans on commodities, especially on maize and other grains, is a deterrent to private sector participation in commodity markets. There are no informal regulatory processes managed by non-governmental organizations or private sector associations that discriminate against foreign investors. Proposed laws and other statutory instruments are usually not vetted with interest groups or published in draft form for public comment before coming into effect. Opportunities for comment on proposed laws and regulations sometimes exist through trade associations, such as the Zambia Chamber of Commerce and Industry, Zambia Association of Manufacturers, Zambia Chamber of Mines, Zambia Business Forum and American Chamber of Commerce in Zambia. Stakeholder consultation in developing legislation and regulation has generally been poor under the current administration; however, the government has recently established a Business Regulatory Review Agency with the mandate to formalize public notice and comment requirements for new regulations.

9. Efficient Capital Markets and Portfolio Investment

The Lusaka Stock Exchange (LuSE) is structured to meet international recommendations for clearing and settlement system design and operations. There are no restrictions on foreign participation in the LuSE, and foreigners may invest in stocks on the same terms as Zambians. The LuSE has offered trading in equity securities since its inception and, in March 1998, the LuSE became the official market for selling Zambian Government bonds. Investors intending to trade in a listed security or government bond are now mandated to trade via the LuSE. The market is regulated by the Securities Act of 1993 and enforced by the Securities and Exchange Commission of Zambia. Secondary trading of financial instruments in the market is very low or non-existent in some areas. Existing policies facilitate the free flow of financial resources into the product and factor markets. The government and the central bank respect IMF Article VIII by refraining from restrictions on payments and transfers for current international transactions. Credit is allocated on market terms and foreign investors can get credit on the local market, although local credit is relatively expensive and most investors prefer to get credit from outside the country.

Money and Banking System, Hostile Takeovers

Zambia's banking sector is considered healthy and relatively well-developed in the African context, although the financial sector remains highly concentrated, with the largest four banks holding nearly two-thirds of total banking assets by 2013. Government policies generally facilitate the free flow of financial resources to support the entry of resources in the product and factor market. There has been a steady increase in electronic banking and related services over the last five years. Banking supervision and regulation by the Bank of Zambia, the central bank, has improved over the past few years. Improvements include revoking licenses of some insolvent banks, denying bailouts, limiting deposit protection, strengthening loan recovery efforts, and upgrading the training and incentives of bank supervisors.

The Banking and Financial Services Act, Chapter 387 of the Laws of Zambia and the Bank of Zambia Act, Chapter 360 of the Laws of Zambia govern the banking industry. The Bank of Zambia regulates the banking industry. There are no restrictions on a foreigner's ability to establish a bank account. Private firms are open to foreign investment through mergers and acquisitions. The Competition Consumer Protection Commission reviews and handles mergers and acquisitions. The High Court of Zambia can only reverse decisions by the Commission. Under the Competition and Consumer Protection Act No. 24 of 2010, foreign companies without a presence in Zambia and taking over local firms do not, however, have to notify their transactions to the Commission as it has not established disclosure requirements for foreign companies setting up or acquiring existing businesses in Zambia.

The banking sector is comprised of 19 commercial banks, 15 of which are foreign-owned, three of which are locally owned, and one, which is jointly owned by the Zambian and Indian governments. The financial sector accounts for about seven percent of GDP. The Bank of Zambia increased capital requirements for locally and foreign-owned banks in 2014 to USD 20 million and USD 100 million, respectively. Of the 19 registered banks, 14 have met the new capital thresholds. Four other banks have been granted temporary relief, while one was unable to meet the threshold and was converted to non-bank status. The Bank of Zambia reports that as of

October 2014 total banking sector assets had expanded 19.5 percent year-on-year to reach ZMW 47.4 billion (USD 7.5 billion). Much of the increase was driven by client loans, which grew by 22.9 percent to ZMW 22.3 billion (USD 3.5 billion), representing 47 percent of total assets.

10. Competition from State-Owned Enterprises

Zambia has two categories of state owned enterprises (SOEs), those incorporated under the Companies Act and those established by particular statutes, referred to as statutory corporations. Following the wave of privatization in early 1990s, a few SOEs now remain in energy, building, and finance and insurance services. There is a published list of SOEs in the Auditor General's annual reports; however, SOE expenditure on research and development is not detailed. In all SOEs and statutory corporations, the government has relinquished management control to appointed boards of directors, whose composition includes a mix of private sector, civil society and government representatives. Their independence, however, is limited as most boards have majority government officials and as board members appointed by the line minister from the private sector or civil society can be removed.

In principal, SOEs do not enjoy preferential treatment by virtue of government ownership, however, they may obtain protection where they are not able to compete or face adverse market conditions. The Zambia Information Communications Authority Act has a provision restricting the private sector from undertaking postal services that would directly compete with the Zambia Postal Services. Private enterprises are allowed to compete with public enterprises under the same terms and conditions with respect to access to markets, credit and other business operations such as licenses and supplies. SOEs can and do purchase goods or services from private sector including foreign firms. SOEs are not bound by the Government Procurement Agreement and can procure their own goods, works and services. SOEs are subject to the same tax policies as their private sector competitors. SOEs are not afforded material advantages such as preferential access to land and raw materials. SOEs are audited by the Auditor General's Office, using international reporting standards. Audits are carried out annually, but delays in finalizing and publishing results are common. Controlling officers appear before a Parliamentary of Committee for Public Accounts to answer audit queries. Audited reports are submitted to the President for tabling with the National assembly, in accordance with Article 121 of the Constitution of Zambia and the Public Audit Act, Cap 378 of the Laws of Zambia.

OECD Guidelines on Corporate Governance of SOEs

SOEs are governed by Boards of Directors that are appointed by government in consultations and participation of the private sector. The chief executive of the SOE reports to the Board chairperson. In the event that the SOE declares dividends, these are paid to the Ministry of Finance and National Planning. The Board chairperson is informally obliged to consult with government officials before making decisions. Zambia strives to adhere to OECD Guidelines on Corporate Governance and the Guidelines are sufficient to ensure a level playing field between SOEs and private sector enterprises. The line minister appoints members of the board of directors from public services, private sector and civil society. All investment disputes are resolved through the High Court of Zambia and court decisions are normally fair and do not favor SOEs.

Sovereign Wealth Funds

The GOZ has plans to launch a Sovereign Wealth Fund following the 2014 reincorporation of the Industrial Development Corporation (IDC) parastatal holding company, but the fund is yet to be set up. The Minister of Finance restated the government's intention to establish a Sovereign Wealth Fund in the 2015 National Budget.

11. Corporate Social Responsibility

The concept of corporate social responsibility (CSR) has recently gained traction in Zambia. General awareness of corporate social responsibility exists among both producers and consumers. The firms that pursue CSR are viewed favorably by the government and the communities in which they operate. Presently, there is no clear legislative framework governing CSR in Zambia and there is no mechanism for harmonizing the various standards included in the legislative frameworks of regulatory agencies. The Institute of Directors of Zambia (IODZ), a professional body accredited to the United Kingdom Institute of Directors, offers training in corporate governance. The IODZ has conducted advocacy campaigns encouraging companies to introduce Board Charters promoting high ethical practices. On request, IODZ works with individual companies to help them set up and implement good corporate governance practices. IODZ is not a legislative body and relies on voluntary compliance to the corporate governance standards that it advocates. A number of SOEs are increasingly adopting international best practice standards promoted by the IODZ on voluntary basis and with the direct encouragement of the Stock Exchange Commission. Government has yet to put in place corporate governance, accounting and executive compensation standards to protect shareholders. Public disclosure of related issues is encouraged and there are no independent NGOs or business associations promoting or monitoring CSR in Zambia.

OECD Guidelines for Multinational Enterprises

Some local and foreign enterprises tend to follow generally accepted CSR principles, such as the OECD Guidelines for multinational enterprises, while other foreign firms ignore complex issues, such as labor rights, environmental protection, bribery, corruption and human rights.

12. Political Violence

Zambia does not have a history of significant political violence. Zambia held relatively peaceful presidential, parliamentary and local government elections in September 2011 which ushered in a change of governing party from the Movement for Multiparty Democracy (MMD) to the Patriotic Front (PF), led by late President Michael Sata. President Sata died in office in November 2014 and was succeeded in January 2015 by President Edgar Lungu of the Patriotic Front following a peaceful presidential by-election which saw Lungu win by a slight margin over the opposition political party. Infrequent student protests sometimes turn violent, but they are generally short-lived and confined to small areas in and around universities. There remain political tensions in Western Province over the rights under the Barotseland Agreement of 1964. In January 2011, protests in Mongu and Limulunga turned violent resulting in two deaths, several injuries, and hundreds of arrests. In August 2012, Zambian miners killed a Chinese manager at a Chinese-owned coal mine in Southern Province during a riot over low wages and dangerous working conditions. In early 2014, increasing violence involving political party supporters was reported during by-elections and political party meetings.

13. Corruption

The Anti-Corruption Act of 2010 and the National Anti-Corruption Policy of 2009, which stipulate penalties for different offenses, govern Zambia's anti-corruption activities. The laws extend to political parties and to family members of officials. While legislation and stated policies on anti-corruption are adequate, implementation sometimes falls short. Zambia lacks adequate laws on whistleblower protection, asset disclosure, evidence, and freedom of information.

Government encourages private companies to establish internal codes of conduct that prohibit bribery of public officials. Most large private companies have internal controls, ethics and compliance programs to detect and prevent bribery. The Integrity Committees (ICs) Initiative is one of the strategies of the National Anti-Corruption Policy (NACP), which is aimed at institutionalizing the prevention of corruption. The NACP was approved in March 2009 and the Anti-Corruption Commission spearheads its implementation. Eight institutions were targeted, including the Zambia Revenue Authority, Immigration Department and Ministry of Lands. Government has taken measures to enhance protection of whistleblowers and witnesses with the enactment of the Public Disclosure Act as well as strengthen protection of citizens against false reports in line with Article 32 of the UN Convention.

The Anti-Corruption Commission (ACC) is the agency mandated to spearhead the fight against corruption in Zambia. The Anti-Money Laundering Unit of the Drug Enforcement Commission (DEC) also assists with investigation of allegations of misconduct. An independent Financial Intelligence Unit (FIU) was formed in 2010, but has not yet developed the capacity to take the lead in investigating financial crimes. In November 2012, the FIU Board of Directors was appointed and sworn in with a challenge to implement its mandate. Zambia's anti-corruption agencies generally do not discriminate between local and foreign investors. Transparency International has an active Zambian chapter.

U.S. firms and the Zambian government have identified corruption as an obstacle to foreign direct investment. Corruption is most pervasive in government procurement and dispute settlement. Giving or accepting a bribe by a private, public or foreign official is a criminal act, and a person convicted of doing so is liable to a fine or a prison term not exceeding five years. A bribe by a local company or individual to a foreign official is a criminal act and punishable under the laws of Zambia. A local company cannot deduct a bribe to a foreign official from taxes.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Zambia signed and ratified the United Nations Convention against Corruption in December 2007. Other regional anti-corruption initiatives are the Southern Africa Development Community (SADC) Protocol against Corruption, ratified on July 8, 2003, and the African Union (AU) Convention on Preventing and Combating Corruption, ratified on March 30, 2007. Zambia is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, but Zambia is a party to the Anticorruption Convention.

Resources to Report Corruption

Contact at government agency responsible for combating corruption:
Mrs. Rosewin Wandi
Director General
Anti-Corruption Commission
Kulima House, Cha Cha Cha Road, P. O. Box 50486, Lusaka
+260-211 237914
rmwandi@acc.gov.zm

Contact at "watchdog" organization that monitors corruption:
Mr. Lee M. Habasonda
President
Transparency International Zambia
3880 Kwacha Road, Olympia Park, P. O. Box 37475, Lusaka
+260-211 256818
tizambia@zamtel.zm

14. Bilateral Investment Agreements

Zambia does not have a bilateral investment treaty or a free trade agreement with the United States.

Zambia has signed bilateral reciprocal promotional and protection of investment protocols with most of the Common Market for Eastern and Southern Africa (COMESA) and the SADC member states. In November 2001, COMESA signed a Trade and Investment Framework Agreement with the United States. On October 2, 2000, Zambia became a beneficiary of the African Growth and Opportunity Act (AGOA). Zambia initialed market access through the Eastern and Southern Africa (ESA) interim Economic Partnership Agreement (IEPA) with the European Union on September 30, 2008. In completing these negotiations, the provisions of trade in goods chapter and related annexes of the ESA IEPA now apply to Zambia. Zambia has signed protective agreements with Chinese, Nigerian, Libyan and Indian investors.

Bilateral Taxation Treaties

Zambia does not have a bilateral taxation treaty with the United States.

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) -Zambia agreement was signed in June 1999. OPIC is active in Zambia, with current portfolio exposure in Zambia of about USD 100 million. In the event that OPIC should pay an inconvertible claim, the local currency accepted by OPIC would be made available, pursuant to the bilateral agreement providing for the OPIC program, to the Mission/ATI on a priority basis for USG expenses. Zambia is also a signatory to the Multilateral Investment Guarantee Agency (MIGA), which guarantees foreign investment protection in cases of war, strife, disasters, other disturbances, or expropriation. In June 2001, the World Bank extended credit in the amount of USD 5 million to start up the African Trade

Insurance Agency (ATI). This institution, which is open to all African states that are members of the AU, provides exporters with insurance against receivables on export trade deals and political risk insurance for trade transactions.

16. Labor

Zambia's population is estimated about 14.5 million with the majority of the population being of employable age. Labor demand, however, does not match supply and Zambia has high levels of unemployment. Although an abundance of unskilled labor exists in Zambia, investors complain that the supply of skilled and semi-skilled labor is inadequate. The government ratified all eight International Labor Organization (ILO) core conventions, and has been engaged in revising labor laws to improve compliance since 2006. However, there are still gaps in law and practice.

The Employment Act, Chapter 268 of the Laws of Zambia covers employment and labor related issues. While the law recognizes the right of workers, to form and join independent unions, conduct legal strikes, and bargain collectively, there are statutory restrictions limiting these rights. Police officers, military personnel and certain other categories of workers are excluded from exercise these rights. No trade union can be registered if it claims to represent a class of employees already represented by an existing trade union. At least 25 members are required and may take up to six months. The government has discretionary power to exclude certain categories of workers, including prison staff, judges, registrars of the court, magistrates, and local court justices from labor law provisions. The law also gives the labor commissioner the power to suspend and appoint an interim executive board of a trade union, as well as to dissolve the board and call for a new election. A trade union officer may be disqualified if s/he fails to satisfy the commissioner that s/he does not contribute to the revocation of his/her trade union registration.

Trade unions are independent of government but the Ministry of Labour and Social Security is ultimately responsible for employment exchange services and enforcing labor legislation. An employer is allowed to terminate a contract of service on grounds of redundancy, however, the Employment Act requires the employer fulfill certain conditions before terminating a contract of service on grounds of redundancy. Some of these conditions include notifying the employee’s trade union. The Act makes a clear distinction between layoffs and severance. In the event an employee is summarily dismissed, he/she shall be paid on dismissal the wages and allowances due to up to the date of such dismissal. Labor-management relations vary by sector. The government formally permits employment of expatriate labor only in sectors where there is scarcity of local personnel, but investors promoting large scale investments can negotiate the number of work permits that they can obtain from the Department of Immigration to employ expatriates.

The law does not limit the scope of collective bargaining, but it allows, in certain cases, either party to refer a labor dispute to court or arbitration. The law also allows for a maximum period of one year from the day on which the complaint is filed, within which a court must consider the complaint and issue its ruling. The law provides for the right to strike provided that recourse to all legal options is first exhausted. The law prohibits workers, engaged in a broadly defined range of essential services, from striking. Under the Zambian law, essential services are defined as any activity relating to the generation, supply, or distribution of electricity; the supply and distribution of water and sewage removal; fire departments; and the mining sector. Employees in the Zambian Defense Forces and judiciary as well as police, prison, and ZSIS personnel are also considered essential. The government has power to add other services to the list of essential services, in consultations with the tripartite consultative labor council.

The process of exhausting the legal alternatives to a strike is lengthy. The law also limits the maximum duration of a strike to 14 days, after which, if the dispute remains unsolved, it is referred to the court. A strike can be discontinued if the court finds it not be "in the public interest." Workers who engage in illegal strikes may be dismissed by employers. The Industrial and Labor relations Act, Chapter 269 of the Laws of Zambia, Part IX covers the settling of labor disputes. Aggrieved parties may report the matter to a labor officer, who would there upon take steps deemed fit to effect a settlement between the parties and would encourage the use of collective bargaining facilities where applicable. In the event of a collective dispute between an employer and a trade union regarding the terms and conditions of employment, claims and demands must be put in writing and both parties must have held at least one meeting with a view to reach a settlement but failed. Such disputes are referred to a conciliator or board of conciliators to be appointed by both parties to the dispute. If the conciliator fails to resolve the problem, the conciliator will inform the Labor Commissioner. The Commissioner will then request the Minister of Labor to appoint a conciliator who will again call the parties to consider the dispute. If all efforts to resolve the matter fail, it is then taken to the Industrial Relations Court for arbitration. The practice of collective bargaining is very much used by trade unions.

In February 2015, more than 2,000 unionized workers at Barrick Gold's Lumwana Copper Mine stopped work. The workers demanded to know their fate after Lumwana announced possible plans to put the mine on "care and maintenance" status, suspending operations and placing nearly 4,000 direct jobs at risk. The Ministry of Labor, the Mine Workers Union of Zambia and Lumwana management met to try and end the work stoppage. President Edgar Lungu also held consultations with the Chamber of Mines of Zambia, assuring mining companies that government would address their concerns on the new mineral royalty tax and mine owners. The work stoppage ended, but government has yet to reach a final accommodation with the mines over the increased mineral royalty taxes that have put mine profitability in jeopardy.

Other internationally-recognized fundamental labor rights, including the elimination of forced labor, child labor employment, discrimination, minimum wage, occupational safety and health and weekly work hours are all recognized under domestic law, but enforcement is often weak. Approximately 28 percent of children in Zambia are engaged in child labor, primarily in agriculture and mining. Cotton, tobacco, cattle, gems, and stones are included on the U.S. government's List of Goods Produced by Child Labor or Forced Labor.

The Department of Labor and the Department of Occupational Safety and Health of the Ministry of Labor and Social Security monitor labor abuses, as well as health and safety standards in low-wage assembly operations such as construction. Two main social partners, the Zambian Congress of Trade Unions (ZCTU) and the Zambian Federation of Employers (ZFE), assist Ministry of Labor enforcement. The worker and employer organizations are consulted at tripartite gatherings on any proposed policy document or legislation, and they participate in labor inspections. The Ministry of Labor produces annual inspection reports, which are made available to social partners.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

Zambian Multi-Facility Economic Zones (MFEZ) were first established under the auspices of the Triangle of Hope (ToH) initiative, introduced in 2005 by the Japan International Corporation Agency (JICA). In early 2007, the government announced the creation of MFEZ in which investors enjoy waivers on customs duty on imported equipment, excise duty and value added tax, among other concessions. There are two MFEZ currently operating, the Chinese, Chambishi MFEZ on the Copperbelt – including its extension, the Lusaka East MFEZ – and the Lusaka South MFEZ. Foreign-owned firms enjoy the same investment opportunities in Foreign Trade Zones. The Zambia Development Agency Act No 6 of 2006 is the primary legislation for investment in Zambia. An investor, foreign or local, is free to identify and suggest any other location in the country deemed economical for development of a multi-facility economic zone, although government has prioritized designated areas in Lusaka, Ndola, Mpulungu, Chembe, Nakonde, Kasumbalesa and Mwinilunga. Investors are encouraged to provide local employment and skills transfer to local entrepreneurs and communities. Investors are also encouraged to utilize local raw materials and intermediate goods and engage in technology transfer to qualify to operate in MFEZ.

On October 31, 2000, the COMESA Free Trade Area (FTA) was launched. COMESA established a customs union in June 2009, during the 13th Summit of the COMESA Heads of State and Government. The top five intra-COMESA exports from Zambia include tobacco, raw sugarcane, wire, refined copper and cement. The SADC (Southern Africa Development Community) Trade Protocol Member States – a regional grouping of 13 African states – came into force in 2008. The SADC Trade Protocol promotes regional integration through trade development and develops natural and human resources for the mutual benefit of their people. Trade among SADC member states is conducted on reciprocal preferential terms. Rules of Origin define the conditions for products to qualify for preferential trade in the SADC region. Products have to be “wholly produced” or “sufficiently processed” in the SADC region to be considered compliant with the SADC Rules of Origin. The SADC Rules of Origin are product-specific and not generic, as are the rules of origin for COMESA.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	125.9 billion ZMK	2013	26.8	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2013	182	2013	119	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Host country's FDI in the United States ($M USD, stock positions)	2012	54	N/A	N/A	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	N/A	N/A	2012	8.3%	

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	11,262	100%	Total Outward	222	100%
Australia	2,266	20%	United Kingdom	105	47%
United Kingdom	1,940	17%	Congo DR	32	14%
Canada	1,776	16%	France	30	14%
China, P.R. Mainland	1,138	10%	South Africa	29	13%
South Africa	980	9%	United Arab Emirates	8	4%
"0" reflects amounts rounded to +/- USD 500,000.					

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	N/A	100%	All Countries	68.0	100%	All Countries	N/A	100%
			United Kingdom	60.8	89.4%			
			United States	3.5	5.2%			
			India	1.5	2.2%			
			South Africa	0.7	1.0%			
			Australia	0.4	0.6%			

19. Contact for More Information

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