

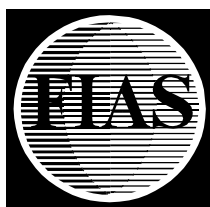


ZAMBIA

**ANALYSIS OF THE LEGAL AND REGULATORY FRAMEWORK
UNDERPINNING INVESTMENT ENVIRONMENT**

October 2004

**Foreign Investment Advisory Service
a joint service of the
International Finance Corporation
and
The World Bank**



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On behalf of the Government of Zambia, the Minister of Trade and Commerce in conjunction with the Ministry of Justice, requested that the Foreign Investment Advisory Service (FIAS) review the legislative implications involved in removing administrative and procedural barriers to investment in Zambia.

The purpose of the study is to conduct a review of the legal framework underpinning the investment climate. The determination of areas in the legal framework which are hindering investment and the recommendations which follow provide the first step toward implementing the authorities' recently adopted private sector development agenda. In addition, the study will be an important component of a wider review of the legal framework

FIAS collaborated with the World Bank's Zambia Country Team on this project.

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EXECUTIVE SUMMARY

i. The Government of Zambia has requested FIAS to provide assistance for the implementation of recommendations provided in the FIAS study on administrative barriers to investment in Zambia dated March 2004. As a first step in implementation, the Ministry of Commerce, Trade and Industry (MCTI) asked FIAS to assess the legislative implications of the recommendations. The objective of this assessment is to identify the need for drafting legislative changes to support implementation of the recommendations.

ii. The assessment is designed not only as specific follow-up for the FIAS administrative barriers study feeding into a reform program that is based on the administrative barriers study, but also as an input to a planned review of the entire legal framework for doing business in Zambia. The current assessment is meant to form one building block of the broader legal review.

iii. Based on the content of the administrative barriers study, this assessment examines recommendations in the areas of investor entry procedures, business registration, land procedures, site development, taxation and customs. The outcome is that the majority of recommendations provided in the FIAS study on administrative barriers can be implemented without legislative changes. Only 23 out of 56 recommendations have legislative implications. The recommendations with legislative implications concentrate on four areas: work permits and investors' right to stay (Immigration and Deportation Act), investment and incentive regime (Investment Act), taxation (Income Tax Act, VAT Act, ZRA Act), and the lands acquisition regime (Lands Act, Lands and Deeds Registry Act).

iv. The study has the following results in the examined areas:

- In the area of investor entry procedures, which includes procedures to obtain visas, work permits for employees, self-employment permits for foreign investors as well as procedures to hire and lay-off employees, five of the seven recommendations can only be implemented through changes of legislation. Laws requiring changes are the Immigration and Deportation Act and the Investment Act. Both laws are currently under revision, and it is hoped that the necessary amendments will be incorporated in the new drafts. However, from the information circulated we have some concerns with the nature and direction of the reforms.
- Business registration procedures include the company registration with the Company Registry Office as well as licensing procedures. The FIAS study includes six recommendations to improve the business registration procedures, with four of them requiring legal amendments. The main acts to be amended are the Companies Act and the Investment Act. In addition, the

recommendations on licensing procedures require changes in a number of acts that sets the conditions for general and sector licensing, including the Trades Licensing Act and the Public Health Act.

- The section on land procedures refers to the procedures to acquire and use land for business development. In this area, much preliminary work needs to be done in the form of reviews and further in-depth studies before decisions can be taken and laws be amended. Only two of the eight recommendations have legislative implications so far, but it is likely that the studies recommended would generate further legal changes.
- The site development section includes procedures to obtain permits and approvals to construct a building for business purposes and to receive services from the public utilities. Seven of the eight recommendations can be implemented without prior legal changes. Only the recommendation on utility services would require major legislative work. In this case, the entire legal framework for private sector participation, including the adoption of a concession law and legislation on the regulatory and institutional set up, would need to be amended.
- The twelve recommendations improving the procedures to register and pay taxes require legislative measures, and only four recommendations can be implemented without legal amendments. The Income Tax Act and the VAT Act would be the legislation where amendments are necessary.
- Finally, only three of the fifteen recommendations to streamline import and export procedures require legislative change in the Customs and Excise Act.

v. Figure 1 summarizes the recommendations and the legislative implications provided in this report.

vi. The study concludes that a coordinated approach to legislative changes is necessary to avoid legal inconsistencies and subsequent uncertainty for the business community and the institutions responsible for administering the laws. This was not always the case in the past. A public-private consultation process and a discussion within the Government on Cabinet and working level needs to take place well before the drafting stage to agree on the policy issues and objectives of the reform. It should ensure that legal changes of interlinked laws serve the same objective, push into the same direction and use mutually compatible concepts, definitions and language.

vii. Regarding next steps, the identified legislative changes should not be addressed in a separate reform program. It should rather feed into the overall work plan to reform the administrative procedures.

Figure 1: Summary of Legislative Implications of the FIAS Recommendations

Recommendations	Legislative Implications	
	Legislative changes necessary?	Act/Secondary Legislation
1. Investor Entry		
Review practice to issue self-employment permit to investors	Yes.	Immigration and Deportation Act (Chapter 123); First Schedule to the Immigration and Deportation Act.
Remove restrictions to self-employment permit	No.	
Introduce “negative list” approach	Yes.	Investment Act (Chapter 385)
Relax restrictive practice to issue work permit.	Yes.	Immigration and Deportation Act (Chapter 123) and its First Schedule.
Improve internal tracking system.	No.	
Streamline lay-off procedures.	Yes.	Employment Act (Chapter 268).
Make allowances paid to workers tax-deductible items.	Yes.	Income Tax Act (Chapter 323).
2. Business Registration		
Do not re-introduce extensive and restrictive investment screening	No.	Investment Act (Chapter 385)
Decentralize company registration.	No.	
Review the need for annual returns.	Yes.	Companies Act (Chapter 388); Schedule 3 to the Companies Act; Companies (Prescribed) Forms Regulations.
Increase the period of validity of licenses from municipality services.	Yes.	Trades Licensing Act (Chapter 393); Public Health Act (Chapter 295) and its Regulations; Hotels Act (Chapter 153) etc.
Analyze inspections with the aim of reducing them and coordinating among inspecting authorities.	No.	
Reduce discretionary power in ZIC.	Yes.	Investment Act (Chapter 385)
3. Land Procedures		
Publish Land Policy and initiate a public discussion.	No.	
Review the current role and responsibilities of all actors.	No.	
Instigate work to establish the resource needs of the current proposals for land reform	No.	
Ensure that the “certificate of re-entry” provisions under the Lands Act are implemented effectively and equitably.	No.	

Establish a defined procedure and fee structure for the process of investors seeking permission from chiefs	Yes.	Lands (Customary Tenure) (Conversion) Regulations.
The operational systems at the Deeds and Land Registry should be reviewed	No.	
It is recommended that the fee structures and fee schedules be reviewed and updated to allow also expedited services for an additional fee.	Yes.	Lands and Deeds Registry Act (Chapter 185); Lands and Deeds Registry Regulations
Procedures and service delivery standards by each agency should be codified, published and monitored	No.	
4. Site Development		
Review the regulations to the Environment Protection Act with a view to limiting the scope of environmental review to environmental issues and to refining the definition of which projects or investments require an EIA.	Yes.	Environment Protection Act and its Regulations.
Improve the dissemination of environmental requirements and previous environmental assessments.	No.	
Conduct broad assessment of the existing laws and regulations governing zoning, building standards, environment and related activities.	No.	
Start planning to meet the challenge of balancing between making more building land available to encourage modern development on the one hand, and preserving agricultural land and the natural and cultural heritage on the other.	No.	
Strengthen the staff's capabilities in all technical units.	No.	
Consider outsourcing some of the technical work.	No.	
Allowed to contract for installation work and service provision in all utility areas.	Yes.	Adoption of Concession Law, a law on infrastructure regulation and the establishment of regulatory institutions.
5. Taxation		
ZRA should simplify the voluntary registration process to encourage small businesses to enroll in VAT.	Yes.	VAT Act (Chapter 331)
Compliance provisions should be clearly stated and provided as guidelines for the use of taxpayers.	No.	
MFNP and ZRA should also increase their efforts to obtain information and feedback from the public and the business community, through feedback forms, hotlines meetings with business associations, etc.	No.	
ZRA should review its rules on deductibility of expenses.	Yes.	Income Tax Act (Chapter 323).
ZRA should review the target-based approach to revenue collection.	No.	
ZRA should review its audit process.	No.	
ZRA should reduce the penalties for late payments.	Yes.	Income Tax Act (Chapter 323).
Procedures should be introduced to ensure that taxpayers can report corrupt practices and other misconduct	Yes.	Income Tax Act (Chapter 323).

ZRA being empowered to maintain a Revenue Retention Fund	Yes.	ZRA Act (Chapter 321).
Regular claimants to be allowed to withhold VAT through offsets.	Yes.	Income Tax Act (Chapter 323).
Placing an obligation on MFNP through the ZRA to also pay penalty interest for delayed refunds.	Yes.	Income Tax Act (Chapter 323).
Placing a statutory limit on the maximum time to be taken to process refunds.	Yes.	Income Tax Act (Chapter 323).
6. Customs		
A comprehensive approach should be taken for all initiatives to improve quality and delivery of services provided by Customs and to reduce the cost of moving goods into and out of Zambia.	No.	
Use Kyoto Convention and WTO Agreements and Measures as guidelines to simplify and harmonize customs procedures.	Yes.	Customs and Excise Act (Chapter 322).
Collect statistical information provided through ASYCUDA++	No.	
Make risk-based inspections the norm.	No.	
Maintain realistic targets for revenue collection combined with realistic targets for service delivery.	No.	
Increase educational campaigns on import/export procedures.	No.	
Improve training for customs staff.	No.	
Review of all border procedures.	No.	
Clarify the Customs Valuation methods that shall be used in all situations and ensure that they are consistent and transparently applied.	Yes.	Customs and Excise Act (Chapter 322).
Encourage use of inland clearance facilities.	No.	
Application of countervailing duties on Zimbabwe imports should be more clearly set out.	No.	
ZRA should carry out a review of the location of its staff dealing with exports and exporters and a review of the functions of its regional offices.	No.	
ZRA should establish exporter subsidiary records (maintained electronically that list out imported materials that are to be used in export production as these are procured and cleared at ports of entry) that will be used to process duty drawbacks.	No.	
ZRA should establish of special accounts for refunds to be legislated.	No.	
Duty drawback claimants should be entitled to penalty interest where refunds are not credited within one month of lodgment.	Yes.	Customs and Excise Act (Chapter 322).

A. Introduction

1. The Government of Zambia requested FIAS to assess the legislative implications of the recommendations provided in the recent FIAS study on administrative barriers to investment in Zambia.¹ The assessment contained in this report takes as its starting point the issues identified as administrative impediments in the FIAS study and the Investment Climate Assessment (ICA) Survey submitted by the World Bank at the same time.² No further investigative work was conducted beyond the FIAS study and the ICA Survey to identify additional administrative procedures. It is understood that the reform process will likely identify additional issues to be addressed. In this sense, the work plan for reform has to be seen as a “living agenda” that needs adjustments and corrections over time.

2. The Ministry of Industry and Commerce (MCTI) as the line-ministry requesting this assessment has expressed a commitment to implementing the FIAS recommendations as part of its overall private sector development agenda. The purpose of the assessment is to inform the Government about the legislative inputs required to implement the recommendations as currently framed. The assessment will help the Ministry to set priorities, assign responsibilities and initiate the necessary changes to laws and procedures. Recommendations, which require legislative amendments, should be tackled early to ensure timely implementation.

3. The assessment must be seen in the context of several reform efforts. It is not only a follow up on the FIAS Administrative Barriers Study and the ICA Survey, but also a starting point and one building block of an envisioned review of the entire legal framework for doing business in Zambia. The legislation creating the investment climate of a country, such as the laws on companies, corporate governance, bankruptcy, competition, land distribution and development, taxation, and investment, are widely thought in need of modernization. The assessment of legislation governing administrative procedures should provide one input to this review identifying the laws, regulations and often the specific provisions to be changed in order to implement recommendations to remove red tape.

4. In addition, the assessment must be seen in the context of the analysis of the tax regime for investments that will be conducted by FIAS in the fall of 2004. The analysis will provide recommendations to streamline and focus the tax system, particularly the investment incentives, so as to improve the investment climate of Zambia. The tax study will pick up many of the issues identified in the section on taxation of the study on administrative barriers and also addressed in this assessment.

5. Finally, it should be mentioned that several legislative projects have been underway since the study on administrative barriers was submitted to the government. Most prominent are efforts to overhaul the Immigration and Deportation Act (Chapter 123) regarding the requirements to issue work permits for foreign employees and self-

¹ Administrative Barriers to Investment, Foreign Investment Advisory Service, March 2004

² Zambia: An Assessment of the Investment Climate, The World Bank, March 2004.

employment permits for foreign investors and the Investment Act (Chapter385) concerning the requirements to invest in Zambia and the provision of investment incentives. The assessment will point out the critical issues in the existing Immigration and Deportation Act from the viewpoint of a foreign investor. With regard to the Investment Act, FIAS will provide special technical assistance to draft a new Investment Act, and this assessment will therefore not give detailed comments on the draft, which is under consideration at this time.

6. This assessment will be based on the outline of issues covered in the study on administrative barriers, and all issues will be presented in the same order as in the study. After naming the relevant legislation in the respective area, the issues will be summarized. Subsequently, detailed recommendation will be presented and each of the recommendations will be followed by an assessment of its legislative implications. If a law or regulation needs to be amended to implement a certain recommendation, then a particular provision will be identified. The Annex contains a summary of all recommendations and their legislative implications.

7. The assessment starts with a documentation of the legislative process in Zambia, whose purpose is to create awareness of the steps to be undertaken in order to implement those recommendations that have legislative implications. The description also clarifies the inputs to be provided by the line-ministries and serves as a planning device regarding human resources and timing.

B. The Legislative Process

8. The process of adopting a law or an amendment to a law takes in Zambia between 3 to 9 months assuming that the involved ministries agree on the content and the form of the piece of legislation and that the political consensus is established.

9. The process to adopt a law in Zambia is very formalized and includes the following steps:

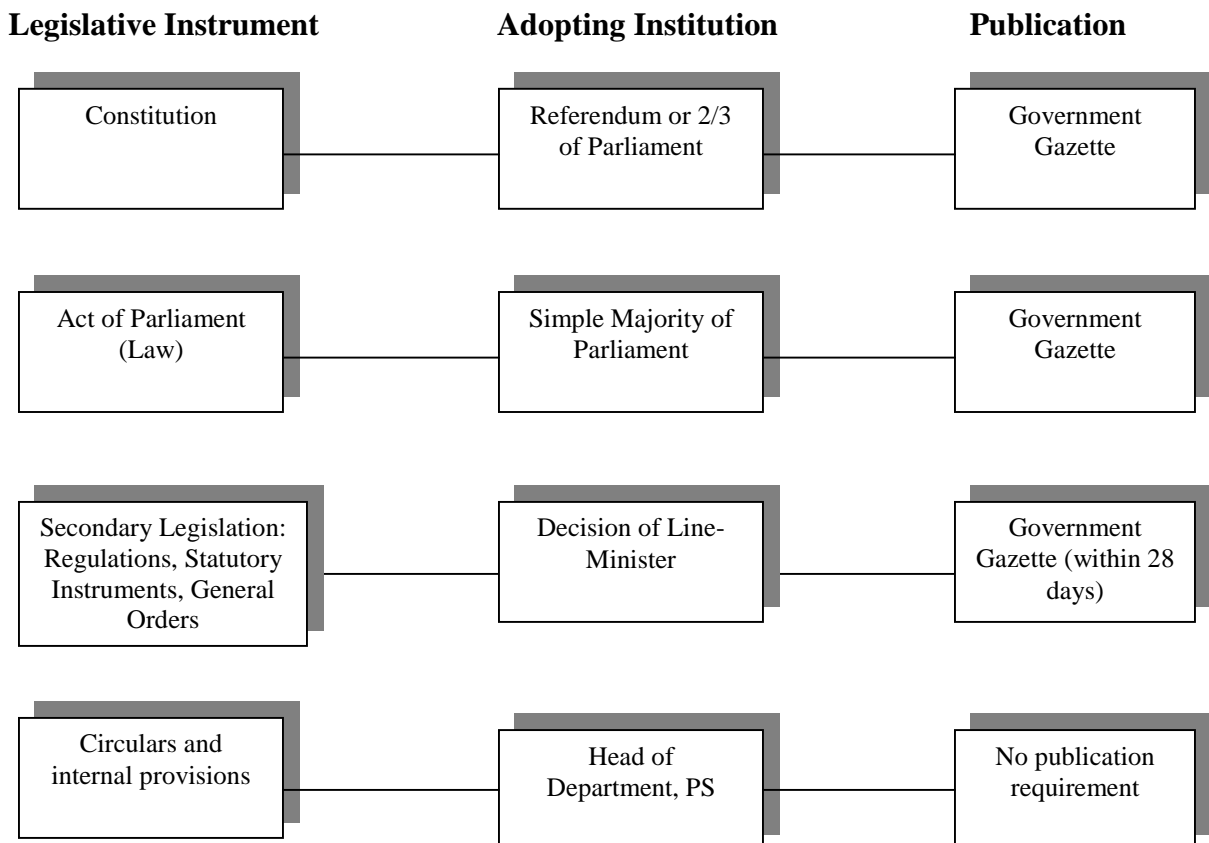
- (a) The line-ministry produces a layman's draft in a consultative process with involved ministries, authorities and private sector representatives
- (b) The draft will be submitted to Cabinet by the line-ministry. It is accompanied by a Cabinet Memorandum that includes a statement on the impact on other legislation, the rationale, options considered, the costs of implementation and any revenue implications.
- (c) The Cabinet approves/disapproves in principle by Cabinet decision.
- (d) The draft will be submitted to the Ministry of Justice, where a Legislative Committee, including working level officials from the Ministry of Justice and the line-ministry, produce a first draft of the draft law.
- (e) The draft will be submitted to the Cabinet in which the line-minister defends the draft. The Cabinet decides on the draft.

- (f) If approved, the draft will be submitted to Parliament. It needs three readings in Parliament to adopt a law. After the first reading, the draft is often submitted to the respective Parliamentary Committee to be discussed and possibly amended.
- (g) Following submission from the Parliamentary Committee, the Minister will submit the law back for a second and third reading. Upon approval by Parliament, the President has to sign the law adopted by Parliament.

10. Secondary legislation, such as statutory instruments, regulations or general orders, can be adopted by decision of the line-minister under authority given by primary legislation. Before adoption, the line-ministry submits a layman’s draft to the Ministry of Justice, which ensures that the draft is in line with the enabling legislation. The secondary legislation needs to be based on an empowerment by an act of Parliament and published in the Government Gazette within 28 days after the signing of the minister. Regulations can generally be adopted within a few months. It is good international practice to develop a blueprint of regulations in parallel to the drafting process of the primary act.

11. Circulars and administrative provisions are issued by the line-ministries in their departments without any formal requirements. They are usually addressed to the officials and not accessible to the public.

12. Figure 1: Summary and hierarchy of the various legislative instruments, adopting institution and publishing requirements.



C. Assessment

1. Investor Entry and Business Registration

13. Investor entry (section 1) addresses the procedures for foreigners to receive a visa, a self-employment permit (foreign investor) and a work permit (foreign employee). It also deals with the procedures to hire and lay-off employees, whether domestic or foreign. Business registration (section 2) includes the permits and approvals any investor needs in order to establish a business in the country. This includes business registration with the Patent and Company Registration Office (PCRO), obtaining an investment certificate and receiving mandatory licenses.

a. Investor Entry

14. The investor entry procedures consist of the requirements for foreigners to obtain visa, self-employment and work permits as well as the procedures to hire and lay-off employees.

Applicable Legislation

15. Primary legislation and regulations:

- Immigration and Deportation Act (Chapter 123);
 - *Immigration and Deportation Regulations (Chapter 123)*;
 - *Fees Waiver Regulations (Chapter 123)*;
- Employment Act (Chapter 268);
 - *Employment Regulations (Chapter 268)*;
- Employment (Special Provisions) Act (Chapter 270);

Note: The Ministry of Home Affairs and its Immigration Department are currently drafting a new Immigration and Deportation Act. According to the Immigration Department, proposals for changes were discussed with various stakeholders and the donor community during spring and summer 2004. Though neither a draft nor a write-up of the proposals were available for review in this study, an official summarized the planned changes as follows:

- Introduction of a definition of the term “investor”;
- Investor-friendly immigration rules to open the economy for foreign investments;
- Family members of a foreign investor to be allowed to enter the country and stay. They are not automatically issued a work permit though;
- Foreign investors to receive the automatic right to stay in the country provided that he/she invests a certain amount of money;
- The draft will acknowledge and accept the COMESA rules for cross-border traders;

- Applicants to have the rights to apply from inside the country;
- The forms to be revised and the penalties fortified.

16. In addition, the Immigration Department is in the process of drafting internal guidelines for the procedures to issue self-employment and work permits so as to ensure consistent application of the laws and regulations. These guidelines will be called “Standing Instructions and Regulation for Immigration Officers”. Furthermore, it is planned to produce brochures informing the public about visa, self-employment and work permit procedures.

Identified Issues

17. The 2004 FIAS Report identified the following shortcomings in the procedures to obtain a visa, a self-employment permit and a work permit:

- A self-employment permit is difficult to obtain, and the procedures, particularly for renewal, are seen by the business community as lengthy, cumbersome, and unpredictable. There is a significant discrepancy between the length of procedures cited by the Immigration Department – two to three weeks - and by the private sector, including facilitators and business associations – two to three months.
- Contrary to sentiments of the Zambian Investment Act and the Immigration and Deportation Act itself, it is the policy of the Ministry of Home Affairs, documented in their guidelines, to allow self-employment permits only in four sectors (commercial agriculture, manufacturing, tourism, and mining). This narrow application of the self-employment permit is an impediment to foreign investments, and certainly to foreign investment in other sectors such as services, where international experience suggests substantial benefits can be secured by allowing foreign investment.
- The procedure to obtain a self-employment permit appears to be based on the premise that an investor will be allowed to do business only if it is considered by the Immigration Committee/Department to be of benefit for the country. This test is too vague and gives the authority wide discretionary powers.
- Requirements for obtaining a self-employment permit are not in line with the Immigration and Deportation Act.
- The existing legislation for obtaining work permits is not consistent with international best practice; the provisions are vague and do not provide clear guidance for application of the law. For example, an applicant has to have an “adequate” knowledge of a language spoken by the indigenous inhabitants of Zambia, or of English. The term “adequate” is nowhere explained or defined. Another example is that an applicant intending to engage in any trade or business can do that only if there is not already a “sufficient” number of

persons engaged in Zambia to meet the requirements of the inhabitants of Zambia. Again. The law and regulations give no help describing the term “sufficient” to “meet the requirements of inhabitants of Zambia”.

FIAS Recommendations and Their Legislative Implications

18. ***Recommendation:*** In order to increase the attractiveness of Zambia as a business location for foreign investors, GOZ needs to review its current policy. The objective of a review should be to establish a system that implements a good Immigration and Deportation Act. The general approach should be to issue (and renew) a self-employment permit to foreign investors, preferably through an automatic procedure, unless there are clear grounds for refusal.

- ***Status:*** The law is under review by the Ministry of Home Affairs and it is planned to have a final draft to Cabinet in November 2004 with the aim to be adopted by Parliament by in January 2005.
- ***Legislative Implication:*** Section 2 (Interpretation), and Sections 14 to 21 (Issue, Variation and Revocation of Permits) and the First Schedule of the Immigration and Deportation Act (Chapter 123) need to be amended. Particularly Sections 14 ***and*** 18 and the First Schedule (Class A) will carry most of the changes. Implementing regulations to the Immigration and Deportation Act should be adopted to set out clearly the requirements for obtaining a self-employment permit.

The Act should include new provisions providing the basis for a separate procedure for foreign investors to obtain a self-employment permit and foreigners applying for work permits. These provisions would include a definition of the term “foreign investor”, the entitlement to a self-employment permit, the requirements to obtain such a permit, the duration of the permit and the rights that come with it. The new rules in the Immigration and Deportation Act have to be harmonized with the Investment Act, and any other legislation. It is also important to include conditions that do not give discretion to the deciding officials. Implementing regulations may provide details on the requirements. While the act would define the categories entitled for a work permit and a self-employment permit, the regulations would include detailed descriptions of the qualifying requirements and the documents accepted to give evidence for meeting the qualifications.

Another way of addressing the issue of self-employment permit procedures is a reference to the Investment Law stating that foreign investors who have obtained an investment certificate are automatically entitled to receive a self-employment permit to stay and invest in the country. This approach would ensure consistency with the Investment Law and reduce bureaucracy.

It is unclear if the new draft Immigration and Deportation Act addresses all recommendations of the FIAS study, since it was not available for review. From the descriptions provided by the Immigration Office, it appears that self-employment permits will be provided only for those foreign investors investing a certain amount of money. This approach is not optimal. Depending on the threshold, it may result in losing out good investors because their investment does not meet the threshold. It also results in increased bureaucracy to monitor investors and an abuse of the self-employment permit for well-off foreigners buying their way into the country.

19. **Recommendation:** FIAS recommends that the current restrictions on issuance of self-employment permits to agriculture, tourism, manufacturing and mining alone should be lifted, and the entitlement be matched with that in the Investment Act. Ideally, Zambia should encourage foreign investment in all sectors of the economy, as clearly established in the Investment Act.

- **Status:** It is unclear if the current revision of the Immigration and Deportation Act addresses this issue. However, this restriction has such a negative impact on investments that it is very important to be addressed. It is strongly recommended to involve MCTI and ZIC in the drafting process and coordinate the revision of the Immigration and Deportation Act with the current revision of the Investment Act.
- **Legislative Implication:** None, but clarification in the Immigration and Deportation Act would be preferred.

The current restrictive practice is not based on the law, but on an internal administrative decision. Therefore, legislative changes are not necessary but would be welcomed for clarification. To ensure compliance and for the sake of clarification, the Immigration and Deportation Act, and particularly its First Schedule (Class A), should be amended in line with the Investment Act. This means that the Immigration and Deportation Act would include a clause that a self-employment permits is issued automatically, if the investor is approved for operation in Zambia.

Again, a pure reference in the Immigration and Deportation Act to the Investment Law and the investment certificate would be preferable because it ensures compliance of both laws and avoids the application of a restrictive sector policy within the Immigration Department.

20. **Recommendation:** If the GOZ determines that certain occupations or sub-sectors should be reserved for domestic investors only, it should delineate these in a “negative list”. Neither determination of the negative list nor evaluation of the desirability of the project or business to be undertaken by the investor should be the responsibility of the

Immigration Department, and any reference in the Immigration Act to a “negative list” should be as a cross-reference to the Investment Act.

- **Status:** The official from the Immigration Department could not say if the revision of the Immigration and Deportation Act will include a list of professions or sectors restricted to citizens. Again, it is very important for the Ministry of Home Affairs to coordinate the approach to this issue with the MCTI and ZIC.
- **Legislative Implication:** The law to be amended to establish a “negative list” would be the Investment Act, not the Immigration and Deportation Act. The First Schedule (Class A) to the Immigration and Deportation Act may include a reference to the Investment Act.

21. **Recommendation:** FIAS would recommend that the restrictive work permit policy should be relaxed. GOZ should develop a written policy that is attractive to investors, and should promote it as one of the positive features of its overall strategy to attract FDI. It is strongly recommended that, as a matter of urgency, the GOZ clarify the existing confusion concerning the entitlement of foreign investors who have obtained an investment certificate to a specific number of work permits.

- **Status:** With a new definition of the term “investor” and a liberalized approach towards self-employment permits and work permits, it should be assumed that the Immigration Department addresses the confusion between provided work permits for foreign employees to investors in the Investment Act and the Immigration and Deportation Act. However, the Immigration Department could not provide any detail on the revised provisions.
- **Legislative Implication:** The Immigration and Deportation Act and its First Schedule need to be amended, and implementing regulations should be adopted.

Sections 14 and 18 and particularly the First Schedule (Class A and B) of the Immigration and Deportation Act reflect the restrictive work permit policy. The vague formulations leave a high degree of discretion to the Immigration Department, which has tended to interpret them in a restrictive manner. Some of the requirements found in the Act and its First Schedule are commonly used in other countries such as the need of an applicant for a work permit to provide evidence for the skills required to do a certain job, or the criteria that work permits are only issued for professions that are of scarcity in the country. However, it is important that implementing regulations give very specific guidance on how the requirements are interpreted and what an applicant has to do to fulfill them.

22. **Recommendation:** Improve the internal tracking and monitoring systems in the Immigration Department. The filing system of the Immigration Department should ensure that files can be easily tracked by officials and that losses of information and applications are avoided. In addition, the Department should establish benchmarks and a monitoring system for self-employment and work permit issuance.

- **Status:** In parallel to the revision of the Immigration and Deportation Act the Immigration Department shall be computerized and an effective record management shall be established. The costs for hardware, software and training are estimated at 614 million kwacha (US\$ 123,000).
- **Legislative Implication:** None.

No legislation needs to be changed to adopt this recommendation. However, internal rules and circulars should be issued to all immigration officers providing rules on filing and information exchange.

23. **Recommendation:** Streamline lay-off procedures for domestic workers. Employees need a process that protects their rights in case of unfair lay-offs. However, the current system should be reviewed with the aim of shortening it without reducing the employee's rights.

- **Status:** Labor Law is under review. Government has been discussing with Zambia Business Forum the redefinition of lay-off provisions, and government is now awaiting comments on the new draft in terms of its compliance with ILO protocols to which Zambia subscribes.
- **Legislative Implication:** If the changes affect the legislative procedures set out in Sections 25 (Summary dismissal), 26A (Termination on grounds related to conduct or performance), 26B (Termination by redundancy) of the Employment Act, then the respective provision needs to be amended accordingly.

24. **Recommendation:** Make allowances paid to workers tax-deductible items. The various allowances that employers are required to pay to employees should be made tax-deductible, as in the case in most countries, since they are part of the business costs of employing labor.

- **Legislative Implication:** Part IV on deductions (Sections 29 to 44) of the Income Tax Act needs to be amended accordingly.

b. Business Registration

25. Before commencing business, investors – domestic and foreign - have to go through three general business approval/registration procedures: investment screening by the Zambia Investment Centre (though not by law but in practice to obtain further licenses and approvals), company registration with the PCRO and obtaining licenses from central and local government.

Applicable Legislation

26. There exist legislation and regulations which define the framework for registration and licensing of businesses.

- Companies Act (Chapter 388);
 - *Transitional Provisions Regulations to the Companies Act (Chapter 388)*;
 - *Fees Regulations to the Companies Act (Chapter 388)*;
 - *Prescribed Forms Regulations to the Companies Act (Chapter 388)*;
- Registration and Business Names Act (Chapter 389);
- Investment Act (Chapter 385);
- Trade Licensing Act (Chapter 393);
 - *Licensing Authorities (Other Areas) Regulations (Chapter 393)*;
 - *Exemption Orders (Chapter 393)*;
 - *Trade Licensing (General) Regulations (Chapter 393)*;
 - *Hawker's License Regulations (Chapter 393)*;
 - *Exemption of Specified Business (Chapter 393)*.
- Liquor Licensing Act (Chapter 167);
 - *Restricted License Notice (Chapter 168)*;
 - *Prohibition Regulations (Chapter 167)*;
 - *Prescribed Areas Regulations (Chapter 167)*;
 - *Prescribed Forms regulations (Chapter 167)*.
- Local Government Act (Chapter 281);
- Public Health Act (Chapter 295);
 - *Public Health Regulations on Tea Rooms, Restaurants, Boarding Houses and Hotels, Factory and Trade Premises, Meat and Butcheries, Milk, Sale of Bakery Products (Chapter 295)*;
 - *Public Health (Building, Control of Habitation in Factories, Workshops and Trade Premises, Meat and Butcheries, Milk, Sale of Bakery products) Regulations – Application (Chapter 295)*
- Hotels Act (Chapter 153);
 - *Minimum Standards and Classification Regulations (Chapter 153)*;
 - *License Fees Regulations (Chapter 153)*;
 - *Hotels Regulations (Chapter 153)*.

Identified Issues

27. The 2004 FIAS report identified a number of shortcomings in the procedures to establish a business:

- The business establishment process is a time-consuming process, mainly because of lengthy licensing procedures. Taking all the additional licenses into account extends the process and the time significantly until the business can start operations. An overall time between five to six weeks (domestic) and nine to 16 weeks (foreign) to obtain all general business licenses, even without taking the special licenses into account, is much too long.
- The centralized business registration process is disadvantageous to the countryside. Entrepreneurs located in the countryside have to travel to Lusaka to discuss issues regarding business registration. There are no branches of the PCRO in other parts of the country.
- The Annual Return is inefficient. The system is not ready to accommodate the annual returns and feed them into the registry, so that the enterprises are burdened by a reporting requirement which generates no benefit for the PCRO.
- The license duration is unjustified short. All licenses necessary for establishing a company have a validity of only one year. Considering the lengthy process to issue a license, the license holders are in a constant process to apply for renewals.
- There are numerous, uncoordinated and sometimes indirectly expensive inspections connected to the licensing regime.
- The investment certificate has only limited benefits for investors. The investment certificate has no residence value – even with a certificate, the investor has to get another permit to stay.
- High degree of discretion in most procedures. Many procedures to obtain approvals before operating a business are at the discretion of an official.
- Officials lack appropriate service mentality. Generally, many interviewed investors said that officials often lack a service mentality. Applicants are often not seen as clients but as intruders or as opponents.

Recommendations and Their Legislative Implications

28. Given the complexity of the current situation in Zambia, the primary recommendation from FIAS is that the whole process and its components should be reviewed by GOZ with a view to reducing the extent of red-tape, coordinating the

requirements of different government agencies and thereby reducing the costs and time of necessary procedures. There is no single measure that greatly reduces registration time, but several of the following recommendations will have a positive effect on the time it takes to start doing business in Zambia.

29. **Recommendation:** Do not re-introduce extensive and restrictive investment screening. FIAS recommends that the government should refrain from moving in the opposite direction to international best practice and from introducing the proposals made earlier this year for the revision of the Investment Act.

- **Status:** The latest drafts of the Investment Act have dropped the original proposals for restrictive and annual screenings and approvals.
- **Legislative Implication:** The Investment Act needs to be overhauled. This work is currently underway. FIAS has already commented in a separate report on these proposals, which go well beyond the scope of the administrative barriers study and involve broader aspects of FDI strategy and policy, the overall role of ZIC and the use of discretionary fiscal incentives.

30. **Recommendation:** Decentralize company registration. It should be considered to have PCRO branches in areas with an active business community where applications can be picked up and submitted as well as where inquiries are lodged. These administrative branches could also be used by several authorities together to lower costs and increase efficiency. FIAS supports PCRO intention to open a branch in the Copperbelt and urges that priority be given to its implementation. There is no time set when a branch office might be established.

- **Legislative Implication:** None.

The Companies Act (Chapter 388) and the Registration and Business Names Act (Chapter 389) do not prohibit the PCRO from establishing branches. However, the PCRO would need an organizational strategy and development plan issued as internal administrative provisions to ensure implementation of the intention to open a branch office.

31. **Recommendation:** Reevaluate the need for annual returns. The instrument of annual returns to update the company registry is not generally regarded as best international practice. In fact, if taken seriously, the annual return amounts to a huge administrative effort every year for PCRO. It is not clear how the PCRO can process and follow up about 120,000 annual returns every year, since they have to be filed, compared with the previous entry, and followed up if discrepancies exist or returns are missing, etc. However, the computerization completed in 2004 may provide the PCRO with the capacity to process annual returns and to maintain an up-to-date database that can be made available to the public.

32. An alternative approach discussed in the administrative barriers study is to rely on an obligation of companies to report changes of facts as they occur so that they can be published and registered in the registry. Penalties for non-compliance should be applicable, and companies and their managing directors should be liable for any false data kept in the registry.

- **Status:** The new computer program enables the PCRO to proceed the annual returns and the Office intends to keep the obligation to submit annual returns for the time being.
- **Legislative Implication:** Sections 2, 184 to 189, 376 and Schedule 3 of the Companies Act (Chapter 388) and the Companies (Prescribed) Forms Regulations (Companies Form 42) would all need to be amended if the alternative approach were adopted.

33. **Recommendation:** Generally, the need for licenses should be reviewed. The information required for application should be reduced, and the duration of the license should be lengthened. In many cases, there is no compelling reason for renewing a license on an annual basis. Licenses with longer validity than one year or even no renewal obligation could include the Trade license and licenses related to public health.

- **Legislative Implication:** The review of the licensing regime would not require immediate legal action. However, the result of the analysis may lead to legal changes.

Regarding the duration of the licenses, Section 6 (1) of the Trades Licensing Act, Sections 75 and 82 of the Public Health Act with the Section 5 of the Regulations on Sale of Bakery Products, Tea Rooms, Restaurants, Boarding-Houses and Hotels, Section 12 of the Public Health Regulations on Milk Section 11 (2) of the Public Health Regulations on Ice-cream Vendors, Section 13 (3) of the Hotels Act would need to be amended. This is just a selection of 1-year licenses currently issued and by no means exhaustive.

34. **Recommendation:** Analyze inspections with the aim of reducing their frequency and coordinating among inspecting authorities. Obligatory inspections of all businesses are time-consuming for the involved authority and the inspected business. As a first step, the government and the public body in charge should gather information and assess the necessity of each inspection scheme. Answers should be found to questions like: What is the purpose of the inspection? Does it achieve this goal? Is there a better, meaning more efficient way, to achieve the same goal? How often are businesses inspected? How are inspected companies selected? What resources are involved? After answering these questions and analyzing the statistics, alternative plans might be developed to achieve the same goal with fewer and more coordinated inspections.

35. Currently, most of the authorities conducting inspections do not coordinate their efforts or exchange information on who was inspected, how, when and what were the results. If authorities were to exchange information and coordinate their efforts, then it may be possible to reduce the frequency of inspections or to reduce the cost to both the inspecting agency and the enterprise.

- **Legislative Implication:** For the time being, legislative changes are not necessary. However, the institutions need to produce clear inspection policies, strategies, procedures and information requirements.

36. **Recommendation:** Reduce discretionary power of officials and specify clearly the basis for award of licenses/permits. In several procedures like the issuance of the investment certificate, the self-employment permit or the trade license, the administration has extensive discretionary power in its decisions. Information about required documents and decision criteria should be clearly and reliably stated, and made available to the enterprise before the start of the procedure. Administrators should have as little discretion as possible, so as to increase the predictability for the applicant. This means that all municipality licenses should be issued without evaluation of the benefits or viability of the project. In the case of ZIC, the procedure for issuance of the investment certificate should be transformed into a reporting obligation, without ZIC carrying out an evaluation of the project.

- **Status:** The revision of the Investment Act includes the abolishment of the investment certificate. The current draft will only contain an incentive certificate, which shall be issued upon formal criteria without discretion of the deciding official.
- **Legislative Implication:** The Investment Act would need to be amended regarding the **procedure** to issue an investment certificate. This should be done in the current redrafting process.

A review of the need for licenses might result in legislation being modified. The legislation should establish the basic purpose of a license, and the procedures and information requirements for issuance of licenses should be clarified in Regulations. The extent of discretion exercised by the competent authority should be carefully defined.

37. **Recommendation:** Introduce programs to change mindset of officials. Many investors complain about the lack of service mentality of officials, and that officials are suspicious of the private sector. To change the mindset of officials needs a long-term strategy, with much attention to training, establishment of service standards and effective monitoring and feedback.

38. To change the attitude of officials is a long-term project. Repeated seminars, and training courses are necessary to achieve this goal. An internal evaluation system,

monitoring systems and appropriate salaries are also cornerstones to improve the public service.

- **Legislative Implications:** None.

2. Land Procedures and Site Development

39. This chapter deals with the procedure to acquire or lease land and to develop and construct a business site. This includes environmental clearance procedures as well as the infrastructure connections such as water, telecommunications, and energy necessary to do business from a site.

a. Land Procedures

Applicable Legislation

40. There are legislation and regulations that govern the acquisition and use of land. They are as follows:

- Constitution of the Republic of Zambia (1996);
- Lands Act (Chapter 184);
 - *Customary Tenure (Conversion) Regulations (Chapter 184)*;
 - *The Lands Tribunal Rules (Chapter 184)*;
 - *Land Development Fund Regulations (Chapter 184)*.
- Land Acquisition (Chapter 189);
 - *Prescribed Forms Regulations (Chapter 189)*.
- Land and Deeds Registry Act (Chapter 185);
 - *Lands and Deeds registry Regulations (Chapter 185)*.

Identified Issues

41. There is a broad range of policy and administrative issues that affect the ability of an investor in Zambia to identify a piece of land and to acquire it for the purpose of setting up a business. Obtaining land, whether state or customary, in Zambia is a major problem for any investor. Some investors report struggling for 3 to 4 years to obtain title to land they had acquired.

42. The implementation of land administration and registration systems suffers from a number of deficiencies that work to the disadvantage of investors:

- First, as in the case of immigration procedures, the land acquisition procedures make it necessary for most foreign investors to seek an investment certificate, even though the Investment Act itself does not require it. There is a need for comprehensive review of investment, immigration and land procedures to ensure that investors are faced with a consistent procedural framework.

- It is clear to all those involved in land allocation that the demand for land has increased considerably, and that there are more applicants seeking both State and Customary Land. However, in its current state, the land delivery system is unable to meet the increase in demand for land, which results in the paradoxical situation of their being excess demand for land while there is also a great deal of idle land within the country.
- One of the main difficulties is that only a small proportion of available land is titled and registered. There is very little information available on land holdings and planned usage, so that identifying a suitable plot is time-consuming. From time to time, the Ministry of Lands makes publicly available a list of potential land plots through advertisement in the press, and investors can make an application. Most of the land advertised in this way is state land. There is no similar mechanism for investors to learn about customary land. The lack of publicly available information on land supply also encourages land speculation.
- The land acquisition and registration process is complex, both highly centralized and decentralized, and poorly coordinated. It appears that there is little coordination between the local authorities, who have responsibility for zoning of land, and the chiefs in the case of customary land. It also appears that there is inadequate consultation and coordination between local authorities and the Ministry of Lands. The complexity, lack of transparency and inadequate coordination among the various actors create inefficiency and offer ample opportunities for land speculation and corruption.
- There are serious human, financial and institutional deficiencies at each level of the land administration system. There are no defined procedures for investors to seek permission from chiefs, and chiefs generally do not have easy access to the skills required to assess applications from investors, or, in the absence of a fee structure for applications, the financial resources to purchase such skills. At district council level, the requirement that the full council interviews the applicant before referring the investor to the Department of Land is said to be a bottleneck. By law, full council meetings are required to take place once a month, but, because they sometimes lack funds to pay councilors, meetings are not held with this frequency.
- Another indicator of the limited capacity of the local councils may be the underuse of the Land Development Fund, by which the central government provides funds to councils for the purpose of developing land; according to the Ministry of Land, the reason for the under use of the fund has been the low capacity of local councils to apply for and spend the money.
- The Surveyor General's Office in the Ministry of Lands is also a bottleneck, since it has only 15 surveyors available. Investors can circumvent this problem

to some degree by hiring private surveyors³, but currently there are only 24 registered private surveyors in Zambia. According to the Ministry of Lands, delays in carrying out surveys are due not only to shortages of surveyors, but also the lack, because of funding constraints, of modern GPS equipment that can reduce survey times dramatically.

- The Deeds and Land Registry appears to be severely under-resourced. The FIAS mission observed that the office lacks the space for effective organization of records, and that files are not easily accessible or well-organized, so that document searches are difficult and the integrity of the records can not be assumed.
- The Lands Tribunal has not developed as was intended at its establishment. It was intended at its formation that it would sit in each of the district centers, but it is currently located only in Lusaka, and it sits only when a number of cases have been accumulated.

Recommendations and Their Legislative Implications

43. The issue of land is an urgent one, considering the government's ambitions to escalate the pace of economic growth through an increase in investment and economic diversification. Without a sufficient supply of land, many desired productive activities will not take place. In addition, land is among the country's valuable assets and should be utilized fully in order to benefit the population. But land is an intensely political issue, and there is a wide range of stakeholders whose attitudes to land reform may differ fundamentally.

44. Land policy design, legislative reform and institutional reorganization and capacity building are all substantial measures that will take several years to put in place, and will involve much broader issues and work than the administrative and procedural issues that are the focus of this report. However, there are several priorities that can be identified to improve the functioning of the system.

45. **Recommendation:** The publication of the draft Land Policy is an important step in bringing land issues to the forefront of political and economic debate. The government should use the opportunity of its publication and public discussion to broaden the agenda of issues and to set in train detailed analysis of the issues.

- **Status:** The timetable for the finalization of the Land Policy appears to have been de-railed after public comments were received. No effort to date appears to have been made to broaden the agenda or to re-publish the policy paper.

³ There have apparently been cases where foreign investors have imported surveyors to overcome the fact that all local surveyors have been busy.

- **Legislative Implication:** None, initially. The Land Policy will probably not be adopted as a law but as a Cabinet decision. However, elaboration of a complete policy would probably have implications for the legislative framework.

46. **Recommendation:** The government should take advantage of the debate on national land policy and administration to review the current role and responsibilities of existing actors in the system, with a view to identifying the need for improved coordination and information flow among agencies, to streamlining, where possible, the procedures, and to having them published. Irrespective of the policy changes that will eventually be introduced, there is a need to improve the capacity and efficiency of the current land administration system, and in particular to make it possible for effective implementation of decentralization objectives of the government's land administration policy. Such a review and proposed changes could be initially targeted at the needs of investor in areas such as commercial agriculture, agro-processing, manufacturing and tourism, which are perceived by the government as key to its economic diversification strategy.

- **Legislative Implication:** None, initially. However, the review will be the basis for legislative changes.

47. **Recommendation:** The government should also instigate work to establish the resource needs of the current proposals for land reform, in order to establish whether the large-scale reform envisaged under the draft Lands Policy can be supported by adequate financial, human and institutional resources and how the commitment of the draft Land Policy to "improved revenue generation from land" can be achieved. In particular, such work should identify the resource requirements for computerizing documentation and record keeping, survey and mapping and tracking and monitoring of land acquisition applications.

- **Legislative Implication:** *None*, although there may be legal changes required in the current laws to allow proper funding of the land reform proposals.

48. **Recommendation:** In view of the growing need for land and the tendency towards land speculation in current circumstances, the government should also ensure that the "certificate of re-entry" provisions under the Lands Act are implemented effectively and equitably. In reallocating such lands that are returned to the state as a result of enforcement of the lease covenants, the government should consider the use of public auctions as a way of getting land into the hands of investors and as a way of promoting the growth of a competitive land market.

- **Legislative Implication:** None. The Lands Act does not favor or prohibit specific methods for re-entry in the respective Sections 12 and 13.

49. **Recommendation:** It is recommended that efforts be made to establish a defined procedure and fee structure for the process of investors seeking permission from chiefs. In particular, there should be introduced a requirement that consents be recorded so as to reduce the possibility of challenges after an investor has received title.

- **Legislative Implication:** The Lands (Customary Tenure) (Conversion) Regulations (Chapter 184) would need to be adopted with procedures and fee schedules to implement this recommendation.

50. **Recommendation:** A land market can only be developed if there is a reliable land register, without which increased attention to formal titling will make little sense. The operational systems at the Deeds and Land Registry should be reviewed, with a view to upgrading their operation urgently, including development and implementation of computerized information management and processing systems and secure storage facilities for land records. Such improvements should reduce the time required for the Registry's titling work and the time required to process and research land records, as well as reducing the possibility of document fraud. More generally, a coordinated information technology system should be introduced to automate the land administration system and to network the various institutions involved in the system.

- **Legislative Implication:** None. This recommendation aims to improve the current lands and deeds administration.

51. **Recommendation:** Since such improvements will require the allocation of adequate resources, both financial and human, it is recommended that the fee structures be reviewed and updated. In addition, consideration should be given to providing expedited services for an additional fee.

- **Legislative Implication:** The Lands and **Deeds** Registry Act would need to have a provision allowing a fast track procedure, preferably in Part II. Provision for a fast-track fee should be established in Section 10 of the Lands and Deeds Registry Regulations.

52. **Recommendation:** As part of the reform of land administration and registration, procedures and service delivery standards by each agency should be codified, published and monitored. Service delivery standards should include codes of conduct for employees.

- **Legislative Implication:** None.

It is assumed that the mentioned standards will be adopted as administrative provisions that aim to inform the public.

b. Site Development

53. This section addresses issues regarding environmental clearance, site development and utility connections.

Applicable Legislation

- The Town and Country Planning Act (Chapter 283);
- Public Health Act (Chapter 295);
 - *Regulations on Buildings (Chapter 295)*;
- Environment Protection Act.

Identified Issues

54. *Environmental Clearance.* The major concerns about EIAs revolved around: the amount of time that was involved in the EIA process; the incorporation into the EIA process of broader socio-economic considerations well beyond a normal environmental definition; the lack of specificity in terms of the areas requiring an EIA and the amount of discretion available to ECZ in its decisions; and the delays in the process because of manpower and resource shortages in ECZ and the sectoral ministries. A concern was also expressed about the inability of new investors to take advantage of the findings of previous EIAs and thereby reduce the amount of work done under a new EIA.

55. The ECZ itself expressed concerns about the EIA process, in part because it is concerned about the impact upon its reputation as a professional organization. First and foremost, it is concerned by the fact that environmental considerations are often raised at a late stage in investment appraisal and approval processes. The ECZ indicated that there have been occasions on which it has been required to question the environmental impact of a project at a late stage, because the investors have been able to secure preliminary approvals without environmental issues being raised. The ECZ indicated that this was particularly the case with projects that were located on customary land. The ECZ considers that investors should be informed at an earlier stage in the investor entry and project approval process that environmental assessment is a necessary part of the entry process.

56. *Site development.* One of the main concerns expressed by recent investors was the fact that Councils charge rates for serviced land, when in some cases the land made available has no services provided. This is not a product of policy or procedures, but is more connected to the shortage of resources available at the council level for land development. In the case of Lusaka, discussions with officials involved in land development revealed that there were areas within the city that the council wished to

develop for industrial and commercial use, but the city has insufficient resources to develop the areas. Though in urban and peri-urban areas basic infrastructure may be provided or available, in rural areas it is more likely that investors have to bear the total or part of the costs of bringing infrastructure to their projects.

57. While *procedures* do not appear to be a substantial problem currently, in part because investment activity is relatively low, it is not an argument for paying no further attention to land development procedures. It is clear that, with the shortage of skilled manpower and finance, a significant upturn in investment would quite quickly stress the system.

58. *Utility connections.* Investors cite frustrations with all utility providers in Zambia for a variety of reasons, including allegedly high costs of service, high and sometimes unjustified installation costs and delays in providing service. Delays are common in obtaining utility connections, particularly in the case of services provided by public institutions such as electricity, water, sewerage and landline telephone and particularly for businesses located outside the major cities. Complaints are especially strong with regard to the cost of electricity, water and telecommunications.

59. High utility costs, downtimes and delays are often cited by foreign investors as one major factor that makes Zambia a less competitive site for investment in the region. By law, ZIC is supposed to assist foreign (and local) investors in obtaining water, electricity, transport and communication services and facilities required for the investment.⁴ However, according to many businessmen, this service is not provided in practice. Different reasons are suggested for the omission--lack of *personnel* at ZIC, lack of adequate powers or a mechanism for ZIC to have privileged treatment at governmental institutions and also the lack of information by the investor regarding that service being cited. The Investment Act's requirement for ZIC to assist investors does imply that procedural difficulties are substantial reasons for the delays in obtaining access to utilities. However, it is clear that procedural issues themselves, though sometimes an irritant, are minor issues, compared to broader problems of poor infrastructure provision in Zambia.

FIAS Recommendations and their legislative implications

Environmental clearance:

60. ***Recommendation:*** Maintenance of environmental standards and processes is an important element of public policy, and the FIAS team would not support erosion of environmental standards and assessment processes in order to short-circuit scrutiny of investment in environmentally vulnerable areas. However, it would recommend that attempts be made to streamline the process in the following ways:

⁴ The Investment Act Chapter 385 of the Laws of Zambia, Part II, Section 33.

- ☐ Review the regulations to the Environment Protection Act with a view to limiting the scope of environmental review to environmental issues and to refining the definition of which projects or investments require an EIA; and

- **Legislative Implication:** Yes.

The review will result in recommendations, which will most likely make legislative changes necessary.

- ☐ Improving the dissemination of environmental requirements and previous environmental assessments to prospective investors with a view to enabling environmental clearances to be obtained in parallel with other approvals.

- **Legislative Implication:** None.

This is a recommendation to improve the knowledge of the public on environmental standards.

Site development:

61. **Recommendation:** Now would be a good time to conduct a broad assessment of the existing laws and regulations governing zoning, building standards, environment and related activities, with a view towards removing outdated and unnecessary requirements and adding new elements important to the development of a modern society.

- **Legislative Implication:** None, initially.

The detailed study will result in recommendations, which may make legislative changes necessary.

62. **Recommendation:** The Government should also become more active in planning ahead for future development. As discussed above, there is a growing demand for land for commercial and industrial development in the greater Lusaka area, and it is likely that development will continue to press outward, quickly reaching previously undeveloped tribal lands in the surrounding areas. Given this probability, the Government should not wait but should be planning to meet the challenge of balancing between making more building land available to encourage modern development on the one hand, and preserving agricultural land and the natural and cultural heritage on the other.

- **Legislative Implication:** None.

63. **Recommendation:** To meet the increasing demand for development plan and construction permit approvals, there is a strong need to strengthen the staff's capabilities

in all technical units, ranging from the physical planning units to the inspectorates. Such strengthening will require both the recruitment of new and qualified staff and training existing staff, with a view of enhancing their technical expertise and professionalism. Moreover, efforts should be made to inculcate in staff the concept of being facilitators to investors and not just inspectors.

- **Legislative Implication:** None.

Budget resources and training programs are necessary to implement this recommendation.

64. **Recommendation:** In addition, government units should also consider outsourcing some of the technical work as a way to further relieve the work load. Outsourcing would allow the GCC more elastic, and perhaps more economic, solutions than hiring all the required technical expertise in-house. As development accelerates, there will be a growing need in the market for private firms to supply services in architectural design, construction site inspection, land survey and related areas, and these can provide services also to the public sector in fulfillment of its responsibilities. Certified service providers can be contracted by the official agencies in the tribal areas adjoining the capital to carry out the technical aspects of the current regulatory requirements.

- **Legislative Implication:** None.

The current legislation does not prohibit GCC from outsourcing services.

65. **Recommendation:** While procedures do not appear to be a substantial problem currently, in part because investment activity is relatively low, it is not an argument for paying no further attention to land development procedures. It is clear that, with the shortage of skilled manpower and finance, a significant upturn in investment would quite quickly stress the system. Now would be a good time to conduct broad assessment of the existing laws and regulations governing zoning, building standards, environment and related activities with an eye towards removing outdated and unnecessary requirements and adding new elements important to the development of a modern society.

- **Legislative Implication:** None, initially.

An assessment of the legislation may lead to recommendations, which may make legislative changes necessary.

Utility connections:

66. **Recommendation:** It also seems desirable that private developers be allowed to contract for installation work in all utility areas, as long as they work according to the

quality specifications set by the utility authorities, under their supervision, and possibly using the materials and equipment they provide. Recognizing this shared interest, countries have developed various policy and regulatory instruments to ensure that necessary services are provided and the related costs are fairly shared by the providers and users

- **Legislative Implication:** It needs a number of legislative amendments to allow for concessions in the infrastructure sectors. Countries adopt usually a framework concession law containing the rules to award concession (bidding processes, selection criteria, duration, contract content, termination rules etc.). Furthermore, a regulatory framework must be set up for the supervision of the concessionaire. This needs a law on the regulatory rules in the respective sector. Finally, a regulatory body must be set up by law. This means usually amendments to the sectoral laws.

3. Operating Procedures

67. Operating procedures include the procedures to pay taxes and to import and export goods.

a. Taxation

Applicable Legislation

68. Primary legislation and regulations:

- *Zambian Revenues Authority Act, No. 28 of 1993 (Chapter 321);*
- *The Income Tax Act (Chapter 323);*
 - *Tax Appeal Court Regulations (Chapter 323);*
 - *Conventions for the Avoidance of Double Taxation (Chapter 323)*
- *Value Added Tax Act of 1995 (Chapter 331);*
 - *Regulations to the Value Added Tax Act of 1995;*
 - *Zero Rating Order (Chapter 331);*
 - *First registration Order (Chapter 331);*
 - *VAT rules No. 1 etc.*
 - *Value Added Tax General Rules of 1997⁵ (Chapter 331).*

Identified Issues

69. The ICA survey results indicate that, within the realm of administrative procedures in Zambia, the area of tax and customs evokes the most negative reactions from enterprises. Two specific issues stand out prominently from the survey results: some 54% of respondents consider penalties to be a problem, with most regarding it as a major or very severe problem; and some 46% of respondents identified the appeals process as a problem, with two-thirds of those identifying it as a significant problem rating it as major

⁵ Internal administrative provisions describing the tax procedures for the officials.

or very severe. Approximately 34% of respondents identified inspections and audits as a concern, and 32% were concerned about the ability to assess their tax liabilities.

70. The business community also expressed concerns about the frequency of changes in tax policy, the lack of a clear rationale and justification for many of the changes, and the absence of a process of consultation before the implementation of changes.

71. The business community complains in particular about decisions that disallow deduction from taxable income of certain business input costs for VAT. For example, cars, petrol and telephone services are presently disallowed, and more recently, this was extended to e-mail service costs.

72. While taxpayers have relatively few complaints about the availability of tax information (almost 60% of respondents stated that this was not a problem), ZRA does not have as effective a communications strategy with its clients as it should. Interviews with several businessmen in Zambia indicated that they were not aware of the website at all or not aware of the kind of information available on it. None were aware of the taxpayer charter that is also on the website. It does appear that ZRA needs to re-assess its efforts to communicate with taxpayers and the general public, in order to ensure that its efforts to improve its image and to meet its charter bear fruit.

73. This is largely linked to attitudes of ZRA officers in their conduct of both field audits and assessment of tax returns. Business enterprises perceive ZRA officers as generally suspicious of any claims for tax relief, and feel that they approach assessments from the point of identifying under declarations rather than ensuring the correctness of submissions. Business enterprises, therefore, feel that they are treated as “guilty until proven innocent” in the eyes of ZRA officers.

74. This situation is exacerbated by pressures faced by ZRA from the Government to exceed revenue collection targets. The key issues are that, first, ZRA staff earn bonuses and secure contract renewals that are largely driven by how they perform in achieving tax collection targets, and second, ZRA itself receives bonuses based on achieving targets. So far, ZRA has been performing above its annual targets. ZRA is regarded as loathe to accommodate any claims that reduce collections.

75. The introduction of VAT has been widely appreciated by the business community. Businessmen, however, have a number of concerns about VAT.

76. The VAT rate of 17.5% is frequently described as “too high” or “higher than regional competitors” by Zambian business. In fact, while at the upper end of the range, Zambia’s VAT is not particularly high in the formal sense, but the effective rate is thought to be higher than in neighboring countries because of the difficulties faced by businesses receiving refunds.

77. The issue of VAT refunds is a topic of great concern to the business community. There are a number of specific issues: the business community considers that extensive

delays are frequent; the procedure to offset a due claim from subsequent Vat liabilities is not automatic but at the discretion of ZRA; claimants face delays up to one or even two years from when a claim has been accepted by ZRA who carry out internal processing of the refund with MFNP; businessmen argue strongly that applications for refunds trigger audits of a broader nature as a matter of course. This largely affects processors and manufacturers whose inputs attract VAT but produce final goods that are zero-rated. This means that they always have net claims to lodge with the ZRA and tend to be subjected to the often long and tedious refund process described above.

78. In addition, there does not appear to be a clear basis upon which goods and services are designated as zero-rated or exempt.

FIAS Recommendations and Their Legislation Implications

79. **Recommendation:** Continued efforts should be made to introduce a single taxpayer number and streamlined documentation requirements as soon as possible. In particular, efforts should be made to reduce the time taken for VAT registration. Moreover, ZRA should simplify the voluntary registration process to encourage small businesses to enroll in VAT. The current rules are too tight resulting in fewer (small) firms to be registered and given the chance to become formal. Instead, more liberal conditions for voluntary registration should be an incentive for small firms to join the formal net.

- **Legislative Implication:** None.

According to officials from ZRA, a single taxpayer number (TPIN) is already in use. The taxpayer's number covers participation in income tax and VAT. The use of the taxpayer identification number is reflected in Sections 45 and 45B of the Income Tax Act.

Voluntary registration is not addressed in the VAT Act or the Statutory Instrument. A change of the rules would not need changes in the VAT legislation.

80. **Recommendation:** Tax policies should, as much as possible, be consistent and predictable. The situation where categories of taxpayers are awarded relief selectively should be avoided as it creates classes of taxpayers that are not recognized in the legislation but are the subject of discretionary treatment by MFNP. Also, compliance provisions should be clearly stated and provided as guidelines for the use of taxpayers so that they are made fully aware of requirements and role of ZRA.

- **Legislative Implication:** None.

This recommendation addresses the implementation of the tax laws, not the tax laws themselves. The guidelines would be adopted as internal administrative provisions and made available to the public.

81. **Recommendation:** ZRA should continue its efforts to publicize relevant laws, amendments, policies and practices and to explain them to the business community. While ZRA should continue to build its website, it should also consider other effective methods of dissemination, for example, through Chamber of Commerce, business association, libraries, banker, etc. Both MFNP, as tax policy agency, and ZRA as tax system administrator, should also increase their efforts to obtain information and feedback from the public and the business community, through feedback forms, hotlines meetings with business associations, etc.

- **Legislative Implication:** None.

The recommendation addresses the publication of administrative practice. The tax laws, however, may oblige ZRA to adopt certain publishing practices or standards.

82. **Recommendation:** ZRA should review its rules on deductibility of expenses, with a view to allowing legitimate business expenses for items currently excluded and to clarifying the basis on which such expenses will be accepted as deductible.

- **Legislative Implication:** Part IV (Sections 29 to 44) and the Second Schedule of the Income Tax Act (Chapter 323) includes the rules on tax deductions. Implementation of the recommendation would require Part IV and the Second Schedule of the Income Tax Act to be amended accordingly.

83. **Recommendation:** ZRA should review the target-based approach to revenue collection, with a view to combining the current target for revenue with other targets, such as taxpayer service standards, identification of large-scale evasion and fraud, etc., and with a view to removing any incentives for harassment of taxpayer.

- **Legislative Implication:** None.

There is no provision in the legislation prescribing the revenue collection approach of ZRA. Instead, the collection approach is decided by the Governing Board of ZRA or the Minister through general directives according to Section 11 (1) and (2) of the Zambian Revenues Authority Act (Chapter 321).

84. **Recommendation:** ZRA should review its audit process, with a view to introducing risk-based approaches to inspection and audit and moving to more selective audits. The current approach penalizes both compliant and poor taxpayers.

- **Legislative Implication:** None.

The Income Tax Act does not specify the auditing policy of ZRA. Sections 57 and 58 of the Income Tax Act in their current form allow a risk-based approach to auditing.

85. **Recommendation:** ZRA should reevaluate the penalties for late payments that are highly punitive (e.g. 0.5% per day or equivalent to about 180% per annum) and due even in cases where the delayed returns are due to disputes and even when ZRA actually owes the taxpayer refunds under another procedure. It should also introduce a market-based interest rate for its delayed payments to businesses.

- **Legislative Implication:** Part X (Offences and Penalties) with Sections 98 – 102 of the Income Tax Act (Chapter 323) would need to be amended to implement the recommendation.

86. **Recommendation:** Procedures should be introduced to ensure that taxpayers can report corrupt practices and other misconduct of ZRA officers without suffering retaliation.

- **Legislative Implication:** The provisions on objections and appeals to the independent Tax Appeal Court (Part XI of the Income Tax Act), particularly Section 109 should be clarified that not only assessments but also corrupt practices and other misconduct of ZRA officers can be brought in front of the court.

87. **Recommendation:** ZRA should, in collaboration with MFNP, review administration of refunds and various other tax claims so that it can meet its obligations for refunds in a more timely manner. Key enhancements could include the following:

- 1) ZRA being empowered to maintain a Revenue Retention Fund that will be funded from part of revenues collected at source to cover taxpayer claims.
- **Legislative implication:** Sections 11(1) (b), 22 of the ZRA Act would need to be amended to allow a Revenue Retention Fund for ZRA.

- 2) Regular claimants to be allowed to withhold VAT through offsets that can then be subject to periodic verification audits;
- **Legislative implication:** The refund provisions (Sections 87 to 93) of the Income Tax Act need to be amended.
- 3) Placing an obligation on MFNP through the ZRA to also pay penalty interest for delayed refunds, as this would provide an incentive to be more efficient; or
- **Legislative implication:** Section 87 of the Income Tax Act on refunds would need to be amended to oblige ZRA to pay interest on delayed refunds.
- 4) Placing a statutory limit on the maximum time to be taken to process refunds, and incorporating delays into the broader assessment of ZRA performance.
- **Legislative Implication:** Again, Section 87 on general refund rules would need to be amended accordingly.

b. Customs

Applicable Legislation

88. Primary legislation and its regulations:
 - Customs and Excise Act of 1955, as amended.
 - *Import and Export (Agriculture) Regulations to the Customs Act (Chapter 421);*
 - *Import and Export (Commerce) Regulations (Chapter 421);*
 - *Ports of Entry and Routes Order (Chapter 322);*
 - *Counterfeiting Duty (Investigations) Regulations (Chapter 322);*
 - *Customs and Excise (Suspension) (Manufacturing Inputs) Regulations (Chapter 322);*
 - *Clearing and Forwarding agents, Regulations (Chapter 322);*
 - *Refunds and Remissions (Surtax) Regulations (Chapter 322);*
 - *Customs and Excise (Suspension) Common Market for Eastern and Southern Africa Regulations (Chapter 322);*
 - *Rebates, Refunds and Remissions (General) Regulations (Chapter 322);*
 - *Intoxicating Liquor Drawback (International Airdromes) Regulations (Chapter 322);*
 - *Spirit Rebate Regulations (Chapter 322);*
 - *Industrial Drawbacks and Rebates Regulations (Chapter 322);*
 - *Customs General Regulations (Chapter 322).*

Identified Issues

89. The addressed issues concern the customs administration and policy as well as import and export procedures.

90. The concerns expressed by the private sector are wide-ranging and extend well beyond the scope of administrative procedures alone, to sudden changes in policies, and inadequate communication and consultation with the business community, and corruption. A particular theme that surfaced in a number of interviews was the complaint from businessmen that changes in staffing at customs posts cause delays and that it can take as much as 4-6 months to stabilize a post's operations after such staffing changes.

91. One of the major concerns raised by the business community relating to import tariffs in Zambia is the sudden changes in tariff levels for specific goods. The use of import bans has particularly affected imports from Zimbabwe. In 2002, the Government suddenly imposed a ban affecting 18 different categories of products imported from Zimbabwe. In the case of eligible imports from Zimbabwe, a new method of calculating the exchange rate for valuing goods was also introduced based on parallel (unofficial) rates. This has affected both traders and manufacturers who source products from Zimbabwe as they presently face higher import charges.

92. It does appear to FIAS that the information required to process imports remains excessive in a number of respects. These include packing lists - if the commercial invoice has sufficient information, it should not be necessary to require a packing list also - and the original bill of lading - the UN Working Party on the Facilitation of International Trade Procedures has recommended that Customs services do not ask for a copy.

93. Private sector representatives (both individual enterprises and freight forwarders) have mentioned delays at the border because of the time taken to value and clear goods. In addition, importers and exporters mentioned delays in clearing of airfreight shipments at Lusaka airport, with shipments taking up to four days to go through the clearance process.

94. There are, in addition to broader issues alluded to above, specific issues related to customs clearance procedures. The most significant issues are as follows:

- In the case of regular imports and well-established importers, it appears that the classification process is carried out in a reasonable time. However, the position is less satisfactory in the case of unique and "dual-use" goods, especially when the goods can attract different rates of duties.
- Valuation of imports is also cited as a significant problem. Many, maybe a majority of irregular importers are said to face problems in the determination of VDP.
- Discussions with clearing agents suggested that delays in import clearance are also experienced due to poor document handling by Customs officials at border points. Since it is virtually mandatory for Form CE 20 to be processed

electronically, the complaint about document handling seems to refer chiefly to misfiling and misplacement of documents accompanying the form.

95. Finally, interviews with importers and freight forwarders indicated that there is a widespread perception that Customs officers do not always understand the businessman's need for rapid clearance of goods. There is a need for clear performance standards for service levels.

96. Regarding export procedures, exporters from outside Lusaka are critical of the lack of Customs (and other government) staff in their localities, which frequently means that a trip to Lusaka is necessary whenever an export transaction needs to be cleared, and of the inability of regional staff to deal with export procedures. The main concern is the procedure for obtaining ZRA endorsement on the export certificates.

97. The main areas of concern relate to the administration of export incentives, such as duty drawbacks, manufacturing under bond and selective application of tax incentives to sectors.

FIAS Recommendations and Their Legislation Implications

98. In view of the limited improvements that have occurred and the persistence of a range of problem, FIAS would recommend that a thorough diagnosis of the customs service be carried out as the basis for a modernization program. FIAS would further emphasize that a commitment in ZRA for such comprehensive reform will be translated into effective results only if ZRA has support from MFNP and the Government at large.

99. Within the broad-based modernization program, ZRA should ensure that the following recommendations are acted upon:

100. **Recommendation:** A comprehensive approach is taken for all initiatives to improve quality and delivery of services provided by Customs and to reduce the cost of moving goods into and out of Zambia. A comprehensive approach needs to take into account all involved agencies and stakeholders inside Zambia, and also needs to take into account the actions of Zambia's neighbors. In particular, ZRA and other government agencies involved in border crossings, should as a matter of priority, consult with neighboring countries with a view to improving border clearance times and procedures.

- **Legislative Implication:** None.

One outcome of the recommended coordination process, might be, however, to exchange information and streamline procedures, which may be done only through legislative amendments.

101. **Recommendation:** New procedures are consistent with international best practice. The Kyoto Convention and WTO Agreements and Measures provide detailed guidelines for simplification and harmonization of customs procedures, and new systems adopted in Zambia should use this information to help Customs conform to international standards and to secure the benefits of proven best practice where possible.

- **Legislative Implication:** According to officials from ZRA, full compliance of the Customs and Excise Act with the Kyoto Convention and the WTO Treaty would require legislative amendments. However, an analysis of legislative amendments needed to be in compliance with the Kyoto Convention and the WTO Treaty would go beyond this study.

102. **Recommendation:** New procedures are developed on the basis of revised and streamlined procedures, and do not simply involve the automation of existing practices and procedures. In this **respect**, the implementation of ASYCUDA ++ allows the collection of statistical information that can be analyzed for trends in order to make recommendations for further procedural improvements.

- **Legislative Implication:** None.

The collection of information and data can be done without legislative changes.

103. **Recommendation:** The principle of selectivity is fully established as the basis for all inspection procedures, and this principle needs to be reflected in the design of inspection procedures, regulations and the collection of data, so as to make risk-based inspections the norm.

- **Legislative Implication:** None.

Changes needed regarding internal procedural rules. The Customs Act allows the implementation of the principle of selectivity and a risk-based approach to inspections.

104. **Recommendation:** Enforcement of rules and efforts to curb illicit customs activities on the part of some importers should be based on effective punishment of those found guilty, and not by the imposition of general rules or procedures that have the effect of penalizing all importers and exporters. Moreover, enforcement of the rules should be balanced by provision of clear information to importers and exporters and the maintenance of effective objection and appeals mechanisms.

- **Legislative Implication:** None.

This is an implementation and not a legislative issue.

105. **Recommendation:** Realistic targets for revenue collection are maintained, and that these are combined with realistic targets for service delivery, so that businesses obtain benefits to balance against their payments of taxes. Moreover, data collection should be designed so that performance of the Customs can be measured in a transparent manner.

- **Legislative Implication:** None.

Legislation does not to be amended to change the policy on setting revenue collection targets.

106. **Recommendation:** More educational campaigns are carried out to clarify import/export procedures, and efforts are made to provide information to taxpayers through a variety of media.

- **Legislative Implication:** None.

107. **Recommendation:** Adequate resources are provided for staff training, and appropriate performance evaluation mechanisms are introduced.

- **Legislative Implication:** None.

Internal rules may be adopted or amended to allow the implementation of this recommendation.

108. **Recommendation:** There is scope for simplification of import procedures and reducing the time spent in clearance. Because customs clearance is only one part of border formalities, FIAS recommends that a review of all border procedures should be carried out, with a view to identifying clearly the inter-related nature of various agencies' responsibilities and the primary procedural obstacles.

109. Within the structure of this overall review, customs procedures should also be reviewed, with a view to:

- ☐ Simplifying the import process;
- ☐ Rationalizing the information requirements, eliminating duplication and facilitating information sharing between relevant agencies;
- ☐ Reduce the administrative burden on the business community; and
- ☐ Minimizing the time required for completing the process.

- **Legislative Implication:** None.

The recommended study can be initiated without legislative changes.

110. **Recommendation:** ZRA should clarify the Customs Valuation methods that shall be used in all situations and ensure that they are consistent and transparently applied. At present the business community insists that too much discretion is given to ZRA customs officers, and that this generates disagreements between importers and ZRA, and causes delays in the clearance of goods. World Customs Organization (WCO) methods of valuation should be published, and ZRA should be obliged to use them. In addition, Customs should take immediate steps to introduce the practice of informing importers in writing if declared values are being challenged and providing reasons for the challenge.

- **Legislative Implication:** The Customs valuation rules are set in Section 85 of the Customs and Excise Act (Chapter 322). To adjust the Customs Valuation methods, Section 85 would have to be amended.

The other recommendations do not need to be implemented by law.

111. **Recommendation:** ZRA should encourage use of inland clearance facilities (i.e. allow goods to be Removed in Bond) for importers using clearing agents, in order to help decongest ports of entry. This would reduce the time that goods are held up at ports of entry whilst taking advantage of clearing agents' bonded warehousing facilities in order to speed up processing and transfer responsibility for the safe storage of inward goods to clearing agents.

- **Legislative Implication:** None.

If incentives to be given are, for example, improved warehousing facilities or speedier processing procedures, then legislative changes are not necessary.

112. **Recommendation:** The application of countervailing duties on Zimbabwe imports should be more clearly set out so that importers know in advance the formula to be used in the computation of exchange rates for the determination of VDP.

- **Legislative Implication:** None.

Countervailing duties and exchange rates are determined by the Commissioner according to Sections 74A and 86 of the Customs and Excise Act (Chapter 322) in connection with the Third Schedule. The provisions give the Commissioner the power to determine the duties and the exchange rate in specific cases and in general. The procedure is not set in the legislation. The Commissioner would merely have to change the current practice to implement the recommendation.

113. **Recommendation:** ZRA should take effective action to reduce the recently increasing delays in clearances at Chirundu border post and Lusaka airport.

- **Legislative Implication:** None.

It is understood that the delays stem from the way the procedure is organized, not the provisions of the law.

114. **Recommendation:** In view of the importance to Zambia's macro-economic performance of exports, especially the stimulation of non-traditional manufacturing and services, FIAS recommends that ZRA carry out a review of the location of its staff dealing with exports and exporters and a review of the functions of its regional offices, with a view to increasing the availability of staff that can facilitate export clearance procedures. This review should not only examine the current demand for export clearances from enterprises outside Lusaka and the other cities served at the moment, but should also look at the potential for export growth in areas which are currently under-served. The objective of the review and subsequent changes in staffing and procedures would be to reduce the costs to businessmen of complying with export clearance procedures, without increasing substantially the costs of ZRA.

- **Legislative Implication:** None.

115. **Recommendation:** A major source of concern for exporters is the procedure applied in determining duty drawback refunds and the time taken to receive payment. Exporters face delays that can be mitigated by:

- 1) ZRA establishing exporter subsidiary records (maintained electronically that list out imported materials that are to be used in export production as these are procured and cleared at ports of entry) that will be used to process duty drawbacks. Such a system could speed up the process of determining the: description, dutiable value and coefficients (in relation to other non-dutiable inputs) of imported inputs eligible for the duty drawback;

- **Legislative implication:** None.

This is an administrative measure that does not need legislative changes to be implemented.

- 2) The establishment of special accounts for refunds to be legislated, empowering ZRA to either withhold from collections portions that will be used to fund such an account or obliging the Ministry of Finance and National Planning to ensure that funds are available in that account to cover all projected claims on a monthly basis; and

- **Legislative implication:** None.

Section 22 (3) (c) of the Customs and Excise Act give the ZRA the right to use its funds for any expenses incurred in its performance of its duties. The Minister and the Governing Board can decide according to Section 11 (2) of the ZRA Act on the functions of the ZRA. If special accounts for refunds shall be maintained by ZRA, then the Minister of Governing Board shall empower ZRA to do so. A change of the ZRA Act is not necessary.

- 3) Duty drawback claimants to be entitled to penalty interest where refunds are not credited within one month of lodgment in order to act as a deterrent to ZRA for delays in confirming value of claims and release of funds.

- **Legislative Implication:** The right to penalty interest should be inserted in Section 90 of the Customs and Excise Act as well as Section 5 of the Rebates, Refunds and Remissions (General) Regulations (Chapter 322).

D. Conclusion and Reform Approach

116. The FIAS study on administrative barriers to investment covers all significant procedures investors have to go through to start and operate a business in Zambia. It results in 56 recommendations to improve the administrative procedures important to investors. However, it is important to bear in mind that while the study covers a fair amount of ground, it is not exhaustive. For example, many sectoral procedures are not covered. The intended reform program based on the study will discover additional areas in need of reform, may shift its focus and develop new recommendations and legislative consequences. The work plan to be developed should therefore be seen as a “living document”. Therefore, the recommendations and its identified legislative implications should not be seen as the final word on administrative reform in Zambia. Their purpose is to help the GOZ setting an agenda for the working groups to start working.

117. **Legal changes should follow not lead policy reform.** Another important issue is the sequencing of legal reform measures. It is vital for a successful reform that legal changes are only be introduced after the underlying policy decisions have been made. Policy reform should lead legal reform, not the other way around.

118. **The majority of recommendations provided in the FIAS study on administrative barriers can be implemented without legislative changes.** Only 23 out of 56 recommendations require legislative actions. The recommendations with legislative implications concentrate on four areas: work permits and investors’ right to stay (Immigration and Deportation Act), investment and incentive regime (Investment Act), taxation (Income Tax Act, VAT Act, ZRA Act), and the lands acquisition regime (Lands Act, Lands and Deeds Registry Act). These areas need more fundamental revision. There

are strategic and policy issues that have to be resolved in each of these areas which are likely to generate not just legal changes.

119. The main legislative changes would have the following directions:
- ☐ The Immigration and Deportation Act needs to adopt a more liberal approach to issuing self-employment permits to investors and work permits to foreign employees.
 - ☐ The Investment Act should adopt a more liberal approach to investment screening and approval.
 - ☐ Changes of the Income Tax Act and the VAT Act should introduce a revised corporate tax and VAT regime based on the recommendations of the administrative barriers study and a review of the effective tax rate currently underway.
 - ☐ Liberalization and development of a land market and land allocation and development procedures would need an overhaul of the Lands Act and its regulations.

120. In two of the mentioned areas, legal drafting is already underway. The Immigration and Deportation Act and the Investment Act are currently under review and draft changes are being discussed within the government and with the private sector. Both drafting processes, however, appear to run independently without much interaction.

121. In the other two areas, various preparatory efforts need to be undertaken before legal drafting can begin. A review of the Income Tax Act and the VAT Act is in process with a FIAS project analyzing the effective tax burden and the overall corporate tax policy including the incentive regime. The review will result in recommendations that are most likely to have to be implemented through changes in tax legislation. The reform of the land regime is in a very early stage. Additional information and analysis is needed before basic policy decisions can be made. Legislative changes should follow only after a new land policy is adopted.

122. **An effective public-public dialogue is needed to ensure coordinated reform measures.** It is important to note that proposed or possible changes in the Immigration and Deportation Act, the Investment Act and the Income Tax/VAT Acts are closely linked. For instance, both the Immigration and Deportation Act and the Investment Act contain provisions on self-employment permits for investors and work permits for foreign employees. The same situation is true for changes in the Investment Act and the laws on taxation. Any changes of the incentive regime currently included in the Investment Act will have an impact on the taxation of businesses and therefore the Income Tax Act and the VAT Act, and vice versa.

123. Consequently, a coordinated approach is necessary to avoid legal inconsistencies and subsequent uncertainty for the business community and the institutions responsible for administering the laws. A public-private consultation process and a discussion within the Government on Cabinet and working level needs to take place well before the drafting stage to agree on the policy issues and objectives of the reform. It should ensure that legal

changes of interlinked laws serve the same objective, push into the same direction and use compatible concepts, definitions and language. The formation of a Cabinet Committee to examine the various drafts with the aim to ensure consistency in policy and strategy may be considered. Any change of provisions in one of the three areas (immigration/investment/taxation) should only be adopted after thorough consultation and coordination. And the ministers presenting their respective proposals to the Cabinet should be in a position to say that their approach has been discussed widely and is consistent with interrelated proposals from other ministries. As mentioned above, this approach appears to be neglected in the actual drafting processes of the Investment Act and the Immigration and Deportation Act.

124. General legal review should not delay reform efforts in areas already underway. Currently, there is some discussion whether there is a need for a more universal review of the legal framework for doing business and how such a review would impact the revision of the laws mentioned above. Such a broad review would typically provide an analysis of general business laws relevant for establishing and operating a business in Zambia. The review would contain the laws mentioned above but would also include, for example, the company law and its rules on corporate governance, laws on winding up a company, privatization rules, securities legislation, competition laws, etc.

125. However, such a review appears not to justify a delay of reforming the areas described above. Otherwise, there would also be a risk to negate the momentum of the drafting processes underway. Revisions of the corporate governance alone can take many years of deliberation as experience shows in many countries. Instead, the government should not lose time, but should continue with drafting changes to the Immigration and Deportation Act, the Investment Act and the Income Tax Act. A broader review of the general business legislation may be undertaken in parallel.

126. Legislative reform should be integrated in the overall work plan to reform the administrative procedures. While for three of the four main areas of legislative changes, the policy decision to implement the recommendations has been made and the reform process is underway, all other identified legislative changes should feed into the overall work plan to remove administrative barriers and addressed in a suitable institutional set up to implement the recommendations. The result of this study should not result in a separate reform program for legislative changes outside the overall working plan.

127. Annex A provides an example for the institutional set up to implement an administrative reform program. Annex B provides an example for a work plan of a program to reform administrative procedures relevant to investments. It should be noted that both annexes are taken from a country that has different problems, issues and objectives than Zambia and they should only serve as an example. Zambia would have to find its own institutional set up and develop a work plan suitable to tackle the issues specific to Zambia.

Framework for Implementation of Administrative Barriers Reform

1. This annex outlines an approach for developing and implementing a sustainable framework for:

- ☐ Monitoring the business environment on an ongoing basis.
- ☐ Systematically soliciting the views, inputs and support of the private sector.
- ☐ Developing an action plan and establishing priorities for reform.
- ☐ Assigning responsibility for specific actions and accountability for measurable change.
- ☐ Securing the resources required for implementation.
- ☐ Implementing changes – legal, regulatory and operational – to streamline administrative procedures and eliminate administrative barriers to investment.
- ☐ Coordinating the activities of the relevant institution.

A. A framework for sustainable change should include the following elements:

- Champions and leaders from the public and private sectors who have the commitment, credibility, and authority to develop a vision and to generate support for action.
- Clear goals and objectives embodied in an action plan.
- An institutional home and an organizational structure for the secretariat of the change agenda to facilitate implementation and to monitor progress.
- Tools for analyzing the investment environment, soliciting investor perceptions, and proposing reforms to address the issues identified.
- A process for consultation among stakeholders in the public and private sectors. This process should be linked to other consultation processes, such as the President's Investor Council.
- Resources for capacity building and implementation, and a system for monitoring and rewarding the performance of organizations and employees in the relevant government institutions. This should be designed and implemented within the context of the ongoing public sector reform.

2. FIAS experience in other countries has shown that leadership and a commitment to improve the investment environment must come from the highest levels of government. The active participation of the private sector should lend credibility and help to broaden the base of support for the change agenda. In addition, Ministries and government agencies must be held accountable for participating in and supporting the agenda, and their commitment is essential. Ongoing consultation among stakeholders in the public and private sectors and regular progress reports will be necessary.

3. In the case of Uganda, there are plans for the President to issue an Investment Statement stating the country's commitment to attracting investment and to provide for an appropriate legal and regulatory framework for investment while ensuring that investors receive an exemplary level of service. In this context, FIAS recommends that the guiding principles for the policy statement (See Box A-1), be applied to the development and implementation of the framework for improving the business environment in Uganda.

Box A-1
Presidential Investment Statement:
Guiding Principles

1. Uganda's objective is to provide a competitive, world-class enabling environment for investors.
2. Investment procedures will be streamlined to minimize costs of doing business and time needed to comply with procedures, and will be implemented and measured from the point of view of business in terms of purpose, service and efficiency.
3. Similarly, publicly-provided services will be service oriented, so as to minimize the costs of doing business and to maximize investor satisfaction.
4. Law, regulation and service provision will minimize discretionary decision-making and will emphasize minimizing the risks for investors.
5. Uganda will continually monitor and benchmark the investor environment/ procedures. Levels of investor satisfaction will be measured on an ongoing basis.
6. Laws, regulation and service will be applied and delivered with consistency. Decision makers and service providers will be held accountable for the quality and impartiality of their work.
7. Procedures that are not needed for public security or safety or basic oversight requirements will be eliminated.
8. Investment procedures will be applied to domestic and foreign, existing and new investors without bias.
9. Public-private collaboration will be emphasized.
10. Performance and benchmarking information will be publicly disseminated.

B. Supporting Structure for Implementation

4. In developing the change agenda and implementing the required reforms, it is proposed that the following supporting structure be adopted:

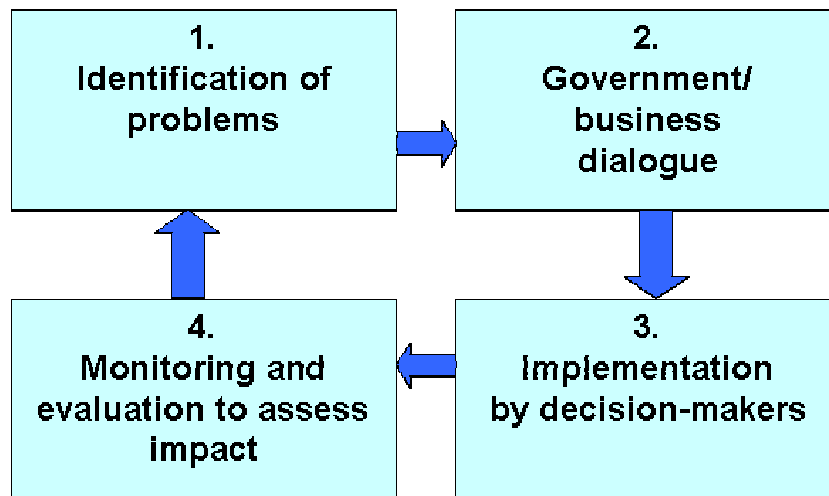
- **The Steering Committee.** FIAS understands that a coordinating committee has already been established for the Medium Term Competitiveness Strategy (MTCS) and the Strategic Export Program (SEP), under the chairmanship of the Ministry of Finance, Planning and Economic Development (MOFPED). In order to minimize duplication and capture synergies, FIAS proposes that this committee assume the leadership for the implementation and follow-up work on the administrative barriers reform program. The action plan should be finalized by the committee and recommended for approval by the President.

- An **implementation team or secretariat**. If such a team has not already been established for the Medium Term Competitive Strategy (MTCS) and for the Strategic Export Program (SEP), FIAS strongly recommends the establishment and allocation of resources for such a team. This is critical to ensure that resources are available for the important tasks of monitoring the investment environment on an ongoing basis, and holding the relevant agencies accountable for implementing the action plan items for which they are responsible.
- A **consultative committee** of stakeholders should be drawn from the public and private sectors as well as from the international donor community. The consultative committee should provide a mechanism for regular consultation with a broad group of stakeholders on various reform initiatives.

C. Action Plan

5. Figure A-1 provides a conceptual outline of the reform process. It must be noted that this is a dynamic and iterative process which will require review, revision, and amendment, in response to emerging factors and the progress of the reform initiative.

Figure A-1: Cycle of Reform



6. Clear goals and objectives must be established for the Commission, the implementation team, and the consultative committee.

7. The Action Plan should be utilized to:

- Document the changes agreed upon.
- Establish priorities and timelines.
- Provide a basis for accountability by identifying the parties responsible for each element of the plan and documenting the agreed timelines for action.
- Keep an ongoing record of progress.

8. Therefore, it must be emphasized that the Action Plan is not a static document but one that evolves over time. This report provides a starting point for the Action Plan, with the summary of issues and recommendations provided in Annex B.

D. Monitoring the Investment Environment

9. The 1996 Roadmap together with the present update of administrative barriers to investment and the review of the commercial legal framework, provide the basis for a systematic, periodic review of the investment environment in Uganda. The procedural documentation outlined here should be used to develop an updated **roadmap** of the business start-up and operation process in Uganda, in a form that can be published and disseminated to existing and potential investors. The roadmap could outline all the steps required for obtaining access to land, business registration, taxation reporting, importing/exporting, licensing, and inspections. It must be updated regularly to reflect procedural changes throughout the reform process. This report provides the basis for the roadmap reflecting the procedures that are currently in effect.

10. A periodic survey of **investor perceptions** should be conducted by the national investment promotion agency, in order to guide the reform agenda and to develop a strategy to promote foreign investment. Investors' perceptions of where to locate an investment are generally based on a combination of: objective information that they have compiled to support their business decisions, their personal experience, reports from the media or third parties (e.g., consultants, business associates, competitors), and interactions with the international business community. Negative perceptions — even if they are partly inaccurate — can remove a country from the first long list of possible locations for investment.

11. Annual updates of the **regulatory and administrative costs survey** should serve as another tool for analyzing the investment environment and for identifying issues that need to be addressed. The 2003 survey should serve as a benchmark. The objectives of these surveys are to:

- Provide feedback from enterprises on constraints in the private sector
- Measure the quality of governance and delivery of public services, and the key procedures and formalities with which businesses must comply
- Evaluate the types and magnitude of costs imposed on private enterprises by administrative and regulatory procedures, and pinpoint excess or unnecessary costs that could benefit from reform or streamlining
- Establish the basis for several internationally comparable indicators that can track changes in the business environment over time, to assess the effect of market-oriented reforms
- Stimulate systematic public-private dialogue on business perceptions and the agenda for reform

12. In addition to the cost surveys, **self-assessment templates** should be developed to document administrative procedures, information requirements, officials fees, and responsible officials within the relevant state and municipal agencies. This documentation should also include information on mandated and average completion times for each step of the procedure. This information should be collected at specified intervals and compared with the outputs of the cost survey and of other public feedback mechanisms. The objective is to assess the impact of reforms and to provide information for supporting additional reforms. It will also provide a basis for holding designated offices accountable for specific activities.

13. **Customer service surveys** should also be used to help improve the quality of the services provided by public agencies. The surveys should be conducted by an independent, private sector entity to solicit customer feedback on a confidential basis. Aggregate results should be published and disseminated. Where appropriate, service recognition awards and/or other appropriate rewards should be granted to deserving employees.