

Doing Business in
Zimbabwe
The jewel of Africa



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Introduction

Deloitte has pleasure in presenting our latest guide to Doing Business in Zimbabwe at 1 April 2013

The purpose of this booklet is to provide potential investors, business persons, students and others with certain fundamental information on doing business in Zimbabwe.

The information given here is a guide and as such it is not exhaustive. It is based on conditions existing at the date of publication. Readers are strongly advised to consult with professionals in the relevant fields of interest prior to relying on any information contained in here. To contact Deloitte in Zimbabwe please refer to contact information on page 78 of this document.

To obtain an understanding of how Deloitte can help you in Zimbabwe please refer to page 74.

This document will continuously evolve with changes that may occur in the Zimbabwe environment. If you would like to receive future editions of this document please email **deloitte@deloitte.co.zw** for inclusion on our mailing list.

High level overview of Zimbabwe

The Republic of Zimbabwe is a landlocked country in Southern Africa and is bordered by South Africa, Zambia, Mozambique and Botswana. It is a 390 757 square kilometres with approximately 1% of its surface area being water. The population in 2009 has been estimated at 12 523 000¹.

The country was a former colony of Great Britain and was granted independence in 1980. English remains the official business language with Shona and Ndebele being the dominant other languages in use. Zimbabwe has an adult literacy rate of approximately 90.7%², one of the highest in Africa.

Zimbabwe maintained positive economic growth throughout the 1980 and 1990's but declined from 2000 onwards where it experienced hyperinflation and later severe hyperinflation. This led to the collapse of the formal economy by the end of 2008. Hyperinflation ceased with the abandonment of Zimbabwe Dollars and the legalised use of multiple foreign currencies in February 2009. This coincided with the introduction of a power sharing government between the three major political parties in Zimbabwe. Since then, the Government has been working towards a revival of the economy.

Zimbabwe drafted a new constitution which was ratified by the people of Zimbabwe by a referendum held on 16 March 2013. The new constitution will also pave way for harmonised elections. The new constitution is founded on respect for the following values and principles:

- Supremacy of the constitution
- The rule of law
- Fundamental human rights and freedom
- The nation's diverse cultural, religious and traditional values
- Recognition of the inherent dignity and worth of each human being
- Recognition of the equality of all human beings
- Gender equality
- Good governance, and
- Recognition and respect for the liberation struggle.

Deloitte footprint in Africa



¹ United Nations Department of Economic and Social Affairs Population Division

² CIA World Fact Book

The Zimbabwe economy has traditionally been based on agriculture with tobacco being dominant. This sector declined from 2000 onwards with the collapse of commercial agriculture. Since then mining has been the mainstay of the economy. Zimbabwe has significant agricultural potential but this sector remains politically sensitive.

Zimbabwe possesses abundant mineral reserves. In particular, significant deposits of platinum, chrome, diamonds, coal, gold, coal bed methane, iron ore and other resources exist.

Zimbabwe is also blessed with significant world class tourism attractions including Victoria Falls, Lake Kariba, the Eastern Highlands and a host of prime wildlife reserves.

Zimbabwe is presently very active in promoting the investment necessary for the rebuilding of its economy. The investment rules and regulations have presently remained largely unchanged since the Zimbabwe Dollar era but there has been a significant relaxation of exchange controls. Business ownership and participation rules have been enhanced.

Investment modalities and rules

Forms of business entities

The laws governing business entities in Zimbabwe have their origin in Roman-Dutch law, borrowing from English law where necessary. As a result, Zimbabwe law contains much of English mercantile, company and insolvency law. In many cases, legislation has been strengthened by the persuasive authority of English and other judicial precedent.

The Principle business entities operating in Zimbabwe fall into five broad categories; namely:

- Sole proprietorships
- Partnerships
- Co-operatives
- Companies (public or private) incorporated under the Companies Act (Chapter 24:03)
- Foreign branches/representative offices or subsidiaries
- Trusts

Legislation also exists in respect of Private Business Corporations (these are essentially the same as Close Corporations (CC's) under South African law) but are not commonly used in practice, if at all.

Sole Proprietorships

Sole proprietorship refers to a business organisation for which an individual has sole and unlimited liability. Any income derived from the business is regard as the owner's income for tax purposes, since the business is not regarded as a legal entity.

Partnerships

As with sole proprietorship, there is little legislative control on partnerships. The nature of the business may mean that a partnership will fall under specific regulatory statutes as, for example, in the case of consulting engineers and public accountants. Profit-making partnerships are generally restricted to a maximum of 20 partners, except for designated professional associations such as doctors, chartered accountants, lawyers and engineers.

Normally, partners are jointly and severally liable for all debts of a partnership, provided they were incurred in the name of and with the authority of the partnership. Presently no legislation exists for the establishment of Limited Liability Partnerships in Zimbabwe. It is expected that such legislation will be introduced in the near future.

Co-operatives

This form of business entity is most appropriate for the small scale farming, mining and fishing sectors. Such entities are formed in terms of the Co-operative Societies Act (Chapter 24:05).

Foreign branches

A company incorporated outside of Zimbabwe and having established a place of business within Zimbabwe may carry out its activities as a branch of a foreign company without having to form a separate locally registered company. However, setting up such branch operations requires approval from the Ministry of Justice and registration with the Registrar of Companies. An investor wishing to use this form of business is required to submit an application to the Minister of Justice. The following documentation is required:

- Completed form CR 18 (a list of documents)
- All company registration documents for the parent company to be submitted
- Documents to be certified at the Zimbabwe embassy of the parent company's jurisdiction. The registrar will accept certification at the correspondent company's office where a jurisdiction has no embassy.
- If the documents are in a foreign language, certified translated copies have to be submitted
- CR 14 (particulars of directors or principal officer representing the company in Zimbabwe)
- CR 6 (the Zimbabwean physical address for the branch)
- A fee of USD 520.00

If approved by the Minister of Justice the Registrar of Companies will be notified of authority to issue a Branch Registration Certificate. The branch licence is issued by the registrar after approval by the Minister.

A foreign company is required to maintain proper accounting records of transactions in Zimbabwe for intervals not exceeding twelve months and must be available within Zimbabwe. Annual financial statements must be lodged with the Registrar of Companies. If the foreign company is a holding company, group accounts prepared in accordance with the requirements of the Companies Act must also be submitted.

Representative office

Registration of a representative office is the same as that of a Foreign Branch. The only significant distinction is that a representative office is not permitted to engage in any activity for profit.

Private Voluntary Organisations (PVO)

Whilst not a form of business in the strict sense of the term, we have included here for reference purposes the registration requirements for such entities. The registration of PVO's falls under the Ministry of Social Welfare.

Form PV.0.1 (application for registration of a PVO) should be completed

To be completed and signed by Head of Office together with a written application and this should be submitted to the Ministry of Social Welfare. The following should be attached to the application:

- Signed Memorandum of Understanding between the organisation and the relevant ministry
- A police clearance for the Head of office in Zimbabwe if the representative is a Zimbabwean
- An Interpol clearance if the Head of office is a foreigner
- A referral letter from the country of origin (Head office) authorising the Head of office to carry out operations on behalf of the organisation
- Power of attorney from the head office authorising the representative to carry out operations in Zimbabwe
- A copy of the certificate of registration for the Head office

The normal procedure is that the board sits every quarter for approval of cases.

Once registered, the organisation will be issued with a registration certificate and they can then commence operations. They will be required to submit within three months after the financial year end, annual audited financial statements. They will be also required to submit an annual activity report. The annual activity report should narrate the operations carried out by the organisation during the period.

Companies

This is the most common form of business entity and is governed by the Companies Act (Chapter 24:03). Companies may either be public or private.

Public companies

A Public company has “Limited” (abbreviated “Ltd”) as the last word in its name. A public company must file its annual financial report with the Registrar of Companies, where it is open to public scrutiny. Public companies are required to be audited. Public companies may seek a listing on the Zimbabwe Stock Exchange and offer shares to the public. Such an offer must be accompanied by a prospectus which must, prior to making the offer, be lodged with and registered by the Registrar of Companies.

Private companies

A private company, denoted by the words (Private) Limited (abbreviated “(Pvt) Ltd”), may not offer shares to the public and is not generally required to file annual financial reports with the Registrar of Companies

Membership of a private company is restricted to a maximum of 50 shareholders, plus employee-shareholders.

Company formation

Registration of a private company in Zimbabwe is relatively simple. The first step is to submit a name search for the desired name to be registered. When this is successful this name is generally reserved for a limited period. A company is then registered by filing a Memorandum of Association (Articles of Incorporation) and Articles of Association with the Registrar of Companies. The former document lists the company’s name, its sphere of business, details of its share capital, the number of shares that each subscriber undertakes to take up and a statement to the effect that liabilities of shareholders are limited. (The liability of a shareholder is limited to the amount, if any, unpaid on his allocated shares.) The second document regulates the company’s internal operations. Model Articles of Association are contained in the Companies Act (Table A).

Registration takes between one and two weeks if all documentation is in order and the prescribed fees are settled. The registrar may request additional information in respect of entities restricted by other laws or regulations. (For example licensing and qualifications may be requested when registering a pharmacy).

Although registration is not a lengthy process an alternative, in the case of extreme urgency, is to purchase a previously registered “Shelf Company”. The name and other details can be changed at a later date but this process can be drawn out.

Capital

No minimum capital requirements are contained in the Companies Act (however, as in the case of Banks for example, other legislation may govern this). The authorised share capital, details of which must be given in the Memorandum of Association, generally consists of ordinary shares (common stock) and/or preference shares (preferred stock). Ordinary shares are the most usual, which may be divided into various classes with varying rights to dividends and votes. Preference shares carry preferential rights to participation in the distribution of dividends or capital, or both. They may be issued with or without voting rights and may be cumulative with regard to unpaid dividends.

There are no limits on the amount of authorised capital. A fee of \$5 in each \$ 100 of authorised capital is payable with a set minimum. Articles of Association invariably make provision for increasing the authorised share capital if so desired and for alterations in the form and rights of shares, so that future increases can be made relatively easily.

Issued share capital cannot exceed the authorised capital. The minimum number of issued shares is two. The signatories to the Memorandum and Articles of Association must specify the number of shares for which they undertake to subscribe, they must each subscribe for no less than one, and the minimum number of signatories to the memorandum and articles is two.

Provided the Articles of Association of the company permit it, a reduction in share capital is possible but requires a special resolution to be passed and is subject to confirmation by the court.

Share capital that was denominated in Zimbabwe dollars is required to be legally reconstituted to United States Dollars by way of a special resolution. The extent of share capital can impact on the cost of annual returns.

Shareholders, Directors and Officers

Shareholders are entitled to a share of profits of a company by way of dividends if declared, to share in surplus assets on liquidation and to receive a copy of the annual financial statements. The rights of shareholders, as embodied in the Memorandum and Articles of Association can only be altered by special resolution as prescribed in the Companies Act.

An annual general meeting of shareholders must be held each year, within six months of the financial year end and within fifteen months of the previous annual general meeting.

The business of the company is managed by its directors who are appointed in the first instance by the subscribers to the Memorandum and Articles of Association and, thereafter by the shareholders at the annual general meeting. The powers of the company are vested in its directors as a board and are exercised at board meetings in accordance with procedures laid down in its Articles. Director's fees are generally determined at the annual general meeting. Their fees and other remuneration must be disclosed in the annual financial statements. The acceptance of office of director carries with it the acceptance of certain duties towards the company. These duties are partly dependent on the law of persons in a fiduciary position (derived from the common law), partly regulatory (derived from the Articles) and partly statutory (derived from the Companies Act and other Acts).

Companies are required to have at least one resident director.

The Income Tax Act also requires that every company which carries on trade, has an office or has established a place of business in Zimbabwe, is obliged by the Zimbabwean law to appoint a public officer who is a Zimbabwean resident, within one month from the establishment of the business in Zimbabwe. The public officer is responsible for statutory requirements. Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

Trusts

A Trust can be constituted by registration of a trust deed with the Deeds Registry Office.

Foreign investment in Zimbabwe

New projects

New foreign investment into Zimbabwe requires an Investment License issued by the Zimbabwe Investment Authority (ZIA)³. A completed application form (ZIA 1) acts as the project proposal. A non-refundable processing fee of US\$500 is paid on submission of the application and if successful US\$2 500 is paid when the license is issued. In an effort to improve the turnaround time on approvals, a “One Stop Shop” has been implemented at ZIA of which the operational modalities are presently being streamlined. Certain sectors are reserved for Zimbabweans. This is regulated by the Indigenisation and Economic Empowerment regulations (see page 16).

ZIA licenses new projects housed through companies or joint ventures.



³ It appears that under the present legislation this is not mandatory but it is highly recommended primarily as the Zimbabwe Investment Authority Act offers investors some degree of protection, and this license will enable the ability to remit future profits. It is also anticipated that the regulations may in the future be amended to mandate registration

Information required to be furnished to ZIA

ZIA requires the following information from potential investors which is submitted on form ZIA1 "Application for Approval of Project Proposal". This is freely available from ZIA or can be downloaded from their website <http://www.zia.co.zw>. A copy can also be obtained from Deloitte.

1. Details of applicant:
 - Name of individual or company
 - Address
 - Registered office
 - Nationality
 - Contact details
 - Names, resident status of shareholders and the distribution of shares
 - Details of shareholders who intend to take up residency
 - Names, address and nationality of directors of the company
2. Nature of new investment (i.e. new investment or expansion of existing investment)
3. Proposed new investment details:
 - Location
 - Estimated date of completion
 - A clear project description
 - Requirements for raw materials and components
 - Project financing including the source of funding and the split between currency injection, capital equipment and other injections
 - Projected outputs for next three years with a split into products/ service and what portion will be exported
 - Number of employees in various categories (managerial, technical, skilled, semi-skilled and unskilled)
 - Work/Residence Permit Requirements
 - Impact of proposed investment on the environment (an environmental impact assessment report should be attached)
 - Requirement for a commercial or industrial property
 - Services required e.g. water, electricity and communications requirements as well as any other services required

4. Declaration by person completing the form that all the information in the form is true and correct.

Please note that the following information will have to be attached to the ZIA application:

- Certificate of Incorporation of local investment vehicle
- Memorandum and Articles of Association of the local investment vehicle
- Form CR 14 (for local investment vehicle)
- Form CR 6 (for local investment vehicle)
- Certificate of Share Capital (for local investment vehicle)
- Official List of Shareholders and Directors
- Business Plan or Feasibility Study
- Proof of Finance (the evidence of project finance may be provided in either bank statements, confirmation letter from a bank, confirmed bank loans, other confirmed credit facilities and or equipment/ machinery)
- Experience reference letters for shareholders and directors
- Brief resumes/CVs for shareholders and/or directors
- Non Refundable application fee of USD500
- Licence Issuance fee of USD2500 upon approval of the investment licence
- An Indigenisation Implementation Plan (IDG 01).

Deloitte offers a comprehensive service offering to cover the whole investment process required in establishing operations in Zimbabwe.

Buying into existing entities

Exchange control approval (Obtained from the Reserve Bank of Zimbabwe) is required when a foreigner acquires shares in an existing company. There are limitations on the number of shares that can be acquired and generally exchange control will not allow a dilution of local shareholding in favour of foreign shareholding of more than 40%. Refer to the section on foreign investment covered under exchange controls starting on page 53.

General business regulations

Licensing and registration

Tax registration

Income tax

After a company has been incorporated, it must register with the Zimbabwe Revenue Authority (ZIMRA) within thirty days of incorporation. The Form Rev 1 (Application for registration for Income Tax and PAYE) should be completed with the following attachments:

- Copy of Certificate of Incorporation
- Copy of Memorandum of Association
- Copy of current bank statement
- CR 14
- CR 6
- ID's for Directors and their proof of residence
- Certified copy of the company's public officer's Identity Documents
- Letter of appointment of the public officer
- Partnership deed (where applicable)
- Constitution (where applicable)

The registration process takes approximately two days.

Every company which carries on trade or has an office in Zimbabwe is obliged to appoint a representative who is the public officer of the company within one month of the establishment of such office or place of business. The public officer has to be approved by the Commissioner General and is answerable for all company tax matters. Companies are also obliged, within one month of establishing a business, to nominate a place within Zimbabwe at which any notices or other documents under the Income Tax Act affecting the company may be served or delivered.

Individual tax

Every person who becomes an employer is obliged to apply to the Commissioner General for registration as an employer, within fourteen days of him becoming an employer. Non-resident employers should appoint a resident representative to secure registration on its behalf and give notice in writing to the Commissioner General of the appointment of a resident representative.

An employer in Zimbabwe will be required to withhold employee's tax where the employee's annual remuneration exceeds the minimum tax free threshold. Please refer to table on page 67.

Value Added Tax

Every entity which carries on a taxable activity and whose annual taxable turnover exceeds or is likely to exceed US\$60 000 per annum is obliged to register as an operator not later than thirty days after becoming so liable. Non-resident persons are required to appoint a representative registered operator in Zimbabwe and furnish the Commissioner with the particulars of such representative registered operator. All registered operators are required to open a banking account with a bank, building society or other similar institution for the purposes of his trade carried on in Zimbabwe and furnish the Commissioner with the particulars of such banking account. Application for VAT registration is done on Form VAT1 and the following information must be attached:

- Copy of certificate of Incorporation
- Copy of Memorandum and Articles of Association
- Copy of Current bank statement
- Certified copy of identity documents for directors (at least two)
- Proof of residence

Business licenses and permits

The Shop Licenses Act stipulates that a license should be held by any person who carries on a trade or business of selling goods or of letting goods for hire. The license is issued by a local licensing authority (City/Municipality).

Factories are required to have a factory license after satisfying certain safety and health requirements and environmental issues.

Tourism operators are required to be registered with the Zimbabwe Tourism Authority and are subject to a 2% levy on turnover.

Other specialised industries may require additional licensing such as Publishing Houses, Banks and Telecommunications operators.

Title and deeds registration

The Deeds Registration Act provides for the registration of and protection of rights to land and property. This includes title to land, water rights or servitudes over a portion of another's property. Lease agreements for a period of ten years or more must be registered against the title deeds but the registration of leases for shorter periods is optional. In all cases, a lease takes precedence in the event of the property being sold or otherwise disposed of. Land may be offered as collateral for loans and the lender's claim on property detailed in a bond registered against the title deeds.

The rights to agricultural land are not guaranteed even by title as such property is subject to compulsory acquisition in terms of the Constitution of Zimbabwe. Compensation is only payable on fixed improvements.

Price controls

Legislation exists for the imposition of price controls in Zimbabwe but presently market forces alone dictate prices.

Mergers, Acquisitions, Monopolies and Trade Restrictions

The Competitions Act and its associated regulations seek to regulate mergers, monopolies, and unfair and restrictive trade practices as well as dumping of goods.

The Competitions Commission is required to be notified of mergers where the acquiring firm and the target firm have a combined annual turnover in, into or from Zimbabwe which is valued at or more than US\$1 200 000,00 or its equivalent or where the combined assets in Zimbabwe of the acquiring firm and the target firm is valued at or more than US\$1 200 000,00 or its equivalent. Generally IFRS principles are applied in determining the amounts with reference to the immediately preceding years financial statements. It should be noted that this threshold may therefore be different to that which is prescribed by the Indigenisation and Economic Empowerment Regulations. Notification of a proposed merger shall be accompanied by a fee calculated at 0.5% of the combined annual turnover or combined value of assets in Zimbabwe of the merging parties, whichever is higher provided that the maximum and minimum fee level shall be US\$50 000 and US\$10 000, respectively.

The Commission is also empowered to impose anti dumping duty on imported products in certain circumstances.

Black Economic Empowerment/ Indigenisation

Overview of regulations

In 2007 the Government of Zimbabwe introduced the Indigenisation and Economic Empowerment Act. The Act seeks to essentially regulate the levels of indigenous ownership in businesses in Zimbabwe but also allows for giving legal effect to the National Indigenisation and Economic Empowerment Board and Fund as well as granting power to the Minister to issue regulations (subject to certain approvals).

The Indigenisation and Economic Empowerment Act states the following:

1) The Government shall, through this Act or regulations or other measures under this Act or any other law, endeavour to secure that—

(a) at least 51% of the shares of every public company and any other business shall be owned by indigenous Zimbabweans;”

Business is defined as “any company, association, syndicate or partnership of persons that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, whether the business is registered in terms of the Companies Act [Chapter 24:03] or otherwise;”

The regulations have been issued primarily to empower the Minister in implementation and administration of the Act and these are explored in greater detail below.

The laws applicable to Indigenisation now includes the following of which concerned readers should be fully aware of and where necessary seek advice of their legal counsel are as follows:

- Indigenisation and Economic Empowerment Act Chapter 14:13-
- Acts 14/2007, 11/2009.

- Indigenisation and Economic Empowerment Act (General) Regulations 2010 – SI 21/2010 amended by SI 116/2010 and 34/2011 and 84/2011
- Indigenisation and Economic Empowerment Act (General) Regulations 2011 – General Notice 114 of 2011 and General Notice 280 of 2012.
- Indigenisation and Economic Empowerment Act Transfer of Investment Trust 2010-Government Notice 6 of 2010.

It is the intention of the Government of Zimbabwe through the Indigenisation and Economic Empowerment Act to secure that at least fifty-one per centum of the shares of every public company and any other business be owned by indigenous Zimbabweans.

The regulations are framed with the general objective that every business of or above the prescribed value threshold must within five years from the operative date of the regulations (1 March 2010) or within five years of commencement of the business concerned dispose of a controlling interest of not less than 51% of the shares or interests therein to indigenous Zimbabweans.

The regulations allows for a variance in this regard where it is necessary to achieve other socially or economically desirable objectives. This would require approval by the minister.

Indigenous Zimbabweans are defined as “any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest”.

An obligation is put on every non-indigenous business to notify the extent of present or future compliance. Every non indigenous (i.e. those that are not already 51% owned by indigenous

Zimbabweans) business in Zimbabwe with a Net Asset Value of or above USD 500 000 is required to submit a prescribed form (IDG01) together with a provisional indigenisation implementation plan (IIP) to the minister no later than 30 June 2010 (for existing businesses) and business commenced after the fixed date within 75 days of commencement of business. These obligations extend also to indigenous companies that later cease to be indigenous.

The minister may serve notice on businesses (in various forms including general notice in the Gazette) who do not comply with this requirement. An extension can be requested but this cannot exceed a further 30 days. Where the owner of a business or a director(s) knowingly make any false statement, or declaration, or furnishes any false information in connection with an IDG01 or and IIP then fines and/or imprisonment can arise.

The Minister shall no later than 45 days after a provisional IIP has been submitted, by notice in writing to the business concerned, and “on a case by case basis” either:

- Approve any provisional IIP or
- Make the approval of the provisional IIP dependent upon its conformity with a notice in the gazette following which the Minister should approve or reject the plan in writing.

Where the minister does not respond in writing within 90 days of the various prescribed due dates for submission as the case may be then the IIP is deemed to be approved provided it meets or exceeds the minimum indigenisation requirements for a business operating in the sector or sub sector of the economy concerned.

The Minister may request (within 45 days of submission) any further information that he or she requires.

The minister is required “as soon as practicable” to publish regulations based on the submissions of provisional IIP’s and IDG01’s thresholds with respect to each sector or subsector of the economy as well as the timeframes for implementation. The minister is assisted by sectoral and/or subsectoral committees in this regard. These have all been formed and reported their findings (not presently in the public domain). In terms of the regulations such additional regulations should prescribe:

- What lesser share than the minimum 51% shall be allowed in a particular sector or subsector and for what period such a business may be allowed to operate with such lesser share until the minimum quota is achieved
- What weighting socially or economically desirable objectives would contribute towards the empowerment quota – namely;
 - (i) The undertaking of specified development work in the community
 - (ii) The beneficiation of raw materials prior to export
 - (iii) The transfer of new technology
 - (iv) The employment of local skills and the imparting of new skills on Zimbabweans
 - (v) Any other socially and economically desirable objective not mentioned.

To date regulations have been published in respect of certain sectors as follows:

Mining

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Mining	1.00	51%	51% within six months of the notice.

Manufacturing

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Manufacturing	100 000	26% ⁴	Year 1 – twenty-six per centum (26%) Year 2 – thirty-six per centum (36%) Year 3 – forty-six per centum (46%) Year 4 – fifty-one per centum (51%)

Finance Sector

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
All financial institutions	As per minimum capital prescribed by the Reserve Bank of Zimbabwe	51%	1st year = 51%

⁴ Whilst not clear, it would seem to imply the lower threshold is only in respect of the first year.

Tourism

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Accommodation (Hotels according to stars and value)			
1 star	2 500 000	51%	1st year = 51%
2 star	5 000 000	51%	1st year = 51%
3 star	7 500 000	51%	1st year = 51%
4 star	7 500 000	51%	1st year = 51%
5 star	10 000 000	51%	1st year = 51%
Boats/Cruisers/Yachts	500 000	51%	1st year = 51%
Motor Coaches	500 000	51%	1st year = 51%
Tourist Activities -			
Hunting safari's or operators	100	51%	1st year = 51%
Tour Operations (Reserved for indigenous Zimbabweans)			
Photographic and other non-consumptive safari operations	100 000	51%	1st year = 51%
Visitors activities (including canoeing, rafting, cruising, bungee jumping, horse riding and golf IVAC)	100 000	51%	1st year = 51%
Visitors attractions including game parks, farms, sanctuaries, at galleries and cultural villages (VAT) Eternal Tours	100 000	51%	1st year = 51%

Education and Sport

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Pre-schools	1.00	51%	1st year = 51%
Primary Schools	1.00	51%	1st year = 51%
Secondary Schools	1.00	51%	1st year = 51%
Private Colleges	1.00	51%	1st year = 51%
Universities	1.00	51%	1st year = 51%
Sports entities, social clubs and sport associations	1.00	51%	1st year = 51%

Arts, Entertainment and Culture

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
1 star	1 000 000	51%	1st year = 51%
Entertainment Film	10 000	51%	1st year = 51%
Entertainment Television	1.00	51%	1st year = 51%
Entertainment Radio	1.00	51%	1st year = 51%
Visual arts and craft	1.00	51%	1st year = 51%

Engineering and Construction

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Consulting Engineers	1.00	51%	1st year = 51%
Building Contractors	1.00	51%	1st year = 51%
Civil Engineering	1.00	51%	1st year = 51%
Electical and Mechanical Engineering	1.00	51%	1st year = 51%
Material, Plant Hire and Equipment Supplies	1.00	51%	1st year = 51%
Joinery and Shop fitting	1.00	51%	1st year = 51%
Plumbing	1.00	51%	1st year = 51%

Energy

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Electricity -			
Transportation	1.00	51%	1st year = 51%
Storage/Handling	1.00	51%	1st year = 51%
Retail	1.00	51%	1st year = 51%
Renewable Energy -			
Retail (Existing)	100 000	51%	1st year = 51%
Distribution	100 000	51%	1st year = 51%
System integration	500 000	51%	1st year = 51%

Services

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Maintenance	100 000	51%	1st year = 51%
Healthcare	500 000	51%	1st year = 51%
Security Services	50 000	51%	1st year = 51%
Catering Services	50 000	51%	1st year = 51%
Freight and Logistics	149 000	51%	1st year = 51%
Construction and Engineering	49 000	51%	1st year = 51%
Franchising	30 000	51%	1st year = 51%

Telecommunications

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Advertising	1.00	51%	1st year = 51%
Broadcasting	1.00	51%	1st year = 51%
Communication and networking	1.00	51%	1st year = 51%
Courier services	1.00	51%	1st year = 51%
Equipment agents for supply and maintainance	1.00	51%	1st year = 51%
Equipment assembly and/or manufacturing	1.00	30%	1st year = 51%
Film making	1.00	40%	1st year = 51%
Fixed telephone	1.00	30%	1st year = 51%
Internet access provision	1.00	40%	1st year = 51%
Mobile cellular	1.00	51%	1st year = 51%
Postal general	1.00	40%	1st year = 51%
Public data	1.00	40%	1st year = 51%
Publications	1.00	40%	1st year = 51%

Transport and Motor Industry

Sub-sector	Minimum net Asset value US\$	Lesser share for non – indigenous business	Years to comply
Haulage industry	500 000,00	51.00%	1st year = 51%
Inland water bodies	20 000,00	51.00%	1st year = 51%
Harbours	1,00	51.00%	1st year = 51%
Motor trade	1,00	51.00%	1st year = 51%
Part manufacturing	1,00	51.00%	1st year = 51%
Assembling factories	1,00	51.00%	1st year = 51%
Wholesale distributors	1,00	51.00%	1st year = 51%
Agent or sub - dealers	1,00	51.00%	1st year = 51%
Parts distributors retailers	1,00	51.00%	1st year = 51%
Panel beaters	1,00	51.00%	1st year = 51%
Workshops	1,00	51.00%	1st year = 51%
Public and commercial airlines	1,00	51.00%	1st year = 51%

Where a merger or restructuring is of a size requiring notification to the Competition Commission and the share held by Indigenous Zimbabweans in the resultant merged or restructured business will be less than 51%, then the notifying party shall within 30 days from the date when the transaction was entered into but before conclusions submit form IDG02 to the minister and the Minister shall where the transaction conforms to the targets set out in an approved IIP submitted by any of the merged or restructured parties (or where there is more than one plan then the plan that most expeditiously achieves indigenisation), approve the transaction. Should it not conform or where there is no approved IIP for the merged or restructured business then the minister shall not approve the transaction.

Similar obligations (as in the case of mergers and restructures above) arise in respect of unbundled or demerged businesses where the resultant business is above the threshold (USD 500 000 Net Asset Value) and the shares held by Indigenous Zimbabweans is below 51%.

Where a controlling interest in a qualifying business is relinquished (those with a Net Asset Value above USD500 000) and Indigenous Zimbabweans do not hold a controlling interest in the business, within 30 days but before conclusion of the transaction, form IDG02 should be submitted to the Minister for approval. This will be approved if the transaction conforms to an approved IIP of the business concerned, otherwise it shall not be approved.

Where any domestic or foreign investor projects or proposes an investment for which an investment licence is required in terms of the Zimbabwe Investment Authority Act and the proposed or projected investment does not reserve a controlling interest for Indigenous Zimbabweans, no investment licence shall be issued unless the investor submits an IDG01 and a provisional IIP and the IIP has been approved.

Investors requiring an investment licence cannot invest in certain reserved sectors without approval from the Minister responsible for Indigenisation and the Minister responsible for Economic Planning. The reserved sectors are as follows:

1. Agriculture: primary production of food and cash crops.
2. Transportation: passenger busses, taxis and car hire services.
3. Retail and wholesale trade.
4. Barber shops, hairdressing and beauty saloons.
5. Employment Agencies.
6. Estate Agencies.
7. Valet services.
8. Grain milling.
9. Bakeries.
10. Tobacco grading and packaging.
11. Tobacco processing.
12. Advertising Agencies.
13. Milk processing.
14. Provision of local arts and craft, marketing and distribution.

The responsibility for compliance is as follows:

Form IDG01 – (as the case may be)

- The company secretary of a company
- The senior partner or other nominated partner of a partnership
- A person nominated by the governing body of an unregistered association or trust
- A person in whose name a private business corporation is incorporated
- The sole trader of a business where such a business is none of the above.

Form IDG02 –

- In the case of mergers, restructures, unbundling and demergers requiring notification, the persons referred to above are the notifying party in respect of the of the merged, restructured, unbundled or demerged business concerned.
- In the case of a relinquishment of a controlling interest the notifying party would be the person relinquishing the interest.
- In the case of a proposed investment it shall be any person authorised by the investor projecting or proposing any investment.

The documents referred to above should be accompanied by a written resolution (in the case of a company or a private business corporation) or a letter of written proof in other cases of authority to submit the documents.

In the case of the transactions requiring submission of an IDG02, any business may request, in writing to the Minister, that it be issued a written certificate certifying that it has obtained approval for an IIP or that it has achieved or exceeded the minimum indigenisation and empowerment quota.



Anti money laundering regulations

The Bank Use Promotion and Suppression of Money Laundering Act introduced certain measures to combat money laundering. The act created the Bank Use Promotion and Suppression of Money Laundering Unit (the unit) under the Reserve Bank and defines its powers. Certain responsibilities have been placed upon designated institutions. Designated institutions include:

- A financial institution, other than the Reserve Bank
- A person registered as an insurer in terms of the Insurance Act
- A person registered as a legal practitioner in terms of the Legal Practitioners Act
- A person registered as a public accountant in terms of the Public Accountants and Auditors Act
- A person registered as an estate agent in terms of the Estate Agents Act
- A cash dealer
- A moneylender
- A pension fund registered in terms of the Pension and Provident Funds Act
- A person carrying on the business of import/export
- A person carrying on the business as a manager or trustee of a unit trust or other collective investment scheme
- A person, other than a financial institution, who carried on the business, whether formally or informally, of providing money transmission services

Responsibilities of designated institutions include the following:

- Verification of customers identity
- Establishment and maintenance of customer records (history to be kept for five years)
- Requirement to report suspicious transactions to the unit
- Establishment and maintenance of internal reporting structures for suspicious transactions

A statutory obligation is also placed upon employees of designated institutions to report suspicious transactions.

Code of Corporate Governance

Zimbabwe does not presently have a legislated code of corporate governance along the lines of the King Code, Cadbury Code or Sarbanes Oxley Act. Efforts are underway to introduce such a code in Zimbabwe. Presently, corporate governance practices are regulated by the Companies Act and Zimbabwe Stock Exchange Listing Requirements as well as the rules of various professional bodies' such as the Institute of Directors.

Most public entities have voluntarily informally adopted provisions of the King II Code.

Employment practices and labour legislation

General

The industrial relations environment in Zimbabwe is sophisticated with regard to the recruitment, compensation for and termination of services of employees and largely favour the protection of the employee. Investors are advised to make themselves aware of the labour and related legislation that will govern their operation.

Labour matters are largely governed by the Labour Act along with its accompanying regulations as well as relevant ancillary labour regulations or collective bargaining agreement for the industry concerned (National Employment Council of Zimbabwe-NEC).

Employers should also be familiar with certain regulations contained in other acts concerning matters related to labour such as safety and environmental issues (e.g. Mines and Minerals Act).



The Labour Act

The Labour Act lays down the fundamentals of labour law in Zimbabwe.

Fundamental rights of employees

The labour act protects the fundamental rights of employees and such protection/right includes:

- Entitlement to membership of a trade union or workers committee
- Prohibition of forced labour
- Protection against discrimination
- Protection of rights to fair labour standards
- Protection of employees' right to democracy in the workplace

Unfair labour practices

The Labour Act defines unfair labour practice and includes both acts by the employer or by the trade union or workers committee and includes matters such as sexual harassment.

General conditions of employment

Age Limits

The general minimum employment age is fifteen years old with the exception of an apprentice where the minimum age can be thirteen years.

Contracts of employment

A contract of employment is deemed to be a contract even if it is not reduced to writing. If the contract of employment does not specify the period for which it is valid, it is then deemed to have no time limit attached. Casual labour is deemed to become permanent on the day that his or her period of engagement exceeds a total of six weeks in any four consecutive months.

Accordingly employees need to manage and monitor employment contracts carefully. The use of employment brokers to avoid liability for labour bears certain risks as such employees of the broker may be deemed to be employees of the entity if they are found to be essentially economically dependent on the entity.

Dismissal

Employees have the right to not be unfairly dismissed. Unfair dismissal is measured against the entities employment code or in the absence of one, against the model code.

Certain cases can be deemed to be unfair such as; where an employee has resigned due to the employer making employment intolerable; or where upon completion of a fixed term contract the employee had a legitimate expectation of being reengaged; or where another person was engaged in their place instead.

Retrenchment

Where an employer wishes to retrench (lay off) five or more employees they have to first give written notice to the workers council/committee of the entity; or if no workers committee exists then to the relevant employment council for the industry; failing which then to the Retrenchment Board. All details of employees to be retrenched and the reasons for the retrenchment have to be provided. In all cases copies are to be sent to the Retrenchment Board. The notified body will attempt to secure agreement between the employer and employees within one month. If it does then it is only required to notify the Retrenchment Board of its final position. If it fails to do so within one month, the matter is referred to the Retrenchment Board and their recommendation is passed onto the Minister of Labour for approval or declination.

The procedures for retrenchment of less than five employees is similar except that the regulations allow for the Retrenchment Board to have the final determination and it also provides for direct negotiation with the specific employees where there is no workers committee or employment council.

In considering the approval of a plan for retrenchment focus is given where possible to avoiding retrenchment and where retrenchment cannot be avoided, consideration is given to the consequences to employees and the mitigation of such consequences. Consideration may also be given to the reasons put forward for the proposed retrenchment and the effect of the proposed retrenchment on the employees concerned.

Every employer is required to ensure that at the earliest possible opportunity, his employees are kept informed of and consulted with regard to any major changes in production programmes, organisation or technology that are likely to entail the retrenchment of any group of five or more employees in a six month period.

Subject to certain procedures, in the process of avoiding retrenchment, employers may resort to certain measures such as short time or shift work so as to reduce the cost of employment.

Wages and benefits on termination of employment

An employee or his estate, as the case may be, shall be entitled to the wages and benefits due to him up to the time of his dismissal, termination, resignation, incapacitation or death, as the case may be, including benefits with respect to any outstanding vacation and notice period, medical aid, social security and any pension, and the employer concerned shall pay such entitlements to such person or his estate, as the case may be, as soon as reasonably practicable after such event.

Certain gratuities may also arise on termination of employment. These are governed by the relevant collective bargaining agreement of the particular sector (and/or Labour Act regulations such as in the case of domestic workers).

Sick leave

Provided the employee has a certificate from a medical practitioner signing them off work, an employee is generally entitled to 90 days full paid sick leave in any twelve month period. If requested and with the support of a medical practitioner, a further 90 days may be granted in a twelve month period but this will be on half pay.

Vacation leave

Unless more favourable conditions have been provided for in any employment contract or in any enactment, paid vacation leave shall accrue at the rate of one twelfth of his qualifying service in each year of employment, subject to a maximum accrual of 90 days' paid vacation leave. Weekends and public holidays falling within the leave period are counted as leave days taken.

Special leave

Special leave on full pay not exceeding 12 days in a calendar year shall be granted by an employer to an employee

- who is required to be absent from duty on the instructions of a medical practitioner because of contact with an infectious disease
- who is subpoenaed to attend any court in Zimbabwe as a witness
- who is required to attend as a delegate or office-bearer at any meeting of a registered trade union representing employees within the undertaking or industry in which the employee is employed
- who is detained for questioning by the police
- on the death of a spouse, parent, child or legal dependant
- on any justifiable compassionate ground

Maternity leave

Unless more favourable conditions have otherwise been provided for in any employment contract or in any enactment, maternity leave shall be granted for a period of 98 days on full pay to a female employee who has served for at least one year. On production of a certificate signed by a registered medical practitioner or State Registered Nurse certifying that she is pregnant, a female employee may proceed on maternity leave not earlier than the 45th day and not later than the 21st day prior to the expected date of delivery. A female employee shall be entitled to be granted a maximum of three periods of maternity leave with respect to her total service to any one employer during which she shall be paid her full salary. Maternity leave shall be granted only once during any period of 24 months calculated from the day any previous maternity leave was granted.

Weekly rest and remuneration for work during public holidays

Employees are entitled to 24 continuous hours of rest each week and are required to be paid fully for all public holidays that fall during a working period. If the employee is required to work over a public holiday they are entitled to double pay for that time worked.

Rights of employees on transfer of undertaking

Whenever any undertaking in which any persons are employed is alienated or transferred in any way whatsoever, the employment of such persons shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

The above is a brief guide to labour law requirements. It is not a substitute for an in depth study and understanding of the labour laws of Zimbabwe. An employer coming into the Zimbabwe market for the first time should seek local advice from consultants or employer organisations.

Health and safety

A number of organisations operating in Zimbabwe provide a primary health care service for their employees. This usually takes the form of an employees' primary health care clinic situated on site and staffed by a state registered nurse with assistants. A registered general practitioner will be retained by the organisation to visit the clinic. Such clinics are seen as a social responsibility.

Most entities provide for medical aid to employees. There are several established medical aid societies in Zimbabwe as well as a number of international organisations providing medical aid or medical insurance in Zimbabwe. Entities provide this either on a full contribution basis or on a shared contribution basis with employees.

There are state and municipal health care facilities in all major centres as well as private hospitals, clinics and private practices. Most private health care providers accept payments from medical aid societies.

Pension plans

All employees are required to contribute to the National Social Security Authority (NSSA), a state run defined contribution scheme. Contributions are presently at 3% of Basic Salary/Wage.

It is common practice for employers to provide an additional contributory pension plan for employees with both employee and employer contributing a percentage of salary.

Subject to certain limits (see section on taxation), pension contributions are tax deductible.

Foreign personnel

The Zimbabwe Government would prefer to see Zimbabwe citizens employed whenever possible. Expatriates require a work permit to work in Zimbabwe.

Work permits are issued in terms of Section 23 of the Immigration Regulations of 1979 and are subject to change without notice.

A spouse may not work in Zimbabwe without a Work Permit and children may not commence schooling in Zimbabwe without being in possession of a Study Permit (if applicable). Authority has to be sought with immigration if a spouse intends to take up employment through a separate work permit application.

Having a Temporary Employment Permit does not confer residence status. The employer applies for the TEP on behalf of the employee and the respective employee applies for a residence status.

Upon approval of the permit, the following conditions must be complied with by TEP holders in Zimbabwe:

- Notify the immigration on their address from time to time,
- Advise the department of Immigration on their whereabouts,
- They also have a duty to leave the Republic as specified in the permit; and
- To obtain the current endorsement of permit (s) on renewal or extension

A residence permit maybe cancelled if the applicant does not take up residence in Zimbabwe

Supporting Documentation

To obtain a work permit the employer needs to submit, prior to the expatriate employee taking up residence, an application, for the employee to the Department of Immigration which must include

- Residence permit application form;
To be completed by applicant
To complete details of spouse and children below the age of 18 accompanying applicant or joining the applicant later.
A separate application form should be submitted for children over 18 accompanying parents to Zimbabwe
- Temporary employment application form;
(to be completed by employer)
- Letter of offer of employment (to be provided by employer)
Letter to show name of employer, occupation, salary and condition of service
- Curriculum Vitae
- Copies of academic and professional certificates
Certified copies of all qualifications
If not in English, certified translated copies
- Birth certificate/s or passport page with the Bio data
- 2x passport size photos
Applicant to produce passport size photos as per his/her home country's specification.
Photos to be certified at the back
- 2x chest x- ray
- Marriage certificate (if married)
- Letter from the line Ministry
The letter would come from the relevant Ministry under which the activities of the potential employer fall under. E.g. if a person is joining the mining sector, the line Ministry would be the Ministry of Mines. The Ministry is supposed to write to Immigration a recommendation letter

acknowledging the existence of the employer in Zimbabwe and the activities being carried out.

- Advert in local newspaper
- CV's for other 2 shortlisted candidates' including their contact details

Please note that the documents that must be submitted to the Department of Immigration, must be certified copies of the original and the original must be presented to them if they request this.

All documents to be submitted in duplicate

Note: All documents not in English should be accompanied by certified translated copies

Certain multinational companies operating in Zimbabwe have had employment permits granted on the grounds that it is the policy of their organisations to have expatriates heading their operations abroad.

Residents do not require work permits even if they are foreign citizens. Residency can be obtained as part of the investment process when an application for new investment is made.

Residents who are foreign citizens require their residence permits to be renewed on an annual basis, even if they were born in Zimbabwe.

Investors can submit work permit applications as part of their investment application. Investments of over USD100 000 per shareholder ordinarily result in favourable consideration for a work permit.

Protection of intellectual property

Zimbabwe is a member of the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works and the World Intellectual Property Organisation.

Trade marks, patents and industrial designs and copyright

Zimbabwe is a member state of the African Regional Industrial Property Organisation (ARIPO). ARIPO is empowered to grant patents in the following countries: Botswana, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. When lodging an application, applicants designate in which territory the protection is wanted. The filing of such an application in Zimbabwe has the same effect as the filing of a separate application in each of the designated states.

The Patents Act makes provision for the registration of patents for invention for a term of twenty years. Patents are considered to be of the same technical level as a European patent.

The Trade Marks Act makes provision for the registration of trademarks for a period of ten years and such registration is renewable. Registration of Trade Marks through ARIPO only covers Botswana, Lesotho, Malawi, Namibia, Swaziland, Uganda, Tanzania and Zimbabwe.

In the case of industrial designs, copyright operates for a period of fifteen years from the date of registration (Industrial Designs Act). The initial period is for ten years and subject to renewal for a further five years.

The Copyright Act is concerned with the protection of literary, dramatic and musical works as well as software, technical drawing etc. It gives those who create the works right of control over the use to which the public may put those works.

The duration of protection is generally for 50 years (with varying start date rules for different categories of protected subject). Literary, musical or artistic work is protected for the life of the author and for a further 50 years from the end of the year in which the author dies.

The Geographical Indications Act regulate an indication, however expressed, which identifies a product as originating in a particular area, where some quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.

The Integrated Circuit Layouts Designs Act protects registered layout designs. The protection accorded to any registered layout-designs terminates at the end of the tenth year after commencement of protection.

Accounting and auditing

The accounting profession

The accounting profession is regulated by the Public Accountants and Auditors Act which governs accountants in public practice through the Public Accountant and Auditors Board (PAAB). The following professional bodies are members of the PAAB:

- a) The Zimbabwe branch of the Chartered Association of Certified Accountants incorporated by Royal Charter in the United Kingdom (ACCA)
- (b) The Zimbabwe branch of the Chartered Institute of Management Accountants incorporated by Royal Charter in the United Kingdom (CIMA)
- (c) The Institute of Chartered Accountants of Zimbabwe established by the Chartered Accountants Act [Chapter 27:02] (ICAZ)
- (d) The Institute of Chartered Secretaries and Administrators in Zimbabwe established by the Chartered Secretaries (Private) Act [Chapter 27:03] (CIS)
- (e) The Zimbabwe Institute of Public Finance and Accountancy, a locally incorporated company limited by guarantee.

All individuals who wish to practice as public accountants and/or auditors are required to apply for a practicing certificate with the PAAB.

Membership of the Institute of Chartered Accountants of Zimbabwe (ICAZ) is restricted to individuals who have completed articles of clerkship with a registered training office either inside professional practice (TIPP) or outside of professional practice in commerce and industry (TOPP). Individuals are also required to pass the necessary examinations which include a relevant recognised degree course, post graduate diploma/honours degree and the two part professional qualifying examinations (PQE). The PQE is the same as that of South Africa with the exception of the tax examination which examines based on local tax laws.

ICAZ is a full member of International Finance Accounting Committee (IFAC) and the Eastern, Central and Southern African Federation of Money Lenders Accountants (ICSAFA). ICAZ has reciprocal agreements with the following Global Accounting Alliance Institutes

- England and Wales
- Australia
- Ireland
- Scotland
- Hong Kong
- South Africa

Accounting standards

Zimbabwe complies with International Financial Reporting Standards incorporating International Accounting Standards and Interpretations (IFRS).

Additionally the Companies Act provides for company accounting regulations. Entities that comply with IFRS will satisfy the rather minimal disclosure requirements of the Companies Act.

During 2008 and up to the legalised use of multiple currencies for trading and reporting in Zimbabwe, entities experienced what has been termed in Zimbabwe as an “IFRS failure situation” where the effects of the dysfunctional economy of the time were so significant that it made it virtually impossible to report financial statements in compliance with IFRS. The transition to the multiple currency environments therefore left a gap where entities were unable to effectively apply IFRS in Zimbabwe in 2008 and up to February 2009. Most Zimbabwean entities are back into full compliance with IFRS.

The present tax laws do not specify the accounting framework to be used. It is proposed in the new draft Income Tax Act that generally accepted accounting practice will be applied.

Entities in Zimbabwe have generally adopted United States Dollars as the reporting currency in Zimbabwe.



Auditing standards

All audits in Zimbabwe are required to be conducted in terms of International Standards on Auditing (ISA). Only registered Public Accountants and Auditors who are also Chartered Accountants under ACCA or ICAZ are permitted to carry out audits in Zimbabwe.

Deloitte in Zimbabwe applies the same international standards required by all member firms throughout the world. Partners are subject to an ongoing international practice review to ensure compliance with all global standards.

Auditors and audited financial statements

All public companies are required to appoint an auditor.

A private company shall not be required to appoint an auditor if;

- the number of members in such company does not exceed 10;
- and none of the members of such company is a public company (or a subsidiary of a public company), whether incorporated under the Companies Act or the law of a foreign country;
- and such company is not a subsidiary of a holding company which has itself appointed auditors;
- and all the members in such company agree that an auditor shall not be appointed.

Branches of foreign companies are required to be audited if their foreign parent is audited.

All members of a company are entitled to receive a copy of the annual financial statements which are to be laid before the Annual General Meeting.

Only public companies and foreign branches are required to lodge financial statements with the Registrar of Companies so that they are available for public inspection.

Audited accounts are not mandatory for tax submission.

Most private businesses are not audited but a large number of such businesses engage professional accountants to do their annual financial statements (compilation engagement) and tax submissions.

Specific regulations/policies

The mining industry

Governing laws

The mining industry is largely governed by the Mines and Minerals Act although it is subject to other regulations like any other business in Zimbabwe. The mining industry falls under Ministry of Mines. The Mines and Minerals Act has been the subject of revision for a number of years but the proposed amendment bill lapsed in parliament before it was brought into law. Other pertinent laws include:

- Mineral Marketing Corporation of Zimbabwe Act
- Gold Trade Act
- Precious Stones Trade Act
- Base Minerals Export Control Act

This section has largely been based on the contents of the Mines and Minerals Act which is a comprehensive piece of legislation which interested parties should familiarise themselves with. The more pertinent sections applicable to investors have been summarised for ease of reference. It is highly recommended to read this in conjunction with the detail of the act.

Industry bodies

The Chamber of Mines of Zimbabwe (established by an Act of parliament) is the dominant representative body of the mining industry in Zimbabwe. The Mines and Minerals Act also establishes the Mining Affairs Board which oversees the administration of the Mines and Minerals act from an administrative perspective. The Zimbabwe Mining Development Corporation (a parastatal) is the government body responsible for mining.

Mineral rights

The dominium in and the right of searching and mining for and disposing of all minerals, mineral oils and natural gases is vested in the President. This right can override any land rights that such minerals may be located on.

General rules for acquisition and registration of mining rights

Prospecting can only be carried out by an approved prospector. Application to register as an approved prospector is made to the mining commissioner in writing accompanied by a photograph and the prescribed fee. Other information may be requested to be provided. Approved prospectors will be entered into the approved prospectors register and granted a prospecting licence. Applications by Foreign prospectors require the prior approval of the secretary of mines. Ordinarily prospecting licences are valid for a period of two years and are subject to renewal on application.

An approved prospector can obtain a prospecting licence from the Mining Commissioner upon payment of the prescribed fee and submission of the prescribed form. The Mining Commissioner may refuse to issue a licence but all such refusals must be referred to the Secretary and such a decision may be overwritten by the Minister.

An approved prospector may appoint a representative to act on his or her behalf in an application for a prospecting licence.

A prospecting licence is valid for two years. No person under the age of 18 can apply for a prospecting license. Licenses cannot be sold, traded or transferred.

The rights of prospectors may overwrite some of the rights of land owners in certain instances. Generally the following land is open to prospecting (but certain other rules may apply in some instances):

- (a) all State land and Communal Land
- (b) all private land in the title to which there has been reserved either to the British South Africa Company or to the Government of Zimbabwe the right to all minerals or the power to make grants of the right to prospect for minerals
- (c) all land held by any person under any enactment or agreement whereby such person is entitled to obtain from the State title thereto on the fulfilment by him of the conditions prescribed by such enactment or agreement.

Certain limits are placed on how close prospectors can operate from existing structures such as farm housing, dips, employee housing and certain other structures. Limits are placed on prospecting on land cleared for agriculture unless such land has not been used in the past two years. Limits are placed on prospecting in or near municipal areas and in relation to other mining locations. In certain instances the permission of land owners is required. Disputes between land owners and prospectors can be resolved in the administrative court. Land owners can register arable land so as to have the effect of such land not being available for prospecting. In all instances prospectors are required to give notice of intention to prospect in the prescribed manner. Failure to give notice does not however invalidate claims.

Application can be made to the Mining Affairs Board to prospect on land not ordinarily open to prospecting. This may be granted and the Act accordingly provides for an appeal process and means of compensation or limitation. In practice certain land being agricultural land may be acquired through other means such as the Land Acquisition Act.

Prospectors have the following general rights:

- the right of prospecting and searching for any minerals, mineral oils and natural gases on land open to prospecting, but not of removing or disposing of any mineral discovered save for the bona fide purpose of having it assayed or of determining the nature of it (with the permission in writing of the mining commissioner)
- the right, subject to certain provisions of pegging:
 - (i) 1 block of precious metal claims; or
 - (ii) 1 block of precious stones claims; or
 - (iii) 1 block of base mineral claims.

Prospectors are not permitted to carry out any drilling or excavation work, whether at the surface or underground except in exercise of exclusive rights granted. They do also, within certain guidelines, have the right to water and firewood and the right to erect certain temporary structures for accommodation purposes.

A prospector must post a prospecting notice on a piece of land open to prospecting in the prescribed manner (as well as complying with all relevant notification requirements). This has the effect of giving the prospector exclusive prospecting rights over the area covered by the notice for a period of 31 days.

Discovery of precious metals or stones - If the holder of a prospecting licence, after posting his prospecting notice, by the work of himself or his agents, discovers within the area covered by such notice any ore or deposit of precious metals or precious stones, he shall mark the point of such discovery by a peg marked "DP".

Discovery of base metals - If the holder of a prospecting licence, after the posting of his prospecting notice, discovers within the area covered by such notice any ore or deposit of any base mineral, he shall mark the point of such discovery by a peg marked "DP" and indicate upon a notice to be styled a "discovery notice" in the prescribed form, posted at the spot where his prospecting notice is posted, the position of the DP peg, the nature of the base mineral he has discovered and the date and time of the discovery, and thereupon for the remainder of the period of 31 days he shall be entitled to the sole and exclusive right of prospecting, including the right to drill and excavate, whether at the surface or underground, upon all ground open to prospecting within an area described by a radius of 900 metres from his prospecting notice.

Where minerals have been discovered and a discovery notice posted the prospector can peg a block or blocks of claims. A registration notice must first be posted (similar to the process of posting prospecting notice) before the 31 day period expires. If not posted then it will be deemed to be abandoned. The registration notice must be registered with the mining commissioner within 31 Days in the prescribed manner.

Section 43 of the Mines and Minerals act provides detailed specifications on how claims/ mineral blocks must be pegged depending on what category of mineral they fall into. Every peg shall bear on it, in addition to the distinguishing letter, the number of the licence under which the block was pegged and the name of the holder of the licence.

Within 31 days of posting the registration notice, a prospector can register their claim with the mining commissioner in the prescribed manner. A certificate will be issued to support the claim and the mining commissioner will allocate a unique claim number. Unless an extension has been granted, if a claim is not registered within the 31 day period it will be deemed to be abandoned.

A holder of a registered mining location can peg and register additional land (subject to limitations) adjacent to his or her block (a site) for the purpose of erecting mine housing, mills and other equipment necessary for the carrying out of the mining activity.

If the holder of a registered mining location, other than a site, has reason to believe that a deposit of any mineral occurs underground beneath reserved ground, he may make written application to the Board for an order authorising him to peg and register an underground extension block or blocks contiguous to such location.

Claims can be preserved by a process of obtaining a series of inspection certificates that verify work carried out on the claim. Where it can be illustrated that development work is not required, claims on application can be preserved by the payment of a prescribed fee.

Forfeiture of claims can arise voluntarily through notification of abandonment or automatically in certain instances where compliance with the processes prescribed for preservation of mining rights have not been complied with. Obligations may arise on forfeiture including the making safe of a mining locations and removal of beacons amongst others.

Any person upon paying the prescribed fee can make a report to the mining commissioner that a particular mining location is not being adequately worked or developed. The board will carry out a series of investigations and has the power in certain instances to expropriate the mining location.

Unless otherwise prohibited a holder of a claim can transfer, hypothecate, option, or tribute their claim. When any registered mining location or any interest therein is sold or otherwise alienated in any manner whatsoever, the seller or person who so alienates shall notify the mining commissioner of the transaction within 60 days of the date of such transaction, and shall inform him of the name of the person to whom such location or interest is sold or otherwise alienated and of the amount of the valuable consideration, if any, agreed upon, and the date of the transaction. Transfer duties arise. Tribute agreements and their terms require the approval of the Mining Affairs Board.

The act also covers quite a number of compliance issues relating to claims which interested parties should familiarise themselves with.



Exclusive Prospecting Reservations/Orders (EPO's)

Any person may make written application to the Mining Affairs Board for the making of an order in his favour over any defined area in Zimbabwe, including any reserved area. The effect of applying for and being granted an Exclusive Prospecting Order (EPO) essentially means that exclusive prospecting rights are granted over the reservation area and within a reservation no person, other than the concession holder, may prospect or peg and register any mining location or be issued with a special grant in respect of coal, mineral oils or natural gases. Some of the formalities associated with normal prospecting activities do not need to be complied with (e.g. requirements to have a prospecting licence or for posting of notices as described above).

The applicant shall:

- Deposit with the Secretary in respect of a period of 6 months a sum calculated at the rate of US\$100 per month for every hectare or part of a hectare of the area in respect of which the order is sought⁴
- Furnish the Board with:
 - (i) full information as to his financial status;
 - (ii) if so required by the Board, particulars of any guarantees that may be offered for the performance of his obligations under the order;
 - (iii) particulars of the minerals which he wishes to seek and mine;
 - (iv) details illustrated by a sketch plan of the area to be embraced by the order and the size of such area;
 - (v) a statement whether or not he wishes the order to authorise him to prospect for specified minerals on any registered base mineral blocks within the reservation;
 - (vi) any further information required of him by the Board (ordinarily includes Local Company documents – CR14, Certificate of Incorporation, Shareholding and corporate structure);
 - (vii) if the applicant is a company, the full names and nationality of the directors and the full names by which those directors have at any time been known in any part of the world;
 - (viii) a programme of the prospecting operations he intends to carry out within the reservation during the first period of 6 months from the date of granting the order.

⁴ This was previously capped in the Zimbabwe Dollar era. It now appears to be uncapped

The chairman of the Board (Mining Affairs Board) may provisionally approve an application before it is considered by the Board and, if he does so, he shall issue a direction to the mining commissioner to reserve the area embraced by the application against prospecting and pegging, and the mining commissioner, without obtaining the authority of the Minister, shall forthwith reserve such area accordingly.

On receipt of the application the chairman of the Board shall publish a notice in the Gazette giving details of the application and inviting objections; and if in any application authorisation is sought to prospect on any registered base mineral blocks within the proposed reservation, give written notice to every registered holder of any such block. The board will consider any objections.

If the board is satisfied that the applicant is a fit and proper person to obtain an order and is of adequate financial standing to undertake the operations under an order and that it would not be against the national interest to make such an order the board may recommend to the Minister the making of an order in favour of the applicant and may recommend a higher than standard area covered by the application. Where they are not satisfied with the application they can reject it and such rejection will be final and not subject to appeal.

The Minister will consider the recommendations of the board and forward the application for final approval to the President. If the President approves the application then the Minister will issue an order specifying the start and expiry dates of the order and shall publish such order in the Government Gazette. The order should also be laid before the next sitting of parliament.

The rights to such orders can not ordinarily be ceded. The board may under special circumstances recommend to the Minister that the rights be ceded.

No reservation shall exceed:

- in the case of an order made solely in respect of coal, mineral oils or natural gases, 130 000 hectares;
- in the case of an order which includes precious stones, other than diamonds, 2 600 hectares;
- in the case of any other order, 20 000 hectares;

No order shall be granted in respect of an area which is less than 2 600 hectares, except in the case of an order granted solely in respect of precious metals or precious stones. The Board may recommend where it deems fit, alterations to the minimum thresholds of area.

No order shall be granted for a period in excess of three years but an order may be extended by the Minister, on the recommendation of the Board, for a further period or periods not exceeding three years in all.

The concession holder will be required to submit periodic work programs to the board as well as reports on work carried out to enable the board to monitor progress. Where a concession holder fails to carry out a work program his order may be revoked or he may be required to pay the board the cost of carrying out the work program. Orders may also be revoked where a report has not been submitted within the prescribed time.

No person shall peg and register more than five mining locations under an EPO. No base mineral mining location pegged and registered under an EPO shall exceed 25 claims.

The act confers some special rights upon holders of EPO's and in some instances the general rights of land owners or occupiers may be altered.

Mining leases

The holder of a registered mining location or of contiguous registered mining locations may make written application to the mining commissioner for the issue to him of a mining lease in respect of a defined area within which such mining location or locations are situated.

The effect of obtaining a mining lease is to enjoy certain exclusive rights over the lease area including:

- the exclusive right of mining any ore or deposit of any mineral mentioned in the application for the mining lease which occurs within the vertical limits of the area covered by his lease; and
- the exclusive right within the vertical limits of the area covered by his lease of mining any ore or deposit of any other mineral discovered within such area after he has notified the mining commissioner of such discovery (this does not automatically confer any right to mine any coal or mineral oil or natural gas)

A mining lease enables a mining entity to essentially reserve probable reserves for future expansion within the vicinity of their existing mining location.

In applying for a mining lease the applicant shall furnish to the mining commissioner the following:

- particulars of the minerals which are being mined or are to be mined in the area applied for;
- details illustrated by a sketch plan based on a map issued under the authority of the State and of a scale of not less than 1:25 000 identifying the position of the area applied for and of any registered mining locations situated therein and specifying the extent of such area;
- if any precious metal reef blocks are covered by the application, details of such blocks in respect of which he wishes to retain extra-lateral rights in the event of the mining lease being issued;
- a list of all the mining locations registered in his name, situated within the area applied for, and the certificates of registration of such locations;
- the name and address of the owner and the occupier, if any, of the land to which the application relates;
- any other information relevant to the application which may be required of him by the mining commissioner or the Board.

Certain other requirements are placed upon the holder of a mining lease which interested parties should familiarise themselves with.

Special mining leases

Where the holder of one or more contiguous registered mining locations intends to establish or develop a mine and, investment in the mine will be wholly or mainly in foreign currency and will exceed US\$100 million in value; and the mine's output is intended principally for export he may apply in writing to the mining commissioner for a special mining lease in respect of a defined area within which his mining location or locations are situated.

A more onerous application process as to normal mining leases arises and Presidential approval is required.

A special mining lease shall not be issued in respect of an area within which there is more than one mine that will be established and developed by the holder of the special mining lease.

A special mining lease shall not be issued to an individual, unless he is a citizen of Zimbabwe or to a body of persons, unless they constitute a body corporate. A special mining lease may be issued to two or more persons jointly if each of them is qualified to be issued with the lease but their obligations will become joint and severable.

A special mining lease shall not be issued for a period exceeding 25 years, but provision may be made for its renewal by the Minister with the President's approval for periods not exceeding 10 years, having regard to the life of the mine concerned and the circumstances then prevailing.

The concept of Special Mining Leases was brought into effect during the Zimbabwe dollar era to encourage large mining development and the beneficiation of minerals as well as foreign currency generation. This was mainly taken up by Platinum Group Metal miners. Holders of special mining leases were able to unlock a special foreign currency environment where they could account, transact in and pay taxes in foreign currency. They also were availed of and continue to enjoy a lower standard tax rate (15%) amongst other benefits. However this status may also give rise to additional profits tax on certain additional cash flows which can result in the total effective tax rate being higher than the present standard rate of 25%. Investors should carefully weigh up the benefits of this status as it may have less relevance in our present environment.

Special grants

The Secretary may issue to any person a special grant to carry out prospecting operations; or a special grant to carry out mining operations or any other operations for mining purposes upon a defined area situated within an area which has been reserved against prospecting or pegging. The period and terms will be specified in the Special Grant.

Special grants for coal, mineral oils and natural gases

No rights to mine coal, mineral oils or natural gases or nuclear energy source material may be acquired except under and in accordance with a special grant issued under Part XX to the Act.

Applications are made to the Mining Affairs Board and the applicant should furnish the following:

- (a) full information as to his financial status;
- (b) particulars of any guarantees that may be required for the performance of his obligations under the special grant;
- (c) information whether the application relates to coal, mineral oils or natural gases;
- (d) details illustrated by a sketch plan of the area to be embraced by the grant and the size of such area;
- (e) if the applicant is a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world;
- (f) any further information required of him by the Board CR14, Certificate of Incorporation, Shareholding and corporate structure);

In considering an application the Board will consider whether:

- (a) the applicant is a fit and proper person to be issued with a special grant;
- (b) the financial status of the applicant is such that he will be able to comply with the terms and conditions of any special grant that may be issued to him;
- (c) it would be in the national interest to issue the special grant.

Where the Board recommends that an application shall be granted it may include in its report recommendations relating to:

- (a) the minimum capital which the applicant should be required to invest in the development of the area to be covered by the special grant;
- (b) the period that should be permitted to the applicant to bring operations in the area to be covered by the special grant to the producing stage;
- (c) the minimum rate of production of coal, mineral oils or natural gases or nuclear energy source material that should be conducted by the applicant;
- (d) the amount of royalty that should be paid by the applicant to the Minister in respect of coal, mineral oils or natural gases or nuclear energy source material won by the applicant;
- (e) the annual fee that should be paid by the applicant to the Minister as a consideration for the issue of the special grant.

The Minister will consider such applications and forward these to the President for approval. Special Grants can be cancelled by the President but cancellation requires 12 months notice.

Royalty

The miner of a registered mining location shall pay royalty (to Zimbabwe Revenue Authority) on all minerals or mineral-bearing products won from such location which have been disposed of by him or on his behalf, whether within or outside Zimbabwe, during any month, at the prescribed rate per unit of mass.

For the purpose of calculating royalty on any mineral or mineral-bearing product, other than chrome, when ore from two or more blocks of claims, whether contiguous or otherwise, owned or held under a tribute agreement by the same person is treated at the same milling or reduction plant, then such blocks of claims shall be deemed to be one property.

For the purpose of calculating royalty on chrome, all blocks owned or held under a tribute agreement and worked by the same person in any one mining district shall be deemed to be one property.

Where the royalty assessed in respect of minerals or mineral-bearing products disposed of in any one month does not exceed US\$200, there shall be a full rebate of such royalty. If it exceeds US\$200 but does not exceed US\$300, the royalty payable shall be three times the amount by which the assessed royalty exceeds US\$200.

There shall be a full rebate of royalty in respect of all minerals or mineral-bearing products used wholly within Zimbabwe.

There shall be a rebate of royalty in respect of any mineral or mineral-bearing product which is disposed of to or received for treatment by an approved beneficiation plant; and specified in relation to that approved beneficiation plant at the rate specified by the Minister in respect of that approved beneficiation plant. If the degree of beneficiation is not achieved royalty becomes payable.

A remission of Royalty can arise on Presidential approval and Royalty rates may be varied under the terms of a special grant.

The current standard royalty rates are as follows:

Percentage of gross fair market value of mineral produced		
(a)	Precious stones	10%
(b)	Precious metals	4%
(c)	Base metals	2%
(d)	Industrial metals	2%
(e)	Coalbed methane	2%
(f)	Coal	1%
(g)	Diamonds	15%
(h)	Platinum	10%
(i)	Gold	7%

Fees

Certain mining activities are subject to an extensive prescribed fees, some of which can be significant. Readers are urged to familiarise themselves with the Second Schedule to the Mining (General) Regulations as amended from time to time.

Payment to local authorities

In certain instances additional payments to local authorities may arise in respect of unit taxes.

Marketing of minerals

The Mineral Marketing Corporation Act (MMCZ) regulates the marketing of minerals (with the exception of gold) within and outside of Zimbabwe. Sales are either required to be made to the corporation, or under their authority or in terms of a contract negotiated by the corporation on behalf of the seller.

MMCZ charges a commission on such mineral sales (even if they do not handle the actual sale in practice) the standard commission is 0.875% of the gross invoice value.

Gold sales are regulated by the Reserve Bank of Zimbabwe (RBZ). Presently the RBZ allows for producers to directly market their gold internationally.



Public Private Partnerships (PPP's)

Zimbabwe does not presently have any legislation covering the establishment of Public Private Partnerships. In the Government's Short Term Economic Recovery Program (STERP), Government recognised the need for PPP arrangements to finance infrastructural development. According to STERP, participating private sector partners, contributing financial resources, will be allowed special dispensations and privileges. Specific areas for possible partnership areas include air and rail services, power generation, dam construction and the upgrading and construction of the main national highways, urban housing development projects, and infrastructure for SMEs. STERP refers to the Guidelines for PPP's already in circulation.⁵

The Public Private Partnerships in Zimbabwe Guidelines were issued in 2004. There has, however, been limited implementation because of the economic conditions prior to 2009. Below is a summary of the guidelines:

The guidelines identify the following forms of Public Private Partnerships.

Management Contract/Service Management

Under this arrangement, the ownership of the enterprise remains in the hands of Government, with private partners managing the operations and maintenance of the enterprise, guided by set targets. Government retains the decision-making role as regards capital investment. This arrangement could apply to the energy, waste water, and water sectors and the maintenance of buildings.

Lease

In this case, Government retains ultimate ownership of a facility but grants a private partner full operating rights and responsibilities. The private partner derives income from tariffs, but bears full commercial risk and responsibility for maintenance and replacement of short-term assets. Government will retain the responsibility for fixed assets and servicing of long-term debt. This partnership can apply to transport and water supply, among other sectors.

⁵ The Public Private Partnership Guidelines of 2004 have not been passed as a statutory instrument

Concession

Under this, the Government grants rights to a private operator/concessionaire to provide infrastructure and/or services upon agreed terms and conditions.

In this arrangement, the private operator/concessionaire develops and/or manages a project/facility, assuming the commercial risk and the investment obligations related to expansion and rehabilitation of the existing facility, as well as building any necessary new facilities.

The contract has a fixed term period and involves transfer of the assets back to the State at the end of the term, when the private operator/concessionaire may re-bid.

In the Guidelines, concessions, although sometimes interchangeably used, will refer to projects under such arrangements as Build-Operate-Transfer (BOT), Build-Transfer-Operate (BTO), and Build Own-Operate (BOO), Build-Lease-Transfer (BLT), Rehabilitate-Operate-Transfer (ROT), and Rehabilitate-Own-Operate (ROO).

De-monopolisation and new entry

Under this model a private investor can enter the market to complement the existing public provider, either in conjunction with it, or alone or in part. Examples would be entry of private operators in Telecommunications, Power Generation, previously State monopolies.

The following are identified as sectors for Public Private Partnerships in the Guidelines:

- **Water**, including irrigation facilities, dams, canals, piping, storage and distribution facilities, and sewage waste
- **Land reclamation**, dredging and other related development facilities and sewage waste
- **Transport**, including air, water, railways, roads, expressways, other roads, bridges, interchanges tunnels and related transport facilities
- **Telecommunications**, including fixed network, terrestrial and satellite facilities
- **Social Services Infrastructure**, including education and health infrastructure, housing and sanitation
- **Government buildings**, construction and maintenance
- **Energy**, including power generation, transmission, distribution and related facilities
- **Industrial** and tourism estates
- **Markets**, industrial shells, slaughterhouses, storage and processing and related facilities
- **Warehouses** and post-harvest facilities
- **Environmental** and solid waste management

Approval process

- The relevant line ministry completes the initial technical appraisal and submits the project to the Inter Ministerial Committee on Public Private Partnerships (ICPPP) for economic , financial, social and environmental impact appraisal
- If approved, the ICPPP will, in turn, submit the proposal to the Cabinet Committee on Investment and Development (CCID), through its working party
- The CCID will recommend the proposal or block of projects to cabinet, through its chairperson
- If approved by cabinet, the project will be submitted for public tender by the responsible line ministry or local authority in accordance with the state procurement board procedures.

It was noted in the 2004 guidelines that the functions of the ICPPP will be transferred to a fully fledged PPP Unit when the legal, institutional and regulatory frameworks are established through an over arching Public Private Partnership legal frame work.

Modes of awarding projects

Competitive public bidding

This refers to the process whereby tenders are open to both domestic and international bidders, either by auction or by public tender. This is normally suitable for big projects, which require outlays of large financial resources and significant management and technical capacity.

Competitive public bidding will be conducted under a two envelope/two stage system. The first envelope will contain the financial proposal. The second envelope will contain the qualification proposal.

The relevant line Ministry/Local Authority, in liaison with the State Procurement Board, shall prepare the bid/tender documents, including clear and comprehensive instructions to bidders. The pre qualification, invitation of bids, evaluation of bids and award of tenders shall be done by the line Ministry/Local Authority in liaison with the State Procurement Board and the PPP Unit.

Limited competitive bidding/

Competitive negotiation

Under this, the relevant government agency selects at least three short listed bidders, using agreed criteria, and then negotiates with each bidder, with the aim of awarding the contract to the best capable bidder also taking account of other terms and conditions.

Private sector own initiatives/

Unsolicited proposals

This refers to negotiated entry or direct entry. Under this, projects are normally initiated by the private sector. Direct negotiations may be entered into on the following basis:

- that the Government has invited comparative or competitive proposals/bids and has not received any other proposal.
- that, in the event that another private proposer has submitted a more competitive proposal, then the original proposer will have to match this, in order to qualify to undertake the project.

Treatment of indigenous companies

An indigenous Zimbabwean contractor/company, which submits an equally advantageous bid, with competitively matching price and technical specifications, as those of a foreign bidder, shall be given preference. (Refer also to information on page 16).



Contract negotiation

- A Contract shall be awarded to the bidder who shall have satisfied the minimum financial, technical, organisational and legal standards required by the relevant Act and has submitted the lowest bid and most favourable terms for the project. The winning project proposer shall be automatically granted the right to implement the project provided it has submitted the required performance security and proof of sufficient funding and technical capacity.
- In all cases, the utilisation of available local resources and labour should be given preference and clearly stated in the contract.
- In all cases, a consortium that participates in a bid must present proof that the members of the consortium have bound themselves jointly and severally to assume responsibility for any project. The withdrawal of any member of the consortium prior to implementation of the project could be grounds for the cancellation of the Contract.
- Authorised agencies, including Government owned or controlled corporations and Local Authorities can enter into Contracts with the winning bidder/project proposer for implementation of a PPP project.
- Profit or revenue sharing policy and mechanisms should be clearly stated in the contract agreement.
- Contract agreements shall contain all the necessary details pertaining to project design, plans, specifications, financing implementation, performance standards, monitoring, adjustment of charges to consumers, and termination procedures.

Financing

Projects can be financed through domestic and foreign sources and private promoters should make appropriate financing arrangements. Consortiums and joint ventures are also encouraged.

Incentives

Refer to the Taxation section on page 61 for relevant incentives applicable to BOT arrangements.

Over and above these incentives, the Minister of Finance may allow additional tax benefits on case by case basis.

Other incentives may extend to duty exemptions, depending on the nature of the project.

The remittance of dividends and disinvestments shall be in accordance with existing Exchange Control Regulations.

Project monitoring and evaluation

Responsibility for the monitoring and evaluation of PPP projects shall rest with the responsible line Ministry/Local Authority, the PPP Unit and the relevant regulatory authorities, in accordance with the contractual obligations of each party to the project.

Regular reports shall be submitted to both the PPP unit and the relevant regulatory authority, in line with prevailing regulatory framework.

Transferable projects

In line with project contractual arrangements, full legal ownership of transferable projects will transfer to Government/Local Authority or its agency at the end of the concession period.

Before transfer, line Ministries/Local Authorities or Agencies shall ensure that the project is in sound working condition.

Regulatory authorities

In the absence of sectoral regulatory arrangements, to protect the interests of investors and consumers, line Ministries will develop new regulations to:

- Enforce and ensure that service providers comply with contractual obligations
- Foster competition and prevent abuse of market power by dominant operators
- Ensure adherence to appropriate operating regulations on safety, performance and quality standards
- Guarantee appropriate investor and consumer rights, as well as obligations regarding the provision of various services
- Arbitrate and mediate disputes among licensees and between licensees and consumers.

Contract termination

Contracts may be terminated or repealed before the end of the agreed contractual term in the event that a Party to the Contract has failed to comply with terms and conditions as prescribed in the respective Contract agreements.

Compensation

In the event that the project is cancelled or revoked by Government through no fault of the private party, compensation shall be payable.

The value of compensation shall be equal to the real value of the investment concerned, and shall be set in accordance with the normal economic situation prevailing prior to any threat of dispossession.

Dispute resolution

Any disputes that may arise in connection with or out of any PPP Contract concluded in terms of these guidelines should be settled amicably, failing which recourse should be had to Zimbabwean laws of arbitration, courts of law and where international investors are involved, the relevant international tribunals.

Exchange Control (EC)⁶

The Zimbabwe Dollar is no longer in use and it is permitted to use multiple foreign currencies in Zimbabwe. The United States Dollar is the primary currency in use in Zimbabwe followed by the South African Rand and to a lesser extent the Botswana Pula. Exchange controls are administered by the Reserve Bank of Zimbabwe through several statutory instruments and directives.

Authorised dealers and Bureaux de Change

The Reserve Bank of Zimbabwe has shifted a significant amount of responsibility onto “Authorised Dealers” which are local commercial and merchant banks licensed by exchange control to deal in foreign currency.

Buying and selling of foreign currency using international cross rates is limited to Authorised Dealers and licensed Bureaux de Change.

Corporates and individuals can conduct Bureau de Change business if they are so licensed to by Exchange Control (hereafter “EC”).



⁶ This section based largely on Reserve Bank of Zimbabwe Exchange Control Directive 1/2009. Readers should also familiarise themselves with SI 110 and 109 of 1996 which provides additional guidance

Types of Foreign Currency Accounts (FCA's)

Corporates

Local and foreign owned corporates who are registered in Zimbabwe can open up to five FCA's denominated in United States Dollars (US\$), South African Rand (ZAR), Botswana Pula (BWP), British Pound (GBP) and Euro (EUR) per each Authorised Dealer. FCA's may be opened at multiple Authorised Dealers. No exchange control approval is required.

Various types of corporate FCA's may be held. These are as follows:

- **Corporate FCA (General)** - These are used to deposit funds emanating from commercial activities in Zimbabwe. These are treated as "Free Funds". The holder of Free Funds is largely unrestricted in determining their use.
- **Corporate FCA (Exports)** - These are used to deposit proceeds from export of goods or services resulting from the acquittal of Forms CD1/CD3/TR1/TR2/GSD or PTS1 (these forms are explained later in this document).
- **Corporate FCA (Transitory)** - These are used for purposes of holding funds whose destination is not yet known or billing is yet to be done i.e. prepayments etc.
- **Corporate FCAs (Banks)** - These are accounts opened by authorised dealers.
- **Offshore Accounts** - Corporate entities are not allowed to open offshore accounts without prior EC approval.

Resident individuals

Individual FCAs can be held by all resident individuals including employees of Government, NGOs, Embassies, International organisations and the private sector. These funds are considered to be "Free Funds" and therefore no restrictions apply to their withdrawal or utilisation.

Non-residents

Non residents can open Non-Resident Transferable FCA's (NRTA) with Authorised Dealers. These can be opened by individuals who visit Zimbabwe on temporary visits or settle and work in Zimbabwe for a period of less than 12 months. Such accounts can also be opened by non-resident corporates but on advice of EC. EC approval is required before loans, overdrafts or guarantees are granted to non-residents. These funds are freely remittable.

Nostro-accounts

Authorised dealers can open any number of nostro accounts with correspondent banks of their choice.

Embassies, NGO's and Diplomatic Missions

These entities may open non-resident accounts without prior EC approval and these funds are regarded as "Free Funds".

Evidence accounts/collection accounts

These offshore accounts which are opened to provide comfort to suppliers of foreign credit are permitted to be opened only by exporters with External Loans Coordinating Committee (ELCC) approved lines of credit and whose terms and conditions have been approved by EC.

Operation of FCA accounts

Individuals and corporates may deposit any amount into their FCAs (although export earnings should be deposited into the Export FCA and local earnings into the domestic FCA) and authorised dealers at their discretion may enquire as to the source of the funds (likely only where large amounts are involved).

There is no limit on the amount of foreign exchange that can, without any documentation, be withdrawn from FCA's.

Individuals, Embassies, NGO's and holders of the General type Corporate FCA (see above) can, without restriction, use their FCA accounts for their local and foreign obligations.

Corporate entities can make payments from their corporate FCA (exports) in line with existing exchange control regulations. (See sections on imports below). Whilst there is a differentiation between general and export accounts their operation is basically the same and they contain similar freedoms).

Currencies, without prior EC approval, can be switched between accounts using international cross rates.

All FCA funds can be held indefinitely.

Investment of FCA Funds

Resident FCA holders can invest in shares quoted on the Zimbabwe Stock Exchange (i.e. can invest up to 100%) or in non listed entities. Non-residents have certain restrictions.

Resident and non-resident FCA holders may freely invest on the Money Market. For non-residents certain anti money laundering regulations apply. The incoming funds have to be shown to have been earned formally, through normal banking channels. Any income realised is freely remittable.

Importation and remittances

All imports to any value can be processed by authorised dealers without exchange control approval. Authorised dealers may request relevant supporting documentation for corporate governance purposes. All corporate remittances for imports are freely remittable and corporates can pay local expenses for their visitors or external business associates from their corporate FCA without restriction.

Individual remittances are unrestricted and Authorised Dealers are not permitted to introduce restrictions whether documentary or otherwise on transfer for funds from individual FCAs.

Remittances from borrowed funds should comply with existing EC regulations.

Registration of service agreements

Where the provision of services involves agreements with recurring fees, the initial agreement must be registered with EC and thereafter payments can be made without EC approval.

Exports and other foreign earnings

General regulations

These regulations are largely aimed at ensuring that the country's export earnings are fully accounted for and that Zimbabwe realises the true and fair value of its exports.

Goods with a value greater than US\$5 000 cannot be exported unless payment for the goods has been made or will be made within 90 days from date of export, or when contractually due, or such other period as EC may direct. The amount of the payment must reflect the true current market value of the goods.

Authorised Dealers must record exports through completion of the Form CD1 in the Computerised Export Payments Exchange Control System (CEPECS). The completion of a CD1 form represents the declaration of the export by the exporter and undertaking that the payment shall be received within the stipulated period. ZIMRA (customs) may prohibit the export if the CD1 form is not completed properly. All new exporters of goods should be registered in CEPECS through their Authorised Dealer and they shall on a "Know your customer" basis satisfy themselves that the business is a bona-fide entity.

Current exchange control policy requires that every export be declared on the EC Export Declaration form. These are as follows:

CD1 - For declaration of export of goods in CEPECS prior to Shipment

CD3 - For declaration of road transport/ freight charges

TR1 - For declaration of non-consumptive tourism earnings

TR2 - For declaring of consumptive tourism (hunting) earnings

PTS1 - For declaration of post and telecommunication receipts

GSD - For declaration of earnings arising from rendering any other service not specified above.

The Exchange Control Declaration 1 of 2009 contains detailed guidance on the completion of these forms.

Within seven days of the receipts of export proceeds the Authorised Dealer must pre-acquit¹⁴ the CD1 and submit an application for final acquittal of the CD1 to EC. Documentary proof of the receiving payment must be shown. CD1's can only be acquitted from offshore funds. Where they are acquitted in cash the Authorised Dealer should ensure that the cash has not come from the domestic market. Funds cannot be deposited into the corporate FCA account until the CD1 is fully acquitted.

¹⁴ "Pre-Acquit" is an EC term meaning "provisionally acquit"

Barter trade transaction

Prior EC approval is required for any form of barter trade.

Samples and goods for repair or return

Export of such goods requires prior EC approval.

Bulk, consignment stocks and auction

These are not permitted without specific EC approval.

Transporters

All local cross border trucking companies are required to complete form CD3. Completion must be accurate in all respects or it will not be processed. No cross border transport will be permitted by ZIMRA unless payment is made or will be made within the stipulated period. The conditions attached to CD3's are essentially the same as for CD1's.

Prior EC approval is required where a foreign registered horse pulls a locally registered trailer or semi trailer or vice versa. Certain information needs to be stipulated in such instances.

Tourism operators

Foreign earnings of non-consumptive tourism operations should be declared by the operator on form TR1 on a monthly basis. Authorised Dealers are required to pre-acquit the TR1 within 15 days after the month being reported on and submit an application for acquittal to EC showing documentary proof of funds being received. Funds received from package tours are credited to the Corporate FCA (Transitionary) prior to issuance of final invoices and TR1 acquittal.

Consumptive Tourism Operators (Hunting Safari Operators) and all taxidermists are required to declare earnings on Form TR2 after completion of the hunt and before export of trophies through their Authorised Dealer. Documentary evidence is required of depositing foreign proceeds.

Telecommunications operators

All licensed Post and Telecommunications operators are required to declare their earnings on form PTS1 on a monthly basis. The declared net funds should be received in Zimbabwe 90 days following the month the services were rendered or contractually due. Pre-Acquittal and final application for acquittal must be done within seven days of receipt of funds by the Authorised Dealer and proceeds cannot be deposited in the Corporate FCA without proper acquittal of the PTS1.

Other service providers

All other service providers are required to complete form GSD when a service is rendered to a foreigner. Funds are required to be received within 90 days of providing the service. The acquittal process is similar to that for CD1's.

Tobacco and cotton

Tobacco and Cotton can only be purchased using funds sourced from offshore. Local market funds are not permitted to be used.

Import and export of foreign currency cash

There are no limits on the importation of foreign currency cash by authorised dealers. However EC approval is required to ensure that the country's anti money laundering rules are adhered to.

US\$10 000 in foreign currency cash may be exported by residents in person or baggage per trip. Amounts in excess of this require prior EC approval.

Repatriation of cash by Authorised Dealers to their corresponding banks requires prior EC approval.

Foreign investment

The guidelines are intended to provide administrative clarity to Authorised Dealers and Exchange Control Review Committee (ECRC) will accept for consideration other "innovative proposals" that fall outside of the guidelines.

Unlisted Companies (investment and disinvestment)

Foreign investors may generally invest up to 40% in already established unlisted companies. New projects fall under the Zimbabwe Investment Authority (ZIA) and have differing limits and do not require separate EC approval unless referred to EC by ZIA.⁷

Mergers and Acquisitions are considered on a case by case basis by EC. EC approval is also required for subsequent restructuring and rights issues.⁸

Remittance of proceeds arising on winding down or closing of operations has some restrictions:

Investments made prior to May 1993 - These require EC approval. Proceeds are required to be re-invested on the domestic market for a period of five years prior to remittance.

Accelerated remittance can apply where the disinvestment proposals result in localisation of ownership or if the sale of foreign shares to locals is discounted by 10% or more in the company's net asset value and dividend savings.

Investments made post May 1993 - These are fully remittable after EC approval has been granted. Investors may remit offshore any capital plus appreciation as well as dividends in full, as and when they accrue.

There are certain guidelines for an application for dilution of local investments, disinvestment and mergers and acquisitions and rights issues and such transactions also require that that notification be given to the Ministry of Indigenisation and Economic Empowerment.

⁷ Where investments are to be financed largely by debt, ZIA may refer this to EC

⁸ Exchange control may consider other proposals outside the 40% limit on a case by case basis but such an application would have to be clearly motivated including how the entity intends to eventually comply with localisation requirements

Investment in listed companies

Foreign investors may participate on the Zimbabwe Stock Exchange (ZSE) provided they finance the purchase of shares by inward transfer of foreign currency through normal banking channels.

The purchase of shares is limited to 40% of total equity with a single foreign investor not allowed to hold more than 10% of the shares on offer. These limits are in addition to any foreign shareholding existing in the companies prior to 1 May 1993. Transfer secretaries are required to report to the ZSE any breaching of the set limits and investors will be required to dispose of any holding of excess shares within sixty days. Any loss is for the investor's account and determination of who will be required to dispose of shares will be on a Last In First Out basis.

Non-Resident Zimbabwean Citizens (i.e. those in the Diaspora) can invest up to 70% in any company listed on the ZSE. The investments qualify for 100% remitability rights subject to the deduction of withholding taxes.

Disinvestment proceeds are freely remittable but subject to certain taxes that may arise.

EC approval is not required for foreign investors wanting to participate on the ZSE within the prescribed limits. This is handled by Authorised Dealers for onward transmission to stock brokers. Shares purchased on behalf of foreign investors shall be registered either in their own names or the names of Nominee Companies but the share certificates must be endorsed as "Non-Resident" and for dual listed shares a further endorsement of "For sale within Zimbabwe only" is required.

Investors enjoy 100% dividend remittance rights and these can be processed by Authorised Dealers without EC approval.

Investment on the money market

Foreign investors may subscribe for up to 35% of primary issues of bonds and stocks provided the purchase is financed by the inward transfer of foreign currency through normal banking channels. There is no limit on the level of participation of each investor. Foreign investors are permitted to sell through the secondary market but cannot buy from the secondary market.

Outward investment

Corporate entities are not permitted to acquire shares on external stock exchanges unless this is from "free funds".

Zimbabwe residents are required to obtain EC approval for cross border investments unless the investment is financed from free funds⁹.

Cross border investment can be in the form of establishment of offshore branches or subsidiaries and these require EC approval and are considered on a case by case basis. Residents with approved cross border investments are not allowed to create liabilities or exposures which have a reducing effect on their shareholding or create foreign obligations in the event of default. If these become necessary they should be approved by EC.

Dual listing

All cases for dual listing shall require prior EC approval. The primary listing shall be on the ZSE with a minimum of at least 60% of listed shares at all times. Foreign investors shall be permitted to buy up to 40% of the shares on the dual listed counter. Full fundability is permitted on up to 40% of the company's shares held by foreigners. Where the secondary listing is on the ZSE, full fundability is not permitted. Foreign Investors may transfer shares from an external register to the Zimbabwe register, sell and repatriate the net proceeds. Zimbabwe resident individuals may not purchase shares externally unless they have free funds. EC has issued detailed guidance on the operational modalities for the trading in dual listed counters.

Proceeds on depreciation of direct investments

These are remittable upon verification and certification by EC.

⁹ Essentially all funds held by individuals are now free funds

External loans and/or trade credits

External loans are controlled in terms of the External Loans Coordinating Committee (ELCC) guidelines.

Authorised dealers can process external loans and/or trade credits up to a value of US\$5 million without ELCC approval but ELCC guidelines should be followed by the Authorised Dealers, and these include amongst other obligations the need to be prudent and to negotiate where possible better terms.

Amounts in excess US\$5 million must be submitted to the Reserve Bank for ELCC approval.

Authorised dealers may establish letters of credit with cash cover for their clients without seeking EC approval.

Lending by authorised dealers

Authorised dealers can on lend funds to resident individuals and corporates at market determined interest rates to meet current account and domestic funding requirements. Any lending to meet capital account obligations (such as dividend and loan repayments) requires specific EC approval.

Non residents may not borrow from Authorised Dealers without prior EC Approval. Non-resident controlled companies may borrow locally to finance working capital on a ratio of 1:1 with shareholder funds (i.e. can not have a debt to equity ratio in excess of 1:1). EC approval is also required for such loans. EC regards shareholders funds as including issued share capital; share premium; capital and revenue reserves; shareholders loans and retained earnings.

Financial derivatives

Authorised dealers are now permitted to enter into derivative transactions up to a value of US\$5million without EC approval for locals and resident financial players. Issuance of derivatives however should be done under the advice of EC. Where the derivatives involve foreigners EC approval is required.

Exchange control review committee

All capital account applications and foreign transactions not covered in both the Exchange Control Regulations SI 109 of 1996 and Exchange Control (General) Order SI 110 of 1996 are subject to prior approval by the EC Review Committee which meets once a week.

Property transactions

EC recently introduced restrictions on the funds arising on the sale of properties by individuals. Following stakeholder representations these have since been suspended.

Taxation

Tax Administration

Tax Legislation

The main taxes in Zimbabwe are enacted by the following acts:

- The Income Tax Act (covers income taxes of individuals and companies and withholding taxes).
- The Finance Act (specifies periodic changes to the tax acts such as rate changes)
- The Capital Gains Tax Act (covers capital gains taxation and capital gains withholding taxes)
- The Value Added Tax Act (covers value added taxes)
- The Customs and Excise Act (covers customs and excise duties but should be read in conjunction with the statutory instruments on rates of duties)
- The Stamp Duties Act (covers stamp duties on certain instruments and immovable properties)

The regulations are available in support of some of the Acts. Other taxes arise in respect of Estate Duties but these are not ordinarily significant. The Zimbabwe Revenue Authority also administers the collection of Mining Royalties under the Mines and Minerals Act.

Interpretation of legislation is supported by case law and practice notes, and where applicable rulings issued in accordance with Revenue Authority Act.

Zimbabwe Revenue Authority (ZIMRA)

The Acts are administered by the Commissioner General who controls the Zimbabwe Revenue Authority (ZIMRA). ZIMRA falls under the Ministry of Finance and is empowered by the Revenue Authority Act. ZIMRA head office is in Harare but there are offices in all major centres. The ZIMRA website contains useful information particularly in regard to customs tariff searches and it can be accessed at www.zimra.co.zw

Classification of Taxpayers

Administratively ZIMRA categorises taxpayers into Large, Medium and Small Clients. Large clients have access to a special Large Clients Office which is aimed at easing the administrative burden of large taxpayers which constitute the bulk of contributions towards revenue.

Certain smaller class taxpayers in the informal sector are subject to presumptive taxes.

Self Assessment

A self assessment system is in place in Zimbabwe but subject to audit by ZIMRA.

Enforcement and Monitoring ZIMRA has various mechanisms for monitoring and controlling compliance. This includes routine audits as well as investigations. Non compliance can attract interest and penalties (of up to 100%) as well as fines and in extreme cases imprisonment.

Interest can be compounded indefinitely as the Tax laws specifically over ride the Induplum Rule (cumulative interest cannot exceed original capital) which is ordinarily enforceable in Zimbabwe. ZIMRA also has power to garnish bank accounts and/or attach property to recover any unpaid taxes.

Judicial Review

Any taxpayer who is aggrieved by any assessment may lodge objection with the Commissioner and, if this is disallowed, may appeal to the courts.

The taxation laws specify that payment of assessed taxes, penalties and interest must be made over to ZIMRA prior to any appeal (a concept of guilty until proven innocent).

Tax incentives

It is Government policy to phase out any special tax incentives.

Tax Treaties/Double Taxation Agreements

Zimbabwe has tax treaties with Botswana, Bulgaria, Canada, France, Germany, Malaysia, Sweden, United Kingdom, Mauritius, Netherlands, Norway, Poland, Yugoslavia and South Africa.

Corporate Income Tax

Basis of Taxation

Zimbabwean income tax is source-based with certain foreign source income being deemed to be from a Zimbabwean source. Corporate tax is primarily based on the financial accounts, subject to adjustment for certain tax-related items. For partnerships which are not recognised persons for tax purposes, taxable income is determined in a similar way as for corporations, except that the income is taxed at the partner/owner level.

Gross income includes all income earned from business activities plus certain deemed income but excluding that income which is of a capital nature or specifically excluded from gross income. Income tax is chargeable on taxable income, which is broadly calculated as follows:

- Gross Income
- Less exemptions
- Less allowable deductions
- Less Assessed losses brought forward

Exempt Income

Certain income is exempt from tax and the most common of which are dividends received from other Zimbabwean companies if the profit has been subjected tax.

Allowable deductions

Most business expenses and losses are deductible only to the extent to which they are incurred for purposes of trade or in the production of income and which are not of a capital nature. The following are some of the allowable deductions:

- Repairs on property or items used or occupied for the purposes of trade,
- Employment-related expenses like employee welfare cost, cost of tools of trade, trade journals, business related seminars and subscriptions to trade, professional and business associations, business-related travel expenses.
- Contribution to a pension, provident or other retirement benefits funds (subject to a maximum of \$5,400 per annum per employee),
- Contributions by employers on behalf of employees to approved medical aid funds,
- Irrecoverable bad debts,
- Preproduction expenditure incurred within 18 months prior to commence of trade,
- Trade conventions and missions, up to a maximum of \$2 000,
- Interest paid on money borrowed or employed as capital for purposes trade,
- Rent paid in respect of property used or occupied for the purpose of trade, etc.

Certain expenses and losses of a private, domestic or capital nature, however, are generally disallowable. The following are some of the expenses specifically prohibited:

- Cost of travelling between home and place of work,
- Any loss or expense which is recoverable under any insurance contract or indemnity,
- Tax and interest payable on late paid taxes,
- Any provisions or income carried to a reserve fund or capitalized in any way;
- Expenses or losses incurred in the production of any amount exempt from income tax or income not from a source within Zimbabwe,
- Lease or rental expenses on a passenger motor vehicle in excess of \$10,000,
- Any expenditure in restraint of trade,
- Any entertainment expenditure, whether incurred on the business of the employer or for the benefit of an employee, etc.

Capital Allowances and Recoupments

General

Generally a Special Initial Allowance (SIA) is available upon election for capital expenditure in respect of articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade and on construction of immovable's as well as industrial buildings. The rate is 25% of cost of acquisition or construction allowed in the year of first use. Thereafter an accelerated wear and tear allowance is available at 25% per annum for the next three years. Commercial buildings are only

granted a wear and tear allowance of 2.5% per annum.

In certain instances an entity can elect to claim long term wear and tear in lieu of the above mentioned allowances and these are at varying rates.

Certain limits exist in respect of the amount subject to allowances and these commonly include the following:

Passenger Motor Vehicles	USD 10 000
Staff Housing	USD 25 000

Small to medium enterprises SME's qualifying for a capital allowance structure of 50% SIA, and 25% accelerated wear and tear in the next two years of assessment.

On the sale of an asset upon which capital allowances were previously granted, a recoupment (inclusion in gross income) for tax purposes arises. Recoupment may however not be taxed in certain instances. It may escape tax if it arises on transfer of asset from one entity to another under a group scheme of reconstruction, merger, takeover or other similar business combination.

Assessed losses

To the extent to which the losses have not been used against current taxable income that may be carried forward and used against the first available future taxable income. Any accumulated tax losses are valid for six years and any unused tax losses expire in the 7th year after they arise. Tax losses of mining companies do not expire. Tax losses can only be used in the entity they were incurred and cannot be offset against other sources of income.

Interest deductions

Interest on borrowing incurred for purposes of trade or in the production of income. There are however thin capitalisation rules or minimum capitalization requirements. The thin capitalisation rules limit the deduction of interest by a company to interest arising on debts that do not cause the debt/equity ratio to exceed 3:1. The rules apply to both local and offshore borrowings and between related or unrelated parties. The disallowed interest is deemed to be a dividend for withholding tax purposes. Further, interest paid between affiliated companies must be at an arm's length rate.

Corporate income tax rate

General Rate

The general rate of tax applicable to taxable income from locally registered companies, foreign branches, a trust operating in Zimbabwe or income of individuals from trade and investment is 25% plus a 3% aids levy of the tax due. The effective tax rate is thus 25.75%.

Special Mining Lease Holders

Mining companies who hold special mining leases are taxed at a special rate of 15% but become subject to Additional Profits Tax. It has been found in the limited application of this tax in practice to be significant.

BOOT/BOT arrangements

Taxable income of a person engaged in an approved BOOT or BOT arrangement:

- First five years 0%
- Second five years 15%
- Thereafter 25%.

The tax rate of a manufacturing company which exports 50% or more of its output is 20%.

Miners

Mining companies may elect to claim capital redemption allowance on new or expansion asset acquisitions amounting to 100% in the year of purchase (does not have to be brought into use). Unlike other operators, miners in turn suffer a recoupment with reference to the full sales proceeds in the event of the disposal of such assets. Miners are not entitled to the general allowances detailed above. The caps on deductibility detailed above also apply, other than on employees staff housing, which qualifies for 100% deduction.

Farmers

Farmers are entitled to the general capital allowances above and are also allowed to claim 100% of expenditures on water conservation works, fencing, stumping and clearing of lands, sinking of boreholes and wells, prevention of soil erosion and aerial and geophysical surveys. In the event of disposal these assets are not subject to recoupment.

Tax year and base period

As a general rule the tax year starts on 1 January and ends on 31 December. The majority of entities are required to have their financial year in line with the tax year. Exceptions are allowed on application and usually extend to subsidiaries of foreign entities or entities that have income of a seasonal nature.

Payment of Tax

Corporate tax is payable during the tax year based on estimated taxable income for the year. Corporate tax is payable as provisional tax on quarterly payment dates as follows:

Quarter	Due date	Percentage
1st	25 March	10%
2nd	25 June	25%
3rd	25 September	30%
4th	20 December	35%

Correction is made on final assessment for any over or under payments of tax. Interest can arise on late payment of provisional tax.

The Commissioner may waive interest under circumstances where the taxpayer fails to forecast profits within a 10% margin of error or when he is satisfied that a person who is required to pay provisional tax failed to do so due to special circumstances.

Returns

An annual income tax computation and return is due by 30 April following the year of assessment. A self assessment system is in place subject to audit by ZIMRA.

Individual Income Tax

Basis of taxation

The principles of taxation applicable to corporate (e.g source rules, nature of income etc) largely apply to individuals. Individuals in employment are subject to PAYE (Pay as You Earn). Individuals who don't earn any other income besides that from employment are not required to submit income tax returns.

Exempt income

The income tax act contains a long list of exempt income in the Third Schedule. The most common exemptions are:

- Costs of medical treatment borne by an employer for employees and their dependants.
- Cost of medical aid provided by an employee to an employer or their dependents.
- Educational loans provided to employees in connection with education applicable to the employers trade.
- Pension contributions paid by the employer.

Fringe benefits

Unless otherwise specifically exempted from tax, all benefits from employment are subject to tax. These are most commonly determined with reference to the cost to employer, or in some instances value to the employee. Certain benefits from employment have deemed values for tax purposes and these commonly include Motor Vehicles and Interest on loans.

Income tax rates for individuals on employment income

The following tax rates apply to both resident and non-resident taxpayers, in respect of employment income earned in Zimbabwe.

These are payable as Pay as You Earn (PAYE) on a monthly basis and are withheld and paid over by the employer or in the case of a foreign taxpayer, their representative tax payer.

The following is the annual tax table¹⁰:

Annual Taxable Amounts (\$)		Tax in band	Cumulative Tax	Tax rate on income in band ¹⁰
From	To			
0	3 000	0	0	0
3 001	12 000	1 800	0	20%
12 001	24 000	3 000	1 800	25%
24 001	60 000	10 800	4 800	30%
60 001	90 000	10 500	15 600	35%
90 001	120 000	12 000	26 100	40%
120 001			38 100	45%

The above tax payable also carries a further AIDS levy of 3% of the tax payable.

A medical aid expense credit of 50% on cost of invalid appliances and treatment and 50% of medical aid contributions is granted, but medical aid expense credit is not available to persons who are not ordinarily resident in Zimbabwe.

¹⁰ To determine applicable tax payable multiply amount in band by tax rate and add this to the cumulative tax in previous bands

Withholding taxes

Certain income is subject to withholding taxes, as follows:

Withholding tax rates	Residents	Non-residents	Due Date
Dividends ¹¹ • <i>From a listed company</i>	10% (a)	10% (b)	(a) Due within 10 days of the date of distribution (b) Due within 30 days of the date of distribution
Dividends ¹¹ • <i>Unlisted company</i>	15% (c)	15% (d)	(c) Due within 10 days of the date of distribution (d) Due within 30 days of the date of distribution
Interest earned from Financial Institutions - <i>short term</i>	15%	-	Due by the 10th day of the month following the month of the relevant expense
Interest earned from Financial Institutions - <i>fixed term</i> ¹⁴	5%	-	Due by the 10th day of the month following the month of the relevant expense
Fees and royalties	-	15%	Due within 10 days from date of payment of the relevant expense
Contracts of sale/service ¹²	10%	-	By the 10th day of the month following month of payment
Non-executive director's fees	20%	20%	Within 10 days of payment
Remittances to non-residents ¹³	-	15%	Within 10 days from date of payment
Capital Gains Withholding Tax - Listed Securities	1%	1%	Due no later than the 3rd working day following the sale
Capital Gains Withholding Tax - Unlisted Securities	5%	5%	Due no later than the 3rd working day following the sale

There is presently no withholding tax on interest payable to non residents.

Certain other withholding taxes may arise (i.e Automated financial transaction tax, Intermediate money transfer tax, Property or insurance commission tax).

Failure to pay on time may result in the imposition of penalties of up to 100% as well as interest.

In most instances 'payment' is deemed to be effectively at the accrual date and therefore obligating settlement of tax earlier than actual cash payment date. NRTF is on actual payment date.

¹¹ Dividends payable from one Zimbabwean company to another are not liable to withholding tax

¹² This applies to suppliers that do not have a valid tax clearance certificate (ITF263)

¹³ This is in respect of allocable expenditure incurred by a foreign head office which is being recovered from a Zimbabwe entity

¹⁴ A fixed deposit account is an account held for at least 90 days

Schedule of DTA Rates

Recipient's Country of Residence	Dividends	Royalties	Remittances	Fees	Interest ^b
Standard rates where there is no DTA	Listed 10%, unlisted 15%	15%	15%	15%	N/A
Botswana	5%/10% ^e	10%	15%	10%	10%
Bulgaria	10% ^a	10%	15%	10%	10%
Canada	10% ^a	10%	15%	10%	15%
France	10% ^a	10%	15%	10%	10%
Germany	10% ^a	7.5%	15%	7.5%	10%
Malaysia	10% ^a	10%	15%	10%	10%
Mauritius	10% ^a	15%	15%	0/15% ^c	10%
Netherlands	10% ^a	10%	0/15% ^c	10%	10%
Norway	15%	10%	15%	10%	10%
Poland	10% ^a	10%	15%	15%	10%
South Africa	15%	15%	15%	15% ^d	10%
Sweden	15% ^a	10%	15%	10%	10%
United Kingdom	5% ^a	10%	15%	10%	10%

a Only on shareholding or voting power, by a company, of at least 25%; otherwise the rates default to standard.

b Currently there is no withholding tax on interest.

c Both rates are specified. No clause on technical fees. Should default to treatment of business profits. We are aware that ZIMRA is not concurring on treatment and taxing at full rate.

d Certain interpretations suggest that these should not be subject to tax in Zimbabwe provided that the provider of the services does not have a Permanent Establishment ("PE") in Zimbabwe and such amounts are taxed in South Africa. ZIMRA not presently concurring.

e The rate is 5% only if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends. In other instances the rate defaults to 10%.

Pending agreements:

China, Indonesia, Namibia, Singapore, Seychelles, Switzerland, Tanzania, Thailand, Tunisia, Yugoslavia, Zambia, Democratic Republic of Congo and (re-negotiation) South Africa.

Value-Added Tax

Value-added tax ("VAT") at a rate of 15% of the value of the supply is generally levied in respect of all goods and services supplied by a registered operator or which are imported. Where annual taxable supplies exceed USD 60,000 an entity must register for VAT.

Generally goods imported under a Customs and Excise rebate are exempted from the payment of VAT as specifically provided for in the VAT Regulations (General), thus if a company is granted a rebate for any of its imports, it is automatically exempt from paying VAT.

The VAT regulations also provide for the deferment of the payment of VAT due on importation of goods of a capital nature. The payment of the VAT due is spread over a period of 90 days.

Fiscalised electronic registers

Statutory Instrument 104 of 2010 on Fiscalised Electronic Registers was gazetted with effect from 1 July 2010 (effective application date 1 October 2010).

The regulations require every registered operator in Category C as defined in the VAT Act to acquire a fiscalised electronic register or a non fiscalised electronic register which has a fiscal memory device. Non-retailers have an additional option to use an electronic signature device. The electronic register and the fiscal memory devices will be acquired from approved suppliers and entities have onerous backup requirements including the requirement for an uninterrupted power supply capable of running for eight hours.

In the event of a device failure or power failure ZIMRA is required to be notified and the situation rectified. A fiscalised electronic register will have the following essential features:

- a screen on which the customer can see simultaneously displayed the input being made by the till operator

- it must incorporate a back up master audit facility
- It must incorporate or be capable of being upgraded to incorporate a feature enabling the fiscalised electronic register to be linked to an input facility operated by ZIMRA or any other network facility
- It must be capable of retaining a fiscal memory of total daily sales, total VAT charged and total sales for at least three years.

Some of the permitted devices are designed to be stand alone (i.e. for those who do not already have an electronic till or a point of sale facility) and others may be integrated where possible with an existing accounting system.

ZIMRA has advised through a public notice that, those who are unable to meet the effective date should apply in writing to the Commissioner stating reasons why they are unable to comply with the effective date.

50% of the cost of acquisition of fiscalised electronic registers shall be claimed as input VAT and with effect from 1 October 2010, 50% of the remaining cost will rank for capital allowances.

Capital Gains Taxation

Capital gains on the sale of specified assets disposed or sold after 1 August 1981 are assessable. Specified assets include any immovable property and marketable securities, such as bonds, debenture, share or stock or right to participate in any unit trust. Movable property is not subject to CGT. Capital gains tax is only levied on Zimbabwe sourced capital gains and is usually determined based on where the seller carried on his activities (in regard to shares) and where property was physically located in the case of immovable property. A DTA can specify a special treatment where applicable.

The capital gain is the selling price less allowable deductions being:

- Cost of construction or acquisition of the property;
- Cost of additions, alterations or improvements;
- Selling expenses;
- Bad debts;
- 2.5% allowance of the purchase price from date of acquisition;
- 2.5% allowance on cost of additions, alterations or improvements.

The capital gain is deemed to be the selling value for certain qualifying assets acquired in the Zimbabwe dollar era without any deductions. Selling price should be reflective of the market/ fair value as the commissioner has the power to deem a value.

Capital losses

Capital losses may be used to offset capital gains. Any excess capital loss may be carried forward indefinitely to offset against any gains realised in future years.

Capital gains withholding tax

As a means of ensuring early settlement of capital gains tax, Zimbabwe levies in most instances a Capital Gains Withholding tax. This tax unless specified to be a final tax, is allowed as a reduction of the final capital gains tax. It can be avoided by seeking immediate assessment for final capital gains tax where it is identified that no capital gains tax is payable or where the amount of the final capital gains tax will be less than the withholding. Accordingly the withholding tax is not intended to be an additional tax but an early collection mechanism for the final tax.

The following table summarizes this treatment for various qualifying assets.

Tax	Shares/securities in Companies other than listed companies.	Shares/securities in Listed Companies	Immovable Property (Land and buildings)
Capital Gains Tax –Qualifying assets acquired and disposed of after Feb 2009 (i.e. post dollarization)	Capital gain is the difference between selling price and cost of shares acquired/ issued less a 2.5% inflation allowance for each tax year or part thereof owned (no apportionment e.g. if one month then presumed to be a year). Certain selling costs can also be claimed. This gain is taxed at 20%. This gain is taxed at 20%	No CGT as it is subjected to the Withholding tax below.	Capital gain is the difference between selling price and cost of property acquired less a 2.5% inflation allowance for each tax year or part thereof owned (no apportionment e.g. if one month then presumed to be a year). Furthermore the cost of any fixed improvements is allowed as a deduction with the inflation allowance being granted on these as well. Certain selling costs can also be claimed. This gain is taxed at 20%.
Capital Gains Tax – Qualifying assets acquired before Feb 2009 and disposed of afterwards	The gain is deemed to be the gross selling amount without deductions. This is taxed at 5%.	No CGT as it is subjected to the Withholding tax below.	The gain is deemed to be the gross selling amount without deductions. This is taxed at 5%.
Capital gains withholding tax (despite acquisition date)	This is determined as 5% of gross selling price.	This is determined as 1% of the gross selling price and unlike other qualifying assets is deemed to be a final tax.	This is determined as 15% of gross selling price.

Customs and Excise Duty

General

Customs duties are charged on most imports with basic commodities attracting lower rates and luxuries attracting higher rates.

A rebate of duty may be granted on capital goods and other goods temporarily imported by contractors or other persons for completion of approved projects. Applications for such rebates are made to the Commissioner giving details of the goods, their purpose, date on which the project will be completed and the date on which the goods are to be re-exported.

COMESA and SADC

The effect of the COMESA or SADC Certificates of Origin is to allow Member states to qualify for lower rates of duty or duty free on the importation of specified goods. This is only effected upon the production of a valid COMESA or SADC Certificate of Origin duly signed and stamped by an authorized signatory. However excise, VAT and other taxes are still payable wherever applicable.

Goods are deemed to originate in the territory of a Member State if they are consigned directly from a consignor in a Member State to a consignee in another Member State, produced wholly in the territory of one or more of the Member States or when goods have been produced in the Member States wholly or partially from materials imported from outside the Member States.

The rates applicable where certificates of origin are being used depend on the type of goods being imported.

The New Income Tax Bill

On the 30 November 2012 the government gazetted a New Income Tax Bill, which if passed by the house will become law with effect from 1 January 2014. The bill proposes a fundamental shift by the country from a source based tax system to a residence based tax system. Any person found to be a resident of Zimbabwe will be taxed on worldwide income, subject to double taxation relief where the same income has been taxed in other jurisdictions. Non residents will be taxed only on income from a source within Zimbabwe.

Residence rules have been defined as follows:

1. Natural persons - A resident of Zimbabwe is a person who:
 - has a normal place of abode in Zimbabwe and is present in Zimbabwe at any time during the year of assessment, or
 - Has been physically present in Zimbabwe for more than 183 days terminating in any tax year.
 - Is a public officer outside Zimbabwe during the year of assessment
2. Companies - A resident company is a company which:
 - Is incorporated or registered, or required to be incorporated or registered, under the Companies Act (Chapter 24.03)
 - Has its effective place of management and control exercised in Zimbabwe at any time during the year of assessment
 - Undertakes the majority of its operations in Zimbabwe during the year of assessment.

3. Trusts - A resident trust is a trust which:

- Is established in Zimbabwe
- Has at least a trustee who is a resident of Zimbabwe
- Has its management and control exercised in Zimbabwe

A partnership will also be considered a resident provided at least one partner was resident in Zimbabwe during the tax year. Nonresident partners would only be taxable however on Zimbabwe source income.

A natural person can also be a temporary resident person provided he is not a citizen of or a permanent resident of Zimbabwe and does not intend to or has not stayed in Zimbabwe for more than four years. Temporary residents are taxed on Zimbabwe source income and/ or income that is required to be repatriated to Zimbabwe by virtue of any exchange control regulation.

Furthermore, the bill is to incorporate into business income gains and losses from disposal of business and investment property, previously taxed as capital gains, as well as gains and losses from previously non-taxable disposal of movables.

Largely, the bill also seeks to widen the tax base primarily focusing on taxing residents on their worldwide income and limiting expenditure which businesses can claim against their incomes. Only expenditure incurred in "the production of income" will be deductible. Expenditure which is not in the production of, income, despite being for the purposes of trade will no longer be allowed.

The bill also proposes the removal of the cash basis tax accounting option to a purely accrual basis and generally adopting GAAP as a basis for tax accounting.

Deloitte in Zimbabwe

About us

Deloitte has been operating in Zimbabwe for over a century with the first office being established in Bulawayo in 1905.

The partnership currently has offices in Harare, Bulawayo and KweKwe and employs over 350 professional and support staff. All our partners and staff are permanent residents of Zimbabwe.

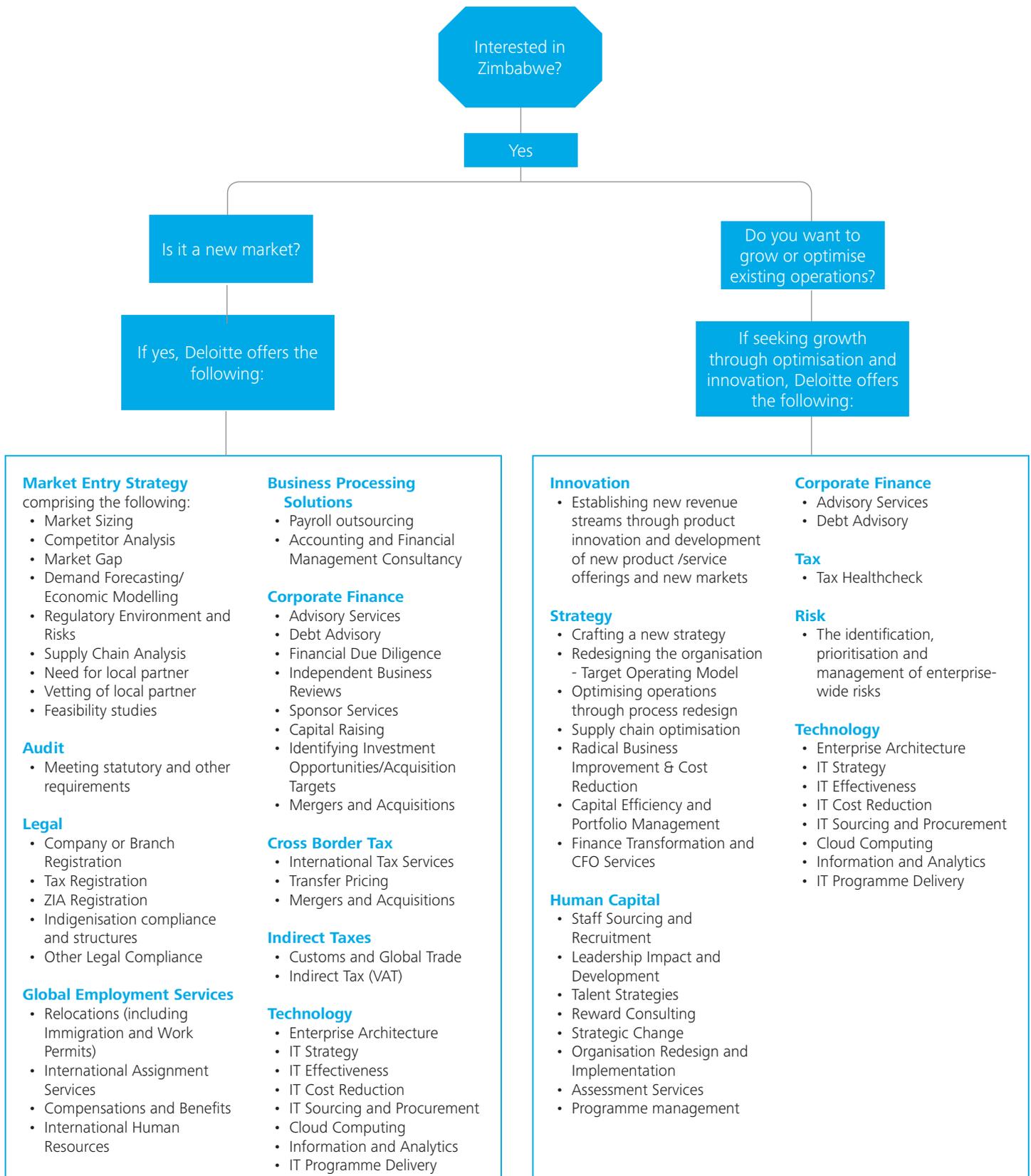
The following service lines have a dedicated Zimbabwean resource base:

- Audit and Assurance Services
- Taxation Services (incorporating Investor Services)
- Risk Advisory (Incorporating Internal Audit Services and Computer Assurance Services)
- Financial Advisory Services (Corporate Finance)
- Consulting
- Tip-offs Anonymous (Fraud Hotline)

Other specialised service offerings are currently provided in conjunction with the South African practice and additional skills requirements that may arise from time to time are drawn from their significant resource base.

Deloitte in Zimbabwe offers a comprehensive service to Investors wishing to establish a presence in Zimbabwe. We will work with you to establish your presence in Zimbabwe. We can advise you on the business vehicle that will best suite your needs and register this on your behalf. Additionally we can assist in obtaining an Investment licence, work permits and taxation registrations necessary for you to commence business.

Supporting investment in Zimbabwe



We offer the above services across various industries:

- Agribusiness
- Consumer Business
- Financial Services
- Healthcare
- Infrastructure and Power
- Manufacturing
- Mining
- Oil and Gas
- Public Sector
- TMT

Contacts

In the event that you require any further information or advice or require assistance in establishing a presence in Zimbabwe, please do not hesitate to contact us.

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