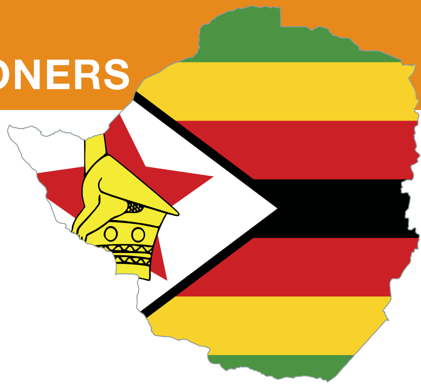
ZIMBABWE

SCANLEN AND HOLDERNESS LEGAL PRACTIONERS



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COUNTRY INFORMATION

Zimbabwe is a landlocked country spanning 390 757 square kilometres. It has a population of approximately 13 million people. More than 60% of the population is based in rural areas.

ECONOMIC INDICATORS

The gross domestic product (GDP) for 2017 grew by 3.7% against a target of 1.7% and it is forecast to grow by over 4.5% in 2018.

INFLATION RATE

The inflation rate averaged 0.91% from 2009 to 2016. In 2017 inflation was 0.8%.

INVESTMENT CLIMATE

Zimbabwe is actively trying to attract foreign direct investment as it emerges from more than ten years of rapid economic decline. The Government which came into power in November 2017 is targeting a stimulation of economic growth through attracting foreign direct investment. In January 2018 the President launched a policy document called “Investment Guidelines and Opportunities in Zimbabwe.” It states that Government is committed to progressive and modern principles which promote investment, respect for Bilateral Investment Protection and Promotion Agreements (BIPPAs), compensating farmers whose land was seized under the land reform programme at the turn of the century and modernisation of the legal framework for investment promotion. The Government has identified priority areas for investment as being mining, agriculture, manufacturing, tourism, ICT and infrastructure development. Investment opportunities are opening up with the privatisation of some state owned enterprises in the iron and steel industry, road and rail transport, communications, agriculture, power supply and other sectors. The country is actively looking for development partners in power generation, water supply and sanitation projects, road construction and railways development. In 2017 the country signed engineering and procurement contracts and concession agreements for the USD984 million dualisation of the Beitbridge-Chirundu highway which cuts across the country from north to south. Work is yet to begin on this project.

The Government has indicated that the Indigenisation law will be amended to allow 100% ownership of businesses by foreign investors except for diamond and platinum mining ventures where the 51/49% ownership structure will remain in place between the investor and Government. This means that foreign investors will no longer be compelled by law to partner with indigenous Zimbabweans when investing in Zimbabwe. Government committed to amending the indigenisation law in 2018.

The Government is planning to operationalise the Zimbabwe Investment Authority (ZIA) as a ”one stop shop” for all regulatory licences and permits to avoid bureaucratic delays by different authorities in approving investments. The Government intends to comprehensively revamp the ease of doing business in order to attract investment.

There are many investment opportunities as a result of the country’s emergence from years of economic decline, political uncertainty and the near collapse of most industries. For instance, the Government is planning to sell its shareholding in various companies held through the Industrial Development Corporation of Zimbabwe (IDCZ). Investors can also invest in agriculture through contract farming in crops like tobacco and cotton.

Zimbabwe suspended the use of its local currency (the Zimbabwe Dollar) in February 2009 in a bid to restore economic stability and stem rampant inflation. Trade is now being conducted in the currencies of other countries (mainly the United States Dollar and the South African Rand). The move has stabilised the economic environment and reduced inflation to single digit figures. In 2015 the Government demonetised the Zimbabwean dollar and compensated holders of Zimdollar bank balances and cash. The country is however suffering from a liquidity crisis as there is reportedly less than USD200 million cash circulating in the market. Banks are failing to satisfy the cash requirements of their customers. To ease the challenge, the Government has imposed controls on external remittances of cash and promised a crackdown on past illegal externalisations of foreign currency. An amnesty entailing the repatriation of externalised funds was introduced in December 2017 and the amnesty period ended on 28 February 2018.

There is a priority list which banks are obliged to follow in the allocation of funds for external transfers. Government also introduced a bonus of bond notes to boost exports and help ease the liquidity crisis. The bond notes are pegged at 1:1 with the United States Dollar. Every exporter is entitled to a 5% incentive on all exports made and the incentive is paid using the bond notes. The bond notes are backed by a USD200 million dollar facility from Afreximbank. To ease the crisis caused by the unavailability of cash, the central bank is actively promoting the use of electronic payment systems across all sectors of the economy. 75% of all retail transactions are now being done through electronic payment systems.

The Government has introduced special economic zones to boost export earnings and is seeking partnerships to develop infrastructure in these zones. Incentives in the sector include zero rated corporate tax for the first 5 years and 15% thereafter, duty free importation of capital equipment, exemption from non-residents tax on fees on services that are not locally available, exemption from non-residents tax on dividends, fees and royalties, zero rating for capital gains tax, and inputs not produced in Zimbabwe can be imported duty free. The Government is also encouraging the local beneficiation of extractives.

FORMS OF BUSINESS

- Private business corporations
- Partnership
- Trading trust
- Co-operatives
- Multinational corporations
- Private limited liability companies
- Public liability companies
- Sole proprietorship
- Company limited by guarantee
- Joint venture.

FORMATION OF COMPANIES

Companies and Private Business Corporations are registered and regulated by the Companies Act (Chapter 24:03) and the Private Business Corporations Act (Chapter 24; 11). Listed public companies are in addition regulated by the rules of the Zimbabwe Stock Exchange. There is a central registry of companies in Harare and a branch registry in Bulawayo. The registration process is often avoided by buying existing shelf companies from law firms.

EXCHANGE CONTROLS

Exchange control laws are in force but their implementation is largely suspended because the country is using the currencies of other countries (for example the US Dollar and the South African Rand). Dividend remittances in respect of projects approved by the Zimbabwe Investment Centre are allowed at 100% of current after-tax revenue profits. Capital remittances are blocked but capital may be remitted through 20 year Government bonds in terms of which capital is paid in 10 equal annual instalments at the end of years 11 to 20 and interest is payable half yearly at 4% per annum, tax free. External loans of up to USD10 million can be approved at bank level without involving the exchange control authority. The permitted participation by foreigners in the domestic bond and money market has been increased to 100%.

TAXATION

The corporate tax rate is 25% plus a 3% levy. A levy of 5% is imposed on the net financial profits of registered banking institutions. To encourage exports, a staggered lower corporate tax structure for exporting companies (ranging from 15 to 20%) was introduced in 2015.

Value added tax (VAT) of 15% is levied on the sale of goods or services.

Profits earned from new projects by companies or individuals operating in designated growth point areas are taxed at 15% in the first year in which the operations commence and for four years thereafter. Resident shareholders' tax is pegged at 20%. Government has extended a rebate of duty on capital equipment imported by the mining, agriculture, energy and manufacturing sectors for equipment valued at USD1 million and above from 2016.

Tax concessions are applied to export manufacturing businesses established in designated export processing zones. Dividends paid by a Zimbabwean company to another Zimbabwean company are not taxable but dividends earned by non-residents in Zimbabwean companies are subject to a withholding tax of 15% in the case of stock exchange listed companies and 20% in the case of other companies.

Capital gains tax is levied on the sale of immovable property at the rate of 20%. The rate is 5% on immovable property acquired by the seller before February 2009. Capital gains tax on securities is 1%.

Double taxation agreements exist with Bulgaria, Canada, France, Germany, Malaysia, Mauritius, Netherlands, Norway, Poland, South Africa, Sweden and the United Kingdom.

IMPORT / EXPORT

Import controls exist. In 2016 the Government introduced a law which prohibits commercial imports unless a special licence is granted by the responsible ministry. The law was intended to boost domestic industrial production but was abolished in 2017. The Government has removed the import duty on equipment and raw materials meant for local industry to promote productivity. Duty on imported commercial motor vehicles has also been reduced to boost the transport and business sector. To encourage certain productive sectors of the economy, the Government will suspend duty on various inputs used in these industries.

LEGAL SYSTEM

The legal system is based on Roman-Dutch common law as modified by statute. Zimbabwe has a new Constitution which came into force in 2013. The highest court in the land is the Constitutional Court followed by the Supreme Court, the High Court and the Magistrate's Court. There are also specialised courts such as the Administrative Court and Labour Court.

INTELLECTUAL PROPERTY

Protection is provided by the Patents Act and Trademarks Act. There are public registries for trademarks, industrial designs and patents. Zimbabwe is a signatory to the Berne and Paris Conventions.

FINANCIAL SERVICES/INSURANCE

There are several international and locally owned banks operating in the country. There are also several building societies established to provide mortgage finance. There are many insurance and reinsurance companies operating in Zimbabwe. The Government signed a memorandum of understanding with local banks in February 2013 in terms of which a cap was put on bank charges and interest rates. The maximum charge for cash withdrawals is 0.5% of the sum withdrawn subject to a minimum charge of USD2.50. All term deposits above USD1000 held for at least 30 days attract interest at the rate of at least 4% per annum. Lending rates have fallen from about 35% per annum to 6-18% per annum in line with central bank guidelines. Pensioners above 60 years of age are exempt from bank charges.

KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT/PRIVATE SECTOR

The Government is making significant investments in infrastructural developments in power generation, road infrastructure (entailing the dualisation of major roads) and the construction of bridges. It is also working on upgrading airports and is committing significant funds towards these developments. The Government is actively seeking private partners in these areas. The Government moreover is actively promoting the beneficiation of minerals produced in Zimbabwe and the building of cross linkages in different sectors of the economy in order to promote economic growth and infrastructural development. The Government has introduced several tax incentives and disincentives to promote the local beneficiation of minerals.

TREATIES AND BILINGUAL AGREEMENTS

Zimbabwe has signed bilateral investment treaties and international agreements whose objective is to guarantee protection to investors. The agreements include the Overseas Private Investments Corporation (OPIC) and Multilateral Investment Guarantee Agency (MIGA), International Convention on Settlement of Disputes (ICSID), the New York Convention on the Enforcement of Arbitral Awards, and the United Nations Convention on International Trade Law (UNCITRAL). Zimbabwe signed a Bilateral Investment Promotion and Protection Agreement (BIPPA) with South Africa in November 2009 and has signed 54 other BIPPAS with countries like China, Germany, Netherlands, Switzerland, Russia and Yugoslavia. Several other Bilateral Investment Treaties await ratification. Government wants to use the BIPPAS to increase investor confidence in the country. Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA) Customs Union and Southern African Development Community (SADC) agreement on tariffs and trade. Zimbabwe has double tax avoidance treaties with South Africa, Mauritius and Seychelles and wishes to enter into such agreements with other countries to promote the residence basis of taxation agreed amongst SADC countries in terms of the SADC Tax Convention.

MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Zimbabwe is a member of SADC, COMESA, the African Union, United Nations, World Bank and International Monetary Fund.

ROAD AND TRANSPORT

The road and rail infrastructure has deteriorated significantly due to lack of investment by the Government. The country is actively working on upgrading the infrastructure by dualising roads and reviving and upgrading the rail network. A dedicated Authority called ZINARA was formed to spearhead the process and private sector partners are being sought by the Government. In 2018 Government proposes to spend over USD386 million on transport infrastructure. A technical partner is being sought for the railways authority to help in reviving the rail network.

WATER

The Government is investing significant sums to support local authorities in the provision of water supplies and it has decentralised water services to local authorities. Water supplies are erratic in most cities and towns and many people resort to borehole water supply for domestic and commercial purposes. Potable water supply is also a persistent problem in rural areas during the dry seasons. Government is supporting projects to increase water supply and will commit substantial sums to dam construction and the rehabilitation of existing infrastructure in 2018. Government is keen to invest in water harvesting projects to increase irrigation capacity.

ENERGY

Energy supplies remain critically low and power shortages and cuts are affecting manufacturing industries, agriculture, commerce and domestic consumption. Power supplies are below 50% of the national demand. Private sector partners are being sought for independent power supplies while the Government is actively looking to develop alternative power supply sources. The Government is committing significant sums to upgrading existing power supply plants and building new ones. In the second half of 2013 the Government introduced the compulsory blending of fuel with ethanol by all petroleum companies. The ethanol is produced locally. With effect from 1 January 2018, power generation projects will be exempt from corporate income tax for the first five years of operation. Thereafter a corporate income tax of 15% will apply.

TELECOMMUNICATIONS

The Government mobilised USD98 million for the State owned telecommunications corporation (Tel-One) to be used in increasing connectivity for its customers, broadening the core network and upgrading its mobile broadband. Government is also opening up airwaves to new radio and television stations. Mobile telephone companies operating in Zimbabwe have rapidly expanded their ground coverage to virtually the entire country.

KEY INDUSTRY SECTORS

The main industry sectors are agriculture, mining, telecommunications, and financial services. There are huge opportunities in the manufacturing sector which is operating at less than 30% of its capacity.

TRADE AND INDUSTRY

Industrial capacity utilisation averaged less than 35% in 2015. In 2016 it rose to 47% spurred in part by the import restrictions introduced by Government. The main trading partner remains South Africa. The industrial sector remains depressed due to a scarcity of capital on the local market, antiquated equipment and the absence of foreign direct investment and lines of credit from external sources. The Government enacted a Joint Ventures Act in 2016 to facilitate joint ventures with the private sector.

INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

A ministry focusing specifically on ICT has been established. The Government has started investing in the creation of fibre optic networks but the levels of investments remain very low. Private sector players are required to complement the Government efforts. The mobile telephone and data companies in the country are expanding their fibre optic link networks. In 2016 Government committed USD299.2 million towards ICT projects like the introduction of data centres, the completion of Mile Connectivity, the establishment of Community Information Centres and the extension of the E-Government Platform.

MINING

Mining is becoming the largest contributor to the country's gross domestic product (GDP). In addition to the gold and chrome which the country has traditionally produced, platinum and diamonds are fairly recent discoveries which are dominating the sector. The Government plans to consolidate all diamond mining companies into one entity in which Government will have a controlling interest. A company called the Zimbabwe Consolidated Diamond Company has been set up and has commenced mining operations. Some diamond companies have resisted the amalgamation and there are disputes pending in the courts. A new Minerals Exploration and Marketing Cooperation Act is being proposed. The Mines and Minerals Act will also be amended to compel holders of mining rights to "use them or lose them". Miners will also be obliged to establish funds to meet the costs of reversing environmental degradation caused by their mining operations. The law will make directors of companies personally liable for criminal acts committed by the company making them susceptible to imprisonment. Government plans to rationalise mining fees in line with regional standards in order to attract FDI into the sector. In 2014 Government introduced a 15% tax on the export of unbeneficiated platinum with the objective of encouraging miners to do value addition before export. The tax was suspended from 2015 to 2017 and Government has deferred its operation to 1 January 2019 as platinum miners are making progress towards meeting the value addition objective. The export tax will also be reduced from 15% to staggered rates depending on the level of beneficiation of the exported material. There will also be an export tax of 5% on unbeneficiated lithium and staggered export tax on unbeneficiated stones with effect from 1 January 2019.

AGRICULTURE

The country produces grain crops such as maize and wheat as well as cotton, tobacco and sugarcane. Farmers who benefited from the land reform programme at the turn of the century are dependent on Government and lending institutions for financial support and are largely hampered by the lack of collateral. Government is in the process of refining 99 year leases to make them bankable as collateral for loans and to enhance security of tenure. Farmers will pay levies to Government for the land and those who fail to pay the levies will have their land repossessed. The Government devoted considerable resources to the sector in 2016. In 2016 the Government introduced considerable financial support for agriculture through a scheme called "command agriculture" in which inputs will be given to farmers in return for agreed quantities of produce. A new law to make movable property bankable as collateral is also being introduced.

TOURISM

The Government is actively promoting the sector through the Zimbabwe Tourism Authority. The sector recorded some growth in 2016 and is expected to grow further in 2018. The Government intends to remove barriers to the free movement of tourists and to promote Zimbabwe as a competitive and attractive tourist destination.

TRADE AND INVESTMENT

The Government has set up several corporations to promote investment in industry. The Small and Medium Enterprises Development Corporation was set up to specifically assist the establishment of small businesses and a bank to support infrastructural development has been established. A central one-stop investment authority is being established to promote foreign direct investment and remove bottlenecks in the regulatory system.

LABOUR RELATIONS

Zimbabwe has a huge pool of labour with over 80% of the population unemployed in the formal sector. Labour relations are regulated by a labour law with a dedicated court and other structures set up to deal exclusively with labour issues. The threshold for tax free bonuses is USD400. Tax free income was increased from USD250 to USD300 in 2015. In 2015 Government amended the Labour Act (Chapter 28:01) to fix minimum redundancy packages and ease up retrenchment. The amendment also dealt with the curtailment of the right to terminate on notice and limitations on frequent renewal of fixed term contracts so as to limit the casualisation of labour. Labour relations are generally much regulated. Companies in various sectors fall under National Employment Councils (NECs) where industry specific labour standards are set. The High Court recently outlawed compulsory membership of NECs and the judgment awaits confirmation by the Constitutional Court.