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ZIMBABWE'S AGENDA FOR ACTION

Business Climate Legal and
Institutional Reform Diagnostic



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Institutional Reform Diagnostic

January 2010



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INTRODUCTION

Zimbabwe is in the midst of a transition. After years of decline, economic stability is emerging. The Government of National Unity (GNU), put in place in February 2009, has brought a renewed optimism and a clear move toward an improved economic policy framework. Accordingly, now is a good time to take account of where the nation's business environment stands and what reforms are needed to enable the business community to reinvigorate the economy and engage competitively in the global market again.

The country has a long way to go. Zimbabwe's GDP shrank by as much as 50% in the past six years, according to some estimates, and the official inflation rate reached as high as 231 million percent in 2008. As the government's Short Term Economic Recovery Plan indicates, Zimbabwe's recovery is well beyond the parameters of the GNU's resources, and the government now hopes for significant support from beyond its borders.¹ While donors are interested in an opportunity to reengage and assist in rebuilding this country, many remain cautious to do so on economic issues—a legacy of the lack of respect for rule of law and damaging fiscal policies by the government in recent years. However, some donors have begun to take a keen interest in this area again since the establishment of the GNU, but despite significant policy improvements, recent advances remain fragile and incomplete.

In anticipation of continued progress toward a new constitution and a new Zimbabwe, this report addresses the current state of the country's business environment and makes recommendations for priority reforms. The report analyzes the legal and institutional conditions underlying economic development across six areas, as well as the social dynamics that affect the private sector and may have an impact on success of reforms. Recent activities have drawn into question the commitment of certain parties in the GNU to reform, so it is unclear whether the current position of disengagement

will change. Accordingly, many of the recommendations made in this report are designed for reform efforts that can be undertaken with the private sector alone. Recommendations for interventions that involve the government directly are also proposed, but such interventions must wait until policies toward Zimbabwe by some donor governments have changed. These recommendations are intended to highlight high-level priorities for institutions that are both key to Zimbabwe's full economic recovery and demonstrate promising opportunities for meaningful partnership.

THE CHANGING POLITICAL LANDSCAPE

In the March 2008 elections, the ruling ZANU-PF party lost majority control of Parliament, and the highly-contested results of the presidential race indicated the need for a runoff between President Robert Mugabe and Morgan Tsvangirai, the leader of the primary opposition party, Movement for Democratic Change (MDC). Subsequently, the MDC pulled out of the runoffs, asserting that Tsvangirai had won more than 50% of the initial vote, and in any event, political violence made a free and fair runoff vote impossible.

In September 2008, under pressure from the regional and international community, President Mugabe and Tsvangirai signed a power sharing agreement, the Global Political Agreement (GPA). Under the GPA, Mugabe

¹ Short Term Economic Recovery Plan: Getting Zimbabwe Moving Again, March 2008, 118-120.

would remain head of state, Tsvangirai would become Prime Minister, and other executive positions would be divided among the parties, including MDC-M, a splinter MDC party led by Arthur Mutambara. Implementation of the GPA was delayed for months due to conflict over allocation of key ministries, but in February 2009 the Government of National Unity (GNU) was established.

TWO STEPS FORWARD...

It is easy to be optimistic about Zimbabwe's economic potential and future when in Harare. The GNU has brought about a renewed sense of hope that Zimbabwe is finally on the road to recovery. The MDC has proclaimed a commitment to restoring land security, respecting the rule of law, and resolving uncompensated appropriations of assets under the Mugabe regime. Moreover, the MDC has shown signs that it can deliver results. Since being taken over by the MDC, the Ministry of Finance has made significant progress in terms of reversing the destabilizing monetary policies of the RBZ, such as an end to damaging price controls and the creation of an official multi-currency system. The multi-currency system brought certainty back to commercial transactions by dampening constant price fluctuations caused by hyperinflation.² Furthermore, despite an economic crash and decades of an oppressive and, at times, violent regime, Zimbabwe has been able to institute such change without resorting to civil war. There have been a number of important changes to fiscal policy as well, in particular a cash-based national budget and tariff cuts. In July, the government held an international investors' conference to signal that Zimbabwe is open for business. Beyond high-level political problems, the country also has a relatively strong legal and institutional infrastructure for the business environment. Today, store shelves are no longer empty, businesses are increasing production capacity, and investors, both local and foreign, are actively looking for opportunities.

Yet less than a year into the GNU's reign, Zimbabwe's continued progression toward reform is far from certain, and it is unclear whether the optimism visible in Harare is premature. The ZANU-PF side of the government has failed to uphold its side of the GPA, and MDC appears helpless to stop continued abuses of power within the government. The GNU continues to be controlled by ZANU-PF loyalists. ZANU-PF has used its control over the police and attorney general's office to arrest several MDC members of parliament (MPs) on false charges in an attempt to regain control over parliament, and it is dangerously close to doing so. Tendai Biti, the Minister of Finance and one of MDC's top actors, has received death threats. ZANU-PF is also using police and security forces to confiscate assets of businesspeople who are seen as politically problematic, and land invasions, often violent, continue. Two commercial farmers were murdered during the course of the two-week in-country diagnostic. A stakeholder conference in July to discuss the Constitution was boycotted by ZANU-PF leadership and disrupted by ZANU-PF loyalists with the support of the police and security forces. Open bickering between the two primary parties to the GPA suggests that Zimbabwe's progress is stalled, and news daily provides further reasons why investors should remain wary. The MDC cannot fix Zimbabwe on its own under the current arrangement, and ZANU-PF has shown no will to promote the success of the GPA. As long as this stalemate persists, Zimbabwe will not make progress, investors will not come, and the business community will not rebound.

While many bemoan the loss of Zimbabwe's golden age—a time when the nation was respected as a leader in the region and an example for the continent—the economy of the 1990s, in truth, was not advancing without difficulties. The economy remained hamstrung, and the diaspora was trickling out even then. Despite having what seemed to be a diverse economy with a variety of commercial

² Fiscal policies and the effect of hyperinflation are discussed further in this report's chapter on Getting Credit.

agriculture products and manufacturing businesses, unemployment remained high and the formal economy was comparatively small. Few opportunities existed for growth of small, local businesses, and commercial agriculture and mining enterprises, held in the hands of a few, dominated the economy. As a result, Zimbabwe not only faces the challenge of returning to where it was before the economic meltdown, but also it must create economic growth that will reach a broader population than before.

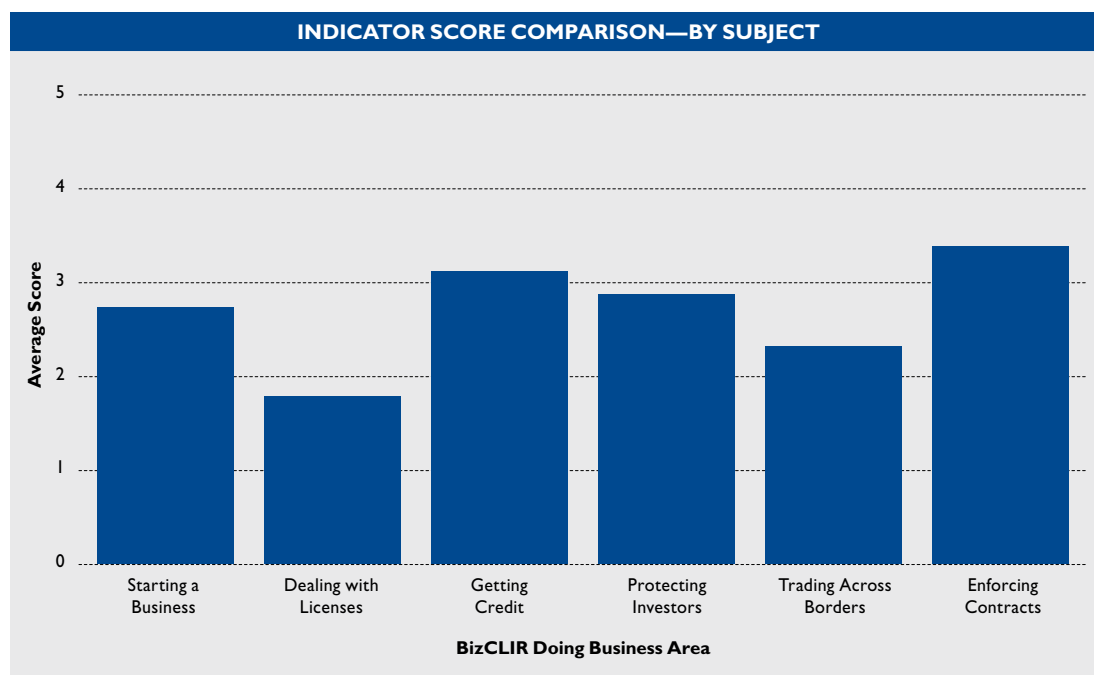
SUMMARY OF DIAGNOSTIC FINDINGS

It should be noted up front that this report seeks as much as possible to concentrate on actionable areas for reform given the current political climate. For the past decade and even before, the Zimbabwean economy has strained mightily under the weight of a government in which the rule of law is not guaranteed. From land invasions to business takeovers, arrests on false charges, and any number of other illegal acts, one can hardly be sure how key participants in the government are likely to behave. As noted throughout this report, the current land reform policy and indigenisation policy create

significant uncertainty in the business environment and, accordingly, remain major impediments to investment. Both are contentious and unlikely to be resolved without political change. And yet, it is precisely ensuring predictability and fairness that is a bedrock necessity of any functional business enabling environment. Until the rule of law is established and guaranteed, Zimbabwe's budding economic recovery is likely to sputter in fits and starts with foreign investment continuing to be extremely limited.

With this caveat in mind, this diagnostic addresses reforms that can be addressed in the present to reduce burdens on business and investment as well as priorities for reform activities to be addressed once a more amenable and positive political situation exists.

This diagnostic found that, overall, much of Zimbabwe's commercial legal framework is relatively strong, although many laws need updating. The indicator graph on page 5 demonstrates stronger legal framework scores, with the exception of the Trading Across Borders area. Institutions, both implementing and supporting, have significant potential, and many government institutions have well-educated and capable



technocrats. However, lack of funding and the flight of many of Zimbabwe's highly-trained professionals in recent years have seriously diminished capabilities at the institutional level. This common weakness is captured in the indicator graph. Notably, institutions are revealed to be the strongest aspect of the credit sector, in contrast to the other subject areas.

Enforcing Contracts emerged as the strongest of the areas addressed in this diagnostic. While the indicator scores have not singled out either Protecting Investors or Getting Credit as being particularly low by comparison, this diagnostic's qualitative assessment determined these two areas to be the most critical challenges to economic recovery in Zimbabwe, due to the impact they have on the rest of the business climate.

Looking at the indicator scores as a whole, Zimbabwe fares poorly. It is evident that strengths in legal and institutional aspects of the country's business environment, of which there are many, are undermined by deteriorating institutional capabilities, outdated regulatory frameworks, and political instability that affects critical aspects of the economy.

Because Zimbabwe's situation today differs significantly from that of most other developing countries, the traditional focus of the BizCLIR indicators fails to emphasize some of the critical issues facing the country. Accordingly, Zimbabwe's priority areas for reform are best understood when these indicators are read in conjunction with analysis in this report.

STARTING A BUSINESS

This report addresses two aspects of starting a business: business registration and competition. Business registration regulations, though somewhat less onerous in practice than on paper, fall far below world standards and even SADC standards. They should be reformed. Competition law is essentially adequate on paper but could be updated and improved. In both cases, however, the institutions responsible for proper implementation of the law are woefully

inadequate. Relevant institutions, particularly municipal governments, are not capable of implementing laws and regulations for business registration in an effective and efficient manner. As a result, what should be a fairly straightforward process is a time-consuming burden that contributes to a high rate of informality in the business community. Improvements and increased efficiencies in the registration process will become more important as the economy recovers and expands, and as the number of registration applicants increases. While the cost for business registration in the first half of 2009 became prohibitively expensive, this issue has reportedly improved with a significant decrease in rates as the government adjusted to realities of dollarization. However, reducing costs further would be an improvement.

With respect to other potential barriers to entry for entrepreneurs, the private sector was reportedly not concerned with issues of anti-competitive practices or dominance by government or other powerful players in certain sectors. However, the contracting economy in recent years has only been able to support one or two businesses in many sectors, so available services have been limited. If the economic recovery continues, more players will enter the market, bringing down costs and improving services. At that point, regulating anti-competitive practices will likely become much more important.

Government involvement in certain sectors of the economy and impediments to registering foreign businesses are additional constraints to business start-up, and these issues are addressed in the Protecting Investors chapter.

GETTING CREDIT

Zimbabwe is slowly emerging from one of the most severe hyperinflationary environments in modern history, and its financial sector is still recovering. Lending in Zimbabwe remains highly constrained as capital is still hard to come by—a critical issue in a country that desperately needs funding to rebuild its economy. The ongoing

crisis in confidence due to Zimbabwe’s political situation must be overcome before investors and donors will step in to fill the gap.

The laws and regulations that pertain to credit in Zimbabwe are generally sufficient, but challenges persist in areas such as respect for the rule of law and the degree of discretion exercised. The institutions relating to finance were also once quite effective, and human capacity and infrastructure are still largely intact. However, the biggest challenge will be rebuilding confidence in these institutions and in the rule of law so that investors and others will feel comfortable investing in Zimbabwe again.

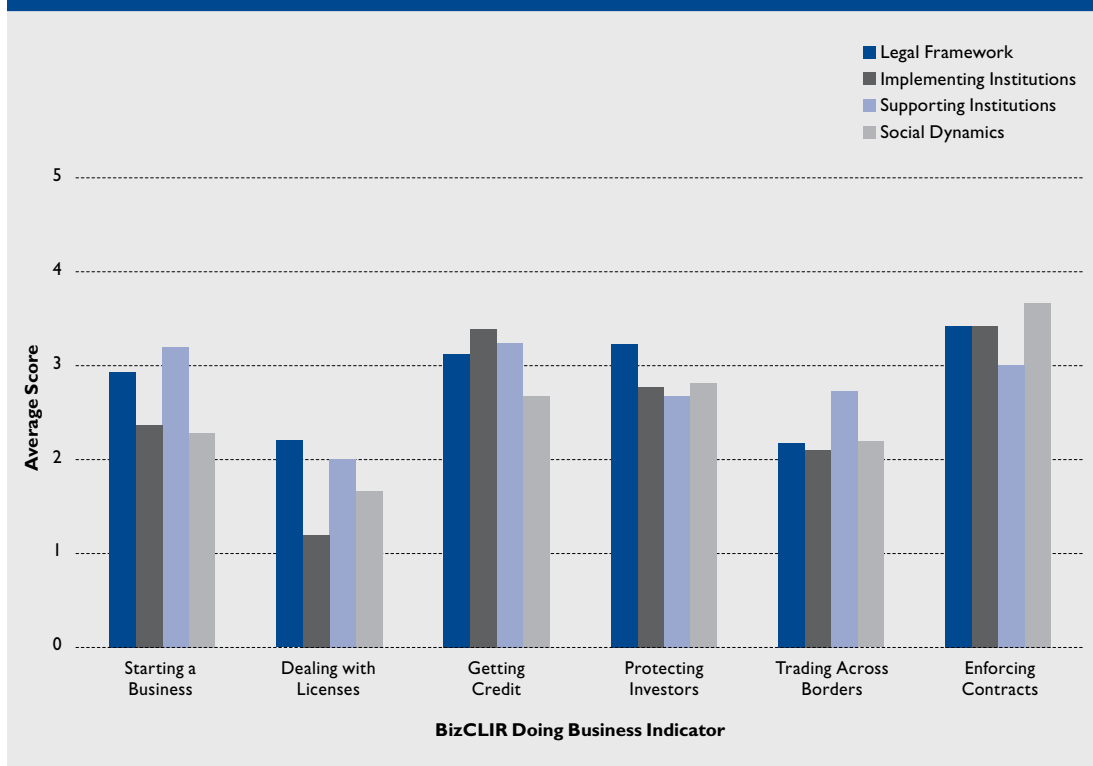
PROTECTING INVESTORS

Despite political events and policy changes that have brought some relief to Zimbabwe’s economy, the current investment climate still leaves much to be desired. The legal framework and basic structure governing investor protections and the business environment are reasonably sound, and the labor force is highly educated

and skilled, particularly compared to other nations on the continent. This sound foundation, however, cannot overcome the uncertainty of political risk that looms large in the minds of most potential investors, a fear that will persist until the government makes credible, tangible steps toward resolving the land reform crisis and indigenisation policy.

Once these overarching issues are overcome, Zimbabwe will still face other needs to build a better framework for facilitating and attracting investment. Effective investment facilitation and promotion will be key to helping the country overcome the legacy left by political and economic challenges, particularly with regard to creating and implementing a streamlined and transparent procedure for obtaining investment certificates. While building the capacity of the Zimbabwe Investment Authority to facilitate and attract investment is sorely needed, key policy and legal changes, which are pivotal to investment decisions, must be made before a robust Investment Authority will prove effective.

INDICATOR SCORE COMPARISON—BY FRAMEWORK AREA



DEALING WITH LICENSES

Zimbabwe's construction licensing system is woefully outdated and no longer serves public and private sector objectives. From national policy to village rules, the entire system should be reviewed and reformed. On the positive side, many public and private-sector actors recognize the urgency of the situation and are willing to dedicate themselves to the task. Political will and priority setting at the top of government seems to be a missing, but necessary, ingredient. Fundamentally, Zimbabwe's use of the "silence is denial" principle in the licensing approval process is the opposite of the global best practice of "silence is consent." Changing this policy should be an immediate priority. A complete inventory of all existing licenses and regulations should be conducted, and those that are unnecessary should be eliminated to reduce unnecessary burden on businesses.

TRADING ACROSS BORDERS

Zimbabwe's trade environment suffers from an outdated legal framework, deteriorating physical infrastructure, and ineffective implementing institutions. Overcoming these challenges will be necessary to improve efficiency and lower the costs of trade so that businesses will again be competitive within the region.

The biggest impediment to improved trade facilitation today is institutional weakness. Under Zimbabwe Revenue Authority's current structure, tax and customs responsibilities are not managed by separate departments. With the organization's heavy focus on tax and revenue needs, trade facilitation priorities and customs capabilities have suffered.

ENFORCING CONTRACTS

Zimbabwe has a sound legal framework in place for the efficient resolution of contractual disputes and a competent and effective court system. Supporting institutions in the area of commercial dispute resolution also contribute positively to the legal system. However, lack of respect for the rule of law in parts of the

government contributes to increasing concerns over the independence and competence of the courts. Low civil servant salaries and reallocation of confiscated land to judges subject the judiciary to undue influence and corruption. Outdated physical infrastructure in the courts as well as inadequate staffing also contribute to growing weaknesses in a previously well-respected and well-functioning judicial system.

CROSS-CUTTING THEMES

COUNTRY RISK

Many stakeholders in both the public and private sectors believe that the biggest challenge they face in attracting the capital, support, and investment necessary to reinvigorate economic recovery is the problem of external perception. The perception of "country risk" remains the primary obstacle to accessing the capital needed to kick start the economy. It is critical that the government and business community realize that this is more than a cosmetic issue. First of all, this is *not* a problem only of perception. "Country risk" in Zimbabwe is well-founded and a critical impediment to economic recovery. Second, when it comes to investment, perception *is* reality, and this *perception* will continue to be problematic for investors until real change to the underlying issues—failure to uphold the rule of law and the lack of security of assets—are effectively addressed.

Uncertainty in security of land tenure and other assets is a monumental disincentive to investors, both local and foreign. When given the option to invest in a country where laws and policies threaten one's ability to protect assets or demand compensation for assets lost, or to invest in a country without such risks, a rational investor will likely choose the latter.

In Zimbabwe, this investment issue has a domino effect on the entire business community. On the heels of deep economic crisis followed by dollarization, Zimbabwe is in dire need of capital. Capital is needed to foster lending, create opportunities for the start-up and expansion

of businesses, fund infrastructure projects, and pay salaries. Without investment to bring in that capital, large and small businesses, as well as the government, have a limited ability to contribute to economic growth. Without funds, businesses cannot afford to start operations or increase employment or production. Without increased production, local companies are unable to ramp up trade to bring in more foreign currency or compete with cheap imports. All business depends on capital, and capital is not forthcoming without investment.

Even if a steady and adequate supply of capital were available tomorrow, however, uncertainty regarding land tenure and other assets would continue to be an economic constraint. Without secure collateral, banks cannot lend due to high risk. Banks in Zimbabwe today will not accept agricultural land as collateral, even though it is arguably the country's most valuable resource. This will continue to severely curtail access to credit even if capital becomes available.

Ultimately, security of land and assets is not merely a problem of perception. Government officials and party factions continue to flout the rule of law and violate property rights with impunity. Over the past few years, a variety of business assets have been confiscated without justification or compensation, and such activities continue to this day. Some within the private sector suggest that this is not evidence of a broad problem, but rather an issue of "not managing one's political relationships well." This is inaccurate. These issues are precisely what investors, donors, and others with a wait-and-see attitude believe they are: an ongoing problem of uncertainty and unpredictability. This uncertainty remains enough of a disincentive to keep most investors at bay.

COMPETITION AND COMPETITIVENESS IN A RECOVERING MARKET

As Zimbabwe slowly emerges from its crisis, it will face changes in the competitive landscape, just as other nations have. Economic contraction over the past decade has forced many businesses

to close or relocate, reducing competition and choices that benefit consumers. As the commercial sector expands in recovery, many new players will likely come to the fore as markets and opportunities increase. Two significant competition issues lie ahead: the threat of anti-competitive practices as businesses attempt to grab shares of emerging markets, and the ability of Zimbabwean businesses to compete effectively with regional players and imports.

Opportunistic mergers and acquisitions should be expected as economic and political stability returns to Zimbabwe. Some state-owned entities will be privatized and commercialized. Some financial institutions will be closed or acquired. New businesses will come, old businesses will go, and some combinations of the two will emerge. This will affect the business community in general, and will likely have a significant impact on the financial sector. If managed well, these changes should lead to increased efficiencies, lower prices, and more options for consumers. However, consolidation of industries creates opportunities for market dominance, and sound regulation will be necessary to ensure that new players and activities do not bring anticompetitive practices. The Competition and Tariffs Commission is charged with regulating competition issues, so it is vital for this institution to be adequately prepared and resourced to address these issues that are likely to emerge.

As the economy expands, an increasing number of players should, in general, create better options and more competitive environments that should benefit consumers. The negative effects of limited competition are evident today in the credit sector, in particular with the example of contract farming. Because credit remains extremely limited, many smallholder farmers are only able to obtain financing through contract farming arrangements. As contract farmers have no effective competition from banks or MFIs that would have provided finance to smallholder farmers in the past, providers are not forced to

offer financing on competitive terms. This has resulted in what many deem to be predatory and exploitative lending practices. Such arrangements will continue until alternatives, such as affordable microfinance, become available.

Even in the absence of anticompetitive practices, Zimbabwean businesses struggle to offer products and services at competitive prices. Market uncertainty continues to raise costs, and most businesses still operate well below capacity, reducing the efficiencies of scale. Weak infrastructure, particularly in the transportation and electricity sectors, adds costs as well, and businesses still suffer from the detrimental economic policies of recent years. All these challenges increase overall business and production costs and make it difficult for Zimbabwean businesses to compete with high quality, low cost imports from elsewhere in the region. While many private sector representatives attributed this to dumping practices of other countries, the problem is simply that business costs remain higher in Zimbabwe because of uncertainty and inefficiencies.

The increasing inflow of humanitarian assistance into the country creates another competitor that donors should be aware of. Several public and private sector representatives in Zimbabwe raised concerns over the growing dependence of much of the country on food aid and other handouts. Humanitarian assistance is an important part of addressing Zimbabwe's crisis, but the longer aid is flowing, the bigger impact it will have on the private sector, particularly the agricultural sector. Food aid distorts the market for many agricultural products, and it can be especially destructive to the many small- and medium-sized agribusinesses that are already in fragile condition due to the country's economic crisis. Furthermore, many small-holder farmers capable of feeding themselves and others have reportedly stopped farming in the past few years because food handouts were readily available. The provision of food aid must be carefully managed to ensure that it

reaches those in need, of which there are many in Zimbabwe. At the same time, it should not create disincentives to operate or distortions within a functioning market.

CAPACITY CHALLENGES IN THE PUBLIC AND PRIVATE SECTORS

Despite its historically strong education system and cadre of well-trained technocrats and professionals, Zimbabwe currently suffers from a crisis of capacity in both the public and private sectors. Approximately 25% of Zimbabweans—four to five million people—are estimated to live outside the country's borders, and many of these individuals have left in the past few years. Due to the combination of political oppression and economic crisis, which has led to fewer and less lucrative opportunities in the public and private sectors, many of Zimbabwe's best and brightest are in the diaspora community. The impact of this "brain drain" is exacerbated by inadequate funding for staffing and supplies in businesses and government offices alike.

These challenges have resulted in a number of impediments to an efficient and effective business enabling environment. Government institutions suffer from a shortage of employees to administer systems and implement legal frameworks, which in turn creates inefficiencies and increases costs in the regulatory environment. Many employees in both businesses and government are less experienced and less qualified than in the past. In addition, fewer business opportunities in a contracting economy result in fewer ways for new entrants to gain experience, and many of those experienced in business and government have left for better opportunities abroad.

Fewer resources, particularly in the public sector, have further resulted in out-of-date equipment and infrastructure and lower compensation for civil servants. Many institutions have been unable to update policies and procedures regularly, and adequate training is not available for staff. Each of these shortcomings reduces the effectiveness of key institutions that impact

business regulation and increases opportunities and incentives for rent-seeking behavior. Customs and the courts are two examples where staffing capacity, experience, training, and integrity have suffered.

COMPARATIVE ADVANTAGES AT RISK

Prior to its economic and political decline over the past decade, Zimbabwe was a strong economic player in the region and had been considered a laudable example of the prosperity that an independent African country could achieve. While the full extent of the country's economic success during that period is a matter of debate, Zimbabwe did boast a number of comparative advantages which gave the country a competitive edge in the region and on the continent. Thanks to an excellent educational system, Zimbabwe has had one of the highest literacy rates on the continent, consistently above 90%, and its well-educated and skilled workforce has historically been a strong attraction for investors. Also, unlike other investment destinations on the continent, Zimbabwe is not yet plagued with endemic corruption across society. The country had a very strong legal and institutional foundation some years ago, and in better times, Zimbabwe also offered strong infrastructure, allowing the country to take advantage of its strategic location in the region as an important center for trade.

Despite its historical comparative advantages in the region, Zimbabwe today faces deterioration of its infrastructure. Funding constraints and mismanagement have impaired the government's ability to maintain its roads, bridges, utilities and other physical infrastructure, and business and trade are suffering from increased costs and reduced efficiencies as a result. In addition, Zimbabwe's highly trained workforce has been leaving in droves, and will likely continue to do so until economic opportunities improve substantially. The future workforce will no doubt be affected by the resource constraints that have caused numerous school and university closings over the past few years. With

fewer opportunities for growth and achievement in both the public and private sectors over the past decade, the rewards for a strong work ethic have been steadily diminishing. That, in turn, has meant a decline of service and capabilities at many institutions. Each of these problems demonstrates the corrosion of once-functional systems, a corrosion still continuing today. Weeds are growing in this garden, and the longer they are allowed to grow, the harder they will be to eradicate.

Corruption, in particular, raises a serious issue regarding a comparative advantage that Zimbabwe is in danger of losing in the very near term. Zimbabwe has been faced with crippling corruption and abuse at high levels of government for many years. However, in Zimbabwean society, corruption is not yet endemic or accepted. This is a critical distinction that separates Zimbabwe from countries such as Nigeria, Kenya, or Uganda, where corruption is a serious problem not only at high levels of government and business, but at every level of society. Over time, such corruption has become ingrained in the culture. In Zimbabwe, this situation is currently in flux, and corruption is creeping further into business and society every day. Instances of petty bribes from policemen, border officials, court staff, and other government authorities appear to be on the rise. Those who played the lucrative role of middle men during hyperinflation are seeking other quick income opportunities. More people benefit from government reallocation of confiscated property, creating dangerous expectations of unearned entitlements. Even though by most accounts corruption is still not a widespread problem, it is clear that the problem is increasing, and arresting this trend should be a key priority for the private sector as well as the GNU.

None of the issues raised here are lost causes yet. However, while the train is slowing down, it is still traveling in the wrong direction. The demise of education, infrastructure, and integ-

rity in Zimbabwe is continuing today despite the economic recovery underway.

THE BizCLIR DIAGNOSTIC AND INDICATORS

This diagnostic took place from July 13 to 24, 2009. A six-member team of U.S.-based government representatives and consultants traveled to Zimbabwe and conducted interviews across the public and private sectors, including with national and local officials, business owners, business associations, nongovernmental organizations, the banking and lending community, university representatives, and many others. Interviews and observations took place in Harare. The diagnostic culminated in a roundtable presentation and stakeholder discussion on July 24, 2009 in Harare. At the roundtable, team members introduced their preliminary observations, which were then subject to feedback and elaboration from participants. This input helped shape the final conclusions of the team, which are now found in this report.

The diagnostic process and this report are grounded in a methodology, established through USAID's Economic Growth Office, which has been used in more than 35 countries since 1998. In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool, USAID sponsored the development of an updated and redesigned set of indicators through the Business Climate Legal and Institutional Reform (BizCLIR) project.³ The indicators now substantially align with the structure of the World Bank's enormously influential *Doing Business* country reports, although this report represents an effort to more clearly distinguish the two methodologies.

Since 2002, *Doing Business* has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key indices of whether and how the environment for doing business is "working," measured by such factors

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as the number of procedures involved in achieving a goal, the number of days required, and the costs of the procedures in relation to per-capita income. The World Bank now gathers data from 181 economies and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world.

USAID's BizCLIR indicators take the topics covered by *Doing Business* and delve deeper into their related legal frameworks, implementing and supporting institutions, and social dynamics to better understand *why* a country has a particular ranking. In short, BizCLIR regards the *Doing Business* findings as "the tip of the iceberg" and aims to assist countries in improving their business environment by addressing the *whole* iceberg. The BizCLIR indicators consider key business issues from a variety of perspectives, illuminating, for example, how certain business processes apply to rural communities, micro-enterprises, and SMEs. The BizCLIR approach was chosen in light of recent demand for better understanding of the issues highlighted in the *Doing Business* initiative and the need to help donors and countries understand, with greater particularity, how to reform.

³ Detailed information about BizCLIR, including an online library of BizCLIR reports, can be found at www.bizclir.com.

WORLD BANK DOING BUSINESS CATEGORIES—ZIMBABWE

	2009	2008	Change
<i>Doing Business Overall</i> (181 countries surveyed)	158	154	-4
Starting a Business	164	170	+6
Dealing with Licenses*	174	174	0
Getting Credit	84	79	-5
Protecting Investors	113	110	-3
Trading Across Borders	162	158	-4
Enforcing Contracts	77	73	-4

*In its most recent survey, the World Bank changed the designation of the category "Dealing with Licenses" to "Dealing with Construction Permits," a title that more accurately reflects the scope of its survey.

Each chapter of this report is structured the same way. Following an introduction, each has four sections followed by recommendations.

LEGAL FRAMEWORK

The chapters first examine the laws and regulations that serve as the structural basis for Zimbabwe's ability to achieve and sustain market-based development. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do the laws respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework?

IMPLEMENTING INSTITUTIONS

Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, and, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the commercial arena.

SUPPORTING INSTITUTIONS

The chapters then look closely at those organizations, individuals, or activities without which the

legal framework or policy agenda in Zimbabwe cannot be fully developed, implemented, or enforced. Examples include lawyers, banks, business support organizations and private services, professional associations, and universities.

SOCIAL DYNAMICS

Finally, the chapters discuss key social issues. Roadblocks to reform, in particular, are considered. These indicators also seek to identify significant opportunities for bolstering the business environment—such as supporting champions of reform and regional initiatives, as well as facilitating access to formal institutions. Social dynamics also concern such important issues as gender, human capacity, and public health, each of which may have a significant bearing on how the business environment functions. Indeed, a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

RECOMMENDATIONS

Following this four-part analysis, each chapter sets forth a set of recommendations. These recommendations are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and political will to reform. Some of the suggestions within the respective sets of recommendations may overlap—that is, some may be consolidated into a single reform initiative—and all turn on the priorities and preferences enunciated by the government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

INDICATORS

With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring key indicators to develop a thorough analysis. Once as much relevant information as possible is gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key indicators was scored

based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 5 and 20 supporting questions accompany each key indicator. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in the country. Rather, they should be read in conjunction with this report

THE SCORE AWARDED KEY INDICATORS ALIGNS WITH THE FOLLOWING CONCLUSIONS:

1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

as a means of understanding the relative status of certain key indicators of a healthy legal and institutional environment for business and trade, and identifying priorities for reform.

SUMMARY OF RECOMMENDATIONS

Recommendations summarized below are discussed in more detail at the end of each chapter.

STARTING A BUSINESS

1. Improve availability of information on the business registration process.
2. Use regulatory reform in the business registration arena to create a one-stop shop model for registration and as a pilot toward developing a Regulatory Reform Program, including an overall regulatory policy law that codifies public-private sector dialogue and input requirements within the regulatory reform process.
3. Work with the Competition and Tariffs Commission to update the Competition Act and applicable regulations and to build the Commission's capacity to address anticompetitive practices in the expanding economy.

GETTING CREDIT

1. Support private sector-led reforms for reduced transaction costs.
2. Provide objective benchmarking of RBZ.
3. Establish credit guarantees and lines of credit.
4. Promote MFI reform package.
5. Support other critical reforms.

PROTECTING INVESTORS

1. Work with private sector to build consensus on alternatives to the approach of the Indigenisation and Economic Empowerment Act as well as land reform.
2. Amend the Investment Authority Act to remove discretion and uncertainty in the investment certification process.
3. Build the capacity of the Zimbabwe Investment Authority to facilitate and promote investment.
4. Build regulatory capacity of the Zimbabwe Securities Commission.
5. Build SME capacity through corporate governance training and promotion.

DEALING WITH LICENSES

1. Institute the "silence is consent" principle which turns an authorization request into a notification, with a time limit for government to respond with an objection.
2. Build construction licensing reform into the Regulatory Reform Program recommended in the Starting a Business chapter. As part of this process, create an inventory of existing licenses and regulations, conduct a review, and eliminate those that are unnecessary.
3. Improve availability of information on the permitting process.

TRADING ACROSS BORDERS

1. Reorganize ZIMRA to create separate customs and tax departments that function independently.
2. Improve trade facilitation by creating one-stop operations at all border posts and increasing targeted training for Customs personnel.
3. Develop an overarching Trade Facilitation Policy to guide the government's efforts to improve trade facilitation in Zimbabwe.
4. Update and modernize the Customs and Excise Act.

ENFORCING CONTRACTS

1. Increase the timeliness of entry of final judgments in commercial disputes.
2. Enhance the competence of commercial courts.
3. Make legal resources widely available.



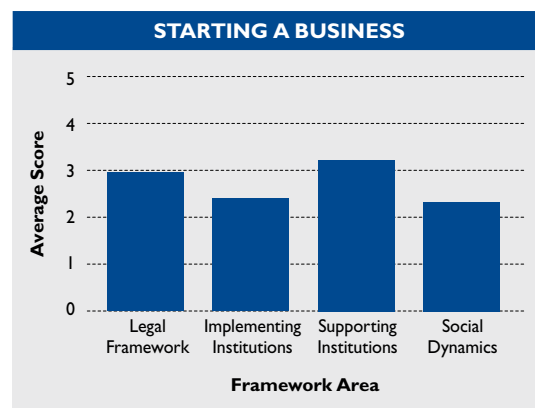
STARTING A BUSINESS

Starting a business today in Zimbabwe may demonstrate prescient vision and a deep belief in the future of the country, but it will not be easy. For micro-, small- and medium-sized enterprises (MSMEs) the incentives to register are minimal, a situation which helps explain why, according to some estimates, more than 94% of the working age population operates in the informal economy. Local government administration of the system in particular is inadequate, especially in terms of disseminating the final licenses required to actually operate a registered business. Improvements in business registration are needed now, but are more important for preparing for the future as the economy expands.

STARTING A BUSINESS	
<i>Doing Business</i> Ranking 2009	164
<i>Doing Business</i> Ranking 2008	170
Procedures (number)	10
Duration (days)	96
Cost (% gross national income per capita)	432.7
Paid-in minimum capital (% gross national income per capita)	3.4

This chapter also addresses competition, as anticompetitive practices can pose strong barriers to entry, especially among small and medium-sized businesses. Increased competition, meanwhile, can lead to reduced prices in goods and services as well as increased service offerings, both of which help local businesses to become more competitive. Despite the government's historically large role in the economy in Zimbabwe, particularly in service sectors such as telecommunications, the private sector did not note any sectors where dominance by a single or small number of players was the result of anti-competitive practices or acted as an effective barrier to entry by new players.⁴

The bigger challenge in Zimbabwe is that available services have become limited and prices have increased as the economy contracted in recent years. With reduced business activity in an already small market, the economy could only support one or two businesses in many sectors. If this economic recovery period



continues, more players will enter the market, bringing down costs and improving services, but regulating anti-competitive practices will likely become increasingly important as commercial actors take advantage of opportunities to corner markets.

LEGAL FRAMEWORK

BUSINESS REGISTRATION

The legal framework for registering a business in Zimbabwe is poor, particularly with regard to implementing regulations. Laws and associated statutory instruments should be modernized as part of an overall regulatory reform initiative to prepare for when political and economic turmoil has passed. Entrepreneurs and business associations expressed general satisfaction with the legal framework and did not provide any

⁴ Specific limitations with regard to foreign investors are discussed in this report's chapter on Protecting Investors.

recommendations for improving it, but most businesses that bother to register avoid the delays and complications by paying middle men to facilitate registration on their behalf. That said, while improvements to statutory instruments that implement laws should be made, such efforts would be ineffective at improving the environment for business registration if administration of the system by local government officials is not drastically improved.

Furthermore, it is generally difficult to obtain information on applicable procedures. Even when visiting government offices, information was not readily available, though government officials appeared knowledgeable about required procedures, duration, and costs.

There are three main forms of business entity in Zimbabwe. The first is a Sole Trader which, as the name implies, is limited in scope. The second is a Public Benefit Corporation, which is a non-profit community service corporation, such as a Rotary. The third is a general company, which is further broken down into a Public Limited Company and a Private Limited Company (PLC). A one-person business with no more than 20 employees may also register as a Private Business Corporation, though this form of registration is not as common as a PLC, the form reviewed by the World Bank's *Doing Business* report.

By law, registrations can be processed only in Bulawayo or Harare. Physical presence is not required to register, though the speed of mail service, internet penetration, and reliability outside of the two main cities, as well as complications with wire transfers for payment of registration fees, are all hindrances to registering



remotely. Fluctuations in the rate structure set by the Registrar of Companies have also added challenges. After the dollarization of the economy, the rate was set at US\$905. After considerable public uproar, it has been reduced to US\$150. While the new rate is a considerable improvement, many consider it quite high for an economy with a GDP per capita (PPP) of US\$188 in 2007.⁵ Further lowering this rate and other costs associated with business registration would be advisable.

COMPETITION ACT

The Competition Act was passed in 1996 and amended in 2001. The Act is in need of an update, and additional amendments are currently being developed by the Competition and Tariffs Commission. The Act provides the Commission with investigative and adjudicative authority in matters of mergers and acquisitions and other potentially restrictive practices. The Commission has legal authority to investigate any commercial actors, including state-owned enterprises (SOEs). Recommendations made by the Commission regarding mergers and acquisitions and other potentially anticompetitive

KEY LAWS

- Companies Act (1951, amended 2006)
- Finance Act (1965, amended 2004)
- Regional, Town and Country Planning Act (1976, amended 1998)
- Competition Act (1996, amended 2001)

5 IMF, *World Economic Outlook 2008*.

practices are mandatory and can be taken to the High Court for enforcement. The Commission has reportedly not had a problem enforcing its rulings, even against SOEs. Under the Act, provisions are also made for protecting the confidentiality of company information for any companies under investigation.

The threshold for determining which mergers must be approved by the Commission is not defined in the Act but is determined by the Commission's board. As the hyperinflationary environment that existed until February 2009 made any prior threshold determination meaningless, a new threshold must be applied. The new board for the Commission was appointed in July and should be making a new threshold determination shortly. Until such a determination is made, every merger and acquisition involving a controlling stake of a company must be approved by the Commission.

The Competition Act does not cover consumer protection explicitly, which is overseen by the Consumer Council, but the Commission's mandate to regulate anticompetitive practices is applicable to the consumer protection field in terms of false advertising, collusive agreements, and other consumer-related issues.

IMPLEMENTING INSTITUTIONS

Assuming an entrepreneur can afford the registration fee, has sought out and obtained the various forms required, and has begun the registration process, any number of obstacles can thwart progress in starting a business.

Entrepreneurs cited government employees as the most common hindrances, either because of a lack of time and competence, or rent-seeking behavior. Government employees also noted that many of the forms they receive from entrepreneurs are fraught with errors.

A general decline in the government's capacity to administer the registration system has transformed a once adequate system into an obstacle

KEY IMPLEMENTING INSTITUTIONS

- Registrar of Companies
- Municipal Health Department
- Municipal Licensing Department
- Competition and Tariffs Commission

to growth and, according to many, a contributor to the size of the informal economy.

THE REGISTRAR OF COMPANIES

The Registrar of Companies is the primary implementing institution for registering a business in Zimbabwe. The Registrar is also responsible for title deeds, trademarks, and copyrights. The Registrar has a satellite office in Bulawayo, the only other place in Zimbabwe where registration is conducted. The Registrar is in need of a complete overhaul. To an outside observer, the filing system resembles small towers of paper stacked relatively neatly on the floor, and efficiency tools such as computers were not in plain view. The Registrar acknowledges this situation and is committed to improving efficiencies, though the lack of funds and human capacity, due to emigration, are obstacles.

That said, senior staff at the Registrar were quite knowledgeable about the registration process and, when asked, produced all requisite forms and most of the step-by-step procedures.

The Registrar is currently working with the Ministry of Investment and Communication Technology to establish a website to provide the public with information and required forms, but progress is slow.

MUNICIPAL AUTHORITIES

Most entrepreneurs were relatively understanding about the plight of the Registrar. Frustration focused rather on the end of the registration process, which involves obtaining a license to operate from the Municipal Licensing and Health Departments. As with other government-operated implementing institutions, lack of human resources, budget, and basic automation equipment, such as desktop computers

and copiers, contribute to delays in obtaining licenses from the Harare Municipal Licensing and Health Departments. Instructions for moving forward are also not readily available, even through appointments.

While government employees appeared to want to provide good services, as in the past, current conditions prohibited them from doing so. Frustrations aside, most entrepreneurs were sympathetic based on an understanding of serious resource constraints.

COMPETITION AND TARIFFS COMMISSION

The Competition and Tariffs Commission regulates mergers and acquisitions and is responsible for preventing practices that restrict competition in the private sector. The Commission has existed since 1999 but has had a low profile in recent history. Limited commercial activity in Zimbabwe in general over the past few years explains the low number of mergers and acquisitions or other activities for the Commission to regulate. Historically, the Commission appears to have been well-respected and visible, and several private sector representatives noted one or two high profile cases recently where the Commission prevented mergers based on competition principles. Yet the Commission this year has only investigated four cases of restrictive business practices and is considering one merger application, although it is expecting two more later this year. Before the economic collapse, the Commission saw much more activity, upwards of 20 cases a year. The Commission is expecting a significant increase in activity in the near future as the economy expands. If this occurs, its current staff will not be adequate to meet the increased caseload. The government must ensure that the Commission is adequately resourced and prepared before the anticipated onslaught of opportunistic mergers and acquisitions begins. Such an influx in activity will likely result once the “wait and see” attitude of the investment community has subsided.

SUPPORTING INSTITUTIONS

Many supporting institutions impact business start-up in Zimbabwe, but they generally suffer from similar challenges to implementing institutions: lack of qualified staff resulting in overwhelming workloads and lack of focus, and ultimately mission failure. The issue of capacity permeates all government agencies and most private sector entities whose mandate is to support business development and entrepreneurship.

ZIMBABWE INVESTMENT AUTHORITY

Foreign and domestic investors in theory may rely on the Zimbabwe Investment Authority (ZIA) for assistance in registering a business, although ZIA is oriented toward serving foreign investors. As discussed in more detail in this report’s chapter on Protecting Investors, ZIA has limited capabilities and does not effectively fulfill its mandate to facilitate investor activities. The ZIA website has limited information and does not detail the business registration process. It provides no opportunity to register online, and updated registration forms are not available. As in most institutions, government and private, staff at ZIA was optimistic but very constrained in the ability to facilitate business start-up in any meaningful way.

BUSINESS ASSOCIATIONS AND BUSINESS SUPPORT SERVICES

Several business associations are active in efforts to improve the business environment, but none appear to provide assistance on the registration process in particular. Business start-up assistance and information, and other business support services, are provided in many countries by business associations such as chambers of commerce, but limited capacity within such organizations in Zimbabwe means less ability to provide such assistance. While resources are limited, expertise and ability is certainly available in local business associations. Accordingly, supporting local associations in efforts to revive business assistance could be a

KEY SUPPORTING INSTITUTIONS

- Zimbabwe Investment Authority
- Business associations and business support services
- Private business service providers

low cost way for donors to support the private sector, specifically with regard to SMEs.

Business extension services were previously available for SMEs through the Small Enterprise Development Corporation (SEDCO), which provides financial assistance, training, and business counseling for SMEs. But SEDCO has suffered from undercapitalization in recent years. SEDCO has the ability to provide such services and has done so for several years, when the resources to do so were available. The recently established Zimbabwe National Association of SMEs is another possible association to work with in this regard.

One challenge to providing business support services is that entrepreneurs are not able to access finance in the first place. This issue, discussed in this report's chapter on Getting Credit, leads many entrepreneurs to question the purpose of obtaining business support. When entrepreneurs cannot obtain funds to start or expand their businesses, demand for such extension services is low. Accordingly, providing this type of support in the absence of improved access to finance will not likely yield much benefit to the economy.

PRIVATE BUSINESS SERVICE PROVIDERS

Because government implementing institutions are not able to administer the registration system effectively, many businesses have emerged to facilitate the process. This adds to the cost of doing business in Zimbabwe and is often a convenient cover for "expediting" fees for a speedier registration, though they are not specified in laws, by-laws, or statutory instruments. Such businesses are flourishing currently as a result of the difficulty of timely navigation of the registration process.

SOCIAL DYNAMICS

The spirit of entrepreneurship is alive and well in Zimbabwe, despite political and economic strains. Most businesspeople are attempting to leave politics behind and focus on wealth creation. Unfortunately, their main partner in this endeavor, the government, is still mired in controversy and competing political interests. In this atmosphere, creating a meaningful partnership between government and business to build a better legal and regulatory regime is difficult.

PRIVATE SECTOR DIALOGUE

Initiatives by both sides are underway and show promise for the future. From the government's renewed emphasis on public-private partnerships as a means to increase investment and improve crumbling infrastructure, to the newly formed nine-member apex organization, the Business Council of Zimbabwe, which is designed to allow business to speak to government with one clear voice, initiatives and hope abound. With a little luck and some targeted assistance, these initiatives can grow to have a meaningful impact on the regulatory environment.

Historically, the government has consulted with the private sector on changes it has made to the legal and regulatory environment. However, during the past decade, there have been many instances where local and national government acted without consultation, which has led to severe consequences and, in some cases, an uproar by businesses. A tradition of open dialogue between government and business is a rarity in developing countries and could be turned into a competitive advantage as Zimbabwe attempts to emerge from its crisis. Further slippage in the other direction could be disastrous, as evidenced by past actions and results.

COLLUSION

Although not raised as a critical issue, collusion does appear to be a challenge to competitive practices, particularly concerning government procurement. The main complaint noted by

private sector representatives in terms of anti-competitive practices is that conflict of interest principles and arm's-length transactions are not well integrated into the procurement process.

COMPETING WITH STATE-OWNED ENTERPRISES (SOEs)

While SOEs dominance of the market in certain sectors can be an impediment to private sector business, SOEs in Zimbabwe have historically been so poorly run that private sector players have not had much difficulty in overcoming this challenge. For example, despite controls keeping private companies from accessing certain activities in internet services, Econet surpassed the state-owned NetOne within one year of starting up. In addition to poor performance of some SOEs, the public is very supportive of private sector offerings. This attitude has created opportunity and space for private sector companies to enter sectors that would otherwise seem unavailable due to SOE dominance.

RECOMMENDATIONS

Improving the registration system will likely reduce the time, cost, and instances of corruption encountered by medium to large sized enterprises when registering their businesses. However, until the incentives for micro and small enterprises to register are addressed, the informal economy will remain large and robust. Such incentives would include a return of the availability of credit and a revision of the tax structure for small businesses, which is currently oppressive.

In order to maximize effectiveness, most recommendations below would need careful timing and synchronization with efforts to improve the license and permitting systems, which are discussed in this report's chapter on Dealing with Licenses.

Improve availability of information on the registration process.

There is an easy and low-cost effort that could be undertaken in the near term to increase the

availability of information to businesspeople. Any entrepreneur would be ecstatic to learn that he or she could walk into the lobby of the Registrar in Harare or Bulawayo without an appointment and obtain a registration packet that contains the current steps to register a business, including all the required forms and examples that show how to properly complete them. Taking this further, the government could ensure that the other eight provincial capitals also provide one place where such a packet can be obtained without interaction with a government official. The information exists; all that is needed is initiative, paper, copiers, toner, cardboard boxes, and postage to mail the packets to the provinces. At the same time, the private sector could be engaged through training and seminars to ensure that they understand the registration process and how to complete the forms correctly. Ideally, this would be done with the participation of government in order to create more opportunities for positive interaction.

One step up the technology ladder, the registration packets could be uploaded to the websites of the Registrar and ZIA. Over time, this effort would lead to a system of online registration, if accompanied by a targeted regulatory reform initiative.

Use regulatory reform in the business registration arena to create a one-stop shop model for registration and as a pilot toward developing a Regulatory Reform Program, including an overall regulatory policy law that codifies public-private sector dialogue and input requirements within the regulatory reform process.

The legal framework for business registration in Zimbabwe is adequate, but it was constructed for an economy that no longer exists, and many of the mechanisms designed to promote transparency and dialogue are no longer operational. Moreover, it was meant to be administered by a strong and competent civil service that has disappeared. For Zimbabwe to emerge from the current economic crisis

and become a robust regional economic player again, a formal partnership must be created between the public and private sector to modernize the business environment and create a balanced system that takes into account both the government's mandate to protect its citizens and the private sector's desire to create wealth. The business registration process is a good focal point for beginning such a regulatory reform initiative, as it is a relatively uncontroversial activity and consensus could likely be reached with minimal acrimony. The guillotine strategy, a regulatory reform tool, could be used to spearhead the effort and galvanize the public. The strategy involves rapidly reviewing, assessing, and updating regulations using a structured framework.

In the short run, such an initiative should lead to improved procedures for registration that decrease the time and cost of registration, while also reducing instances of corruption. Strong consideration should also be given to the implementation of a one-stop shop model for business registration, as it would create efficiencies and reduce the burden on government.

Ideally, this effort would be undertaken through a Regulatory Reform Program that could be applied in other aspects of business environment reform, and would include ultimately the development of a regulatory policy law (or transparency law) that formalizes a workable interaction between the government and private sector during the process of rulemaking for the country. This would codify a partnership between the public and private sectors, in keeping with Zimbabwe's tradition, and would include requirements for opportunities for

private sector input into proposed legal and regulatory changes. The types of input opportunities mandated would depend on the nature of the reforms under consideration, but should incorporate publication of draft laws and regulations for mandated periods of time, and public forums for offering feedback and asking questions. The use of a guillotine strategy focused first on business registration (multiple areas and sectors can be simultaneously addressed or sequentially, depending on the situation) could be used to launch a government-wide Regulatory Reform Program.

Work with the Competition and Tariffs Commission to update the Competition Act and applicable regulations and to build the Commission's capacity to address anticompetitive practices in the expanding economy.

As discussed above, the Competition and Tariffs Commission is adequately staffed for its current activities, but as the economy expands, the Commission's case load is likely to expand rapidly to reach previous levels. The staff today is knowledgeable but has had only limited experience in recent years given the low level of economic activity in Zimbabwe during hyperinflation. The Commission would benefit from assistance in both training on best practices for investigation of anti-competitive practices and review of mergers and acquisitions, and in its efforts to update its governing legislation and regulations. Training for the new board would be useful as well. Such training and legislative assistance could be provided using experts from the U.S. Federal Trade Commission as well as regional expertise.



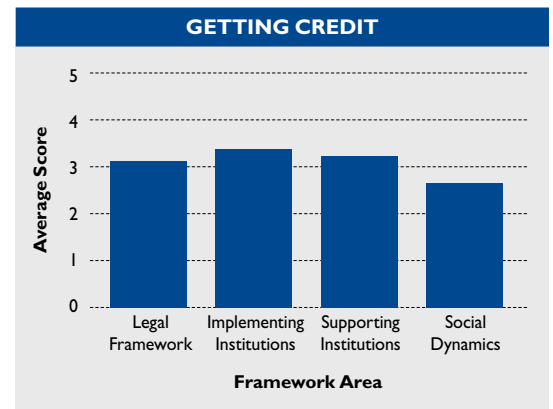
GETTING CREDIT

Access to finance is the catalyst that allows an economy to effectively and efficiently allocate resources. Individuals need finance to fund housing, education, and healthcare that will raise their standards of living and improve productivity. Farmers need access to finance to invest in infrastructure, fund agricultural inputs, and bridge their incomes between harvest and sale. Manufacturers and service firms require finance to expand production and enhance productivity. Entrepreneurs require finance to fund new ventures that spur innovation and competition. Financial firms, meanwhile, act as a mechanism to distribute resources to their most effective use.

GETTING CREDIT			
<i>Doing Business</i> Ranking 2009			84
<i>Doing Business</i> Ranking 2008			79
Indicator	Zimbabwe	Region	OECD
Legal Rights Index	8	4.5	6.8
Credit Information Index	0	1.4	4.8
Public Reg. Coverage (% Adults)	0	2.5	8.4
Public Bureau Coverage (% Adults)	0	4.8	58.4

WAIT AND SEE

Zimbabwe is slowly emerging from one of the most severe hyperinflationary environments of any country in modern history. By July 2008, inflation had reached as high as 231,000,000%! Prices changed several times a day. People relied on barter or foreign currency to get by. The balance sheets of financial institutions were destroyed. Loans on the books in Zimbabwean dollars became nearly worthless, so most customers paid up in full. Deposits that remained were similarly useless, as lending in the face of such inflation made little sense. By the beginning of 2009, most financial institutions were starting from scratch in the new multi-currency economy. Unfortunately, none of them had access to much capital. Lending in Zimbabwe remains a mere trickle for an economy that requires a flood. Terms are somewhere between 30-90 days in most situations, 180 days at the most.



For an economy that needs to rebuild infrastructure, invest in new equipment, and plant crops, such loans will not suffice.

In other countries, financial institutions could typically access offshore capital from investors or donors. However, Zimbabwean banks struggle against a tremendous problem over which they have almost zero control—country risk. Given the country's recent policy history, foreign investors have almost no confidence that the current stability created by the government of national unity (GNU) and the move away from the Zimbabwean dollar will remain. The leadership that presided over the policies that led to hyperinflation are still in place. The issues surrounding the security of land tenure persist. The Indigenisation Act requiring businesses to have a minimum of 51% Zimbabwean ownership is still on the books. Few investors will risk

their capital in Zimbabwe, when many other countries provide much more favorable business environments that protect foreign investors. As such, financial institutions in Zimbabwe must bide their time until confidence can develop in the government's ability to deliver sound economic policy. Reforms to resolve the above mentioned issues are critical for investors to have faith once again that the country is safe for investment. Though lines of credit and credit guarantees being negotiated are important to staunch the bleeding, the flow of capital truly needed to return the Zimbabwean economy to the robust engine it has been in the past will only come with time.

Country risk remains the most important problem in remedying the access to finance issues in Zimbabwe. However, it is important to consider the system as a whole. Though much of the financial system remains strong, the remainder of this chapter will focus on highlighting areas of the legal and institutional framework that can be strengthened to lift constraints to accessing credit. Recommendations are put forth at the end of the chapter suggesting approaches to lower transaction costs, generate greater confidence in the system, and expand finance to those in need.

LEGAL FRAMEWORK

Generally, the laws and regulations that pertain to credit in Zimbabwe are sufficient for a modern, growing economy. However, key issues in this area are the respect for the rule of law and the degree of discretion that is exercised. Aside from reestablishing the consistency and predictability of the application of existing laws, some small reforms in areas such as collateral registration could generate efficiencies for the overall system.

REAL PROPERTY

The ability to use real property as collateral in financial transactions is one of the fundamental building blocks for enabling access to finance in any country. The land reform program that began in earnest in 2000 eroded any concept of secure land tenure for those holding title deeds in Zimbabwe. Currently, financial institutions in Zimbabwe will not accept rural or agricultural land as collateral in a loan because the rule of law, as it relates to ownership, has been violated. Financial institutions noted that they will accept city property to secure agricultural loans, but such workarounds should not be necessary under a modern system of credit. Agricultural land is one of Zimbabwe's most precious assets. The government is currently discussing the

NOT THE TYPICAL PROBLEMS

In most developing countries, the issues of access to finance are often quite similar: weak information systems, weak creditor rights for collateralized lending, and weak courts limit banks willingness to lend. Zimbabwe suffers an enormous access to credit problem, but the reasons are not the same.

Generally, credit information systems exist on which banks rely, though they could be stronger. Creditor rights and institutions for securing interest in pledged collateral are established in the law and relatively efficient. The courts, and other means for dispute resolution, are in place and generally perceived to be fair.

Access to credit issues in Zimbabwe flow from the erosion of balance sheets stemming from hyperinflation. Banks cannot access capital to lend. Furthermore, the ability to lend on what is arguably the most valuable asset in the country—agricultural land—was destroyed by the government's mismanaged land reform which eliminated any concept of secure land tenure. The financial system in Zimbabwe is actually quite strong, if one looks at laws, institutions, and human capacity. However, without a more stable and predictable business environment, for which the government is responsible, access to finance will remain a significant issue.

issuance of 99-year leases which are registerable and transferable through the deeds registry to reestablish security of tenure. The original drafts of these documents, however, still allow for too much government discretion to expropriate property. The land issue in Zimbabwe is fundamental to enabling businesses, and especially the agricultural sector, to recapitalize and begin growing. Though a return to full title would be ideal, movement toward long-term leases would be helpful, presuming the financial community agrees that they are transferable. Property insecurity is also discussed in this report's Protecting Investors chapter, in terms of its effect on the investment climate.

RESERVE BANK OF ZIMBABWE (RBZ) ACT

A credible central bank is necessary for the financial sector to regain its footing. Unfortunately, the RBZ, due to its leadership's willful orchestration of policies that created a hyperinflationary environment, actions which many consider to have been illegal, is not considered credible. The RBZ Act stipulates the activities and governance mechanisms of the institution, but the RBZ strayed significantly from its charter. The composition of the board was inconsistent with the RBZ Act, and the financial reporting practices did not adhere to international standards.⁶ The quasi-fiscal activities that took place during the hyperinflationary period were also well outside of the Bank's core

RECOGNITION OF NEED FOR LAND REFORM

“More importantly, the long term solution in agriculture lies in restoring security of tenure and strengthening property rights in the form of long leases, title deeds and certificates of occupation, all of which can be securitized and hypothecated.”

—Tendai Biti, Minister of Finance, “The 2009 Mid-Year Fiscal Policy Review Statement: STERP in Motion.” Presented to the Parliament of Zimbabwe on Thursday, July 16, 2009

KEY LAWS AND REGULATIONS

- Reserve Bank of Zimbabwe Act (1999, with amendments)
- Banking Act (2004)
- Banking Regulations (2000)
- Anti-Money Laundering Act (2006)
- Moneylending and Interest Rate Act (1962, with amendments)
- Hire Purchase Act (2000)

competencies. The Minister of Finance noted that the government was working to amend the RBZ Act “with the objective of realigning the Reserve Bank's institutional framework to the economic reforms that the country has adopted.”⁷ It is essential that this institution, once viewed as one of the most capable regulatory bodies in the region, reestablish itself as such to provide the foundation stone upon which the financial sector can rebuild.

MICROFINANCE POLICY

Zimbabwe's microfinance policies, and the constraints that they create for microfinance institutions (MFIs), have been well documented over the last few years.⁸ This section will simply highlight some of the more problematic constraints, noted in previous studies, that should be addressed to support the reestablishment of this important vehicle for small scale lending.

The Moneylending and Interest Rate Act, along with the Presidential Powers Regulation of 2004, establishes the RBZ as the licensor of MFIs. The licensing requirement is misplaced. Annual licensing for MFIs limits their ability to attract investment, as potential investors will be scared away if they think the Zimbabwean government can deny a license in subsequent years. Also, non-deposit taking institutions should not be subject to the same regulatory oversight as deposit taking institutions. The licensing for deposit taking institutions should be closer to a range of three to five years, or even better, only required when regulators note issues during their supervision.

6 IMF, “Zimbabwe—Staff Report for the 2009 Article IV Consultation,” April 20, 2009 at 9.

7 Tendai Biti, Minister of Finance, “The 2009 Mid-Year Fiscal Policy Review Statement: STERP in Motion.” Presented to the Parliament of Zimbabwe on Thursday, July 16, 2009 at 103.

8 Klinkhamer, Madeline, “Microfinance Sector Rebuilding,” SNV Harare (2009), ZAMFI, “Review of Microfinance Institutions' Regulatory Framework in Zimbabwe,” ZAMFI Harare and Zimbabwe and RBZ (2006), “National Microfinance Survey and Proposed Legal and Regulatory Framework.”

SECURED FINANCE

The legal and regulatory framework for secured finance in Zimbabwe works quite well. The relevant legislation is primarily covered in the Conveyancing Act and the Deeds Registry Act. For land transactions, financial institutions register a Deed of Hypothecation at the Deeds Registry; for movable property, they use a General Notarial Covering Bond. Most financial institutions and attorneys in the country find that the framework for secured finance works sufficiently. Best practice suggests that moving to a system with a single web-based pledge registry would help improve efficiency. Such a system would require legal reforms to institutionalize the necessary changes. However, if implemented, the transaction cost for collateralized lending on movable property would be reduced. Nonetheless, the minor shortcomings of the current system are not among the key constraints for credit.

CREDIT INFORMATION SHARING

Though credit reporting is available in Zimbabwe, no legislation or regulation is in place that deals specifically with credit information sharing. Currently, most information being reported is from the public domain, and remediation processes are in place if consumers feel the information is incorrect. Lack of regulation of credit information sharing has not been viewed as a major impediment, but if firms in Zimbabwe intend to move forward with a more robust credit reporting mechanism—including data from non-financial institutions (e.g. utility companies), positive data, and credit scoring—regulatory agencies and financial institutions will need to work together to determine whether more explicit regulations are necessary to protect consumers.

OTHER RELEVANT LEGISLATION

Asset finance through leasing and hire purchase is returning to Zimbabwe. Reportedly,

HYPERINFLATION, DE FACTO DOLLARIZATION, AND THE MULTI-CURRENCY ENVIRONMENT

Hyperinflation, driven by the imprudent (or, perhaps more aptly described, corrupt) policy decisions at the top of the RBZ, led to the deterioration of the country's economy faster than almost any other in modern history. Not only was the RBZ printing money and trading it for foreign exchange on the informal market, but it was also raiding the RBZ accounts of donors and businesses. The resulting hyperinflation led to an environment where prices were changing multiple times a day, new notes were printed constantly (up to a Z\$100 trillion note), and a barter economy ensued. Though possessing foreign exchange was against the law, a de facto dollar, and in some areas rand or pula, economy developed. In February 2009, a multi-currency environment was officially declared by the government, driven by the Ministry of Finance. The multi-currency environment allowed rational prices to again prevail and the economy to stabilize. Banks' balance sheets have been eroded, but they are beginning to lend again and have deals to do, if only they had the capital to lend. While Zimbabweans are better off now than they were on the Zimbabwe dollar several months ago, the uncertainty of currency must be resolved. Should businesses be keeping their books in rand or U.S. dollars? Should their computer systems be programmed for rand or U.S. dollars? Should banks reprogram their ATMs to distribute other currencies, and which should they choose? How should MFIs operating in both currencies manage exchange rate issues? The Ministry of Finance is committed to the multi-currency environment for the foreseeable future, but occasional suggestions are still made that the Zimbabwe dollar should return. Some stakeholders believe the rand would be a better choice for the lead currency rather than the U.S. dollar. Although recent changes have been positive, the government must begin projecting a timeline—even if the timeline is over a few years—toward a single currency. It must also state clearly what benchmarks must be achieved before considering a move toward a currency printed and managed by the RBZ, a move that is likely years off.

complexity in the Hire Purchase Act leads financial institutions to favor lease products unregulated by the Act, even when purchase is the intended result. Further analysis of the legal structure may indicate a need for legal reform.

The Banking Act of 2004 and Banking Regulations of 2000 govern many of the financial institutions operating in the country. Though viewed as quite modern, high collateral and reserve requirements are perceived to be a constraint on lending.⁹ Regulators and the Bankers Association should revisit these regulations to determine whether loosening such requirements would be wise. Finally, given the complexities of operating in a multi-currency environment, Zimbabwe may be well positioned to benefit from the entrance of mobile finance and/or mobile payment operators. However, the Banking Act stipulates that “no banking institutions shall engage in any business or activity other than approved banking business.”¹⁰ Financial regulators in many developing countries recognize the opportunities that mobile finance presents but lack the local knowledge and regulatory infrastructure to allow it to thrive. It is imperative that Zimbabwean regulators begin to build plans to enable such innovations to flourish while controlling risks.

IMPLEMENTING INSTITUTIONS

Similar to the legal environment, the institutions relating to finance in Zimbabwe were once quite effective. The human capacity and infrastructure is largely intact. The need now is to rebuild confidence in these financial institutions so they can once again flourish.

RESERVE BANK OF ZIMBABWE

Many investors perceive the RBZ to be ground zero for the policies that led to hyperinflation. However, most financial institutions and policy makers in Zimbabwe would argue that the RBZ remains quite strong. The technocratic staff for both banking supervision and monetary policy remains in place and should not

KEY IMPLEMENTING INSTITUTIONS

- Reserve Bank of Zimbabwe
- Ministry of Finance
- Credit bureaus
- Collateral registry
- Courts

be tied to the policies that generated the economic turmoil of recent years. One informed policymaker suggested that the technocrats “did what was right, and then did as they were told.” In other words, the detrimental practices resulted not from a lack of human capacity or poor institutional structures, but from ineffective leadership. Unfortunately, this leadership remains in place. A change of leadership, to a respected technocrat without political ambitions, would be a powerful statement by the unity government that they intend to reestablish confidence in the financial sector and the government’s ability to supervise it. This would allow the RBZ to establish its independence from political actors and a renew its reputation for good governance. Transparency will be the key. However, a change of leadership does not appear likely in the immediate future. As such, the government is limiting the independence of the RBZ and increasing the control of the Ministry of Finance. In the current environment, this approach seems wise; however, it is not the long-term solution. In the near term, the RBZ should embrace the opportunity for outside bodies to evaluate their activities. Anything that will generate enhanced confidence by investors is imperative. Periodic benchmarking of the capabilities of the RBZ against other regional and international central banks to demonstrate capacity and implementation along basic elements, such as supervision, monetary policy, and debt management could go a long way to rebuilding confidence in the institution’s ability to oversee the financial sector.

MINISTRY OF FINANCE

The Ministry of Finance has taken a lead role in recent reform efforts. Most of the legal reforms

⁹ Klinkhamer at 41.
¹⁰ Id.

discussed in the previous section are being led, or will need to be led, by the Ministry. The Ministry helped move the country beyond the hyperinflationary environment with the multi-currency policy and has demonstrated openness to other reforms, including those with the RBZ. It is essential that it continues to forge the way forward on monetary policy. Although the multi-currency environment has created stability, it has clearly not reached the desired end state. Financial institutions and other businesses need greater clarity regarding the long term direction of monetary policy. A long-term plan should be developed with the benchmarks necessary to move from the current state to a single currency, and eventually to a Zimbabwe-managed currency. Once private sector actors understand the way forward, they can plan with greater certainty. (It should be noted that monetary policy is a central bank function and responsibility should eventually return to the RBZ once confidence in the institution returns.)

CREDIT BUREAUS

Credit information bureaus in Zimbabwe could be stronger. Currently, neither of the existing suppliers provides positive information on good credit history. Little information is collected from utilities. Bureaus do not provide any scores or ratings based on systematic analysis. Few MFIs actively participate, limiting the depth of information. (MFIs considered developing their own credit bureau previously, but the RBZ wanted a unified system.)¹¹

Zimbabwe is well positioned to quickly strengthen its credit information architecture, a move which would reduce the cost of due diligence for all financial institutions. Better due diligence will lead to fewer defaults, and ultimately all borrowers will benefit from less expensive finance. Not only do Zimbabwean banks have stronger MIS systems than many of their neighbors, enabling them to provide and receive data electronically, but also the single national ID in Zimbabwe provides the unique personal data necessary for identification and indexing.



Although the banks have come to rely on the existing credit information infrastructure, increased services as described above by one of the existing players or a new entrant would benefit banks and borrowers alike.

COLLATERAL REGISTRY

The collateral registry system in Zimbabwe has served the financial sector well. Financial institutions can perform a search at the Deeds Registry within one day to see if an individual or business has borrowed on a piece of land or moveable collateral. If a bank wants to register a security interest in a piece of collateral to perfect the lien on a loan, the process takes no longer than a week. However, the system could be improved to enhance efficiency and to lower transaction costs. The system is currently paper-based, and the Deeds Registry has only two offices: one in Harare, the other in Bulawayo. For land registration, each office covers specific districts, so it is clear where to search for liens on specific pieces of land. However, for movable property, a search must be conducted at both registries. The Deeds Registry is also indexed by name, so misspellings, while rare, can lead to problems.

Zimbabwe should consider moving toward a web-enabled pledge registry system, first for

¹¹ ZAMFI, "A Feasibility Study on the Establishment of a Credit Bureau for the Microfinance Sector in Zimbabwe," supported by SNV (February 2006).

movables but eventually for land as well. Such a system would enable real time searches and registrations by lenders without any intervention necessary by the deeds office. This would also resolve the issue of multiple offices by providing a single virtual system. A web-based system would adopt the national ID as the index of choice as well, remedying the challenge of clerical errors.

COURTS

Most financial institutions in Zimbabwe perceive the court system to be relatively fair and efficient. Zimbabwe's court system is discussed at length in this report's chapter on Enforcing Contracts.

SUPPORTING INSTITUTIONS

BANKS AND MICROFINANCE INSTITUTIONS

The financial institutions in Zimbabwe have strong systems, products, and people. Unfortunately, they have almost no capital to lend. As previously noted, their balance sheets were wiped out during the hyperinflationary period. The deposit base is slowly growing again and has improved almost three-fold since February. However, due to liquidity issues, most banks are only offering short-term loans. Such loans will help some businesses and individuals get started again, but for farmers needing loans for planting through to harvest, or mines or manufacturers needing new machinery, a 30, 60, or 90 day loan is simply insufficient. Some institutions are gaining access to credit guarantees or foreign lines of credit, which is opening a window for more normal lending, but substantial investment flows will only return to Zimbabwe when the country risk is reduced.

PARASTATALS AND GOVERNMENT OWNERSHIP

Government participation in the financial sector through parastatals or ownership of private banks is significant. Agribank, IDBZ, POSB, ZABG, and ZB are all either parastatals or majority-owned by the government.

KEY SUPPORTING INSTITUTIONS

- Banks
- Microfinance institutions
- Bankers Association of Zambia
- Zimbabwe Association of Microfinance Institutions
- Insurance providers
- Macroeconomic and Financial Management Institute of Eastern and Southern Africa

Government engagement in the financial sector generates market distortions, though it does exist to some degree in most countries. The Zimbabwe government should pursue privatization of government-owned financial institutions to allow market forces to drive efficiency. Besides being the right policy choice, the government does not have the funds to recapitalize these institutions. Also, many of these institutions appear on U.S. and EU sanctions lists and are thus suffering from their past relationships with government. Moving these institutions into the private sector will allow the government to spend more time governing, rather than running what should be private financial institutions.

BANKERS ASSOCIATION OF ZIMBABWE (BAZ) AND THE ZIMBABWE ASSOCIATION OF MICROFINANCE INSTITUTIONS (ZAMFI)

BAZ and ZAMFI act as the voice of the financial sector. Both have been active in lobbying for financial reform and consulting with government on policies for the financial sector. The Bankers Association of Zimbabwe has consulted with the government on the possible language included in 99-year lease agreements. They have advised the government that anything less than a fully registerable, transferable, and tradable document will be a waste of time. ZAMFI continues open discussion with the government on a variety of regulatory matters, the foremost of which is the issue of annual licensing. Any reform work in Zimbabwe's financial sector would benefit from open consultation with these organizations.

INSURANCE PROVIDERS

The insurance industry in Zimbabwe is well established. It offers a variety of products to mitigate risk for the financial industry, including products for the agricultural sector that are lacking in neighboring countries. In fact, one innovative provider has developed a cattle insurance product, reinsured offshore, that provides banks protection for taking livestock as collateral. In an environment where farmers cannot use agricultural land as collateral, the ability to leverage livestock for this purpose can be a tremendous benefit. The industry requires stronger supervision, however, as the Insurance Commission has suffered from brain drain.

MACROECONOMIC AND FINANCIAL MANAGEMENT INSTITUTE OF EASTERN AND SOUTHERN AFRICA (MEFMI)

MEFMI was founded in 1994 to focus on capacity building for capital markets development and macroeconomic management. The institute provides consulting services and training to central banks, ministries of finance, and other related public institutions across the region. It receives funding from member countries and donor organizations. Based in Harare, MEFMI, as an apolitical institution, could play a critical role in helping the RBZ reestablish a reputation for pragmatic, consistent management of monetary policy and regulation of financial institutions.

DONOR COMMUNITY

Currently, the donor community does not play an active role in Zimbabwe for economic growth and financial sector activities. The Zimbabwean government has significant arrears to the multilateral institutions that must be resolved before open engagement returns. However, the donor community appears to be collectively “dipping its toe” back in to Zimbabwe. Financial and economic analysis and small-scale technical assistance will be the first steps. Lines of credit will come when confidence in the government returns. Although humanitarian assistance is critical, Zimbabwe risks creating

a culture of dependence if it cannot move from humanitarian assistance toward capacity-building and empowerment programs. Given the human capacity in Zimbabwe, it would be a shame if short-term humanitarian assistance became a long-term perceived entitlement.

SOCIAL DYNAMICS

CRISIS OF CONFIDENCE

Over the past nine years, the policy environment in Zimbabwe has shaken the confidence of private investors and the donor community to the point that even the strongest banks cannot raise capital for low-risk deals. Conversations with most bankers suggest that, if capital were available, most of the large banks could move US\$100-200 million on bankable deals within a matter of weeks. The GNU has generated stability, but the leaders that introduced land reform and the current indigenisation policy also remain. Investors have little confidence that stability will persist. The only way to increase confidence would be to announce and implement a progressive reform agenda.

COST OF UNCERTAINTY

The average businessperson makes long-term plans based on assumptions regarding the policy environment. For example, businesspeople know that they will have to apply for and purchase a license to operate that has been established under the regulatory environment for years. They will have to pay a clearly defined tax rate based on their turnover. Inflation can be expected, but planned for, based on historical data. A stable policy environment allows for long-term planning; an unstable policy environment creates paralysis. With security of business ownership and control in question due to the indigenisation policy or land reforms, individuals will not invest in their business or be able to convince others to do so. Additionally, with inflation levels at historical extremes, the mechanisms of the economy simply froze up.

The unity government has begun making some positive steps. The multi-currency environment has stabilized the inflation rate. The government has stated that farm invasions will be met with arrest. The Indigenisation Act has been downplayed. Yet uncertainty around each of these issues persists. Although the rand is the reference currency, the U.S. dollar is the norm in Harare. As such, how should businesses plan for what comes next? For banks, a decision that should be simple, such as what money to load into ATMs, can be quite costly. Software will have to be changed and machines recalibrated to take a new currency. If they make these changes for the U.S. dollar and the government decides to move to the rand, businesses will be taxed. This example is only one of many regarding the cost of uncertainty. Even with steps forward, a tremendous amount of uncertainty remains for Zimbabwe's economy.

POLITICIZATION OF FINANCIAL SECTOR REFORM

Unfortunately, reform in the financial sector has been politicized: the Governor of the RBZ hails from one political party and the Minister of Finance from the other. Many view the RBZ leadership as having generated many of the problems associated with the hyperinflationary environment, and the Ministry of Finance as having led reform efforts. In a unity government, these two institutions are supposed to work together, but it is hard to view them as anything other than adversaries. Mechanisms that should not involve the government, such as lines of credit to private institutions, now have a joint committee, the External Loans Coordination Committee, to approve loans over a certain size. Reform under this unity government will likely remain contentious and slow for the foreseeable future.

COMPETITION IN A TURBULENT ECONOMY

After any recession in any economy, some businesses will close or be acquired, and new players may come to the forefront. Clearly, the

competitive landscape changes. Zimbabwe is slowly coming out of one of the most turbulent economies in recent history, with inflation peaking at over 200 million percent. Some financial institutions will be closed or acquired. Some government-owned institutions will be privatized. It is essential that the regulatory body overseeing competition is alert to changes that consolidate the market to the consumer's disadvantage. The public should expect change but be wary of the impact that such changes can yield.

Another example of competition issues in the credit sector can be observed with contract farming. With credit limited, many small holders in the agriculture sector can only gain financing through contract farming arrangements. However, providers do not have to offer competitive terms in this sector, as there is no competition from banks or MFIs that would have provided lending to the small holders in the past. In fact, as small holders are competing with imports from neighboring countries that are likely to have high quality products at good prices, providers are likely to squeeze the small holders as much as possible. Such situations can be addressed through on-lending to MFIs that focus on small scale farmers, or simply by supporting the recapitalization of the MFI sector.

RECOMMENDATIONS

Support private sector-led reforms for reduced transaction costs.

Although land reform may be the most important step to address the issues of access to credit in Zimbabwe, it is rife with political and historical elements that make a speedy resolution unlikely. However, other reforms not tainted by the political situation can be pursued. These reforms should be spearheaded by the BAZ and ZAMFI working together and supported by the government as necessary:

- Implement a web-enabled pledge registry for movable property
- Work to establish a more robust private credit information system

- Commission a FinScope Survey for benchmarking and increased awareness

Although the Deeds Registry is quite efficient for a paper-based registry, further cost reductions can be realized by moving to a web-enabled system. This reform will require the selection and tailoring of a software package. (Multiple packages have been built; there is no need to build from scratch.) Legal reform will also be necessary. An international expert should work with 1-2 local legal experts with drafting experience to craft a law based on international best practice. Training would follow for banks, attorneys, and the registry.

The existing credit information infrastructure needs to be enhanced to include positive information, non-financial institution data (e.g. utility information), and scoring. The associations should collaborate with existing providers and competitors potentially interested in the market to outline their needs and discuss data requirements and transaction costs. Both USAID and the IFC have experience in supporting credit bureau reform and could be valuable resources. Once the associations decide on the appropriate way forward, they should appoint a project manager to coordinate between the bureau, financial institutions, and regulators. A local attorney with experience in consumer protection and privacy should be consulted to determine whether the existing laws and regulations suffice, or whether a credit information sharing law is necessary.

Finally, the associations would greatly benefit from a FinScope survey. With extensive experience across Africa, FinScope surveys analyze access to and use of financial services at the national level. The tool could be useful for the association and its members to understand the state of financial services coming out of the recent crisis, and it could be used to measure progress if repeated every one to two years.

Provide objective benchmarking of RBZ.

Reestablishing the Reserve Bank of Zimbabwe as a prudential financial institution with the

capability to carry out banking regulation and monetary policy is critical for Zimbabwe's recovery. One way to validate such capability is through an annual benchmarking exercise. The World Bank's *Doing Business Report* and the World Economic Forum's *Competitiveness Report* demonstrate the power of benchmarking. These reports not only provide indicators to investors on the business environment, but they provide information on best practices and areas of need as well. Developing a regional or global benchmarking study can provide an objective measure for the capability of the RBZ, as compared to its competitors. The study should include an objective assessment of the basic competencies of central banks (e.g., managing monetary policy, banking supervision, AML supervision, governance and transparency). Such a study could highlight where the RBZ is gaining ground and where it still needs focus and progress. Partnering with a local organization like MEFMI to implement such a reform could yield a product that would raise confidence and be a policy tool for years to come. In addition, ensuring that all actors, including the RBZ, have adequate information available on the financial sector is critical. Investing in a quantitative sector assessment, such as FinScope every few years, would provide greater awareness on the health, depth, and breadth of the sector.

Establish credit guarantees and lines of credit.

With access to capital being the most fundamental need of the banking system, credit guarantees and lines of credit could catalyze the financial sector to begin functioning again. Any such mechanisms must be designed in a way to stimulate competition among financial institutions rather than limiting funding to the largest borrowers. Product designers should ensure that multiple financial institutions have access to the LOCs or guarantees. The government should work with financial institutions, or if necessary non-profits, to ensure funding for the recapitalization of the microfinance industry can also

flow back into the country. Ideally, large financial institutions with access to LOCs or guarantees would on-lend to MFIs, as they have in the past; however, given the current environment, onlending to MFIs is unlikely to be the most profitable use of funds for banks. Working with non-profits with an interest in microfinance could be a workable alternative. A separate support mechanism for access to capital is directly supporting the recapitalization of the microfinance sector through a fund managed by ZAMFI, non-profits could support this mechanism directly.

Though steps for increasing access to capital for the financial sector are now essential, all actors should keep in mind that the need now to recapitalize the financial sector is a direct result of the poor policy decisions that have been made by the government in recent years. Were it not for the consistently poor economic policy decisions by the government such as those that eliminated secure land tenure and the mismanagement of monetary policy which created the hyperinflationary environment, the financial institutions would have remained solvent and investors would not need courting back. Though the citizens of Zimbabwe need access to finance, donors and other actors should recognize that with much of the same leadership in place, there is no certainty that any injections of capital will be secure.

Promote MFI reform package.

The regulatory community needs to work with ZAMFI and its members to achieve a more risk-

based supervision approach. First, annual licensing is unnecessary; renewal every three to five years should be sufficient, or until withdrawn due to issues identified during supervision. Second, tiered oversight for deposit taking and non-deposit taking institutions should be established, an approach that is considered best practice. Third, donors should work with ZAMFI to ensure that its stronger members begin reporting to MIX. Such reporting will help attract the interest of donors and investors.

Support of other critical reforms: a precondition for a full recovery.

For the financial sector to regain its former strength, the government must push more complicated reforms forward. This will require a high degree of political will. First, the land tenure issue must be resolved to unlock the value of rural land. Until banks feel secure to lend on land, the issue will not have been addressed. Second, parastatal and government owned financial institutions must be returned to the private sector. Parastatals should go through a privatization process and government should divest their interests in private financial institutions. Third, in order to reestablish the credibility of the financial sector, the sector must be able to trust in the leadership of the regulatory authorities. Government should consider whether new leadership is necessary, and at what levels. These reforms will require government leadership, but are critical in allowing the Zimbabwean financial system to once again flourish.



PROTECTING INVESTORS

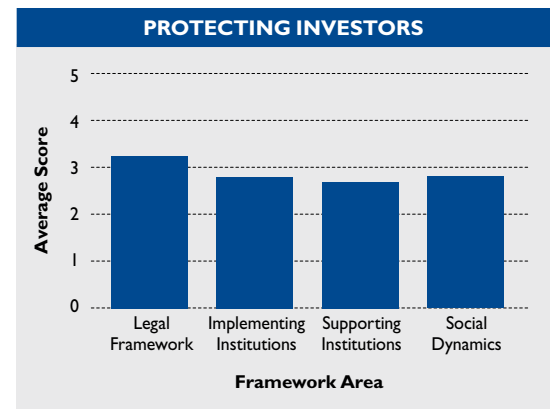
Since the transitional government came into power in February 2009, a sense of cautious optimism has emerged in the business community. After decades of a stringently controlled economy, culminating in intense price controls last year, and crisis-level hyperinflation due to poor fiscal policies and a pattern of printing money to cover government debt, some optimism is certainly warranted. Things have improved. Stores carry goods at reasonable prices, business is picking up, and the black market is no longer the main player. Despite political events and policy changes that have brought some relief to the beleaguered economy, the current investment climate remains highly unappealing due to great uncertainties caused by the lack of respect for the rule of law.

PROTECTING INVESTORS			
<i>Doing Business</i> Ranking 2009			113
<i>Doing Business</i> Ranking 2008			110
Indicator	Zimbabwe	Region	OECD
Disclosure Index	8	4.6	5.9
Director Liability Index	1	3.2	5.0
Shareholder Suits Index	4	5.0	6.6
Investor Protection Index	4.3	4.3	5.8

The legal framework and basic structure governing investor protections and the business environment are reasonably sound, and the labor force is highly educated and skilled, particularly compared to other nations on the continent. This sound foundation, however, cannot overcome the country risk that looms large in the minds of most potential investors, and that will persist until the government makes

“Investors need to be able to mitigate risks, and they cannot mitigate the risks of unpredictable government policies. A potential South African investor told me that it was risky to invest in a plant in Palestine, but he could mitigate the risk of a suicide bomber by increasing security. He had no such solution for mitigating the risk of uncertain government policies in Zimbabwe.”

—Zimbabwean entrepreneur



tangible, credible steps toward resolving the uncertainty over the land reform crisis and indigenisation policy.

Interest by potential investors continues to be high, but the wait-and-see attitude continues. Most who are making the jump already are the opportunistic, who come in with an exit strategy and limited commitment—not the type of investments that spur broader economic growth. This reality will not change until security of investments is more certain. Many within the business community and government in Zimbabwe profess that this is an issue of perception rather than reality with regard to security of assets, as it is said to only affect commercial farming property in certain instances. However, this claim is meaningless, in part

because perception is reality when it comes to attracting investment. If the government can confiscate some assets without compensation, what assurances do any investors have that their investment is secure? The precedent is daunting.

Moreover, it is a partial picture at best—security of assets is a *real* concern for investors. Even today under the GNU, businesspeople of all kinds are harassed, arrested, sanctioned, or run out of the country because they have crossed the wrong politician or politically connected players. Not only were thousands of commercial farmers evicted from their property without compensation under the land reform policy instituted by President Mugabe in 2000, but many other businesses, including tourist lodges and mines, have been confiscated under questionable circumstances as well. Indeed, some companies still have not been repaid for foreign currency funds that went missing from their foreign currency accounts with the Reserve Bank in 2007-2008.

The impact of these practices must be addressed, resolved, and reversed by providing resolution to the question of compensation and by sustaining a long period of predictability and assurance in terms of protecting investor assets. Restoring confidence will not happen overnight. Not only must sound and reliable policies be in place, but they must be in place for a sufficient period of time before investors feel confidence in relying upon them. The uncertainty created in recent years by an unpredictable, dramatically fluctuating policy framework has taken its toll on investor confidence. The donor community can engage to improve various aspects of the business environment and assist in providing a more amenable climate for investment, but without resolution of these very basic challenges to investor security, economic recovery in Zimbabwe will remain extremely limited.

LEGAL FRAMEWORK

Zimbabwe's commercial legal framework is generally adequate, which is good news for investors. Of course, the exceptions make the rule

KEY LAWS

- Land Acquisition Act (1992)
- Indigenisation and Economic Empowerment Act (2008)
- Zimbabwe Investment Authority Act (2007)
- Companies Act (1955, amended 2006)

when it comes to investment, and the exceptions to the generally sound legal framework are the very worrisome land reform and indigenisation policies.

LAND REFORM POLICY

In 1992, the government passed the Land Acquisition Act which removed the “willing seller, willing buyer” provision that had previously been a key aspect of the existing land reform policy because land reform was proving too slow. Opposition emerged early on, but the basic premise prevailed that some form of land reform would be necessary. It was not until the Fast Track Land Reform Program of 2000, with the explosion of state-sanctioned land seizures—often violent and uncompensated—that the land issue became a major roadblock to a stable investment environment. While many players within the government oppose such practices, they are sanctioned by ZANU-PF leadership and continue to this day. No consensus has been reached regarding how or when outstanding issues relating to land will be resolved. An increasing number of farm invasions target foreign-owned property that should be explicitly protected under Bilateral Investment Promotion and Protection Agreements (BIPPAs). Furthermore, land invasions are no longer limited to farming land. These practices drive (realistic) international perceptions of lawlessness in Zimbabwe and will continue to play such a role until serious and sustained changes occur in both policy and practice.

It is well beyond the scope of this diagnostic exercise to solve the longstanding issue of land reform, but clearly greater dialogue and consensus is needed in both the public and private

sectors regarding a reasonable way forward. The private sector could play a major role in resolving this issue if a consensus could be reached regarding alternative land reform proposals and options for resolving uncompensated confiscations.

INDIGENISATION AND ECONOMIC EMPOWERMENT ACT

In 2008, prior to the GNU, the government put in place the Indigenisation and Economic Empowerment Act. This Act aims to increase the role of indigenous Zimbabweans in the economy. It stated, “The Government shall ... endeavor to secure that at least fifty-one per centum of the shares of every public company and any other business shall be owned by indigenous Zimbabweans.” According to the Act, “indigenous Zimbabweans” are defined as those who were disadvantaged by unfair racial discrimination prior to independence in 1980.

Similar to the land reform issue, a general consensus exists regarding the need for better integration of a larger swath of the Zimbabwean population into the growing economy. However, to translate that need into a dictated controlling share of every business is to crush any hopes of a foreign investment upswing. Defenders of the act assert that it is not so extreme because businesses can apply for exceptions to the 51% provision. Yet the exception states that only “the Minister may prescribe that a lesser share than fifty-one per centum ... may be acquired by indigenous Zimbabweans ... but in doing so he or she shall prescribe the general maximum timeframe within which the fifty-one per centum share or the controlling interest shall be attained.” This exception is clearly intended to be a temporary measure, making it of little value to an investor seeking security for his or her investment. Some seek solace in the fact that this law is on the books but has not yet been applied—probably because of its controversial nature—and has no implementing regulations as yet. The law in its current form fails to even identify the size threshold for businesses to which these requirements apply. In June

2009, the Minister of Finance responded to the concerns of investors by stating that investors would not be required to surrender controlling shares of their investments. While this proposed direction of government policy is positive, it provides only limited comfort for investors looking for long-term security and minimized risk in an environment already fraught with policy instability. Public statements by government officials over what the law means and if and how it will be implemented continue to be unclear and often contradictory, leaving investors with little ability to effectively weigh the risks they face in Zimbabwe. Although the government’s stance on the 51% provision appears to be softening, the Indigenisation and Empowerment Act remains in force and the Minister could issue regulations at any time.

In addition to the Indigenisation Act, an Amendment Bill to the Mines and Minerals Act recently under consideration by Parliament was withdrawn in July 2009. The Amendment Bill proposed that all foreign-owned mining firms would be required to cede 51% of their shares to indigenous Zimbabweans, with the government receiving 25% of that share for free, and the remaining 26% being paid out over time through dividends. The withdrawal of this bill is a positive sign that reconsideration of the controlling ownership approach to indigenisation is unworkable.

Many within the private sector asserted that they understand the need for reform and would feel comfortable with 10% or 15% local ownership requirement, some even going as high as 25% in terms of what might be reasonable. Indeed, a level of 15% has proven workable in other countries that have faced this issue, such as Namibia. It is risking the loss of control over one’s investment that pushes Zimbabwe’s approach to economic empowerment beyond what investors can be expected to endure.

Furthermore, the focus of the Act is too concentrated on the issue of mandated ownership, which has proven in country after country to be ineffective in benefiting anyone beyond a

minority of locals who are included or close to the political elite. Accordingly, there is little evidence that this approach is capable of achieving its purpose. The MDC is reportedly developing a paper proposing another approach to indigenisation, and recently the American Business Association of Zimbabwe held a private sector stakeholder event to build dialogue on the subject. Indeed, a broader dialogue is occurring on this subject than on the issue of land reform. For both topics, there is a need for greater private sector input and consensus on suitable alternatives.

ZIMBABWE INVESTMENT AUTHORITY ACT

This Act repealed and replaced the Zimbabwe Investment Centre Act and Export Processing Zones Act, and set up a new Authority tasked with granting investment licenses, promoting local and foreign investment, reviewing proposals for joint ventures with the government, and advising the Ministry on investment policy including the use of incentives. The Zimbabwe Investment Authority is managed by a Board consisting of 11 members appointed by the Minister¹² in consultation with the President. The President gives the Minister direction based on recommendations of other government officials, such representatives making up almost half of the board. Representatives from specific industries and other specified areas of the private sector make up the remainder of the Board. The Board then establishes an Investment Committee, composed primarily of representatives from relevant ministries and specified government departments, including the Reserve Bank. The Committee is responsible for making recommendations to the Board regarding investment applications. While the Act provides “considerations” to guide approvals of the Committee—including the extent of skills and technology transfer, employment opportunities, and use of local raw materials—no criteria are specified for refusal, leaving decisions on investment certificates subject to significant discretion and uncertainty.

Given Zimbabwe’s recent history, the role of a largely political body in the approval process only enhances uncertainty. Notably, the Board is not required to follow the recommendations of the Committee and reportedly has not always done so. Both the Act and the implementing regulations are also unclear regarding what documentation is required for such applications, leaving room for delay during an already cumbersome process. To make matters worse, investment certificates are issued for a finite period of time. While no timeframe is specified in the Act or regulations, some investors are reportedly required to reapply every other year. No one interviewed reported denial of investment certificate renewals, but many expressed concern over the uncertainty and burden that this process engenders. Additionally, rejections of applications or renewals are not required to state the reasons for a denial, and the only appeals process available is through the Minister.

The Act and its regulations fail to answer a number of questions. The Act defines “investment” to include “an investment in Zimbabwe or a proposal therefore which will necessitate the expenditure of convertible foreign currency.” In the age of dollarization, this could require an investment license for any investment whatsoever, just one of many examples of how Zimbabwe’s legal framework has not been modified to work within a multiple currency system. Furthermore, without a provision stipulating a threshold investment amount to which this Act applies, even a very small contribution by a foreigner presumably requires an investment certificate. In practice, the general consensus appears to be that an investment certificate is required for any new projects, but Reserve Bank approval is still required for foreign investor engagement in existing businesses, including the purchase of shares or sale of shares from one foreign investor to another.

The Act also provides that the Minister may specify sectors reserved exclusively for domestic

¹² The Act specifies the Minister of Industry and International Trade “or any other Minister to who the President may appoint from time to time to assign the administration of this Act.” With the advent of the GNU, and subsequent changes to the composition of the ministries, including addition of new ministries, the relevant Minister today is reportedly the Minister of Economic Development and Investment Promotion.

investors or prescribe limitations in terms of percentages for maximum foreign ownership of businesses in certain sectors. Limitations in certain industries, including 70% in tourism and infrastructure and 35% in transport and agro-forestry, are indicated on the Authority's website. When changes to these provisions are made, the impact on existing businesses is unclear.

COMPANIES ACT

The Acts discussed above pose serious challenges to attracting and protecting investors. The Companies Act, like other general commercial law instruments in the country, is not as problematic. While the Companies Act needs updating to capture recent developments in corporate governance—and the private sector is engaged in lobbying for such changes—Zimbabwe's strong common law system has enabled it to keep up with modern times to a significant degree. The Act does not cover many specific issues of corporate governance, the details of which are found in common law precedent rather than statutory instruments. Challenges in the culture of corporate governance are discussed further below, and efforts to modernize and improve the Companies Act should be supported. However, the outdated nature of the Act itself has reportedly not been a significant constraint to the business community.

IMPLEMENTING INSTITUTIONS

A robust investment climate requires the protection of investments within a country as well as within a company, accompanied by effective investment promotion and facilitation. The Legal Framework section above addresses serious concerns regarding protection of an investment within a country, in terms of protection of assets from confiscation by the government. This section will address investment promotion and facilitation, specifically in terms of the role of the Zimbabwe Investment Authority. It will also address protection of investment within a company through corporate governance.

WHY FACILITATE FOREIGN INVESTMENT?

All countries can benefit significantly from foreign investment, but with its current cash-flow crunch, Zimbabwe needs an influx of foreign capital more than most. Businesses lack capital to invest and expand, and banks lack cash to lend. With the death of the Zimbabwean dollar, liquidity can only come from outside. Increased foreign investment will increase local investment by bringing in cash that can be available to local investors and by creating business opportunities for providers of supplies and services. ZIA, among other roles, can assist foreign investors in create backward linkages with local businesses.

ZIMBABWE INVESTMENT AUTHORITY

In addition to the challenges posed by its statute, described above, ZIA has very limited capacity and struggles to fulfill its mandate, particularly with regard to investment facilitation and promotion. While ZIA aims to eventually become a one-stop shop for investor needs and its staff asserts that they currently work with investors to handle and fast track various licensing procedures on behalf of investors (by physically visiting the relevant institutions to submit required materials), the consensus within the private sector is that ZIA provides no such services and is, in fact, a hindrance and additional burden to the investment process. At the very least, this institution is not effectively fulfilling its facilitation role.

As part of its investment promotion strategy, ZIA developed the Zimbabwe Investor Prospectus, released at an investors' conference held in Harare in July 2009. This document provides general information about investment opportunities in many sectors as well as a list of specific projects where the government is seeking outside investment. The information contained in this prospectus is a first step, but it is very general and unlikely to generate much interest in investors who do not already have an eye on Zimbabwe. It does not include the type



of compelling information that could make the wait-and-see crowd look closer. For example, it fails to highlight specifics about Zimbabwe's comparative advantages, such as its educated workforce and available expertise, or the lower incidence of crime compared to South Africa, one of its key competitors for investment. In effect, it fails to make an effective argument for investing in Zimbabwe over other more tested investment destinations.

Effective investment promotion requires focus and an implementation plan. ZIA appears to focus on promoting public-private partnership (PPP) opportunities—a sensible approach given the benefits such partnerships could bring not only in terms of investment but also in terms of improvements in infrastructure and service delivery. ZIA has developed a database of PPP opportunities and will reportedly be assigning a promoter for each project. However, promoters will face challenges in attracting private sector partners because of the uncertainty and risk pervading in the investment climate, as well as the government's interest in retaining control of state-owned enterprises (SOEs) and related activities. According to the representatives within the Ministry of Finance, the standing rule for the government in commercializing SOEs will be to retain 51% control. While it was emphasized that there would be exceptions to

this threshold, the government's reluctance to cede control in many aspects of the economy is telling. This will remain an impediment to effectively using privatization to both improve services and raise revenue for the state.

The government will need to be active in analyzing investment opportunities to be able to demonstrate a strong case to investors; it will need to be flexible regarding the forms that PPPs ultimately take; and it will need to ensure that it is able to offer opportunities that appeal to reasonable investors.

The task of building an effective investment promotion scheme should start now, through actively promoting targeted opportunities as well as rebranding Zimbabwe to overcome perceptions of country risk. It will not likely bear fruit, however, until the policies and factors contributing to country risk are removed. ZIA first needs to fulfill its advocacy and advisory role to the Ministry in promoting changes to such policies. Regardless, overcoming country risk is only a first step. Building a case to overcome the competition of other potential investment destinations requires much more.

REGULATORY AUTHORITIES RESPONSIBLE FOR ENFORCING CORPORATE GOVERNANCE

Sound corporate governance is the mechanism by which investors are protected from mismanagement, corruption, and poor business decisions by a company's management. While very limited corporate governance requirements are imposed (but not effectively enforced) by the Company Registry, significant requirements are imposed on those companies listed on the Zimbabwe Stock Exchange (ZSE) and regulated by the Securities Commission, as well as those enterprises within the banking industry that are regulated by the Reserve Bank of Zimbabwe.

ZSE began in 1896, and a governing Stock Exchange Act was passed in 1974 and amended in 1996. As one of the few places where Zimbabwe dollars could purchase items of real value in

KEY IMPLEMENTING INSTITUTIONS

- Zimbabwe Investment Authority
- Zimbabwe Stock Exchange
- Zimbabwe Securities Commission
- Reserve Bank of Zimbabwe

the days of hyperinflation, ZSE was booming up until November 2008 when RBZ shut it down due to the excessive level of speculation it was promoting. Trading opened again in February 2009 with dollarization. ZSE's listing requirements are harmonized with the requirements for the Johannesburg Stock Exchange, including a requirement for audited financial reports twice a year from all listed companies. Once a company is listed, ZSE's corporate governance enforcement is somewhat limited to the financial reporting area. Companies are required to report the extent to which they comply with corporate governance guidelines, but ZSE lacks the capacity to follow up on enforcement in most regards. ZSE is required to approve any transactions involving related parties. ZSE has also played a role in encouraging the appointment of qualified board members by requiring that CVs be shared with ZSE before appointment. Although ZSE cannot prevent an appointment, it provides an opinion on suitability.

Up until 2008, ZSE was a self-regulating body. In response to pressure from new investors, the Securities Act was passed in 2004 creating the Securities Commission. This body did not become operational until 2008, and it has not progressed far to date. This institution is in need of significant technical assistance and capacity building to get going on the right track. Having an effective regulator for the stock exchange will be increasingly important as the economy continues to normalize. As Zimbabwe's economy begins to rapidly expand, regulators will want to ensure that the types of scandals that have plagued many listed companies the world over do not have an opportunity to flourish there.

In 2003-2004, several bank failures, resulting from what RBZ deemed an abuse of depositor

funds, led to a renewed interest in the corporate governance of the banking sector. RBZ responded by instituting very strict corporate governance requirements for banks, and such requirements are strongly enforced. They included separation of ownership from management, publication of financial results through RBZ, and regular rotation of RBZ-approved auditors. In 2004, RBZ also began licensing microfinance institutions (MFIs), imposing corporate governance requirements on them as well. In both sectors, some have argued that this enhanced regulation has strengthened these institutions, while others argue that it has been unnecessarily harsh. Many MFIs have indeed found it challenging to comply, particularly given the lending environment in recent years. It has without a doubt led to greater awareness of the importance of corporate governance, in any event. The finance industry is discussed at greater length in this report's chapter on Getting Credit.

Corporate governance of state-owned enterprises is especially weak in Zimbabwe. This is well recognized, and some donors, including UNDP, are already providing assistance to the Ministry of Finance in developing a manual on corporate governance for public enterprises as well as legislation on public enterprise management. Reform in this area will be key to improving the provision of services by SOEs as well as attracting investment into these areas.

SUPPORTING INSTITUTIONS

Several institutions and other resources in Zimbabwe that are not charged with implementing investment laws and policies play an important role with regard to investment protection, in terms of both lobbying for improvements to the legal and institutional framework affecting investors and providing services and information to the business community. With limited donor intervention and strained government resources, private sector resources have played a particularly important role in providing support, but

KEY SUPPORTING INSTITUTIONS

- Legal and accounting professions
- Zimbabwe National Chamber of Commerce
- American Business Association of Zimbabwe
- Institute of Directors
- Leadership Forum and Quality Corporate Governance Centre

economic hardship and the resulting exodus of much of the country's population has certainly taken a toll on capacity within the private sector.

LEGAL AND ACCOUNTING PROFESSIONS

Representatives of both the public and private sectors describe the professional communities in Zimbabwe as adequately skilled but dwindling in numbers. Professions that were once robust are now weakening at an increasing pace because of the lack of opportunities within the business community and the effect of the economic decline on the country's historically strong educational institutions. Education is discussed further in the Social Dynamics section below.

Even before the rapid decline of the country's economy began a decade ago, highly educated professionals were leaving Zimbabwe to work in more robust markets in South Africa, the United Kingdom, and elsewhere. As the journey toward economic collapse accelerated, so did departures, and an estimated 25% of Zimbabweans now live abroad. As the number of professionals in the country has dwindled, so have the skills and experience of many who have remained behind. Many experienced professionals have left the country, and new professionals have found it difficult to gain experience because of limited economic activity. Accordingly, resources are stretched, and this could prove a challenge for businesses seeking services as the economy starts to expand.

Despite these strains, there is an understanding within these professions of the important role they can play in an economic recovery. Some firms have even engaged government institutions to offer pro bono services to assist with

capacity building. This attitude is promising and particularly useful for a country boasting a well-educated and highly-skilled workforce, even if its numbers have dwindled.

BUSINESS ASSOCIATIONS

Zimbabwe has several influential business associations that represent and advocate for private sector needs and concerns. The Zimbabwe National Chamber of Commerce is purported to be the voice of business but has been associated primarily with trade and commerce over time. Like most business associations, it is funded mainly by member subscriptions with occasional donor assistance, and it has created relationships with other Chambers of Commerce in the region to improve Zimbabwe's business visibility and profile. The Confederation of Zimbabwe Industries and the Zimbabwe Chamber of Mines are two of the higher profile trade associations that have a reputation for strong lobbying. The American Business Association of Zimbabwe has also played a role in the private sector, and the Business Council of Zimbabwe, an apex organization for all business associations, was established in 2008.

Just as in the professional communities, however, a significant portion of the business community has left Zimbabwe in recent years due to economic hardships, and this has resulted in diminished membership (and funding) for these organizations. While some of these organizations have tried to build private sector dialogue on the thorniest issues affecting the private sector today—land reform and indigenisation—external assistance to the private sector in building consensus on alternative approaches to these issues could be of significant value. Despite efforts by certain private sector organizations, constructive dialogue on both issues remains minimal. Additionally, while private sector representatives were adamant that the transitional government should be more responsive to the business community than the old regime, public-private dialogue on policies and legal constraints affecting the private sector is still largely on an ad-hoc basis. A more formal engagement of the private sector is needed.

CORPORATE GOVERNANCE INSTITUTIONS

Zimbabwe's corporate governance culture is discussed further below, but two supporting institutions focused on promoting corporate governance best practices should be noted. The Institute of Directors (IoD) is a global organization based out of London with a mandate to support and set standards for company directors worldwide. The oldest branch of the IoD outside of London is the branch in Harare. The IoD in Harare holds networking functions and luncheons regularly where it highlights corporate governance issues and other relevant topics. It also holds trainings, although undercapitalization as of late has meant less trainings, and it aims to lobby the government on corporate governance policies. The Zimbabwe Leadership Forum and Quality Corporate Governance Centre conducts training and drafts reports on corporate governance issues as a consultancy. It has recently begun an initiative to develop a modern corporate governance code for Zimbabwe and has received support from the World Bank, in coordination with the Ministry of Finance, to hold a summit for stakeholder input in October. These efforts should be coordinated with the activities underway by UNDP to promote better governance within SOEs.

SOCIAL DYNAMICS

POLITICAL WILL

Zimbabwe's business community continues to face a critical challenge of a lack of political will within powerful pockets of the GNU to reform. These forces continue to stall real progress by failing to honor obligations under the Global Political Agreement, stop farm invasions, and end the crackdown on MDC supporters. Efforts to slow the progress of constitutional reform are also evident, as represented by the orchestrated disruption by ZANU-PF supporters of a recent constitutional conference and the failure of ZANU-PF leadership to show up at the event. While real progress has been made in areas of the government under opposition

control, at least some parts of the ZANU-PF leadership have demonstrated a lack of good faith in their approach to the unity government. This situation threatens to stall the country's economic recovery and could result in political backsliding if it interferes with progress toward a new Constitution and elections next year. Beyond lobbying for improvements, little can be done by donors or the private sector to affect this situation, but it is important that all stakeholders understand the impact that this uncertainty has on potential investment.

CORPORATE GOVERNANCE CULTURE

Zimbabwe has a long history of a strong corporate governance culture. While private sector representatives commonly asserted the need for greater shareholder activism and better protection of minority shareholders, awareness of the role of corporate governance in protecting all shareholders is growing, and the corporate governance culture in Zimbabwe is strong compared to many other countries on the continent.

Still, the severe economic challenges of the past few years have taken a heavy toll. Over the past several years, businesses that functioned strictly within the existing legal framework and strongly adhered to corporate governance best practices found it difficult to survive because of the hardships imposed by the harsh regulatory environment. Within the past 24 to 36 months, commercial survival required limited transparency as well as adoption of creative approaches to bookkeeping and basic business practices that were not always above board. Accordingly, economic pressures have led to an erosion of the long history of adherence to sound corporate practices, and those businesses still in operation today were no doubt affected. While the business community feels strongly that medium and larger firms have the ability and motivation to return to sound practices now that conditions have improved, many small businesses that lack access to top accounting and auditing firms and young entrepreneurs who have only been exposed to a dysfunctional system are facing

challenges adapting to an environment where regular, reliable financial reporting is meaningful and long term planning is imperative for success. Even basic corporate governance practices are not well heeded within the SME community, and this part of the private sector is the most vulnerable to continuing in the same manner as it did in the past, when the system did not work. While many businesses in Zimbabwe have been able to adopt corporate practices that are appropriate for today's functional system, others continue to face challenges. In order to draw many businesses, particularly SMEs, back into the formal system with best corporate governance practices in effect, corporate governance training and business development services should be made available.

Hyperinflation caused particular challenges in financial reporting, making it very difficult to value businesses during 2008 and subsequently with the change through dollarization. Financial records kept by companies during this period are essentially meaningless. Medium and large corporations that can afford to hire reputable auditing firms will be assisted by highly qualified professionals and will be well-equipped to deal with such problems. Many small and informal firms, meanwhile, have already found it difficult to adjust to the new system. This is another area where assistance could be highly valued.

CORRUPTION

Corruption at high levels of government remains a serious impediment to investment in Zimbabwe. Land and businesses confiscated by the government—whether through the land reform program or simply by force—are reportedly handed out to politically connected individuals, judges, and military leaders. This is the very type of activity that instills fear in potential investors.

That said, it is important to note that, beyond certain pockets of the governments, corruption is not endemic in Zimbabwean culture or the community. Zimbabwe should be strongly differentiated from other potential investment destinations on the continent, such as Nigeria

and Kenya, for this reason. This is a comparative advantage for Zimbabwe, but one in danger of being lost if the economic situation does not improve. Though not yet widespread, corruption is starting to take root, as jobs, credit, and opportunity are harder to come by. Members of the public complain about theft in businesses and banks mushrooming over the past three to four years. With little money available to pay salaries for civil servants, teachers, and SOE employees, demand for informal fees—by teachers, service providers, and government offices—has grown in the past few years. The recent bump in stipends for civil servants has not reversed this trend. Additionally, some Zimbabweans, primarily young, unemployed men, were able to make big margins on black market transactions during the hyperinflationary period. Some of these individuals are not willing now to engage in the less lucrative work of the formal sector.

Low-level corruption is becoming more common, and this trend will be hard to reverse. However, as an overall cultural problem, it has yet to reach the levels faced by many other developing countries. This is remarkable given the corruption of leadership in the country over many years. However, this growing challenge must be arrested immediately if Zimbabwe hopes to avoid such a fate. To do so, given the current political climate, the private sector needs to send a clear message that corruption will not be tolerated. This is not the message today.

WOMEN

As in other areas of the business environment, a sound legal framework for the protection of women's rights is in place, and this is an important aspect of ensuring that this significant portion of the population can ably engage in the private sector. Despite this foundation, severe economic stress in recent years has led to an erosion of women's rights. In some rural communities, families have reinstated harsh customary law practices to wrest assets from women, with regard to issues such as

inheritance rights for daughters and widows. These challenges are not deeply rooted, and are often not even based in actual customary law, but rather on an opportunistic exploitation of traditional practices. The economic crunch has also deteriorated recent gains in girls' education. As funds became more limited and families had to prioritize spending, girls' education was often sacrificed. The extent of backsliding in such areas is not known, but the direction of the trends is clear and should be watched. Women also remain sidelined politically, not through any deliberate action by political parties, but as a result of entrenched cultural practices. Women are roughly half of the Zimbabwean population and could play a significant role in the country's recovery if given a chance. Accordingly, serious consideration should be given to supporting the promotion of women as investors and entrepreneurs and rebuilding a wide understanding of the importance of their education.

RECOMMENDATIONS

Work with private sector to build consensus on alternatives to the approach of the Indigenisation and Economic Empowerment Act as well as land reform.

While the private sector cannot change damaging policies that currently stand as barriers to investment, they can and should play a role in lobbying the government for suitable alternatives. Some business associations have made efforts to engage the private sector in debate to build consensus on reasonable solutions, but most private sector players seem to prefer to keep their heads down while waiting for change rather than to engage in controversial dialogue. This approach, however, sanctions the government's failure to move forward with remedies to these problematic policies.

Both land reform and indigenisation policies are political hot-button topics, but donors could contribute to resolution of these issues in a less controversial way by supporting private sector efforts to build dialogue and consensus on

these issues. The indigenisation policy may be the topic preferred first, as it is somewhat less controversial than land reform, and it may offer greater opportunity for consensus in the private sector as well. Donors could assist business organizations in conducting analysis of indigenisation and empowerment efforts in other countries to determine what approaches have been effective and what lessons might be learned. This information could then be incorporated into stakeholder discussions on available options and ultimately a proposal for amendments or alternate legislation.

Analysis is needed to highlight both the damaging effects of retaining an equity ownership focus for the indigenisation and empowerment efforts as well as the minimal benefits this is likely to yield. Ample evidence exists from empowerment efforts taken by numerous countries in Africa and across the globe, and the lessons posed by these experiences, would strengthen the case altering the current approach. As one example, South Africa's own attempt to impose a 51% indigenous ownership rule in the mining industry had disastrous effects on the stock exchange overnight. Following this and other unsuccessful attempts to focus on ownership primarily, South Africa has altered its approach dramatically. In the latest legislation, the Broad-Based Black Economic Empowerment Act (2003) included the minimum ownership requirement (at 26%) but also emphasized other approaches focused on human resource and skills development, employment equity in the workplace, preferential procurement, and social and economic investment—all captured in a "BEE scorecard" revealing a business's BEE status. Through this system, the minimum ownership requirement can actually be overcome by strong scores in other empowerment areas. Several other related laws have been put in place over the past decade to spread economic opportunities to the broader population.

Nonetheless, in all African countries that have taken on indigenisation efforts, including Nigeria,

Kenya, and even in South Africa, satisfaction with the outcomes of indigenisation efforts has been very low. The impression in most countries where similar efforts have been undertaken is that such policies have not succeeded in overcoming social disparities. Rather they are perceived to have enriched only a small and well-connected elite and entrenched cronyism. Beyond Africa, other countries, such as Brazil and Malaysia, have imposed indigenous empowerment targets with very modest success. Many lessons can be learned from these experiences, and it is evident that the current legislation does not take such lessons into account.

The American Business Association of Zimbabwe has already begun engaging stakeholders in dialogue on this issue. A report on its recent stakeholder forum, *Policy Dialogue Forum on Indigenisation and the Capital Needs of the Private Sector*, found consensus among private sector representatives present that the focus of empowerment policies should be on empowerment in the broader sense. The report indicated that empowerment efforts should include skills training, equitable employment practices, provision of goods and services to communities, and procuring from local communities where possible. Emphasis was placed on what the stakeholders deemed “responsible investment” rather than ownership quotas. This forum and report provided a strong introduction to organized dialogue on the topic, but translating this general dialogue into research, analysis, and additional targeted stakeholder forums will be challenging. Nonetheless, an informed and detailed proposal outlining an alternative, holistic approach to empowerment could propel the debate forward and contribute to a workable solution.

Amend the Investment Authority Act to remove discretion and uncertainty in the investment certification process.

For improved investment facilitation, the Investment Authority Act should be revised to explicitly state the processes for obtaining

an investment certificate as well as minimum thresholds for qualifying as an investment under this law—for both domestic and foreign investments. Key to such legal amendments will be removal of the significant discretion and lack of transparency regarding issuance of investment certificates, as well as specific criteria for investment certification or denial. This should include a simple appeals process for denied or restricted applications and should require that any denials or restrictions be explained in writing. The one year limitation on investment certificates should also be removed or extended to multiple year certification. Further, the business community should be educated on the processes involved in applying for a certificate, their right to knowledge regarding reasons for denial, and the processes for appeal.

Build the capacity of the Zimbabwe Investment Authority to facilitate and promote investment.

Zimbabwe needs foreign currency and available capital if its economy is to rebound, and this requires a dramatic increase in investment. With years of economic and political instability not yet fully resolved, country risk remains a strong disincentive to potential investors, and many investors have already left. Once major political issues, such as the controversial land and indigenization policies, are resolved, Zimbabwe’s economic recovery will require effective and targeted investment promotion, including a rebranding of the country abroad. The government will need to ensure that potential investors who are considering Zimbabwe as a destination are not discouraged by unnecessary barriers in the investment process. Improving the ZIA’s investment promotion and facilitation capabilities will not likely have much impact until the investment climate itself is improved, but a strong investment authority could be a very effective tool once major impediments to investment are removed.

The Zimbabwe Investment Authority should be the government’s primary resource for

addressing investment needs and a useful resource for the private sector. Both its governing statute and regulations provide very limited detail on its duties, leaving the institution with a broad mandate but little guidance on how to execute it, and leaving the private sector with little information on what to expect. The legislation makes clear that the ZIA is responsible for licensing foreign investors and facilitating and promoting investment in the country, but the ZIA is not yet fulfilling any of these duties adequately to contribute to the country's economic turnaround. This is in part due to a lack of capacity, in terms of staff numbers and skills, although it is likely that the political nature of foreign investment is also at the root of the ineffectiveness of investment facilitation in the country. In any event, capacity building for this young institution should pave the way for improved investors services and investment promotion.

The ZIA needs assistance in establishing an effective one-stop shop for investors. The institution is reportedly working on developing these capabilities, but with limited resources, it has not made much headway. The ZIA purports to provide services whereby its staff undertake the legwork of physically delivering applications to the necessary government agencies and fast-tracking the application processes by delivery to appropriate individuals, but private sector representatives consulted in this diagnostic were neither aware of such services, nor did they believe they existed. The consensus within the private sector appeared to be that the ZIA was an obstacle to investment rather than a facilitator. Working with the ZIA to build an effective one-stop shop could change this perception and significantly ease the investment process.

The ZIA also needs assistance with its investment promotion strategy. As discussed above, the Zimbabwe Investor Prospectus is a start, but much more must be done to draw investors to a country with intense lingering country risk. Technical assistance could be provided to aid the ZIA in developing a strategy to promote

investment opportunities to potential investors in specific sectors. By providing expertise on the information investors need, how to find relevant information, and effective ways of communicating that information to promote specific opportunities, donors could provide short term assistance. Such assistance would allow the ZIA staff to apply a consistent approach across its potential investment portfolio. FIAS's online FDI Promotion Center offers a number of tools that could help the ZIA identify gaps and weaknesses in its investment promotion strategy.

For interventions limited to the private sector, donors could work with business associations to fill in some of the gaps in information provided by the ZIA. For example, despite its efforts, the ZIA has not yet provided an exhaustive list of processes, procedures, and forms that potential investors must complete to begin an investment project in Zimbabwe. The ZIA has compiled information on certain processes, but this is incomplete, and does not cover key issues such as property registration. Information on processes other than the investment license itself is not readily available. Donors could work with business associations to provide information to investors and potential investors—whether online or through manual distribution—on the full scope of processes that investors must navigate.

Build regulatory capacity of the Zimbabwe Securities Commission.

The Zimbabwe Securities Commission only began operations in 2008, and it is a sorely under-resourced institution. The Commission is expected to be fully self-funded through market transactions. Such an approach would enable the it to retain a high level of independence, but with minimal market activity occurring due to the struggling economy, the Commission has little funding to get its activities off the ground. Currently, it can only afford a skeleton staff. While other securities commissions in the region have been helpful in providing guidance, the Commission lacks the resources to build an effective regulatory body for the Zimbabwe

Stock Exchange. As the economy continues to stabilize and activities on the Exchange increase, lack of effective regulation could allow for abuse and corruption.

Donor assistance for enforcing reporting and auditing requirements, reviewing applications for listing, and regulating relevant financial professionals could be timely and useful. Donors could also assist the Commission in formulating best practices for performing its regulatory functions and developing its implementing regulations. Communications with the business community and the public regarding changes to the regulatory regime will be needed as well. In starting from scratch, the Commission has an opportunity to implement a sound regulatory system, if it can access the resources to do so.

Build SME capacity through corporate governance training and promotion.

As discussed above, the corporate governance culture in Zimbabwe is relatively strong, but destabilizing economic policies in recent years have eroded that culture somewhat. Most larger businesses are reportedly returning to good corporate governance practices now that the dysfunctional economic policies of recent years have been removed. However, most SMEs lack access to resources, such as experienced auditing firms and parent companies that impose international best practices, that have helped many larger businesses get back on track. Even submitting financial statements for auditing or tax purposes over the past year has been a monumental task when one considers the effects of hyperinflation and the switch to the multi-currency system. Young entrepreneurs are particularly vulnerable during this transition; their experience may be limited to times when normal business practices, such as long term planning and straightforward bookkeeping, simply were not possible.

For these reasons, assistance to SMEs on corporate governance practices would be valuable. Considering the government's desire to diversify the economy and enhance opportunities

for local empowerment, a focus on SME development is important. Strong corporate governance will be a key part of enabling small businesses to attract investors and remain effective and profitable as they grow.

Several local organizations have experience in corporate governance training and working with SMEs. The Institute of Directors has provided training and other educational activities for many years, and it has a long history as the local custodian of corporate governance. The Leadership Forum and Quality Corporate Governance Centre was recently established as a local consultancy on the topic. It has engaged in corporate governance trainings in the region and is currently spearheading the effort to develop a new corporate governance code for Zimbabwe. Local offices of international accounting firms, such as Ernst & Young and PricewaterhouseCoopers, are also available to provide such services.

A donor could provide the support necessary to link available corporate governance training expertise with the appropriate SME organization. Within the government, the Ministry of SME Development is interested in providing corporate governance training but lacks the necessary resources. The Small Enterprise Development Corporation (SEDCO), a state enterprise mandated to provide financial assistance, training, and business extension services, has experience providing trainings to SMEs and may also be interested in promoting corporate governance if resources were available to do so. Outside the government, the Zimbabwe National Association of SMEs would likely provide a good base for such trainings, but as it is a new organization (begun in 2006), the extent of its capacity and reach into the SME community is unclear.

Experts could develop a training module on best practices in corporate governance, possibly incorporating basic financial practices, that is tailored for SMEs, and a chosen SME organization could assist in targeting the right audience for trainings and distribution of materials.



DEALING WITH LICENSES

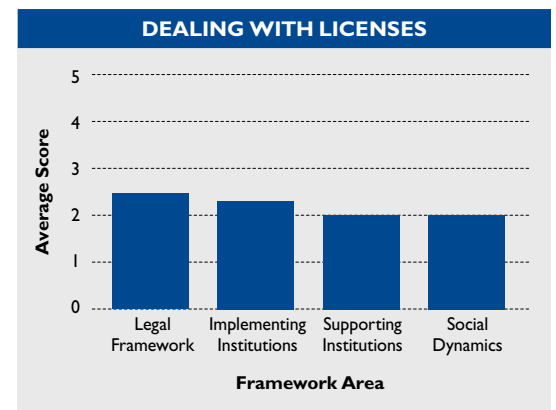
After the estimated three months required to start a business in Zimbabwe, an entrepreneur that needs to construct or renovate premises faces the daunting task of obtaining the required licenses and permits. This is an extraordinarily complicated area of regulation in Zimbabwe and will be a major roadblock to economic growth for many years unless reforms are initiated immediately. This chapter focuses primarily on construction permits, as the astonishing number of days and cost noted in the World Bank's *Doing Business Report 2009* demanded close scrutiny.

DEALING WITH LICENSES (CONSTRUCTION PERMITS)	
<i>Doing Business</i> Ranking 2009	174
<i>Doing Business</i> Ranking 2008	174
Procedures (number)	19
Duration (days)	1,426
Cost (% gross national income per capita)	16,368.8

One could surmise by the overall respectable quality of buildings in downtown Harare compared to other African capitals that at one time construction licenses, permits, and standards served a good purpose when the system was implemented properly and in a timely manner. Today the pieces of the system are woefully outdated and no longer serve public and private sector objectives. From national policy to village rules, the entire system should be reviewed and reformed. On the positive side, many public and private sector actors recognize the urgency of the situation and are willing to dedicate themselves to the task. Political will and priority setting at the top of government seems to be a missing, but necessary, ingredient.

LEGAL FRAMEWORK

Several decades ago, the legal framework for obtaining construction permits operated reasonably well. In immediate post-independence Zimbabwe, the country's urban management policies were revised to address deficiencies. What began as an earnest attempt at developing the country through proper planning, however,



has evolved into a system of obsolete local plans used by local government to “control” business.

REGIONAL, TOWN, AND COUNTRY PLANNING ACT

The Regional, Town, and Country Planning Act is the main law that controls the planning and permitting system. It underwent its last full review in 1996 and was due for another review in 2006, in accordance with practices in Zimbabwe. Unfortunately, lack of human resources (with respect to both quantity and quality) prevented the review and revision from taking place. The interpretation of this law, and of the Model Building By-Laws, by local authorities is cited as a primary problem by most business people and business associations. Although the Ministry of Local Government creates statutes that explain the Act, it is local authorities that create the by-laws that operationalize it at the local level. Due to broad interpretation,

permitting procedures and fees vary widely across the country. Often, fees are used to generate income rather than to simply cover administrative costs. This is contrary to best practice and significantly adds to the cost of doing business in Zimbabwe.

URBAN COUNCILS ACT

The Urban Councils Act provides for the establishment and administration of municipalities and towns by local boards and municipal and town councils. It also outlines in great detail the administration of local government and its roles and responsibilities for resource management within its jurisdiction. The law goes so far as to stipulate the ability of the town council to tax dogs “of the age of six months or more.” More importantly it provides for the administration of land, water, sewer, electricity and the licenses, permits, and fees related to these services. Any review of the system of land management would necessarily incorporate an examination of the functions conferred on local government through the Act. A review could become quite sensitive in nature due to claimed past abuses by both the national and local governments.

MODEL BUILDING BY-LAWS AND LOCAL BY-LAWS

The model by-laws serve as a guide for local authorities for the creation of processes and fee structures for construction. Unfortunately, even when the model by-laws set reasonable minimum timeframes for approvals and fees for services, local authorities do not seem to adhere to the model in practice, due to inability or willful disregard. As noted in the *Doing Business Report*, the model by-laws stipulate that

approval for site development by local authorities must be given within 30 days. This rarely occurs, however, and approval may take a year or more, depending on the complexity of the site development plan.

Analyses of key laws have been undertaken by donors and local entities. For instance, in 2008, UN-Habitat assessed the regulatory framework as it pertains to the construction of low-cost housing. Many of the recommendations pertain to the broader regulatory regime for construction and should be considered by government.

As in the system of registration, the legal framework for obtaining necessary licenses and permits for a construction is not the worst in the world, as one might assume from the *Doing Business* indicator. In fact, in examining the “BuildCo” example in the *Doing Business Report* with several private architects and engineers, they expressed confidence that, without resorting to bribes, the necessary permits could be obtained in nine to 18 months. That said, the overall consensus was that national and local government ability to administer the system has significantly diminished with no prospect for that capacity to return in the near future. This hurdle presents an opportunity for Zimbabwe to completely reform its system so that it is modern and efficient.

IMPLEMENTING INSTITUTIONS

Implementing institutions across Zimbabwe at the national and local levels suffer from low capacity and limited resources to carry out their functions. This is an overarching problem that will have to be dealt with in order to improve the business environment and will take a concerted effort by government and donors to alleviate.

LOCAL PLANNING AUTHORITY

The Local Planning Authority is the first entity that one must interact with in order to obtain the necessary approvals for site development before construction can begin. The local

KEY LAWS

- Regional, Town and Country Planning Act (1976, amended 1998)
- Urban Councils Act (1995, amended 2002)
- Model Building By-Laws
- Local Authority Building By-Laws

KEY IMPLEMENTING INSTITUTIONS

- Local Planning Authority
- City/Local Councils
- Building Inspectorate
- Zimbabwe Electricity Supply Authority (ZESA)

authority is often cited as one of the primary bottlenecks in the approval process. Most entrepreneurs note that, due to emigration and the inability to retain staff, local planning authorities are not able to fulfill their functions properly. This is a crucial issue as town planners have responsibility for preparing the development plan, strategic plan, and master (long term) plan for the town/municipality. These documents are an important part of economic development. Due to the lack of experienced town planners, these documents are now being prepared by engineers, architects, and surveyors. As a result, the vision for economic development and growth is missing from most documents. In the words of one entrepreneur, “They are more focused on controlling development, not helping to expand development.”

Notwithstanding the abovementioned deficiencies, many government officials noted that businesses, especially SMEs, did not complete their forms properly and required officials to provide guidance that would normally be paid for by the business before submitting an application. On both sides of the equation, there are problems.

LOCAL COUNCIL

After the site development plan has been approved, a business must obtain approval of the building plan by the local council. This is one of the most daunting tasks in the permitting process. It is here that more than ten separate departments must approve the building plan, after which the chief of the Building Inspectorate must make a final inspection and approval. The application must be circulated from one department to the next by hand. If a department has a question or issue, it must contact the business directly to resolve the issue.

This is an inefficient process, made worse by the low capacity of government. It also exposes the business to a multitude of government officials that can request extra fees for an approval or speedier service. Depending on the local council, and individual departments, this process can take over a year, or sometimes less than 6 months. Since the responsibility for approval is so decentralized, a multitude of variations on procedures, costs, and time to complete exist across the country. Most entities involved in this process suffer from the same ailments as the government as a whole: low capacity, outdated systems and procedures, and growing corruption. In many countries, a one-stop shop approach to permit issuance alleviates this problem. Including business registration in such a process would also provide near-term administrative efficiencies while longer term legal and regulatory reform is undertaken.

BUILDING INSPECTORATE

The ability of inspectorates to fulfill their functions has been severely crippled by a dearth of human resources. The inspectors must physically visit the construction site to confirm that requirements have been met so that the builder can move to the next stage of construction. Not only are there not enough inspectors to visit sites, but they are often not able to pay for the transportation to the sites. Builders are more than willing to pick up the inspectors and drive them to the building site, but this practice often diminishes the independence of the inspector and opens the door to informality in a process that is designed to protect the public from unsafe construction. In many instances, physical inspections are not undertaken and approvals are simply rubberstamped. In the long run, this can pose a serious problem for public safety as standards and codes are ignored.

ZIMBABWE ELECTRICITY SUPPLY AUTHORITY (ZESA)

While the building inspectorate was singled out by many, there was no shortage of businesspeople that ranked ZESA as a major impediment



in the permitting process. By law, ZESA must provide connections from the electricity supply source to a construction site. This includes transformers, poles, meters, and other equipment. In the past, this was a relatively efficient operation and complaints were rare. Currently, ZESA barely functions, and businesses frequently purchase these materials on their own either locally or from South Africa, adding to the time and cost of doing business.

SUPPORTING INSTITUTIONS

A number of thoughtful and motivated individuals are employed by local institutions that support business development and growth. Some entities operate reasonably well with limited resources but others, mainly governmental, lack the capacity to fulfill their mandates.

ZIMBABWE INSTITUTE OF REGIONAL AND URBAN PLANNERS

The Zimbabwe Institute of Regional and Urban Planners is a member-based educational institution that is attempting to address capacity issues of local planners. The Institute has existed since 1980, and its goal is to advance town and urban planning for the benefit of the public. It has more than 200 town planners (governmental and non-governmental) as members, 70% in

KEY SUPPORTING INSTITUTIONS

- Ministry of Local Government, Public Works, and Urban Development
- Training Institutions
- Private Business Associations

Harare, 10% in the provinces, and 20% pursuing work outside the country. According to the Institute, most of the best qualified town planners left Zimbabwe during the period of economic collapse, and less qualified junior planners have replaced them. Unfortunately, the Institute is administered by only one person, so its effectiveness is very limited. That said, it has a great deal of support within government and recently organized a conference, “Networking for Implementation of Development Plans.” In the long run, it hopes to work with the UK’s Royal Town Planning Institute to establish a certification program for town planners to increase quality and effectiveness of town plans.

MINISTRY OF LOCAL GOVERNMENT, PUBLIC WORKS, AND URBAN DEVELOPMENT

A business wishing to obtain a construction permit does not have to interact directly with the Ministry. However, the Ministry has within its authority the ability to affect the entire system of permitting in the country since it sets national standards and is the author and steward of the Model Building By-laws under the Regional, Town and Country Planning Act. The Ministry has overall responsibility for town planning statutory instruments that municipalities use to create by-laws, as well as establishment of minimum fees. The Ministry recognizes that government is not able to administer the current system and is seeking assistance in reforming laws and regulations. It is possible for the Ministry to make progress on its own, as its leadership is aware of the issues. For instance, the Ministry understands that Zimbabwe’s use of the “silence is denial” principle in the approval process is counter to the global best practice of “silence is consent,”

and the Ministry plans to address the issue in the revisions to the approval process. Due to shortages of staff and expertise, however, the Ministry requires assistance on the methodology of review, analysis, incorporation of other best practices, and automation. In addition, standards that are set by the Ministry are often too high for what can be practically implemented in Zimbabwe and are a cause of social tension with regard to the availability of housing (for example, standards in low-density areas were often cited as being too high).

THE PRIVATE SECTOR

The collapse of the economy has gutted many traditionally strong sectors. The situation is compounded by the inability of government to administer the system of rules to which businesses must adhere. The construction and manufacturing sectors (especially as pertains to construction materials) have suffered greatly. Improving the permitting process would be beneficial for their growth, which will be critical if Zimbabwe is to build and reconstruct the once good infrastructure required for economic progress.

Construction Industry Federation of Zimbabwe, Confederation of Zimbabwe Industries, Harare Chamber of Commerce, and other business associations seem to be operating in good faith as they attempt to work with government to improve processes and procedures. While at this time they are not acting as critical supporting institutions for construction permits, they could play a significant role in reforming the system.

SOCIAL DYNAMICS

What is striking about the social dynamics in Zimbabwe is the overall openness of the public and private sector to engaging in dialogue on most topics to improve the situation for the country. This phenomenon applies not only broadly to the regulatory environment, but also to the way that businesspeople and government officials interact during the execution of specific procedures. For instance, often government

officials that are involved in the building plan approval process will assist entrepreneurs in correcting their plans on the spot rather than formally rejecting plans and returning them to the applicant. This spirit of cooperation is important to nurture during the implementation of any process to improve the procedures for permitting.

More often than not, entrepreneurs want to follow the regulations and understand that government is doing its job of protecting society by creating and administering a system of rules. In most cases, the private sector opinion of the government's openness with regard to rulemaking was quite positive. Broadly, complaints were leveled concerning the lack of information on regulations and procedures, but the consensus was that the government was not maliciously withholding information; rather, it was simply incapable of providing it.

CORRUPTION

Unfortunately, this positive dynamic may be showing the first signs of fissure. There is a small but growing sense of exasperation that permeates discussions with businessmen and government employees. This is especially true when discussing the issue of corruption in permitting procedures. There is a reluctance to acknowledge that bribery is becoming routine, and this reluctance seems to result from a sense of pride in the country rather than approval of its existence. At the same time, with government monthly wages hovering around \$140 per month and the average monthly cost of living in Harare estimated to be between \$400 and \$600, government and private sector realize that supplemental income is necessary. Government employees now routinely moonlight during or after work hours, but many are reportedly resorting to extracting facilitation fees for services. One entrepreneur described the situation in this way: "In the past, if there was a bribe expected, it was usually a 30-minute conversation before the government employee got around to hinting about the bribe. Today, it

happens within the first 60 seconds.” This growing problem affects the business environment increasingly across many areas.

LAND, HOUSING, CLASS, AND CONFLICT

Reform of land development and the system of construction (standards, codes, licenses, and permits) has the potential to spark social conflict. Since before independence, land allocation, zoning, and housing have been issues with which Zimbabweans have grappled, touching directly on socio-economic disparities as well as issues of race. Issues such as land reform and indigenisation are already drawing controversy, and this is another area that could become divisive if not handled delicately. Obviously, addressing issues related to land allocation, planning, and zoning could be contentious, but even topics that are as seemingly as straightforward as building standards and codes (everyone wants a home of high standards) may cause friction between groups, as there is a natural tension between stringent standards, which are costly for builders to adhere to, and the desire of the poor to have access to affordable housing.

Fortunately, because of the history of cooperation and general desire of the public and private sectors to collaborate to make Zimbabwe once more into a regional powerhouse, there is a window of opportunity to achieve real progress in the system of regulating business.

RECOMMENDATIONS

Institute the “silence is consent” principle in relation to permitting applications, which turns an authorization request into a notification, with a time limit for government to respond with an objection.

Currently, Zimbabwe employs a “silence is rejection” principle with regard to permitting, whereby if the entrepreneur has not heard from government about his or her permit request within the period specified by law, the assumption must be that the request is denied. In

today’s Zimbabwe, it is usually not a denial, but simply an inability of the government to respond in time. Laws, regulations, and practices should be modified such that, after a reasonable period (90–120 days), silence from the licensing authority may be interpreted as permission to go forward.

Build construction licensing reform into the Regulatory Reform Program recommended in the Starting a Business chapter. As part of this process, create an inventory of existing licenses and regulations, conduct a review, and eliminate those that are unnecessary.

Reform of registration regulations should be the first focus of a Regulatory Reform Program, as it is a relatively uncontroversial issue that can be used to gain proponents of the processes used, which would eventually be incorporated into the law. In crafting this second phase of the program, particular attention should be paid to the possibility of incorporating standards, inspections, and licenses related to construction. As part of this process, an inventory of all existing licenses and regulations should be created, reviewing and eliminating those which are unnecessary. Focal points for this phase of a Regulatory Reform Program should be:

- Process reengineering for construction permits and integration of new procedures into the one-stop-shop facility for registration.
- Introduce the guillotine strategy as a tool for quickly and efficiently clearing specific sectors of regulations that are illegal or business “unfriendly.” If this tool were employed it would be best to begin with registration as a “quick win” in a relatively simple area would allow momentum to build in government and the private sector. It is important to note that the use of this tool alone will not address the regulatory burden unless it is accompanied by a broader systemic regulatory reform program.

Improve availability of information on the permitting process.

As in the business registration process, there is a dearth of accessible information available on the exact procedures required for obtaining all necessary approvals needed to construct a building in Zimbabwe. What makes matters worse is the fact that the system is entirely decentralized, so procedures and fees vary among and within provinces. Ensuring that the public has all the required information is therefore a two-step process. First, each local authority should produce information packets that clearly state the procedures, the applicable by-laws, and correct forms, both in hard copy and electronically. The packets should be provided to the public at one location

where interaction with a government official is not required. Over the long term, this could be the location of the one-stop shop. This initiative would have two benefits; it would reacquaint local governments with what is required from them by law and would provide the public with accurate and accessible information. At the same time, the public should be made aware of their rights under the law and remedies available to them should those rights be violated. Initiatives underway by entities such as the Zimbabwe Chamber of Informal Economy Associations should be examined. This recommendation is immediate in nature and can be configured to begin first with the private sector or with both the public and private sector simultaneously.



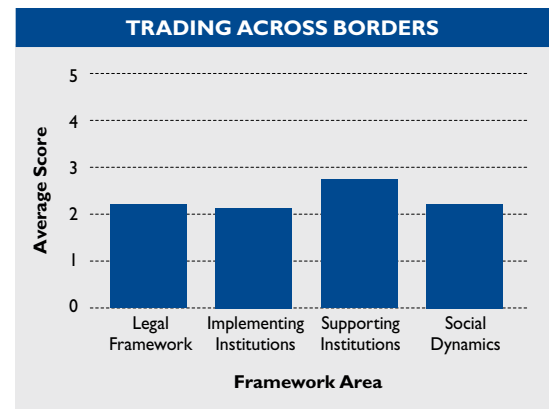
TRADING ACROSS BORDERS

Zimbabwe is a country of both challenges and opportunities. There is lingering damage from Zimbabwe's recent political and economic history, but the current period of transition has also brought with it some optimism. This dichotomy is also true with regard to Zimbabwe's trade environment. The country is rich in resources, including minerals such as gold and fertile land for cash crops such as tobacco, and it is centrally located in the region, at the crossroads of South Africa, Zambia, and Mozambique. At the same time, Zimbabwe is a land-locked country, so access to the sea is available only via rail and truck routes through neighboring countries, and its road and rail infrastructure is deteriorating due to lack of funding.

TRADING ACROSS BORDERS			
<i>Doing Business</i> Ranking 2009			162
<i>Doing Business</i> Ranking 2008			158
Indicator	Zimbabwe	Region	OECD
Documents for Export (number)	7	7.8	4.5
Time for Export (days)	53	34.7	10.7
Cost to export (US \$ per container)	2,678	1,878	1,069
Documents for import (number)	9	8.8	5.1
Time for import (days)	73	41.1	11.4
Cost to import (US \$ per container)	3,999	2,279	1,133

This chapter addresses both trade policy and trade facilitation in Zimbabwe. Trade policy refers to the international, regional, and national policies applicable to Zimbabwean trade—specifically, what can come in and out of the country, at what cost, and under what conditions. Trade facilitation refers to the country's international trade procedures—what steps and costs an importer or exporter must undertake in order to bring his or her goods across the border. Trade facilitation is a major factor in expanding imports and exports of any country because it can reduce time and costs for traders.

Zimbabwe's principal export commodities include tobacco, gold, ferroalloys, sugar, maize,



iron and steel nickel, cotton, textiles, and coffee. Zimbabwe's key trading partners include South Africa, Botswana, China, the United Kingdom, Germany, the United States, the Netherlands, Japan, and Italy. Merchandise trade data was difficult to obtain.

Historically, the agriculture sector has been and continues to be the backbone of Zimbabwe's economy. The agricultural sector provides the raw materials required in other major sectors of the economy, such as manufacturing. According to available data, agriculture contributes approximately 18.5% of GDP and about 23% of formal employment. The major agricultural export products are tobacco, horticultural products, cotton, sugar, tea, coffee, and beef.

As a result of Zimbabwe's struggling economy in recent years, imports pose a challenge to reinvigorating the country's manufacturing sector. Low-priced imports from neighboring countries have displaced Zimbabwean products, while production in Zimbabwe has dropped to 5–10% of capacity. During the hyperinflationary period, stores had no locally produced products on their shelves. As a result, imported goods were quickly able to penetrate the local market, further inhibiting the production of Zimbabwean products.

LEGAL FRAMEWORK

INTERNATIONAL AND REGIONAL TRADE AGREEMENTS

Zimbabwe has been a member of the General Agreement on Tariffs and Trade (GATT) since 1948 when its predecessor, Rhodesia, joined. In 1995, when GATT became the World Trade Organization (WTO), pursuant to the Uruguay Round Agreement, Zimbabwe became a full participant in WTO activities and agreements.

Zimbabwe is a member of the Common Market for Eastern and Southern Africa (COMESA) and benefits from its initiatives to increase trade among its members. In accordance with the COMESA Common External Tariff (CET), Zimbabwe's customs tariff schedules consist of 4 bands: 5% for raw materials and capital goods; 10% for intermediate products; 20% for industrial products and finished goods; and 40% for luxury goods. Zimbabwe uses the international standard for tariff classification, the Harmonized System (HS) 2007, and has an 8-digit structure for its tariff.

Zimbabwe is a member of the Southern African Development Community (SADC). Other



SADC members include Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, and Zambia. As implementation of SADC's trade improvement efforts advance, Zimbabwe should benefit from increased trading opportunities and better trade facilitation within the region. Zimbabwe is also a member of the International Monetary Fund, the World Bank, the Preferential Trade Area, and is a signatory to the Lome II Convention grouping European Union countries with ACP countries.

Implementation of the SADC Free Trade Agreement (FTA) began in 2000 following the signing of the SADC Trade Protocol in 1996. Liberalization of tariffs has taken place at different rates. In general, developed countries have reduced tariffs at a faster rate. South Africa, Botswana and Namibia removed most tariffs in 2000. Middle income countries, such as Mauritius, have gradually reduced their tariffs each year between 2000 and 2008. For least developed countries, such as Mozambique and Zambia, tariff reductions have been introduced during 2007-2008. Angola and the Democratic Republic of Congo will be joining the FTA in the near future. By August 2008, producers and consumers will pay no import tariffs on an

KEY LAWS

- Customs and Excise Act (1955) as amended
- Customs Tariff Law
- Competition (Anti-dumping and Countervailing Duty) Regulations (2002)
- Competition (Safeguards and Investigations) Regulations (2006)

estimated 85% of all trade in Community goods across the initial 12 countries.

The SADC regional integration program includes the establishment of the FTA in 2008, a Customs Union by 2010, a Common Market by 2015, a monetary Union by 2016, and a single currency by 2018.

The SADC FTA is either already facilitating the movement of goods or will be doing so shortly through the following initiatives:

- Harmonizing customs procedures and customs classifications
- Increasing customs cooperation
- Reducing costs by introducing a single, standardized document (Single Administrative Document) for customs clearance throughout the region
- Establishing “one-stop shop” border posts with a goal of cutting the time spent at borders by half. Currently, three such posts are being piloted: at the border of Mozambique and Zimbabwe (Forbes–Machipanda), the border of South Africa and Mozambique (Lebombo Ressano Garcia); and the border of Zimbabwe and Zambia (Chirundu)
- Making transshipment easier by enabling a single bond to be used when transporting goods across several borders within the Community.

CUSTOMS AND EXCISE ACT

The Customs and Excise Act was enacted in 1955 and has been amended numerous times over the years. Importers and the business community uniformly suggested that the Customs and Excise Act be redrafted into an updated, modern and comprehensive law. Although the law covers the basic principles of customs administration, many significant international advances have been made within the past 15 years, such as incorporation of the WTO principles and agreements set forth in the 1995 Uruguay Round. Under GATT, countries could pick and choose which agreements they would apply. However, when GATT changed

to the WTO, it became mandatory that member countries apply all WTO Agreements and principles. Zimbabwe appears to have incorporated many of the WTO Agreements into its legislation, either as primary laws approved by Parliament or as secondary statutes issued by the Prime Minister or ministers.

The Revised Kyoto Convention (International Convention on the Simplification and Harmonization of Customs Procedures), which became effective in 2006, promotes trade facilitation and effective controls through its legal provisions. The governing principles of the Revised Convention include transparency and predictability of customs actions; standardization and simplification of the goods declaration and supporting documentation; maximum use of information technology; minimum necessary customs control to ensure compliance with regulations; use of risk management and audit based controls; coordination with other border agencies; and partnership with the trading community. These principles need to be incorporated into the Customs and Excise Act or issued as a Ministerial Decree. The Revised Convention also contains new, obligatory rules which all contracting parties must accept without qualifications. Zimbabwe is a party to the Revised Convention, but the country’s compliance has been woefully inadequate.

TRADE REMEDIES

Trade remedy laws—addressing anti-dumping, subsidies, countervailing measures, and safeguard measures—were incorporated into domestic legislation and are administered by the Competition and Tariffs Commission. The Trade Remedies Department consists of a director and staff of five economists. This team is well trained but has dealt with only three cases since 2002. Zimbabwe’s trade remedies track the WTO Agreements and appear to be sound. Zimbabwe’s industrial sector, like those in many developing countries, does not fully understand trade remedy principles, especially those applying to anti-dumping. Zimbabwean manufacturers

believe that if an imported product has a landed cost lower than their marginal cost of production, or a lower price than their product's sale price in the Zimbabwe market, the import must have been "dumped." This is an erroneous view: dumping occurs only when a product is sold outside the producing country's market at a price lower than what the producer is willing to accept in its domestic market. Currently in Zimbabwe, the problem is largely not one of dumping, but an issue of local producers being unable to make products at competitive prices.

CUSTOMS VALUATION AND TARIFFS

Although the WTO Agreement on Customs Valuation has been implemented into the Zimbabwe Revenue Authority (ZIMRA) regulations and procedures, the prohibited methods for customs valuation in the purported Fallback Method have not been incorporated into the law and regulations. This defect should be corrected to bring Zimbabwe's administration of the Customs Valuation Agreement into conformity with the agreement.

The Customs Tariff Law of Zimbabwe is an 8-digit tariff based on an international standard, the Harmonized Commodity Description and Coding System, generally referred to as "Harmonized System" or simply "HS." HS is a multipurpose international product nomenclature developed by the World Customs Organization (WCO). The EU plus 139 countries are signatories of the HS Convention and use the HS as the basis of their Customs Tariff. Zimbabwe has implemented the updated 2007 version of the HS.

For declaration processing, ZIMRA uses ASYCUDA (the UN system). The central server is in the ZIMRA headquarters. The Harare Airport Customs Post uses ASYCUDA World (the most recent version of ASYCUDA), whereas border customs posts and in-country posts use ASYCUDA++. Use of both ASYCUDA World and ASYCUDA++ within ZIMRA is not problematic as the two are compatible systems. ASYCUDA++ is an updated

version incorporating modules that have better data collection features. However, ZIMRA does have plans to ultimately move toward a single ASYCUDA system (ASYCUDA++) as time and resources permit.

IMPLEMENTING INSTITUTIONS

COMPETITION AND TARIFFS COMMISSION

The Competition and Tariffs Commission is divided into two functional areas. The Competition Department is discussed in this report's chapter on Starting a Business. The Tariff Department is charged, among other functions, with enforcing and implementing policies regarding trade remedies (anti-dumping, subsidies, and countervailing measures and safeguard measures). Staff in the Trade Remedies Unit appear to be knowledgeable and competent. However, as mentioned above, they have seen only three trade remedy cases since 2002.

MINISTRY OF INDUSTRY AND TRADE AND MINISTRY OF REGIONAL INTEGRATION

The Ministry of Industry and Trade is responsible for general trade policy formulation and implementation, in collaboration with other ministries. The Ministry of Regional Integration was recently formed and is anxious to become involved in specific issues of regional integration, which are typically the country's most pressing trade areas.

The Regional Integration staff consists of 21 persons across two different ministries—The Ministry of Regional Integration and the Ministry of Industry and Trade. The Regional Integration

KEY IMPLEMENTING INSTITUTIONS

- Competition and Tariffs Commission
- Ministry of Industry and Trade
- Ministry of Regional Integration
- Zimbabwe Revenue Authority (ZIMRA)

Unit recently moved to a new building and was not fully functioning at the time of this diagnostic. The main function of the Ministry of Regional Integration is to interface with SADC and COMESA. Zimbabwe is in negotiations currently with COMESA on a Common External Tariff (CET), a Free Trade Area, and a Customs Union. Although progress has been made on the CET, it has not yet been implemented. As to a Customs Union, no member country of COMESA has joined at this time. The Free trade Area is also still under negotiation, and Rules of Origin has proved to be a difficult obstacle to overcome. While COMESA deals primarily with technical issues, SADC is principally engaged in political and economic integration, especially in the area of conflict resolution and procedures on elections, market integration, and removal of tariffs and other non-tariff barriers.

The Ministry of Regional Integration coordinates with the Ministry of Industry and Trade on the issue of trade facilitation. These two ministries appear to cooperate so far, but ZIMRA has primary responsibility over trade facilitation and acts in a somewhat arbitrary manner, failing to fully cooperate with the government's trade facilitation initiatives on the whole.

ZIMBABWE REVENUE AUTHORITY

The Ministry of Finance is responsible for revenue collection, and its main arm in this regard is the Zimbabwe Revenue Authority. ZIMRA covers an odd combination of both tax functions and customs functions. In Southern Africa, ZIMRA is the only revenue authority that currently has no separate customs entity. ZIMRA has combined its customs authority and tax/VAT (Value Added Tax) department within a single structure. Last year, after a directive from the Minister of Finance, an effort was made to recreate the separate customs and tax departments, but ZIMRA has reverted to a single tax/customs structure. When the tax/customs functions were combined (approximately 2002), tax collections represented a greater portion of the country's revenue than customs collections.

Now, however, the situation is reversed, and customs collections amount to a substantially greater portion of revenue than tax collections.

When the South African Revenue Service (SARS) was formed more than ten years ago, it also abolished two departments and created a single entity, and officers were able to work in either section without the necessary training. Chaos ensued but, with the help of DFID, SARS was reorganized and the Customs Department and Internal Revenue Department were recreated. A separate General Manager is now in charge of each section.

Zambia and other countries in the SADC Region (Malawi, Tanzania, Mozambique, Lesotho, and Botswana) have separate departments, with customs sections headed by a commissioner and mandates that are exclusively customs-related. Similarly, a commissioner for VAT is responsible for all issues and the VAT Act.

The absence of a separate Customs Department has led to a number of serious shortcomings, including the following:

- **Lower quality and quantity of Customs officials.** Within the business and trade community, as well as within the ranks of the customs posts in ZIMRA, the almost unanimous opinion is that the knowledge level and proficiency of customs officers has been degraded by combining the tax and customs functions. When tax and customs were combined in ZIMRA, a considerable number of highly qualified, knowledgeable, and proficient customs officials left the organization, and the quality of officers on average has continued to decline. In addition to the lower quality of customs staff, inadequate staff numbers have resulted in backups and delays at the border. The brain drain that Zimbabwe has faced in recent years has also had a negative impact on ZIMRA, both in the customs and tax areas. Many private sector representatives also indicated that customs officers are not fully

knowledgeable of the role of clearing agents and that the working relationship with clearing agents was at times adversarial instead of facilitative, further complicating customs interactions.

- **Lack of specialized customs training.** The core functions of a customs organization, from a revenue standpoint, are goods classification (the Harmonized System), which determines the rate of duty, and the valuation of goods based on the WTO Customs Valuation Agreement. Zimbabwe's customs officers reportedly lack the necessary knowledge to properly classify goods under the Harmonized System. Customs officials also demonstrated only superficial knowledge of the customs valuation of goods under the WTO Customs Valuation Agreement. Training ZIMRA personnel in the Revised Kyoto Convention discussed above will be key to improving trade facilitation. Customs managers, at both headquarters and border posts, are not sufficiently knowledgeable of modern trade facilitation practices and the details of how to develop and implement them.
- **Reduced morale.** Most, if not all, of the top management officials at ZIMRA are former tax officials. Consequently, mid-level customs officials lack incentives to strive for excellence and promotion. Facing little opportunity for advancement, numerous highly qualified and experienced customs officials have resigned to enter the private sector.
- **Focus on revenue over trade facilitation.** A universal criticism of ZIMRA and other border agencies is the attention paid to collection of revenue at the expense of trade facilitation. Understandably, the primary mission of ZIMRA is to collect and protect revenue, but as the customs agency, ZIMRA must also abide by WTO principles of trade facilitation, and many of its obligations under these principles are not being met. Customs clearance at the

border reportedly takes two to three days for commercial shipments. With multiple agencies present on the border (e.g., customs, agriculture, immigration, standards, health), clearance processing is long and arduous. Moreover, the resulting delays at border posts create opportunities and incentives for petty bribes and corruption.

Restructuring ZIMRA would facilitate improvements in each of the problem areas identified above. Increased staffing for ZIMRA in general should also be a priority. ZIMRA's total staff is reported to be about 500 employees. Considering the size of Zimbabwe and the scope of ZIMRA's functions, this staff size does not appear to be adequate.

On the positive side, ZIMRA has initiated a one-stop operation at one Zambian border post where exporters may clear both Zimbabwe export procedures and Zambian import procedures and requirements. ZIMRA is also considering establishing a one-stop procedure at the Beitbridge Customs Post as well. Movement toward implementing one-stop operations at all borders would significantly improve trade facilitation.

OTHER BORDER AGENCIES

Perhaps the most significant impediment to trade facilitation at the borders is that too many uncoordinated agencies are engaged in border activities. Each has its own personnel and requires clearance for its respective functions. In addition to customs, border personnel include immigration, agriculture, health, and others. The result of the need for multiple clearances is long queues of trucks and people, creating increased opportunities and incentives for officials to engage in petty corruption. It also encourages declarants to accelerate their clearance procedures by bypassing required steps, and in some cases encourages importers to smuggle goods.

Zimbabwe's border processes are generally predictable, and the laws and regulations are reasonably transparent, but these processes are



not always administered in accordance with regulations. It is unclear whether the confusion, long lines, multiple clearance requirements, and other factors affecting clearance are designed by officials to allow petty corruption.

SUPPORTING INSTITUTIONS

Supporting institutions in the private sector of the economy are a strong point for Zimbabwe's trade. Although capacity is currently only at about 10%, the Confederation of Zimbabwe Industries is poised and ready to resume manufacturing as soon as the necessary capital is available. This factor, coupled with a reportedly 90% unemployment rate, should provide a stimulus for investment and trade once confidence and trust return to the Zimbabwean economy.

THE CONFEDERATION OF ZIMBABWE INDUSTRIES

Representatives from the Confederation of Zimbabwe Industries believe that trade laws and regulations are relatively transparent, but that there is a need to develop capacity in industrial businesses, and to develop policies and alternatives for the private sector to help themselves rather than waiting for the government to apply trade remedies to protect the domestic industry. Generally speaking, this approach is

representative of the private sector's independence and initiative. Many private sector groups and businesspeople demonstrated a keen interest in having an opportunity to succeed independently rather than being propped up or subsidized by the government or donors. Additionally, the private sector wants to be an active participant in the economic turnaround. This suggests that partnerships between the government and private sector, or donors and the private sector, are important and could be a highly productive part of the country's economic recovery.

THE ASSOCIATIONS FOR FREIGHT FORWARDERS AND CUSTOMS CLEARING AGENTS

The Associations for Freight Forwarders and for Customs Clearing Agents are no doubt a major asset for Zimbabwe's progress in the trade arena. Zimbabwe has 571 clearing agents and freight forwarders that are reportedly approved by ZIMRA. Clearly, this cadre of knowledgeable and well-trained forwarders and agents makes for a solid foundation for improvements in Zimbabwe customs clearance, declaration processing, and customs information technology. Freight forwarders and customs clearing agents can improve the performance of a customs administration significantly by preparing accurate declarations. This enables a customs administration to focus attention on post-declaration audits, risk management systems, and fraud detection (e.g., contraband and smuggling).

THE TRANSPORT SECTOR

According to the Transport Owners Association, Zimbabwe has approximately 30,000 trucks and 54,000 trailers. Due to the economic situation in Zimbabwe, the country has less freight than it has had in the past. Consequently, intense competition between truckers has resulted in a reduced price per load. With increased fuel costs and lower load prices, truckers' profit margins are significantly down. As a result, truck maintenance is poor, and truck breakdowns combined with weakened infrastructure have diminished the timeliness of

KEY SUPPORTING INSTITUTIONS

- Confederation of Zimbabwe Industries
- Associations for Freight Forwarders and Customs Clearing Agents
- Transport sector
- Standards Association of Zimbabwe

goods delivery. Although Zimbabwe's air travel sector is limited, with very few airlines servicing the country, Air Zimbabwe has been a model example of a well-managed organization. This is notable given the lack of competition in the industry. Nonetheless, increasing air service to the country would be beneficial in increasing travel flexibility and reducing prices.

STANDARDS ASSOCIATION OF ZIMBABWE

Zimbabwe's local standards are derived from International Organization for Standardization (ISO) standards. Zimbabwe's standards are voluntary, rather than legally binding. However, it is to a producer's benefit to voluntarily follow the established standards, as the Standards Association of Zimbabwe will issue a certificate to the producer, and such certification can be used for marketing and commercial purposes. Most Zimbabwe producers abide by the established standards. Also, a certificate issued by the Zimbabwe Standards Association will generally be accepted for exports to countries such as COMESA members as well as other African countries. Zimbabwe is in the process of harmonizing standards with COMESA as well as with SADC. As stated previously, market integration is a goal of SADC and COMESA, and harmonization of standards facilitates market integration. Harmonization of standards within SADC and COMESA should also lead to the removal of non-tariff barriers.

SOCIAL DYNAMICS

POLITICAL LEADERSHIP

Advances in trade facilitation depend directly on the quality of leadership and level of

commitment not only at the border agencies but, more importantly, at the top levels of government. It is the responsibility of a nation's leaders to create an enabling environment for reform and to have the vision, credibility, and mandate to bring border agencies together to meet goals. The willingness of the Ministry of Regional Integration and the Ministry of Industry and Trade to coordinate, and last year's attempt (albeit failed) to separate the tax and customs roles within ZIMRA demonstrate some level of political will for reform. However, substantial gains are proving challenging and will be accomplished only with strong commitment from the highest levels.

CORRUPTION

According to Transparency International's Corruption Perceptions Index for 2008, Zimbabwe ranks 166th in the world (out of 180 countries surveyed), with a corruption rating of 1.8 out of 10. The diagnostic team found that, while corruption is clearly an issue in the country, high-level corruption is the root of this problem. While corruption is beginning to make inroads into the country's culture, it does not yet appear to be fully ingrained, as it is today in so many African countries. However, due to the hyperinflation period, "created chaos" at border posts, negative influences on the security forces, and other factors that open the door to petty malfeasance, corruption is growing by the day. In the trade field, most companies and associations reported that ZIMRA has contributed to reducing corruption in customs and tax activities. Nonetheless, some local companies assert that unofficial payments to state officials (including ZIMRA) are not uncommon. A reorganization of ZIMRA into separate customs and tax components should play a key role in reducing rent-seeking behavior, which is on the rise in the trade field. If entry points in Zimbabwe are equipped with computers, there should be faster and more reliable processing of declarations. Additionally, automation, along with a roll out of one-stop border post systems, should allow faster and

more efficient processing, reducing the opportunity for rent-seeking activities.

INFRASTRUCTURE

Zimbabwe's infrastructure creates serious problems in trade facilitation. The major transport corridors within Zimbabwe and to South Africa and Mozambique, the country's outlets to the sea, need upgrading and modernization. Specifically, the rail infrastructure is in poor condition due to a lack of funds and policy direction. Emphasis has been placed on the transport of people. Consequently, Zimbabwe's cargo carrying capacity has deteriorated and is simply not working adequately. Engines and rolling stock are in need of repair or replacement. Rail shipments of cargo may take upwards of 14 days to travel from Harare to Durban. This is due to several factors such as infrequent departures, limited availability of equipment, and breakdowns. Exporters and users of rail shipment estimate that rail cargo is 30 to 40% cheaper than shipment by truck, but in business, time is money, so exporters and the business community have no alternative but to use trucks and incur the additional costs until improved rail shipment is available.

RECOMMENDATIONS

Reorganize ZIMRA to create separate customs and tax departments that function independently.

Perhaps the single most significant trade reform would be the separation of the customs and tax functions within ZIMRA. Almost all countries across the globe recognize the separate responsibilities and specializations of tax and customs and divide them into separate units. During this diagnostic, the trade and business community of Zimbabwe commented uniformly about the declining competency, proficiency, and knowledge of ZIMRA officers carrying out customs functions. The separation of these dissimilar functions will improve the effectiveness of customs functions and restore confidence in the institution. Separation of these functions should entail

the creation of a Commissioner of Customs and a Commissioner of Tax. Training on organizational structuring will also be necessary during this process, as will capacity-building for customs management under the new structure.

Improve trade facilitation by creating one-stop operations at all border posts and increasing targeted training for Customs personnel.

ZIMRA should take immediate steps to improve trade facilitation in order to enable increased and improved trade which will contribute more to Zimbabwe's economic recovery. Trade facilitation reform should incorporate an increased emphasis at border posts on facilitation over revenue collection. Creation of one-stop operations at all border posts should be prioritized in order to eliminate the need for multiple agency clearances.

With decline of knowledge and competency of customs officers at border and inland customs posts, there is an urgent need for specialized training in the core areas of customs operations and procedures, especially in the areas of:

- The Harmonized System (classification of goods)
- Full implementation of the WTO Customs Valuation Agreement
- International standards for clearance of goods and trade facilitation pursuant to the Revised Kyoto Convention procedures
- Risk management or risk assessment procedures
- Application and use of information technology systems (e.g., ASYCUDA)
- Rules of origin for application to regional and preferential agreements
- Acceptance and use of electronic documents

Develop an overarching Trade Facilitation Policy to guide the government's efforts to improve trade facilitation in Zimbabwe.

It is in the government's interest to develop an effective, viable Trade Facilitation Policy. Policy formulation should be a joint effort among the business community, trade community, and the

government. The Trade Facilitation principles of both the WTO and the World Customs Organization (WCO) should be applied when formulating the policy.

After a Trade Facilitation Policy is established, a high-level Trade Facilitation Committee should be formed to implement it. Leadership of the committee should be vested in the business and trade communities with participation by ZIMRA (customs officials), relevant border agencies, freight forwarders and customs clearing agents, transportation companies (air, rail, and truck) and other interested parties. Immediate steps to be taken include:

- Training by an international expert in global best practices on trade facilitation
- Capacity-building in the business and trade communities on trade facilitation

Zimbabwean government ministries involved in regional integration and international negotiations (such as SADC and COMESA negotiations) should be included in the formulation and implementation of the Trade Facilitation Policy

so that Zimbabwe's interests, policies, and practices would be represented and included in regional integration discussions.

Update and modernize the Customs and Excise Act.

Although the Customs and Excise Act has been amended many times since 1955, the law is outdated and needs modernization. Rather than additional amendments to this outdated text, a new law should be drafted in line with international best practices. A new Customs and Excise Act should incorporate applicable WTO and WCO standards and principles. Implementing regulations or ministerial decrees should also be revised for improve clarity and transparency.

The drafting process for the new law should include opportunities for input and comment by the trade community. In order to ensure this input is meaningful, training and capacity building in the trade community on trade and customs laws and principles, as well as advocacy training, could be useful.



ENFORCING CONTRACTS

Zimbabwe has the legal structures necessary for the efficient resolution of contractual disputes. The country's framework laws dealing with the creation and enforcement of contracts are based on over 100 years of common law jurisprudence. The primary institution for enforcing contracts—the court system—has a rich history of competence and independence. Various other institutions that support the legal system also adequately contribute to the fabric of a competent legal system.

ENFORCING CONTRACTS			
<i>Doing Business</i> Ranking 2009			77
<i>Doing Business</i> Ranking 2008			73
Indicator	Zimbabwe	Region	OECD
Procedure (days)	38	39.4	30.8
Duration (days)	410	659.7	462.7
Cost (% of claim)	32	48.9	18.9

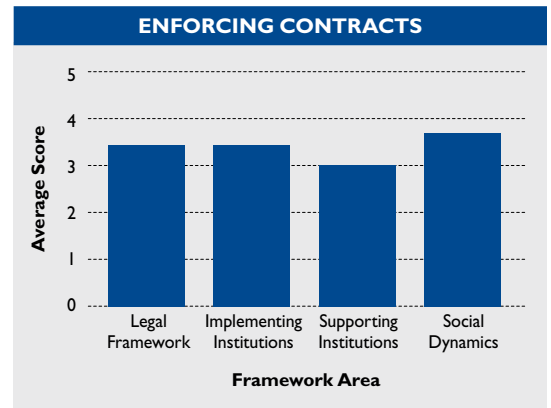
However, events in Zimbabwe's recent history have created concern among the business and legal communities regarding the direction of the institutions charged with enforcement of contracts. Pervasive distrust stems from a perceived lack of respect for the rule of law at certain levels of the government. Distrust also stems from attempts to marginalize the judiciary by overt influencing of judges, politicization of the process for judge selection, and the withholding of necessary funding for the payment of judicial salaries, much needed upgrading of the physical infrastructure of the court system, and adequate staffing.

In some respects, Zimbabwe is at a crossroads for its commercial legal system. It can either continue its historical adherence to high standards of competence and independence, or it can allow its institutional infrastructure to fall into disrepair.

LEGAL FRAMEWORK

THE CONSTITUTION

The Constitution is the supreme law of Zimbabwe. It creates the courts in which significant contractual disputes are resolved.¹³ These



courts are the Supreme Court, which is the “final court of appeal” for contractual disputes,¹⁴ and the High Court, which is the trial court of first instance in all significant contract cases.¹⁵ Minor contractual disputes may also be heard in the Magistrate Courts, which are created by statute rather than the Constitution.¹⁶

ZIMBABWE COURT SYSTEM

- Supreme Court
- High Court
- Magistrate Courts

The Constitution also creates the primary legal framework for the substantive law on contracts by providing that “the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent

¹³ Zimbabwe Constitution, Arts. 79, 80, and 81.

¹⁴ *Id.*, Art. 80(1).

¹⁵ *Id.*, Art. 81.

¹⁶ Magistrates Court Act.

legislation having in Zimbabwe the force of law.” The law referred to in this Constitutional provision is the Roman-Dutch Common Law in effect at that time. With only minor exceptions (discussed below), there has been no subsequent legislation modifying the law on contracts as contained in the Common Law of Zimbabwe. Accordingly, the Common Law remains the source of the framework laws governing contracts in Zimbabwe.

COMMON LAW

The Roman-Dutch Common Law in effect in 1891 has been supplemented and interpreted by subsequent decisions of the High Courts and Supreme Court of Zimbabwe. In this respect, Zimbabwe courts apply the doctrine of *stare decisis* such that rules or principles of law on which the Supreme Court or the High Court rested a previous decision are authoritative in all future cases in which the facts are substantially the same. In addition, decisions of South African courts are highly persuasive sources of Zimbabwean commercial law. To some extent, decisions of English courts and even other Commonwealth countries may also be persuasive authorities in the absence of any more local authority. As a result, the laws dealing with contracts are highly developed and consistent with international best standards.

STATUTES AND STATUTORY INSTRUMENTS

As noted, the Common Law may be modified by legislation. In addition, regulations, called statutory instruments, promulgated by a ministry under the provisions of a statute enabling a ministry to pass regulations within the scope of a particular subject matter have the same

force and effect as legislation. Only three statutes modify the law of contracts. Two of these are substantive but not significant in the area of enforcing commercial contracts—the Contractual Penalties Act of 1992 and the Consumer Contracts Act of 1994. The third act is the Arbitration Act of 1996, which is procedural in nature. No significant statutory instruments impact the enforcement of commercial contracts.

The Consumer Contracts Act provides “relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions” It applies only to consumer contracts, which are defined as contracts for the sale of goods or services in the ordinary course of a seller’s business to a consumer.¹⁷ The law provides broad discretion to a court to vary or deny enforcement of any term in the contract that the court finds unfair to the consumer.¹⁸

The Contractual Penalties Act provides the circumstances under which penalty clauses in contracts will be enforced. The term “penalty clauses” as used in the act has a meaning similar to “liquidated damages” when used in references in U.S. law. Just as under U.S. law, parties are not entitled to enforce penalty clauses if the penalty is out of proportion to the damages suffered by the plaintiff.¹⁹

While procedural in nature, the Zimbabwe Arbitration Act (“Arbitration Law”), which deals with the procedure for resolution of contract disputes without having to resort to formal court proceedings, is of greater import to the enforcement of contracts in Zimbabwe. The passage of the Arbitration Law was the result of the work of six leading attorneys who saw the need for an efficient method of resolving commercial disputes. It incorporates the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985, which gave effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in New York on June

KEY LAWS

- Constitution (1979, with amendments)
- Common Law
- Consumer Contracts Act (1994)
- Contractual Penalties Act (1992)
- Arbitration Act (1996)

¹⁷ Consumer Contracts Act, s. 2.

¹⁸ *Id.* s. 4.

¹⁹ Contractual Penalties Act, s. 4.

10, 1958. The Arbitration Law provides that any dispute that the parties have agreed in writing to submit to arbitration may be determined by arbitration.²⁰ As discussed below, the use of arbitration clauses in significant commercial contracts is becoming widespread, to the extent that arbitration is becoming the preferred procedure to resolve substantial commercial disputes involving written contracts.

IMPLEMENTING INSTITUTIONS

RESOLVING CONTRACTUAL DISPUTES IN THE COURTS

Except in cases referred to arbitration, the key implementing institutions in the process of resolving contractual disputes are the courts that adjudicate the disputes, the registrars who manage case administration, and sheriffs who execute on judgments.

The procedures governing commercial disputes appear to be efficient. An action is commenced by the plaintiff obtaining the issuance of a summons, which is then served by the sheriff along with a statement of the particulars of the claim. Simple matters can be initiated by the filing of an application setting forth facts that are not in dispute. The matter will be set down for hearing, often within two to three months from filing and considered on the papers. For more complicated matters involving disputed facts, after the defendant has responded, a pretrial conference is scheduled.

The primary purpose of the pretrial conference is to discuss settlement of the case. In this respect, the judges of the High Court play a proactive role in discussing with each party the strengths and weaknesses of their respective positions. The client, or client's representative with authority to settle, is required to be in attendance. In a significant percentage of cases, this process leads to a total resolution of the matter and avoids the necessity of further protracted and expensive court proceedings. Cases

KEY IMPLEMENTING INSTITUTIONS

- Courts
- Registrars
- Sheriffs

that are not settled at the pre-trial conference are then scheduled for trial in front of a judge different from the judge presiding over the pre-trial conference.

The amount of time that a case will require from filing until entry of final judgment is dependent on a number of factors. These include the diligence of the attorneys in prosecuting their cases expeditiously. Generally, with diligent attorneys, a commercial case can expect to progress to the pretrial stage in one to three months. Even in a substantial case, a trial can be scheduled in as little as eight months after the action is filed.

CASE ADMINISTRATION BY THE MASTER OF THE COURT

The Master of the Court presides over the administration of the court system at the High Court and Supreme Court levels. The Master does so in three distinct roles: as registrar (or clerk) of the courts managing all court administrative matters, as sheriff overseeing the performance of deputy sheriffs in the service of summons and collection of judgments, and as the Master overseeing the administration of insolvent estates, probate estates, and court receiverships.

As registrar, the Master has quasi-judicial powers in the administration of the court system. In this respect, the registrar makes decisions (subject to High Court review) dealing with procedures governing the processing of filings of papers in the court and calendaring of matters for consideration by judges. Once a matter has been fully adjudicated with the entry of a judgment, the registrar executes the writs necessary to enforce the judgments.

Another role performed by the Master in his role as sheriff is the supervision of deputy

sheriffs who are responsible for enforcement and collection of judgments throughout the country. The sheriff performs this role through nine deputy sheriffs who are appointed by the sheriff to serve in the various provinces throughout Zimbabwe. They in turn contract with a number of individuals to serve as assistant deputy sheriffs to perform the duties required of the office. For example, in Harare, the deputy sheriff has 7 assistant deputy sheriffs assigned to different geographic areas and one assistant on call to serve process on an as-needed basis.

The Office of the Master has yet another independent role overseeing the administration of insolvent estates, probate estates, and court receiverships. Each of these areas is subject to the Master's oversight pursuant to specific enabling legislation. For example, if the High Court issues an order directing judicial management of an insolvent business, the administration is done under the direction of the Office of the Master.

SPEEDY AND COMPETENT RESOLUTION OF COMMERCIAL DISPUTES

Two factors are most often cited as significantly affecting the perception of the quality of commercial dispute resolution by the courts with jurisdiction over those disputes. The first is the speed with which disputes can be resolved. The second is the commercial law competence of the judges presiding over those disputes.

With respect to the speed of resolution of commercial disputes in the High Court, the process appears to be working well up through the conclusion of the trial. A typical time frame cited during this diagnostic was three months to a year, with an average in the six-to-eight month range. This is adequate with respect to substantial commercial cases. However, the time for entry of a judgment following trial in Zimbabwe can still be a significant problem. In fact, the length of time between trial and a final judgment was the most often-cited complaint about the administration of commercial cases in the High Court. Rulings

from the bench immediately following trial were reported as rare to nonexistent.

The other key factor in the efficient resolution of commercial cases is the competence of particular judges to deal with complex commercial issues. Recently, an informal system of specialization has been introduced in the High Court. The Judge President has directed that designated judges be assigned to exclusively handle cases in the following legal areas: commercial disputes, family, criminal, and general civil law. In the area of commercial disputes, this specialization has been received favorably, and the prosecution of those cases is working much better. This is particularly important in the commercial area where concerns have been raised about the need for judges to gain experience in adjudication. Notwithstanding the recent specialization in the assignment of cases, no formal continuing education for judges in commercial law exists.

ENFORCEMENT OF JUDGMENTS

The process of enforcing judgments appears to be fairly straightforward, effective, and similar to the process followed in other Common Law countries such as the United States. Once a judgment is obtained, the sheriff serves the writ of execution on the judgment debtor. The movable property of the debtor is then attached and can then be sold at public auction. Deputy sheriffs performing this role are generally perceived to be competent. To the extent necessary, the deputy sheriff may obtain the assistance of the local police to assist in the seizure of the debtor's movable assets. While there are occasions of local police being subjected to external influence from debtors with political connections, at worst, these attempts reportedly only serve to delay enforcement, not to stop it.

If the judgment is not paid within 48 hours of service of the writ of execution, the deputy sheriff will remove the assets to be held pending an auction sale. This sale typically occurs within two weeks. The sale is advertised in the leading local newspaper. The sheriff's office conducts

weekly auctions of seized assets. Execution and sale of immovables (i.e., real estate) is dealt with separately. Unlike movables, deputy sheriffs do not have authority to sell immovables. While deputy sheriffs still serve the writ of execution, only the sheriff can conduct the sale of immovables. In this respect, an assistant registrar is appointed by the sheriff to oversee the sale of immovables. The actual sale is conducted by an auctioneer drawn from a roster of insolvency professionals that includes auctioneers and appraisers. After the sale, the sheriff is responsible for drawing up a Sheriff's Plan of Distribution detailing how the proceeds are to be distributed.

EROSION OF INFRASTRUCTURE OF LEGAL INSTITUTIONS

Despite adequate capabilities, the judiciary has been marginalized to some extent by the withholding of resources in terms of salary, support staff, and physical supplies and infrastructure. What was once an advanced institution is now struggling to keep up with modern practices and needs. Following the dollarization that occurred in February of 2009, judges (similar to civil servants at every level of Zimbabwe's government) were paid only \$100 per month.²¹ While inadequate salaries can be a source of corruption in any government institution, the impact that it has on judicial independence as well as judicial quality can be serious. Other resources of the High Court are also inadequate. Not only do the courts lack adequate funding for minimal routine maintenance, they also lack adequate staffing, and available staff need training. Computerization of court records, even court dockets, is nonexistent. Examples of lost files are often cited by participants.

SUPPORTING INSTITUTIONS

While framework laws and efficient implementing institutions are essential to the process of resolving contractual disputes, other institutions that support the process are also key to the fabric of the system for dispute resolution. Without the various key institutions that support the development and implementation of

commercial law, the commercial legal environment for enforcing contracts cannot function at its full capacity. Examples include lawyers and other professional associations, continuing legal education providers, and those involved with legal reform. Zimbabwe has several such organizations. Noteworthy among these are the Law Society of Zimbabwe, the Law Development Commission, the Commercial Arbitration Centre, the University of Zimbabwe Law School, and the Legal Resources Foundation.

LAW SOCIETY OF ZIMBABWE

The Law Society of Zimbabwe (Law Society) is a self-regulating independent professional body that was formed in 1981 as a result of the fusing of a previously bifurcated legal practice system. Under the prior system, lawyers would either practice under the Advocates Act as trial lawyers, called "advocates," or they would practice under the Attorneys, Notaries, and Conveyances Act as predominantly office attorneys. Under the current system, all lawyers hold the same license to practice law. There are currently 710 members of the Law Society.

In order to become a member of the Law Society and to practice law in Zimbabwe, a lawyer must have graduated with a four-year law degree from the University of Zimbabwe or the recently opened Midland State University. There is no requirement to pass a professional examination to become a member of the Law Society unless the law graduate is a graduate of a law school in another common law country such as South Africa or Zambia, in which case a "conversion" exam is required to demonstrate knowledge of local jurisprudence.

KEY SUPPORTING INSTITUTIONS

- Law Society of Zimbabwe
- Law Development Commission
- Commercial Arbitration Center
- Law Schools
- Legal Resources Foundation

²¹ As of July 2009, the civil servant stipend was boosted to an average of \$140 per month, with the incorporation of some salary level differentiation planned for the near future.

In addition to controlling the admission of new members to the profession, the Law Society also undertakes or makes recommendations on legal training; regulates the profession in respect of continuing training, discipline, and trust accounts; and represents the profession and articulates its views on various issues, most recently with respect to attacks on the profession and human rights lawyers by elements within the government.

With respect to legal training, the Law Society maintains a regular program of continuing legal education (“CLE”). The CLE program is currently funded under a grant from the Royal Netherlands Embassy that will expire in 2010. The program includes sessions on such areas as practical skills training, alternative dispute resolution, and international litigation. Due to Zimbabwe’s pending constitutional revision process, the Law Society is rechanneling its CLE efforts to develop a constitutional process position paper with respect to sixteen thematic areas dealt with by the current draft constitution.

In addition, a Joint Judicial Legal Practitioners Colloquium was scheduled to take place on September 10, 2009. The speakers were to include supreme court and constitutional court justices from Zambia and South Africa, as well as a number of prominent local practitioners. The program is funded by the British Embassy. The subject of the colloquium is the practical challenges facing the legal profession. It will be followed by another program in three to six months to follow up on the practical solutions to the issues presented.

ZIMBABWE LAW DEVELOPMENT COMMISSION

The Zimbabwe Law Development Commission (“LDC”) is part of the Ministry of Justice and functions in two major areas. The first is law reform. In this respect, the LDC is charged with promoting the development of the law, reviewing the law and its administration, making proposals for the elimination from the law of any defects of a policy or substantive nature, making

proposals for bringing the law into accord with current national and international trends, and proposing new or more effective procedures for the administration of the law and the dispensing of justice. Current laws being considered as part of the LDC’s reform function relate to the regulation of debt collectors and a law dealing with limited liability partnerships.

The second and seemingly more important function, in light of current needs of the legal system, is maintaining and updating current statutes when new legislation is passed. This is critical because the last comprehensive compilation of statutory law into a set of easily accessible volumes was published in 1996. As new acts are passed amending, repealing, or adding to existing statutes, the only institution charged with compiling and maintaining a comprehensive set of statutes reflecting such changes is the LDC. These statutory provisions as revised are not generally available to the public, although they can be accessed by appointment at the LDC’s offices in Harare. The LDC also reviews recent regulations and, through an index, ties them to the related enabling law. This is a critical function because in many instances the regulations are more extensive than the enabling law.

ZIMBABWE COMMERCIAL ARBITRATION CENTRE

A number of leading attorneys are active supporters of arbitration in commercial disputes. A common theme expressed by these individuals is that, while the “legal system is as good as any” and there is “very little wrong with the legal framework,” a perception is held by some that it takes too long to get to a final disposition in commercial cases. As a result, the use of arbitration as an alternative to the court system in commercial disputes has been well developed. Attorneys representing clients in drafting contracts routinely include clauses requiring that any dispute with respect to the contract be submitted to binding arbitration.

The most important supporting institution in the area of arbitration is the Commercial



Arbitration Center (“Arbitration Center”). The Arbitration Center relies in substantial part on retired Supreme Court justices and former advocates who are very skilled and respected in the area of resolving commercial disputes. If the parties agree, a single arbitrator may preside over the arbitration proceeding. If the parties cannot agree on a single arbitrator, each side chooses an arbitrator, and those two arbitrators jointly choose a third. The arbitration process does not contemplate significant court involvement other than reducing the arbitration award to a final judgment that can then be enforced on the same basis as ordinary judgments.

LAW SCHOOLS

Zimbabwe currently has two law schools: the University of Zimbabwe Law School, located in Harare, and the recently opened Midland State University (“MSU”), situated near the Midlands provincial capital of Gweru. Both universities offer a four-year Bachelor of Laws Honors Degree. While MSU is preparing to graduate its first class of law students, unfortunately, financial problems forced the University of Zimbabwe to temporarily shut down in 2008. This closing resulted from lack of water due to a well system needing repair and qualified professors leaving due to inadequate salaries. These problems have been addressed at least in

part by financial assistance from UNICEF, and the University of Zimbabwe was scheduled to reopen in August of 2009.

LEGAL RESOURCES FOUNDATION

The Legal Resources Foundation (“LRF”) is an autonomous, charitable and educational trust, established by trust deed and registered in 1984 under the Welfare Organizations Act. It was established to improve the accessibility of legal and information services to all sections of the population. The LRF publishes the Law Reports of Zimbabwe, which is the official compilation of cases or precedents in Zimbabwe. These law reports, along with numerous other publications, are made available to the public through the LRF’s regional libraries in its five projects centers.

SOCIAL DYNAMICS

Leading jurists, legal practitioners, and the business community in Zimbabwe generally recognize that an effective, efficient and transparent judicial environment is essential to investment and commercial growth in Zimbabwe. In this regard, Zimbabwe has a strong legal culture with good framework laws and a skilled and independent judiciary. In purely commercial cases, the general view of leading attorneys is that the courts function well and impartially. An erosion of respect for law and the institutions that implement the law, however, have created concern in the business community about the continued vitality of this system.

RESPECT FOR LAW AND INSTITUTIONS

The problems giving rise to the perception that the respect for law is eroding are not the result of deficiencies in the framework laws governing commercial transactions. Rather, as explained by one interviewee, “The problem is not framework laws, it is respect for those laws.” As a result, there are numerous accounts of court orders not being respected by other branches of the government. This is especially evident when dealing with persons with government influence. Nor does the problem lie

with the structure and procedures employed by the judicial branch. The judicial system and its institutions have been in place for many years. For most of its history, the judicial institutions of the country have been widely respected for expertise and independence. That respect is beginning to erode, however, in the minds of many directly involved with the system. These concerns are expressed by judges and attorneys, as well as the business community members who have cases pending in the courts.

For example, the process of selection of judges is perceived by many to be a function of party affiliation and willingness to accede to the will of the political party exercising control. Where at one time, a predominant number of High Court and Supreme Court judges were chosen from among the leading advocates in the country, current judicial appointees are from varied backgrounds and may not have the same level of experience in complex legal matters as their predecessors. Some have not ever practiced law in the conventional sense. Part of this is a result of many mid-level attorneys leaving the country because of the country's economic strain. However, a significant part of this is perceived to be due to politicization of the judicial nominating process. The result is a growing perception that political affiliation is displacing legal competence as the primary basis for judicial appointments.

Another prevalent perception is that the government has tried to marginalize the role of the judiciary, particularly in cases involving political issues, land tenure, and compensation for appropriation of land. This perception is exacerbated by the overt influencing of judges by making them the beneficiaries of confiscated farms, luxury automobiles, and other gifts.

These issues have not yet reached the point of rendering the system for resolution of contractual disputes wholly ineffective. However, the concern is with the future direction of these institutions. The threats of incipient corruption among legal institutions appear to be isolated and at a low level today—e.g., the assistant in

the registrar's office conveniently misplacing a file or the police squad stopping cars and taking payoffs as an alternative to a ticket. The question is whether such corruption will continue to grow. In the words of one private sector representative, "It is not within the culture of Zimbabweans to be corrupt. This is quite alien to a lot of citizens. The problem is that corruption has been adopted at the highest levels. My worry: are we able to eradicate it?" Notwithstanding such concern, many express an optimistic outlook for a "functioning system that needs tuning, not replacement."

Fortunately, unlike many developing countries, there is no general perception that judges are corrupt or susceptible to inappropriate external influence in the resolution of contract disputes. Preserving its reputation for integrity and fairness is key to the backbone of the judiciary and one of its most important attributes. It is very important that the emerging concerns of cronyism in judicial selection, undue influence, and marginalization by withholding of resources not allow an environment to flourish that may be conducive to widespread corruption.

ACCESS TO LAWS

The framework laws in Zimbabwe—statutes, regulations, case law, and treaties—are not easily available to the public and generally to attorneys other than those practicing in the oldest and most prominent law firms that have in-house librarians. The Zimbabwe Law Reports, which contain all reported judgments of the Zimbabwe High Court and Supreme Court, are only current through 2004. Decisions rendered since that time period are available only at major law firms that have in-house resources or through services that charge fees for access to more current case decisions. Judges express frustration that their decisions have not "filtered down" to the attorneys who appear before them.

The last available comprehensive collection of the statutes in effect in the country is a five-volume set last revised as of January 1, 1996 ("1996

Statutes”). At that time there were 29 titles in the 1996 Statutes. There have been numerous amendments to the 1996 Statutes, and a set of statute books has not yet been comprehensively updated. Fortunately, as discussed above, the Zimbabwe Law Development Commission has collected the various amendments contained in legislative acts passed since 1996 and maintains an updated version of the 1996 Statutes in its offices. Unfortunately, a full set of these statutes together with all amendments is not generally available except at the LDC’s offices, with the exception of a few major law firms with comprehensive libraries and librarians who manually perform the task of updating the laws as they are amended or supplemented.

GROWING LACK OF CAPACITY

While one of the country’s two law schools, MSU, is preparing to graduate its first class of law students, unfortunately, as discussed above, financial problems forced the University of Zimbabwe to temporarily shut down in 2008. In addition, currently there is a shortage of individuals with advanced degrees typically required for serving as a professor at the law school level. In many cases local practitioners and recent graduates are relied upon to give lectures. Lack of funding for salaries is one of the key difficulties in attracting qualified staff. Professors are paid between US\$150-200 a month. As a result, professors must supplement their university pay with income from practicing law or consulting for nongovernmental organizations. Matters are exacerbated by a lack of teaching materials. The library’s materials are out of date, leaving students to rely on the resources of lecturers for course materials.

There is a widespread perception that a brain drain has affected every sector of Zimbabwean economy. This includes the legal profession. A number of mid to upper level attorneys have left the country. This affects both the legal profession and the judiciary in that the pool of qualified candidates for judgeships has been diminished.

The same problem has affected others charged with the administration of the legal system. Lack of compensation and high turnover has negatively impacted some members of the court registrar’s office. Retention of highly trained individuals to manage the cases of the High Court is essential for an efficient and respected judicial institution. Unfortunately, after having obtained experience in dealing with the Court from the perspective of the registrar’s offices, employees face an understandable temptation to seek the greener pastures of the private sector, including private practice with attorneys who appear before the High Court.

RECOMMENDATIONS

Increase the timeliness of entry of final judgments in commercial disputes.

As discussed above, the length of time between trial and a final judgment was the most often-cited complaint about the administration of commercial cases in the High Court. This is a common complaint in many court systems. Investors and lenders find themselves involved in contractual disputes as a regular part of doing business. However, once these disputes reach the court system, the speed of resolution at times may be perceived as more important than the outcome. This is because, once a resolution is made, businesses can address the outcome and move on to productive endeavors. On the other hand, an unresolved court case often creates a logjam barring a party from focusing on its core business.

Several relatively simple approaches are available to address the speed of resolving commercial cases. First, a transparent method of tracking the status of court cases can be instituted in the court registrar’s office. This system would have as its core component a computerized database that contains the basic information about the court case. This information would include entries for each event occurring in the case, such as the filing of pleadings and other court papers, scheduled hearings, proceedings memoranda reflecting what has transpired, and the date on

which any matter is taken under advisement to consider entry of a final judgment.

Not only would such a system greatly streamline the process of case management, the database would allow the court to generate reports on the status of all cases to include a report of matters under advisement listing the judge, matter description, and date taken under advisement. This could be coupled with a general guideline for issuing judgments following trial. A typical time-frame would be 60 days. Once this deadline has passed, unresolved matters would be listed on an “under advisement” report. The use of such a report would typically be left up to the chief judge for the particular court. For example, the chief judge could meet with the judges on a periodic basis to review the status of pending matters. This simple level of transparency often creates a form of peer pressure which, combined with professional pride, frequently leads judges to make an effort to minimize the number of cases that make it to the under advisement report.

Another way to improve speediness in entering final judgment is to provide judges with research and writing support. While the court system is already suffering from a lack of funding, a relatively inexpensive source of assistance can be law students serving as interns or recent graduates who serve as law clerks. These clerks could not only assist in providing research support on matters under advisement, they could also assist judges in preparing pretrial memoranda setting forth facts, issues, and legal principles involved. A formalized law clerk or intern program would not only help on matters under advisement, but it may also permit judges who have had the benefit of pretrial preparation to rule from the bench.

Rulings from the bench are considered to be the rare exception in current commercial cases. Judges should be encouraged to rule from the bench immediately following the conclusion of the trial. Judges could then request the assistance of the prevailing party in the preparation of a draft of the findings of fact and conclusions

of law to be incorporated into the final judgment consistent with the judge’s bench ruling.

In summary, the following recommendations are made with respect to improving the speediness in which judges are entered following trial:

Enhance the competence of commercial courts.

Legal professionals in Zimbabwe agree that the judicial system needs a specialized venue for resolution of commercial disputes. This includes well-trained, specialized commercial judges. Such an institution will enhance consistent, reliable decision-making from judges who understand commercial transactions. This has already been addressed by the creation of informal divisions in the High Court that include a commercial division. Consideration should be given to taking this preliminary work one step further by establishing a separate formal division of the High Court denominated the Business Court with its own registrar and case management system.

With specialization comes experience and competence in the resolution of complex commercial cases. However, experience is not enough. In this regard, regular continuing legal education of judges is essential to the continued competence of a working commercial court. In addition, the processing of commercial cases can be enhanced by active case management within the judge’s chambers and the registrar’s office. Thus, education of judicial and registrar staff is also necessary. Commercial case resolution requires a sufficient support system in court administration and management, or improvements in specialization can be undermined by weaknesses in the court system itself. It is therefore essential to provide continuing education and training for various court staff, from file clerks to enforcement officers, to ensure that they too are providing the best possible services.

Make legal resources widely available.

While Zimbabwe has well developed framework laws in the form of its common law, as

developed through many court decisions, unfortunately the publication of these decisions has been lagging for several years. In addition, publication of a comprehensive, updated compilation of statutes and statutory instruments is not generally available to the public.

The result is that the body of published laws is generally not available except at major law firms that have law libraries with librarians or through services that charge fees for access to more current case decisions. This leads to a lack of capacity within the legal community and attorneys who are not aware of recently published decisions. It is also a problem for the magistrate court system, which does not even have access to what is available online due to lack of internet service.

A program should be implemented to review the steps needed to make Zimbabwe's legal resources more widely available. Components of such a program could include cataloging the status and availability of all laws whether in the form of cases, digests, statutes, statutory instruments, or treatises. The work of the Legal Resources Foundation should be supported to assist in completing the updating of the Zimbabwe Law Reports and making these reports available through online providers. The work product of the Zimbabwe Law Development Commission should be made publicly available at no cost via the internet and through the publication of a set of revised statutes. At a minimum, a full set of revised statutes, corresponding regulations, and cases should be made available to the judges at all levels of courts.



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