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**Topic: CRITICAL ANALYSIS OF THE FOREIGN DIRECT
INVESTMENT FRAMEWORK IN TANZANIA AND ZAMBIA**



Supervisor: PROF. RIEKIE WANDRAG

**A mini-thesis submitted in partial fulfillment of the requirements for the
LLM: International Trade and Business Law**

DECLARATION

I, **Sadik Nurdin Salim**, do hereby declare that the work presented in this dissertation is original. It has never been presented to any other University institution. Where other people's' works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the LL.M Degree in International Trade& Business Law.



Signed:
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SADIK NURDIN SALIM

Date: 01 November, 2013

Signed:

Prof MS Wandrag

DEDICATION

I dedicate this thesis to my mother who has been a great mentor and supporter throughout my entire life.



ACKNOWLEDGEMENT

I have to start by thanking the almighty God for blessing me with this chance to complete one of my important steps in my academic journey.

The completion of this study has been a result of great contribution from several people, who sacrificed their time and gave their generosity in this work.

Therefore it is my humble pleasure to thank them for their great contributions as follows:

1. Prof. Riekie Wandrag at the University of Western Cape Faculty of Law for the support and supervision throughout the study
2. Shamsi Sadik and Nusra Sadik for giving me a moral support which was a key motivation for me to successful accomplish this study
3. My classmates, LLM International Trade, Investment and Business Law 2012/2013 at The University of the Western Cape for their arguments, views and contributions in the course of my study.

Thank you so very much and May almighty God bless you.

KEY WORDS

FDI: Foreign Direct Investment

TNC: Transnational Corporations

MNE: Multinational enterprises

MFEZ: Multi-Facility Economic Zones

SADC: Southern African Development Community

PSRDP: Private Sector Reform Development Program

TIC: Tanzania Investment Centre

IPC: Investment Promotion Centre

BRELA: Business Registrations and Licensing Agency

TRA: Tanzania Revenue Authority

ZDA: Zambia Development Authority



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CHAPTER ONE

1.0 INTRODUCTION

Foreign direct investment is recognized as one of the most important factors in contributing to economic development and growth, since it brings to host countries' capital, technology, innovation, management skills, as well as access to supply chains and new markets.¹ Foreign direct investment (FDI) can therefore be used as a key tool in facilitating economic growth of a particular country once there is imposition of strong legal framework and policies.

Despite the continuing effects of the global financial and economic crisis of 2008–2009 and the continuing sovereign debt crises, FDI inflows to developing countries rose 16 per cent in 2011, surpassing the 2005-2007 pre-crisis level for the first time.²

The term, FDI has been widely defined by different scholars. According to Bjorvatn, FDI is an investment made to acquire long term interest in a foreign enterprise with the purpose of having an effective voice in its management.³

The International Monetary Fund defines FDI as investment that is made to acquire a lasting interest in an enterprise operating in an economy other than that of the investor, the investor's purpose being to have an effective voice in the management of the enterprise.⁴

Different governments in Africa have taken different reform paths and programmes in the last decade as an initiative to foster private sector development

¹ UNCTAD *An Investment Guide to Zambia, Opportunities and Conditions* (2011)v

² UNCTAD *World Investment Report* (2012)xiii

³ Bjorvatn, K *FDI in LDC: Facts, Theory and Empirical Evidence Manuscript* (2000) 1

⁴ IMF *Balance of Payment Manual* (1993)

and empowering overall economic and business environment to attract FDI in their countries.⁵

In so doing new regulations and various policies have been introduced to their perspective legal frameworks. With regard to investment some countries introduced special acts to cater for all transactions arising out of investment. For example, in East Africa, Tanzania introduced The Tanzania Investment Act in 1997, Kenya introduced various legislations to assure the efficient flow of FDI.⁶ Zambia passed a bill in January, 2006 to mark the commencement of The Zambia Development Agency Act, 2006. Namibia enacted Foreign Investments Act 27 of 1990 which was later amended by Foreign Investment Amendment Act 24 of 1993, the act established principles regarding foreign investment in Namibia. In western Africa, Nigeria for example, introduced Nigerian Investment Promotion Commission Act, Chapter N117 (Decree No 16 of 1995).

In other African countries such as South Africa and Botswana, changes were incorporated to attract more FDI in the country without introducing specific legislation to deal with investment matters.⁷

⁵CENTRE FOR CHINESE STUDIES *Assessing China's role in Foreign Direct Investment in Southern Africa* (2011) 23

⁶The legal framework for Foreign Direct Investment is provided by The Companies Ordinance, The Partnership Act, The Foreign Investment Protection Act and The Investment Promotion Act

⁷ NEPAD/OECD Investment Initiative *Investment for African Development* (2005) 12

1.1 OVERVIEW OF FDI IN TANZANIA

FDI is on the whole a remarkable success story in Tanzania. During the era of socialism, the government did not allow FDI.⁸ It was not until the mid-1990s when it started excelling and by year 2000, it stretched to US\$260 million per annum, and apart from an exceptional increase in 2001, it has more or less remained at the US\$250-million level.⁹

FDI in Tanzania is relatively diversified in mining (39%), followed by manufacturing (22%), tourism (13%) and agriculture (7%).¹⁰ Whereas the target for FDI was mainly for low economic value industries such as mining in earlier years (example, in 1999, mining accounted for 67% of the inflows), regulatory reforms and the successful track record of privatization are enticing new FDI inflows across industries. Investment inflows are primarily from South Africa, the UK, Australia, Canada, Kenya and the US.¹¹

Foreign corporations have invested through mergers & acquisitions, Green field investments into new and untapped sector developments, and brown-field investments that are a hybrid of both mergers & acquisitions and green-field investment.¹²

Investment in Tanzania is a national and sub national concern. Tanzania mainland investment affairs are governed by the Tanzania Investment Act while Zanzibar has separate legislation that governs investment promotion called The Investment Promotion Act passed by the Zanzibar House of Representatives in 1986.

⁸ UNCTAD *An Investment Guide to Tanzania, Opportunities and Conditions* (2005) 3

⁹ UNCTAD *An Investment Guide to Tanzania, Opportunities and Conditions* (2005) 15

¹⁰ BOT *Bank of Tanzania Report*(2003) 6

¹¹ UNCTAD *An Investment Guide to Tanzania, Opportunities and Conditions* (2005) 15

¹² Tanzania and The Added Value of Business for Development *Economics and Management in Developing Countries*(2007) 9

1.2 OVERVIEW OF FDI IN ZAMBIA

Until three decades ago, Zambia was one of the most prosperous countries in sub-Saharan Africa. Today it ranks as one of Africa's least developed.¹³

At independence in 1964, the country's rich mineral resources were well developed and during the first ten years, world market conditions were generally favourable. However, the country's fortunes were adversely affected in the early 1970s by the rise in oil prices and the drop in copper prices. This was compounded by the nationalization of major industries, including copper mines, which formed the backbone of the economy and generated 90 percent of export revenues. The wider economy suffered severe difficulties and by 1975, Zambia was faced with a sharp decline in government revenue as well as an escalation in the balance of payments and budget deficits.¹⁴

The situation declined through the next two decades, made worse by increasing government debt and an inability to maintain investment in the copper industry. External factors, in particular the declining terms of trade for commodity producers, compounded Zambia's problems.¹⁵

GDP growth averaged 1.5 percent in the 1970s, 1.4 percent in the 1980s and 0.3 percent in the 1990s. In the 1980s, Zambia's economic growth was second lowest in Southern African Development Community (SADC) after Mozambique, a country that was experiencing civil strife. In the 1990s, it was well below the

¹³UNCTAD *Investment Policy Review Zambia* (2006) 3

¹⁴UNCTAD *Investment Policy Review Zambia* (2006) 3

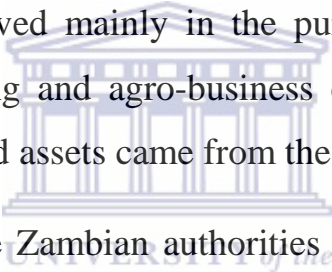
¹⁵UNCTAD *Investment Policy Review Zambia* (2006) 3

SADC average of one percent and the Sub-Saharan African average of 2.4 percent.¹⁶

Overall, Zambia's FDI inflows have not changed significantly in the last twenty years, especially when measured relative to population and size of economy. This compares poorly with its peers, who have made stronger efforts to improve their investment climate and implement economic reforms.

Zambia's FDI performance is strongly based on the performance of its mining industry, for which FDI has been a vital source of capital, technical inputs and managerial know-how.

Foreign investors were involved mainly in the purchase of a number of larger mining, energy, manufacturing and agro-business companies. The main foreign investors purchasing privatized assets came from the UK and South Africa.¹⁷

On 31st December 2006, five Zambian authorities merged into a new institution that was meant to induce economic development - The Zambia Development Agency.¹⁸ This institution has been set up to further economic development by formally promoting efficiency, investment and competitiveness in business. The Agency was empowered to assure the cost of doing business is streamlined to levels that make the country's producers more competitive at national and international level at large.

¹⁶UNCTAD *Investment Policy Review Zambia* (2006) 3

¹⁷ADB *Bank Report*(1998)12

¹⁸ The institutions were: the Zambia Privatisation Agency, the Zambia Investment Centre; Export Board of Zambia; Zambia Export Processing Zones Authority; and Small Enterprises Development Board.

1.3 PROBLEM STATEMENT

Over the past decade, Tanzania and Zambia have, with some rapidity been moving from constraints of a centrally planned economy to more open market based regime. Both passed different legislation aiming at facilitating, promoting and safeguarding maximum inflows of FDI. Tanzania enacted The Tanzania Investment Act and The Investment Promotion Act, while Zambia enacted The Zambia Development Agency Act.

The continuing process of change has outpaced statutory reform. The existing laws have become increasingly dysfunctional. For instance, in terms of procedural bureaucracy in granting an investment licence, screening process is a mandatory procedure which requires market studies, risk assessments report, proof of necessary investment capital to be submitted to investment authority.¹⁹

Barriers to investment therefore still exist such as regulations governing transfer of funds by investors, regulations governing the issuance of incentives to various investors, poor administrative systems, poor enforcement of intellectual property rights and other regulations, weak leadership in national economic planning, weak information disclosure and weaknesses inherent in the national investment policy. Particularly, concern is expressed on the land law, tax regulations and labour laws, which are thought to be out dated and lacking a comprehensive trade policy.²⁰

The research concentrates on the problem of poor administrative systems, especially legal, and regulatory frameworks which are plagued by overlapping regulations that duplicate functions of agencies and increasing red tape in

¹⁹UNCTAD *Investment Policy Review Tanzania* (2002) 89

²⁰CUTS *Investment Policy Reviews, Tanzania*(2002) 73

investment establishment, weaknesses inherent in the national investment policy and lack of a comprehensive trade policy which affect future and existing FDI.

The study attempts to solve the above problems by examining the existing provisions of the legislation and how they can be modified to alleviate the problem.

1.4 RESEARCH OBJECTIVES

The primary objective of the research is to analyse the role of pieces of legislation and policies specifically dealing with FDI, with the purpose of attempting to derive improvements and reforms needed in accelerating FDI inflows which is important in promoting national development and international competitiveness in Tanzania and Zambia.



1.4.1 The Specific Objectives of the research are:

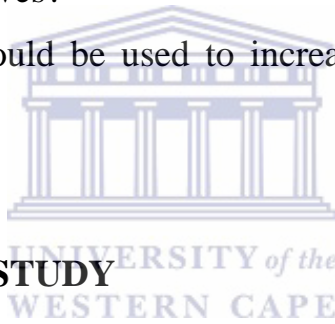
- (i) To review the current status and trend of FDI inflows into Tanzania and Zambia in terms of magnitude and beneficiary sector since the introduction of open market based economies
- (ii) To review and analyse various policies that affect FDI inflows
- (iii) To analyse the role played by investment agencies in influencing MNE decisions to invest in a country and recommend specific measures to be imposed to improve their capacities
- (iv) To derive appropriate measures to counter act the obstacles that prevent the inflow of more FDI

- (v) To provide recommendations on the best legal frame work that will ensure higher inflows of FDI aiming at improving the economy.

1.5 RESEARCH QUESTIONS

The research questions which the research centres upon are as follows;

- (i) How can the provisions of the legislation be modified to match current investments needs?
- (ii) How can the policies be altered to allow FDI inflows to fit with development objectives?
- (iii) What approaches could be used to increase the benefits of FDI in the country?



1.6 RATIONALE OF THE STUDY

The research paper aims:-

- (i) To assess the purposes and the effectiveness of the policies introducing to facilitate more FDI inflows,
- (ii) To make a critical analysis of the regulatory framework found in Tanzania and Zambia with regard to FDI and to, suggest areas of improvement if necessary to assure maximum inflow of FDI
- (iii) To seal the existing lacuna between the existing provisions of the law and actual practice in order to assure the goals of having FDI accomplished.

The study facilitates the production of knowledge which is critical in understanding, and explaining the role of countries' institutions and their significance in facilitating MNE's investment decisions in Africa. These insights will therefore provide assistance in legislative amendments in Tanzania and Zambia.

1.7 METHODOLOGY

The research is mainly based on a desktop study whereby critical and textual analytical methods of enquiry of relevant legislation, case laws, and policies will be accomplished. Additionally a comparative assessment study is conducted using Tanzania and Zambia.

The research aims at carrying out a critical analysis of the legal framework in Tanzania and Zambia with regard to FDI. The researcher selected Tanzania and Zambia because of the following:

Matters arising out of investment are incorporated in specific legislation in both countries. Tanzania mainland, enacted The Tanzania Investment Act in 1997 and in Zanzibar, The Investment Promotion Act in 1986, while in 2006, Zambia enacted The Zambia Development Agency Act.

Tanzania and Zambia are neighbouring countries, both, over the last decade, undertook significant economic reforms to win the confidence of global investors as stable economies in Africa.

In Tanzania for instance, from a low level of US\$12 million in 1992, FDI inflows reached US\$517 million in 1999, due to mass privatization, and adjusted to

US\$249 million in 2004.²¹ Tanzania is the leading FDI destination in the East Africa region; the total FDI destination exceeded US\$ 6 billion.²²

In Zambia, FDI inflows has seen steady increase over the years, averaging US\$ 651 million for period 2002 to 2009 with a peak in 2007 at US\$1,324 million, a 115 per cent increase compared to the 2006 figures.²³

Tanzania and Zambia are both members of Southern African Development Community (SADC); their economies have been transformed from a centrally planned economy to a market oriented system through implementation of legal, regulatory and institutional reforms. Both governments have encouraged private sector growth through restoration of market forces and less interference in commercial activities.

In Zambia, after a long period of decline and stagnation (from the mid-1980s – late 90's), the economy has experienced strong growth in the past decade, averaging five per cent (5%) per year due to privatisation and a boom in the mining industry.²⁴ In Tanzania, mining has become the fastest growing sector in Tanzania in terms of its share of exports which stands at around 48.2 per cent and the manufacturing industry has recovered contributing to real GDP growth by 7.8 per cent in 2007.²⁵

Both countries embarked on wide ranging reform programmes in order to provide an enabling business environment that would facilitate the development of the private sector. Zambia introduced the Private Sector Reform Development

²¹Tanzania and The Added Value of Business for Development *Economics and Management in Developing Countries*(2007) 7

²²Tanzania Investment Centre *Tanzania Investment Guide*(2008) 9

²³UNCTAD *An Investment Guide to Zambia, Opportunities and Conditions*(2011)3

²⁴Shuller H *Zambia ICT Sector Performance Review* (2010) 1

²⁵Tanzania Investment Centre *Tanzania Investment Guide* (2008) 12

Program (PSRDP) and Tanzania launched the Business Registrations and Licensing Agency (BRELA) in 1997.²⁶ Both of which were introduced to further streamlining business licensing processes and improving administrative processes related to business establishment.

1.8 SCOPE OF THE STUDY

This study is undertaken in South Africa. Due to constraint of first-hand information from the countries under study, the research is therefore based on second hand information.

The thesis is limited to a case study of the laws and policies of the two countries. It is believed that the selected countries reflect the successes, problems and controversies experienced in receiving FDI in Africa.



²⁶ UNCTAD *An Investment Guide to Zambia, Opportunities and Conditions* (2011) 15

CHAPTER TWO

OVERVIEW OF FDI WITH FOCUS ON TANZANIA AND ZAMBIA

2.1 The Definition of FDI

There is no single universally accepted definition of FDI. Different organizations and scholars have emerged with different definitions with time.

According to The World Bank, Foreign Direct Investments are the net inflows of investment to acquire a lasting management interest (10 percent or more of voting stock) in an enterprise operating in an economy other than that of the investor.²⁷

From the definition, it is clearly envisaged that for FDI to persist there must be a long term relationship that will exist between the investor and the invested enterprise, and the investment should be done outside the economy of the investor.

FDI is therefore not just about buying or trading equity rather it is more of management practices, aiming at utilizing the resources with the inclusion of a technology in a foreign economy.

UNCTAD defines FDI as an investment involving a long term relationship and reflecting a lasting interest and control of a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise, affiliate enterprise or foreign affiliate).²⁸ UNCTAD definition is relatively similar to that of The World Bank.

According to the OECD, FDI reflects the objective of obtaining a lasting interest by a resident entity in the economy (direct investor) in an entity resident in an

²⁷World bank website <http://www.worldbank.org/> (accessed on 12 Jan 2013)

²⁸ UNCTAD website [http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-\(FDI\).aspx](http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-(FDI).aspx) (accessed on 12 January 2013)

economy other than that of investor (direct investment enterprise). The lasting interest implies the existence of a long- term relationship between the direct investor and the enterprises and a significant degree of influence on the management of the enterprises. Direct investments include both the initial transaction between the two entities and all subsequent capital transactions between them and among affiliated enterprises, both incorporated and unincorporated.²⁹

The definition provided by OECD evidently pin point that founding an enterprise for establishing a production plan in a country of exile is FDI. Furthermore, purchasing a sufficiently high equity share in a particular foreign company with a clear target of building up a lasting relationship is also considered a foreign direct investment.³⁰



2.2Relation between FDI and the Legal Framework of the Host Nation

Foreign Direct Investments are the net inflows of investment to acquire a lasting management interest in an enterprise operating in an economy other than that of the investor.³¹ The lasting interest denotes that there is an existence long term relationship between the direct investor and the enterprises or host nation and a significant degree of influence on the management of the enterprises or that particular nation.

²⁹ Organization for Economic Cooperation and Development *OECD Benchmark Definition of FDI* (1999) 7

³⁰ Marco N *The Impact of FDI on Economic Growth: Analysis for the Transition Countries of Central and Eastern Europe* (2006) 42

³¹ World bank website <http://www.worldbank.org/> (accessed on 12 June 2013)

The decade of the 1990s was characterized by widespread liberalization of laws and regulations affecting inflows of FDI in developing countries.³² The liberalization of FDI policy was both cause and effect of the marked increase in integration of the world economy in the 1990s.³³

According to the World Bank Development Committees' Guidelines on the Treatment of Foreign Direct Investment, each state has the right to make laws that facilitate the admission of foreign investments into its borders, but competition policy should be established with respect to international and domestic laws, national labour and environmental laws.³⁴

Host countries believe that there is a good relationship that exists between FDI competition policy, law, and development, FDI competition policy can improve host country laws and FDI growth.³⁵

Furthermore, studies showed the connection between FDI Promotion provision and development, wherein such promotions improve development, when economic and legal infrastructures are enhanced as a cause of FDI growth, as well as a product of

³² Liberalization of laws and regulations affecting inflows of foreign direct investment was a result of increasing integration of developing countries into international trade and the global market which was accompanied by a dramatic influx of foreign capital in developing countries, particularly in form of FDI through Multinational corporations. The third World received 23 percent of the world's FDI inflows during the 1980's, but by 1994, their share had risen to 40 percent while developing countries received us\$ 2.4 billion in FDI in 1990, by 1995, the figure increased nearly 400 percent to US\$ 91.8 billion

³³ Kobrin S *The Determinants of Liberalization of FDI Policy in Developing Countries: A Cross- Section Analysis, 1992-2001* (2005) 3

³⁴ World Bank Development Committee *Guidelines on the Treatment of Foreign Direct Investment* (2010) 2

³⁵ UNCTAD study in examining policy and institutional characteristics of host countries as FDI determinants has shown that institutional characteristic of a host country combining ratings for the judiciary system, red tape and corruption together with the host country market size have a positive influence on inward FDI into developing countries

FDI inflows.³⁶ Some of the studies suggest that, there is a possibility that Multinational enterprises (MNEs) benefits more than the host countries, especially when the legal framework imposes extensive tax holidays, subsidies, and other forms of government incentives in the host nation.³⁷ The incentives provided by the host nation can sometimes disguise legislative implications that would be sources of objections from the host nation different parties, for instance, when there is a complain that the investment policy is against the constitutional law regarding ownership of properties and domestic companies.³⁸ Incentives may entice FDI because some tax incentives, may manipulate trade flows since convince firms to support FDI over exports as a means of foreign market access.³⁹

Critics of FDI have affirmed that FDI can even present more costs than gains to host countries especially when the host nation's investment legal framework is too eager to boost investment, even if the quality of economic gains from it is beneficial only in a short run.⁴⁰

Economic interdependence through FDI is commonly linked with political interdependence, as nation aligns legislation that will be more favourable to FDI.⁴¹ Host governments compete with each other for FDI through offering lavish incentives that can entice multi-million dollar investments, as encapsulated in their FDI competition policies.⁴²

³⁶ Murad M *The Role of Competition Policy and Law in Foreign Direct Investment: Issues and Future Developments* (2011) 248

³⁷ Velde D *Foreign Direct Investment for Development Policy Challenges for Sub-Saharan African Countries* (2002) 3

³⁸ Rosenboim M, Luski I & T Shavit *Behavioral Approaches to Optimal FDI Incentives* (2008) 29

³⁹ United Nations Industrial Development Organization (UNIDO) *Foreign Direct Investment in Southeast Asia: Experience and Future Policy Implications for Developing Countries* (2005) 11

⁴⁰ Khoury S & Wagner E *A Case Of Missing Links: FDI In MENA Countries* (2009) 9

⁴¹ Evans P *Embedded Autonomy: States and Industrial Transformation* (1995) 14

⁴² A Palangkaraya A & Waldkirch *A Relative factor abundance and FDI Factor Intensity in Developed Countries* (2008) 22

The Uruguay Round Agreements and the World Trade Organisation aimed to improve the multilateral dimension of FDI.⁴³ The major multilateral agreement on FDI, the TRIMs Agreement, was made during the Uruguay Round of the GATT.⁴⁴ This agreement aims to respond to issues about investment policies in the multilateral framework, a formal treatment of TRIMs in a GATT forum was already done before. The Uruguay Round of GATT aimed to address issues about trade and investment while The TRIMs Agreement understands that particular investment measures deform trade and that these distortions do not support GATT principles.⁴⁵ Export subsidies, import rights, minimum export obligations, and local content constraints directly impact volumes and prices of imports and exports, and in even the contents of trade activities. An instance refers to local content requirements which note that imports are seen less favourably than domestic inputs, which breaches the national treatment principle of the GATT.⁴⁶

Accordingly, National Treatment generally pertains to treating foreign investors in the same way as a government treats other national investors.⁴⁷ Most Favoured Nation (MFN) treatment means that the treatment given to one foreign investor is provided to all foreign investors.⁴⁸

⁴³The World Trade Organisation (WTO) is a supra-regulatory international treaty with regard to issues arousing out of FDI, which makes it legally binding for all WTO member countries to adopt standards at the domestic level in accordance with the regulations given in the WTO, this is to ensure that national regulatory frameworks are adopted in accordance with international regulations for the mutual benefit of all signatories

⁴⁴ Sanders L, Moulton K, Paggi M & Goodwi The GATT Uruguay Round and the World Trade Organization: Opportunities and Impacts for U.S. Agriculture (2010)

⁴⁵It took seven and a half years, almost twice the original schedule. By the end, 123 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.

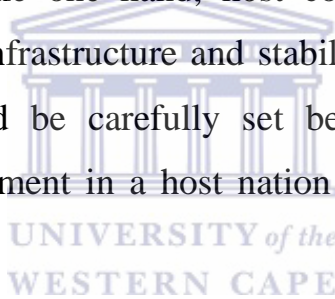
⁴⁶ Brooks D, Fan & Sumulong L *Foreign direct investment in developing Asia: Trends, Effects, and Likely Issues for the Forthcoming WTO Negotiations* (2003) 13

⁴⁷ UNCTAD (n47) 102

⁴⁸ Neumayer E *Do Double Taxation Treaties Increase Foreign Direct Investment To Developing Countries* (2007) 43

Developing nations provide competition policies that entice FDI to their borders hence international efforts to regulate foreign investment and legal frame work of FDI have raised, such as those from the World Bank and United Nations whereby these policies are often interlinked with investment legislation, so that the attractiveness of one's country can be enhanced to foreigners.⁴⁹

FDI competition policy, therefore, has its upsides and downsides since competition policy pertains to the set of policies and instruments that seek to entice competition in markets and to promote the allocated efficiency that basically goes with competition.⁵⁰ . Indeed, there are advantages of setting up effective FDI competition policy but on the one hand, host countries will be compelled to improve physical and legal infrastructure and stabilise macroeconomic policies.⁵¹ Investment incentives should be carefully set because it can also lead to a reallocation of foreign investment in a host nation or invite investment where it would otherwise not occur.⁵²



2.3 FDI trends in Africa

Most of African countries began getting their independence from colonial powers in the 1960's.⁵³ After their independence, many African countries initiated different programmes to assure economic growth is attained, for example by privatizing state owned enterprises, maintenance and restoration of macroeconomic stability by reducing inflation rates, cutting down budget deficits and devaluation

⁴⁹ Bjorvatn K, Kind H & Nordas *The Role of FDI in Economic Development* (2001) 109

⁵⁰ White L *The Role of Competition Policy in the Promotion of Economic Growth* (2008) 8

⁵¹ Bjorvatn K & Ecke C *Policy Competition For Foreign Direct Investment Between Asymmetric Countries* (2006) 50

⁵² Rosenboim M, Luski I & T Shavit *Behavioral Approaches to Optimal FDI Incentives* (2008) 29

⁵³ Available at www.africanhistory.about.com (accessed on 30 Dec 2012)

of overvalued national currencies.⁵⁴ African countries also improved and introduced various regulatory frameworks for FDI, which allowed more transparency, permitting profit penetration and providing tax and other incentives aiming at attracting more investments.⁵⁵

African countries went further to improve other sectors which affect the flow of FDI, such as solidifying the rule of law, improvements in legal and other institutions, telecommunication and transport infrastructure.⁵⁶ African countries have also been engaged in the conclusion of double taxation treaties (DTTs) and Bilateral Investment Agreements.⁵⁷

In the 1970s, Africa accounted for 25% of foreign direct investment to developing countries while in 1992, it only accounted for 5.2% whereas in 2000 it received 3.8% of the total FDI to the developing world and during the period of 1982-1999, most FDI flows to developing countries were directed towards the South, East and South-Eastern Asia followed by Latin America.⁵⁸ FDI has increased only moderately from an annual average of almost \$1.9 billion in 1983–1987 to \$3.1 billion in 1988–1992 and \$6.0 billion in 1993–1997, while inflows to developing countries as a group almost quadrupled, from less than \$20 billion in 1981–1985 to an average of \$75 billion in the years 1991– 1995.⁵⁹

⁵⁴UNCTAD *World Investment Report 1988:Trends and Determinants* (1998) 24

⁵⁵According to UNCTAD, *World Investment Report 1997: Transnational Corporations, Market Structure and Competition Policy* ; 26 of the 32 least developed countries in Africa covered in a 1997 survey had a liberal or relatively liberal regime for the repatriation of dividends and capital

⁵⁶ The World Economic Forum *Annual Report 1998/1999* (1999)20

⁵⁷Available at http://www.lowtax.net/lowtax/html/south_africa/south_africa_double_tax_treaties.asp (accessed on 30 Dec 2012)

⁵⁸Ntwala M *Foreign Direct Investment in Africa* (2003) 39

⁵⁹UNCTAD *Foreign Direct Investment in Africa: Performance and Potential* (1999) 2

The overall economic performance in Africa remained unfavourable for a long time because of various problems including civil wars, poverty and diseases. Data shows that it was not until the 1990s when FDI inflows to African countries became one of their leading sources of external financing and a major catalyst of development.⁶⁰ The main sources of FDI to Africa were France, the United Kingdom, and the United States, and to a lesser extent, Germany and Japan.⁶¹

FDI inflows to Africa declined from \$10.5 billion in 1999 to \$9.1 billion in 2000 which means African share of FDI in the world fell below 1 percent in 2000, the inflow to its top recipients, namely, Angola; Morocco; and South Africa have fall by half.⁶²



In 2010, FDI inflows amounted to US\$ 55 billion, of which 30 percent went to North Africa and Southern Africa received 27.5 percent.⁶³ UNCTAD World Investment Report has shown that FDI inflows to sub-Saharan Africa have also increased to \$36.9 billion from \$29.5 billion in 2010 in which Nigeria led with \$8.9 billion in FDIs in 2011 followed by South Africa whose FDI inflows amounted to \$5.8 billion increased from \$1.2 billion.⁶⁴

⁶⁰OECD *Foreign Direct Investment for Development "Maximising benefits, Minimising Costs" Overview* (2002) 3

⁶¹UNCTAD *World Investment Report 1999: Foreign Direct Investment and the Challenge of Development*(1999)26

⁶²UNCTAD *World Investment Report 2001: Promoting Linkage*(2001) 22

⁶³ UNCTAD *World Investment Report 2011: Non-Equity Modes of International Production and Development*(2011)

11

⁶⁴ UNCTAD *World Investment Report 2011: Non-Equity Modes of International Production and Development*(2011)13

According to an UNCTAD Report which was released in 2013, investment flows to the African continent has gained a significant increase of 5 percent to reach \$50 billion, even as global FDI fell by 18 percent in 2012.⁶⁵ North Africa saw the highest increase which was 35 percent of total investment in 2012 among the continent's regions, after declines resulting from the area's political turmoil in 2011. The report entails that much of the north African FDI of \$11.5 billion during last year was accounted for by a turnaround in Egypt, where inflows climbed from a net divestment of \$500 million to a positive of \$2.8 billion in 2012.⁶⁶



2.4 History and FDI Trends in Tanzania

The United Republic of Tanzania is a nation which was formed in 1964, after the combination of Tanganyika and Zanzibar, and it is located in central east Africa with about 1,400 km of coastline along the Indian Ocean, well situated geographically bordering Burundi, Kenya, Malawi, Mozambique, Rwanda, Uganda, Zambia and The Democratic Republic of Congo.⁶⁷

⁶⁵ Available at <http://www.newstrackindia.com/newsdetails/2013/06/26/377--Africa-records-increased-FDI-in-2012-as-global-inflows-fall-UNCTAD-.html> (accessed in 12 March 2013)

⁶⁶ UNCTAD *The World Investment Report(2013) Global Value Chains: Investment and Trade for Development* (2013) 6

⁶⁷ Tanzania Investment Centre *Tanzania Investment Guide*(2008) 3

In 1963, Tanganyika established the first act dealing with investment called The Foreign Investments (Protection) Act with an objective of promoting incentives that would attract many investments into the country.⁶⁸

In 1967, Tanzania was under one party rule after independence during which the state implemented nationalisation because the private sector in Tanzania was very small, and the socialist government of President Julius Kambarage Nyerere discovered that private initiative would not be sufficient to act as an engine of growth.⁶⁹ The decision was made to put all strategic commercial activities of the economy under state control leading to the establishment of numerous parastatal enterprises in all sectors.⁷⁰ However, it was later on declared impossible for the Government to manage its parastatals without constraints, both in terms of finance and management which created heavy reliance of the parastatals on the exchequer causing lot of concern and hence the need for change of policy.⁷¹

In the 1980's, Tanzania started to liberalise its economy following the limited access to finance that for years constrained its domestic investment.⁷² Adoption of structural adjustment policies as a condition for securing loans from the International Monetary Fund (IMF) and the World Bank was also implemented, for instance, the World Bank recommended policies was to change the mix of private

⁶⁸The Act focused more on protect foreign investments in Tanganyika, for instance, it approved enterprises could transfer out of the country in the approved foreign currency and at the prevailing official rate of exchange

⁶⁹ Pushan D *Tanzania and The Added Value of Business for Development: Economics and Management in Developing Countries*(2007) 2

⁷⁰OECD *OECD Investment Policy Review: Tanzania* (2013) 6

⁷¹ Available at <http://www.tanzania.go.tz/economy.html> (accessed on 5 May 2013)

⁷²Available at <http://www.fdi.net/documents/WorldBank/databases/plink/factsheets/tanzania.htm> (accessed on 4 May 2013)

and public health facilities.⁷³ In January 1992, the parastatal reform policy was first pronounced as a national policy by the Government.⁷⁴

Tanzanian parliament also enacted The National Investment (Promotion and Protection) Act which provided the fundamental definition of investment that implies also foreign direct investment (FDI).⁷⁵ In the Act, foreign investment means contribution of foreign capital by a foreign national that is a person who is not a citizen of the United Republic and, or a company or other body corporate outside the United Republic of Tanzania.⁷⁶

FDI grew much faster than Tanzania's economy in the second half of the 1990, as a result, the role of FDI in Tanzania's economy increased considerably.⁷⁷

Over the last decade significant economic reforms and privatisation enabled the country to win the confidence of global investors. From a low level of less than US\$ 2 million between 1986-1991 to US\$12 million in 1992, FDI inflows reached US\$517 million in 1999, due to mass privatization, and adjusted to US\$249 million in 2004, Tanzania moreover registered 38.77 per cent increase in FDIs from US\$ 1229.4 million in 2011 to US\$ 1.7 billion in 2012 contrary to global trend which showed alarming decline in investment inflows.⁷⁸

Total cumulative FDI in mining was estimated at \$370 million in 1997 which accounts for 67% of the inflows, regulatory reforms and the successful track record

⁷³ John Benson *The Impact of Privatization on access in Tanzania* (2001) 1

⁷⁴ The Presidential Parastatal Sector Reform Commission (PSRC) was established under The Public Corporations Act of 1992, as amended in 1993 and 1999

⁷⁵ Section 2 of The National Investment (Promotion and Protection) Act, 1990

⁷⁶ Part I of The National Investment (Promotion and Protection) Act, 1990

⁷⁷ Tanzania Investment Centre website <http://www.tic.co.tz/> (accessed on 3 March 2013)

⁷⁸ Tanzania Investment Centre *Report on the Study of Growth and Impact of Investment in Tanzania* (2008) 16

of privatization still entice new FDI inflows across industries.⁷⁹ Investment inflows are primarily from Canada, South Africa, the UK, Ghana, Australia, Kenya and the US whereby most of this investment (36%) is located in or around Dar es Salaam.⁸⁰

2.4.1 Entry Mode of FDI into Tanzania

The main channels of entry for FDI have been green field investment, either through sole ventures by foreign investors or joint ventures with the locals.⁸¹ Cumulative data on foreign investment projects approved by the Tanzania Investment Centre between 1990 and 2000 indicates foreign investors are interested in green field investments.⁸² Estimation shows that participation in privatisation process is gaining strength, especially the ongoing divestiture of public utility companies, privatisation proceeds accounted for a third to half of FDI flows between 1992 and 1998, with a cautionary note on the reliability of the figures.⁸³

Subsequently, the share has fluctuated between 1 and 4 percent annually. Overall, the share of foreign acquisitions in FDI inflows has been above one-tenth between 1993 and 1998.⁸⁴

⁷⁹ Mining Act, 1998 provided management and administration of the land in villages helped a lot to boost mining sector. Government also enacted Petroleum (Exploration and Production) Act, 1980[Act No. 27 of 1980] which enshrined licensing with respect to exploring for and producing petroleum

⁸⁰ Tanzania Investment Centre website <http://www.tic.co.tz/>(accessed on 6 May 2013)

⁸¹ Tanzania Investment Centre *The Study of Growth and Impact of Investment in Tanzania* (2008)18

⁸² Tanzania Investment Centre website <http://www.tic.co.tz/>(accessed on 56 May 2013)

⁸³ Gibbon (1999) 'Privatization and Foreign Direct Investment in mainland Tanzania' (1999) IV. 99. 117

⁸⁴ UNCTAD *World Investment Report 2001: Promoting Linkages* (2001) 1

2.4.2 Ownership of FDI in Tanzania

The Business Licensing Act of 1972 was replaced by the new Business Activities Registration Act Registration, 2005 which established licensing regulations for business operations.⁸⁵ It provides the right to freely establish private entities, to own property both movable and immovable, and to acquire and dispose of property including interest in business enterprises and intellectual property.⁸⁶ Registration fees and charges for foreign companies are significantly higher than for domestic companies.⁸⁷ The government is now implementing The Business Activities Registration Act of 2007, which aims to reduce administrative barriers with one centralized licensing database.⁸⁸

FDI projects initiated in Tanzania are therefore either full foreign owned or in joint venture with Tanzanian citizens. Acquisitions of companies by foreign investors have been few, but these gave a significant push to increased FDI flows.⁸⁹

Overall, the share of foreign acquisitions in FDI inflows has been above one-tenth between 1993 and 1998. In 2002, for instance, more than 32 percent of projects registered at the Tanzania Investment Centre during the previous past 13 years were joint ventures and only 24 percent were fully owned by foreign share holders.⁹⁰

⁸⁵The Act established Business Registration and Licensing Agency (BRELA) through which all enterprises whatever their legal forms, must be registered thereto. However other approvals, permits and licenses are also required, but for investors who pass through TIC will facilitate these requirements

⁸⁶Part VI of The Business Activities Registration Act, 2005

⁸⁷Tanzania Investment Centre *Benchmarking Tanzania's Foreign Direct Investment* (2003) 11

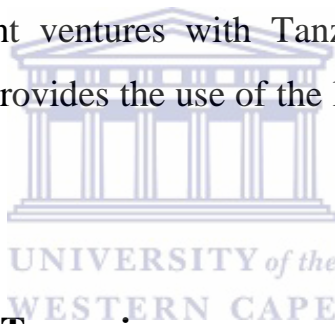
⁸⁸ Section 5 of The Business Activities Registration Act, 2007, establish Business Registration and Licensing Agency (BRELA) which facilitate all the licensing processes, and Section 7 of the same Act, established Business registration centres which is the section of local authority assisting in registration processes

⁸⁹UNCTAD *World Investment Report 2001: Promoting Linkages* (2001) 2

⁹⁰Tanzania Investment Centre *Benchmarking Tanzania's Foreign Direct Investment* (2003) 32

In general, based on the FDI inflows in the country until 2003, the share of foreign acquisitions was about 28% while new investment establishments accounted for 72% of total number of projects into Tanzania.⁹¹

Under the Tanzania Investment Act 1997 and The Land Act 1999, occupation of land by non-citizen investors is restricted to lands for investment purposes. Land in Tanzania is state property that can be leased for up to 99 years. The law does not allow individual Tanzanians to sell land to foreigners. Foreigners can only lease land in Tanzania through the Tanzania Investment Centre (TIC), which has designated specific plots of land to be made available to foreign investors, another way is by entering into joint ventures with Tanzanians, and in this case the Tanzania Investment Centre provides the use of the land but retains ownership that is the leasehold.⁹²



2.4.3 Trend of FDI policy in Tanzania

The Government from 1985 changed the direction of its policies towards market based economic management after almost two decades of central planning that was characterized by excessive government interventions in economic activities.⁹³

⁹¹ Tanzania Investment Centre *The Study of Growth and Impact of Investment in Tanzania* (2008) 18

⁹²United States Bureau of Economic, Energy and Business Affairs *2011 Investment Climate Statement* (2011) 20

⁹³Ending of the Arusha Declaration of 1967 and The Nationalization Policy that followed discouraged active involvement of the private sector in the economy

Major changes were in the following fields:

- Trade and exchange liberalization where there was abolition of exchange controls on current account transactions, abolition of import and export licenses and partial liberalization of the financial account.⁹⁴
- Parastatal sector reforms including privatisation of state owned companies and institutional reforms.⁹⁵
- Investment promotion reforms that involved guarantees against nationalisation which creates better guarantees to investors.⁹⁶ The new Act states categorically that business enterprises shall be guaranteed unconditional transferability of dividends, loan servicing,⁹⁷ and remittance of proceeds in the event of liquidation provision of tax holiday incentives,⁹⁸ the establishment of IPC which transformed later into TIC, and TIC transformed into a one stop investment centre.⁹⁹

⁹⁴ Introduction of Fair Competition Act, 2003: provides for promotion and protection of effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct. In March 1992: The Foreign Exchange Act 1992 was enacted

⁹⁵ The Privatisation Trust Act, 1997 which provided for the establishment of the Privatisation Trust, to define its obligations and functions in relation to the promotion of broader share ownership by citizens of the Union Republic of Tanzania and for matters connected thereto

⁹⁶ Under section 22 of The Tanzania Investment Act, 1997, specifies that business shall be neither nationalised nor expropriated by the Government hence creating investment guarantees. After successful registration, TIC grants investment guarantees and registers technology agreements for all investments above US\$ 300,000 and US\$ 100,000 for foreign and local investments respectively

⁹⁷ Liberalisation of FDI is declared in 1998 Foreign Exchange Regulations BOT, as well as Foreign Exchange Circular no. 6000/DEM/EX.RE/58 of September 1998

⁹⁸ The requirement for the certificate of incentives include: three copies of the projects business plan/ feasibility study, one copy of the Memorandum & Article of Association, one copy of the Certificate of incorporation, covering letter and three copies of TIC application forms, one copy of the company board resolution, one copy of the evidence of the land ownership, and one copy of the evidence of financing. Currently, tax incentives are

- Substantial improvements were made on the new Investment Code. For example, to avoid contradictions, the amount for approval to obtain new investment licences were set, which was a minimum sum equivalent of USD 300,000 for foreign investors and USD 100,000 for local investors.¹⁰⁰ In an attempt to minimize bureaucracy in the sector, the Investment Code also set a maximum period for processing application to be 14 working days.¹⁰¹
- Introduced Tax reforms which aimed at streamlining and broadening of the tax base whereby the Tanzania Revenue Authority (TRA) was established and later on Value Added Tax (VAT) was introduced.¹⁰² Furthermore, in the process of reforming the tax system, TRA was set as an independent institution to administer the tax system.¹⁰³
- Financial sector reforms involving privatisation of state owned banks, allowing foreign banks to operate alongside local banks, establishment of the

granted in the form of enhanced capital deductions and allowances structured according to lead priority sectors which include agriculture, agro- based industries, mining, tourism, petroleum and gas and economic infrastructure

⁹⁹TIC is therefore the first point of call for potential investors, a one stop facilitation centre for all investors. It also engages in marketing Tanzania as an attractive investment destination. It has also established zonal offices in Moshi and Mwanza. On behalf of investors, TIC undertakes the following: investment facilitation, tax registration, land issues, business licensing and registration, immigration issues, labour issues and after care services

¹⁰⁰Bank of Tanzania *Tanzania Investment Report: Report on Study of Foreign Private Capital* (2001) 5

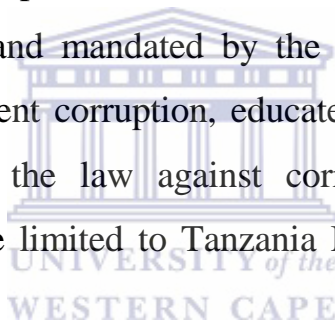
¹⁰¹ Section 16 (4) and (5) of Tanzania Investment Act [ACT No. 26 of 1997]

¹⁰² Value Added Tax Act, 1997; provides for the imposition of VAT on supplies of goods and services and for related matters, also enacted Financial Laws (Miscellaneous Amendments) Act, No. 27; aimed at amending certain financial laws that had potential conflict with provisions in the Tanzania Investment of 1997. The Laws which were affected by the Act are some section of The Income Tax, 1973 which was later amended to Income Tax Act, 2004; providing for the charge, assessment and collection of income tax and for the ascertainment of the income to be charged and matters incidental thereto, Customs Tariff Act 1976, Sales Tax Act, 1976(since repealed) and The Immigration Act, 1995

¹⁰³The Tanzania Revenue Authority Act, 1995 established the Authority as a semi-autonomous agency of the Government, under the general supervision of the Minister for Finance

Capital Market and Securities Authority (CMSA) and the Dar es Salaam Stock Exchange (DSE).¹⁰⁴

- Civil service reforms whereby there was restructuring in the public service and performance improvement, pay reform, record and information system improvements and capacity building¹⁰⁵
- Measures against corruption: the Government introduced a bureau to combat and prevent corruption in the country.¹⁰⁶ The bureau was called Prevention and Combating of Corruption Bureau (PCCB), which is a law enforcement institution established and mandated by the Prevention and Combating of Corruption Act to prevent corruption, educate society on the effects of this problem, and enforce the law against corruption.¹⁰⁷ The mandate and operations of PCCB are limited to Tanzania Mainland. In the endeavour to



¹⁰⁴ Establishment of The Capital Markets and Securities (Amendments) (Act No. 4-1997) Act, 1997 which amended Capital Markets and Securities Act, 1994; which provides for the establishment of a Capital Markets and Securities Authority (CMSA) for the purpose of promoting and facilitating the development of capital markets, Enactment of Banking and Financial Institutions Act, 2006; which provides for comprehensive regulation of banks and financial institutions with the view of maintaining the stability, safety and soundness of the financial system, Bank of Tanzania Act, 1995 and Bank of Tanzania Act, 2006; both provides for the establishment, constitution and functioning of the bank of Tanzania as the central bank of The United Republic of Tanzania. The Acts specifically express the functions and the objectives of its regulatory and supervisory powers over all banking and financial institutions in Tanzania. In September 1996: The Dar es Salaam Stock Exchange was incorporated as a private company limited by guarantee and not having a share capital under The Companies Ordinance, later on in April 1998: Trading activities at the Dar-es-Salaam Stock Exchange commenced after two years of preparatory work under the stewardship of the Government through the Capital Markets and Securities Authority. The opening of the Trading Floor coincided with the listing of TOL Limited (formerly Tanzania Oxygen Limited), as the first company on the Exchange

¹⁰⁵ The Government established Public Service Reform Programme (2000-2011) which was designed to assure all sectors of public service were advanced in order to increase efficiency in daily activities

¹⁰⁶ The Prevention of Corruption Act (PCA) Cap 329 [RE 2002] was enacted, which was later repealed by The Prevention and Combating of Corruption Act, 2007

¹⁰⁷ Section 7 of The Prevention and Combating of Corruption Act, 2007

combat corruption the Bureau adopts the three-pronged approach, namely by prevention, public awareness, investigation and prosecution of offenders.¹⁰⁸

The flow of capital investment into Tanzania started to speed up in the mid-1990s as a result of liberalization and intensification of structural reforms, the revision in legislative incentives and other investment promotion and facilitation efforts.¹⁰⁹ The Government adopted a policy which was called The National Investment Promotion Policy and enacted The National Investment (Promotion and Protection) Act.¹¹⁰

Under the act, the Government established The Investment Promotion Centre (IPC) which is an institution responsible for promotion, approval, monitoring and facilitation of foreign private capital flows into the country.¹¹¹

The National Investment Policy of 1996 was later on replaced by The Tanzania Investment Act,¹¹² which effectively repealed The National Investment (Promotion and Protection) Act, 1990. The Tanzanian Investment Act managed to transform the Investment Promotion Centre into the Tanzania Investment Centre.¹¹³ The replacement was deemed necessary after Government initiated three studies named

¹⁰⁸ Available at <http://www.pccb.go.tz/index.php/about-pccb> (accessed on 2 June 2013)

¹⁰⁹ On the regulatory front, capital markets in Tanzania are regulated by The Capital Markets and Securities Act of 1994 as amended by act No. 4 of 1997 and the rules made by the DSE Council. The growth of stocks in the capital market has been modest but significant taking into consideration the historical economic structure of the country. Companies fulfilling the necessary participation conditions may benefit from Collective Investment Schemes, Unit Trust and Open Ended Investment Companies (OEICs)

¹¹⁰ Act No. 10, 1990; Published in the Government Gazette of the United Republic of Tanzania: No. 26, vol. 71, dated June 1990, Acts supplement no. 3 of 1990

¹¹¹ Section 4 of The National Investment(Promotion and Protection) Act ,No. 10 of 1990, by the time it was replaced by Tanzania Investment Centre, Investment Promotion Centre had already approved about 1,025 projects worth US\$ 3.1 billion

¹¹² Act no. 26 of 1997

¹¹³ Part II of Tanzania Investment Act [ACT No. 26 of 1997]

the Investors' Road Map Study, Investment Policy Review and Investment Code review.¹¹⁴

Enacting more effective legislation was a mandatory requirement because there were clear indications that the investment policy and The National Investment (Promotion and Protection) Act did not auger well with investor requirements especially because of conflicts between the investment code and other laws governing investments.

There was also a perception of an unpredictable investment climate due to goal-shifting syndrome which resulted to unpredictable incentives and the IPC increasingly being perceived as another bureaucracy.¹¹⁵

Moreover, there were frequent changes which were incorporated in the provisions that led to more confusion for investors and other involved parties as to which law to be applied in various cases. The existence of administrative weaknesses in the centre caused limitations to the effective attraction of foreign investors.¹¹⁶

Tanzania established the Tanzania Investment Centre in 1997 to be the primary agency of the Government to coordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment related matters.¹¹⁷ All Government departments and agencies are required by law to cooperate fully with TIC in facilitating investors to assure maximum benefits are obtained.¹¹⁸

¹¹⁴UNCTAD *Investment Policy Review; The United Republic of Tanzania* (2001) 29

¹¹⁵Tanzania Investment Centre *Reports on the Study of Foreign Private Capital Flows in Mainland Tanzania* (2001)

22

¹¹⁶CUTS *Investment Policy in Tanzania- Performance and Perceptions* (2003) 45

¹¹⁷Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 35

¹¹⁸ Tanzania Investment Centre website <http://tic.co.tz/> (accessed on 28 May 2013)

2.4.4 Analysis of FDI performance in Tanzania

Tanzania's attempt to create a more favourable environment for a private sector led economy has seen significant increase in the inflow of FDI. During the last decade Tanzania's foreign investment has increased from US\$ 12 million in 1992 to US\$ 240.4 million in 2002, FDI to 1.7 billion in 2012.¹¹⁹ This consistent growth of FDI into Tanzania reflects the confidence that investors have in the country's successful reforms.

According to the Tanzania Investment Centre data, Tanzania's inward FDI stock in 2001 reached a record high of US\$ 374.4 million, placing the country among the top dozen recipients of FDI in Africa.¹²⁰ Tanzania's FDI inflows have increased from US \$ 23 million in 1995 rising to US\$ 516.7 million in 1999, US\$ 374.4 in 2001 and US\$ 240.4 in 2002, this is despite the fact that the whole of Africa received only 2 percent of total global inflows in 2001 while global FDI plunged by 51 percent from US\$ 1.3 trillion in 2000 to US\$ 735 million in 2001.¹²¹

Based on 2012 shares of inward flow of FDI into Tanzania when compared to regional countries in Sub-Saharan Africa such as Botswana, Lesotho, Senegal, Uganda, and Zambia, it is clear that Tanzania has done relatively well with a total share of 2.35 US\$ Billion in 2002.¹²²

¹¹⁹ Tanzania Investment Centre *Report on the Study of Growth and Impact of Investment in Tanzania* (2008)16

¹²⁰ Tanzania Investment Centre website <http://tic.co.tz/> (accessed on 29 May 2013)

¹²¹ Tanzania Investment Centre *Benchmarking Tanzania's Foreign Direct Investment* (2003) 19

¹²² Page S & Velde D *Foreign Direct Investment by African Countries* (2004) 31

2.5 History and FDI trends in Zambia

Zambia, a landlocked country which obtained independence from Great Britain in 1964, covers an area of 752,614 square kilometres, situated on the southern part of Africa, sharing its international boundaries with Malawi in the east, Tanzania in the north-east, Democratic Republic of Congo in the north, Angola in the west, Botswana in the south-west, Zimbabwe in the south, and Mozambique in the south-east.¹²³ The country is endowed with abundant natural resources, which include copper, cobalt, zinc, lead, coal, emeralds, gold, silver, uranium, water and fertile land, the main industries are mining, transport, construction, manufacturing and agriculture.¹²⁴

During the early years after independence, in 1964-68, Zambia followed a largely free market orientation with little public sector participation in economic activity. This period was accompanied by booming economic prospects, supported by complimentary external factors such as high and increasing copper prices and favourable terms of trade.¹²⁵

The structure of the Zambian economy was set to service the copper mining sector whereby Zambia earned over 90 percent of its export revenue.¹²⁶

In 1968 radical economic reforms were initiated and the free market orientation that had been adopted at independence was reversed.¹²⁷ Government started

¹²³ Available at <http://www.whereig.com/zambia/> (accessed on 27 June 2013)

¹²⁴ Zambia Development Agency 2011/12 *Zambia Review* (2013) 5

¹²⁵ Economy and Globalization in Zambia, Available at <http://www.studymode.com/essays/Economy-And-Globalizatin-In-Zambia-1064999.html> (accessed on 15 June 2013)

¹²⁶ Available at <http://www.academicroom.com/topics/facts-about-zambia> (accessed on 27 June 2013)

nationalization which led to the expansion of the public sector's share of capital investments from US\$ 180.4 million (which was 42.3 percent) during 1954-64 to US\$ 281.8 million (approximately 67.7 percent) in 1966-70, finally 80 percent of the economy came under the control of state owned enterprises.¹²⁸

In early 1973, Zambia experienced many episodes of external and internal downfalls whereby the external downfalls included deteriorating terms of trade, collapsing copper prices, soaring oil prices, and a lack of capital investment.¹²⁹ The situation was further aggravated by frequently recurring droughts, and the downfalls caused significant effects in the Zambian economy especially in the late 1980s because it existed for a long period in which the economy could no longer sustain itself.¹³⁰ The Government experienced deficits on budget and balance of payments as a result of declines in the copper price.¹³¹

The Zambian Government decided to use domestic and foreign borrowing to finance the imbalances that existed which resulted in more destabilization due to the continuation of copper price declines, increases of world interest rates and regional conflicts.¹³² From 1985 to 1989 public enterprise losses were estimated at

¹²⁷ Zambia by then was the World's third largest copper producer and a middle- income nation in the 1960s, but falling copper prices and mismanagement of state owned mines led to steadily declining income from 1974 to 1990

¹²⁸ Andersson P & Kayizzi-Mugerwa S *External shocks and the search for diversification in Zambia* (1993) 113

¹²⁹ Walters D *Failure of Zambia's Nationalisation Programme: Exploring the Factors that Precipitated the Collapse* (2010) 2

¹³⁰ The Government during all that period of 1973-1984 under President Kenneth Kaunda of was of the view that the downfalls experienced were only temporally hence the effect will not has maximum damage to the economy of Zambia

¹³¹ Zambia had one of the highest debts of any nation on the globe, relative to its gross domestic product (GDP), The IMF insisted that the Zambian government should focus on stabilising the economy and restructuring it to reduce dependence on copper

¹³² During the period 1965 and 2001, Zambian economy grew at an average annual rate of 1.7 percent, compared to 10.3 percent for Botswana, and 5.4 percent for Egypt and 4.8 percent for Gabon

US\$ 455 million per annum.¹³³ Ultimately, Zambia's economic position had deteriorated to the extent that the country was unable to service its internal and external debt obligations, and was incapable of sustaining its ailing domestic industries.¹³⁴

Zambia embarked on an ambitious effort to liberalize and streamline its economy, this was done through ensuring there is a satisfactory private investment climate, and FDI promotion has been one of the most important pillars of the Zambian Government's economic and social policies.¹³⁵ The Government's economic reforms included economic liberalization and public sector reforms. By this time, external debt had risen to US\$ 7.2 billion, private investment had remained depressed and Zambia had experienced decades of steady declines in per capita income from US\$ 900 in 1970 to US\$ 380 in 1990.¹³⁶

Following almost two decades of economic misfortune and state participation that was characterized by overly intrusive controls, Zambian domestic policy has proved to be a failure and economic misalignment only served to reinforce the adverse effects of the persistent external shock. The Government finally committed to extensive and deep economic reforms in 1991 which included economic liberalisation and public sector reforms.¹³⁷

¹³³Domestic policy failure and economic misalignment only served to reinforce the adverse effects of the persistent external shock. Following almost two decades of economic misfortune and state participation that was characterized by overly intrusive controls, Zambia finally committed to extensive and deep economic reforms in 1991

¹³⁴ Cheelo C & Munalula T *The Impact of Privatization on Firm Performance in Zambia* (2005) 2

¹³⁵The policies which were established aimed at discovering Zambia's comparative advantage, developing strategies for attracting maximum inflows of FDI in different economic productive sectors

¹³⁶ Aron J & Elbadawi I *The Impact of Privatisation on Firm Performance in Zambia* (1992) 22

¹³⁷ Bank of Zambia *Issues on the Zambian Economy* (2010) 25

Private investment had remained depressed and Zambia had experienced decades of steady declines in per capita income from US\$ 900 in 1970 to US\$ 380 in 1990.¹³⁸ The Zambian Government started privatisation of state-owned enterprises and liberalized external trade,¹³⁹ but the attempt did not rescue the economy of Zambia overnight because there was still restructuring and weak investment which created more deterioration in manufacturing sector performance.¹⁴⁰

In 1996, Zambia's gross fixed capital formation (GFCF) declined from about 43 percent of the GDP to around 18 percent in the year 2000; this was largely due to the poor performance of the mining sector.

FDI flows increased from US\$97million in 1996 to US\$198 million in 1998, but declined to US\$72 million in 2001, in 2006, there was a significant increase to US\$ 615.8 million and US\$ 1.32 billion in 2007, US\$ 938.6 million in 2008, US\$ 959.4 million in 2009 and the amount increased drastically in 2011to US\$ 2 Billion.¹⁴¹



FDI flows into Zambia constitute only a small fraction of overall net resource flows into Zambia. In 1999 and 2000, however, FDI constituted 36 and 26 percent

¹³⁸ Aron J & Elbadawi I *The Impact of Privatisation on Firm Performance in Zambia* (1992) 21

¹³⁹ In Feb, 2006;in addressing the National Budget at the Parliament, Hon.by Honorable Ng'andu P. Magande, MP, Minister of Finance and National Planning envisaged that in 2005, three companies were privatised bringing the cumulative total number of companies and units privatised, leased or concessioned to 262 out of a working portfolio of 284

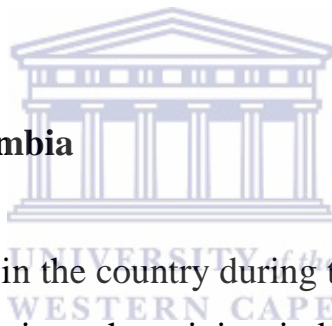
¹⁴⁰ Bigsten A & Kayizzi-Mugerwa S *The Political Economy of Policy Failure in Zambia* (2000) 6

¹⁴¹ 2013 Index of Economic Freedom (2013) 465

respectively of net resource flows.¹⁴²UNCTAD's World Investment Report 2002 also gives a comprehensive picture of FDI inflows into Zambia, from 1985-2001.

A snap shot analysis of the data from 1985 to 1995 reveals that the performance of FDI flows to Zambia has exhibited a decreasing trend over time, of course not withstanding the peak recorded in 1997. Again, an analysis of the UNCTAD FDI Performance Index reveals that, for Zambia, the value of the index has fallen from 4.2 during the 1988-1990 period to 1.7 during the 1998–2000 period, however, on a score of 0–1, the inward FDI potential index for Zambia has risen from 0.111 in the 1988–1990 period to 0.160 during the 1998–2000 period.¹⁴³

2.5.1 FDI Entry Mode in Zambia



Zambia started attracting FDI in the country during the mid-1990's after advancing the privatisation policy, ever since the mining industry has been dominating the inflow of FDI, estimations shows that it attracted more than half of the FDI inflows during that period.¹⁴⁴

The service sector is the second field which received more FDI, services such as banking, communications and tourism dominated the flow.¹⁴⁵ Government strategy of improving the tourism sector has attracted more foreign investors.¹⁴⁶

¹⁴² CUTS *Investment Policy in Zambia- An Agenda for Action* (2003) 14

¹⁴³ UNCTAD *World Investment Report 2002: Transnational Corporations and Export Competitiveness* (2002) 49

¹⁴⁴ Zambia Development Agency (ZDA) Research, Planning and Policy Director on her April Interview to Lusaka Today, elaborated that Mining sector has contributed more than 63% of Zambia's earning from Foreign Direct Investment (FDI) during the third quarter of 2012 whereby out of the total earnings of about US\$ 2.8 Billion, the mining sector raked in investment of more than US\$.7 Billion

¹⁴⁵ Zambia Development Agency Website <http://www.zda.org.zm/> (accessed on 10 June 2013)

2.5.2 FDI Policy trends in Zambia

Investment policy reform in Zambia started in 1991. After a massive failure of economic policies in Zambia, the enactment of pro-business legislation and amendment of existing laws to support the liberalised economic environment was deemed necessary to assure economic rescue.

The Government introduced different legislations such as the Income Tax Act of 1991, Investment Act of 1991, Companies Act of 1995, Export Development Act of 1994, Privatisation Act of 1993, Lands Act 1995, Securities and Exchange Act. 1994, The Zambia Revenue Act 1994, Banking and Financial Services Act 1994 and The Zambia Development Agency Act of 2006. The Government also established various intermediary organizations namely,¹⁴⁷

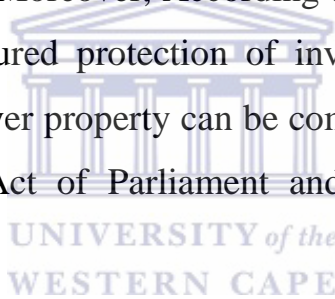
- The Zambia Investment Centre (ZIC)
- The Zambia Privatisation Agency (ZPA)
- The Export Board of Zambia (EBZ)
- The Small Enterprise Development Board (SEDB)
- The Zambia Competition Commission (ZCC)
- The Energy Regulation Board (ERB)
- The Communication Authority of Zambia (CAZ)
- The Securities Exchange Act (SEC)
- The Patents and Companies Registration Office (PACRO)

¹⁴⁶Government renovated and developed more gaming parks and sites along Victoria falls, building new hotels such as The Sun International Resort in 2001, the estimation cost was US\$ 45.6 million

¹⁴⁷Mwitwa C *Policy Reform for Investment: The Case of Zambia* (2006)5

The Investment Act of 1991 is the important act which had liberal provisions for FDI. This statute was repealed and replaced by the Investment Act of 1993.¹⁴⁸ The 1993 Investment Act was also amended in 1996 and 1998 aimed at promoting investments including FDI, mainly in productive activities by offering generous fiscal incentives as an attraction to foreign investors to Zambia.¹⁴⁹

The Act guarantees foreign investment against compulsory acquisition or nationalization without compensation, the Act also reduced the legal requirements to an absolute minimum which reduces complications in procedures that may confront foreign investors.¹⁵⁰ Moreover, According to the Act and the Constitution of Zambia, Government ensured protection of investment projects whereby no property or interest in right over property can be compulsorily acquired, except for public purposes, under an Act of Parliament and against prompt payment of compensation.¹⁵¹



In 1995, Zambia introduced The Companies Act in which all the registration takes place in the Patents and Companies Registration Agency.¹⁵² The act allows two or more persons of any nationality to register a company in Zambia.¹⁵³ According to the act registered companies are also eligible for investment licenses under

¹⁴⁸ The Investment Act, no. 39 of 1993 which was later amended by Investment (Amendment) Act, 1996

¹⁴⁹ Part VIII of The Investment Act [No. 39 of 1993]

¹⁵⁰ Section 19 of The Investment Act [No. 39 of 1993]

¹⁵¹ Articles 16(1) of Constitution of the Republic of Zambia and 35(1) and (2) of The Investment Act, 1996

¹⁵² The registration of companies in Zambia is governed by the Companies Act No. 24 of 1995 and registration takes place in the Patents and Companies Registration Agency. Under the Company's Act, any two or more persons, regardless of citizenship, may register a company in Zambia

¹⁵³ Companies Act No. 24 of 1995 The Companies Act allows also foreign companies to register with the Registrar of Companies within 28 days of setting up or acquiring an established place of business

Investment Act No. 39 of 1993, which created more room for more companies to start investing in Zambia. In 2012, changes to the Companies Act were proposed which could impose indigenisation requirements ranging from zero to fifty-one percent on foreign-invested companies, depending on the size of the investment. Any revisions to the Companies Act, however, remain in draft form.¹⁵⁴

The Government started a progressive establishment of timely, secure and effective methods of ownership registration for land and other forms of property. The Lands Act was amended to provide for property ownership by both foreign and domestic investors.¹⁵⁵

Foreigners holding Investment Certificates or in which 75% shares is owned by locals can own property.¹⁵⁶ The land delivery system is currently being reviewed to shorten the process in which the concept of a land Bank is being operationalised.¹⁵⁷

General incentives to investors in various sectors are provided in assorted legislation that governs the Zambia Revenue Authority (ZRA), including the Customs and Excise Act, Income Tax Act of 1966 and the Value Added Tax Act of 1995.¹⁵⁸

¹⁵⁴ United States Bureau of Economics and Business Affairs 2013 *Investment Climate Statement: Zambia* (2013) 9

¹⁵⁵ Section 3 (b) of The Land Act [Act No. 29 of 1995] which gave power to the President to alienate land to a non-Zambian where the non-Zambian is an investor within the meaning of The Investment Act or any other law relating to the promotion of investment in Zambia

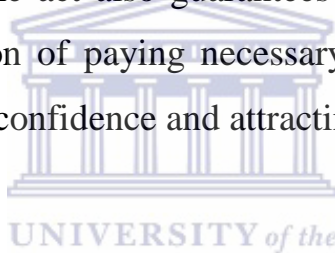
¹⁵⁶ Mwitwa C *Policy Reform for Investment: The Case of Zambia* (2006) 6

¹⁵⁷ Government of Zambia The Draft Land Policy (2002) 11

¹⁵⁸ In Dec, 2010; Luke Mbewe: The Chairperson of Zambia Development Agency (ZDA) said the investment of the cement manufacturing plant and ancillary infrastructure in Masaiti on the Copper Belt Province of US\$400 million was above the US\$10 million and qualifies for an investment incentive under section 58 of The Zambia Development Agency Act [No. 11 of 2006]

In 2006, Zambia enacted the Zambia Development Agency (ZDA) Act which replaced the Investment Act.¹⁵⁹ The act marks a departure from its predecessor's more liberal stance, introducing compulsory licensing and screening of new investors, restricting the scope for incentives and making it more difficult to employ foreign workers and obtain land.¹⁶⁰

The Zambia Development Act does not discriminate against foreign investors, and all sectors are open to both local and foreign investors. The Citizens' Economic Empowerment Commission is working with The Zambia Public Procurement Authority, to implement preferential procurement that would support Zambian-owned and based firms.¹⁶¹ The act also guarantees investors the right to transfer funds abroad upon completion of paying necessary tax which is a positive step towards establishing investor confidence and attracting investors to Zambia.¹⁶²



The legal reform done in Zambia, has been very successful in such a way that there is no distinction existing in Zambian law between foreign and domestic investors, though changes to the Companies Act, which could create such distinctions, were proposed in 2012.¹⁶³

¹⁵⁹Zambia Development Agency Act [No. 11 of 2006]

¹⁶⁰Section 68 of Zambia Development Agency Act [No. 11 of 2006]

¹⁶¹The Zambia Public Procurement Authority (ZPPA) is an independent regulatory body with responsibility for policy, regulation, standard setting, compliance and performance monitoring, professional development and information management and dissemination in the field of public procurement formerly the Zambia National Tender Board, was established in December 2008 under The Public Procurement Act No 12 of 2008

¹⁶²Section 20 of Zambia Development Agency Act [No. 11 of 2006]

¹⁶³Part viii of Zambia Development Agency Act [No. 11 of 2006]

Zambian businesses have complained the government sometimes gives foreign companies tax preferences that are unavailable to Zambian companies in the same line of business.¹⁶⁴

The Zambia Development Agency board screens all investments for which incentives are requested and usually make its decision within 30 days, the reviews appear routine and non-discriminatory and applicants have the right to appeal the investment board decisions. The board is comprised of 16 selected members,¹⁶⁵ including representatives from various government and private sector stakeholders.¹⁶⁶

In the privatisation process, foreign investors are eligible to bid on State-owned Companies and non-Zambians may also invest in the Lusaka Stock Exchange without restriction and on terms comparable to those Zambians receive.¹⁶⁷ The Lusaka Stock Exchange (LuSE) was established with preparatory technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993.¹⁶⁸

The Government enacted The Public-Private Partnership (PPP) Act in 2009, which established a Public Private Partnership Unit under the Ministry of Finance and National Planning to promote and facilitate privately financed infrastructure

¹⁶⁴Zambian Diaspora Survey *Report Feeding into the Development of a Diaspora Engagement Framework for Zambia* (2011) 63

¹⁶⁵Section 6 (1) of Zambia Development Agency Act [No. 11 of 2006]

¹⁶⁶Section 6 of Zambia Development Agency Act [No. 11 of 2006]

¹⁶⁷Lusaka Stock Exchange Website <http://www.luse.co.zm> (accessed on 12 May 2013)

¹⁶⁸ Available at <http://www.izambia.co.zm/directory/biz/organisations/the-lusaka-stock-exchange.html> (accessed on 12 May 2013)

projects and effective delivery of social services.¹⁶⁹ The Government has stated plans to merge the Zambia Development Agency and the Public Private Partnership Unit to establish an Industrial Development Commission under the Ministry of Commerce, Trade and Industry to enhance capacity for the country's economic development.¹⁷⁰ In 2013, The Government has made significant progress towards actualisation of the Industrial Development Commission (IDC), a national strategy aiming at turning Zambia into a manufacturing hub in the Southern African Region.¹⁷¹

The Zambian Government in consolidating the laws relating to migration in order to simplify movement of investors in and out of the country enacted the Immigration and Deportation Act,¹⁷² which regulates the entry into and residency in Zambia of visitors, expatriates and immigrants.

Zambia is also a member of the Multilateral Investment Guarantee Agency (MIGA) of The World Bank, UNCTAD, WAIPA, SADC and COMESA. This guarantees foreign investment protection in case of war, strife, disasters and other disturbance or in case of expropriation.¹⁷³

¹⁶⁹ Part II of The Public- Private Partnership Act [No. 14 of 2009], Part II establish Public- Private Partnership unit which shall be the department in the ministry responsible for finance, which is the ministry of finance of Zambia and shall be under the control and supervision of the minister of finance

¹⁷⁰ Daily Mail 'ZACCI wants Industries' *Daily Mail* 22 July 2013 2

¹⁷¹ Kunda J 'Zambia : Govt Makes headway on IDC' *Times of Zambia* 30 July 2013 1

¹⁷² Zambian Department of Immigration introduced new permits, this is as a result of the repealing of The Immigration and Deportation Act CAP 123 of The laws of Zambia and subsequent enactment of The Immigration and Deportation Act No. 18 of 2010, which provides for the introduction of new permits

¹⁷³ Mwitwa C *Policy Reform for Investment: The Case of Zambia* (2006)13

In 2012, With regard to expropriation and compensation, the Zambian Government took several measures similar to expropriation, reversing the privatization of one State Owned Enterprise and terminating two government concessions, in all three instances, full compensation for Government actions has yet to be finalised, though Government figures for 2012 FDI reflect a significant offset for the return of foreign acquisition capital.¹⁷⁴

2.5.3 Analysis of FDI Performance in Zambia

Before the commencement of privatisation in Zambia in 1991, the economy of the country was at the edge of decline due to the fall of imports and growing foreign debt which was a result of a sustained drop in copper production and ineffective economic policies.¹⁷⁵ The country experienced a high inflation rate of 80%. The GDP was at US\$ 4.7 Billion, per capital income of \$ 580, real growth rate was 2% in 1990.¹⁷⁶ The implementation of the privatisation programme, including the sale of state-owned mining companies, has largely influenced the trends in FDI flows since the early 1990s in Zambia. Despite a decade of liberalisation and reforms, FDI flows constitute only a small fraction of overall net resource flows into Zambia, in 1999 and 2000, however, FDI constituted 36 and 26 percent respectively of net resource flows.¹⁷⁷

Zambia despite being a landlocked least developed country has performed fairly well in attracting FDI. FDI inward stock increased from \$1 billion in 1990 to about \$2.6 billion in 2002. FDI inflows as a percentage of gross fixed capital formation

¹⁷⁴ OECD *OECD Investment Policy Reviews: Zambia 2012* (2012) 54

¹⁷⁵ Mudenda D *Trade and Industrialisation Policies Experience from Zambia* (2009) 17

¹⁷⁶ CIA World Fact Book , available at http://www.theodora.com/wfb1991/zambia/zambia_economy.htm (accessed on 30 June 2013)

¹⁷⁷ UNCTAD *Investment Policy Review Zambia* (2006) 7

(GFCF) doubled from 10 per cent in 2001 to 20 per cent in 2002 .FDI inward stock, as a percentage of Gross Domestic Product was in the upward trend with 60 percent from 1998 - 2002.¹⁷⁸

According to the Zambian Commerce, Trade and Industry Permanent Secretary, Stephen Mwansa, the estimated value of FDI's grew in 2012 in contrast with the figures for the previous year when there was a drop, therefore recent records show the country recorded an increase of FDI inflows estimated at US\$1.6 billion in 2012 from \$1.1 billion recorded in 2011, which stimulated economic growth, trade and ensured high employment and skills levels.¹⁷⁹

On the basis of the commitments, South Africa ranks first among the source countries of investments, followed by the United Kingdom and Sweden, Zambian investors accounted for little more than one quarter of the investment commitments made over the period 1995-2001 and nearly 15 percent were made jointly by domestic and foreign investors.¹⁸⁰

According to the review by the World Bank (2002), the privatisation programme achieved an important measure of damage control for almost all of the companies privatised after the establishment of the Zambian Privatisation Agency (ZPA) in

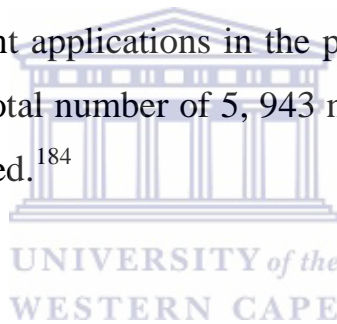
¹⁷⁸UNCTAD *World Investment Report* (2002) also gives a comprehensive picture of FDI inflows into Zambia, from 1985-2001. Assuming that the 1985-1995 periods is the base year, a snap shot analysis of the data reveals that the performance of FDI flows to Zambia has exhibited a decreasing trend over time, of course not withstanding the peak recorded in 1997. Again, an analysis of the UNCTAD FDI Performance Index reveals that, for Zambia, the value of the index has fallen from 4.2 during the 1988-1990 period to 1.7 during the 1998-2000 period. However, on a score of 0-1, the inward FDI potential index for Zambia has risen from 0.111 in the 1988-1990 period to 0.160 during the 1998-2000 period

¹⁷⁹Ngosa S 'FDI for Key Sectors must be found' *Times of Zambia* 20 June 2013 1

¹⁸⁰ Available at <http://www.theglobaleconomy.com/Zambia/indicator-BX.KLT.DINV.WD.GD.ZS/> (accessed on 15 June 2013)

1992. The Profit remittances on FDI (US dollar) in Zambia was last reported at 183 million in 2010, according to a World Bank report published in 2012.¹⁸¹

The Zambia Development Agency has recorded more than US\$1.3 billion foreign direct investment (FDI) in the first quarter of the year, 2011, surpassing the projected US\$1 billion FDI inflow in 2010.¹⁸² At the beginning of the year, 2011, the Zambia Development Agency had projected about US\$1 billion of FDI inflow following the economic stability of world economies from the economic recession and the business reforms the country was implementing.¹⁸³ In 2010, the Zambia Development Agency recorded US\$1.9 million during the first quarter of the year, compared to about US\$1.344 billion recorded during the same period for the year 2011, the approved investment applications in the period under review were from fifty-nine applicants, with a total number of 5,943 new job opportunities expected to be created once implemented.¹⁸⁴



¹⁸¹ Profit remittances on foreign direct investment covers payments of direct investment income (debit side), which consist of income on equity (dividends, branch profits, and reinvested earnings) and income on the intercompany debt (interest)

¹⁸² In March, 2012; Frederick Bantubonse, The General Manager of Zambian Chamber of Mines, declared in The World Bank Training Programme on Governance of the Extractive Industries in Zambia that Zambia's mining industry alone has recorded significant investments since 2000 generating US\$4.5 billion in the past decade due to a steady flow of investments in the sector and some of the new Foreign Direct Investment was in the setting up of new copper processing plants and expansion projects

¹⁸³ Lusaka Times 'Zambia Government Attracts US\$ 4.5 Billion in Mining Investment' *Lusaka Times* 29 May 2010

¹⁸⁴ The approvals were from the manufacturing, service, health, education, energy, tourism and agriculture sectors. Others were from mining, real estate and construction sectors, with the mining sector recording the largest investment of US\$500 million followed by manufacturing with about US\$89.1 million, while other sectors shared the rest

2.6 Conclusion

FDI inflows started in Tanzania and Zambia in the 1990's as a result of the implementation of the privatization programmes introduced after massive failure of both Governments' state owned enterprises. Both countries introduced special agencies to act as a one stop shop centre for investors that is TIC for Tanzania and ZDA for Zambia. FDI has played a great role in various key sectors such as boosting the large scale mining, improvement of the banking industry, parastatal sector reforms which guaranteed against nationalization, introduction of new tax laws, improvement of civil service, parastatal sector, tourism which has become one of the growing sources of foreign currency for both countries.

The big difference between FDI in Tanzania and Zambia, is the concentration of the FDI, whereby in Zambia, more than half of the FDI was dominated by the mining industry while in Tanzania, FDI is relatively diversified in mining, manufacturing, tourism, services and agriculture.

Chapter two analyses difference phases encountered by Tanzania and Zambia Government before and after allowing FDI. It can be clearly noted that both countries had undergone different legislative amendments to assure maximum attraction of FDI and assuring the accommodated FDI helps to boost the economy of the country.

The next chapter will analyse the investment institutions in Tanzania and Zambia, by focusing on the lacunas found on the regulations governing the institutions and how the inefficiency of the laws affect these two countries.

CHAPTER THREE

ANALYSIS OF INVESTMENT INSTITUTIONS IN TANZANIA AND ZAMBIA

3.0 This chapter will deal with an assessment of the institutions that handle FDI in Tanzania and Zambia by analysing the weaknesses and shortcomings of the laws guiding the institutions. Moreover, roles of other institutions that support FDI activities will be analysed. At last, the chapter will analyse the role played by other institutions supporting FDI in Tanzania.

3.1 Analysis of the Legal Framework and Investment Institutions in Tanzania

The legal and corporate due diligence evaluation for any particular FDI can be a complex exercise, touching on a wide range of laws, regulations and other issues. However, for the matter of this thesis, assessment and evaluation of FDI legal framework in Tanzania will dwell on the institutions that govern all the issues dealing with FDI.¹⁸⁵

3.1.1 Tanzania Investment Centre Analysis

In 1997, The Government of Tanzania established Tanzania Investment Centre (TIC),¹⁸⁶ TIC was established to be the primary agency of the government to coordinate, encourage, promote and facilitate investment in Tanzania and to advise

¹⁸⁵It should be noted that the mainland Tanzanian and Zanzibar Governments do not have the same laws and regulations regarding investment, and that the enforcement is done separately. For the purposes of this thesis only the mainland is being assessed

¹⁸⁶Under Section 4 of Tanzania Investment Act [ACT No. 26 of 1997]

the Government on the matters relating to investment,¹⁸⁷ all Government departments, Government agencies and other public authorities are mandated to cooperate fully with the Centre in the facilitating investors.¹⁸⁸

Tanzania Investment Centre as a one stop facilitation centre acts as the focal point for investor inquiries.¹⁸⁹ The agency has been engaging in marketing Tanzania as an attractive investment destination, managed to establish zone offices in Mwanza and Moshi region, engaging in investment facilitation, tax registration, land issues, business licensing and registration, immigration issues, labour issues and after care services.¹⁹⁰

The functions of the Tanzania Investment Centre are discharged by a board which is made up of a chairman, who is appointed by the president of Tanzania,¹⁹¹ four members appointed by the Minister of which two are from the private sector and two from the public sector.¹⁹² The secretary of the board is the Executive director who is appointed by the President upon recommendation by the minister; the term of office for the executive director is five years and he/she may be reappointed for a further non-renewable term of five years.¹⁹³

¹⁸⁷Section 5 of Tanzania Investment Act [ACT No. 26 of 1997]

¹⁸⁸Section 16 (1) of Tanzania Investment Act [ACT No. 26 of 1997]

¹⁸⁹Tanzania Investment Centre renders services to facilitate all Investors whether covered by the Tanzania Investment Act [ACT No. 26 of 1997] or not

¹⁹⁰Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 35

¹⁹¹March, 2010, President Jakaya Mrisho Kikwete appointed retired Ambassador Elly Mtango to become the new board chairman of the Tanzania Investment Centre (TIC)

¹⁹²Prime Minister is the one responsible in appoint those other members as empowered by section 7 (2) of The Investment Act, 1997 (ACT No. 26 of 1997)

¹⁹³Section of 10 The Investment Act, 1997 (ACT No. 26 of 1997)

By September 2000 all the targets set in the action plan had been successfully implemented, the new Tanzania Investment Centre corporate plan was in place and a true One-Stop-Shop for investors was in place.¹⁹⁴

From then onwards the Tanzania Investment Centre has worked closely with the private sectors acting as a bridge between the private sector and the public sector and has been instrumental in designing forums and institutions to strengthen the investment regime in Tanzania with active participation of the private sector.¹⁹⁵

Tanzania has put in place investment incentives which provide a soft landing platform to all investors during the initial stage of the projects implementation. These incentives are both fiscal and non-fiscal and are provided under four major legislations named; Tanzania Investment Act which entails certificate of incentives, strategic investor status and import duty draw back scheme, Export Processing Zones Act, 2002, Mining Act, 1998, Petroleum Exploration and Production Act, 1980 and Special Economic Zones Act, 2005.¹⁹⁶ Tanzania Investment Centre functions are stated under Section 6 and 17 of the Tanzania Investment Act, among many, one of the functions is to review all applications for certificates of incentives and to provide and disseminate up to date information on benefits or incentives available to investors.

According to Tanzania Investment Act, incentives are defined as tax reliefs and concessional tax rates which may be accessed by an investor under The Income

¹⁹⁴Tanzania Investment Centre website <http://tic.co.tz/> (accessed on 28 June 2013)

¹⁹⁵The most institutionalised forum for formal public and private sector dialogue is the Tanzania National Business Council (TNBC). It was inaugurated on April 9, 2001 to provide a forum for public-private sector dialogue with a view of reaching consensus or mutual understanding on strategic issues relating to the efficient management of development resources

¹⁹⁶ Tanzania Investment Centre website <http://www.tic.co.tz/> (accessed on 14 July 2013)

Tax Act, 1973, The Customer Tariff Act, 1976, The Sales Tax Act, 1976 and any other law for the time being in force, and includes additional benefits that may be accessed by an investor under sections 19 and 20.¹⁹⁷

The benefits which are enshrined in Section 19 of the same Act are the benefits which are applicable to the business enterprises under the provisions of The Income Tax Act, 1973, The Customs Tariff Act 1976, The Sale Tax Act, 1976.

Moreover Section 20 of The Investment Act, empowers the minister to give addition unspecified benefits to the business enterprises for the purpose of promoting identified strategic or major investments after consulting appropriate government authorities and after consultation with the minister of finance.

From the given definition of incentive, The Tanzania Investment Act made a reference to The Sale Tax Act of 1976 which is currently not in force, after being replaced by The Value Added Tax Act,¹⁹⁸ hence creating confusion to the interested parties.¹⁹⁹

The Investment Act is silent with regard to specific types of investment incentives and to what extent the incentives can be that can be issued by the Tanzania Investment Centre. The silence can lead to the creation of arbitrariness or discrimination among the investors in the country. The Tanzania Investment

¹⁹⁷Section 3 of Tanzania Investment Act [ACT No. 26 of 1997]

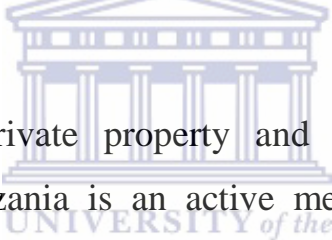
¹⁹⁸Chapter 148 (Revised Edition 2006), The edition of The Value Added Tax Act, Cap. 148 incorporates all amendments up to 30 November, 2006 and is printed under the authority of Section 4 of the Laws Revision Act, Chapter 4

¹⁹⁹The Tanzania Investment Act allows National Investment Steering Committee to offer additional incentives and benefits over and above those provided by the act to strategic or major investment projects

Centre, however, has managed to design a certificate of incentives which provides clear, specific incentives for investors.²⁰⁰

A certificate of incentives is issued by Tanzania Investment Centre, if the investor has minimum fixed investment cost for new, rehabilitation and expansion Projects of at least US \$100,000 for projects which are owned 100% or in majority shareholding by Tanzanian citizens and US \$300,000 for projects which are 100% or majority shareholding owned by non-Tanzanian citizens or a company which is incorporated under laws of any country other than Tanzania.²⁰¹

The incentives available to the holders of Tanzania Investment Centre certificate of incentives are.²⁰²

- 
- The recognition of private property and protection against any non-commercial risks, Tanzania is an active member of MIGA (Multilateral Investment Guarantees Agency), The International Centre for Settlement of Investment Disputes (ICSID).
 - Reduced import tariff on project capital items (5% import duty for investments in priority sectors and zero% for investment in Lead Sectors).
 - Favourable investment allowances and deductions i.e. capital allowance (100%) on industrial buildings, plant and machinery and on agricultural expenditure.
 - Deferment of VAT payment on project capital goods as defined in the tariff book and its relevant annexes deferred VAT to be shown on monthly return

²⁰⁰ UNCTAD *Report on the implementation of the Investment Policy Review: United Republic of Tanzania* (2011) 7

²⁰¹ Available at <http://www.tanzaniaembassy.or.jp/> (accessed on 16 July 2013)

²⁰² SADC website <http://www.sadc.int/information-services/tax-database/tanzania-investment-incentives/> (accessed on 14 July 2103)

after which it will be extinguished unless it is discovered otherwise after audit.

- Imports Duty drawback on raw materials
- Zero-rated VAT on Mining inputs, Agriculture inputs, goods manufactured for exports, foodstuff and tourism.
- Straight line accelerated depreciation allowance on capital goods.
- Up to five years carryover of all business losses against future profits.
- A reasonable corporate tax rates 30% and low withholding tax on loan interest payments.
- The unrestricted right to transfer outside the country 100% of foreign exchange earned profits and capital.
- The ease of obtaining other permits such as Residence/Work Permits, industrial licence, trading licence through one stop shop operation of TIC.
- Automatic permits for employing an initial quota of 5 foreign nationals on the project holding Certificates of Incentives.

The Tanzanian tax legal framework has changed other years and the reform is expected to continue,²⁰³ Some of the important changes expected are: a simplification of the tax-regime, including broadening of the tax-base, rationalization of the exemption-system to avoid further erosion of the tax-base and change of tariff-rates and introduction of revenue raising measures to compensate for possible losses arising from further liberalization of the trade-regime.²⁰⁴

²⁰³The total income-tax-revenue share in GDP was 3.6% in 1999/2000, falling to 3.0% in 2000/01 but rising again to 3.4% in 2002/03

²⁰⁴SIDA *Taxation in Tanzania- Revenue Performance and Incidence* (2004) 7

The Tax legal framework allows for many exemptions which creates large differences when comparing Tanzania's actual receipts with the revenues implied by published tariffs and estimated import volumes but the differences far exceed the exemptions presumably due to corruption and smuggling at official entry points counting ports and roads whereby smuggling is done through un official entry points normally at unguarded borders.²⁰⁵ The difference has recently fallen fairly consistently, in the late 1990s approximately one third of exemptions were granted directly to private companies and individuals, plus those granted through the Tanzania Investment Centre.²⁰⁶

Currently, in Tanzania, tax incentives are granted to both local and foreign investors in the form of enhanced capital deductions and allowances structured according to lead and priority sectors which include agriculture, agro based industries, mining, tourism, petroleum, gas and economic infrastructure.²⁰⁷ On the basis of import duty drawback, import duty charged on imported inputs used for producing goods for export and good sold to foreign institutions like the United Nations in Tanzania, is refunded, and all factories registered to manufacture goods under bond for export purpose are exempted from import duty and other tax on inputs used to manufacture such goods.²⁰⁸

The process of granting tax incentives to attract more FDI in the country is received with mix feelings among different stakeholders and scholars.

²⁰⁵Tsikata M *Southern Africa: Trade, Liberalization and Implications for a Free Trade Area* (1999) 23

²⁰⁶Since then the percentages have reversed but the total remains about the same. The share of customs-exemptions in total revenue-collected has declined over the years, while the VAT-share declined but increased again, suggesting some type of shift in the exemption- regime

²⁰⁷ Tanzania Investment Centre website <http://www.tic.co.tz/> (accessed on 14 July 2013)

²⁰⁸Tanzania Trade Development Authority website <http://tanzaniaexport.com/faq.php?item=33> (accessed on 15 July 2013)

The sustainable economic development needs FDI that do not exploit consumers, but ones which have greater linkages with the domestic economy activities and fair competition regulations.²⁰⁹ The idea that developing countries are competing for FDI has been met with constructive criticism in that incentives are temporary measures which may work or not depending on the seriousness of the investor because the investor will come to invest in an economy where making of profits is assured in conditions of stability of the leadership but not primarily on the basis of incentives.²¹⁰

Many economist disdain tax incentives, regarding the incentives as ineffective and the loss of revenue for the treasury and expensive distortions that actually reduce the true value of output, furthermore tax incentives cause distortions in factor or product markets.²¹¹ There is a long list of disadvantages with tax incentives, as outlined in a recent IMF report,²¹² which argues among other things that tax incentives: result in a loss of current and future tax revenue, create differences in effective tax rates and thus distortions between activities that are subsidized and those that are not, could require large administrative resources, could result in rent-seeking and other undesirable activities, could, in the case of income tax holidays, be a particularly ineffective way of promoting investment companies that are not profitable in the early years of operation and could attract mainly footloose firms.²¹³

²⁰⁹The World Bank & The International Finance Corporation *Doing Business 2008* (2007) 40

²¹⁰Maro F *Incentives Package for Foreign Direct Investment (FDI) in Tanzania* (2009) 2

²¹¹Bergsman J *Advise on Taxation and Tax Incentives for Foreign Direct Investment* (1999) 23

²¹²2006 Report by the African Department of the International Monetary Fund (IMF), focusing on East Africa, revealed further that investment incentives particularly tax incentives are not important factors of attracting foreign investors

²¹³International Monetary Fund (IMF) *Kenya, Uganda and United Republic of Tanzania: Selected Issues* (2006)10

A lot of evidence suggests that the disadvantages of tax incentives vastly outweigh the advantages and that such incentives are not needed to attract FDI.²¹⁴ In addition, A Joint IMF, OECD, UN and World Bank report for the G-20 declared that studies suggest that tax driven investment does not provide a stable source of investment in the recipient country.²¹⁵ Basing on this reasoning partly explains why the IMF, and other international organisations such as the African Development Bank, has been pressing Tanzania to radically reduce their tax exemptions.²¹⁶

The ongoing tax incentives competition to attract and retain greater levels of Foreign Direct Investments among East African partner states has been cited as the main cause of significant revenue losses for the government.²¹⁷ Countries are continuously being tempted to increase investment incentives in general and tax incentives in particular in order to attract and retain more FDIs.

Ana Lucia Coronel, Uganda's IMF senior resident representative, has declared that tax incentives are exemptions from paying tax, offered to woo players into a specified activity or industry.²¹⁸

²¹⁴ A 2006 Report by The African Department of The international Monetary Fund (IMF), focusing on Tax Incentives in East Africa, notes that available empirical evidence confirms that investment incentives particularly tax incentives are not an important factor in attracting foreign investment

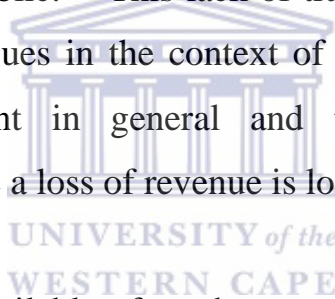
²¹⁵The IMF report argues that countries that have been most successful in attracting foreign investors have not offered large tax or other incentives

²¹⁶Tax Justice Network-Africa & Action Aid *International Revenue Losses Owing to Tax Incentives in the Mining Sector: Policy Recommendations* (2012) 2

²¹⁷ The recent study done by Tax Justice Network-Africa and Action Aid International the competition makes it difficult for countries to maintain desired tax rates, leading to ever-declining revenues. The study revealed further that both Kenya and Uganda governments are granting massive tax incentives, partly in a competition to attract and retain FDIs resulting into significant losses of revenues for their governments as it is in Tanzania

²¹⁸Rwothungenyo B 'IMF Chief Advises Govt To Dump Tax Incentives' *New Vision* 17 June 2013 2

In Tanzania, it is a well-known fact that incentives provided by the government directly reduces revenue to the treasury, hence costing the government and forcing the government to increase tax on other sectors in order to compensate for the loss incurred.²¹⁹ According to the Tanzania Investment Centre, companies investing more than \$20 million, typical of mining companies are accorded strategic investor status. The centre is of the view that investors of big projects of over US\$20 million offering great impact to the society or economy can thus apply for special incentives from the Government, hence some foreign mining companies and agribusiness companies do have individual fiscal agreements with the Government, some of which offer special concessions to individual companies but which have never formally been made public.²²⁰ This lack of transparency in such agreements is among the key burning issues in the context of good governance and prudent public financial management in general and taxation for funding public expenditure in particular since a loss of revenue is lost as a result of such tendency.



Different estimates are available for the revenue losses caused by the Government's granting of tax incentives and exemptions, revenue losses from all tax exemptions and incentives may be as high as Tanzania Shillings 1.8 trillion (approximately: US\$ 1.23 billion) in 2008 and that the minimum revenue loss from tax incentives granted to companies alone is around Tanzanian Shillings 381 billion approximately: \$174 million a year for the years 2008/09 – 2009/10. for the year 2011/12 exemptions amounted to Shs.1,016,320,300,000 which is about 18

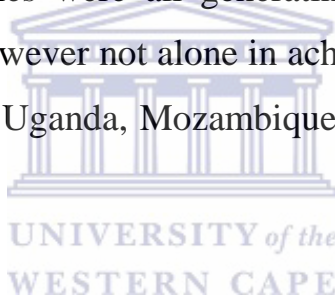
²¹⁹ Ngowi H *Tax Incentives for Foreign Direct Investment (FDI) : Types and who Should/ Should not Qualify in Tanzania* (2010) 24

²²⁰ The 2011 Controller and Auditor General (CAG) Report, enshrined that tax exemptions issued to the mining sector alone totalled Tanzanian Shillings 109.885 Billion while those granted by the Tanzania Investment Centre totalled Tanzania Shillings 239.667 Billion, as indicated by National Audit Office of Tanzania Website <http://nao.go.tz/> (accessed on 27 October 2013)

per cent of total tax collections.²²¹ As a result, Tanzania Government has experienced deficits in the Government budget for years which has amounted to more dependency to the donors.²²²

Cross country analyses of tax-revenue performance suggest that Tanzania should be capable of generating substantially more tax-revenue than what is collected each year.²²³

Estimation shows that Tanzania should have been able to generate an 18% tax-revenue share of GDP in 1999 far above the actual 11%, taking into consideration, African countries like Kenya, Malawi, Ghana and Zambia which all have broadly similar tax-structures in terms types of tax and rates, and have or are setting up autonomous revenue-authorities were all generating substantially more revenue than Tanzania. Tanzania is however not alone in achieving a low tax-revenue GDP ratio, countries like Ethiopia, Uganda, Mozambique, and Cameroon all performed similarly.²²⁴



Tanzania faces the problem of transparency especially with regards to the extent of allocated tax incentives which has become a great obstacle to the public in obtaining adequately data for various purposes but still analysis suggests that the main beneficiaries of tax incentives and exemptions in Tanzania are a small group

²²¹The United Republic of Tanzania *Controller and Auditor General (CAG) 2011 report* (2011) 8

²²²According to Citizen Newspaper on Wednesday 4 April 2012, the planned budget for 2012/13 is Tshs 13.5 trillion. Therefore, the 2011 total exemptions to the tunes of Tanzania Shillings 1.02 trillion is about 7.6 per cent of the planned 2012/13 total budget. The amount exempted in 2011 is a whole 24.9 per cent of the planned development expenditure budget for 2012/13.37

²²³Ghura D *Tax Revenue in Sub-Saharan Africa: Effects of Economic Policies and Corruption* (1998) 56

²²⁴Bevan L *Tanzania Public Expenditure Review: 2000/2001* (2001) 19

of foreign investors who have managed to utilize the privileges obtained by establishing FDIs in Tanzania.²²⁵

Similarly, although the TIC Investment Guides and the TIC website summarise the main investment incentives by industry, these are not clearly laid out within a single legal document and the award of many incentives moreover remains discretionary.²²⁶

This is especially the case for projects which qualify for strategic investor status: although the eligibility criteria for this status are not set out in quantifiable terms, the Tanzania Investment Act allows benefits over and above the incentives provided by the Act to be awarded to such strategic projects.²²⁷

There are very different estimates available for the revenues losses caused by Tanzania's tax incentives and exemptions imposed by the Government:

- Analysis by a Non Governmental Organization (NGO), UWAZI based on figures from Tanzania Revenue Authority (TRA) shows that losses from incentives and exemptions amounted to Tanzania Shillings 752 billion in 2008/09 and Tanzanian Shillings 695 billion in 2009/10.²²⁸ The principal

²²⁵Tax Justice Network-Africa & Action Aid International *Tax Competition in East Africa: A race to The Bottom? Tax Incentives and Revenue Losses in Tanzania* (2012) 9

²²⁶OECD *Investment Policy Review: Tanzania: Working Draft* (2013) 19

²²⁷For projects in the mining, petroleum and gas sectors, which generally have strategic status, investment incentives can be decided upon on a negotiation and case basis. This wide scope for discretion in the award of incentives reduces predictability and transparency for investors, and increases the risk that incentives overlap or work at cross-purposes. Administrative discretion in the management of incentives moreover seriously increases the risk of corruption and rent seeking.

²²⁸UWAZI *Tanzania's Tax Exemptions: Are they too high and making us too dependent on Foreign Aid?*(2010) 3

beneficiaries of these incentives and exemptions are the holders of certificates with the Tanzania Investment Centre and the Zanzibar Investment Promotion Authority, which together accounted for around 45 per cent of the incentives and exemptions in 2008/09 – 2009/10, these are mainly Multinational Corporations.²²⁹ The UWAZI report, explain further that mining companies accounted for a further 7.5% of beneficiaries. Thus together these companies account around 52% of the incentives and exemptions provided. This amounts to an average of around Tanzania Shillings 381 billion in the year 2008/2009- 2009/ 2010.

- The East African Community (EAC) secretariat – covering exemptions on import duties alone- estimates that revenue losses from tax exemptions amounted to US\$ 435.9 million (Tanzania Shillings 955 billion) in 2008 and an average of US\$ 370 million(Tanzania Shillings 811 billion) in the three years 2006-08.²³⁰
- A report for the African Development Bank (AFDB) notes that exemptions and incentives account for up to 6% of Gross Domestic Product (GDP) which is Tanzanian Shillings 1.8 trillion (US\$ 1.23 billion) in 2008.²³¹

The current qualifying threshold for tax incentives for FDI in Tanzania is US\$ 300,000, the amount has been reduced from US\$ 500,000 in 1996 while local

²²⁹UWAZI *Tanzania's Tax Exemptions: Are they too high and making us too dependent on Foreign Aid?*(2010) 5

²³⁰The East African Community *The EAC Trade Report, 2009* (2009) 34

²³¹African Development Bank *Domestic Resource Mobilisation for Poverty Reduction in East Africa: Tanzania Case Study* (2010) 20

investors' threshold is US\$ 100,000, and investment in rehabilitation should exceed US\$ 250,000 for foreign investors and joint venture whereas for local investors is US\$ 50,000.²³² It is therefore clear that every FDI that reaches the specified amount above qualify for tax incentives. The threshold alone does not guarantee that the value of the FDI will at least be high enough to offset the costs of tax incentives.²³³

The Tanzania tax legal framework reflects weakness in the dependency of level of threshold as a key determinant to qualify investors for a certificate of incentive. Some investors have manage successfully to use this lacuna in establishing companies and selling them within the tax holiday period hence enjoying the incentive benefits obtained from Tanzania Investment Centre and ending up paying less or no capital gain tax at the end of the transaction.²³⁴

For instance, The question of Airtel Tanzania's precise ownership structure has caused controversy in recent years, according to Tele Geography Global Comms Database, although Bharti Airtel secured a deal to acquire the majority of Zain's African assets in July 2010, the Government of Tanzania subsequently claimed to have lost USD308 million by allowing the sale and in April 2011 the chairman of the Public Corporations Accounts Committee Member of Parliament, Zitto Kabwe said the government did not benefit from the transaction following the application of a weak structure that allowed Bharti Airtel to buy Zain Africa without considering shareholders in Tanzania.²³⁵

²³²Tanzania Investment Centre website <http://www.tic.co.tz/> (accessed on 30 July 2013)

²³³Ngowi H *Tax Incentives for Foreign Direct Investment (FDI) : Types and who Should/ Should not Qualify in Tanzania* (2010) 24

²³⁴ According to: MhegeraE 'Tanzania: Public urged to Interest in Administration of Tax *Shout Africa* '19 August 2012; Tanzania there have been such changes with some five stars hotels and mobile phone companies which have been changing names with a short span of time in order to escape capital gain tax

²³⁵The Citizens 'Government Confirms 40% stake in Airtel Tanzania' *The Citizens* 17 April 2012 1

The case of ATC and ACTL can be another good example whereby both the airlines and airports in Tanzania have known several unsuccessful attempts at privatisation or management through public-private partnerships.²³⁶ In the case of ACTL, in 2002 South African Airways (SAA) won a competitive bid for privatisation purchasing a 49% stake in the company, but 2005 recorded a pre-tax loss of almost USD 7.3 million for the first year of part ownership by SAA.²³⁷

3.1.2 Analysis of Tanzania Business Registration Agency (BRELA)

In order to set up a business in Tanzania, an investor must register the business with the Business Registration and Licensing Agency (BRELA) of the ministry of Industries, trade and marketing.²³⁸ The investor must have the following documents in order to register the company; certificate of incorporation, memorandum and article of association, business licence, income tax clearance certificate, residence permits class A or B, Tax Identification Number, Lease agreement or title deed, business plan or feasibility study and certificate of incentives, this is only for the projects approved by Tanzania Investment

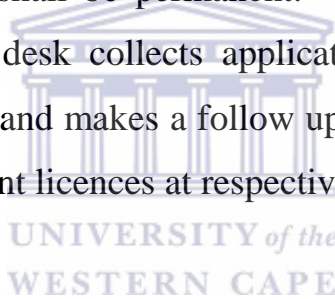
²³⁶OECD *Investment Policy Reviews: Tanzania: Working Draft* (2013) 109

²³⁷According to ACTL, the loss was mainly caused by the inability to expand the network – including development of Dar es Salaam International Airport as an SAA hub – as quickly and extensively as originally planned. By 2006 Government bought back the 49% SAA share, following which its flight operator licence was suspended by Tanzania Civil Aviation Authority (TCAA) in 2008, and in 2010 the Parliamentary Infrastructure Development Committee (PIDC) advised the government to no longer support the company

²³⁸Business Registration and Licensing Agency (BRELA) was established under The Government Executive Agencies Act [No. 30 of 1997], it is a Government executive agency, established on the 28 October 1999 by Government Notice No. 294, and it was officially inaugurated on the 3 December 1999

Agency.²³⁹ The registration process with Tanzania Investment Act undertaken on behalf of investors will lead into a foreign company being issued a certificate of compliance, costing US\$ 1200, certificate of incorporation will be issued if it is the local company, the cost ranging from 126,200 - 400,000 Tanzania Shillings.²⁴⁰

The Government has introduced Business Activities Registration Act, 2007 (replaced The Business Licensing Act), the act provides for the establishment of a business activities registration system and business registration centre.²⁴¹ Under the new system, each business activity operating in Tanzania shall be registered in the registry and the registration shall be permanent.²⁴² Tanzania Investment Centre, under its business licensing desk collects applications from investors, presents them on the investor's behalf and makes a follow up for the issuance of temporary business permits and permanent licences at respective licensing authorities.²⁴³



3.1.3 Tanzania Mining Industry Assessment

Mining activities in Tanzania are regulated by the ministry of energy and minerals. The Government manage introduced special act for mining purposes, that is The Mining Act which safeguards mining activities in Tanzania whereas the areas of investment are mineral exploration and mining, mining services, value addition

²³⁹ Business Registration and Licensing Agency (BRELA) website www.brela-tz.org (accessed on 1 July 2013)

²⁴⁰ Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 42

²⁴¹ [No. 25 of 1972]

²⁴² Part IV of Business Registration Act, 2007

²⁴³ Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 43

activities and mineral trading.²⁴⁴ Mining companies are given various tax incentives and exemptions including individual Mining Development Agreements which the government has signed with particular mining company.²⁴⁵

Although a new Mining Act was introduced in 2010 replacing the Mining Act of 1999, the mining agreements signed before 2010 remain in force meaning that their terms often vary, but many contain, and others are believed that the agreements have not formally been made public containing fiscal or stabilisation clauses which means that the range of tax incentives provided in the individual agreements are still likely to apply even under the new Act.²⁴⁶

In June 2011, for example, it was reported that the government was considering levying a super profits tax on windfall earnings from mining, but AngloGold Ashanti, which operates the country's largest gold mine, stated that the introduction of such a tax would not affect its tax payments since its mining agreement with the government has a fiscal stabilisation clause, forbidding the government from raising taxes on the company.²⁴⁷

Tanzania is the fourth largest producer of gold but the expectation that mining would contribute significantly to economic development has not been

²⁴⁴ The Mining Act, 2010 was passed by Tanzania's Parliament on 23 April 2010. The Act is a composite of a document presented to the Parliament, thus the initial reading, together with a schedule of amendments

²⁴⁵ The Mining Act, 2010 under section 8 (4) gives the minister responsible for mining issues to prescribe a standard model from Mining Development Agreement for all projects exceeding US\$ 100 Million

²⁴⁶ Tax Justice Network-Africa & Action Aid International *Tax Competition in East Africa: A race to The Bottom? Tax Incentives and Revenue Losses in Tanzania* (2012) 6

²⁴⁷ Reuters 'Anglo Gold says Tanzania " Super Profits" Will not Apply' *Reuters* 8 June 2011 1

fulfilled.²⁴⁸ This is largely because of corporate income tax holidays provided to the mining companies. Data shows that none of the existing gold projects in Tanzania have paid material income tax to date.²⁴⁹

The energy industry in Tanzania is governed by The Petroleum (Exploration and Production) Act 1980,²⁵⁰ which also covers the exploitation of natural gas, and The Energy Water Utilities Regulatory Authority Act 2003 both acts are legislations prescribing for regulatory duties and functions for the upstream and downstream industry respectively.²⁵¹

Tanzania Petroleum Development Corporation (TPDC) and The Energy and Water Utilities Regulatory Authority (EWURA) are two authorities involved in the upstream and downstream gas industry in Tanzania whereby both bodies are coordinated by the ministry of energy and minerals.²⁵²

The Mining legal framework in Tanzania is so weak hence creating a lacuna for mining companies to have exclusive ownership of their operations and the minerals recovered and the power to make disposition without the supervision of the ministry of energy and minerals, for instance, transferring of rights to other

²⁴⁸Jerving S 'Tanzania Concerned Gold Slump May Prompt Mines To Shut' *Bloomberg Business Week* 17 April 2013
1

²⁴⁹International Monetary Fund, *Staff Report for the 2011 Article IV Consultation and Second Review under the Policy Support Instrument* (2011)17

²⁵⁰ The Petroleum (Exploration and Production) Act [Act No. 27 of 1980] was designed to create a favourable legal environment for exploration by oil and gas companies. This legislation vests title to all petroleum and natural gas deposits within Tanzania and its territorial waters in the Government of Tanzania. It also allows the grant of exploration, development and production licences in relation to petroleum and natural gas, and importantly, it expressly permit the holder of a development licence to sell natural gas

²⁵¹ Chapter 414 [Act No. 11 of 2001]

²⁵²The Tanzania Petroleum Development Corporation (TPDC) is a Government body which was established under The Public Corporations Act No.17 through the Government Notice No.140 of 30 May 1969

companies without incurring capital gains tax can be easily done, which means that the practice of buying and selling mining operations can be very lucrative.²⁵³

In 2003, for example, the Australian company, East African Gold Mines, made US\$252 million by selling one Tanzanian gold mine to the Canadian company Placer Dome which was later bought by African Barrick Gold PLC, from an original investment of US\$90 million, in this transaction, neither the Government of Tanzania nor ordinary citizens receive anything from these multi-million dollar deals.²⁵⁴

The Bomani Commission estimated that the government lost Tanzanian Shillings 39.8 billion in 2006/2007 and Tanzania Shillings 59 billion in 2007/2008 simply as a result of fuel levy exemptions granted to the six large mining companies.²⁵⁵ Until the late 2011, mining companies were making claims to the government for refunds totaling US\$ 274 million related to their fuel levy exemptions for the period since 2002.²⁵⁶ Based on the analytical review of the current situation in Tanzania, it is obvious that mining revenues will not grow much in the near future, according to the IMF, the growing mining sector has so far had little net fiscal impact and this is unlikely to change in the coming years, partly because of large

²⁵³ Mining companies' ability to offset against their taxable income the full costs of their expenditure on items such as plant and machinery has led to perpetual declaration of tax losses, and thus non-payment of corporate income tax. In response to this the government introduced in 2008 an Alternative Minimum Tax of 0.3% of turnover, payable when companies declare three consecutive years of tax losses, although it is likely that revenues from this tax are far lower than the losses caused by the capital allowance

²⁵⁴ Lissu T ' "Conducive environment" for whose development?: Globalisation, National economy and the Politics of Plunder in Tanzania's mining industry' (2006) 16

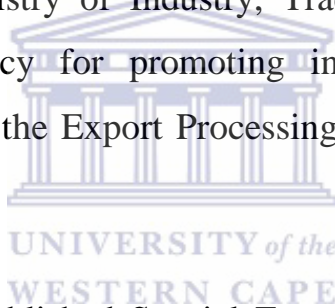
²⁵⁵ Policy Forum 'How Much Revenue Are We Losing?' *Policy Brief* March 2009

²⁵⁶ Doya D 'Tanzania May Abolish Tax Refund for Miners to Boost Revenue' *Bloomberg Business Week* 25 October 2011 1

embedded tax holidays.²⁵⁷ This analysis is also based on the fact that despite the enactment of the new Mining Act in 2010, the existing gold mines remain governed by their respective agreements which were made before the enactment of this new Act.²⁵⁸

3.1.4 Tanzania Export Processing Zone Assessment

Tanzania's Export Processing Zones (EPZs) Act was passed in April 2002,²⁵⁹ Export Processing Zones Authority (EZPA) is an autonomous Government agency that operates under the Ministry of Industry, Trade and Marketing and is the principal Government Agency for promoting investments in the Tanzanian Economic Zones particularly the Export Processing Zones (EPZ) and the Special Economic Zones.²⁶⁰



In 2006, the government established Special Economic Zones (SEZs) aiming at attracting FDIs and promote exports, increase employment opportunities and promote technology transfer, which include EPZs, Free Ports, Free Trade Zones, Industrial Parks, Science and Technology Parks, Agricultural Free Zones, and

²⁵⁷International Monetary Fund, *Staff Report for the 2011 Article IV Consultation and Second Review under the Policy Support Instrument* (2011) 14

²⁵⁸The International Monetary Fund notes that gold exports have risen from around US\$ 500 million to US\$ 1.5 billion in the last five years due to rising gold prices, but that government revenues have remained at around US\$ 100 million a year

²⁵⁹ The Export Processing Zones (EPZ) Act was established in April 2002, effective implementation of the Act started in March 2003 and In Feb., 2006 the Act was amended to strengthen supervision of the programme and to improve the Incentive package

²⁶⁰Section 12 of The Export Processing Zone (Amendments) Act of 2006

Tourism Development Zones.²⁶¹ Investors qualify under the Special Economic Zones' scheme if it is demonstrated that their investment is new, achieves a minimum annual export turnover of US\$ 5 million for foreign investors and US\$ 1 million for domestic investors, provide adequate environmental protection and utilize modern production process and new machinery.²⁶²

The annual turnover of companies should not be less than US\$ 500,000 for foreign investors and US\$ 100,000 for local investors.

Zanzibar has also established Free Economic Zones and Free Ports which also offers investors various incentives.²⁶³

Based on the tax arrangement established in the Export Processing Zones, the issues of concern in the context of tax exemption for the first ten years is that it creates a big room for manipulation by foot loose investment since the investor easily close their operations after the expiry of the tax incentives and relocate in other EPZs and SEZs within the country as a new investment or even fly out to other countries. This implies that even after the ten years of tax exemptions, it is not guaranteed that investors in EPZs and SEZs will pay taxes.²⁶⁴

3.1.5 Dar es Salaam Stock Exchange and Tourism Assessment

Newly-listed companies on the Dar es Salaam Stock Exchange (DSE) with at least 30 per cent of their shares issued to the public pay only 25% corporate income tax

²⁶¹Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 36

²⁶²Available at <http://www.epza.go.tz/> (accessed on 18 July 2013)

²⁶³Tanzania Revenue Authority *Taxes and Duties at a Glance 2010/2011* (2011) 6

²⁶⁴Tax Justice Network-Africa & Action Aid International *Tax Competition in East Africa: A race to The Bottom? Tax Incentives and Revenue Losses in Tanzania* (2012) 6

compared to the standard 30 per cent for the first three years, therefore, shares of companies listed on the Dar es Salaam Stock Exchange are exempted from paying capital gains tax whose normal rate is 30per cent.²⁶⁵

With regard to tourism in Tanzania, Tanzania Tourist Board is a government organization which was legally established under Tanzania Tourist Board act,²⁶⁶ and amended by act No. 18 of 1992. Tanzania Tourist Board was formed after the disbandment of the Tanzania Tourist Corporation, and the Board is mandated with promotion and development of all the aspects of tourism industry in Tanzania.²⁶⁷

Conditions and regulations for issuing tourist agent licence are specified in Tourist Agents (Licensing) Act of 1969 and Tourist Agents (Licensing) Regulations, 1998, tourist agent after fulfilling all necessary requirements has a mandate to obtain Value added Tax exempt.²⁶⁸



3.2 Analysis of the Legal Framework and Investment Institutions in Zambia

In 1991, there was implementation of a privatisation programme in Zambia, which was one of the important steps in changing different policies to allow flow of FDI into the country. The Zambia Privatisation Agency (ZPA) was established.²⁶⁹

²⁶⁵Dar es salaam Stock Exchange website <http://www.dse.co.tz/> (accessed on 10 July 2013)

²⁶⁶[CAP 364 of 1962]

²⁶⁷ Tanzania Tourist Board website <http://www.tanzaniatouristboard.com/about-us/> (accessed on 20 July 2013)

²⁶⁸Tanzania Revenue Authority website <http://www.tra.go.tz/> (accessed on 20 July 2013)

²⁶⁹Part II of The Privatisation Act [Chapter 386 Volume 21] (Repealed By Act No. 11 2006)

In 2006, Zambia enacted the Development Agency Act which repealed the Privatisation Act.²⁷⁰ The new act established the Zambia Development Agency (ZDA).²⁷¹ This agency is managed by a board whose chairperson and vice chairperson are appointed by the minister.²⁷² The other fifteen members are the representatives from Zambia Chamber of Commerce and Industry, the farmers, civil society organizations involved or interested in commerce and industry, and agencies promoting small scale industries, two private Businesspersons, a representative of the Environmental Council of Zambia, eight representatives from the Ministries responsible for trade and industry, finance, labour, agriculture, tourism, education, skills training and mining, and the attorney General or the Attorney General's representative.²⁷³

3.2.1 Zambia Development Authority Analysis

The Zambia Development Authority is the body corporate established by the Government of Zambia to promote efficiency, investment and competitiveness in business and promoting exports from Zambia.²⁷⁴

FDI in Zambia is managed by Zambia Development Authority. Under the Zambia Development Act, foreign investor is entitled to invest in any activity open to the private sector whereas the only restriction is made on arms production, security

²⁷⁰Act No. 11 of 2006

²⁷¹Part II of Zambia Development Agency Act [No. 11 of 2006]

²⁷²Current chairperson of Zambia Development Agency is Mr. Luke Mbewe

²⁷³Section 6 of Zambia Development Agency Act [No. 11 of 2006]

²⁷⁴Section 5(1) of Zambia Development Agency Act [No. 11 of 2006]

printing and the manufacture of dangerous substances, for which in each case investment approval is needed.²⁷⁵

The Zambia Development Act brought in a new set of incentives applicable only to investments that are over \$500,000 as specified by Income Tax Act and Customs Excise Act²⁷⁶. Investors are licensed by the Zambia Development Agency and are operating within a sector designated as a priority by the Minister of Commerce, Trade and Industry.²⁷⁷

The incentives are specified in the 2006 budget and it has been stipulated that for the first five years of operation, corporate tax should be calculated on 50 percent of profits, dividends should be exempt from tax and that capital expenditure on the improvement or upgrading of infrastructure should qualify for an improvement allowance of 100 percent, in addition, imported machinery and equipment is exempt from customs duty.²⁷⁸

Zambia, through Zambia Development Authority attracted foreign direct investment (FDI) worth US\$10.1 billion in 2012, the highest ever recorded in the history, meanwhile, the country's export earnings rose to about US\$9,381.5

²⁷⁵UNCTAD *Investment Policy Review of Zambia* (2006) 15

²⁷⁶ Section 56 of Zambia Development Agency Act [No. 11 of 2006]

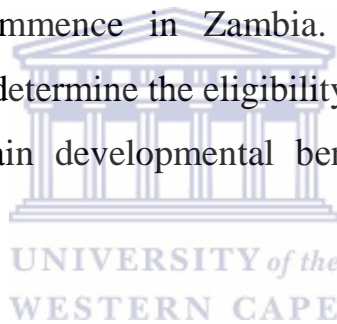
²⁷⁷Part VIII of Zambia Development Agency Act [No. 11 of 2006]

²⁷⁸Feb, 2006; Hon.by Honourable Ng'andu P. Magande, Member of Parliament, Minister of Finance and National Planning,in addressing the National Budget at the Zambian Parliamentary session, giving out details regarding incentives in Zambia

million last year from US\$2,209.8 million in 2005. ²⁷⁹

Investment incentives in Zambia include direct instruments such as grants or subsidies, tax holidays, investment tax credits, and depreciation allowances aiming at reducing the fixed costs of making an investment, and indirect instruments, trade tariffs and quotas and foreign exchange restrictions that affect the decision to invest.²⁸⁰

All investors in order to obtain certificates of investment,²⁸¹ are required to apply to the Zambia Development Authority in order to obtain the approval for the particular investment to commence in Zambia.²⁸² The authority conduct a screening process in order to determine the eligibility of the investment and foresee if the investment will contain developmental benefits and will not harm the environment.²⁸³



²⁷⁹Chitala N ' *Zambia in Historic FDI Zambia*'*Daily Maily* 28 June 2013 1

²⁸⁰CUTS *Investment Policy in Zambia: An Agenda for Action* (2003) 20

²⁸¹In the repealed Investment Act [Act No. 39 Of 1993], the approval process in order to obtain an investment certificate was not required although it was a de facto requirement to avail of protections and incentives. The principal form of approval under The Zambia Development Agency Act [Act No. 11 of 2006] is the grant of an investment licence which acts as a guarantee for foreign investors on important matters such as funds transfer, due process in expropriation and recourse to adequate dispute settlement will apply. Larger investors may also be eligible for privileges under certain conditions in relation to taxes and expatriate recruitment

²⁸²The introduction of compulsory licensing of investors was designed to give the Zambia Development Authority powers to first approve every foreign investor prior to investment. The reasoning behind this provision may be partly premised on a belief that an investment promotion centre should in the first place determine whether an investor's business plan is a good one and thereafter monitor operations to ensure compliance with the plan. The best judge of the business plan is the investor that provides the finance to Zambia

²⁸³These requirements are made in addition to regulatory requirements in the activity concerned

These requirements are in addition to regulatory requirements in the activity concerned. For example, manufacturing enterprises need to obtain licences from city, municipal or district councils.²⁸⁴

The investor who is interested in applying to develop premises as a multi facility economic zone, export prescribed goods and services, or invest in any business enterprise, register a micro or small business enterprise, education enterprise, skills training enterprise or rural business enterprise in a multi-facility economic zone is mandated to submit an application to the board of Zambian Development Authority in a prescribed form and the application shall be accompanied by a prescribed fee and such documents and information as may be required by the Board.²⁸⁵



3.2.2 Zambian Tourism Industry Analysis

Tourism in Zambia is monitored by Zambia Tourism Board is statutory body charged with the responsibilities to assure active participation at select trade, consumer shows trade, tours and the provision of information about areas of tourism interest available in the country and investment opportunities in Zambia.²⁸⁶

²⁸⁴The Zambia Development Agency Act, the Government is involved in judging whether every proposed investment is worthwhile on a number of broad criteria of promoting economic development, employment, exports and transfer of technology

²⁸⁵ Section 68 of The Zambia Development Agency Act [Act No. 11 of 2006], The Board of Zambia Development Authority shall, within fourteen days of the submission of an application approve or refuse to approve the application and, immediately thereafter, communicate the approval or refusal to the applicant. Where the Board approves an application made, it will grant a licence to an investor, a permit to a business enterprise, other than a micro and small business enterprise or rural business enterprise and a certificate of registration to a micro and small business enterprise, education enterprise, skills training enterprise or rural business enterprise

²⁸⁶ Zambia National Tourist Board was established by Part II of The Tourism and Hospitality Act [Act No. 23 of 2007]

FDI into Zambia has witnessed positive growth over the years thanks to efforts by the government to encourage private sector involvement in economic growth, in 2010,²⁸⁷ the country recorded a remarkable increase in the value of FDI and a substantial amount of the inflows went into travel and tourism.²⁸⁸

Corporate tax in the tourism industry is levied at the national rate of 35% with the following exceptions,²⁸⁹

- Tourism businesses such as lodges and hotels in rural areas are subject to a corporate tax rate of 30%,²⁹⁰ during the first five years of operation,²⁹¹
- Small business receives a tax holiday for the first 3 years of operation in urban areas and 5 years in rural areas.²⁹²

Full Value Added Tax is charged on all tourism products and services except package tours, sold by licensed operators to international tourists, are zero rated and all tourism services with the exception of food and beverages are zero rated in Livingstone.²⁹³ The tourism industry does receive preferential treatment with respect to accelerated depreciation allowances.²⁹⁴

²⁸⁷Travel and tourism has been attracting more foreign investors in recent years, especially in the development of hotels and recreational facilities, rehabilitation of roads and airports, developing infrastructure in game parks, as well as the opening up of the Northern Circuit for tourism

²⁸⁸ Available at <http://www.euromonitor.com/travel-and-tourism-in-zambia/report> (accessed on 30 July 2013)

²⁸⁹ Zambia National Tourist Board annual questionnaire completed by licensed tourism operators (1995 - 2003) declared that Tourism generated US \$148.8 million dollars in 2003, representing a 11% growth on the previous year, but only representing less than 3 percent of total GDP

²⁹⁰ According to the investment Act 1993 Cap.385 rural area is defined as any area which is not an area declared or deemed to have been declared as a city or municipality under the Local Government Act except for the area declared to be Kafue Township under that Act

²⁹¹ Zambia Investment Act of 1993 states that income received from a rural enterprise for each of the first five charge years is reduced by such amount as is equal to one-seventh of that tax

²⁹² Small business needs to be registered with the Small and Medium Business Development Board (SMDB)

²⁹³ This agreement was initially meant to be for two years beginning January 2001 in order to establish Livingstone as a world class tourist destination capable of competing with the Zimbabwean side of Victoria Falls. This incentive has since been extended for an additional two years and should be discontinued in December 2004.

3.2.3 Zambia Mining Sector Analysis

Zambia is the most dependent of African countries on its mining industry, mining industry has been the backbone of the economy, and copper-belt mining contributed 90% of export earnings in the mid-1990s, a situation which has been largely unchanged since the 1960's.²⁹⁵ In addition to copper and cobalt, the Zambian mining industry also produces lead, zinc, gold, coal and precious and semi precious stones.²⁹⁶

The current mining policy was formulated in 1995, and its primary focus was on the privatization of state mining corporations.²⁹⁷ The legal framework for the mining sector comprising the Mines and Minerals Act (1995), the Prescribed Minerals and Materials Act, Explosives Act, and various regulations are outdated due to new developments, especially technology, however, Zambian Government has proposed changes to the country's policy on mining that will subject investment deals in the sector to more public scrutiny and Parliamentary approval.²⁹⁸

²⁹⁴International Service Corporation & The World Bank *Zambia: Sectoral study of Effective Tax Burden* (2004) 20

²⁹⁵ Ministry of Energy and Water Development website <http://www.mewd.gov.zm/> (accessed on 31 July 2013)

²⁹⁶ OECD *Global Forum on International Investment: Foreign Direct Investment and the Environment: Lesson from the Mining Sector* (2002) 25

²⁹⁷Zambia's current mining policy was adopted in 1995 to guide development in the sector. Efforts to update the policy are underway in order to bring it in line with the changing mining environment. It is expected that the revised policy will be adopted and implemented during the period of the FNDP

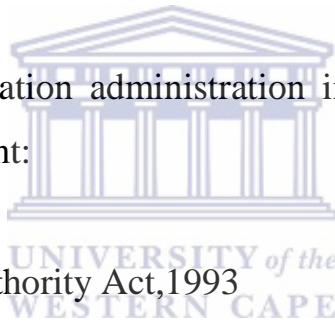
²⁹⁸ Mwila R Zambia 'Seeks To Change Its Mining Policy' *Mine Web* 2 August 2007, also available at <http://www.mineweb.net/mineweb/content/en/mineweb-mining-finance-investment-old?oid=24484&sn=Detail> (accessed on 2 August 2013)

3.2.4 Zambia Department of Migration

Work Permit Requirements in Zambia: Under the provisions of The Immigration and Deportation Act,²⁹⁹ a foreign national who invests a minimum of USD 250,000 or equivalent in convertible currency is entitled to a self-employment permit and employment permits for up to five expatriates.³⁰⁰ In practice, however, some foreign companies have had difficulty securing these permits, especially smaller-scale investors.³⁰¹

3.2.5 Analysis of the Legal Framework for Taxation in Zambia

The legal framework for taxation administration in Zambia is governed by the following Act of the parliament:



- Zambian Revenues Authority Act, 1993
- The Income Tax (Amendment) Act, 2010
- Value Added Tax Act, 1995
- Regulations to the Value Added Tax Act, 1995
- Value Added Tax General Rules, 1997
- Customs and Excise (Amendment) Act, 2009

Zambia, in the creation of more efficiency and simplicity in tax sector to allow more FDI in the country, The Government has concluded Double Taxation

²⁹⁹ [No. 18 of 2010]

³⁰⁰ Part IV of The Immigration and Deportation Act [Act No. 18 of 2010]

³⁰¹ The Zambian Department of Immigration website www.zambiaimmigration.gov.zm (accessed on 31 July 2013)

Treaties with 21 countries to avoid double taxation of companies operating in Zambia and other countries at the same time.³⁰²

Tax and incentive policies are key parameters in defining a business climate of any particular nation, taxes are therefore essential for the financing of government activities, but at the same time, taxes should be set and administered to be as growth enabling as possible.³⁰³ In Zambia, the revenue licencing authorities which are Zambia Revenue Authority (ZRA),³⁰⁴ and The Ministry of finance have been trying to administer set of tax policy which meets both ends, in so doing number of incentives aiming at promoting industrial development and general investment have been introduced and or implemented since the early 1990s.³⁰⁵

The Zambia Development Authority offers a wide range of incentives in the form of allowances, exemptions and concessions for companies, which are applied uniformly to both local and foreign investments.³⁰⁶ Investors who invest at least USD 10 million in an identified sector or product are entitled to negotiation with the government for additional incentives other than what they might already qualify for under the Zambia Development Act.³⁰⁷

From a macroeconomic perspective, tax policy in Zambia has been effective at raising revenues, as measured by tax/GDP ratios. The 18 percent tax/GDP ratio,

³⁰² Countries includes: Canada, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, Mauritius, Norway, Romania, South Africa, Sweden, Tanzania, The Netherlands, Uganda, U.K., Yugoslavia and Zimbabwe.

³⁰³ Tanzania Revenue Authority Website www.tra.go.tz/ (accessed on 15 August 2013)

³⁰⁴ Established by Zambia Revenue Authority Act [Act No. 28 of 1993] on 30 April 1993

³⁰⁵ World Trade Organisation *Zambia's Trade Policy Review* (2009) 5

³⁰⁶ United States Department of State website <http://www.state.gov/> (accessed on 26 July 2013)

³⁰⁷ The 2012 Zambian national budget however disallowed this practice as a way to make the investment climate more uniform and transparent

which has been maintained over the past 4 years, is among the highest rates in Africa.

Total central government revenues in 2003 amounted to approximately US\$ 888 Million, 80% of which was collected through taxation, with the largest sources being personal income tax at 31% of revenues and VAT (including import VAT) at 23%.³⁰⁸

The low revenue Zambian Government derives from taxes is one of the major reasons why FDI is not contributing as it should to sustainable development.³⁰⁹ A breakdown of the 2010 budget shows that the largest contributors to revenue are Pay as you earn individual employees' tax at 19% and Value Added Tax at 18%.³¹⁰ The focus on incentives to attract FDI is disproportionately weighted towards economic incentives because the Government does not invest in workforce skills through support for sectors such as education and health, which would reduce poverty much more substantially.³¹¹

3.3 Treatment and Protection of FDI in Zambia

The Zambia Development Agency Act is a special act that deals with investment matters applicable to both domestic and foreign investors, moreover the act has no provisions mentioning national treatment for foreign investor.³¹²

³⁰⁸International Service Corporation & The World Bank *Zambia: Sectoral study of Effective Tax Burden* (2004) 9

³⁰⁹Company Income Tax contributes 8% and mineral royalty tax contributes 2%. As metal prices soared after 2004 a windfall tax was introduced in 2007, however, after a lot of pressure from the mining companies, this tax which could have contributed a lot more to the treasury was repealed in 2009

³¹⁰Deloitte and Touche *Zambia Budget 2010- Keeping the Right Balance* (2010) 7

³¹¹Muyoyeta L *Direct Investment and the Fulfilment of the KeyRights* (2010) 185

³¹²The Zambia Development Agency Act does not mention national treatment for foreign investors. However, additional guarantees for foreigners are contained in the Bilateral Investment Treaties (BITs) which are signed by

With regard to protection of FDI, The act clearly enshrine that an investor's property (local and foreign investor) will not be compulsorily acquired nor will any interest in the right over such property be compulsorily acquired except for public purposes under an act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation for such acquisition.³¹³The act stipulate further that any compensation payable will be made promptly at the market value and will be fully transferable at the applicable exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies and other duties, except where those are due.³¹⁴



Zambia, according standards of fair and equitable treatment, National Treatment and Most Favoured Nation treatment to foreign investors. However, of those recently signed, only one, Switzerland, has been ratified. The only other BIT to have been ratified was with Germany; BIT was signed in 1966 and therefore, unlike Switzerland, do not accord standards of fair and equitable treatment, national treatment and MFN treatment. At the same time, Zambia's BITs take account of its membership of various regional agreements under which it has committed to provide preferential treatment for investors from regional countries. Thus, Zambia's BITs make an exception from these treatment standards of special advantages to nationals of third states by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions

³¹³ Section 19 of The Zambia Development Agency Act[Act No. 11 of 2006]

³¹⁴The Zambia Development Agency Act [Act No. 11 of 2006] under Section 20, provides rights for investors to repatriate profits, debt service, fees, royalties and disinvestment proceeds, whereby in the process of externalisation of funds, a foreign investor may transfer out of Zambia in foreign currency and after payment of the relevant taxes dividends or after tax income, the principal and interest of any foreign loan, management fees, royalties and other charges in respect of any agreement or the net proceeds of sale or liquidation of a business enterprise. The Foreign Exchange Control Act was repealed in 1994 hence there are no controls on the transfer of capital in or out of Zambia and Export permits are no longer required

3.3.1 Dispute settlement

Zambia is a signatory to the 1958 New York Convention, has signed the UNCITRAL model law and is a member of the International Centre for the Settlement of Investment Disputes (ICSID).³¹⁵

The Government of Zambia has also enacted The Arbitration Act, 2000, the act provides for domestic arbitration, which has been used in various cases dealing with investment issues.³¹⁶

The Zambian Arbitration Act applies to both domestic and international arbitration and is based on the UNCITRAL Model Law in which arbitration agreements must be in writing, parties may appoint an arbitrator of any nationality, gender or professional qualifications. Foreign lawyers cannot be used to represent parties in domestic or international arbitrations taking place in Zambia.³¹⁷

Arbitration awards are enforced in the High Court of Zambia, and judgments enforcing or denying enforcement of an award can be appealed to the Supreme Court.³¹⁸ For example the case of private mobile phone provider Telecel versus

³¹⁵Zambia is also a member of several multilateral agreements on investment such as The Washington Convention, which put in place International Centre for Settlement of Investment Disputes(ICSID) since 1970, and Multilateral Investment Guarantee Agency(MIGA)since 1988

³¹⁶ [Act No. 19 of 2000], gazette on 29 December 2000, which is an act to repeal and replace The Arbitration Act with provisions for domestic and international arbitration through the adoption, with modification of the Model Law on International Commercial Arbitration adopted by The United Nations Commission on International Trade Law on 21 June 1985

³¹⁷ United States Bureau of Economics and Business Affairs *2012 Investment Climate Statement – Zambia* (2012) 2

³¹⁸ On average, it takes about 14 weeks to enforce an arbitration award rendered in Zambia, from filing an application to a writ of execution attaching assets. It takes about 18 weeks to enforce a foreign award. Contracts involving state entities commonly rely upon arbitration as a dispute resolution tool

state-owned ZAMTEL, the case took seven months to be solved by domestic arbitration.³¹⁹

3.4 Conclusion

Chapter three analysed the institutions dealing with FDI in Tanzania and Zambia. Based on the analysis done, it is clear that both Governments have played significant role in the modifications of the existing legislations to safeguard institutions facilitating FDI and assuring more attractions to FDI and more benefits obtained by the investments. Moreover, the chapter clearly shows that there is a great need for both Governments to continue improving the legal frameworks in order to utilise FDI exclusively and to facilitate more economic development into the country, and to allow FDI to flow into more economic sectors hence creating more diversification in the economic activities.

The next chapter will analyse how different constraints found in Tanzania and Zambia hinder the efficiency of the existing FDI and the overall flow of FDI to these two countries.

³¹⁹USAID and the Law Association of Zambia are currently in the process of reviewing the legal and institutional framework in favour of strengthening national arbitration

CHAPTER FOUR

EXISTING CONSTRAINTS FACING FDI IN TANZANIA AND ZAMBIA

4.0 Different countries have been taking various approaches to attract FDI due to the assumed role in these countries. These roles include, but are not limited to, possibility for increased Government revenue mainly from taxation, employment creation, improved balance of payment by increasing export or by reducing imports, transfer of technology, improve managerial and entrepreneurship skills, increase competitiveness in the market, and linkage with the rest of the economy.³²⁰

This chapter is centred on examining existing constraints facing FDI in Tanzania and Zambia.



4.1 Existing Constraints facing FDI in Tanzania and Zambia

Although both governments have done a great deal to create an enabling investment environment for private sector growth and with specific measures to ensure greater inflow of FDI, there are some areas where more efforts need to be directed.

³²⁰ Ngowi H Tax Incentives for Foreign Direct Investment (FDI): Types and Who should / Should not Qualify in Tanzania (2010) 19

The constraints facing FDI in both countries are analysed below;-

4.1.1 High Operating Costs

The high cost of operating a business in Tanzania is currently the greatest impediment to FDI in Tanzania, especially the utility and transport costs,³²¹ the cost of doing business in Tanzania is benchmarked against other Sub-Saharan African countries, Tanzania scores very low indicating higher operating costs than Lesotho, Zambia, and Senegal.³²²

Tanzania depends on hydro-electricity as its main source of power hence affecting manufacturing businesses whenever there is a failure or breakdown and the utility costs are relatively higher in Tanzania than other members of the East African Community.³²³

The situation in Zambia is not so different from Tanzania with regard to operating cost of doing business. During the third quarter of 2009, firms reported that average operating costs remained high due to high prices of raw materials, high water and electricity tariffs, moderately high inflation and poor infrastructure. 38.9% (44.2%) of the firms recorded high operating costs compared with 11.4% (11.1%) that reported lower operating costs, along with 40.3% (32.2%) maintained their average operating costs in the same quarter, firms expect operating costs to

³²¹The power sector in Tanzania is also characterised by high tariffs, poor service and frequent power interruptions that causes great frustrations to manufacturing plants

³²² Tanzania Investment Centre *Benchmarking Tanzania's Foreign Direct Investment* (2004) 28

³²³Douglas K Tanzania: 'A Land of Obstacles and Untapped Opportunities for Businesses' *How We Made It in Africa* 26 October 2012 1

remain high in the quarter ending December 2009 for the same reasons cited above.³²⁴

Insufficient infrastructure services in Zambia such as transportation, telecommunication and electricity services are a formidable barrier to private productive investment in Zambia, making many activities and industries uncompetitive since the existing services are among the most expensive and unreliable in Africa.³²⁵

4.1.2 Lack of Financial Resources

Lack of financial resources to fund private sector development continues to be a major constraint to the growth of the private sector in Tanzania and Zambia, therefore impeding the growth of FDI.

In Tanzania, Domestic credit to the Private Sector fell from 14 percent in 1990 to 5 percent of GDP in 2001, but according to World Bank report, 2012 the rate has risen to at 17.89 in 2011.³²⁶ Distribution of commercial lending by sector shows most of the commercial lending going to the mining and manufacturing sector in Tanzania. Only 15 percent of the total commercial credit of 2002 went to the agriculture sector.³²⁷

While the financial sector has developed quickly over the last few years, it remains highly concentrated and dominated by over liquid banking institutions whereby

³²⁴ Bank of Zambia *Quarterly Survey of Business Opinion and Expectations Report for Third Quarter 2009* (2010)

³²⁵ World Bank *World Business Environment Survey 2000*(2000) 43

³²⁶ Trading Economics website <http://www.tradingeconomics.com/tanzania/> (accessed on 18 August 2013)

³²⁷ Government of Tanzania Website www.tanzania.go.tz/(accessed on 18 August 2013)

56% of the population, and in particular small businesses in rural areas, remains excluded from any financial service.³²⁸

The private sector participation in the economy has been undermined by weak macroeconomic stability and lack of an appropriate economic infrastructure despite the Zambian Government's effort to assure citizens are encouraged to engage in different economic activities.³²⁹ The most important constraint to the development of a sound private sector is the cost of long term investment finance whereby commercial lending is very expensive on account of the government's enormous borrowing requirements which crowd out the private sector's requirement.³³⁰

The various donor funded capital access schemes for the private sector had little impact and a succession of several state owned development banks providing credit to small farmers have failed owing to low recoveries, political interference and poor management.³³¹



³²⁸ The Global Competitiveness Report 2012-13, access to financing is cited as the second-most problematic factor for doing business in Tanzania, closely followed by infrastructure. Credit from commercial banks has increased significantly over the last five years but only 12% of this credit went to agriculture

³²⁹ Specific problems include high inflation, erratic exchange-rate movements, steep interest charges and high import duties on fuel and other essential inputs which all make investment planning difficult with increased uncertainty and risk

³³⁰ Commercial Banks hold around 70 per cent of Zambia's total Treasury bill's issuance where as the actual rates charged to investors are closer to 50 per cent nominal, even in real terms, these rates remain extremely high, at around 20 per cent, per annum

³³¹ The vacuum has determined that only individual entrepreneurs with sufficient collateral are able to borrow from private banks but high interest charges and stringent borrowing requirements still severely restrict small traders and farmers' access

4.1.3 Low Levels of Investments

Despite having increasing number of investments in both countries over the years, the levels have not yet managed to have a great impact on poverty alleviation.

Tanzania is one of the world's poorest economies in terms of per capita income, however, it has achieved high growth based on gold production and tourism, the economy depends on agriculture, which accounts for more than one-quarter of GDP, provides 85% of exports, and employs about 80% of the work force.³³² In 2008, Tanzania received the world's largest Millennium Challenge Compact grant, worth \$698 million.³³³

In Zambia, the poverty situation has dramatically worsened in parallel with the poor economic performance of the country over last thirty years, per capita income in 2000 was about 60 per cent of its level in late 1960s.³³⁴

The majority of people suffer from weak purchasing power, and in most of the rural poor are small scale farmers followed by medium scale farmers. Rural poverty is largely attributed to poorly functioning markets for agricultural output

³³² Tanzania Economic Profile 2013 available at http://www.indexmundi.com/tanzania/economy_profile.html (accessed on 5 August 2013)

³³³ Dar es Salaam used fiscal stimulus and loosened monetary policy to ease the impact of the global recession. GDP growth in 2009-12 was a respectable 6% per year due to high gold prices and increased production

³³⁴ According to World Bank, The Gross Domestic Product per capita in Zambia was last recorded at 439.13 US dollars in 2011. The GDP per Capita in Zambia is equivalent to 4 percent of the world's average. Zambia GDP per capita averaged 446.97 USD from 1960 until 2011, reaching an all time high of 626.13 USD in December of 1965 and a record low of 314.31 USD in December of 1999. The GDP per capita is obtained by dividing the country's gross domestic product, adjusted by inflation, by the total population, available at <http://www.tradingeconomics.com/zambia/gdp-per-capita> (accessed on 5 August 2013)

and to low agricultural productivity because of poor utilisation of agricultural inputs and inadequate irrigation systems.³³⁵

4.1.4 Underdeveloped Infrastructure System

Tanzania suffers from a poor infrastructure that hinders investment growth and technology development. Poor infrastructure raises the cost of doing business in Tanzania, which deters potential investors from exploiting Tanzania's resources.³³⁶

The lack of adequate infrastructure hinders private investment in agriculture and reduces the competitiveness of agricultural supply chains, due to poor infrastructure development, in the Global Competitiveness Report (2012-2013) Tanzania ranks 120 out of 144 in the 2012-13, against only 104 out of 139 countries in the 2009-10 Report, indeed, Tanzania ranks 132 out of 144 for infrastructure (WEF, 2012).³³⁷

Tanzania faces a lack of adequate public management and capacity for infrastructure development especially for encouraging and structuring private participation in infrastructure.³³⁸ Public sector capacity in designing and negotiating infrastructure projects remains weak and communication and coordination across different government levels on infrastructure development

³³⁵AFDB/ OECD *African Economic Outlook: Zambia* (2003) 349

³³⁶ Tanzania Investment Centre (2008), declared that high investment levels are necessary to trigger even mild increases in Tanzanian GDP, in large part due to a lack of complementary human skills and infrastructure that can enhance the productivity of invested capital. Tanzania ranks 132nd out of 144 economies in the infrastructure dimension of the 2012-13 Global Competitiveness Report. The lack of adequate infrastructure discourages foreign and domestic private involvement. Enabling infrastructure for Production, transport, processing and marketing is not integrated in a multi-modal manner, which reduces trade and value addition opportunities

³³⁷ World Economic Forum *The Global Competitiveness Report 2012-2013* (2012) 46

³³⁸ OECD *Investment Policy Reviews: Tanzania: Working Draft* (2013) 94

strategies is relatively inefficient.³³⁹ Potential sources of finance for infrastructure investment in Tanzania include Government budget, bonds, grants, and non-concessional borrowing. However the country's financial sector as a whole remains under-developed, even outside of capital markets: in 2010-11 less than 17% of formal businesses reported that they borrowed from financial institutions, and private sector credit only constituted 16-17% of GDP.³⁴⁰

Tanzania and Zambia are both sub-Saharan Africa countries which are in the midst of a power crisis. Sub-Saharan African's power generation capacity is lower than that of any other world region, and capacity growth has stagnated compared with other developing regions, which makes the average price of power in Sub-Saharan Africa to be double than other developing regions, but the supply of electrical power is unreliable throughout the continent.³⁴¹

Zambia is therefore characterized by poor infrastructure system,³⁴² which creates problems to the investors in the country, for instance: Zambia's rural road accessibility is poor compared to other countries in the sub Saharan.³⁴³ The poor road system and delays on account of truck and fuel shortages considerably reduce Zambia's attractiveness as a location for FDI aimed at supplying markets in the

³³⁹Performance management to meet end-user needs in infrastructure provision, and the role and independence of regulatory authorities such as the Energy and Water Utilities Regulatory Authority (EWURA) and the Consolidated Holding Corporation (CHC), are irregular across infrastructure sectors. While Government clearly acknowledges the strategic importance of improved infrastructure, the dominance of parastatals in infrastructure provision also limits opportunities for private investors to operate on an equal footing, and past attempts at PPP management and divestiture have rarely been successful

³⁴⁰ AFBD, United Republic of Tanzania Country Strategy Paper 2011-2015 (2011) 11

³⁴¹The World Bank Africa's Power Infrastructure : Investment, Integration, Efficiency (2011) 1

³⁴²Less than 10 percent of the total roads in Zambia are tarred and accessible in all weather conditions. The road freight cost from any of the regional seaports to Lusaka is higher than the cost to the capital city of other countries in the Southern African region

³⁴³While 70 percent of Zambians depend on agriculture for their livelihood, only 17 percent of this population lives within 2 km of an all-season road—about half the African average. The condition of the existing rural networks is exceptionally poor, with only 21 percent in good or fair condition, compared with around 60 percent in the relevant peer groups. There may thus be a case for shifting attention and resources to the rural networks in the future

region such as in agricultural production or in food processing, of which more than half of all exports are to the Democratic Republic of the Congo, in spite of Zambia's privileged access to these markets.³⁴⁴

In attempt to rescue the situation, The World Bank has invested significantly in improving the road network in Zambia, during the past decade, total investments in the roads sector have amounted to US\$120 million, through Road sip 1 (1997-2004) and Road sip 2 (2004-13).³⁴⁵

Access to electricity in Zambia has been low in Zambia and stagnant over time, only 20 percent in Zambia, less than half of what is found among the relevant African peer groups which create an increase in the cost of doing business for private sector.³⁴⁶ Inequitable access to power and water makes subsidized tariffs a highly regressive policy, Zambian power consumers are having the full capital costs of their service subsidized by the state.³⁴⁷ Every year the Zambian Government spend about \$95 million more than needed to meet Zambia's estimated infrastructure requirements, most of this overspending is on the transport sector, \$65 million, which in recent years is being funded at rates apparently over and above long-term requirements.³⁴⁸

³⁴⁴ UNCTAD *Investment Policy Review of Zambia* (2006) 49

³⁴⁵ The World Bank *The World Bank in Zambia* (2012) 8

³⁴⁶ Power access lags behind in both urban and rural areas, but the gap for rural electrification is particularly large more than 3 percent in Zambia versus 30 percent in the peer groups. Low power tariffs undermine the sustainability of the power sector. At \$0.03–\$0.04 per kWh, Zambia has some of the lowest power tariffs in Africa. Looking across the developing world, Zambia's power tariffs fall below the typical price range of \$0.05–\$0.10 per kWh. While Zambia's power production costs are low, tariffs are lower

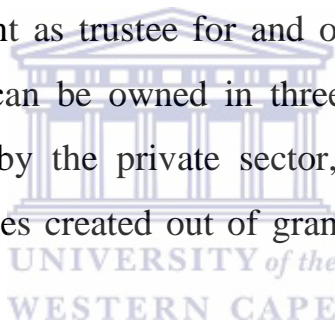
³⁴⁷ Zambia's infrastructure funding gap amounts to \$0.5 billion per year or about 6.5 percent of GDP and is mainly associated with spending needs in the power and water sectors

³⁴⁸ AICD *Zambia's Infrastructure: A continental Perspective* (2010) 32

However, Zambia is endowed with a relatively large amount of cost effective hydropower, in terms of electricity supply, Zambia enjoys a much more favorable position than many of its neighbours but due to the demands of its large-scale mining sector, Zambia has a relatively large generation capacity and power consumption per capita, several times higher than that of other resource-rich countries in Africa.³⁴⁹

4.1.5 Difficulties in accessing land for large scale agricultural investors

According to The Land Act, 1999 all land shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.³⁵⁰ However, land can be owned in three different ways; Government granted right of occupancy by the private sector, Tanzania Investment Centre derivative rights and sub leases created out of granted right of occupancy by the private sector.³⁵¹



Foreign investors are not allowed to own land but it can be leased through the Tanzania Investment Center, which issues a derivative right, leasehold agreement for duration starting from 32 to 98 years.³⁵² Foreign companies in Tanzania can obtain granted rights of occupancy or Tanzania Investment Centre derivative rights on general land only.³⁵³ If foreign investors are interested in village land, the land must first be transferred to general land before being allocated, while derivative

³⁴⁹ AICD *Zambia's Infrastructure: A continental Perspective* (2010) 16

³⁵⁰ Section 1(1) of The Land Act, 1999

³⁵¹ Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 46

³⁵² Available at <http://tanzania.eregulations.org/show-list.asp?l=en&mid=274> (accessed on 15 August 2013)

³⁵³ Tanzania Investment Centre only facilitates investors to obtain land that already has title deed. General land is a surveyed land usually located in urban and peri-urban centres, the centre deals only with lease for general land

rights may be easier to obtain than granted rights of occupancy, in practice, very little land is readily available in the Tanzania Investment Centre Land Bank where available land parcels are too few and small.³⁵⁴

Moreover, an inventory of public lands and their geographical location does not exist and normally is undertaken only on an ad hoc basis, such as if divestiture is contemplated, no information about availability of public lands is accessible to the public.³⁵⁵ Investors are unable to get a good sense of land availability without incurring major transaction costs, something that recently prompted the government to establish a bank of land that has been cleared preemptively from all interest to make it available for investors.³⁵⁶



The situation in Zambia is different from Tanzania. The Zambia ministry of Land has been working in cooperation with the Zambia Development Agency and line ministries such as the Ministry of Agriculture and Cooperatives, and managed to set up successful land blocks for reservation for investors willing to invest in priority sectors, for instance in the agriculture sector, farm blocks have been identified in all the nine provinces for possible development by interested investors.³⁵⁷

This creates easier access for Land for investors, as 94 percent of Zambia's total land falls under the Customary Land Tenure System and the farm blocks have been established with the consent of local authorities which is very important given the

³⁵⁴ OECD *Investment Policy Reviews: Tanzania Working Draft* (2013) 22

³⁵⁵ The lack of information not only encourages informal occupation of public land by squatters, but also makes it very difficult to assess the efficiency of the public institutions that manage such lands

³⁵⁶ The World Bank *The Land Governance Assessment Framework* (2012) 85

³⁵⁷ NEPAD/OECD *Highlights for the Policy Framework for Investment in Zambia* (2010) 5

sensitive nature of land ownership for investment in Zambia, but heavy land development approvals can lead to delays in registering land.³⁵⁸

Currently, land can be bought and sold by private buyers, and title deeds issued by the Commissioner of Lands upon application. In all instances ‘State Consent’ has to be obtained by the vendor before title deeds can be passed on to the purchaser. If consent is not granted within 45 days of filing the application, then the application is approved by default. Land disputes are referred to the Lands Tribunal for arbitration to fast track the resolution of land disputes.³⁵⁹

The government has also opened up a Customer Service Centre at the Ministry of Lands to provide information on land transactions whereby a foreign investor can acquire and obtain land titles as long as they have been granted investor status under the Lands Act or any other law pertaining to investment in Zambia.³⁶⁰

4.1.6 Low level of Good Governance

Poor governance and lack of accountability among leaders have been cited as two major factors have been a stumbling block in attracting more FDI in the country. Failure to control the crimes committed by the ruling class is also great indicator of bad governance and a great threat to development in any country.³⁶¹

Tanzanian Government has shown great commitment to good governance as a key requirement for promoting foreign investors to allow more economic growth and

³⁵⁸ NEPAD/OECD *Highlights for the Policy Framework for Investment in Zambia* (2010) 5

³⁵⁹ Zambian Ministry of Land website <http://www.ministryoflands.gov.zm/> (accessed on 17 August 2013)

³⁶⁰ Zambia Development Agency website

³⁶¹ Tanzania Governance Review *Kikwete's First Two Year* (2007) 1

poverty reduction.³⁶² In spite of big strides made on promoting good governance and accountability, Tanzania is still facing challenges on how to eradicate the existing corruption practices for both petty corruption, and grand corruption involving big contracts which has been seen in government Ministries, Departments and Agencies.³⁶³

Failure to deal with corruption is among the greatest indicators of bad governance. One of the basic principles of rule of law is that no one should be above the law, but in Tanzania a whole lot of corruption cases have erupted and at the end of the day the people concerned have not been taken to court or told to return what they took illegally.³⁶⁴

The situation is the same in Zambia whereby that government effectiveness is the area of governance in which Zambia is worst performing, below the Sub-Saharan average and public services are plagued by staff shortages, unmotivated and often ineffective or absent staff.³⁶⁵ Until recently, most financial releases from the

³⁶²Various measures and reforms towards strengthening good governance have mainly focused on the areas of democracy and human rights, legal and institutional systems. The Government of Tanzania has carried out sustained reforms of the legal sector in the pursuit for strengthening the rule of law, democratic governance, transparent and accountable conduct of public affairs. The Human Rights Commission was also established in 2002. The National Governance Framework and specific on-going reforms including Public Service Reform Programme (PSRP), Local Government Reform Programme (LGRP), Public Financial Management Reform Programme (PFMRP), the Legal Sector Reform Programme (LSRP) and Financial Sector Reform are among the necessary measures aimed at contributing towards good governance outcome, improved public services delivery, better economic management, positive cultural change and democratic development

³⁶³The United Republic of Tanzania *Country Report on the Implementation Status of Brussels Plan for Action*(2001) 4

³⁶⁴A good example of this is the former prime minister of the country, Mr. Edward Lowassa and two former ministers who were forced by the parliament to resign from their positions because their names appeared in a multibillion (In Tanzania Shillings) scandal famously known as the Richmond scandal, the scandal resulted into restructuring the council for ministers

³⁶⁵ European Union Delegation *Zambia - European Community, Country Strategy Paper and National Indicative Programme for the period 2008- 2013* (2008) 16

Treasury to spending ministries and agencies was very minimal, unpredictable and focused on meeting personal emolument expenses for civil servants with trickling funding to development projects.³⁶⁶ The government still struggles with accountability for public resources and inability to effectively deliver services.³⁶⁷

Good corporate governance and zero tolerance to corruption are among the main global conditionalities which multilateral donors and foreign governments have set for investment flow, poor corporate governance and widespread corruption in Zambia have therefore continued to beleague the country's investment environment causing the country not to be first choice investment destination for high profile investors despite the conducive attractions found.³⁶⁸

4.1.7 Poor Technology in Production Sector



Tanzanian and Zambian Government has made a lot of effort to develop technology used in different productive sectors to assure maximum attraction of FDI in the country, but these countries still lag behind in technology utilisation even though the situation is different in mining sector, economic growth by sector shows most of the major sectors growing at relatively low levels.³⁶⁹

³⁶⁶ There was an upswing of government undertaking and allocating resources to projects such as building of roads, schools and health facilities two years prior to the 2011 elections. Even then most of those projects remained poorly funded despite high visibility provided to their commissioning by high ranking officials, including former President Banda warranting them to be labelled as political-expediency projects

³⁶⁷ Yezi Consulting & Associates *Political Governance Study in Zambia* (2013) 20

³⁶⁸ Available at http://english.peopledaily.com.cn/200612/10/eng20061210_330638.html (accessed on 16 August 2013)

³⁶⁹ Tanzania Investment Centre Benchmarking Tanzania's Foreign Direct Investment (2004) 52

Low technology utilisation has lagged far behind in the agricultural sector as a result of the utilisation of outdated technology that has not changed much since independence whereby most agriculture production is done on a small scale using the hand hoe.³⁷⁰

4.2 Conclusion

FDI flows in Tanzania and Zambia has been increasing over the years. Both neighbouring countries belong to the third world countries facing same economic, social, political challenges which affect the flow of FDI into these two countries.

Although both Governments have done a great deal to create an enabling investment environment for private sector growth and with specific measures to ensure greater inflow of FDI, still both Governments needs to allocate more resources in eliminating the existing constraints in order to facilitate the increase of flows and operations of FDI into Tanzania and Zambia.

³⁷⁰Despite having source of water within reach, a large portion still depends upon the rain rather than irrigation. Export of agricultural produce largely dominated by unprocessed produce with very little value added and thus fetching very low prices in international markets

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 This is the final chapter that sums up the findings of the study and emerges with various recommendations aiming at helping the government to establish effective legal framework and policies that will facilitate not only FDI inflows but also the level of development anticipated to be achieved in Tanzania and Zambia via FDI.

5.1 Summary and Conclusion

The study has examined the legal frameworks for FDI in the East African neighboring countries of Tanzania and Zambia. The study has attempted to demonstrate critically the current status of the FDI legal framework and how the current status has affected the FDI in those particular nations and the overall impact that has been on the economy of Tanzania and Zambia.

Chapter two of the study described in detail the concept of FDI, by looking at different definitions given out by different experienced scholars and recognized institutions. Moreover, the study looked at the world history of FDI, the trend of FDI in Africa especially after African countries obtained their independence. The study went further by examining how the African countries reformed their policies to accommodate FDI. Since the study is centered on Tanzania and Zambia, the study has analysed critically the trend and performance of FDI in these two countries, and what extent the economy of these countries have been affected.

Lastly, the chapter analysed the institutional framework governing FDI in both countries.

Chapter three assessed the institutions that handle FDI in Tanzania and Zambia. The assessment was attained by looking at the relationship between the FDI and the legal framework of the host nation. The study concentrated on the weakness found on the institutions guiding FDI and other institution that support the role of the core institution in assuring efficiency and maximum exploration of FDI. Moreover, the study also looked at various sectors accommodating FDI by looking at the weaknesses found and how those weaknesses affect the host nations.

Chapter four examined different constraints facing FDI in Tanzania and Zambia. The constraints which were analysed are the ones that act as the stumbling block for the investors to start investing and the one causing the FDI not to advance further once the operation commence in both countries.

FDI is an important tool in the economic development of the nation. Contribution of FDI through financial resources, technology and innovative techniques raise the overall productivity of diverse sectors of economy. If properly navigated, FDI truly acts as a catalyst for development of sectors such as agriculture, manufacturing, service, SME and many more.³⁷¹

Both countries have fast growing economies for the last decade and have witnessed a large amount of FDI poured in various sectors. Both Governments have formulated policies aimed at attracting more funds considering the domestic and

³⁷¹Moghe D *Critical study of Foreign Direct Investment in Indian Retail with special reference to Multi Brand Retail Sector* (2013) 1

exportation business simultaneously. It is argued in this study that, the current legal frame work for FDI in both countries have managed to facilitate FDI but the existing problem is that the current legal framework for FDI is set to attract more FDI and once the FDI are in place both Governments do not profit as expected because of the existing gaps found in the legal framework which are sometimes abused by the investors. Therefore, legal frameworks are not constructed to allow Government to obtain maximum benefits possible from incoming FDIs.

The findings reveal that both countries have managed to make reforms in legal frameworks to allow more FDI, but the reforms were not constructed strictly enough to allow maximum benefit to be obtained by both Governments hence leaving loop holes for the investors to use which assures more ratio of benefits to their side. For example, Tax system found n both countries as clarified in the study gives a manipulation field for the investors to use hence the Governments end up losing large amounts of income which could be easily obtained.

5.2 Recommendations

5.2.1 Recommendation for Zambia

After the Zambian Government decided to change economic policy to accommodate more private investments especially FDI, the changes has helped to boost the economy.

The Zambian Government through FDI has managed to reboot the mining industry in the country which faced critical down fall during the 1980s through the privatization policy. The privatization policy was initiated all over the country, prospects remain good as world demand for copper and prices increased considerably. Moreover, the Government has managed to attract more FDI in other sectors apart from mining to decrease dependency on mining.

The study has observed that private sector is not performing as it was supposed to due to various setbacks such as high cost of capital and domestic inputs for local production. However Zambia still has potential to grow more because of the potential contained in the country, for instance, rich in copper deposits despite long exploration that has been done so far.

Following are the recommendations as a result of observed several weaknesses in the FDI legal framework in Zambia;-

- **Further improvements in the FDI policy and regulatory framework**

Despite the efforts attained by the Government of Zambia in restructuring the FDI framework, which managed to enact the Zambia Development Agency Act in 2006 as a legislation special to safeguard FDI activities in the country, the following should be done to assure more efficiency;-

The screening and approval process introduced by The Zambia Development Agency Act is one of the important procedures in assuring advantageous investments are the only ones accommodated in the country, however the process

should not be incorporated to all investors who are interested in registering for investment purposes. This will enable agency to minimise bureaucracy in the registration process since the process will only be extended to investors who have the intention of applying for incentives given by the agency or the investors interested in mining sector or infrastructure. Other investors who for instance, are registering for information purposes should not be screened hence allowed to obtain information directly relevant to monitoring FDI statistics.

The Zambia Development Agency Act has given the Zambia Development Agency enormous power to issue incentives to investors which in practice should be restricted because the study has shown that as a result the Zambian Government has continued to lose large amounts of revenue resulting from excessive issuance of incentives to FDI investors. Furthermore, clarification should be made to give more detailed explanations as to which investors fits the criteria to obtain fiscal incentives. The Zambia Development Agency Act gives the threshold of US\$ 500,000 as the requirement to obtain incentives which creates loop holes since there is no concrete restriction made after the investor attained the threshold.

Provisioning of high taxes as a way of covering the lost revenue due to issuance of certificates of incentives should be amended to allow maximum accommodation of FDI investors in the country. The introduction of general level of corporate tax will manage to boost local and foreign investment across all sectors. The Government should therefore concentrate on improving the business environment to promote more FDI investors to all sectors available in the country which will increase more deviation from mining dependency income.

- **Policy rationality and investment promotion**

The Zambian Government despite having Zambia Development Agency as a one stop centre for FDI issues, should examine the role played by other Governmental institutions and departments supporting FDI in the country since the study has realized the existing lack of coordination which reduces the effectiveness of the Government's effort to attract and benefit from FDI.

The existing policy lacks consistency which has made it practically impossible to implement efficiently. Changes in policy are frequent and unpredictable whereby in most cases, there is no apparent logic for the change beyond political agenda of the Government. This problem has become a setback in attracting more FDI in to the country because of lack of predictability in the policy which creates fear. The Zambian government should therefore, set and explain clearly the vision and objectives regarding the role and benefits to be obtained by FDI that already exist in the country and the ones expected to commence in the country.

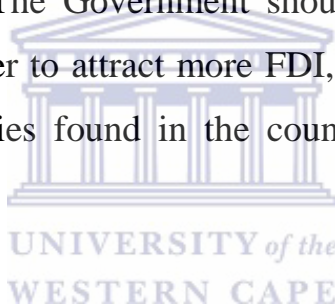
- **Consolidation of recent improvements in macroeconomic policy**

Although the macroeconomic policy climate of Zambia has improved in recent years, additional efforts are required in the area of macroeconomic policies in order to strengthen business confidence and create a stable policy environment.

Zambia business industry faces the problem of high interest rates which create a major setback to FDI especially in nontraditional activities where the investors funds are normally small to medium scale operators.

- **Increasing the availability and competitiveness of infrastructure services**

The study has observed that transportation, energy and telecommunication services are not adequate in many parts of the country which creates a big burden to FDI investors. The cost of these services which are very important for production and exports are relatively high. The Government should allocate more resources in building infrastructure in order to attract more FDI, to allow maximum utilisation of the investment opportunities found in the country and minimise the cost of doing business in the country.



- **Develop and strengthen the domestic private sector**

Zambia faces the problem of weak domestic private sector which is a disadvantage to the country since less benefit is obtained from FDI. The Government should focus on constructing an advanced domestic enterprises sector that will lead to more FDI attraction since the country will be in a good position to demonstrate reliable and strong economy climate.

5.2.2 Recommendation for Tanzania

FDI inflows have a significant contribution to the economic growth of Tanzania. The Government of Tanzania has managed to make various reforms aiming at improving and attracting FDI in the country. However the study managed to find various loop holes found in the legal framework, and the followings are the recommendations to assure that the increase of FDI in the country goes in hand with the revenue collected out of it

- **Review of the Tanzania Investment Act**

The current act that deals with legal and regulatory issues that govern investments and business operations in Tanzania is the Tanzania Investment Act. The act needs to be revised in order to be in harmony with the demands of the market economy and continue providing an enabling environment by improving the regulatory regime, the judiciary, strengthening the Tanzania Investment Centre and the private sector institutions.

The Act is outdated, For example; citing different statutes that no longer exist, for instance, the reference is made on The Sales Act which is has been repealed and replaced by The Value Added Tax Act. The amendment should be made to avoid any loop holes and contradictions.

Based on what Tanzania is experiencing currently, it is sufficient to say investment reform is past due. The delay that is still going on in enacting a new investment law is affecting various important issues such as minimum investment size required by Tanzania Investment Centre, issuance of certificate of incentives to investors which has caused a lot of revenue loss to the Government because of the statutory unlimited power invested on Tanzania Investment Centre, and the loop holes found in the statute which allows the investors to abuse. Example: the changing of names

of company before the lapsing of tax free duration. Other factors that need attention are factors that contribute to creating an attractive investment climate such as commercial dispute resolution, arbitration settlements, contract enforcement and expatriate labours which have been poured in the country in a large number.

The Tanzania Investment Act needs to address issues related to FDI such as employment, transfer of skills and technology, repatriation of capital, foreign exchange, business linkages and capital injection of FDI inflow to Tanzania.

Government should set human resource development policies and initiatives that encourage the transfer and diffusion of technology and formation and utilisation of networks with FDIs. For instance higher learning institutions need to enter into dialogues with FDIs regarding their knowledge and skill requirements so that the former can produce graduates who meet educational requirements. The Government should therefore address the issue in such a way that the local economy will be in a good position to benefit from the FDI, hence contributing to the economy of Tanzania in a feasible way.

Tanzania needs to abandon the disjointed approach in various activities hence the Government should make sure that the policies for investment especially FDI are interlinked with other policies found in the country in order to avoid contradictions. For example: While the Ministry of Finance policy is aimed at collecting more tax/revenues, while Tanzania Investment Centre is issuing a lot of incentives to FDI investors which leads to loss of enormous amount of tax. Therefore, there should be a joint effort to harmonize all national policies in different sectors to assure no contradictions and targeting single major goal which is development.

- **Infrastructure development**

Tanzania despite having resources which attract a lot of prominent FDI investors, poor infrastructure is still has a major setback. Tanzania has made significant headway in developing strategies, formulating plans and securing investor interest in infrastructure development, but the projects have been delayed in implementation.

Access to global markets is directly related to the country's existing infrastructure. Most of the agriculture activities take place in remote areas where produce is wasted due to lack of storage facilities and access to markets. For Tanzania to attract significant amounts of FDI into the agro-processing sector, deliberate efforts have to be made to reduce the cost of utilities and transport in Tanzania. Manufacturing processes require high consumption of energy, the cost of energy becomes a major factor in determining the degree of processing to take place inside the country. The cost of transport is related to the linkage between local agriculture producers and foreign investors.

- **Land Law Reforms**

The study has shown that investors have major problems in accessing land for various development activities including agriculture. The Government in solving this problem has managed to come up with a project aiming at modernizing the land system in the country so as to obtain revenue which will result from FDI in commercial agriculture. Currently, the Government is failing to realize investment opportunities in the agriculture sector, the allocation and procedures for land bank needs to be improved to allow more access for foreigners in the reserved lands.

- **Investment promotion**

There is a need to have a strategic and comprehensive promotion and facilitation of investment that need to achieve the interest of Tanzania. Tanzania Investment Centre needs to more frequently use the targeting tools that it in order to assure new FDI investors are captured. Blanket promotion efforts to a sector or to investors by region are not sufficient. TIC staff working on investment promotion should be trained and well versed in targeting techniques in order to assure efficiency in promotion strategies. The Government needs to advance promotion techniques by allowing more coordination from different sectors since most of the activities do overlap. FDI promotion should remain set firmly under the auspices of the Tanzania Investment Centre and implementing a coordination mechanism with the individual ministries be involved effectively in FDI promotion activities.

- **Develop Clusters to Link FDI and SMEs in the Global Value Chain**

In order to attract substantial amounts of FDI into the agro-processing and natural resource industries and benefit from FDI, deliberate policies have to be made to build clusters in both urban and rural communities. Companies and associated institutions in a particular field, including producers, service providers, suppliers, distributors, training and research institutions can be connected together to form clusters in targeted geographic locations to develop capabilities in selected products. In the Morogoro region, for instance, agricultural producers can link up together with farmers associations, food processing plants, suppliers of farm inputs, private sector business support institutions and knowledge providers, consumers, and foreign companies. Once such clusters are developed, investors will be attracted to move in to take advantage of emerging opportunities. This fits in well with the global value chain linkages where clusters will provide room for having a greater portion of the value adding activities to take place in regions where most of the poor live. As clusters develop and grow the community prospers and creates a market by raising purchasing power.

- **Directing FDI to meet Development Objectives**

The Government should examine how FDI fits in with development objectives which may deter inflows. FDIs are of various types and can have different impacts on the domestic economy of the host nation. FDI can lead to capital intensive projects that embody technology with regards to the extraction of resources.

Development objectives may require a certain type of FDI. For instance, in the extractive industry, FDI help to achieve the objective of exploiting natural resources for economic development, but attracting FDI in the textile industry helps to achieve

the objectives of low skill job creation and exports while on the other hand in the high tech industry, FDI can lead to further innovation, exports and high-skill job creation. Given Tanzania's natural resources and its development objectives which aim at poverty reduction, growth job creation and financing current account deficit, there is a great demand for the Government to determine what type of FDI is needed and how the positive and negative, long-run and short-run characteristics of the various types of FDI fit in. Tanzania has attracted FDI by privatisation of state utilities this has enhanced efficiency but it has not guaranteed affordability of services for all and has required putting in place regulation and competition policy.

The study clearly shows that FDI can play an important role in attaining development and economic growth. An effective regulatory framework to monitor and regulate all related activities will ensure the existing FDI helps to boost the economy of the country. Tanzania and Zambia should not only continue to reform their regulatory framework in order to ensure the existing gaps found in the regulations are sealed but also continue to eliminate existing constraints that hinder the flow of FDI in these neighbouring countries.

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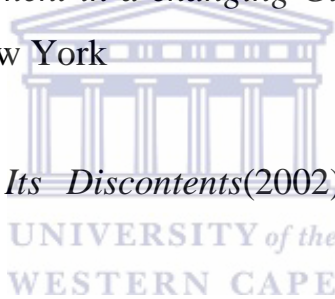
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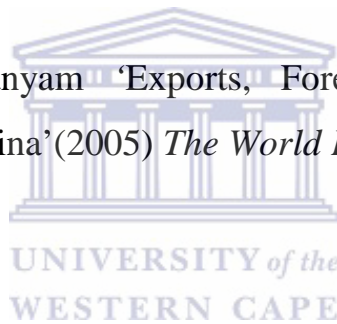
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