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BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS
FOR EFFECTIVE REGULATORY REFORM

REGULATORY CAPACITY REVIEW OF ZAMBIA

INVESTMENT CLIMATE ADVISORY SERVICES
WORLD BANK GROUP

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1818 H Street NW
Washington DC 20433

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Better Regulation for Growth Program

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory services of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: www.ifc.org/brg

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FOREWORD

Regulatory reform has emerged as an important policy area in developing countries. For reforms to be beneficial, regulatory regimes need to be transparent, coherent, and comprehensive. They must establish appropriate institutional frameworks and liberalized business regulations; enforce competition policy and law; and open external and internal markets to trade and investment.

This report examines the institutional set-up for and use of regulatory policy instruments in Zambia. It is one of five reports prepared on

countries in East and Southern Africa (the others are on Kenya, Uganda, Rwanda, and Tanzania). The report is based on a review of public documents prepared by the government, donors, and the private sector, and on a limited number of interviews with key institutions and individuals.

The report is an input to the Investment Climate Advisory Services (IC) discussions aimed at helping governments improve regulatory quality—that is, reform regulations to foster competition, innovation, economic growth, and social objectives.

ACRONYMS: ZAMBIA

ACC	Anti-Corruption Commission
BLRC	Business Licensing Reform Committee
CLC	Cabinet Liaison Committee
CLO	Cabinet Liaison Officer
COMESA	Common Market for Eastern and Southern Africa
DFID	UK Department for International Development
DIP	Decentralization Implementation Plan
EBZ	Export Board of Zambia
EPZ	Export processing zone
FDI	Foreign direct investment
FNDP	Fifth National Development Plan
IC	Investment Climate Advisory Services
ICT	Information and Communication Technology
IFC	International Finance Corporation
IMCO	Inter Ministerial Committee of Officials
JCA	Judicial Complaints Authority
MDG	Millennium Development Goals
MFNP	Ministry of Finance and National Planning
MPC	Monetary Policy Committee
MTEF	Medium Term Expenditure Framework
OAG	Office of the Auditor-General

OECD	Organization for Economic Cooperation and Development
PAC	Policy Analysis and Coordination Division
PACRO	Patents and Companies Registration Office
PEMD	Planning and Economic Management Department
PEMFA	Public Expenditure Management and Financial Accountability Reforms
PRSP	Poverty Reduction Strategy Paper
PSD	Private Sector Development
PSF	Private Sector Federation
PSM	Public Service Management
PSRP	Public Service Reform Program
RIA	Regulatory Impact Analysis
RISDP	Regional Indicative Strategic Plan
RTFP	Regional Trade Facilitation Program
SADC	Southern African Development Community
SAG	Macroeconomic Sector Advisory Group
SME	Small and Medium Enterprises
SQAM	Standardization, Quality assurance, Accreditation and Metrology
UNCTAD	United Nations Conference on Trade and Development
UNIP	United National Independence Party
USAID	U.S. Agency for International development
ZAM	Zambia Association of Manufacturers
ZBC	Domestic Business Council
ZBF	Zambia Business Forum
ZCCI	Zambia Council of Commerce and Industry
ZDA	Zambian Development Agency
ZEPZA	Zambia Export Processing Zones Authority
ZIBAC	Zambia International Business Advisory Council
ZIC	Zambia Investment Centre
ZRA	Zambia Revenue Authority

EXECUTIVE SUMMARY

Since the late 1990s, the government of the Republic of Zambia has attempted to reverse the country's economic decline by putting together a new approach to economic management, focusing on fiscal discipline, better governance, and promotion of economic growth. These steps have been designed to introduce a market-based and private sector-driven economy in place of the state enterprise-dominated system. As a result, the Zambian economy has experienced positive GDP growth for eight consecutive years, with all sectors, but in particular mining, construction, and services, contributing positively. Real GDP growth has averaged more than 5 percent since 2005, and as a consequence, the overall poverty headcount has declined from 73 percent of the population in 1998 to around 68 percent. The government recognizes that, in order to meet the Millennium Development Goals (MDGs), the economy needs to move to a higher GDP growth path of between 8–10 percent per annum, and that private sector development will have to be responsible for stimulating that growth.

However, economic recovery has not yet been accompanied by a significant increase in private savings and investment. While gross investment rose from 15 percent of GDP in the early 1990s to about 20 percent by 2005, the increase came largely from public investment, with private investment languishing at around 6 percent of GDP. Private investment will have to increase significantly if growth targets are to be met. The reforms and the recent improvements in economic performance have not altered the perceptions of the business community that the business climate in Zambia is generally poor because of a broad range of obstacles listed below:

- costs of financing;
- macroeconomic instability;
- tax rates;
- regulatory policy uncertainty;
- access to financing;

- crime;
- corruption; and
- infrastructure.

Numerous reports prepared by donors and the private sector have identified business regulations as a major issue, and Zambia accepted the need for reform in this broad area in its private sector development (PSD) strategy.

Zambia is beginning to respond to the challenge of regulatory capacity and performance through a broad range of programs and activities involving public sector and civil service reform; decentralization and local government reform; anti-corruption campaigns; competition and competitiveness programs; and legal reform. It is also focusing specifically on business registration and licensing as key factors determining the creation of new businesses and the formalization of informal businesses. Despite these efforts, much more remains to be done.

This report reviews the current state of regulatory capacity and performance in Zambia, with a view to identifying weaknesses that must be overcome and existing strengths upon which the regulatory management system could be constructed. Much of the regulatory reform carried out to date has been directed at solving existing problems and weaknesses, but it is also essential that the capacity to make new regulations and to keep them up to date is strengthened. The report argues for building a regulatory management system by adopting a broad policy on regulatory reform that establishes short and medium term objectives, and focuses on implementing better regulations and regulatory procedures.

An important step in institutionalizing regulatory reform would be to create a ministerial position supported by a technical unit to champion such reform, and to coordinate the many reforms across

government that have regulatory implications. Important components of this system would be:

- the introduction of regulatory impact assessment;
- establishment of consultation procedures in the development of policies, laws, and regulations;
- improved communications of existing regulations; and
- a focus on compliance and enforcement.

Much of what this report endorses has been identified in the report of the Business Licensing Reform Committee (BLRC), which establishes an agenda for discussion within government and other stakeholders for broad regulatory reform, as well as for specific reform of business licensing.

Particular attention should be paid to implementing regulatory strategy and reform, in view of the country's past performance in this area. The Phase II strategy of the Public Sector Development Reform Program (PSDRP) outlines a number of focus areas for regulatory reform, including reducing the number of licenses that businesses need to get and ensuring that processes and procedures for import and export are transparent and streamlined. However, there is the real risk that these reform programs will flounder like those before due to a shortage of trained personnel and funding, irrational incentives that work against reform, and a failure to establish clear targets as well as monitoring and evaluation mechanisms. The successful implementation of the regulatory aspects of the Phase II PSDRP strategy will take considerable time and require sustained effort over several years. The government's program will need to establish realistic intermediate targets that are attainable and can contribute to building the constituency for reform.

REGULATORY REFORM IN A NATIONAL CONTEXT

Economic development context

Until very recently, the people of Zambia were steadily becoming poorer. The per capita GDP fell for more than three decades, from \$700 in 1970 to \$390 in 1998. At independence in 1964, the Zambian economy was concentrated around a single sector—the mining sector, particularly copper production. This sector accounted for some 45 percent of GDP, nearly 90 percent of exports, 65 percent of public revenue and the bulk of formal sector employment that was not in public services. In the first decade after independence, Zambia's copper exports reached an all-time high, yet the remainder of the economy stagnated, and overall GDP growth—averaging 3 percent per annum—lagged behind the rate of population growth.

The collapse of world copper prices in the mid-1970s created an enormous adverse shock for the Zambia economy. Equally devastating was the government's response to this shock, comprising heavy international borrowing, the imposition of pervasive controls over factor and product markets, and widespread nationalization of productive assets outside of the mining sector. While partial reforms

were introduced during the 1980s, and some attempts were made to improve incentives for agricultural production and manufacturing, most reforms were short-lived and hampered by poor implementation. The diversification that took place depended heavily on either subsidies or protection against competition. Zambia's exports continued to decline, its foreign debt mushroomed, and the pace of per capita GDP decline accelerated.

In October 1991, Zambia moved to a multiparty democratic system. In the following years, the government implemented a number of policy and structural reforms, liberalizing exchange and interest rates; simplifying the tariff structure and removing quantitative restrictions on trade; privatizing most state-owned enterprises; and substantially withdrawing from the agriculture sector. Despite these reforms, economic growth remained lackluster, and poverty and social conditions continued to worsen.¹ Between 1991 and 2000, real per

¹ Overall poverty increased from 70 percent in the early 1990s to 73 percent by the end of the decade, and other social indicators declined as well: life expectancy declined from 49 years to 38 years; under-five mortality rate rose from 151 per 1,000 live births to 162 per 1,000; net primary school

capita GDP declined at an average annual rate of 1.5 percent a year, so that by 2000 real per capita GDP was no more than half what it had been at Independence.² In 2000, Zambia found itself in the unfortunate and unique position of a country that had not undergone the trauma and dislocation of war or civil strife, yet had experienced a virtually continuous contraction of per capita income over three and a half decades.

Since the late 1990s, the government has attempted to put together a new approach to economic management, focusing on fiscal discipline, better governance, and promotion of economic growth. This new way of thinking was reflected in a series of policy statements, including the Interim Poverty Reduction Strategy Paper (I-PRSP, July, 2000) and the Poverty Reduction Strategy Paper (May, 2002).³ Over the past decade, Zambia has implemented stabilization and structural adjustment reforms designed to introduce a market-based and private sector-driven economy in place of the state enterprise-dominated system.

However, an inability to reduce budget deficits and to restrain growth of public employment resulted in high rates of inflation averaging some 20 percent per annum, and in high real interest rates exceeding 20 percent per annum in the first half of the decade. Not surprisingly, the economy's response to these reforms was muted, with GDP growth accelerating to 3.8 percent per annum between 2000 and 2004 and per capita GDP growth increasing to 1.8 percent per annum. Modest by international standards, such growth was significantly higher than Zambia had achieved in the past, and the first time since independence that the country had achieved positive per-capita GDP growth for more than five years in a row.

enrollment fell from 77 percent to 67 percent; and adult literacy declined.

2 In the period 1991–95, annual GDP growth was negative, averaging –1.1 percent per annum, while at least it was positive, averaging 2.1 percent per annum, in the second half of the decade.

3 Interim Poverty Reduction Strategy Paper (I-PRSP) July 2000, and the Poverty Reduction Strategy Paper, May 2002.

As of today, Zambia has experienced positive GDP growth for eight consecutive years with all sectors, particularly mining, construction, and services, contributing positively. Real GDP growth has averaged more than 5 percent since 2005, and as a consequence, the overall poverty headcount has declined from 73 percent of the population in 1998 to around 68 percent.⁴ The government recognizes that, to meet the MDGs,⁵ the economy needs to move to a higher GDP growth path of between 8–10 percent per annum, and that private sector development will have to be responsible for stimulating that growth. In June, 2004, the government publicly launched an ambitious private sector development agenda during a workshop involving both public and private sector stakeholders. This forum put the government on record that it intended to implement its private sector development strategy.

However, economic recovery has not yet been accompanied by a significant increase in private savings and investment. While gross investment rose from 15 percent of GDP in the early 1990s to about 20 percent by 2005, the increase came largely from public investment, with private investment languishing at around 6 percent of GDP. Moreover, foreign direct investment (FDI) has been declining, with relatively little flowing into manufacturing, tourism, non-copper mining and agro-processing, which the government wishes to promote as part of its diversification program.

The reforms and the recent improvements in economic performance have not altered the perceptions of the business community that the business climate in Zambia is generally poor. The Inward FDI Potential Index of the United Nations Conference on Trade and Development (UNCTAD), for example, places Zambia towards the bottom of all countries. In contrast to many of its regional

4 During the past four or five years, inflation has been reduced to less than 10 percent per annum, and the macro-economic position has improved significantly.

5 The MDG goal for poverty is to halve the percentage of the population living in absolute poverty by 2015.

competitors, Zambia's ranking has fallen in recent years. Similar conclusions are drawn through the Heritage Foundation's Index of Economic Freedom. Firms in the Investment Climate Assessment sample ranked regulatory policy uncertainty as the fourth most pressing constraint to growth. Fifty-seven percent of Zambian respondents rated regulatory policy uncertainty as an important (major or severe) problem for their firm, compared to, for example, only 28 percent of Ugandan firms. Seventy percent of firms judged that government officials' interpretation of regulations affecting their businesses are inconsistent and unpredictable.

Although some aspects of this broad category, such as business registration and customs administration, do not rank highly on their own as serious constraints on investment and operations, the overall cumulative impact of these regulations and policies is considered to be high. Firms reported that these shifts in policy exacerbate the risks that they associate with doing business in Zambia and create a disincentive to invest.⁶ There are also numerous relatively new agencies within the government, some of which require licenses of one type or another, such as the Competition Commission, Communications Authority, Investment Centre, and the Environmental Council, not to mention the licenses required from relevant industry regulatory bodies.

These findings are corroborated by the *Doing Business 2009* indicators.⁷ DB 2009 ranks Zambia

as 100th globally in the "ease of doing business" synthetic indicator, and 7th in Sub-Saharan Africa (SSA).⁸ The report identifies starting a business, getting credit, and paying taxes as areas where Zambia compares favorably to its neighbors, and permitting/licensing, labor rules, and cross-border trade as areas where Zambia's performance lags. DB2009 confirms that Zambia has gradually improved its standing in comparison to other SSA countries, but also shows that it lags well behind international best practice.

Red tape and excessive government interference in private sector activities are the main constraints to private sector development. One indicator of this is the large share of GDP generated in the informal sector and its continuing growth. Some 50 percent of GDP is estimated to be generated within the informal sector, and a very large proportion of enterprises are estimated to be informal to some degree.⁹ In turn, the impact of the large informal sector on formal sector enterprises can be gauged by the fact that "practices of the informal sector" was the second-largest constraint to enterprise investment in 2007, according to the World Bank enterprise survey.¹⁰

Administrative and legal environment

The Zambian legal system is based closely on that of England and Wales, and Zambian courts widely apply principles of English common law. Customary law is also applied.¹¹ Zambia's judicial practice and procedures are governed by the Zambian High Court Act. However, where the

⁶ For example, the immigration laws were suddenly changed in 2003, requiring all non-Zambians to renew unexpired permits at high cost. In addition, as was indicated in the Administrative Barriers Study carried out by FIAS, non-Zambian businesses are required to renew licenses and immigration permits every year, and uncertainties in the application and interpretation of the policy tend to reduce the willingness of businesses to invest. Another good indicator of the cost of regulatory uncertainty is the amount of senior management time spent on regulations (e.g. tax, customs, labor regulations, licensing, and registration), completing forms and dealings with officials. In Zambia, this amounts to about 13 percent, a rather high percentage compared to only 4 percent in Uganda, but lower than 14 percent in Kenya and 16 percent in Tanzania.

⁷ The World Bank Group, *Doing Business Indicators*, Washington, D.C., 2009.

⁸ Rankings in Africa for Zambia's regional competitors were 5th for Kenya, 10th for Uganda, 14th for Tanzania, and 17th for Rwanda.

⁹ See "Zambia: Informal Investment Climate Assessment," Africa Private Sector Group, June 2006.

¹⁰ See <http://rru.worldbank.org/BESnapshots/Zambia/default.aspx>

¹¹ The dual legal system in Zambia, in which both statutory and customary laws apply, has often led to discriminatory practices which, in most cases, are biased against women, especially in the application of customary law which is not written. For this reason, the government has initiated the review of customary laws to avoid arbitrary interpretation of the customary laws and to align them to statutory laws.

Zambian provisions are deficient, the appropriate provisions of the Rules of the Supreme Court of England and Wales are applied.

In terms of the hierarchy of legal, administrative, and regulatory instruments, the Constitution¹² is the supreme law, and any law or custom in conflict with it is null and void to the extent of its inconsistency (Article 3). The second tier of the hierarchy is statute law or acts, which are published in the *Official Gazette*. The third source of law is decree law.¹³ The fourth source is case law, comprising judgments from the Supreme Court, the High Court, and the Court of Appeal, which serve as precedents for lower courts. The fifth source of law is customary law. Finally, international treaties and conventions are a source of domestic law as long as they have been ratified by Parliament.¹⁴

12 The current constitution was adopted in 1996. Prior to this, Zambia functioned under the constitution adopted in 1973, which provided for a strong president and a unicameral National Assembly. National policy was formulated by the Central Committee of the United National Independence Party (UNIP), the sole legal party in Zambia. The cabinet executed the central committee's policy. In accordance with the intention to formalize UNIP supremacy in the new system, the constitution stipulated that the sole candidate in elections for the office of president was the person selected to be the president of UNIP by the party's general conference. The second-ranking person in the Zambian hierarchy was UNIP's secretary general. In December 1990, President Kaunda signed legislation ending UNIP's monopoly on power. In response to growing popular demand for multi-party democracy, Zambia enacted a new constitution in August 1991. The constitution enlarged the National Assembly from 136 members to a maximum of 158 members, established an electoral commission, and allowed for more than one presidential candidate who no longer had to be a member of UNIP. The constitution was amended again in 1996 to set new limits on the presidency (including a two-term limit, and a requirement that both parents of a candidate be Zambian-born). The current Constitution allows for amendments in the event that they are approved on a vote by no less than two thirds of the Assembly's members. In 2003, the government appointed the Mung'omba Constitutional Review Commission (CRC) to address shortcomings of two earlier commissions and to come up with a widely accepted constitution. The CRC released its report and draft constitution in December 2005.

13 Decrees may be issued under the name of the president, but have to be submitted to Parliament for ratification at its next session.

14 While Zambia is not a signatory to any international convention regarding the enforcement of foreign judgments,

The Republic of Zambia is today "a unitary, indivisible, multi-party and democratic sovereign state" (Part I, Article 1). The government has three organs: Legislature (established under Part V), the Executive (established under Part IV) and Judiciary (established under Part VI), whose functions and powers are laid out in the 1996 Constitution. The Constitution provides for legislative supremacy of Parliament and independence of the Judiciary.

Executive power in Zambia is vested in the president (Article 33 (2)). The president, who may serve for two terms of seven years each (Article 35), is elected by universal suffrage through secret ballot, and can be elected by a simple majority of votes cast (Article 34). Article 45 authorizes the president to appoint a vice president¹⁵ from the members of the National Assembly; Article 46 authorizes the president to appoint ministers, also from the members of the Assembly; and Article 47 permits the president to appoint deputy ministers (whose role is to assist the ministers) and provincial deputy ministers (whose role is to be responsible for administration of the country's provinces), also from the membership of the National Assembly.

The Cabinet, which is responsible for formulating the government's policy (Article 50), consists of the president, vice president, ministers, and ministers of state. According to Article 51, the Cabinet and the deputy ministers are accountable collectively to the National Assembly, and subject to a code of conduct promulgated by the Assembly. Article 53 makes provision for appointment by the president, subject to ratification by the Assembly, of a Cabinet secretary, who is head of the public service¹⁶ and in charge of the Cabinet

it is currently putting in place mechanisms for the ratification of the International Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

15 One of whose roles is to be the leader of the government in the National Assembly.

16 And responsible for securing the general efficiency of the public service.

office.¹⁷ Finally, the president is responsible (Article 54) for appointing the attorney general, who is ex-officio, a member of the Cabinet and the government's legal adviser.¹⁸

Legislative power in Zambia is vested in Parliament, which consists of the president and the National Assembly (Article 62). The Legislature has three main functions: to make laws, to appropriate money for public expenditure, and to oversee government administration and subject its activities to scrutiny. A single chamber, the National Assembly, consists of 150 elected members, not more than eight nominated members¹⁹ (Article 68) and the speaker (Article 63). The elected members²⁰ are directly chosen by secret ballot and by universal adult suffrage, using the simple majority (or "first-past-the-post") system. Each elected member represents a geographical constituency, defined by the Electoral Commission, which exists to supervise elections.²¹ All members of the Assembly serve five-year terms. Article 73 establishes the post of Clerk of the National Assembly, who, along with his staff, is responsible for the Assembly's activities. Article 88 stipulates that there shall be a session of Parliament at least once a year.

The Parliament exercises its powers through passage of bills by the Assembly and by the president assenting to them. Should the president choose not to provide assent, the bill is returned to the Assembly for reconsideration; if the bill is passed

again, with or without amendment, on a vote of no fewer than two-thirds of all members of the Assembly, the president may provide his assent, or else is required to dissolve Parliament (Article 78).

Part XIII of the Constitution provides for the concept of tribal chiefs and the institution of the House of Chiefs. Article 127 provides for the election of chiefs in accordance with traditions and customs of the population, while Article 129 precludes chiefs from participating in partisan politics. Article 130 establishes the House of Chiefs as an advisory body to the government on traditional, customary, and other matters referred to it. It can consider proposed legislation that has implications for custom and tradition, can itself instigate discussion and decide on matters relating to customary law and practice, and can submit resolutions on bills to the National Assembly through the president. The House of Chiefs consists of 27 chiefs, three each from the nine provinces. Each member holds office for three years, with the possibility of renewal for a second three-year term.

The judiciary in Zambia comprises various institutions concerned with the provision of legal services, enforcement of laws, and administration of justice. The main institutions include the Supreme Court, the High Court, the Industrial Relations Court, Subordinate Courts, and local courts. (For further details, see Annex C). The Constitution also provides for the creation of posts of the director of Public Prosecutions (Article 56) and an investigator-general (Article 90).²²

Within the Executive, the Ministry of Justice and Constitutional Affairs has jurisdiction over legal matters, including the Law Development Commission. The Ministry of Justice has two chambers, namely, Attorney-General's Chambers and the Director of Public Prosecutions, which are constitutional appointments. The ministry has departments structured along its

¹⁷ And responsible for arranging the business of the Cabinet and conveying decisions made by Cabinet to the appropriate authorities.

¹⁸ Article 54 stipulates that the Attorney General is responsible for signing all government bills presented to Parliament. It also requires that a person shall only be qualified to be appointed to the office if he/she is qualified for appointment as a judge of the High Court. A similar requirement is stipulated (Article 55) for the appointment of the Solicitor-general.

¹⁹ Article 74 allows the president to terminate the appointment of any nominated member, without limitation.

²⁰ Articles 64 and 65 stipulate conditions for running for the Assembly. Article 65 states that a tribal chief is ineligible to run for the Assembly, unless he/she abdicates the office of chief before lodging his nomination.

²¹ Articles 76 and 77 establish rules for the specification of constituencies.

²² The investigator-general is the chairman of the Commission for Investigations.

constitutional and statutory mandates. The ministry also supervises some statutory bodies: the Zambia Law Development Commission, the Zambia Institute of Advanced Legal Education, and the Administrator General and Official Receiver and Legal Aid Board, and several departments falling under the Attorney-General's Chambers and the Administration Department. The ministry also houses the Governance Development Unit, which was created following the adoption of the National Capacity Building Program for Good Governance in Zambia by Cabinet in March 2000.

According to the Fifth National Development Plan, which is being implemented from 2006 to 2010, all statutory bodies and departments of the ministry face severe challenges in fulfilling their mandates because of low staffing levels due to unattractive working conditions; inadequate logistics ranging from office space, transport, and office equipment; and poor funding of their operations.

Recent regulatory reforms

Zambia has been engaged in economic reforms for the past 20 years, as outlined briefly in section 1.1. Starting in the early 1990s, in response to a long-term decline in economic fortunes, Zambia implemented stabilization and structural adjustment reforms designed to introduce a market-based and private sector-driven economy in place of the state enterprise-dominated system of the previous two decades. Increasing attention in recent years has been given to structural and regulatory reforms: the agenda has been broad, involving a mix of establishing a market-based system and reforming past policies, which included constraints and disincentives on private sector activities and continued application of outdated laws and regulations.

Currently, the government is framing its economic development programs within a national long-term planning instrument entitled "Vision 2030," prepared in consultation with line ministries, provinces,

districts, the donor community, and civil society. Vision 2030 reflects the collective aspirations of the Zambian people to be a "*prosperous middle-income country*," and provides the framework for developing medium-term plans.²³ The Vision is being operationalized through five-year plans containing specific policies, programs, and projects, predominantly targeted towards wealth creation and poverty reduction. The first of these plans is the FNDP.

The FNDP establishes a real GDP growth target of at least 7 percent per year, and starts from the presumption that the environment for growth, development, and poverty alleviation needs to be substantially improved, especially with regard to the business and investment climate. The FNDP draws an explicit link between the quality of the business and investment climate and sustained growth, employment, and poverty reduction. It identifies the Private Sector Development (PSD) Program as the strategic instrument for promoting improvements in the business environment.

The PSD Program²⁴ has six reform pillars, which are: (a) improvement of the policy environment

²³ The Vision sets out three scenarios for development options: a baseline, a preferred, and an optimistic option. The socioeconomic development objectives enshrined in the preferred scenario were: to attain and sustain annual real growth of 6 percent per annum for 2006–2010, 8 percent for 2011–2015, 9 percent for 2016–2020, and 10 percent between 2021 and 2030; to attain and maintain a moderate inflation rate of 5 percent; to reduce the national poverty head count to less than 20 percent of the population; to reduce income inequalities to a Gini coefficient of less than 40; to provide secure access to safe potable water sources and improved sanitation facilities to 100 percent of the population in both urban and rural areas; to attain education for all; and, to provide access to quality health care to all by 2030.

²⁴ The PSD Program was the product of extensive discussions between government and the private sector between 2000 and 2004. The catalyst for these discussions was Anglo-American Corporation's withdrawal from its mining operations in Zambia, which led to government realizing the need for diversification and creation of a business environment that would promote both local and foreign investment in manufacturing, services, agriculture, and infrastructure. Discussions about a new generation of growth policies started with the Copperbelt Diversification Conference held in Kitwe in June 2002, which led to publication of a strategic plan, but no implementation. Subsequently, several reports and studies were carried out (Zambia; the Challenge of Competitiveness and Diversification, Zambia Privatization

and institutions that serve the private sector; (b) regulations and laws, (c) infrastructure development, (d) business facilitation and economic diversification, (e) trade expansion, and (f) citizens' economic empowerment. Within these pillars, the PSD Program identified a wide range of administrative and regulatory activities for immediate implementation.

Under the first pillar, the plan called for effective implementation of the "ministerial code of conduct," creation of a single Zambian Development Agency to serve as a "one-stop shop," implementation of FIAS's recommendations for service standards; and formalization of a meeting schedule for the Domestic Business Council.

Under the second pillar, key actions included:

- review by joint public-private groups of all investment-related legislation to harmonize with the new Investment Act;
- preparation of a "comprehensive business redesign project";
- simplification of customs procedures;
- streamlining of immigration and work permit procedures;
- accelerated review of retirement and termination clauses of the labor legislation; and
- review of policies and procedures for acquisition of customary land and for land development.

Review, Financial Sector Assessment, Agribusiness Sector Development, Framework for Tourism Development, and Gemstone Sector Review), but for some time these were not discussed widely within Zambia. In late 2003, after receiving from the World Bank an Investment Climate Assessment and an Administrative Barriers Study, the government in partnership with the newly-created Private Sector Foundation decided to use all these reports as the basis for preparing a Private Sector Development Plan and Implementation Framework. A draft report was presented to a PSD Forum held in Livingstone in June 2004, modified through discussions and presented to the president for his endorsement.

Under the third pillar, the key regulatory activity was to revise the Telecommunications Act and the licensing framework for operators. Under the fourth pillar, the plan called for review and rationalization of all business registration and licensing/inspection procedures; establishment of service standards; time limits for consideration of review of applications; streamlining of environmental procedures; and modernization of the gemstone and mining regulatory regime.

The fifth pillar called for rapid finalization of an export processing zone (EPZ) strategy, legislation, regulations and incentives; and increased capacity within the Bureau of Standards to provide testing services for exports. Finally, under the sixth pillar, the PSD Program called for development of a government procurement policy for local businesses and the development of incentives and procedures to encourage conversion of informal firms into formal enterprises.

The PSD Program contained a framework for managing implementation that fed upwards to the Domestic Business Council. However, the framework turned out to be flawed, and implementation of the PSD Program essentially did not start until the end of 2006. In early 2007, the government asked FIAS to carry out an assessment of the implementation arrangements, and several of the recommendations have subsequently been implemented. The PSD Program formally ended in December 2008, with only limited areas of it having been implemented. A new plan, Phase II of the PSDRP, is now being prepared.

Since the adoption of the PSD Program, there have been a number of regulatory reforms that have registered progress. The PSD Program sought to enhance the efficiency of the institutions that serve the private sector. A pilot program of action to improve delivery of services in three institutions started in late 2006. These are the Ministry of Lands, Immigration Department of the Ministry of Home Affairs, and the Zambia Revenue Authority (ZRA), which are being supported by

the USAID-financed Threshold Program.²⁵ For all the three institutions, the aim was to implement institutionally-tailored regulatory reforms to simplify processes, and reduce red tape, and corruption. Once successfully implemented in the three pilot institutions, the program could then be replicated in other similar service institutions.

For the Ministry of Lands, the focus was to streamline and shorten technical procedures in land administration, including the recording of deeds and titles; to quicken service delivery; and to minimize corruption by making information about land acquisition processes more transparent and accessible to the public. At the same time, the government committed to review the organizational structure of the Ministry of Lands with a view to restructuring and strengthening its capacity to manage land more transparently and professionally to secure fair and equitable access to, and control of, land for sustainable socio-economic development. As a result of these reform programs, registering property has been streamlined, and reduced from 70 days in 2006 to 39 days in 2008. The reduction came about because the Land Registry introduced a Customer Service Relations Center in June 2008 and computerized its operations.

For the Department of Immigration in the Ministry of Home Affairs, the primary objective of the reform was to simplify, clarify, and make transparent the procedures for permits to reduce discretionary authority, thus reducing

opportunities for corruption. Results are not clear at this time.

The ZRA has been involved in a broad reform effort in the past three years. The objective of this activity has been to make tax and customs procedures more efficient and responsive to the needs of the public. It was expected that successful implementation of this program would result in faster access to service, quicker and less onerous customs procedures, and greater customer satisfaction with the targeted institutions. The FNDP set a goal of raising the country's tax revenues from 16 percent of GDP in 2006 to 18 percent in 2010, through a broadening of the tax base and rationalization of tax rates, incentives, and reliefs. ZRA undertook a comprehensive tax review,²⁶ which formulated reforms that were introduced into the 2007 budget. The ZRA has also given attention to introducing performance standards in addition to tax targets.

ZRA has also been engaged in customs reforms related to trade facilitation. The problems facing exporters and importers in this area have been established clearly,²⁷ and include:

- excessively bureaucratic trade procedures due to the involvement of multiple government agencies and clearance systems at borders;
- lengthy inspection and certification processes;

²⁵ The overall objectives of the project are to: build capacity of the Anti-Corruption Commission (ACC) to implement the National Corruption Prevention Plan; work with Ministry of Lands, the Immigration Department, and ZRA to reduce opportunities for administrative corruption; help Zambia establish the ZDA as a "one-stop shop" for businesses and investors by consolidating operations of five previous agencies; minimize start-up costs for business investment and licensing, including supporting the expansion of the Patents and Companies Registration Office into provincial capitals; improve border management operations by building capacity in modern customs and inspections techniques in border agencies, including Immigration, ZRA, the Zambia Bureau of Standards, the Ministry of Agriculture's Plant Quarantine and Phytosanitary Services Division, the Ministry of Health.

²⁶ FIAS contributed to this review by providing an assessment of the impact of the tax system on investment decisions.

²⁷ See, for example, the Diagnostic Trade Integration Study 2005, and the Administrative Barriers Study, FIAS, 2004. The Diagnostic Trade Integration Study (DTIS) was developed in support of the context of the PSD Reform Program and focused on specific priority areas for intervention and support: making export incentives work for exporters; improving trade facilitation; enhancing the capacity to formulate, coordinate and implement trade policy; and negotiating trade agreements. This includes streamlining the duty drawback scheme, the development of a single processing and payment window for all border agencies, and the amendment of the Standards Act to separate standard testing from the regulatory functions. The extent of issues facing importers and exporters is demonstrated by Zambia's ranking in DB2009 at 30th country in Sub-Saharan Africa.

- poor or non-existent border information and communication technology (ICT) infrastructure;
- inadequate application of modern customs techniques; and
- insufficient and skilled personnel.

ZRA has been addressing these issues through the Integrated Framework (IF), which is an international initiative to respond to developing countries' trade needs, particularly focusing on supply-side constraints.

The PSD Plan identified business entry as one of the areas in which improvements and streamlining were most urgently needed. The PSD Plan sought to cut by two-thirds the number of steps and the amount of time needed to open a business in Zambia. As a result of the USAID-funded Threshold Project, business registration has already been simplified, so that the amount of time dropped from 35 days in 2006 to 18 days in 2008 (DB 2009), although the number of steps was not affected. The reduction of time was accomplished through process reengineering and computerization in the Patents and Companies Registration Office (PACRO). In response to complaints from industry and small and medium enterprises about having to go to Lusaka to deal with PACRO procedures, PACRO is establishing provincial offices, first in the Copperbelt and Southern and Eastern provinces, and subsequently in the other provinces.

Zambia has started to introduce institutional and legal reforms to deal with business entry issues. In 2005, the Zambia Development Agency (ZDA) was created by the Cabinet. It brings together the operations and procedures of five statutory bodies, namely, the Zambia Investment Centre (ZIC), the Zambia Export Processing Zones Authority (ZEPZA), the Export Board of Zambia (EBZ), the Zambia Privatization Agency, and the Small Enterprise Development Board. The creation of the ZDA received Cabinet approval in 2005 and it

began operations in 2007.²⁸ The aim of the ZDA is to create a "one-stop-shop." It is proposed to revise the Investment Act in support of this aim.²⁹ The operation of ZDA is being supported by a US\$15 million project financed by the European Union. The project is scheduled to run from December 2006 to April 2010. The goal of the project is four-fold:

- improve the regulatory framework for private business;
- improve access to and quality of business services offered by the development agency;
- improve the internal organization of ZDA through integration of ZIC, SEBD and EBZ; and
- enable the private sector to contribute to the development of the business environment. As part of the project outputs, a strategic plan for ZDA was developed during 2007, including a three-year trade and investment promotion strategy, a three-year SME development strategy, and a coordination strategy.³⁰

Zambia has also carried out reforms that have some regulatory dimensions through a Public Service Reform Program (PSRP), which has an overall goal of improving the quality, efficiency, cost-effectiveness, and delivery of public services to the people of Zambia. Under the FNDR, the PSRP focuses on three main areas, namely, Public Expenditure Management and Financial Accountability Reforms (PEMFA); Public Service Management (PSM); and decentralization.

28 USAID is assisting the establishment of the ZDA by helping design the institutional and procedural mechanisms.

29 The existing Investment Act 1991 already stipulates that ZIC should be a "one-stop-shop," a role that it was never able to play because other ministries involved in the business start-up process, in particular the Immigration Department, refused to give up their responsibilities.

30 For details, see "Capacity Building for Private Sector Development: Annual and 3rd Quarter report for September – October 2008," dated Dec. 21st, 2008.

The main objective of the PSM program component of the PSRP is to enhance service delivery and program implementation by improving management systems in the public service. This is necessary because the restructuring of the civil service that began in 1993 has not greatly improved service delivery. The government ascribes these weaknesses to inadequate pay for professional and technical staff; ministerial and institutional establishments that are unaffordable given government priorities and limited resources; and lack of effective performance incentives.

The reform process underway is expected to enhance the performance and effectiveness of the public service. For example, under rightsizing, the objective is to ensure that all government ministries and institutions have staffing levels commensurate with their mandates and affordable in relation to their MTEF ceilings. Major actions include the completion of the restructuring of the remaining ministries; the enforcement of entry and hiring policies; and the development of a strategy on unclassified workers. With regard to pay reforms, the main objectives are to ensure that: (a) employee remuneration is related to job responsibilities and performance; (b) essential technical, professional, and managerial staff are attracted and retained in the public service; (c) pay arrangements support and reinforce improved service delivery; and (d) increases in pay levels are consistent with the FNDP resource envelope.

The goal of the decentralization component of the PSRP is to empower local government structures

to effectively participate in the formulation and implementation of development programs. The National Decentralization Policy aims to achieve a fully decentralized and democratically elected system of governance characterized by open, predictable and transparent policy making and implementation processes. The government developed a Decentralization Implementation Plan (DIP) that provides a roadmap that will guide the efforts of all stakeholders through the articulation of their roles in implementing the decentralization policy. The key components of DIP include:

- sensitization and civic education;
- legal and regulatory framework;
- institutional and human resource capacity building;
- local development planning and budgeting;
- financial management and accounting;
- fiscal decentralization and revenue mobilization;
- sector devolution;
- infrastructure development and services provision; and
- monitoring and evaluation. (See section 2.3. for more details of central-local government coordination.)

NATIONAL POLICIES AND INSTITUTIONS FOR REGULATORY REFORM

Regulatory reform principles and policies

Governments should be clear about why they are pursuing private sector development and reforming regulation. They should also be clear about the principles and objectives of reform, and the responsibilities of the groups involved in reform. The most effective way to do this is to establish an explicit regulatory reform policy, based on internationally accepted principles of good regulation (See Annex A).

As detailed in the previous sections, Zambia has been pursuing numerous policy reforms that have legal, administrative, and regulatory implications. There is a multiplicity of projects with various ministries supported by various donors that involve review and reform of laws, regulations, policies and institutions affecting the business environment. However, to date, Zambia has not adopted an explicit policy on regulatory reform and the principles and objectives of regulatory reform, in order to ensure that they are mutually consistent and supportive of each other.

Nonetheless, there are elements and arrangements in place that are consistent with good regulatory principles and which could provide the backbone for development of an explicit policy. The Preamble to the Constitution provides a basic statement of the democratic principles of the Zambian state, in declaring that the people “resolve to uphold the values of democracy, transparency, accountability and good governance.” However, the Constitution is silent on how these principles are to be applied to the rights of citizens to participate in the country’s government.

As discussed in greater detail in section 3.1, the development strategy documents adopted by government during the past decade have been developed to an increasing extent within a framework of public-private dialogue and consultation. Consultation involving non-governmental stakeholders was first introduced for specific areas, such as tax reform, but was a central feature of the development of the Vision 2030³¹ and of the FNDP.

³¹ “This Vision was a result of a nationwide consultative process involving various stakeholders, who included, among others traditional leaders, civil society, government

Zambia created the Domestic Business Council in 2004 and the Zambia International Business Advisory Council (ZIBAC) in 2003, both chaired by the president, to provide fora for public-private discussion of development priorities and reforms.

Institutions and drivers to promote regulatory reform

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on track and on schedule, and to ensure regulatory quality standards continue to improve. It is often difficult for ministries to reform themselves, given countervailing pressures and deficient financial and human resources. Initiating and taking up a reform agenda, maintaining its consistency, and pursuing systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to agencies at the centre of government. Experiences from developed countries have shown that central oversight units seem to be most effective if they have the following characteristics:

- independence from regulators (*i.e.*, they are not closely tied to specific regulatory missions);
- operation in accordance with a clear regulatory policy, endorsed at the political level;
- horizontal operation (*i.e.* they cut across government);
- expert staffing (*i.e.* they have the information and capacity to exercise independent judgment); and
- links to existing centers of administrative and budgetary authority (centers of government, finance ministries).

departments, cooperating partners, and ordinary citizens.”
Executive Summary, Vision 2030.

Zambia has not yet introduced a central institution to carry out and coordinate regulatory reform. However, there have been a number of institutions within government that have become or have the potential to become strategic leaders in the course of developing policies and regulations associated with implementing the government’s reform agenda.

- The late President Mwanewasa was a public champion for reform of the business environment and by implication for regulatory reform designed to reduce the costs of doing business. He endorsed the PSD Program formulated at the Livingston PSD Forum, and advocated for implementation of the plan’s priorities.
- The institution with the most substantial coordinator role has been the Steering Committee established to guide and oversee implementation of the PSD Program and the Program Coordination Unit that was established to provide day-to-day assistance in implementation.
- The Cabinet Secretariat has also been a champion for reform. Its Policy Analysis and Coordinating Division has responsibilities for ensuring the quality of Cabinet papers, and has supported the use of good regulatory practices in developing high quality proposals from sponsoring ministries. However, it does not have capacity to provide rigorous training and advice to the ministries to promote quality improvements, so that systemic improvements in policymaking and preparation of legislation are something for the future.
- The Ministry of Finance oversees the financial implications of policy and reform efforts. Over the last decade, the ministry has developed a more sophisticated approach to budgeting, and has required proposals brought before the Cabinet to be costed. While the approach is restricted to estimating the fiscal costs and benefits of proposals, this is a first step towards the introduction of a regulatory impact

assessment that would provide a broader assessment of the net benefits of regulatory reforms. But again, in the absence of any formal definition of costing methodology, great variations remain in the quality of financial estimates.

- The Ministry of Justice is responsible for the legal quality of policy proposals.
- The Ministry of Commerce, Trade and Industry has been a champion for regulatory reform related to business entry.
- The Ministry of Local Government has a potential role as a champion of regulatory reform, in its role of coordinating local authorities.

Coordination between levels of government

The 1997 OECD Report advised governments to “encourage reform at all levels of government.” This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined by poor regulatory policies and practices at other levels, while, conversely, coordination can vastly expand the benefits of reform. The policies and mechanisms for coordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

National-local

Zambia is divided into nine provinces, administered by officials appointed by the central government. Each province is further divided into districts, presided over by district secretaries. There are 72 local authorities (including 4 cities and 14 municipalities). Lusaka, Ndola, Livingstone and Kitwe have city councils, and the other

large towns have councils or town management boards. Most townships, however, are directly administered by government officers. Local urban authorities can levy taxes, borrow money, and own and manage housing projects. They control roads, water, power, town planning, health facilities, and other public services within their areas, including administration of trade and business licensing, and therefore have a significant impact upon the regulatory environment for businesses.

Administrative districts lying outside municipal and township areas are governed by rural councils, consisting of members elected by universal adult suffrage and a minority of nominated members, mainly chiefs. The functions and powers of rural councils are similar to those of the urban local authorities. Steps are under way to create another level below the local council to be called Area Development Committees (ADCs).

The government has promulgated a decentralization policy that is being implemented slowly. Local governments fund their expenditures from three sources: inter-governmental transfers, own source revenues and borrowing. Own source revenue is small in relation to transfers from the central government budget. The relationship between central and local government is mainly through fiscal issues.

Institutional mechanisms for coordination between the levels of government on regulation and regulatory policy do not exist at this time.

National – international

Zambia is a member of The Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). Both have ambitions to create free trade areas as a first step in wider cooperation. COMESA's strategy so far has been to emphasize the integration of the member economies through removal of trade and investment barriers. In the short to medium term, the emphasis will be on trade

development and investment, specifically, the elimination of impediments to trade and investment. SADC³² strategy is geared to promoting economic cooperation and integration among its members. The SADC Free Trade Area was launched on Aug. 17, 2008, during the 28th Summit of SADC Heads of State and Government.

Both organizations are involved in a variety of consultations and exchange of information in furtherance of their immediate goals. As a framework for promoting regional economic integration, SADC developed a Protocol on Finance and Investment, which attempts to give legal and practical effect to commitments that SADC member states made through the SADC Treaty and the Regional Indicative Strategic Plan (RISDP).

The RISDP seeks to remove barriers that prevent economic relationships between countries in the region and to harmonize the regulatory and legal environments across member states. One specific area of emphasis appears to be tax coordination,³³ and the protocol calls for development of a tax database for all members. Presumably, the next step in this area will be efforts to harmonize tax rates and administration procedures across the countries, but little information is available in the public domain about precise plans and activities, or whether common procedures have been agreed upon.

³² SADC adopted milestones to facilitate the attainment of a SADC Free Trade Area (FTA) by 2008, a Customs Union (CU) by 2010, a Common Market (CM) by 2015, Monetary Union (MU) by 2016 and a Single Currency by 2018.

³³ <http://www.sadc.int/tifi/tax/index.php>.

Within SADC, the Directorate of Trade, Industry, Finance and Investment has developed a work program in the following areas:

1. Customs Cooperation and Modernization
2. Investment and Development Finance
3. Macroeconomic Convergence
 - Macroeconomic Policies and Convergence Program
 - Tax Coordination
4. Mining
5. Productive Competitiveness
6. Regional and Multilateral Trade Policies
7. Standardization, Quality assurance, Accreditation and Metrology (SQAM).

Further details of the work program are not currently available in the public domain.

Over the past couple of years, there have been discussions within the Zambian government as to whether continued membership in COMESA and SADC is possible and, if it is not, in which organization Zambia should continue to hold membership. The Regional Trade Facilitation Program (RTFP) has conducted research on this issue, and the latest position appears to hold that no decision is possible until each organization's strategy has been fleshed out in greater detail.

ADMINISTRATIVE CAPACITIES FOR MAKING HIGH QUALITY REGULATION

Administrative transparency and predictability

Transparency of the regulatory system is an essential feature, because it establishes a stable and accessible regulatory environment that promotes competition, trade, and investment. It helps ensure against undue influences of special interests and reinforces the legitimacy and fairness of regulatory processes. Transparency involves a wide range of practices, including standardized processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeal processes that are predictable and consistent. It is not easy to establish in practice.

Provisions for transparency in making laws

Transparent and consistent processes for making and implementing laws and regulations are fundamental to ensuring public confidence in the rulemaking process.

In the early 2000s, the National Assembly published for public consumption various reports and brochures on Parliamentary practice, procedure, traditions, and administration. Under the Parliamentary Reform Project (PRP),³⁴ the National Assembly has been reforming its operations in five key areas: the legislative process; member-constituency relations; administration of the National Assembly; support services to Parliament; and the Committee system.

- The PRP activities include:
- development and implementation of a strategic plan;
- review of the standing orders;
- use of ICT;

³⁴ The National Assembly of Zambia assigned an agreement in November 2002, with the Canadian High Commission, Embassy of Ireland, Embassy of the Kingdom of the Netherlands, Embassy of Sweden and USAID/Zambia to carry out a two-stage process for reform, PRP Stage I being the design and planning phase and Stage II implementation. Stage I lasted from November 2002 to December 2003 and Stage II lasted from December 2003 to November 2006.

- enhancement of National Assembly operations;
- development of a directory of all civil society organizations;
- a members' handbook;
- establishment of constituency offices;
- design of an internship program;
- indexing of committee hearings and bills; and
- the National Assembly directory.

Overall objectives have been to develop the capacity of the National Assembly to play the roles assigned to it by the constitution (i.e., representation, legislation, accountability and oversight), develop a strong committee system, have a permanent professional staff trained to serve MPs in a non-partisan manner, and to apply principles of good governance—accountability, openness and transparency—in all aspects of Parliament's activities, and to ensure that government does so as well.³⁵

While these activities are important building blocks to improve the functioning of Parliament, they do not address directly the legislative process as it affects regulation and regulatory procedures. Zambia does not have specific laws, regulations, or guidance documents setting out rulemaking requirements. For example, unlike Tanzania,

Zambia does not have a “How to Legislate Act,” and does not have formal guidelines on how legislation is to be developed. Although it stresses the need for dialogue and consultation in broad terms, the Constitution is silent on the frameworks for and process of policy and law making.

Formal policymaking begins with the ministry responsible for the sector or issue for which a new policy or a review of an existing policy is required. It starts by identifying and conceptualizing the policy problem to be addressed. Policy issue and problem identification and definition is the responsibility of the ministry's Cabinet Liaison Committee (CLC) which comprises of the Minister, Deputy Minister, Permanent Secretary, technical experts in the ministry including the Head of Department responsible for the subject under consideration and the Cabinet Liaison Officer (CLO).

Once the committee has signaled its go ahead, the relevant department, working closely with the CLO, is expected to lead the effort to outline a policy proposal on behalf of the ministry or agency. In preparing the policy outline, a team might rely on its own effort or outside technical expertise, especially when there is no technical capacity in the ministry to achieve this. Draft proposals may also emerge from a stakeholder consultative exercise, especially in cases where policies are being revised. While the CLC is expected to take ownership of and direct the policy development process within the ministry, policy drafts may be discussed within the ministry through meetings, retreats, and workshops.

It is expected that the Policy Analysis and Coordination Division (PAC) of Cabinet Office is informed about the intention of the ministry to draft a policy at the earliest opportunity. Once this information is received from the ministry, the PAC determines whether the policy proposal would require Cabinet attention and advises the ministry accordingly. In the event that the draft policy is likely to impact other ministries and stakeholders, PAC arranges for an Inter Ministerial Committee of Officials

³⁵ Subsequently, the National Assembly signed a MOU with the Economics Association of Zambia (EAZ) in December 2008, to have the EAZ provide capacity-building support to Members and staff. The EAZ had previously provided similar support to National Assembly under the PRP Phase II. The support focuses on capacity building in economic affairs and the Budget process through training workshops and seminars. In March 2009, the government announced a third phase of the PRP (whose US\$6.5 million will be financed by DFID, Irish AID, the EC, and UNDP) to achieve improved member-constituent relations and increased autonomy and transparency of Parliament as the legislature, including its capacities in bill drafting, budgeting and legislative oversight and foresight.

(IMCO) to ensure effective cross-government consultation on the draft proposal. In some instances, the IMCO can take the lead in submitting the policy proposal to Cabinet for its consideration and decision.

After the initial policy consideration, ministries – guided by the CLO – are expected to focus on specific policy options by identifying the range of possible courses of action, and comparing their relative merits, including the costs, benefits, and risks associated with them. The focus is on establishing the policy need; defining the objectives; identifying and describing options; identifying the costs, benefits, risks and other relevant impacts (indicative); and summarizing the findings with a recommendation for the preferred policy option, and how the policy would be managed, monitored and evaluated. Government expects policy to be based on sound evidence derived from a variety of sources – expert knowledge; existing local, national, and international research; existing statistics; stakeholder consultation; evaluation of previous policies; new research, if appropriate; or secondary sources, including the internet.

However, there is evidence to suggest that many policies are not evidence based, and that resources in government and among other stakeholders required to support evidence-based policymaking are inadequate. The effectiveness of the effort is also influenced by vested interests that may be benefiting from the status quo. It is also common practice for government officials charged with guiding the policy development process to prepare and submit drafts based on existing policy scripts rather than investing efforts in researching and presenting fresh proposals. Before major policy reforms are undertaken, government officials often go on study tours in the region and further afield as a way of learning. However, it is difficult to ascertain the impacts of these study tours on the quality of policy proposals.

Interviews conducted for this report suggest that there is considerable variation and inconsistency of approach to the process of law and rulemaking

within the Zambian government. Private lawyers experienced in drafting bills on behalf of ministries report that there is great variation in the quality of supporting documentation, and that in many cases the analysis and justification of policy options are incomplete, to the point that the lawyer becomes responsible for creating the policy rationale as well as drafting the legislation. One can say that policy is made through the law-drafting process. One consequence of this state of affairs is that there is a tendency for framework laws to be introduced that leave a large amount of discretion to the respective ministry to issue enabling regulations. It has also been suggested that the passage of these regulations is subject to less public scrutiny than primary legislation.

Provisions for consultation

Consultation is a systematic attempt to discover the opinions of groups affected by regulation and to obtain data useful in regulatory development and analysis. It may be general (e.g. advertisement for comment) or specifically targeted (e.g. focus groups, working parties). Consultation can contribute to regulatory quality by:

- bringing new ideas, perspectives, and data to the attention of regulators;
- helping to balance opposing interests and reduce the risk of capture;
- identifying unintended effects and practical problems;
- gathering information on compliance issues; and
- providing a quality check on the administration's assessment of costs and benefit.

Consultation can also enhance voluntary compliance by creating a sense of “ownership” of the resulting regulations, and reducing reliance on enforcement and sanctions.

Consultation within government: The Cabinet Office has issued elaborate guidance (*in the Cabinet Handbook*) on how and when intra-government consultation should take place and who should participate. The CLO in each ministry is the focal point for consultation within ministries. Once a policy idea is put on the table, the CLO informs the PAC at Cabinet Office. The PAC then advises on whether the proposal will require Cabinet attention and whether other stakeholders need to be consulted. When PAC determines that other ministries should be involved, it initiates across government consultation through meetings of IMCO. The role of IMCO is to harmonize positions of all ministries with interest in the policy. PAC also plays a quality control role to ensure that other important policy development parameters are adhered to during and after the consultation process.

Once the draft policy proposal has been approved by the initiating minister, copies are sent to all ministers requesting them to send comments within 14 days. Ministers are expected to make substantive comments, which are incorporated in the draft memorandum. Apart from formal and informal consultation throughout policy development, government encourages early dialogue at a senior level between the ministry development and delivery bodies, including other ministries, government agencies, or districts, in planning for implementation. The goal is to ensure that delivery bodies give due priority to the policy and to secure the interest and ownership of the ultimate implementers. If a policy is cross-cutting in nature, the government recommends the use of partnership arrangements to plan its delivery at the local level.

Public Consultations: In the formal sense, public consultations have become a regular feature of Zambia's policy development over the past decade. Zambia has established an international business council (ZIBAC³⁶) and a Domestic Business Council, both chaired by the president. These are

umbrella bodies that provide the opportunity for high-level reviews of the government's economic policies and programs as they relate to the business environment and the prospects for private sector development. They function as public pressure on the Zambian government to ensure that the momentum for implementation of its plans is sustained. However, the record in this regard has been very mixed, and for several years, the meetings of ZIBAC could be characterized as opportunities for the government to explain why plans were not being implemented.³⁷ In fact, evidence of systematic and structured consultation between government and non-government stakeholders in Zambia is patchy at best.

The responsibility for undertaking consultation rests mainly with the ministry initiating the policy. While requirements for intra-government policy consultations are elaborately laid out in government policy guidance manuals and documentation, minimal guidance is given with regard to how ministries are expected to conduct consultations with other stakeholders. Government only requires that the permanent secretary in the concerned ministry certifies, in writing, that consultations took place while submitting policy memoranda for Cabinet decision.

There is much bureaucratic discretion when ministries are handling this issue. While some ministries are open and see stakeholders as partners, others engage in cosmetic consultation and consider outside input as a form of interference in government affairs. Some officials consider the consultative exercise as a way of earning allowances and waste resources in organizing unnecessary workshops – the preferred consultation across government. There is little indication that systematic stakeholder mapping and analysis is done to inform the consultation process. Stakeholder consultation is sometimes poorly planned,

³⁶ Zambia International Business Advisory Council.

³⁷ Indeed, after the third meeting, there were proposals made by several of the international private sector participants that ZIBAC meetings should be discontinued, which prompted more serious attempts by the government at the next meeting to announce real progress.

ad-hoc, and superficial. There is also evidence that consultation is sometimes resource driven with a focus on how much is budgeted, not how effective the proposed approach might be.

The Domestic Business Council (ZBC) has had a number of meetings. It offers the opportunity for the private sector to inform the government about private sector priorities and grievances. It is not clear yet whether the vehicle works well. The Zambia Business Forum (ZBF), an umbrella organization that includes many, but not all the major business associations in the country, has called for the council to meet on a quarterly basis, but this has not yet been accepted.

However, the record appears to be more varied in the case of consultations on specific issues, and there appears to be considerable variety as to when and how stakeholders outside the government are involved in the process. A general criticism leveled against ministries is that consultations with the private sector or civic society are usually held after a government position has been decided. This often makes it difficult for changes to be introduced or produces delays in the processing of proposals until multiple layers of consultation are held.

In the specific case of tax issues, the ZRA has consulted with clients/customers, and the record seems to be favorable.³⁸ In the case of the Investment Act revision sponsored by the Zambia Investment Center (ZIC), there was also consultation with the Private Sector Federation (PSF), the Zambia Council of Commerce and Industry (ZCCI), the Zambia Association of Manufacturers (ZAM), etc, but there was considerable dissatisfaction expressed by the private sector because ZIC officials were willing to indicate only in general terms what they were planning to do (which

was to re-regulate and intensify the need for approvals) and not willing to provide drafts of policies or laws.

ZIC claimed that it was forbidden by law from sharing position papers or draft legislation before it had gone through Cabinet. Similar dissatisfaction has been expressed concerning the decision process to establish the ZDA, and the private sector has recently lobbied hard for the law establishing the ZDA to be reconsidered only a couple of years after it was passed. ZBF hired a consultant to write a report on the law, and is now participating in a committee set up expressly to consider how to deal with criticisms of ZBF and other organizations.

The ZBF and other representative groups are gaining experience in representing their positions to government and dealing with policy issues in a proactive rather than a reactive manner. The major spokesman for the private sector has been the ZBF.³⁹ Perhaps because the ZBF was supported by the major donors, the government has tended to favor it as the business association that it invites for consultation. There is some concern developing in government and business circles about whether ZBF is adequately representing the business community.

According to interviews with the organization's staff, ZBF faces two major difficulties in representing its members. The first is that it requires resources and staff to carry out research. Since its research officer recently left, it faces capacity issues, which it hopes to overcome by recruiting new staff. It has secured funding from the Dutch government to finance its research program. In addition, ZBF faces member organizations that are also limited in their ability to contribute to policy formulation. The second difficulty is in formulating positions that are supported by the whole membership.

³⁸ When FIAS conducted its tax incentives study, ZRA organized a workshop to present and discuss its findings with the private sector, and representatives of the private sector emphasized strongly the improvement in recent years in their ability to present information and positions to the tax authorities.

³⁹ It now does not include the Zambian Associations of Chambers of Commerce and Industries (ZACCI), which withdrew from ZBF last year.

One such example has been trade policy, where some member organizations have supported free trade and lower tariffs, whereas others have pressed for protection against imports of goods, capital, and skilled labor. The policy positions for ZBF are prepared within its Policy Committee and validated by the ZBF Board. In addition, ZBF is facing pressures to develop programs for rural and small businesses in response to criticism from some members that it is oriented towards Lusaka-based and larger businesses.

Communication of regulations

Another dimension of transparency is the need for the government to effectively communicate the existence and content of all regulations to the public. This means that the regulations are available to the public at reasonable cost, in a language that can be easily understood. Communication is also essential to achieving effective compliance.

Written government policy guidance is largely silent on communicating policy effectively to targeted groups and the general public. Multiparty political dispensation in Zambia has made government very sensitive to media comments and criticisms of its policy decisions. This has reinforced the tendency of public officials driving policy development to downplay the role of communication. The tendency to consider policymaking a preserve of government officials is also very strong in many ministries. It is not uncommon for ministries to consider draft policy documents “top secret,” thereby making them inaccessible to key stakeholders. This is often after cabinet has endorsed principles of the draft policy.

The minister of Information and Broadcasting is the government’s focal point with regard to communicating government policies. However, in most instances, the minister comes in with reactions to controversial policy developments – well short of effective policy communication. There is also limited availability of information on government policies and regulations. This situation is slowly changing, especially in those institutions

and regulatory agencies that have benefited from development partner interventions under the government PSD program. These institutions now publish information on policies, laws, regulations, service charters, etc, on their official Web sites.

All laws and regulations, including statutory instruments, are published in the *Official Gazette*. Article 78 of the Constitution states that no law may come into effect until it has been published in the *Gazette*, but Parliament (and a Minister issuing implementing regulations) can delay the effective date of any law after publication.

FIAS recommended that the PSD Reform Program should institute a formal communications program and hire staff to devise and implement a public relations/communications strategy.⁴⁰

ZRA has taken steps to improve its communications about tax administration procedures and regulations to taxpayers, both through its Web site and through preparation of brochures and similar forms of communication. ZRA has gone much further than most government agencies in this respect. However, the impact of these communications initiatives may be attenuated to a significant degree: FIAS’s Administrative Barriers Study in 2004 reported that it was unable to find evidence of any more than a handful of businesses making use of the Web site. This has more to do with overall Internet and telecommunications issues in Zambia than the Web site itself.

Compliance and enforcement of regulation

The adoption and communication of a law or regulation is only part of the regulatory process. The law can achieve its intended objective only if it is adequately implemented, applied, complied with, and enforced. A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and

⁴⁰ “Review of the Zambia’s PSD Reform Program and Recommendations for Enhancing Impact,” report prepared by FIAS and PEP-Africa, May 2007.

credibility of governments in taking action. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures.

There are lots of macroeconomic monitoring and evaluation frameworks in Zambia collecting information on economic policies and targets. These include: (a) the Economic Management and Monitoring Committee; (b) the Macroeconomic Sector Advisory Group (SAG); (c) the recently formed PEMFA Working Group; (d) the Financial Sector Development Plan Working Groups; and (e) the Budget Execution Monitoring Committee. There are also other institution-based frameworks, such as the Monetary Policy Committee (MPC) of the Bank of Zambia and the Medium Term Expenditure Framework (MTEF) Committee at MoFNP, the Central Administration Sectoral Advisory Group, and the PSRP Steering Committee. All these bodies address various aspects of the macroeconomic and Public Service Delivery Service System programs.

Other mechanisms for monitoring and evaluating macroeconomic performance are documents such as the annual Economic Report produced by the Ministry of Finance and National Planning (MFNP). The overall coordination of implementing the FNDP rests with MFNP, with the participation of line ministries, other government institutions, civil society, and cooperating partners. The Planning and Economic Management Department (PEMD) in MFNP is the focal point for the FNDP coordination, monitoring, and evaluation.

The FNDP is a results-based plan that focuses on agreed targets and results. The plan incorporates a system to monitor inputs, outputs, outcomes, and impacts so that resources can be strategically managed and progress tracked. These monitoring frameworks do not serve to monitor regulatory policies and results, but they could be developed to provide a framework for monitoring and evaluating compliance and performance of regulations.

In general, levels of compliance with basic business environment regulations are less than the government would like to see. The size of the informal sector is testament to the limited extent to which many regulations can be enforced.

There are extensive requirements in the country's regulatory regime for inspection on a regular basis. According to the DB 2009, these requirements for inspection often lead to significant delays in completing regulatory processes, because of a shortage of inspectors or because the agency has insufficient transport.⁴¹ Inspections conducted by different agencies are rarely coordinated, in part because of the difficulty of sharing documentation.

Public redress and appeals

Mechanisms to redress regulatory abuse must also be in place, not only as a fair and democratic safeguard in a rule-based society, but also as a feedback mechanism to improve regulations. The first stage of seeking redress is to complain directly to the government agency that has taken the decision. The second stage is to seek review by the courts; and there may be other institutions for redress, such as arbitration, mediation, or an ombudsman.

The first stage of seeking redress against administrative and regulatory decisions in Zambia is to request reconsideration by the agency that has taken the decision. It does not appear that there are clear directions as to how redress mechanisms should be organized, and there appears to be considerable variations. In some cases, seeking redress essentially involves appealing to the person who took the original decision, even when the appeal is judged formally by a higher level of the ministry or department. In other cases, such as in the immigration field, there are legislative provisions for the appeal to be heard by the minister. In a few cases, formal appeals mechanisms have been developed. The best example may be the Tax Tribunal.

⁴¹ During the preparation of the Administrative Barriers Study in 2003/4, FIAS learned that businesses frequently were required to provide transport to officials in order to accelerate inspections.

In Zambia, considerable efforts have been made to introduce a range of broader institutions that have the potential to provide redress against administrative and regulatory abuse. These include:

- i) Anti-Corruption Commission (ACC). Established in 1980, it has three main functions: first, to prevent corruption; second, to investigate and prosecute offenders; and third, to educate the public about corrupt practices and foster public support in the fight against corruption. The ACC consists of five part-time commissioners who are answerable to Parliament and supervise the director-general who heads the directorate. The ACC has established offices in all the provincial centers of the country. A review of ACC's strategy and organizational structure was conducted in 2003, following which revisions were introduced. Also in 2003, a National Governance Baseline Survey was carried out to measure public perceptions of corruption and public service delivery and to develop a comprehensive strategy to combat corruption and enhance public service delivery. The FNDP committed the government to a follow-up National Governance Survey.
- ii) Commission of Investigations. Established in 1973, the commission is charged with redressing grievances from members of the public and employees in the public service, which arise as a result of maladministration or abuse of office by public organizations. In 2004, the commission handled a total number of 825 cases, out of which 526 were concluded. In 1998, a strategic plan for restructuring the commission was developed for the following five years, but was never formally approved and implemented.
- iii) Judicial Complaints Authority (JCA). Established in 1999, the JCA began operating in 2003 with a mandate to investigate complaints from the public on alleged misconduct by judicial officers⁴² and to make recommendations for disciplinary action.
- iv) Office of the Auditor-General (OAG). Established under the Constitution, the OAG's function is to submit an audit report to the president on the accounts relating to the general revenues of the country and expenditures appropriated by Parliament, and accounts relating to the stocks and stores of the government. The OAG is also mandated to audit every statutory body; all private institutions that receive government grants, subsidies or subventions, government ministries and departments, and to report to Parliament on the results of the audit. The OAG also conducts environment, IT and performance audits.
- v) Office of the Ombudsman. The Office of the Ombudsman is a constitutional post. Appointed by the Parliamentary Service Commission and subject to ratification by the National Assembly, the Ombudsman has the right to investigate the actions of public officials, to instigate proceedings against officials, recommend disciplinary actions in the event of misconduct, to issue opinions on administrative actions, and to make recommendations for review and harmonization of laws.

Policy instrument alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In developed economies, the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. Increasingly, guidelines for regulators require ministries and agencies to consider whether "command and control" regulation is likely to be the most effective policy instrument or whether other options might succeed in

⁴² Judicial officers are judges, including the chief justice, deputy chief justice, chairman and vice chairman of the

Industrial Relations Court, magistrates, local court justices, and all persons who have the power to hold or exercise the judicial powers of a court.

achieving policy goals at lower cost. But the use of regulatory alternatives in OECD countries, while increasing, is still at a relatively low level.

At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

Government intervention should be based on clear evidence that a problem exists and that government action is needed. This should include assessments of the size of the problem, of likely government effectiveness and of the likely costs of government intervention. Good practice in this area is increasingly seen as requiring consideration of both regulation and alternative policy tools.

In the absence of any policy guidelines, ministries that are responsible for regulatory processes are not required to consider alternatives to regulation of the traditional “command and control” type. To the extent that the purpose of regulatory reform in Zambia has been clearly stated by the government in its various strategies, there is clearly scope for ministries to take innovative approaches. However, there appears to be little documentation of such approaches.

The Zambian government does appear to have introduced institutions that are outside government but play a regulatory role similar to a government department.

Use of RIA for understanding regulatory effects

Regulatory impact analysis (RIA) provides a systematic basis for choosing the best regulatory (or non-regulatory) alternative to respond to a

problem. A range of different approaches to RIA exist, depending on policy preferences and administrative capacities. At the core of any RIA system, however, are the following: i) an assessment of selected types of impact of specific types of regulation; ii) assessment methodology according to pre-defined standards and procedures; and iii) a process of quality control by an independent government agency/unit.

In Zambia, RIA is not yet being used as either a technique for evaluating costs and benefits or as a part of “good regulatory process.” Nevertheless, the government is aware of the importance of RIA to well-grounded policymaking. There seems to be an informal expectation that policy proposals are supported by the components of RIA, such as an analysis of the positive and negative impacts of policy proposals and the importance of discussing the implication for different segments of society. In practice, the components of RIA are rarely applied due to a combination of factors, including a lack of capacity. There is a formal requirement that the Ministry of Finance and National Planning is consulted before Cabinet decisions are sought. Proposals with financial implications that are not consulted on with Ministry of Finance and National Planning are not placed on the Cabinet agenda. There is some evidence that this rule is in some cases relaxed and does not always apply.

Building administrative skills for regulatory reform

A skilled and well-trained civil service recruited on the basis of merit is a prerequisite for developing and maintaining high-quality regulations and regulatory policies.

As part of the World Bank-supported PSRP, upgrading of civil servants is one component. It is not clear what precisely is being supported in the form of skills training.

UPDATING REGULATIONS

Revisions of existing laws and regulations

Assessment of new regulations is not enough to ensure a high quality regulatory structure. As technology, the economy, and society change, existing regulations often become less relevant and effective. Regulatory management should involve periodic reevaluation of whether existing regulations still constitute the best available solutions to the problems they seek to address. A systematic approach is required to ensure that all regulations are regularly subjected to this reassessment.

Zambia has a Law Development Commission designed to review laws for their relevance and consistency. Unlike other countries in East Africa, it does not appear to have a Web site, and there is no information available on its current work program and priorities.

Reducing administrative burdens

Regulatory paperwork and government formalities can be unnecessarily burdensome on regulated

groups if coordination between regulators is lacking, new technologies are not used to assist in information gathering, and if unnecessary information is sought by regulators. Governments worldwide are adopting programs to reduce the administrative burdens associated with regulatory requirements.

An earlier section described the reforms of the business registration process in Zambia through the Threshold Project, aimed at reducing the financial and time costs faced by businesses in registering their operations.

FIAS is currently working with the government of Zambia to reform business licensing. In December 2007, the government announced its intention to undertake comprehensive licensing reform. In May 2008, a formal circular was issued to all ministries and regulatory authorities, indicating the government's regulatory reform objectives and requiring active support and participation of all ministries and regulatory authorities in the reforms. The government appointed the high-level BLRC, chaired by a private sector lawyer and with representation from the MFNP, MCTI,

Local Government, and Housing and Justice. The committee was mandated to identify, scrutinize, and review all business licenses in Zambia, defined broadly as “any ex-ante authorizations required for any business activity to commence,” in order to determine whether the business licenses were legal, necessary, or efficient.

The BLRC adopted a “regulatory guillotine” approach to its review work, whereby it invited licensing authorities to justify the continuation of licensing requirements in terms of legality, necessity, and efficiency. According to the committee’s report,⁴³ it identified 520 licenses after reviewing some 86 laws and many other rules, by-laws and notices. The licenses are administered by 18 ministries, 72 local authorities and 33 regulatory institutions, and issued at national, provincial, and local government levels. The main findings of the review are that:

- the competitiveness of Zambian business is severely affected by the “inefficient and cumbersome” licensing framework, and the total costs incurred by the business community amount to some ZMK 2.2 trillion (about \$465 billion), approximately 5 percent of current GDP;
- many laws and regulations are obsolete or archaic, with licensing practices typically not keeping pace with best practices in other countries. Laws overlap, leading to duplication in the licensing system;
- there is a proliferation of regulatory authorities at all levels of government with broad and complex mandates and discretionary powers that make the licensing procedures opaque;
- there are too many contact points during the licensing process, which, along with unclear requirements and discretionary powers, increase the potential for corruption; and

⁴³ “Report on Business Licensing and Regulatory Reforms,” January 2009.

- there is excessive duplication of information requirements for original applications and renewals, in part because agencies are not able or not willing to share information.

The BLRC report recommends:

- retention of 287 licenses on the grounds that they serve legitimate regulatory purposes, but also recommends that many of them can be streamlined to reduce the costs of the licensing process for both businesses and the regulator;
- elimination of 168 licenses on the grounds that they are illegal or serve no legitimate regulatory purpose;⁴⁴
- reclassification of 47 licenses into notifications or information reports, and a total of 38 local government licenses into a single “business levy;” and
- consolidation of 85 licenses into 18 licenses to reduce duplication and overlapping of licensing procedures.

More broadly, the report makes these recommendations for introducing more systemic regulatory reform:

- setting a target for all regulatory authorities to reduce administrative and compliance costs by at least 30 percent over a 6–8 month period, and placing an emphasis on using ICT and data sharing to achieve these savings;
- expediting the implementation of the government’s decentralization policy, so that local authorities can become effective agents for regulatory agencies;

⁴⁴ A significant portion of these licenses are under local government and in agriculture and forestry, and many are issued under outdated legislation, much dating back to colonial times, and are focused on revenue raising.

- establishing an electronic registry to provide easy access to information about licensing requirements;
- investigating the feasibility of establishing a “Business Regulatory Unit,” whose main function should be to act as a “gatekeeper” for all new regulations;⁴⁵
- preparing a five-year regulatory strategy and introducing RIA, both to be the responsibility of the BRU; and
- introducing a monitoring and evaluation system to monitor the outcome of regulatory reforms.

The BLRC’s report is now under discussion within government.

Use of ICT to support regulatory reform

Once government procedures have been streamlined and redesigned as part of regulatory reforms, use of computerized databases and registries can lead to further improvements in regulatory performance, particularly for enterprises that are a long distance away from the agencies they have to deal with. ICT can be used to provide information to

the users of government procedures, and can also enable users and applicants to submit requests for services in a structured and consistent fashion. Moreover, use of ICT for regulatory and administrative tasks within the public sector is increasingly seen as an important way of combating corruption.

In general, Zambia’s government is lagging behind its regional neighbors on development of e-government programs. In part, this reflects the delays encountered in the government’s negotiations on the international gateway and development of broadband facilities. In addition, there are extensive challenges facing the government in introducing e-government programs. “Although Zambia has recognized the importance of e-government, its benefits are yet to be realized while challenges such as environmental issues, leadership, change management, human capital, funding and infrastructure are critical to the successful implementation of e-government in Zambia, there is little evidence to suggest that effort is being applied to counteract these challenges. The lack of context-specific e-government programs and the absence of mar⁴⁶ but at the moment, there are no business regulatory applications that can be submitted online. The BLRC report on licensing gives an impetus to renewed efforts in the area of ICT and e-government in the area of business regulation.

⁴⁵ The report also suggests that the BRU should house the registry.

⁴⁶ A start has been made through the Threshold Project with the computerization of PACRO activities.

ROLES OF DONORS AND IFIs

In economies where public revenue is scarce, donors have often stepped in to finance the costs of regulatory reform programs. The financing horizon of donors has been variable: some donor-assisted programs have been relatively short, focused on achieving “quick wins,” while others have been geared to capacity building and creation of a new approach to developing policies, laws, and regulations that requires a long-term commitment. Irrespective of the donor time horizon, an exit strategy and the transfer of program costs to the host government remain important issues. In addition, there is often an issue of donor coordination and dialogue. Increasingly, donors are introducing jointly financed programs (often through donor pools) with “harmonized” procurement and financing arrangements.

Aspects of regulatory reform have been supported in Zambia through a variety of programs supported by a variety of donors.

The PSD Reform Program is supported by a donor pool, which does not include the World Bank, although the Bank is heavily involved in private sector development issues. One reason for the delay in its implementation was that the funding arrangements were complicated. The harmonized funding and approval procedures developed by the donors were complex, and several working groups spent far too much time trying to formulate their plans in a form that would bring funding approval.

At the same time as the PSD Program is in place, Zambia had support from the MDG and from a large Japanese program. It is not obvious that there are clear arrangements in place to coordinate the various efforts.

CONCLUSIONS AND RECOMMENDATIONS

Assessment of strengths and weaknesses

There is increasing pressure within Zambia for more extensive economic reforms. This pressure originates from the population at large, which wants a better standard of living and better public services. The pressure also comes from the business community, which wants a policy framework that reduces the cost of doing business and provides positive incentives for the creation and expansion of business opportunities. Finally, the pressure also comes from within the government, which needs to demonstrate that it can provide services and support to the development of the economy. All these pressures add up to an impetus for good policy and better regulation.

The impetus for better regulation has been translated into a number of programs and projects that have been funded by the donor community. These projects often embody facets of good regulatory practice where relevant, but it has been applied in an ad-hoc and partial fashion, and these projects have not been a vehicle for promoting systemic change in the approach towards

regulation. The projects have focused on specific areas of regulation and have not to date been used to broaden the application of good regulatory practice.

Within these reform initiatives, there has been some progress made in consultations, in response to donor pressure in many cases, increased efforts have been made to engage stakeholders in discussions – from the preparation of overall plans, such as Vision 2030 and the Five-year Development Plans, to the development of new legislation, such as the Investment Act or Tax Act. Government performance, however, varies considerably: inclusivity of stakeholders remains a problem, whether it is because government selects whom it wishes to consult or because the private sector and civic society have difficulties in representing their own members' views.

In general, consultation occurs only after a government position has been developed, which may make modifications to that position politically or administratively difficult to accept. This practice may also cause delays in finalizing proposals because proposals have to be referred back to the

government agency for reconsideration. There is no mechanism for improvements in consultation techniques being publicized across government, given the fact that the ministries tend to operate as “silos.”

Zambia has, in a formal sense, good machinery for dealing with regulatory abuses. However, the institutions all suffer from resource and capacity constraints, which may reflect budgetary pressures or represent a deliberate attempt by the government to restrict access and render the appeals process less effective.

One of the most serious weaknesses facing the government in the development of regulatory reform is the shortage of skilled policy analysts within government, particularly within the Department of Industry, and the shortage of government lawyers. Capacity building in these areas will be necessary in order to permit a regulatory reform program to be implemented in a timely fashion. There is a grave need for review of business legislation to rationalize the body of law and to remove inconsistencies and redundancies.

Policy options

This section makes some recommendations for future actions by government that would support the development of a high-quality regulatory regime in Zambia.

- a. Establish an overarching regulatory policy that provides clear objectives and frameworks. While individual regulations and policy areas can be rationalized by applying a methodology tuned to the area, broad and systemic regulatory reform needs a framework derived from principles of good regulation, such as those promulgated by OECD.

- b. Establish a Cabinet-level position to promote regulatory reform and coordinate regulatory reform efforts.
- c. Establish a technical unit to support the minister.
- d. Determine a number of areas that should make use of RIA over the medium-term as demonstration projects for introducing benefit/cost calculations.
- e. Define mandatory consultation procedures to be followed for all business-related policies, laws, and regulations.
- f. Institute a review of all existing regulations through the Law Development Commission.

The BLRC report on business licensing establishes a clear agenda for both reform of licenses that can take place in the short to medium term, and also for the development of the long-term regulatory agenda, much along the lines suggested above. Its recommendations are broad, and reflect the fact that regulatory reform has to be tied closely to other facets of the government’s administrative and development agenda.

The resource implications of the report’s recommendations, in terms of both personnel and finance, require extensive consideration. In addition, careful consideration should be given to the timing of the reform activities proposed in the BLRC report. While, in view of the size and complexity of the future regulatory agenda, it is important to press forward with actions, it is important that time required for action should not be underestimated.

APPENDIX A. PRINCIPLES OF GOOD REGULATION

The 1997 OECD Report on Regulatory Reform includes a coordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These were:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory coordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

The OECD report recommended adoption of a set of regulatory quality standards based on the OECD principles as follows:

"Establish principles of "good regulation" to guide reform, drawing on the 1995 Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels."

Source: OECD Report to Ministers on Regulatory Reform, 1997.

APPENDIX B. DB INDICATORS, DB 2009

Economy	Ease of DB	Business start-up	Constr. permit	Employment	Property Regist.	Credit	Investor Protection	Paying Tax	Trade across borders	Contracts	Closure
Global Ranking											
Kenya	82	109	9	68	119	5	88	158	148	107	76
Zambia	100	71	146	135	91	68	70	38	153	87	80
Uganda	111	129	81	11	167	109	126	70	145	117	57
Tanzania	127	109	172	140	142	84	88	109	103	33	111
Rwanda	139	60	90	93	60	145	170	56	168	48	181
SSA Ranking											
Kenya	5	14	1	10	16	2	14	36	26	19	10
Zambia	7	7	32	26	11	6	11	5	30	15	12
Uganda	10	21	14	1	41	14	20	15	24	21	2
Tanzania	14	14	42	28	27	7	14	21	9	1	19
Rwanda	17	5	16	13	5	27	43	10	40	4	34

APPENDIX C. THE JUDICIAL SYSTEM IN ZAMBIA

The hierarchy of the judicial branch is as follows: the Supreme Court, high courts of the Republic, provincial courts, districts courts, and mediation committees.

The Supreme Court

The Supreme Court is the highest court in the country. It consists of the chief justice, deputy chief justice, and several other justices. It is the court of last resort. The decisions of the Supreme Court are not be subject to appeal, except in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision. Its decisions are binding on all parties concerned, whether organs of the State, public officials, civilians, military, judicial officers or private individuals.

The High Court

The High Court is presided over by a chief justice and is basically an appellate court. The High

Court has jurisdiction to try in the first instance certain serious offenses committed in Zambia.

Magistrates courts

There are three classes of magistrate's courts, with progressive degrees of criminal and civil jurisdiction.

Local courts

Local courts consist of a president sitting alone or with other members, all appointed by the Judicial Services Commission. Local courts also deal with civil cases of a customary nature. Customary law is followed when it is not incompatible with other legislation.