

# AFRICA

A Legal Guide for Business  
Investment and Expansion

## ZIMBABWE



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## **FIRM PROFILE: SCANLEN & HOLDERNESS LEGAL PRACTITIONERS**

Scanlen & Holderness is a premier law firm which in 2014 celebrated 120 years of continued professional legal service to Zimbabwean corporates, statutory bodies, individuals and the international community. Although it has a rich heritage, its thinking is progressive. The quality of expertise consistently earns the firm and its lawyers a top ranking in both local and international legal surveys.

Throughout history, team Scanlen has proudly influenced jurisprudential development in Zimbabwe through its continued involvement in landmark cases which have set precedent in many areas of law. In 2013 two of its lawyers again set new precedents in Zimbabwe in the following areas of law: (i) electronic service of court papers for un-located debtors, (ii) private prosecution in criminal matters and (iii) damages arising out of rape-pregnancy.

Team Scanlen has a track record of innovative transactions and market-firsts. It has its hand on the pulse of the law in Zimbabwe and over the years a number of its lawyers have been elevated to the bench of the High Court and Supreme Court.

Although team Scanlen is mainly a corporate, commercial and mining firm, its diverse and talented lawyers work under one roof, making it a one stop shop offering a full circle of legal services to local, regional and international clients.

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### 1. What role does the government of Zimbabwe play in approving and regulating foreign direct investment?

The Government established the Zimbabwe Investment Authority (ZIA) to promote, coordinate and approve investment projects among other things. The Authority is established in terms of the Zimbabwe Investment Authority Act (Chapter 14:30). Any person wishing to obtain the approval of the Authority to invest in Zimbabwe must submit a written application to the Authority. Investors are not obliged to obtain the authority of ZIA before they invest in Zimbabwe. The Act does not make it mandatory. Obtaining investment approval from the authority has its advantages.

The Indigenisation and Economic Empowerment Act (Chapter 14:33) also affects foreign direct investment. All businesses in Zimbabwe are required to have 51% of their shares owned by indigenous Zimbabweans. There are various ways in which investors can navigate around the indigenisation law to deal with this requirement. The indigenisation law also reserves certain specific sectors of the economy for indigenous persons. The reserved sectors are as follows:

- Agriculture: primary production of food and cash crops
- Transportation: passenger buses, taxis and car hire services
- Retail and wholesale trade
- Barber shops, hairdressing and beauty salons
- Employment agencies
- Estate agencies
- Valet services
- Grain milling
- Bakeries
- Tobacco grading and packaging
- Tobacco processing
- Advertising agencies
- Milk processing
- Provision of local arts and craft, marketing and distribution

Zimbabwe has a Competition Act (Chapter 14:28) which prohibits anti-competitive practices. The law regulates mergers and acquisitions and it prohibits certain unfair trade practices and monopoly situations. Investors must take note of any bilateral agreements between Zimbabwe and their country of origin as these may confer certain privileges. Regional instruments at SADC or COMESA level, for instance, may also confer benefits to investors.

### 2. Provide advice on best entry strategies to employ in Zimbabwe and common corporate structures used.

Foreign investors are advised to contact ZIA when wishing to invest in the country. ZIA grants investment licences and also deals with indigenisation issues. Obtaining a ZIA licence opens doors for the investor. Partnerships with indigenous Zimbabweans are encouraged not only for compliance with the empowerment law, but also for a better appreciation of the local terrain.

Investors can also enter into joint ventures with government or government owned companies. There is a new law regulating such joint ventures called the Joint Ventures Act (Chapter 22:22). It regulates joint ventures with government departments or public entities. Joint ventures with government departments can ease access to specific licences and permits which may be required to conduct the business.

The common corporate structure is a company which is regulated by the Companies Act (Chapter 24:03). Other structures which can be used include the Private Business Corporation, Partnerships or Sole Trader. An investor can buy into an existing company or buy a shelf company and start afresh. An investor can also purchase an undertaking in a company.

### 3. How does the Zimbabwe government regulate commercial joint ventures between foreign investors and local firms?

There is no specific law regulating such joint ventures similar to the Joint Ventures Act which regulates joint ventures with government and public entities. Key statutes to take into account in this respect are the Competition Act, the Companies Act, the Exchange Control Act and the Indigenisation and Economic Empowerment Act. These laws have components which affect commercial joint ventures.

#### **4. How does the Zimbabwe government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy, telecommunications or real estate)?**

As indicated above, there are certain areas of the economy expressly reserved for indigenous Zimbabweans. The indigenisation law now requires the involvement of indigenous Zimbabweans in all business enterprises in the country. This cuts across all sectors of the economy. There are various ways in which empowerment schemes can be modelled to ensure compliance with the law. Investors must obtain professional legal advice on suitable schemes for their businesses.

#### **5. How do labour statutes regulate the treatment of local employees and expatriate workers?**

The main law is the Labour Act (Chapter 28:01). It applies to all employers and employees based in Zimbabwe. This covers expatriate staff. The Act provides for the rights and obligations of employers and employees. It was recently amended to expressly provide for minimum redundancy benefits and benefits for loss of employment. Foreign employees must have a work permit issued by the Ministry of Home Affairs. There are also comprehensive collective bargaining agreements (CBAs) which apply to all sectors of the economy. These CBAs deal with issues like

minimum wages, employment benefits, safety and terminal benefits. There is an active trade union movement in the country which advocates for the rights of workers. The Constitution of Zimbabwe now guarantees labour rights.

#### **6. Capital availability and access considerations in Zimbabwe – any major capital, infrastructure or labour constraints to be aware of and strategies to mitigate?**

The country is currently experiencing a tight liquidity crisis arising mainly from its position as a net importer of goods and the adoption of the United States dollar as the main currency of trade. All external payments currently require approval by the central bank. Approval is based on a priority list developed by the central bank which prioritises productive sectors of the economy. Long term funding is not readily available and external funding for business requires exchange control approval. This requirement is not, however, prohibitive as the exchange control authority is amenable to such applications.

Zimbabwe has a poor rail network which requires major upgrades. The network is operated by a public company called the National Railways of Zimbabwe which is beleaguered by crippling debts. Government is seeking partners to upgrade the rail network and capacitate the company. Privatisation is an option being pursued.

The road network is reasonably good but it has recently been ravaged by

floods and storms which hit the entire country in January, February and March 2017. Some areas have become inaccessible and hundreds of people were displaced, particularly in rural areas. Government is battling to repair the road network.

The country has a huge labour reserve. Unemployment is over 80% and many university graduates are struggling to secure jobs. The labour laws were amended in 2015 to provide for minimum retrenchment benefits and terminal benefits. There is a dedicated Labour Court to deal with all employment related disputes.

#### **7. What types of taxes, duties, and levies should a foreign investment in Zimbabwe expect to encounter?**

There are various taxes applicable in Zimbabwe. All companies pay corporate tax on profits. The rate is 25.5%. In addition, all businesses pay value added tax for goods sold or services rendered. The rate is 15%. Businesses are also required to deduct withholding taxes in certain instances. All employers must deduct and pay tax for employees. This is called Pay As You Earn (PAYE). All employees also contribute to a health levy called AIDS levy. The employer is obliged to deduct it at source and remit the funds to the tax authority. The law requires all employees to contribute to an employment insurance scheme administered by a public authority. The employer is obliged to deduct the levy from wages and remit to the authority. Local authorities also issue compulsory health licences to businesses for which they levy a charge.

### **8. What are the main IP law provisions likely to be most relevant to inbound investors and/or foreign imports and their distributors (e.g. trademark protection, licensing, other)?**

Zimbabwe has IP statutes to protect businesses. There is a trademark law which provides for the registration of trademarks. There are also laws protecting patents, industrial designs and copyright. Zimbabwe is a member of the African Regional Intellectual Property Organisation (ARIPO), and IP property rights registered in member countries are automatically recognised and protected in Zimbabwe.

### **9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

Local courts in Zimbabwe offer a more beneficial forum for resolving commercial disputes. Handling disputes in the country's local courts is generally cheaper than international arbitration. Zimbabwe has very competent courts and there is a drive within the judiciary to expedite the resolution of disputes.

Zimbabwe is a member of the New York Convention on the recognition and enforcement of foreign arbitral awards, and there are a few local centres which administer arbitrations. Foreign arbitral awards can be registered in Zimbabwe for enforcement purposes provided they are not in conflict with the public policy of the country.

### **10. What laws and business practices are peculiar to Zimbabwe?**

In 2010 Zimbabwe introduced its own law to empower indigenous Zimbabweans and facilitate their greater participation in the national economy. All businesses with a value of at least USD500 000,0 are required to have no less than 51% of their shares owned by Zimbabweans. The controlling interest of the businesses must be owned by indigenous Zimbabweans. Certain sectors of the economy are specially reserved for indigenous Zimbabweans only. Local Zimbabweans are also given preference in procurement policies of public companies.

Agricultural land in Zimbabwe has been virtually nationalized since government embarked on its land reform exercise in 2000. Government owns more than 80% of the agricultural land and at best farmers are given 99 year leases as title. Some have offer letters which can be revoked by government at any time. The compulsory acquisition of agricultural land by government cannot be challenged in the courts. The law prohibits courts from determining such disputes.

### **11. What are the regulations, protocol, and practicalities around public procurements and financing in Zimbabwe?**

Zimbabwe has a procurement law which applies to all procurements by public authorities and public companies. Generally all public bodies are required to accept public tenders for significant procurements. There is

a tender board which administers the tender process and adjudication of the bidding process. Public financing is governed by the Public Debt Management Act and the Public Finance Management Act. The law permits government to borrow funds both domestically and externally, subject to the limits imposed by the National Assembly. Government may also guarantee loans advanced to any approved person in Zimbabwe subject to such limits as may be imposed by the National Assembly.

### **12. What kind of actions should investors take to avoid corrupt practices in Zimbabwe?**

Bribery and corruption are criminalized in the country. It is therefore an offence for any person to be involved in such activities. Investors can avoid corrupt practices by complying with the law and following normal processes in procuring licences, permits and other regulatory approvals. Compliance with all regulatory requirements also ensures that investors do not expose themselves to being solicited for bribes.

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