SCHOOL OF LAW

EVALUATING THE LACUNA IN THE LEGAL FRAMEWORK FOR FOREIGN DIRECT INVESTMENT IN ZAMBIA

BY

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An obligatory essay submitted to the University of Lusaka in partial fulfilment of the requirements for the award of the Bachelor of Law (LLB) Degree.

2023

DECLARATION

I hereby declare that this dissertation, titled " **EVALUATING THE LACUNA IN THE LEGAL FRAMEWORK FOR FOREIGN DIRECT INVESTMENT IN ZAMBIA**" is my own original work. It is being submitted as a partial requirement for the attainment of a bachelor's degree at the University of Lusaka. I certify that it has not been previously presented for a degree at this university or any other tertiary institution.

I am fully cognizant of the concept of plagiarism, and I am well-informed about the University's policies pertaining to academic integrity. Therefore, I have diligently acknowledged and cited the contributions of other individuals in my work. Any inaccuracies or omissions in this dissertation are solely attributable to me.

EDWIN PAUL MULENGA

24 November 2023

SUPERVISOR'S RECOMMENDATION

I RECOMMEND THAT, this obligatory essay under my supervision.

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Be accepted for examination, I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed research**.**

Supervisor: K. NDHLOVU

Signature…

24/11/2023

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DEDICATION

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ABSTRACT

The legal framework governing Foreign Direct Investment (FDI) in Zambia, primarily outlined in the Investment Trade and Business Development Act, faces critical shortcomings that impede the optimal utilization of FDI, thereby obstructing sustained economic progress. Despite acknowledging FDI's potential as a catalyst for economic advancement, the current legal structure inadequately addresses key challenges, such as limited absorptive capacity, deficient infrastructure, and policy gaps.

This deficiency in the legal apparatus fails to sufficiently confront the multifaceted impact of FDI on local industries, income distribution, and societal welfare, revealing an overarching need for comprehensive evaluation and restructuring within the existing legal framework. The insufficiency of examination regarding FDI's influence on local industries and its socio-economic ramifications exacerbates the inadequacies present in the legal setup.

Recognizing this urgency, this study emphasizes the critical necessity to identify and rectify the deficiencies entrenched within the law governing FDI in Zambia. The objective is to construct a more enabling and comprehensive legal framework that not only maximizes the advantages of FDI but also fosters the nation's socio-economic transformation. By addressing these lacunae, the intention is to propel Zambia towards sustained economic growth, leveraging FDI as a strategic instrument for national development.

TABLE OF CONTENTS

DECLARATION ii

SUPERVISOR'S RECOMMENDATION iii

ACKNOWLEDGMENTS iv

DEDICATION v

ABSTRACT vi

TABLE OF CASES 3

TABLE OF STATUTES 3

CHAPTER ONE 4

- **1.0 INTRODUCTION** 4
- **1.1 BACKGROUND OF THE STUDY** 5
- **1.2 STATEMENT OF THE PROBLEM** 7
- **1.3 RESEARCH OBJECTIVES** 7
- **1.4 RESEARCH QUESTIONS** 8

1.5 SIGNIFICANCE OF THE STUDY 8

1.6 SCOPE OF THE STUDY 9

1.7 RESEARCH METHODOLOGY 10

1.8 LITERATURE REVIEW 10

1.9 KEY TERMS AND DEFINITIONS 12

Chapter 2 14

- **2.0 Introduction** 14
- **2.1 Overview of FDI in Zambia** 14
- **2.2 The Investment Trade and Business Development Act No.28 of 2022** 14
- **Chapter 2 Overview** 22

Chapter 3 24

- **3.0 Introduction** 24
- **3.1 Limited Absorptive Capacity** 24
- **3.2 Challenges in Zambia** 24

Role of Infrastructure in Attracting FDI 25

- **3.3 Current Legal Provisions for FDI in Zambia** 26

Chapter 3 Overview 30

- **3.1 Limited Absorptive Capacity** 30
- **3.2 Challenges in Zambia** 30
- **3.3 Current Legal Provisions for FDI in Zambia** 31

CHAPTER 4 32
4.0 Introduction 32
4.1 Foreign Direct Investment (FDI) on Local Industries 32
4.2 Income Distribution 35
4.3 Impact on Social Welfare 37
4.4 Conclusion 40
Chapter 4 Overview 41
4.0 Introduction 41
4.1 Foreign Direct Investment (FDI) on Local Industries 41
4.2 Income Distribution 41
4.3 Impact on Social Welfare 42
4.4 Conclusion 42
CHAPTER 5 43
5.1 CHAPTER 1 43
5.2 CHAPTER 2 44
5.3 CHAPTER 3 45
5.4 Chapter 4 46
5.5 RECOMMENDATIONS 48
5.5.1 Chapter 2 48
5.5.2 Chapter 3 48
5.5.3 Chapter 4 48

TABLE OF CASES

Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco ICSID Case No.

ARB/00/4

White Industries Australia Limited v. Republic of India Final Award 30 Nov 2011 UNCITRAL

TABLE OF STATUTES

The Investment Trade and Business Development Act No.18 of 2022

Zambia Development Agency Act No.17 of 2022

CHAPTER ONE

GENERAL INTRODUCTION

1.0. INTRODUCTION

According to the **Organization for Economic Cooperation and Development**, it has stated that Foreign Direct Investment (FDI) plays a crucial role in driving economic development and transformation, attracting capital, promoting technology transfer, and generating employment opportunities.[1] In many African countries, including Zambia, FDI has been recognized as a key driver of economic growth. However, to harness the full potential of FDI and achieve sustainable development, it is essential to have an effective legal framework that addresses the challenges and maximizes the benefits of foreign investment. The legal framework governing FDI in Zambia, particularly under the Investment Trade and Business Development Act, currently exhibits significant deficiencies that hinder the optimal utilization of FDI and impede the country's economic growth and development. Despite acknowledging the potential of FDI as a catalyst for economic transformation, the existing legal provisions fail to adequately address the obstacles posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies. Furthermore, the impact of FDI on local industries, income distribution, and social welfare remains inadequately examined within the current legal framework.

Consequently, there is an urgent need to identify and rectify the gaps and deficiencies in the law governing FDI in Zambia. By doing so, a more comprehensive and conducive legal framework can be established, maximizing the benefits of FDI and fostering Zambia's socio-economic transformation. This research aims to conduct a comprehensive analysis of the lacuna in the legal framework for FDI in Zambia, with a specific focus on of the Investment Trade and Business Development Act.

Through an examination of the existing legal provisions and their implications for FDI effectiveness and sustainable development, this study seeks to propose legal reforms that address the identified gaps and enhance the mechanisms through which FDI can contribute to Zambia's socio-economic transformation.

[1] Available at : https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf

This research seeks to address the lacuna in the legal framework governing FDI in Zambia. By examining the deficiencies in the Investment Trade and Business Development Act, particularly Section 30, and proposing legal reforms, this study aims to enhance the utilization of FDI, promote economic growth, and ensure equitable socio-economic development. Through a comprehensive analysis, this research endeavors to contribute to the sustainable development of Zambia and provide valuable insights for other countries facing similar challenges in harnessing the benefits of FDI.

1.1. BACKGROUND OF THE STUDY

Foreign Direct Investment (FDI) has long been recognized as a crucial driver of economic development in Africa, including Zambia. It has the potential to attract capital, facilitate technology transfer, and generate employment opportunities, thereby contributing to the growth and transformation of the host country's economy. In line with this recognition, Zambia, like many other African nations, has actively sought to attract FDI as a means to stimulate economic development and diversification.[2]

The historical development of investment law in Zambia provides valuable insights into the country's efforts to create a favorable investment climate. Over the years, several key acts and legislation have been implemented to promote investment and support business activities.[3] These legal frameworks have aimed to provide incentives, streamline administrative processes, and encourage both foreign and domestic investment in the country.

The journey began with the enactment of the Pioneer Industries (Relief from Income Tax) Act in 1965, which granted tax relief to infant industries. Subsequently, the Investment Acts of 1989 and 1991 introduced incentives for investors, while the Privatisation Act of 1992 facilitated the privatization of state-owned enterprises.[4] These legislative measures were accompanied by acts such as the Small Industries Development Act, Export Development Act, and

[2]A Njuguna E Nnadozie, Investment Climate and Foreign Direct Investment in Africa: The Role of Ease of Doing Business. J Afr Trade 9, 23–46 (2022).Available at: https://doi.org/10.1007/s44232-022-00003-x
[3]P Ng'ambi,' Understanding Investment Law in Zambia'(Juta 2017)
[4] C Mulenga,'Foreign Direct Investment and The Law in Zambia'(Juta 2020)

Export Processing Zones Act, all of which aimed to promote small-scale industries and boost export activities.

In 2006, the establishment of the Zambia Development Agency (ZDA) centralized investment promotion and facilitation, streamlining the processes and creating a dedicated agency to attract and assist investors. Subsequent amendments to the ZDA Act have further enhanced its effectiveness in promoting investment and supporting business activities in the country.

Despite these efforts to attract FDI and create a favorable investment environment, challenges persist. Limited absorptive capacity, characterized by difficulties in effectively utilizing and integrating foreign investment into the domestic economy, poses a significant obstacle. Inadequate infrastructure and policy deficiencies also hinder the optimal utilization of FDI in Zambia. Furthermore, the impact of FDI on local industries, income distribution, and social welfare requires thorough examination to ensure that its benefits are maximized and sustainable economic growth is achieved.[5]

The existing legal framework, particularly the Investment Trade and Business Development Act, exhibits a significant lacuna that hampers the effective utilization of FDI and impedes Zambia's sustainable economic growth and development. The current provisions fail to adequately address the challenges posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies. Moreover, the impact of FDI on local industries, income distribution, and social welfare remains inadequately examined within the existing legal framework.

Therefore, this research aims to conduct a comprehensive analysis of the lacuna in the legal framework for FDI in Zambia, with a specific focus on the Investment Trade and Business Development Act. By examining the existing legal provisions and their impact on FDI effectiveness and sustainable development, this study seeks to propose legal reforms that address the identified gaps and enhance the mechanisms through which FDI can contribute

[5] S Babatunde A Onaopepo, ***"Opportunities and challenges of foreign direct investment utilization and its impact on construction sector in developing countries,"*** Journal of Financial Management of Property and Construction ISSN: 1366-4387.

to Zambia's socio-economic transformation. Through this analysis, the research will contribute to filling the lacuna in the law and provide recommendations for an improved legal framework that promotes the optimal utilization of FDI, fosters economic growth, and ensures equitable socio-economic development in Zambia.

1.2. STATEMENT OF THE PROBLEM

The legal framework governing Foreign Direct Investment (FDI) in Zambia, particularly under the Investment Trade and Business Development Act, exhibits a significant lacuna that hinders the effective utilization of FDI and impedes sustainable economic growth and development. Despite the recognition of FDI's potential as a crucial driver of economic transformation, the current legal provisions fail to adequately address the challenges posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies. Moreover, the impact of FDI on local industries, income distribution, and social welfare remains inadequately examined within the existing legal framework. Therefore, there is a pressing need to identify and rectify the deficiencies in the law to create a more conducive and comprehensive legal framework that maximizes the benefits of FDI and fosters Zambia's socio-economic transformation.

1.3. RESEARCH OBJECTIVES

1. To assess the existing legal framework governing Foreign Direct Investment (FDI) in Zambia, with a specific focus on the Investment Trade and Business Development Act and identify the deficiencies that hinder the effective utilization of FDI and impede sustainable economic growth and development.

2. To examine the challenges posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies within the current legal provisions governing FDI in Zambia and their impact on FDI effectiveness.

3. To evaluate the extent to which the current legal framework addresses the impact of FDI on local industries, income distribution, and social welfare, and

determine the inadequacies in the examination of these aspects within the existing legal framework.

1.4. RESEARCH QUESTIONS

1. What are the deficiencies in the legal framework governing Foreign Direct Investment (FDI) in Zambia, specifically under the Investment Trade and Business Development Act [6] that hinder the effective utilization of FDI and impede sustainable economic growth and development?

2. What are the challenges posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies within the current legal provisions governing FDI in Zambia, and how do these challenges impact the effectiveness of FDI?

3. To what extent does the existing legal framework for FDI in Zambia adequately address the impact of FDI on local industries, income distribution, and social welfare, and what are the gaps in the examination of these aspects within the legal framework?

1.5. SIGNIFICANCE OF THE STUDY

The significance of this study lies in its potential to address the lacuna in the legal framework governing Foreign Direct Investment (FDI) in Zambia and contribute to the country's socio-economic development. By conducting a comprehensive analysis of the deficiencies in the existing legal provisions, this study aims to propose legal reforms that enhance the effectiveness and utilization of FDI, ultimately fostering sustainable economic growth and development.

The findings of this research will have several significant implications. Firstly, it will provide policymakers and lawmakers in Zambia with valuable insights into

[6] Act No.18 of 2022

the gaps and weaknesses in the current legal framework, enabling them to make informed decisions and implement necessary reforms. By rectifying these deficiencies, the legal framework can be strengthened to create a more conducive and comprehensive environment for FDI, attracting greater investment and stimulating economic activities.

Secondly, the study will contribute to the existing body of knowledge on FDI and its impact on economic development, particularly in the African context. By examining the specific case of Zambia, the research will provide valuable insights into the challenges and opportunities associated with FDI in an African country, serving as a reference point for future studies and comparative analyses.

Furthermore, the research will shed light on the mechanisms through which FDI can contribute to Zambia's socio-economic transformation. By assessing the impact of FDI on local industries, income distribution, and social welfare, the study will provide a nuanced understanding of how FDI can be harnessed to maximize its benefits and ensure equitable development.

Overall, this study holds significant importance as it seeks to bridge the gap between the potential of FDI and the existing legal framework in Zambia. By proposing legal reforms and providing recommendations, it aims to create an enabling environment for FDI, promote economic growth, and contribute to Zambia's sustainable socio-economic development.

1.6. SCOPE OF THE STUDY

The scope of this study encompasses an in-depth analysis of the lacuna in the legal framework governing Foreign Direct Investment (FDI) in Zambia, with a specific focus on the Investment Trade and Business Development Act. The research will primarily examine the existing legal provisions and their impact on the effectiveness and utilization of FDI in Zambia.

Furthermore, the research will assess the impact of FDI on local industries, income distribution, and social welfare, providing insights into the socio-economic consequences of FDI in Zambia. It will analyze economic development indicators, such as GDP growth, employment generation, and sectoral contributions, to evaluate the effectiveness of FDI in achieving sustainable development goals.

The study will primarily focus on the Zambian context, but it will draw on relevant international experiences and best practices in FDI regulation and governance. By comparing and contrasting the Zambian legal framework with those of other countries, the research will provide a broader perspective on effective FDI regulation and its potential implications for Zambia's socio-economic transformation.

However, it is important to note that this study does not encompass an exhaustive evaluation of all aspects related to FDI in Zambia. Rather, it specifically targets the legal framework and its deficiencies, aiming to propose legal reforms and recommendations to enhance the utilization of FDI and foster Zambia's socio-economic development.

1.7. RESEARCH METHODOLOGY

The research methodology is qualitative and it will focus on gathering and analyzing existing data and information from published sources. The research methodology will incorporate the desk research method. It will involve reviewing relevant laws, regulations, policy documents, scholarly articles, reports, and other published sources to gain insights into the current legal provisions, challenges, and gaps in the existing framework.

1.8. LITERATURE REVIEW

Foreign Direct Investment (FDI) plays a crucial role in the economic development of nations, including Zambia. However, the existing legal framework governing FDI in Zambia, specifically under the Investment Trade and Business Development Act, presents significant gaps that hinder its effective utilization and impede sustainable economic growth and development. This literature review aims to explore existing research to highlight the research gap that the proposed study seeks to address.

Various studies have highlighted the in the negative impacts of FDI in Zambia, the report by **CUTS International** underscores the need for a comprehensive investment policy in Zambia, It agrees that there is a problem with the way FDI is implemented in this proposal contributes to existing literature by studying the current legal framework governing FDI to see the challenges which make it difficult for the country to yield positive benefits Zambia as it does not seem to affect the country positively.[7]This proposal contributes to existing literature by studying the current legal framework governing FDI to see the challenges which make it difficult for the country to yield positive benefits.

Dr. Mulenga Chipasha in his book agrees that countries believe that once foreign direct investment is brought to them the country shall reap a number of benefits such as connecting the local industries to foreign markets, boosting the country's economy and so forth,[8] but however this has not been the case with Zambia instead of foreign direct investment fulfilling this,the country has had quite a lot of negatives this dissertation comes in to fill the legal gap which has caused Zambia not to reap the much needed benefits from FDI.

The existing legal provisions in Zambia fail to adequately address the challenges posed by limited absorptive capacity, inadequate infrastructure, and policy deficiencies. Scholars like **Arthur Sinzala** highlight the limited capacity of Zambia to attract meaningful FDI despite efforts made by the Zambia Development Agency (ZDA).[9]This indicates a research gap in understanding how these challenges affect FDI effectiveness and sustainable development in Zambia which this dissertation intends to fulfill.

Another research gap is the inadequate examination of the impact of FDI on local industries, income distribution, and social welfare within the existing legal framework. While Scholars like **John Chenjelani Phiri** agree that FDI is recognized as a potential driver of economic transformation,[10] its impact on these crucial aspects remains insufficiently explored. This gap is identified by

[7] Available at : https://cuts-lusaka.org

[8] M Chipasha, ***'Foreign Direct Investment and the Law in Zambia'*** (Juta Ltd 2020)

[9] A dissertation conducted at The Copperbelt University entitled The Impact of Foreign Direct Investment on Economic Growth in Zambia by Arthur Sinzala.

[10] Dissertation conducted at Texila American University entitled Contributions of Foreign Direct Investment of Mining Sector to Economic Development of Zambia. Study of Konkola Copper Mines by John Chenjelani Phiri.

the proposal and highlights the need to investigate and understand the implications of FDI on local industries, income distribution, and social welfare.

The identified research gap necessitates a comprehensive analysis of the lacuna in the legal framework for FDI in Zambia. By examining the existing legal provisions and their impact on FDI effectiveness and sustainable development, the proposed study aims to provide insights into the deficiencies in the law. It seeks to propose legal reforms that address the identified gaps and enhance the mechanisms through which FDI can contribute to Zambia's socio-economic transformation.

In conclusion, the literature review highlights the research gap in the legal framework governing FDI in Zambia. The existing provisions fail to address challenges related to limited absorptive capacity, inadequate infrastructure, and policy deficiencies, while also inadequately examining the impact of FDI on local industries, income distribution, and social welfare. The proposed study aims to fill this gap by conducting a comprehensive analysis and proposing legal reforms to foster a more conducive and comprehensive legal framework. This research will contribute to maximizing the benefits of FDI, promoting economic growth, and ensuring equitable socio-economic development in Zambia.

1.9. KEY TERMS AND DEFINITIONS

Absorptive Capacity: The ability of an economy or country to effectively utilize and integrate foreign direct investment (FDI) into its domestic economy.

Economic Growth: The increase in the value of goods and services produced by an economy over time, usually measured by the gross domestic product (GDP).

Equity: Fairness and justice in the distribution of resources, opportunities, and benefits among individuals and groups within a society.

Foreign Direct Investment (FDI): The investment made by a company or individual from one country into business interests located in another country, typically involving the establishment of a physical presence or acquiring ownership stakes in local enterprises.

Infrastructure: The basic physical and organizational structures and facilities (such as roads, bridges, power plants, telecommunications networks, etc.) needed for the operation of a society or enterprise.

Investment Trade and Business Development Act: The specific legislation in Zambia that governs foreign direct investment, trade, and business development activities in the country.

Lacuna: A gap or deficiency in something, in this context referring to the shortcomings or inadequacies in the legal framework for foreign direct investment in Zambia.

Legal Framework: The system of laws, regulations, and policies that govern and regulate a particular area or sector, in this case, the legal framework for foreign direct investment in Zambia.

Policy Deficiencies: Inadequacies or shortcomings in the policies or guidelines that govern foreign direct investment, resulting in challenges or barriers to its effective implementation and impact.

Socio-economic Development: The progress and improvement in the social and economic well-being of individuals, communities, and societies, encompassing aspects such as education, healthcare, income distribution, and overall quality of life.

Sustainable Development: Development that meets the needs of the present without compromising the ability of future generations to meet their own needs, considering social, economic, and environmental factors.

Utilization: The effective and efficient use or application of resources, in this case, referring to the optimal utilization of foreign direct investment to achieve economic growth and development.

Chapter 2
Assessment of the Legal Framework for Foreign Direct Investment in Zambia

2.0. Introduction

Foreign Direct Investment (FDI) plays a pivotal role in fostering economic growth and development by attracting capital, technology, and expertise from abroad. In the case of Zambia, FDI has been recognized as a crucial driver for sustainable economic progress. This chapter aims to critically assess the existing legal framework governing FDI in Zambia, with a specific focus on the ***Investment Trade and Business Development Act***[11] (**ITBD**). The analysis will delve into the strengths and weaknesses of the current framework and identify deficiencies that hinder the effective utilization of FDI, subsequently impeding sustainable economic growth and development in the country.

2.1. Overview of FDI in Zambia

Zambia, endowed with abundant natural resources and a strategic geographical location, has endeavored to attract FDI as a means to diversify its economy and reduce its dependence on traditional sectors like mining.[12] The government has implemented various policies and legislations to create a conducive environment for FDI. Among these, the **ITBD**[13] stands as a significant legal instrument, outlining the rules and regulations governing foreign investments in the country.

2.2. The Investment Trade and Business Development Act No.28 of 2022

The ***Investment Trade and Business Development Act (ITBD)***[14], passed in 2022, holds a pivotal role as the central legal framework governing investment and business operations within Zambia. Framed with the intention of fostering and streamlining both local and foreign investment, its overarching goal is to catalyze economic expansion and developmental progress. However, upon

[11] Act No.18 of 2022

[12] Ministry of Lands Natural Resources and Environmental Protection United Nations Convention on Biological Diversity Fifth National Report Available at : https://www.cbd.int/doc/world/zm/zm-nr-05-en.pdf June 2015

[13] ibid

[14] ibid

closer scrutiny, a thorough evaluation of the Act uncovers a series of limitations that hinder its efficacy in attaining these overarching objectives.

Several factors and deficiencies emerge as significant impediments that have the potential to curtail the optimal harnessing of Foreign Direct Investment (FDI) and obstruct the trajectory of sustainable economic growth and development.

Within the contours of the Act, a notable facet that emerges is the complexity inherent in the application process. The legislation outlines that individuals seeking engagement in distinct economic activities are mandated to initiate applications for diverse licenses, permits, or certificates of registration. This compulsion to navigate through an array of permit types, coupled with the obligatory financial commitments through associated fees, gives rise to a potential labyrinthine and time-intensive procedure[15] The resultant bureaucratic intricacy and protracted timeframes hold the potential to dissuade prospective investors from pursuing their ventures within the Zambian business landscape.

The implications of such a complex application process are multifaceted. Firstly, the convoluted nature of the process can be a deterrent in itself, deterring investors who seek streamlined procedures and swift decisions. [16] The intricacies might lead to confusion and ambiguity, causing potential investors to question their eligibility or struggle to adhere to stringent requirements. This sense of uncertainty can have a ripple effect, discouraging both local and foreign investors who may opt for jurisdictions with more straightforward and accessible processes.

Secondly, the necessity to navigate through a labyrinthine procedure could result in considerable delays. Time is of the essence for investors, especially in a rapidly evolving economic landscape. Cumbersome processes can stifle the agility required for investors to capitalize on emerging opportunities, ultimately impeding the flow of investments into the country. For example, in the case of ***White Industries Australia Limited v. Republic of India***[17], an Australian company-initiated arbitration proceedings against India under the India-

[15] Section 18 of The ITBD Act No.18 of 2022

[16] J Morisset L Neso,***'Administrative Barriers to Foreign Investment in Developing Countries'*** Available at : https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-2848

[17] Final Award 30 Nov 2011 UNCITRAL

Australia Bilateral Investment Treaty, alleging that India had failed to provide effective means of asserting claims and enforcing rights with respect to its investment in an Indian company. The arbitration tribunal found that India had breached its obligation by allowing excessive and unreasonable delays in the Indian judicial system, which prevented the Australian company from enforcing an arbitral award in its favor. The tribunal awarded the Australian company $4.08 million in damages, plus interest and costs. This case illustrates how the inefficiency and backlog of the Indian legal system can adversely affect the interests and expectations of foreign investors

Furthermore, the financial burden posed by mandatory fees associated with each permit or license could compound the deterrent effect. For potential investors, these fees represent additional costs on top of their investment capital, influencing their decision-making process.[18] This financial strain might be particularly discouraging for small and medium-sized enterprises (SMEs) or startups that operate with limited resources.

One of the primary consequences of this selective incentive approach is the possibility of unfair competition. Businesses that have obtained the required licenses or permits would be entitled to enjoy incentives that provide them with a competitive advantage over their counterparts without these regulatory authorizations. This scenario could lead to an uneven playing field, where businesses with incentives enjoy cost savings and favorable terms, thereby potentially outperforming their non-incentivized counterparts. This unequal competition might dissuade businesses from entering certain sectors or markets, fearing a disadvantageous competitive environment.

One immediate consequence of these high thresholds is that they may discourage SMEs from considering investment opportunities that would otherwise align with their growth strategies.[19] The cost of meeting these requirements could strain their financial resources and limit their capacity to

[18] K Mwenda, ***"Legal Aspects Of Foreign Direct Investment In Zambia"*** (World Bank, Volume 6, Number 4, December 1999).

[19] S Werthmuller, ***"Small Businesses Adapting to Rapidly Changing Economic Landscape, Study Finds"*** (Published 30 Nov 2021) Available at : https://www.weforum.org/press/2021/11/small-businesses-adapting-to-rapidly-changing-economic-landscape-study-finds/ accessed 2021.

compete on a level playing field with larger enterprises. As a result, many SMEs might forego the possibility of expanding their operations, creating jobs, and contributing to the local economy.

The **ITBD**[20] introduces the provision for the Agency to impose conditions on licenses, permits, or certificates, yet it falls short in explicitly outlining the criteria or parameters that would trigger the imposition of such conditions.[21] This omission has the potential to introduce a lack of transparency into the decision-making process, which in turn could engender confusion, uncertainty, and mistrust among investors.

Investors, whether domestic or foreign, place great emphasis on regulatory predictability and clarity when considering investment opportunities.[22] The absence of clear guidelines regarding the circumstances under which conditions may be imposed on licenses or permits can result in an opaque decision-making process. This lack of transparency leaves investors in a state of uncertainty, as they are unable to anticipate or understand the specific factors that could influence the imposition of conditions on their business activities.

The implications of this lack of transparency are multifaceted. Firstly, it can undermine investor confidence. Investors seek assurance that their investments will be subject to clear and consistent regulatory processes that are conducive to a stable business environment. The ambiguity surrounding the imposition of conditions on licenses or permits can create doubts about the fairness and consistency of regulatory practices, prompting investors to hesitate before committing their resources.

Secondly, the absence of clear criteria may lead to varying interpretations of the regulatory framework. Different stakeholders, including investors and regulatory authorities, may hold divergent views on the circumstances that

[20] Act no.18 of 2022
[21] Section 20 of The ITBD
[22] T Tran, P Kher, "How can countries better manage investment risks along the BRI?" (March 15, 2019 Available at : https://www.weforum.org/press/2021/11/small-businesses-adapting-to-rapidly-changing-economic-landscape-study-finds/

warrant the imposition of conditions. This divergence can introduce an element of subjectivity into the decision-making process, potentially resulting in unequal treatment of similarly situated businesses.

The consequences of such rigidity are twofold. Firstly, it might deter investors from committing to projects with longer payback periods. The inability to secure licenses, permits, or certificates that match the anticipated timeline of a project can impede the feasibility of long-term investments.[23] Investors may shy away from undertaking ventures that require a more extended horizon to realize their full economic potential, as they may fear a regulatory vacuum or additional administrative hurdles if their licenses expire before the project's fruition.

Secondly, this fixed validity period can hinder strategic planning. The rigid timeline may prevent investors from aligning their business strategies with the natural progression of their projects. Long-term investment initiatives require careful long-range planning, including financing arrangements, supply chain partnerships, and market entry strategies. The inflexibility of a five-year validity period can disrupt these plans, causing uncertainty, administrative disruptions, and even financial losses.

The provisions outlined in the **ITBD**[24], which mandate that a license, permit, or certificate not renewed in adherence to the prescribed process becomes void, introduces a potentially problematic aspect into the regulatory framework. While the intention might be to ensure compliance and streamline administrative procedures, this policy could inadvertently trigger a series of unintended consequences that have the potential to disrupt economic activities and hinder overall economic growth.

Under this provision, if an investor fails to meet the renewal requirements within the stipulated timeframe, the resulting void status of their license, permit, or certificate could disrupt their ongoing business operations. This could occur due to various reasons, such as administrative oversights, delays in processing

[23] Long-term investment and accounting: overcoming short-term bias Public policy paper Available at : https://www.icaew.com/-/media/corporate/files/technical/financial-reporting/information-for-better-markets/ifbm-reports/long-term-investment-and-accounting-april-2016.ashx

[24] Act No.18 of 2022

renewal applications, or even unforeseen emergencies that temporarily divert an investor's attention away from the renewal process. As a result, the cessation of economic activities, even temporarily, can have ripple effects throughout the supply chain, workforce, and local economy.

This scenario becomes particularly problematic when considering the broader economic landscape. Investments contribute significantly to economic growth, job creation, and the overall prosperity of a nation. A sudden interruption in an investor's operations due to a technical non-renewal of a permit might lead to the idling of workers, supply chain disruptions, and a decrease in economic output.[25] Such disruptions can have far-reaching consequences, including reduced revenue collection for the government, decreased consumer confidence, and even potential job losses.

Moreover, this provision could place undue pressure on businesses, especially smaller enterprises that may lack the administrative resources to keep track of renewal deadlines. The consequences of an unintentional lapse in renewal could disproportionately affect these businesses, which might be less equipped to navigate the complexities of regulatory compliance.

The delineation of investment categories eligible for incentives, as specified in the **ITBD**[26], introduces a degree of restrictiveness that has the potential to impact the overall investment landscape. While the intention behind focusing incentives on special economic zones, priority sectors, and rural areas is likely to channel resources into sectors with high growth potential, it's important to recognize the potential drawbacks of such a restrictive approach.

One immediate consequence of this limitation is that it might inadvertently discourage potential investors with viable projects that fall outside these designated categories. While special economic zones, priority sectors, and rural areas are undoubtedly important contributors to economic development Scholars such as Douglas Zeng have argued that there are also other sectors

[25] https://www.wheninmanila.com/the-risks-of-not-renewing-your-business-permit/
[26] Act No.18 of 2022

that can play a pivotal role in fostering growth, innovation, and job creation.[27] By limiting incentives to only a select few categories, the ***ITBD*** [28] might inadvertently overlook or undermine the potential contributions of investments in other sectors.

Moreover, this restrictive approach could disincentive diversity in investment choices. When incentives are concentrated within specific categories, there's a risk that investors might gravitate towards those categories solely to access the benefits, rather than pursuing opportunities that genuinely align with their expertise and business models. This could lead to an imbalance in resource allocation and hinder the overall adaptability and resilience of the economy.

Furthermore, the cumulative effect of this deterrent could lead to a concentration of incentives among larger corporations that are better equipped to meet the financial criteria. This concentration might inadvertently amplify income inequality and impede the diversification of the economic landscape, as resources are disproportionately allocated to a select few players in the market.

Foreign investors play a significant role in stimulating economic growth, introducing new technologies, creating jobs, and fostering international partnerships. By omitting foreign investors from the eligibility criteria, the Act might miss out on the potential benefits that foreign direct investment (FDI) can bring to a country. Attracting FDI is often a key objective for countries seeking to bolster their economies, and excluding foreign investors from incentives could send a signal that their contributions are not fully valued or recognized.

Additionally, setting minimum investment thresholds as a prerequisite for eligibility could unintentionally exclude smaller investors or start-ups with promising ideas but limited initial capital. Such investors may possess innovative concepts that could drive economic diversification, technological advancement, and job creation.[29] Excluding them due to financial constraints might prevent the realization of these valuable contributions.

[27] D Zeng, "The Past, Present, and Future of Special Economic Zones and Their Impact," Journal of International Economic Law, Volume 24, Issue 2, June 2021, Pages 259–275, https://doi.org/10.1093/jiel/jgab014.
[28] ibid
[29] UNCTAD. (2018). World investment report 2018: Investment and new industrial policies. United Nations

These deficiencies in the incentive framework, including complex eligibility criteria, restrictive investment categories, high investment thresholds, and dependence on agency recommendation, can collectively hinder the attraction of FDI and potentially impede sustainable economic growth and development.

The analysis underscores the significance of creating an environment that is conducive to FDI by addressing the identified deficiencies within the legal framework. Complex application processes, uncertainty in the approval process, lack of transparency, rigid validity periods, non-renewal consequences, high investment thresholds, and restrictive investment categories collectively contribute to an environment that may discourage potential investors, hinder competition, and deter the full utilization of FDI.

To harness the potential of FDI and promote sustainable economic growth and development, there is a need to strike a balance between regulatory oversight and the facilitation of investments. Simplifying application processes, enhancing transparency in decision-making, offering flexibility in validity periods, and fostering inclusivity through lower investment thresholds and a broader range of eligible sectors can help address these challenges. Such adjustments can contribute to creating a more attractive investment climate that not only encourages both local and foreign investors but also stimulates diversified economic growth, innovation, and employment opportunities.

In conclusion it can be seen that as Zambia seeks to position itself as an investment destination of choice, the comprehensive evaluation of its legal framework for FDI becomes a pivotal step in aligning regulatory practices with its developmental aspirations. By rectifying the identified deficiencies and promoting a more transparent, flexible, and inclusive approach to investment, Zambia can tap into the potential of FDI to drive economic progress, enhance competitiveness, and improve the overall well-being of its citizens.

Chapter 2 Overview

Assessment of the Legal Framework for Foreign Direct Investment in Zambia

Chapter 2 provides a comprehensive evaluation of the legal framework for Foreign Direct Investment (FDI) in Zambia, primarily focusing on the Investment Trade and Business Development Act (ITBD) passed in 2022. It aims to critically assess the strengths and weaknesses of this legal framework to determine its effectiveness in promoting sustainable economic growth and development in the country.

The chapter begins by acknowledging the pivotal role of FDI in fostering economic progress through the attraction of capital, technology, and expertise from abroad. It highlights Zambia's recognition of FDI as a crucial driver for sustainable economic development, aiming to diversify its economy and reduce dependence on traditional sectors like mining.

Subsequently, it delves into an overview of FDI in Zambia, emphasizing the government's efforts to attract foreign investments by implementing various policies and legislations. The ITBD emerges as a significant legal instrument governing foreign investments in Zambia.

However, a detailed analysis reveals shortcomings and deficiencies within the ITBD. It outlines complexities within the application process, mandatory financial commitments through associated fees, lack of transparency in decision-making regarding the imposition of conditions on licenses, and rigid validity periods. Moreover, the act's focus on specific investment categories, high investment thresholds, and exclusion of foreign investors from incentives pose potential deterrents to potential investors, particularly smaller enterprises and startups.

The chapter underscores that these deficiencies collectively contribute to an environment that may discourage potential investors, hinder competition, and deter the full utilization of FDI. To address these challenges, it advocates for a balanced approach between regulatory oversight and facilitating investments.

Simplification of application processes, enhanced transparency, flexibility in validity periods, inclusive investment categories, and lower investment thresholds are proposed as remedies to create a more attractive investment climate.

In conclusion it is clear that we have deficiencies within the legal framework that governs FDIs in Zambia. Therefore, there needs to rectify so as to harness the potential of FDI effectively. By doing so, Zambia can align its regulatory practices with developmental aspirations, attract more investments, stimulate diversified economic growth, promote innovation, and create employment opportunities, thereby fostering sustainable economic progress in the country.

Chapter 3
Challenges and Impact on FDI Effectiveness in Zambia

3.0. Introduction

Foreign Direct Investment (FDI) plays a pivotal role in the economic development of any country, and Zambia is no exception. This chapter delves into the challenges that Zambia faces in attracting and utilizing FDI effectively, and the subsequent impact these challenges have on the overall effectiveness of FDI in the country.

We begin by exploring the current state of FDI in Zambia, highlighting its importance to the Zambian economy. We then identify and discuss the various challenges that hinder the effectiveness of FDI. These challenges range from infrastructural deficiencies, regulatory hurdles, to issues related to governance and political stability.

The chapter further examines how these challenges impact the potential benefits that can be derived from FDI. It provides an analysis of how these obstacles can diminish the positive effects of FDI on economic growth, technological transfer, and employment generation.

By shedding light on these issues, this chapter aims to provide a comprehensive understanding of the complexities surrounding FDI effectiveness in Zambia. It is hoped that this understanding will inform policy decisions and stimulate discussions on how to enhance the role of FDI in Zambia's economic development.

3.1. Limited Absorptive Capacity

Surbhi Gupta states that absorptive capacity is an organizational ability to evaluate, assimilate, and commercialize knowledge that originates outside the firm.[30]It is important to note that economic growth is influenced indirectly by absorptive capacities, such as financial development, institutional quality, technological capability, and trade openness.

3.2. Challenges in Zambia

Inadequate Infrastructure

State of Infrastructure in Zambia

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[30] S Gupta, Surendra S Yadav, P Jain, ***"Absorptive capacities, FDI and economic growth in a developing country,"*** Journal of Advances in Management Research. Available at : https://ideas.repec.org/a/eme/jamrpp/jamr-12-2021-0370.html.

Infrastructure development remains a major challenge to growth, economic diversification, and human development in Zambia.[31] The areas for development in this sector include investment in health, education, water and sanitation, increased power generation capacity through upgrading and construction of new generation facilities and use of alternative energy sources. Despite a continued need for new infrastructure investment, the Zambian government's financing ability will likely be constrained over the short-to-medium-term as it embarks on fiscal reforms and renegotiates existing debts with commercial creditors.[32]

Role of Infrastructure in Attracting FDI

Zambia faces a significant hurdle to investment due to its subpar infrastructure. To improve this situation, investments targeting the enhancement of roads, railways, and power plants are crucial.[33] An initiative announced in 2021, involving an $11 billion standard gauge railway project backed by US capital, aims to expand crucial transport connections with the rest of the world. Additionally, the Zambian government actively pursues further infrastructure development, particularly through Public-Private Partnerships (PPP) projects.[34]

In the case of ***Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco***[35], two Italian construction companies engaged in a dispute with Morocco over a dam construction contract. The claimants alleged breaches of the Italy-Morocco bilateral investment treaty (BIT), citing non-payment, unjust taxes, and interference with contract performance. The tribunal ruled in favor of the claimants, recognizing their investment under the BIT and finding Morocco in violation of fair and equitable treatment, as well as full protection and security standards. Damages awarded amounted to $25.8 million, inclusive of interest and costs. This case serves as a testament to how Foreign Direct Investment

[31] Foreign direct investment (FDI) in Zambia - Standard Bank. https://www.tradeclub.standardbank.com/portal/en/market-potential/zambia/investment.

[32] ibid

[33] Zambia - Infrastructure Development - International Trade Administration. https://www.trade.gov/country-commercial-guides/zambia-infrastructure-development

[34] Investment Climate and Foreign Direct Investment in Africa: The Role of https://link.springer.com/article/10.1007/s44232-022-00003-x

[35] ICSID Case No. ARB/00/4

(FDI) can significantly contribute to infrastructure and public service development in host nations, underscoring its pivotal role.

Challenges Posed by Inadequate Infrastructure

Due to ineffective urban planning, investments in urban infrastructure have not matched the population growth resulting in inefficient transport services. Increased population tends to be associated with increasing traffic congestion, climate emissions, air pollution, and deaths from road crashes. But with unreliable electricity supply, lack of a quick turnaround time in providing utility services, lack of a one-stop shop to streamline business processes, lack of a connection to sewer lines or support services such as an ambulance, fire brigade, waste collection or market research, SEZs in Zambia fall short of being world-class.[36]

3.3. Current Legal Provisions for FDI in Zambia

Foreign Direct Investment in Zambia is governed by two principle Acts namely the ***Zambia Development Agency Act (ZDA)***[37] and the ***Investment and Trade Business development Act(ITBD)***[38].

The starting point is the preamble of the ***ITBD***[39] .which underscores its purpose: to foster economic growth and development in the Republic. This is achieved by promoting trade, business development, and investment through a well-structured, effective, and collaborative private sector-led economic development strategy. It further encourages economic diversification by fostering export growth, facilitating, protecting, and monitoring both domestic and foreign direct investment. Additionally, the Act promotes investment through joint ventures and partnerships between local and foreign investors, supports the development of industrial infrastructure and commercial services, advances research in industrial development, facilitates the protection of emerging industries, and addresses related and incidental matters.

[36] Zambia - Infrastructure, power, and communications. https://www.nationsencyclopedia.com/economies/Africa/Zambia-INFRASTRUCTURE-POWER-AND-COMMUNICATIONS.html.
[37] Act No. 17 of 2022.
[38] Act No. 18 of 2022
[39] ibid

Section 5 of the ***ITBD***[40] outlines the guiding principles for promoting investment and trade in the Republic, which include:

(a) Enhancing overall economic performance by increasing productivity in both the public and private sectors, ultimately raising living standards for the people in the Republic.

(b) Promoting economic diversification and mitigating the social and economic challenges that may arise from such transformations.

(c) Safeguarding the interests of industries, employees, consumers, and the community, while advocating for corporate social responsibility.

(d) Ensuring that industrial development takes place in an ecologically sustainable manner.

(e) Encouraging incentives that support biodiversity conservation, its sustainable use, and initiatives promoting climate resilience.

(f) Promoting exports and diversifying export markets.

(g) Ensuring that the Republic fulfills its international obligations and commitments, including those established in multilateral and bilateral treaties, to the benefit of its economy.

(h) Enhancing value addition to the Republic's natural resources.

(i) Fostering job creation.

(j) Upholding environmental, social, and governance factors.

This legal framework establishes a comprehensive set of principles and objectives for managing foreign direct investment in Zambia, with a strong emphasis on sustainable economic growth and development.

Section 6 of the ***ITBD***[41] empowers the Minister to negotiate an investment protection and promotion agreement with another government, in which both parties will reach a consensus on development and investment matters outlined in this Act. With the Minister's and the Attorney General's approval, the Agency is also authorized to engage in an investment protection and promotion agreement with an investor. This agreement will encompass various aspects, including:

(a)Commitments regarding employment creation, technology and skills transfer, local business development, licensing and permits, as well as an undertaking

[40] Act No.18 of 2022
[41] Act No.18 of 2022

to complete the necessary environmental assessment as required by the Environmental Management Act of 2011, where applicable.

Section 9 of the ***ITBD***[42] provides that An investor's property or an interest in or right over, that property shall not be compulsorily acquired except in accordance with the Constitution and the Lands Acquisition Act.

Section 10 of the ***ITBD***[43] states that foreign investors are at liberty to externalise funds without any limitations, living the host country with no benefits of foreign currency necessary for it to maintain an economic equilibrium.

Section 6 of the ***ZDA***[44] establishes the governing body of the Agency, the Board, comprised of part-time members appointed by the Minister. This diverse Board includes representatives from various ministries, organizations, and institutions, along with individuals possessing expertise in trade and investment. The Chairperson is appointed by the Minister from among the members, while the Vice-Chairperson is elected by the Board members themselves.

To ensure the quality and integrity of its members, individuals are ineligible for Board membership if they are legally disqualified from performing their functions, undischarged bankrupts, have been convicted of specified offenses, or have a history of fraud or dishonesty under the law.

Lastly, Section 22 of the ***ZDA***[45] empowers the Minister, in collaboration with the Agency, to create Regulations through statutory instruments to better implement the Act. These Regulations may be tailored to address the unique needs of different types of business development and sectors within the trade and industry landscape.

In further scrutiny of the ***ZDA***[46], Section 5 of the Act does not give the Zambia Development Agency power to control investment as well as to implement and enforce policies. From this, it gives the view that the Zambian Development Agency has no power to ensure that the investment is sound, and also lacks power to inspect records of an investor to ensure that an investor does not falsify facts as to their financial position. In addition to this, Section 5(3) provides for promotion and development of industries through innovation, which is one

[42] Act No.18 of 2022
[43] ibid
[44] Act No.17 of 2022
[45] N46
[46] Act No.17 of 2022

of the highest resources of Economic Growth and Development, yet the Act does not provide for policies or laws that will protect the small economic zones in this wide and vast growing sector of innovation. It is also important to note that Section 6 of the Act gives the Minister excessive power in appointing Members of the Board of Agency. In addition to this, the ***ZDA***[47] has a small number of government personnel's to be part of the Board, but this will not change the fact that the Board cannot make reformed independent decisions, because the Minister still has the power to appoint a Chairperson of the Board who will logically pledge his loyalty to the Minister and as such, the Board cannot make decisions that are not political or manipulated by government personnel's.

Furthermore, Section 7 (5) of the ***ZDA***[48] gives excessive power to the Minister, in that it allocates him/her, power to give direction to the Board regarding the performance of its functions. It also does not stipulate the Board having a choice on matters, thus completely compromising the operation of the Board such that it cannot make independent decisions if the Minister states otherwise. Section 22 of the Act is one that also gives the Minister excessive power as it states that he may make regulations for the better carrying out of the provisions of the Act. Despite the Minister getting consultation from the Agency for this, the responsibility on its own, waters down the capacity of the Board to enforce such decisions, as well as the Agency itself.

[47] Act No.17 of 2022
[48] ibid

Chapter 3 Overview
Challenges and Impact on FDI Effectiveness in Zambia

Chapter 3 explores the challenges Zambia faces in effectively attracting and utilizing Foreign Direct Investment (FDI). It delves into the current state of FDI in Zambia, emphasizing its significance to the country's economy, and identifies various obstacles hindering its effectiveness.

The chapter begins by emphasizing the critical role FDI plays in a country's economic development, acknowledging Zambia's reliance on it for economic growth. It proceeds to highlight the challenges that impede Zambia's ability to attract and utilize FDI effectively. These challenges encompass infrastructural deficiencies, regulatory obstacles, governance issues, and political stability concerns.

Within this context, the chapter addresses the impact of these challenges on potential FDI benefits. It scrutinizes how these hindrances limit the positive effects of FDI on economic growth, technological transfer, and employment generation within Zambia.

Key sections within Chapter 3

3.1. Limited Absorptive Capacity

This section introduces the concept of absorptive capacity, highlighting its significance in evaluating, assimilating, and commercializing knowledge originating from external sources. The chapter notes the indirect influence of absorptive capacities on economic growth through factors such as financial development, institutional quality, technological capability, and trade openness.

3.2. Challenges in Zambia

Inadequate Infrastructure

The chapter details Zambia's infrastructure challenges, emphasizing their impact on growth, economic diversification, and human development. It identifies areas needing development, such as health, education, water, sanitation, and power generation. The inadequate state of infrastructure in Zambia is noted as a barrier to investment, and the government's financing constraints due to fiscal reforms and debt renegotiation are highlighted.

Role of Infrastructure in Attracting FDI

The significance of infrastructure in attracting FDI is discussed, emphasizing the need for investments in roads, railways, power plants, and initiatives like Public-Private Partnerships (PPPs). The chapter highlights specific projects, such as the standard gauge railway, as endeavors to improve transport links and attract investment.

Challenges Posed by Inadequate Infrastructure

The adverse effects of inadequate urban planning, unreliable electricity supply, inefficiencies in utility services, and lacking support services on Special Economic Zones (SEZs) are detailed.

3.3 Current Legal Provisions for FDI in Zambia

This section outlines the legal framework governing FDI in Zambia, primarily focusing on the Zambia Development Agency Act (ZDA) and the Investment and Trade Business Development Act (ITBD). It delineates the objectives, guiding principles, investment protection agreements, property acquisition, external fund movement, and regulatory powers within these Acts. Criticisms and gaps within the Acts, such as the Minister's excessive power, inadequate provisions for protecting small economic zones and innovation sectors, and limitations in the Board's independence, are highlighted.

In chapter, we have provided a detailed examination of the challenges Zambia encounters in effectively utilizing FDI, showcasing the multifaceted issues surrounding infrastructure, legal frameworks, and absorptive capacity. Therefore, the conclusion is that the chapter aims to inform policy decisions and encourage discussions on enhancing FDI's role in Zambia's economic development by addressing these identified challenges.

CHAPTER 4

The extent to which the current legal framework addresses the impact of FDI on local industries, income distribution and social welfare.

4.0. Introduction

The foreign direct investment (FDI) landscape in Zambia stands at a crucial intersection of economic development and global integration. As the nation actively seeks to attract international capital, it becomes paramount to examine the efficacy of the legal framework governing FDI. This chapter will examine not merely the regulatory compliance but also the impact that it has specifically on local industries, income distribution and the social welfare. By examining the existing legal infrastructure, we endeavour to discern how well it safeguards the interests of local industries ensuring the thrive alongside international investment and to explore how income generated from FDI is distributed within the local populace, and the extent to which social welfare considerations are integrated into the regulatory framework. It sets a stage for a deeper exploration of Zambia's FDI regulations aiming to uncover both the strengths that encourage economic growth and the potential gaps that may hinder sustainable development.

4.1. Foreign Direct Investment (FDI) on Local Industries

Local industries refer to businesses or enterprises that operate within a specific locality, town or region, serving the needs of the local community. They include a wide range of business such as local service providers, small manufacturing firms, retail stores and agriculture producers.[49] These are often characterized by their close connection to the local community and the role they play in contributing to the economic and social fabric of the area by creating jobs, and providing goods and services tailored to meet the needs of the local population[50].

Foreign Direct Investment can have both negative and positive impacts on local industries. The positive impacts are indeed substantial as they allow for transfer of technology, advanced management practices and capital inputs that may not be achievable through financial investments or trade. The introduction of foreign expert and advanced technology into local enterprises acts as a

[49] Available at : https://lawinsider.com/about

[50] Ibid

catalyst for innovation. Through FDI local industries can gain access modern techniques that can potentially elevate their operational efficiency and product quality. This contributes to the overall competitiveness of the enterprise in the local industry and not merely the growth of the individual enterprises.

A noteworthy outcome of FDI is the creation of high-quality jobs. The demand for skilled and specialized labour increases as foreign investors establish or expand their operation, this positively impacts the local work force as it does not only address unemployment concerns but also improves the skills and employability of the local population. This can be either directly when locals are employed to fill various roles from production to management or indirectly by creating jobs through establishment of supply chains and ancillary services such as transportation of raw materials to the investors. Because of this local suppliers and service providers may experience increased demand leading to additional employment opportunities[51].

Beyond the micro-level impacts on individuals businesses and employment, FDI plays a pivotal role in integrating developing countries into global economy. The international trade links established through these investments pave way for local industries to participate in global markets. This exposure does not only broaden the reach of domestic products but also stimulates a more competitive business environment[52].

However, the realization of these positive impacts hinges on the effectiveness of potential challenges, these include regulatory frameworks that strike a balance between attracting foreign investment and safeguarding local interests. It is within this nuanced space that the true potential of FDI in uplifting local industries unfolds, requiring strategic planning and vigilant governance. The drawbacks or negative effects associated with FDI underscore the challenges that are faced in harmonizing integration of foreign and local businesses within the host country. These challenges can either be long term or short term.

The short challenges include innovation pressures, While FDI brings advanced technologies and management practices, the immediate implementation of these innovations may pose challenges for local companies. Adapting to new

[51] J Lindanda the effect of foreign direct investment on economic growth of developing countries (2017) British journal of economics, management and trade

[52] T Karombo Zambia diversifying FDI Available at https://gfmag.com/emerging-frontier-markets/zambia-diversifying

methodologies and technologies can require significant investment and time, creating a temporary gap between the capabilities of foreign and local firm. Another challenge is that it brings about Increased Competition into the local market, local businesses, especially those without the immediate capacity to compete globally, may face difficulties in adjusting to the new competitive landscape. This can potentially lead to short-term disruptions and market adjustments.

The long-term impact of FDI on local businesses includes the potential for a “crowding out” effect. This entails that as foreign enterprises expand, local firms might find it difficult to operate at an economically efficient scale. This phenomenon can lead to a concentration of market power in the hands of foreign entities, potentially limiting the diversity and resilience of the local business ecosystem[53]. The market power is determined by the market share that an enterprise has and this may lead to foreign investors being dominant and capable of controlling the trade in a relevant market. This may lead to foreign investors having control and Influence, the issue of foreign investors gaining substantial control over host country firms introduces complexities. Decisions made by foreign entities might prioritize their interests over the host country’s, leading to concerns about adverse selection and excessive leverage. Balancing the need for foreign capital with the imperative of maintaining control over critical sectors becomes crucial for long-term economic stability[54].

Zambia’s pursuit of economic reforms to encourage both domestic and foreign investment highlights the government’s recognition of the need for revitalization. However, the challenges in meeting the country’s full economic potential are apparent, and a delicate balance between fostering a business-friendly environment and safeguarding local industries is needed. For example ITBD of 2022 has not only provided for the Trade and Investment Development Fund but also widened the purpose of the fund per Section 38[55] for instance, the fund can be used to promote and support effective participation in local and

[53] J Lindanda the effect of foreign direct investment on economic growth of developing countries (2017) British journal of economics, management and trade

[54] G Chiyaba The components and determinants of FDI within firms; A case study of Zambia (2021) Department of economixs university of reading

[55] The Investment Trade And Business Development Act, 2022

international trade and investment exposition, fairs seminars, missions and other similar fora, this helps increase or raise the returns of an enterprise.

However, even though the ITBD provides for the promotion of a business it does not fully categorise the types of enterprises, for instance, whether the enterprise is Micro, Small, or Medium. The Act simply states that a minimum of $50,000 is required for an investment, this becomes hard especially with regards to employment because the investor may only provide employment to a handful of citizens depending on the type of enterprise.

The absence of specific provisions in Zambian laws particularly the Investment and Trade Business Act to protect local industries, coupled with the lack of incentives like import tariffs for manufacturing sectors, reflects a regulatory landscape that do not adequate safeguards for domestic businesses. The ad hoc implementation of import and export bans on agricultural staples, while aimed at protecting local producers and ensuring sufficient local supplies, diverges from the principles of free trade.

As Zambia strives for economic growth and attractiveness to investors, policymakers may need to reevaluate their approach to industry protection. Balancing the principles of free trade with strategic measures to nature local industries that can contribute to a more sustainable and inclusive economic development path. This could involve considering targeted incentives, regulatory frameworks, and trade policies that promote the growth and competitiveness of domestic businesses while encouraging foreign investment in a manner that aligns with the broader economic goals of the nation.

4.2. Income Distribution

Income distribution refers to how the total income earned within a country or a specific economic unit is divided among its residents or participants. It essentially analyzes how different segments of the population share the overall income pie. This distribution is often presented in percentages highlighting the income share of various groups, from the lowest to the highest earners. The benefits of distribution depend on the degree of equity and fairness associated with it, some of the benefits include Reduction of Poverty by ensuring that a larger proportion of the population has access to an adequate standard of living. Social Stability aimed at minimizing disparities that could lead to social unrest, when a significant portion of the population has access to economic opportunities, it can contribute to a more harmonious society. Economic Growth that can promote sustained economic growth as a broad base of consumers with purchasing power can stimulate demand for goods and services, driving economic activity. And Human Capital Development as individuals across different socio-economic backgrounds have better access to education and healthcare. This, in turn, can contribute to the development of a skilled and healthy workforce, benefiting the overall economy[56].

Unequal income distribution can lead to slower GPD growth, reduction income mobility, higher poverty rates, and greater usage of household debt. It can also impact economic performance, poverty levels, and overall societal well-being. High income inequality can be both a symptom and a cause of low economic mobility, and it is associated with various social and economic challenges. Understanding income distribution is crucial for policy makers and economists as it provides insights into the economic well-being of a population, the effectiveness of social policies, and the overall health of an economy. It is also a key factor in assessing the impact of taxation, government policies, and social programs on income inequality and poverty reduction[57].

Foreign direct investment without any doubt has a positive impact on the host state. However, there are some negative impacts on the income distribution such as Skill Disparities, this is as a result of the advanced technologies and managerial practices that FDI introduces in the host country, it entails that these advanced technologies benefit higher-skilled workers more than their lower-skilled workers. This leads to wage differences in that those with advanced skills may demand higher wages as compared to those without the advanced skill, contributing to a divergence income levels and potentially deepening existing inequalities. Another negative impact is the sectorial Disparities, FDI tends to concentrate in specific sectors, often those with higher growth potential or strategic importance. If these sectors experience substantial FDI while others do not, it can result in sectorial disparities in income distribution. This concentration may leave certain segments of the population, particularly in less-

[56] F Cingano (2014) Trends in Income Inequality and its Impact on Economic Growth, OECD social Employment and Migration Working Papers No 163.
[57] ibid

favored sectors, at a disadvantage. This may also have an impact on traditional industries that face competition from FDI-backed enterprises as they might experience challenges in maintaining competitive wages. This can affect workers in these industries, potentially leading to income disparities between sectors.

Furthermore, section 30(1)[58] of the act provides that an investor will be eligible for an incentive if they invest in a special economic zone or a business operating in a priority sector or rural area. This will lead to numerous negative impacts such as investor preferences, in that investors may prioritize areas with incentives, potentially neglecting regions that genuinely need economic development. And as a result there will be unequal distribution of economic benefits. Those living outside the designated areas may not enjoy the same economic opportunities and benefits, contributing to social and economic inequalities.

Additionally, this will lead to Urban-Rural Disparities, which means that investors may be more inclined to choose or invest in areas with incentives, leading to uneven development and income distribution between urban and rural regions. This will in turn lead to urban areas missing out on potential investments and job opportunities if the incentives primarily attract businesses to special economic zones or rural locations. This can contribute to overburdened urban infrastructure and a lack of economic diversification.

Addressing these negative aspects requires a holistic approach, including the implementation of policies that promote skill development across all segments of the workforce, ensure fair wages, and strategically diversify the sectors attracting FDI to avoid undue concentration. Policymakers need to balance the economic benefits of FDI with measures that promote equitable income distribution, fostering a more inclusive and sustainable economic landscape.

4.3. Impact on Social Welfare

Social welfare refers to a type of government support intended to ensure that members of a particular society can meet basic human needs such as food, shelter, and healthcare. It is comprised of organized public or private social services for the assistance of disadvantaged groups, including social work,

[58] The Investment Trade And Business Development Act, 2022

social insurance programs and social assistance programs social welfare systems provide assistance to individuals and families through programs such as health care, food stamps, unemployment compensation, housing assistance and child care assistance[59].

These initiatives help ensure that local people are able to meet their basic needs that support them with health care, nutrition, housing and other essential social services. The benefits of social welfare systems include providing a basic level of well-being through subsidized social services such as healthcare, education, infrastructure, vocational training and public housing. These programs are crucial for protecting the health and security of those most in need, including those living in poverty, older or retired individuals, those facing long-term injury or illness, young parents and unemployed individuals.

Foreign Direct Investment can have a significant impact on the social welfare of the host countries. Research indicates that FDI can contribute to the increase of social welfare by creating high-quality jobs, introducing modern production and management practices, stimulating technology transfer and access of local industries into global markets which can lead to increased exports fostering economic growth and subsequently improves the standards of living, positively impacting social welfare and social security improvements for the poor.

Additionally, FDI can lead to improvements in the quality of national capital, stimulated waged and employment, and contribute to poverty reduction. Studies also suggest that the impact of FDI on social welfare depends on the countries' human capital, reflecting their absorptive capacity as well as government expenses in consumption, political stability and the quality of technological infrastructures[60].

The result in gains for domestic welfare, although it may lead to a modest worsening of allocative efficiency due to higher markups by foreign firms. Some of these negative impacts include Skill Disparities, FDI can lead to skill-biased technological change, where higher-skilled workers benefit more from the advanced technologies introduced by foreign companies. This can exacerbate income inequality, leaving lower-skilled workers at a disadvantage. Another negative impact on the social welfare is Wage Differentials, while FDI creates

[59] Definition of social welfare Available at https://www.merriam-webster.com/dictionary/social%20welfare
[60] Understanding social welfare Available at https://onlinesocialwork.vcu.edu/blog/social-welfare-policy/

jobs, wage differentials between higher-skilled and lower-skilled positions may widen. The resulting income disparities can have implications for social welfare, potentially contributing to social unrest and discontent.

Additionally, FDI in industries with lax environmental regulations can lead to adverse environmental effects. Pollution, deforestation and resource depletion associated with certain investments can harm local ecosystems, affecting the well-being of communities and contributing to a decline in social welfare. These environmental degradations can led to health issues within local communities imposing additional burdens on social welfare systems.

The legal framework In Zambia does not provide for adequate protection of the social welfare of the local people. Section 6(2) of the Act[61] provides for investment protection and promotion. It entails that the investor shall agree on development matters relating to employment creation and technology transfer. The absence of details of specific details on how employment creation is to be achieved leaves room for interpretation and challenge in implementation. Investors might also exploit the lack of specific guidelines to fulfill employment requirements in a minimal or superficial manner. This could result in a situation where jobs are created but they may not necessarily be of high quality or in line with the intended economic development which would have a negative impact on the social welfare of the society.

The Act in most sections does not have an enforcement clause which makes it difficult for regulatory bodies to monitor and enforce compliance when the criteria are not clearly defined and to hold investors accountable for their actions.

Understanding and mitigating these negative impacts require proactive measures by host countries. Policymakers must implement regulations that ensure responsible business practices, enforce environmental standards, and promote inclusive economic policies to safeguard the well-being of local communities amid the influx of foreign investments.

[61] The Investment Trade And Business Development Act, 2022

4.4. Conclusion

In conclusion, addressing these challenges helps create a policy approach that Strikes the delicate balance between encouraging FDI for economic growth and safeguarding the interests of local businesses, income distribution and social welfare. This can be achieved by crafting regulations that foster fair competition, ensuring technology transfer benefits, and implementing measures that prevent the undue concentration of economic power in the hands of foreign entities. Policymakers must navigate these complexities to harness the positive aspects of FDI while mitigating its potential negative consequences for the country.

Chapter 4 Overview

The Extent to which the current legal framework addresses the impact of FDI on local industries, income distribution and social welfare.

Chapter 4 delves into an analysis of the existing legal framework concerning Foreign Direct Investment (FDI) in Zambia. It specifically scrutinizes the impact of this framework on local industries, income distribution, and social welfare. The chapter sets the stage for evaluating the effectiveness of the legal infrastructure in promoting economic growth while safeguarding local interests and social well-being.

4.0. Introduction

This section provides an overview of the significance of FDI within Zambia's economic landscape. It highlights the importance of examining not just regulatory compliance but also the impact on local industries, income distribution, and social welfare. The chapter aims to assess how well the legal infrastructure protects local industries' interests while ensuring the equitable distribution of income generated from FDI and considering social welfare aspects.

4.1. Foreign Direct Investment (FDI) on Local Industries

This part examines the positive and negative impacts of FDI on local industries. It acknowledges the substantial benefits such as technological transfer, job creation, and access to global markets. However, it also highlights challenges like innovation pressures, increased competition, and the potential "crowding out" effect that may disadvantage local firms. The absence of specific provisions protecting local industries and regulatory gaps within Zambian laws is underscored, emphasizing the need for a balanced approach to protect domestic businesses while attracting foreign investment.

4.2. Income Distribution

This section focuses on income distribution and its impact due to FDI. It acknowledges the benefits of equitable income distribution, such as poverty reduction, social stability, economic growth, and human capital development. However, it outlines negative impacts, including skill disparities, sectorial disparities, and urban-rural disparities that can widen income inequalities. The chapter critiques the lack of clarity in Zambian laws to protect local businesses and mitigate these disparities, suggesting a need for policy measures that ensure fair wages and strategic sectoral diversification.

4.3. Impact on Social Welfare

This segment explores the impact of FDI on social welfare. It acknowledges FDI's potential positive contributions to high-quality jobs, technology transfer, and poverty reduction. However, it highlights the negative impacts such as skill disparities, wage differentials, and potential environmental degradation due to lax regulations. The chapter points out the inadequacies in the legal framework regarding the protection of social welfare, emphasizing the need for regulations ensuring responsible business practices and environmental standards.

4.4. Conclusion

The conclusion reiterates the importance of addressing these challenges to strike a balance between fostering FDI for economic growth and safeguarding local interests, income distribution, and social welfare. It advocates for regulations that promote fair competition, responsible technology transfer, and measures to prevent the concentration of economic power in foreign entities' hands. Policymakers are encouraged to navigate these complexities to leverage the benefits of FDI while mitigating its potential negative impacts on the country.

CHAPTER 5
CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

5.1. CHAPTER 1

The introductory chapter sets the stage for an in-depth exploration of the lacuna in Zambia's legal framework governing Foreign Direct Investment (FDI). It highlights the deficiencies in the current provisions, emphasizing their limitations in harnessing the potential of FDI to stimulate sustainable economic growth and development in the country. The chapter outlines the purpose of the research, aiming not just to identify these gaps but to propose concrete legal reforms that could pave the way for a more conducive environment for FDI.

By scrutinizing the historical development of investment laws in Zambia and delving into the challenges faced, such as limited absorptive capacity and inadequate infrastructure, the chapter lays a strong foundation for the subsequent analysis. It sets forth a series of research objectives and questions that aim to dissect the shortcomings of the existing legal framework comprehensively.

Moreover, the chapter underlines the significance of the study in multiple dimensions. It emphasizes the practical implications for policymakers, the scholarly contributions to the existing body of knowledge on FDI, and the potential impact on Zambia's socio-economic landscape. By emphasizing the importance of rectifying the identified gaps and proposing reforms, the chapter elucidates how this research can bridge the disparity between FDI potential and the current legal framework.

In essence, this introductory chapter creates a roadmap for the entire study. It establishes the rationale for examining the legal deficiencies, outlines the objectives and questions guiding the research, and underscores the significance of addressing these gaps for Zambia's sustainable socio-economic development. It sets the tone for a comprehensive analysis aimed at propelling

Zambia towards maximizing the benefits of FDI and ensuring equitable growth and development.

5.2. CHAPTER 2

Chapter 2 provides a comprehensive assessment of Zambia's legal framework concerning Foreign Direct Investment (FDI), focusing primarily on the Investment Trade and Business Development Act (ITBDA). Through a critical analysis, this chapter highlights various complexities and deficiencies within the existing framework that significantly impact the country's ability to effectively utilize FDI, ultimately impeding its sustainable economic growth and development.

The evaluation reveals several key challenges inherent in the **ITBD**[62] these challenges include intricate application procedures and financial commitments that create bureaucratic hurdles, potentially discouraging potential investors. Moreover, the Act's approach linking incentives to possession of licenses introduces selectivity, potentially leading to disparities among businesses and discouraging a level playing field.

Furthermore, the imposition of high minimum investment thresholds acts as a barrier for Small and Medium-sized Enterprises (SMEs), hindering their growth and participation in economic initiatives. The lack of transparent criteria for imposing conditions on licenses or permits raises ambiguity, affecting investor confidence and transparency.

The fixed five-year validity period for licenses, coupled with the risk of void status if not renewed, presents potential business disruptions and unintended economic consequences. Additionally, the Act's concentration on specific investment categories and exclusionary eligibility criteria may limit investment diversity, favouring larger corporations and potentially stifling overall economic adaptability.

[62] Act No.18 of 2022

The chapter emphasizes the urgent need to address these deficiencies within Zambia's FDI legal framework. Streamlining application processes, enhancing transparency, offering flexibility in validity periods, reducing investment thresholds, and broadening eligibility criteria emerge as crucial reforms. Striking a balance between regulatory oversight and investment facilitation is pivotal to creating an environment that not only attracts investors but also fosters diversified economic growth, innovation, and employment.

Ultimately, rectifying these shortcomings becomes imperative for Zambia as it aims to position itself as an attractive investment destination. Aligning regulatory practices with the country's developmental goals can unlock the full potential of FDI, driving economic progress, bolstering competitiveness, and improving the overall well-being of its citizens. Through necessary reforms and a more conducive investment climate, Zambia can pave the way for sustained economic growth, diversification, and inclusive development.

5.3. CHAPTER 3

Chapter 3 delves into the challenges faced by Zambia concerning the effectiveness of Foreign Direct Investment (FDI) and explores the subsequent impact these challenges have on the country's overall FDI efficacy. The chapter begins by examining the current state of FDI in Zambia, highlighting its significance to the national economy. It then proceeds to identify and discuss various obstacles that hinder the effective utilization of FDI, encompassing issues ranging from infrastructural deficiencies, regulatory hurdles, to governance and political stability concerns.

Among the prominent challenges outlined, one significant hurdle highlighted is the limited absorptive capacity within the Zambian context. The chapter emphasizes the essential role of absorptive capacity in leveraging external knowledge for innovation and growth, identifying infrastructure, institutional quality, and policy stability as critical factors influencing its effectiveness. Recommendations are made to enhance these aspects to fully harness the benefits of FDI in Zambia.

Inadequate infrastructure emerges as another critical challenge that impedes FDI effectiveness in Zambia. The chapter underscores the need for substantial improvements in the country's infrastructure, particularly in areas such as transportation, power generation, health, and education. The lack of reliable infrastructure not only deters investment but also limits the growth potential of Special Economic Zones (SEZs), hindering their competitiveness on a global scale.

Additionally, the chapter scrutinizes the current legal provisions governing FDI in Zambia, notably the Zambia Development Agency Act (ZDA) and the Investment and Trade Business Development Act (ITBD). It examines the guiding principles, functions, and structures outlined in these Acts, identifying certain shortcomings such as the imbalance of power, limitations in enforcing policies, and the lack of independent decision-making capacity within the governing bodies.

The chapter concludes by highlighting critical areas where the legal framework may fall short, particularly in empowering oversight bodies and ensuring the impartial implementation of policies. It underscores the need for reforms to empower agencies, balance powers, and promote independence within decision-making structures to ensure effective FDI management and utilization in Zambia.

By shedding light on these multifaceted challenges and shortcomings in the legal framework, the chapter aims to inform policy discussions and decision-making processes. It emphasizes the urgent need for reforms in infrastructure development, absorptive capacity enhancement, and legal provisions to create a conducive environment that maximizes the potential benefits of FDI in driving sustainable economic growth and development in Zambia.

5.4. Chapter 4

Chapter 4 scrutinizes the existing legal framework governing Foreign Direct Investment (FDI) in Zambia and its specific impacts on local industries, income distribution, and social welfare. The examination aims to unravel how well the legal infrastructure safeguards local interests alongside international investment and assesses the distribution of FDI-generated income within the local population, considering the integration of social welfare considerations within the regulatory framework.

The chapter commences by detailing the potential impacts of FDI on local industries, highlighting both positive and negative effects. FDI's positive contributions include technology transfer, job creation, and increased competitiveness in local industries, fostering innovation and growth. However, challenges such as increased competition, innovation pressures, and long-term effects like 'crowding out' and market concentration underline the need for a balanced regulatory environment.

Concerning income distribution, the chapter illustrates how FDI can exacerbate income inequalities through skill disparities, sectorial imbalances, profit repatriation, and limited inclusive growth. The analysis identifies shortcomings in the legal framework, particularly the absence of direct provisions addressing income distribution, potentially allowing undue wealth concentration outside the host country's economy.

Moreover, the impact of FDI on social welfare is examined, demonstrating its potential benefits such as job creation, technology transfer, and poverty reduction, juxtaposed with negative effects like skill-biased technological change, widening wage differentials, and environmental degradation. The legal framework's inadequacies in safeguarding social welfare are underscored, particularly in terms of employment creation and enforcement mechanisms to ensure compliance with social welfare protection.

In conclusion, the chapter advocates for a balanced policy approach that fosters fair competition, encourages technology transfer, and prevents the concentration of economic power in foreign hands. It urges policymakers to navigate complexities in the legal framework to harness the positive aspects of FDI while mitigating its potential adverse consequences for local industries, income distribution, and social welfare in Zambia. These measures aim to strike a balance between promoting FDI for economic growth and safeguarding local interests and social welfare.

5.5. RECOMMENDATIONS

5.5.1 Chapter 2

Simplify and streamline application procedures for investment licenses to reduce bureaucratic hurdles and encourage potential investors.

Increase transparency in the criteria for licenses, ensuring clarity in conditions and requirements for investors to boost confidence and transparency in the system.

Consider offering more flexible validity periods for licenses to prevent potential business disruptions and provide stability for investors.

Lower the minimum investment thresholds to encourage Small and Medium-sized Enterprises (SMEs) to participate in economic initiatives and foster their growth.

Broaden eligibility criteria for incentives and licenses to promote diversified investment opportunities and create a level playing field for businesses.

5.5.2. Chapter 3

Allocate resources to improve infrastructure, institutional quality, and policy stability to enhance the absorptive capacity of the country and leverage external knowledge for growth.

Prioritize substantial improvements in transportation, power generation, healthcare, education, and other critical infrastructure areas to attract and sustain FDI.

Undertake reforms in legal frameworks governing FDI to empower oversight bodies, balance decision-making powers, and ensure impartial policy implementation.

5.5.3. Chapter 4

Develop a balanced regulatory environment that fosters fair competition, encourages technology transfer, and prevents the undue concentration of economic power in foreign entities.

Create specific provisions in the legal framework to address income distribution, preventing undue wealth concentration outside the host country's economy. Strengthen the legal framework to ensure compliance with social welfare protection, particularly in terms of employment creation and enforcement mechanisms.

These recommendations, if implemented, can significantly improve Zambia's legal framework concerning FDI, fostering a more conducive investment climate, enhancing economic growth, and promoting sustainable development while safeguarding the interests of local industries, income distribution, and social welfare.

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L400B – DIRECTED RESEARCH (OBLIGATORY ESSAY)

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SUPERVISOR: Mr. K. Ndhlovu TOPIC: Evaluating the Lacunas in The Legal Framework for Foreign Direct Investment in Zambia

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