

ZIMBABWE



1. Foreign Direct Investment

1.1. What are the specific governmental and regulatory approvals required for foreign direct investment? Please detail any trigger thresholds, relevant authorities, and typical timing for obtaining these approvals.

The full extent of the approvals required would depend on the nature of the investment and the sector being invested in. Common to all investments, however, is a requirement that a foreign investor must apply for and secure an Investment Licence from the Zimbabwe Investment Development Agency (“ZIDA”) established in terms of the Zimbabwe Investment Development Agency Act [Chapter 14:38]. ZIDA is a one-stop shop in respect of all investments in the country as it houses a number of government ministries responsible for all other approvals. The investment licence will, in greenfield projects, remove the need to procure Exchange Control Approval from the central bank, which is essential for a foreign investor to hold shares in a local company. The Licence will provide protections and incentives for such investors and would entitle the investors to appoint senior expatriate staff to oversee the investment.

In cases in which the foreign investor is investing in a brownfield project which would result in a dilution of the local shareholders, the dilution would need to be sanctioned by the Reserve Bank of Zimbabwe through a separate application made to the Reserve Bank of Zimbabwe. The application is made through a local commercial bank which is an authorised dealer. ZIDA will not issue the Investment Licence in the absence of approval from the Reserve Bank of Zimbabwe.

If a foreign investor is investing in the Reserved Sectors of the economy, which, in terms of the Indigenisation and Economic Empowerment Act [Chapter 14:33] are transport (passenger buses, taxis and car hire services), retail and wholesale trade, hair salons, advertising agencies, estate agencies, grain milling, bakeries, tobacco grading and packaging and artisanal mining, a specific authorisation or permission is required from the Minister responsible for Trade and Commerce on written application through the National Indigenisation and Economic Empowerment Unit. This approval will typically take a few weeks.

A proposed acquisition may be regarded as a notifiable merger requiring approval from the Competition and Tariff Commission (“CTC”) in terms of the Competition Act [Chapter 14:28]. In terms of the Competition (Notification of Mergers) Regulations, 2020 as published in Statutory Instrument 55 of 2022, the threshold for a notifiable merger which applies to merging parties is those whose combined annual turnover in or from Zimbabwe is valued at or more than US\$ 1 200 000.

A transaction may also trigger COMESA Competition Commission (CCC) approval. CCC approval is triggered if any of the merging parties or the target has operations in two or more of the member countries and its revenue or asset value is at or above the set threshold. Merging parties are required to notify the COMESA Competition Commission if either their combined annual turnover or combined assets in the Common Market is at least US\$50 million and where each of at least two parties has an annual turnover or asset value in the Common Market of at least US\$10 million.

In addition, the investor would need to secure sector-specific approvals and permits to enable one to operate. Such permits and approvals would be necessary for a business in such a sector, regardless of whether it is foreign-owned or not to operate. By way of example, a mining company would be required to secure the mining title, ore movement permits and environmental permits and approvals before engaging in mining operations.

The application for the Investment Licence requires a submission fee of US\$500.00 and once approved, the licence will cost US\$4500.00.

1.2. What are the most common types of corporate legal entities established for foreign investment? What internal corporate governance structures are typically used? Are there any tax or legal advantages for specific types of entities?

The most common type of legal entities are companies limited by shares, which can either be a private or public company, which are all regulated in terms of the Companies and Other Business Entities Act [Chapter 24:31]. A private company limited by shares is the most preferred vehicle for foreign investors. It is the simplest to register and run. It can have up to 50 members and must have at least 2 directors one of whom must be ordinarily resident in Zimbabwe. A public company limited by shares can also be incorporated for larger investments especially in cases in which it may be intended at some future date to list the company on an exchange. It can have more than 50 members.

As an alternative to the incorporation of a new entity in Zimbabwe, a foreign investor may elect to register their foreign entity as a branch in Zimbabwe. The requirements for the incorporation of a new local company or the registration of a branch of the foreign entity are different, however, in either case, the company must have a physical place of business in Zimbabwe and must have a person locally resident in Zimbabwe that will see to the management of the company in Zimbabwe.

The tax regime is similar for both options. The company or the branch would be liable to pay corporate income tax on revenue generated in Zimbabwe. In addition, on sales,

Value Added Tax would arise. The rate for Value Added Tax would depend on the goods or services being traded. When acquiring mineral rights, the company or branch would be liable to pay special capital gains tax at the rate of 20% of the transaction value. Customs and Excise duty would also apply on imports unless a rebate is granted. However, there are several tax incentives available in the mining industry. See the section on incentives for value addition below. The specific circumstances of each transaction or case would determine the actual taxes that arise, having regard to the double taxation agreements in place, if any.

1.3. What is the procedure for the registration and incorporation, including estimated timelines, costs, and any streamlined processes for foreign investors?

For the registration and incorporation of a company, one would need to check for the availability of the proposed company name by completing the necessary form and submitting it online. Ideally, three (3) names should be submitted. Once approved, the following information must be submitted to enable registration:

- i. Five proposed company names in order of preference. Abbreviations are not allowed to start a company name.
- ii. At least 2 (two) full names of directors as they appear on the passport. You are also required to indicate any former names.
- iii. ID numbers of directors
- iv. Date of birth of directors
- v. Physical addresses of directors
- vi. Phone numbers of directors
- vii. Email addresses for directors
- viii. Share distribution percentages e.g. A- 80%, B- 20%. If shareholders are different from directors, details must be provided to include full names, passport numbers, phone numbers, and email addresses.
- ix. Company address
- x. Business email address
- xi. Objects of the company, that is, the business(s) which the company intends to do, e.g. transport business

The statutory fees for the registration of a company, including name search, is currently set at a total of US\$45.00. This excludes the amount payable to the agent for registering the company on your behalf.

If intending to register as a branch, Section 241 of the Companies and Other Business Entities Act (Chapter 24:31) ("COBE") mandates that every foreign company which intends to establish a place of business in Zimbabwe submit certain documents to the

Minister of Justice, Legal and Parliamentary Affairs or any other Minister appointed by the President for registration of that company in Zimbabwe. An application fee of US\$500.00 is payable with the process taking approximately four- six weeks. Applications for the incorporation of a new entity are made to the Registrar of Companies on submission of the requisite documents.

1.4. Are there any special economic zones in your jurisdiction? What are the specific benefits and advantages that these zones offer to businesses operating within them?

Yes. Section 31 of the Zimbabwe Investment and Development Agency Act [Chapter 14:38] provides for the establishment and regulation of “special economic zones” (“SEZs”) and are more comprehensively regulated in the Zimbabwe Investment and Development Agency (Special Economic Zones) Regulations, 2023 which were published in Statutory Instrument 226 of 2023 (“the SEZ Regulations”).

These are geographically delimited areas which offer special benefits for investors physically within the zone through having their own custom rules and streamlined procedures. Incentives for SEZs include zero-rated corporate income tax for the first 5 (five) years of operation with a corporate tax rate of 15% applying thereafter, a special initial allowance of 50% of the cost from year one and 25% in the subsequent two years, specialized expatriate staff are taxed at a flat rate of 15%, exemption from non-residents withholding tax on fees on services that are not locally available, exemptions from non-residents withholding tax on royalties, exemptions from non-residents withholding tax on dividends and a 100% rebate on customs duty for all imported equipment, machinery and raw materials.

It must be noted that the Government of Zimbabwe has now removed SEZ status for mining projects.

An application for SEZ designation is made to ZIDA in the prescribed form together with the prescribed fee, which is currently set at US\$1 000.00.

1.5. Are there any specific localization requirements for foreign direct investment in various industries such as minimum ratios of local employees, local procurement policies, or community development agreements?

Generally, there is no special quota for local versus foreign labour. The qualifying requirement is that the skills that are being imported are not available in Zimbabwe. It is, therefore, common that specialized labour in respect of certain projects is invariably foreign while the locals would man the lower-end jobs. Where an investor has an investment licence, an investor is entitled to appoint, regardless of their nationality, any individual who is a qualified person as a senior manager, technical and operational expert or advisor with respect to the investment in accordance with the laws of Zimbabwe.

There may be some sector specific laws and policies which may regulate the employment of a foreign national.

1.6. What are the requirements and procedures for obtaining work visas for foreign employees? Include details on processing times, renewal options, and permanent residency possibilities.

It is illegal for a person to engage in employment in Zimbabwe unless he is in possession of a valid employment permit or other authority in terms of sections 10 and 21 of the Immigration Regulations contained in Statutory Instrument 195 of 1998 passed in terms of the Immigration Act (Chapter 4:02).

The most common permit for an employee in our jurisdiction is a temporary employment permit which is valid for one year and which can be renewed for an aggregate of five years. It allows the foreign employee to be employed by a specified employee as determined within the permit and will also allow the holder of the temporary permit's spouse and children to enter and remain in Zimbabwe for the five-year period. It takes a period of between 21- 28 days for the processing of a temporary employment permit upon submission of the requisite documents and application fees. In order to apply for the temporary work permit, the following are required:

- i. fully completed Residence permit application form (I.F 5);
- ii. Temporary Employment Application form;
- iii. Application letter requesting for TEP;
- iv. Certified passport;
- v. Passport-sized photos certified as a true likeness of the applicant;
- vi. Curriculum Vitae;
- vii. Contract of employment;
- viii. Notarized academic and professional certificates, if not in English, certified translation;
- ix. Statutory non-refundable fee of US\$500 and \$300/dependent;
- x. Radiological certificate;
- xi. Advertisement in a local newspaper for the position;
- xii. CV for shortlisted candidates including their contact details;
- xiii. CVs and qualifications of persons identified to do understudy;
- xiv. Police clearance from country of origin/last permanent residence;
- xv. Company documents (CR6, CR14, ZIDA licence, Memorandum and Articles of Association, ZIMRA tax clearance).

For an investor residence permit, the following are the requirements:

- i. Fully completed Residence permit application form (I.F 5);

- ii. Company documents (CR6, CR14, ZIDA licence, Memorandum and Articles of Association, ZIMRA tax clearance)
- iii. Application letter addressed requesting for residence permit;
- iv. Certified passport;
- v. Certified 2 Passport photos;
- vi. Project proposal;
- vii. Police clearance from country of origin/last permanent residence;
- viii. Radiological certificate;
- ix. Banking history from country of origin /last permanent residence;
- x. Proof of funds available for transfer;
- xi. Proof of equipment to be imported;
- xii. Copies of passports for other foreign shareholders involved;
- xiii. List of expatriates and local employees;
- xiv. Statutory non-refundable fee of US\$500 and \$300/dependent;

1.7. Could you detail any exchange control restrictions affecting the remittance of capital, profits, and dividends from foreign investments? Please provide examples of how any restrictions have impacted foreign investments.

On investment, there is no limitation on the amount of foreign currency brought into Zimbabwe. This includes investment in the form of cash and equipment. Upon divestment, an investor can repatriate the full invested capital, provided it came through formal banking channels. It is important therefore that the initial investment be brought into the country and accounted for properly in the banking system.

It is prohibited for any Zimbabwean resident may make any payment outside Zimbabwe or incur any obligation to make a payment outside Zimbabwe without exchange control approval.

An investor can fully repatriate dividends from their investment subject to compliance with the remittance guidelines. The dividend must be from profits earned in that year and not from retained earnings from previous years. The amount must be remitted within 12 months from the balance sheet date.

Further, a person who receives or is entitled to receive any of the following amounts shall have the right to remit the whole or any part of the amount concerned out of Zimbabwe through an authorised dealer:

- in the case of an individual, money held by him in a foreign currency account;

- any dividend or interest on a security acquired by that person from money held in a foreign currency account;
- any amount which the recipient has the right to remit out of Zimbabwe in terms of any enactment or any convention, treaty or agreement to which the Government of Zimbabwe is a party.
- The authorised dealer will be able to process these remittances with approval from the exchange control authority.

2. M&A

2.1. What are the specific governmental and regulatory approvals required for M&A transactions in your jurisdiction? Please detail any trigger thresholds, relevant authorities, and typical timing for obtaining these approvals.

A proposed acquisition may require CTC and/or COMESA approval, as discussed under 1.1 above. The threshold for a notifiable merger which applies to merging parties is those whose combined annual turnover in or from Zimbabwe is valued at or more than US\$ 1 200 000. Merging parties are required to notify the CCC if either their combined annual turnover or combined assets in the Common Market is at least US\$50 million and where each of at least two parties has an annual turnover or asset value in the Common Market of at least US\$10 million.

Depending on the sector, the merger may require additional requirements. For instance, certain operations holding specific licences may not transfer them or change control without the relevant regulatory authority's approval. A good example would be a licenced petroleum company.

2.2. Are there specific merger control or antimonopoly regulations that apply to M&A transactions? Please provide details such as thresholds that trigger these regulations, the authority responsible for oversight, and the typical timeline and process for obtaining necessary approvals.

The CTC is empowered in terms of section 28 of the Competition Act (Chapter 14:28) to investigate any restrictive practice, mergers and monopoly situations if it believes such restrictive practice or monopoly is already in existence or may come into existence. There is no specific threshold. However, this is more geared towards ascertaining whether any merger, business arrangement or method of trading does not create a monopoly or a restrictive practice which would hamper competition.

3. Mining

3.3. What are the primary minerals mined, and where are the major mining areas? Are there recent developments affecting gold and copper mining in your jurisdiction?

The main minerals mined in Zimbabwe are:

- Gold is prevalent in all the major provinces of the country, with the major mines found in Bindura, Kadoma, Shamva, Chegutu, Mazowe, Penhalonga and Gwanda;
- Lithium, which is mainly found in Goromonzi, Bikita and Mberengwa;
- Coal, which is found in Hwange and Binga;
- Chrome, which is mainly found in Shurugwi, Zvishavane and Mashava;
- Platinum, which is mainly found in Ngezi, Shurugwi and Zvishavane;
- Diamond, which is mainly found in Marange and Zvishavane;
- Black granite, which is mainly found in Mashonaland East province;
- Nickel, which is mainly found in Bindura and Shangani; and
- Copper is mainly found in Mhangura.

There are no recent developments affecting gold mining in Zimbabwe. As far as copper is concerned, with effect from the 29th of December 2023, it was declared a strategic mineral. The effect is that any person wishing to mine copper may only obtain in relation to it a special mining lease or special grant; and must demonstrate to the satisfaction of the Minister the capacity and the intention to invest, during the subsistence of the special mining lease or special grant or such shorter or other period as may be specified in the agreement between the person concerned and the Minister, a sum equivalent to at least US\$100 million (or such lesser or greater sum as the Minister may prescribe generally or in relation to a specific declaration of a strategic mineral).

3.2. What laws and regulations oversee mining, and when were they last updated? Which agencies enforce mining laws, and what are their powers?

The main laws and regulations affecting mining are as follows:

- Mines and Minerals Act [Chapter 21:05], which was last updated on 29 December 2023;
- Environmental Management Act [Chapter 20:27], which was last updated in 2016;
- Gold Trade Act [Chapter 21:03], which was last updated in 2014;
- Base Minerals Export Control Act [Chapter 21:01], which was last updated in 2001;
- Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04], which was last updated in 2016;
- Precious Stone Trade Act [Chapter 21:06], which was last updated in 2014;
- Mining (General) Regulations, 1977, which were last updated in 2022;
- Mining (Management and Safety) Regulations, 1990, which were last updated in 1999;

- Mining (Health and Sanitation) Regulations, 1995, which were last updated in 1997;
- Mines and Minerals (Custom Milling Plants) Regulations, 2002, which were last updated in 2011;
- Environmental Management (Environmental Impact Assessment and Ecosystems Protection) Regulations, 2007, which were last updated in 2011; and
- Environmental Management (Control of Alluvial Mining) Regulations, 2014, which were last updated in 2021.

The following agencies enforce mining laws and have the following powers:

- The President of the country. He has specific responsibilities reserved for him in the granting and withdrawal of certain mining rights, especially relating to coal, oil and gas
- The Minister and the Ministry of Mines and Mining Development Secretary have various responsibilities in the mining industry, including issuing certain mining titles, licences, approvals, and orders under some of the Acts listed above.
- The Mining Affairs Board (“MAB”) is responsible for granting certain mining rights, the withdrawal or cancellation of such rights, the approval of certain agreements and transactions in the mining sector, and making recommendations to the Minister and/or the President concerning the granting or withdrawal of certain mining titles.
- Mining Commissioners are now referred to as Provincial Mining Directors (“PMD”). The Mines and Minerals Act has not yet been amended to record the change in title. They are responsible for issuing mining titles within their mining districts to the extent that such power is not reserved for the Minister, the MAB or the President.
- The Environmental Management Agency (EMA) regulates the environmental aspects of mining and grants the environmental impact assessment certificates required before mining projects can commence.
- The National Employment Council for the Mining Industry deals with employment and related matters in the mining industry.
- The Minerals Marketing Corporation of Zimbabwe (MMCZ) is responsible for marketing minerals in Zimbabwe.

3.3. What types of mining rights and titles exist for prospecting, exploration, and mining, and what are their application requirements, rights, obligations, durations, and renewal processes?

To conduct prospecting or exploration, one requires a Prospecting Licence, an Exclusive Prospecting Order (“EPO”) (which the government have renamed Exclusive Prospective Licences (EPL)), or a Special Grant for prospecting on reserved ground.

- A permanent resident of Zimbabwe or any duly appointed agent of such person may apply to a PMD for a Prospecting Licence. The applicant must be above the

age of 18 years and must state his full name, permanent postal address and such other information as the PMD may require. The rights of the holder of a Prospecting Licence must where the holder is not an approved prospector be exercised only by an approved prospector appointed by the holder in writing. A Prospecting License is valid for two years and cannot be transferred. Every holder of a prospecting licence is entitled to the right of prospecting and searching for any minerals, mineral oils and natural gases on land open to prospecting and the right of pegging 1 block of precious metal claims or 1 block of precious stones claim or 1 block of base mineral claims.

- Exclusive Prospecting Order (EPO) is an exploration license given to someone interested in exploring or searching for minerals on a large area of land. An application for an EPO is made to the Mining Affairs Board ("MAB). The MAB forwards its recommendations in respect of the applications to the Minister of Mines and Mining Development. Approval or refusal of the application for an EPO is, however, done by the President. The rights granted under an EPO may not be ceded. However, the Minister, on the recommendation of the MAB and on such terms and conditions as the MAB may recommend, may permit a concession holder to cede or assign such rights in circumstances considered by the MAB to be special. An EPO is valid for a period of 3 years. However, the period may be extended by the Minister on the recommendation of the MAB for a further period or periods not exceeding three years in full. An EPO entitles the holder to prospect or peg and register any mining location or be issued with a special grant in respect of coal, mineral oils or natural gases. The government moved in April 2024 to suspend the issuing of new Exclusive Prospective Orders (EPO) through a directive. These would be replaced by Exclusive Exploration Licences (EPL), which will only be issued to deserving entities with a demonstrable past history of exploration. The renewal of the existing EPOs will also be subject to the presentation of evidence of exploration work done under the existing EPO. There has been concern that most of the EPOs were acquired for speculative purposes with no exploration work being done. The size of the land to be the subject of the EPL will also be reduced. The legislative framework for this is still, however, to be changed and refers to the EPOs as described above.
- A special grant for prospecting operations is issued by the Secretary upon application by any person. It is issued in respect of a defined area situated within an area which has been reserved against prospecting or pegging. The holder of a special grant has the exclusive right of prospecting within the area of the special grant on all ground which is open to prospecting on the date on which the special grant is issued. A special grant for prospecting operations may be renewed.

There are four (4) types of mining licenses or titles that a prospective miner can obtain to do mining activities in Zimbabwe, namely Certificate of Registration, Special Grant, Mining Lease, as well as Special Mining Lease.

- When someone has discovered a mineral after prospecting, he or she can make an application for registration of a claim or blocks of claims. The application must

be accompanied by the prescribed fee and documents. Once that application is successful one is issued with a Certificate of Registration of a Block of Claims. A Certificate of Registration is issued by the PMD under whose area the area to be mined falls. An ordinary block for precious metals, for example, gold, has 10 hectares in extent or 10 claims maximum. A normal Block of claims for base metals is 25 hectares in extent. A Special Block for base metals is above 25 hectares and can be up to 150 hectares. A certificate of registration may be cancelled if one does not comply with the Mines and Minerals Act.

- An application for a mining lease is done by the holder of a registered mining location or of contiguous registered mining locations. The application is made in writing to the PMD for the issue to the applicant of a mining lease in respect of a defined area within which such mining location or locations are situated. The application must include the prescribed information. An application for a mining lease should be submitted to the MAB by the PMD, together with any report he may wish to make on the application. The MAB may provisionally approve the application if it is satisfied that the application has reasonable prospects of success. Mining rights of holders of mining leases include the exclusive right of mining any ore or deposit of any mineral which occurs within the vertical limits of the area covered by his lease; and the exclusive right within the vertical limits of the area covered by his lease of mining any ore or deposit of any other mineral discovered within such area after he has notified the PMD of such discovery. Cancellation of a mining lease or a fine may be imposed for failure to comply with the terms and conditions of the mining lease.
- A Special Mining Lease is ideal for large-scale miners or foreign investors. An application for a special mining lease is made by a holder of one or more contiguous registered mining locations who intends to establish or develop a mine, and investment in the mine will be wholly or mainly in foreign currency and will exceed one hundred million United States Dollars in value, or the mine's output is intended principally for export. An application for a special mining lease may be made in writing to a PMD in respect of a defined area within which the applicant's mining location or locations are situated. From the PMD, the application goes to the MAB. The MAB deliberates on the application and makes its recommendations to the Minister. The Minister, having considered the documents forwarded to him by the MAB, together with his or her own recommendations, submits them to the President. It is the President who authorizes the Minister to issue a special mining lease in accordance with the MAB's recommendations or on such other terms and conditions as the President may direct. A special mining lease is not issued for a period exceeding 25 years, but provision may be made for its renewal by the Minister with the President's approval for periods not exceeding 10 years, having regard to the life of the mine concerned and the circumstances then prevailing.
- A special grant is a type of a mining title usually issued on reserved ground and it is given with special terms and conditions attached to it. Part XIX of the Mines and Minerals Act deals with special grants for non-energy minerals. The Secretary is the one who issues this form of title to any person either for prospecting or mining. A

special grant is given upon a defined area that has been reserved against prospecting or pegging.

- Part XX of the Mines and Minerals Act deals with special grants for coal, mineral oils and natural gases. A person who wishes to mine such minerals makes an application to the MAB, and the application must include: full information as to his financial status, particulars of any guarantees that may be required for the performance of his obligations under the special grant, information whether the application relates to coal, mineral oils or natural gases, and if the applicant is a company, the full names and nationality of each director and the full names by which those directors have at any time been known in any part of the world. The MAB considers the application and thereafter makes a report to the Minister together with its recommendations. The Minister submits the report and recommendations of the MAB made to him to the President, who may refuse the application or authorize the Minister to issue a special grant on such terms and conditions as he may fix. If a grantee contravenes the terms and conditions attached to his special grant, the President may cancel such grant.

3.4. Please outline the current regulatory framework governing the processing, refining, and beneficiation of mined minerals in your jurisdiction

- Are there any restrictions on the export of raw or processed minerals?

- Are there any incentives for adding value locally through processing or beneficiation?

Under the Base Minerals Export Control Act [Chapter 21:01], the Minister is empowered to put in place rules regulating the export of base minerals. In July 2022, the Minister issued an order banning the exports of unprocessed granite through the Mines and Minerals (Prohibition Order of Exportations of Unprocessed Granite Notice, 2022). A further statutory instrument was put in place banning the export of un-beneficiated lithium through Statutory Instrument 5/2023. In terms of this Order, a written permit issued by the Minister of Mines and Mining Development is required before one can export un-beneficiated base mineral ores. In order to obtain a permit to export unbeneficiated lithium, the following requirements are mandatory: the exporter must be operating an Approved Processing Plant (APP) or has a permit to operate an APP; the exporter must be an individual who is or partnership whose members are all Zimbabwean citizens or a corporate entity the ownership of which is held exclusively by Zimbabwean citizens; and prior concurrence of the President is required.

In addition, no permit for the export of beneficiated lithium shall be granted unless the applicant has capacity to process lithium ores to the required level of beneficiation (that is up to 3% or more lithia content for spodumene and 2.5% or more lithia content for petalite and lepidolite) and the selling price for the export of the beneficiated lithium is not less than that set by the Minerals Marketing Corporation of Zimbabwe from time to time.

The Order also deals with controlling the movement of lithium ores within the country. The lithium may only be moved to and sold to an Approved Processing Plant (APP).

Transportation of lithium ore requires a lithium movement permit. The lithium ores cannot be stored anywhere except at the mining location or the premises of an approved APP. In order to obtain an APP Permit one must apply to the Minister of Mines demonstrating the capacity to process and beneficiate lithium bearing ores. For a lithium movement permit, one needs to apply to the Minister of Mines demonstrating the capacity to transport lithium bearing ores.

The export of minerals is done through the Minerals Marketing Corporation. According to the Minerals Marketing Corporation of Zimbabwe Act, no person other than the Corporation shall export any mineral from Zimbabwe except in terms of a contract negotiated by the Corporation on behalf of the seller or when authorised to do so by the Corporation subject to such terms and conditions as the Corporation may impose. The export of gold is also restricted as this is the sole responsibility of Fidelity Printer.

Various incentives are available for investors in the mining industry who add value through beneficiation, for example:

- Beneficiated Lithium Exports are zero rated on Value Added Tax;
- The investor can apply and obtain National Project Status, which accords the investor with a duty-free window for the importation of equipment, a tax holiday and an exemption from non-resident tax on fees payable in respect of any services relating to the project;
- The investor can also apply to have the project classified as a Special Economic Zone. The status brings:
 - i. Zero rated corporate income tax for the first 5 years of operations with a corporate tax of 15% applying thereafter;
 - ii. 100% rebate on customs duty for all imported equipment, machinery and raw materials;
 - iii. Specialised expatriate staff will be taxed at a flat rate of 15%;
 - iv. Special Initial allowance of 50% of the cost from year one and 25% in the subsequent two years;
 - v. Exemption from non-residents withholding tax on fees for services that are not locally available;
 - vi. An exemption from non-residents tax on royalties
 - vii. exemptions from non-residents withholding tax on dividends;
 - viii. a 100% rebate on customs duty for all imported equipment, machinery and raw materials
 - ix. zero-rated Capital Gains Tax;
 - x. inputs which include raw materials imported for use by companies set up in the SEZs, are imported duty-free;

- xi. fully deductible expenditure on expenditure related to petroleum production activities;
- xii. Exemption from Exchange Control authority to move funds for approved activity, in and out of an SEZ; and
- xiii. Exemption from Exchange Control approval to borrow funds for use in approved activity from any bank, building society, financial institution or other source situated outside of the SEZ but within Zimbabwe.

- In addition, there is no restriction on the amount of foreign currency brought into Zimbabwe.
- Investments of more than US\$100 Million qualify for Special Mining Lease, which allows investors to negotiate for favorable concessions for example income tax on mining operations is levied at 15% for Special Mining Lease holders.

3.5. How should due diligence be conducted on mining titles within your jurisdiction? Is it necessary to visit the local mining authority for due diligence purposes, or can an online system be utilized?

For due diligence purposes, one needs to visit the local mining authority, such as the PMD or the Secretary. The system is at present such that an online search is not possible. One would, therefore, need to have copies of the mining title that is subject to the due diligence and then cross-check with the relevant office in which the title is registered in order to verify the existence of the title and its status.

3.6. Can mining rights or titles be transferred, and under what conditions or restrictions? Are there any associated taxes?

A certificate of registration may be transferred. When a registered mining location or any interest therein is sold or otherwise alienated, the seller or person who so alienates shall notify the PMD of the transaction within 60 days of the date of the transaction. The seller shall provide the following information to the PMD: the name of the person to whom such location or interest is sold or otherwise alienated; the amount of the valuable consideration, if any, agreed upon; and the date of the transaction. Transfer duty is payable by the purchaser on the sale at a fee prescribed by Parliament, currently fixed at 1% of the consideration. This duty should be paid within six months. If payment is partly in cash and partly in shares of a company, the nominal value shall be used. If payment is contingent upon some future event, the purchaser shall give security to the satisfaction of the Mining Commissioner that he will pay the transfer duty at a fixed rate when the consideration becomes due.

The rights granted under a special grant are personal to the grantee, who may not cede or assign any such rights to any other person unless authorized to do so by the President. Where authorised, a new special grant would have to be issued to the transferee.

Once the MAB issues a mining lease, it may not be transferred except to a person approved by the MAB after consulting with the owner of the ground covered by the lease.

A special mining lease may not be transferred except to a person approved of by the MAB, after consultation with the owner of the ground covered by the lease.

The seller is obliged to pay Capital Gains Tax on the gain realized from the sale of mining rights or title at the rate of 20%. The purchaser pays Special Capital Gains Tax on the value of the transaction at the rate of 20% failing which the seller would be obliged to pay. We must point out that the mining sector is lobbying the government for the scrapping of the Special Capital Gains which was introduced effective January 2024.

3.7. Is it possible to secure financing using mining rights, and if so, under what conditions?

Yes. To mortgage the mining location, one would require a notarial agreement between the parties, which will be submitted to the PMD for registration. The actual hypothecation will, if approved, be executed in the office of the Secretary. The holder of the mining location will be required to submit original registration certificates for endorsement. However, the use of mining rights as security is not popular with financial institutions at the moment.

3.8. Has there been an instance in your jurisdiction where the state has compulsorily acquired ownership stakes in mining projects

We are not aware of any recorded cases of compulsory acquisition of mining projects by the government. However, in terms of section 398 of the Mines and Minerals Act the President may, at any time, for the utilization of any mining location for a purpose beneficial to the public generally, or to any section thereof, acquire either the whole or any portion of such mining location, or limit the rights enjoyed by the owner thereof. Compensation will, however, be fully paid. The Investment Licence issued by ZIDA would also provide investor protection against compulsory acquisition without full compensation.

3.9. Where are mining disputes typically resolved? Do foreign investors sign contracts with the government, and how are disputes under these contracts resolved, especially regarding international arbitration?

Mining disputes are mainly resolved by the PMD, the Minister, the Administrative Court and the High Court. The PMD deals with disputes that fall within his province with the consent of the Parties. If there is no consent, the High Court of Zimbabwe has jurisdiction to deal with mining disputes between miners and other people affected by the mining operations. An appeal against the decision of the PMD lies to the Minister of Mines and Mining Development.

Foreign investors do not generally sign contracts with the government unless they are entering into a joint venture agreement with the government. In the event of a joint venture agreement between the government and a foreign investor, the parties are free to agree on terms relating to international arbitration.

The above answers were prepared by 4 July, 2024

Author(s):

Nikita Madya, Partner



Milton Muzaza, Partner



Pauline Mwandura, Partner



Chantele Sibanda,
Associate



Mazviita Mlambo,
Associate

Wintertons Legal Practitioners in Zimbabwe