



# ZAMBIA

## TECHNICAL ASSISTANCE REPORT — GOVERNANCE AND ANTI-CORRUPTION ASSESSMENT

January 2023

This technical assistance report on Zambia was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed in July 2022.

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# **DIAGNOSTIC REPORT ON GOVERNANCE AND CORRUPTION**

## **ZAMBIA**

**JULY 2022**

**Authoring Departments:**

**LEG/FAD/MCM/FIN**

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## Acronyms and Abbreviations

ACA	Anti-Corruption Act No.3 of 2012
ACC	Anti-Corruption Commission
ACC Act	Anti-Corruption Commission Act of
ADR	Alternative Dispute Resolution
AG	Auditor General
AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
AMLIU	Anti- Money Laundering Investigation Unit
BO	Beneficial Ownership
BoZ	Bank of Zambia
BoZ Act	Bank of Zambia Act
CC	Commercial Court
CTR	Currency Transaction Report
CRM	Compliance Risk Management
CSO	Civil Society Organization
DEC	Drug Enforcement Commission
DPP	Director of Public Prosecution
DNFBP	Designated Non-Financial Businesses and Professionals
EFCC	Economic and Financial Crimes Court
EITI	Extractive industries Transparency Initiative
EPF	Environmental Protection Fund
ESAAMLG	East and South Africa Money Laundering Group
FIC	Financial Intelligence Center
FATF	Financial Action Task Force
FMIS	Financial Management Information System
FSAP	Financial Sector Assessment Program
GDA	Governance Diagnostic Assessment
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IDC	Industrial Development Corporation
IMF	International Monetary Fund
JCC	Judicial Complaints Commission
JSC	Judicial Staff Commission
LEA	Law Enforcement Agency
MIM	Ministry of Information and Media
MER	Mutual Evaluation Report
MLC	Mining License Commission
MMMD	Ministry of Mines and Mineral Development
MoFNP	Ministry of Finance and National Planning
MLGRD	Ministry of Local Governments and Rural Development
MOJ	Ministry of Justice
MOI	Ministry of Information

NA	National Assembly of Zambia
NPA	National Prosecuting Authority
NRA	National Risk Assessment
NPBA	National Planning and Budget Act of 2020
PAC	Public Audit Act of 2016
PACRA	Patent and Company Registration Agency
PEP	Politically Exposed Person
PFM	Public Financial Management
PFM Act	Public Financial Management Act
PIMA	Public Investment Management Assessment
PPG	Public and Publicly Guaranteed
PP	Public Procurement
SOE	State-Owned Enterprise
SCC	Small Claims Court
SAC Act	State Audit Commission Act of 2016
SH	State House of Zambia
ST	Short Term
MT	Medium Term
TE	Tax Expenditure
UNCAC	United Nations Convention Against Corruption
VAT	Value Added Tax
ZCCM-IH	Zambia Consolidated Copper Mines
ZEMA	Zambia Environmental Management Agency
ZMK	Zambian Kwacha
ZPBI	Zambia Paying Bribes Index
ZRA	Zambia Revenue Administration
ZPPA	Zambia Public Procurement Agency

## Preface

In response to a request from His Excellency Mr. Hakainde Hichilema President of Zambia, of November 18, 2021, an International Monetary Fund (IMF) mission undertook a governance diagnostic assessment from January 14 to May 6, 2022. The mission was led by Ms. Tina Burjaliani and was comprised of Mr. Enrique Rojas Ms. Nino Tchelishvili, Mr. Nate Vernon, Mr. Elie Chamoun, Mr. Riaan van Greuning, Ms. Aldona Jociene, Mr. Ron Snipeliski, Ms. Luisa Malcherek, Mr. Hans Weenink. The mission was assisted by a short-term expert Ms. Marja Hinfelaar. The mission met with the President of Zambia, advisors of the President, Members of the Parliament, the Bank of Zambia Governor, Deputy Governor and officials, officials from the Ministry of Finance, Ministry of Justice, Ministry of Mines and Minerals Development, Office of Auditor General, Ministry of Education, Ministry of Health, Ministry of Agriculture, Zambia Revenue Administration, Zambia Procurement Agency, Anti-Corruption Commission, Judiciary, Financial Intelligence Center, Drug Enforcement Commission, Industrial Development Corporation and Chamber of Industry and Commerce. The mission also met with members of civil society and international partners working on governance and anti-corruption issues.

The mission wishes to express its sincere appreciation for the excellent support and cooperation given by officials and staff of these various agencies. The mission is also grateful to civil society and staff of international partners for sharing information and providing valuable insights. The mission appreciates the support provided by Ms. Allison Holland, (IMF Mission Chief for Zambia), Ms. Preya Sharma (IMF Resident Representative in Zambia), Mr. Slavi Slavov (Senior Economist and other IMF staff. The mission is thankful for the administrative assistance provided by Ms. Alexandra Rajs.

The report is based on information collected in January – June 2022. The mission notes that several reform initiatives were launched or advanced by the authorities of Zambia after June 2022, including the adoption of the new Bank of Zambia Act in August 2022. The mission team reflected the new initiatives in the GDA report, to the greatest extent possible.



## Executive Summary

**At the request of the authorities of Zambia, an interdepartmental (LEG/FAD/MCM/FIN) Governance Diagnostic Assessment (GDA) mission was conducted during January 14 – May 6, 2022.**<sup>1</sup> In line with the IMF's 2018 Framework on Enhanced Fund Engagement on Governance,<sup>2</sup> the diagnostic assessment focused on governance weaknesses and corruption vulnerabilities in macroeconomically critical priority areas of: (i) the anti-corruption and anti-money laundering; (ii) fiscal governance (e.g., public financial management, revenue administration, oversight of State Owned Enterprises, natural resource management, and procurement); (iii) enforcement of contract and protection of property rights; (iv) central bank governance and operations, and (vi) financial sector oversight.

**Zambia is a large, land linked, resource-rich country with a rapidly growing population of approximately 17.9 million.** It borders eight countries (Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Namibia, Tanzania, and Zimbabwe) that serve as an expanded market for its goods. Zambia is a stable multi-party democracy with elections held every five years. The current President, H.E. Hakainde Hichilema of the United Party for National Development, was elected in August 2021, after defeating then-incumbent President Edgar Lungu of the Patriotic Front.

**Zambia's pre-existing economic hurdles were aggravated by successive shocks of drop in copper prices (2015-2016), major droughts (2015-2016 and 2018-2019) and the Covid-19 pandemic.** While policy adjustment mitigated earlier shocks, policy resolve began to wane as the country entered the 2021 election cycle. As the COVID-19 shock unfolded, financing pressures emerged, the Zambian Kwacha (ZMK) depreciated, and inflation spiked, all of which increased the external debt burden. Unencumbered reserves shrank to about [\$972] million by end-October 2020 (about [2.4] months of imports), against a projected external debt service of at least [\$1.3 billion] in 2021 and signs of significant unmet FX demand. As public debt ballooned, the government defaulted on its Eurobonds in November 2020 and stopped servicing most external debt. Real GDP shrank by 2.8 percent in 2020, with services, transport, manufacturing, and tourism taking the brunt of the COVID-19 shock. A broad-based moderate recovery started in 2021, with real GDP rebounding by 4.6 percent, though with some key sectors still held back by supply chain disruptions (mining) or weather (agriculture). The recovery continued this year, with real GDP expanding by 3.5 percent in 2022Q1, mostly driven by public sector. Inflation has receded from its peak of almost 25 percent in mid-2021 to 9.7 percent in October 2022, in line with the appreciating Zambian Kwacha.

**Consistently high fiscal deficits, inefficient public investment and weak controls on spending led to Zambia accumulating large fiscal and external imbalances.** In 2014-2019, external public and publicly guaranteed (PPG) debt had more than quadrupled. Zambia fell into arrears on external debt service and defaulted on a USD 42.5 million payment on its Eurobond and numerous other commercial loans with foreign creditors in 2020. Following this, external PPG debt reached 78 percent of GDP by end-2021, including \$2.3 billion of principal and interest arrears, and \$1.3 billion arrears to

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<sup>1</sup> The data collection through remote meetings with stakeholders continued through June 2022. The authorities provided updates on ongoing reform initiatives in October 2022.

<sup>2</sup> IMF Framework on Enhanced Fund Engagement on Governance, 2018.

external suppliers (budget arrears and external IPP arrears). Total PPG debt reached 132 percent of GDP. The IMF-supported program intends to put Zambia on a path of debt sustainability, improved fiscal governance and gradual economic recovery.

**In this challenging environment, the authorities sought the IMF’s assistance to analyze governance weaknesses and corruption vulnerabilities and make specific, country-tailored and feasible recommendations to address governance and corruption risks in wide-ranging areas.**

The GDA revealed serious governance weaknesses and corruption vulnerabilities across all state functions, but those with particular macroeconomic impact are present in public financial management (especially in relation to planning and monitoring of large investment projects), granting and managing contracts in the mining sector, transparency in public procurement, including adequate monitoring of Politically Exposed Persons (PEPs), autonomy of the central bank and effective financial sector oversight (especially oversight on banks with government ownership), Beneficial Ownership (BO) transparency and land management. These weaknesses and vulnerabilities highlight several themes, including weak transparency and accountability mechanism in public service, weak legal frameworks for key institutions and lack of coordination and clarity in the roles and responsibilities in key governance and anti-corruption functions.

**Specific weaknesses in each area can be summarized as the following:**

- Effectiveness of the legal and institutional frameworks related to Anti-Corruption and Anti-Money Laundering (AML): Anti-corruption and AML frameworks are in place but require upgrades to address specific governance weaknesses and corruption vulnerabilities. The most significant governance weaknesses are demonstrated in the limited transparency and absence of an effective access to information framework as well as limited autonomy and capacity of key oversight institutions and inadequate coordination mechanism among them. Corruption vulnerabilities are exacerbated by the legacy of impunity, weak accountability frameworks and sustained challenges in effective enforcement of anti-corruption laws. Lack of risk-based approach to AML supervision and delayed implementation of the legal framework on BO transparency are significant governance weaknesses elevating corruption risks. Inadequate monitoring of PEPs, ineffective application of sanctions, and limited resources to investigate and prosecute money laundering increase corruption vulnerabilities.
- Fiscal Governance: Significant governance weaknesses were identified in fiscal governance that elevate corruption risks. Due to the nature of corruption vulnerabilities in Zambia, the GDA mission team focused on areas of fiscal governance such as public financial management (PFM), public procurement (PP), effectiveness of governance and anti-corruption frameworks of Zambia’s Revenue Administration (ZRA), as well as management of natural resources, which is a significant revenue-generating sector in Zambia and the oversight of State-Owned Enterprises (SOEs).
  - PFM suffers from historic governance weaknesses concentrated in poor management of large public investment projects, lack of capacity at district level to manage increased budgets associated with the fiscal decentralization, limited use of technology and weak expenditure controls.
  - Public procurement remains one of the key areas of governance inefficiency and vulnerability to corruption, especially in sectors where public spending is particularly high

(e.g. agriculture, road construction). The recent PP related legislative upgrades should be followed by effective implementation. Efforts to increase the control of PEPs in procurement, are underway but remain impeded by the incomplete implementation of the BO register, so risks of corruption remain elevated.

- Corruption vulnerabilities in Revenue Administration are high in the Value-Added Tax (VAT) refund process. Here too, corruption is facilitated by a lack of BO transparency for legal persons and other arrangements that enable concealment of ill-gotten proceeds. Significant governance weaknesses are present in the organizational structure and the compliance risk management systems in the ZRA.
  - Mining legislation is generally robust, but implementation is impeded by the resource constraints. The Ministry of Mines and Mineral Development (MMMD) lacks capacity and resources for effective operation, including lack of digitalization, which constitute significant governance weaknesses. Corruption vulnerabilities are present in granting, transfer and oversight of mining licenses.
  - SOEs raise high concerns too. The lack of a legal framework for ownership, corporate governance, oversight, transparency and accountability of SOEs generate governance weaknesses that negatively impact performance. Corruption vulnerabilities are present as the legal framework allows opportunities for political interference and patronage.
- *The Bank of Zambia (BoZ)* faced governance weaknesses, derived primarily from the Bank of Zambia Act (BoZ Act). Subsequent to the Governance Diagnostic Assessment mission, the BoZ Act was amended and important legal reforms were enacted in August 2022. The amended BoZ Act is substantially in line with IMF recommendations and significantly strengthens the Bank of Zambia's autonomy and governance arrangements.
  - *Financial sector oversight*: While there is a good progress in aligning legal and regulatory framework with international standards, there are remaining constraints in performing the oversight function effectively. The governance weaknesses related to supervisor's operational independence, accountability, transparency, decision-making, enforcement of prudential requirements as well as insufficient human resources limit oversight function and increase opportunities for corruption. The weaknesses in governance-related prudential framework cannot ensure adequate safeguard for the integrity of the banking sector. Increased corruption vulnerabilities are present for banks and specialized financial institutions with Government ownership.
  - *The contract enforcement* legal framework is well developed but access to dispute resolution mechanisms is limited due to insufficient number of courts and adjudicators, as well as ineffective alternative dispute resolution (ADR) mechanisms constituting major governance weaknesses in the system. Addressing corruption vulnerabilities in *protection of property rights* requires, *inter alia*, streamlining procedures for transforming customary land into State land. Detailed procedures for land management, especially at the level of local authorities and full operationalization of land tribunals are needed to address governance weakness in protection of property rights.

**The report identifies on near-term reform steps and structural policy measures that require more time and resources but are necessary for sustainable change.** It is acknowledged that addressing effectively all governance weaknesses identified through the GDA would require careful sequencing, continued strong political will, significant resources and prolonged efforts, including with support from Zambia’s international partners. To facilitate the reform planning process, the mission identified priority recommendations, which focus on the first round of reforms in the key state functions. The priority recommendations are expected to serve as the catalyst in a transition to stronger governance and more effective, sustainable anti-corruption reforms.

Table I. Priority Recommendations				
Measure		Authority	Objective	Timeline <sup>3</sup>
1	Adopt a legal framework that guarantees public access to information	MOJ, MOI SH, NA	Strengthen transparency and accountability	ST
2	Introduce necessary measures to ensure that top anti-corruption and AML officials such as Director General of ACC, Director General of DEC, Director General of FIC, DPP are selected and appointed through transparent, merit-based and participatory processes.	MOJ, SH, NA	Strengthen transparency and accountability	MT
3	Prepare, with participation of civil society, academia and legal profession, a comprehensive reform strategy to strengthen the independence, professionalism and efficiency of the judiciary and prosecution authorities.	MOJ, Judiciary	Strengthen AC& Oversight institutions	MT
4	Operationalize PACRA’s beneficial ownership register, including ensuring the availability of accurate, complete and up-to-date beneficial ownership information and imposing effective sanctions on entities for non-compliance.	PACRA, MoFNP	Strengthen transparency and accountability, reduce AML/CFT risks	Immediate
5	Prepare a time-bound action plan and roll-out E-Government Procurement.	ZPPA	Strengthen PFM	Immediate
6	Mandate the use of the FMIS system for all transactions currently able to be undertaken through the system.	MoFNP	Strengthen PFM	Immediate
7	Mandate regular preparation and external publication of tax expenditure reports on measures expected to result in significant foregone revenue.	ZRA, MoFNP	Strengthen fiscal governance	ST
8	Increase internal audits in VAT refund process and customs warehouse management, as well as in other processes where IT systems are not fully integrated or are unstable.	ZRA	Strengthen fiscal governance	ST
9	Strengthen the MMMD’s capacity to properly scrutinize license and transfer applications, and monitor the associated commitments on safety and environment, work programs, and production	MOFNP, SH, MMMD	Strengthen fiscal governance	ST
11	Bring the Public Audit Act of 2016 and the State Audit Commission Act of 2016 into force by issuing the statutory instrument by MoFNP	MoFNP	Strengthen AC & Oversight institutions	Immediate
12	Develop and reinforce supervisory processes for banks and other financial institutions with Government ownership to address specific risks and challenges associated with these special entities.	BoZ	Strengthen financial sector oversight	MT

<sup>3</sup> The recommendations are classified as Immediate – to be implemented in up to 6 months, ST – Short Term to be implemented in six to twelve months, MT – Medium Term that may require up to 24 months.

**All recommendations coming out of the diagnostic shall contribute to the formulation of governance and anticorruption policies and programs, improvement of the legal and institutional frameworks, as well as governance and anti-corruption reform measures agreed to in the Extended Credit Facility Arrangement (ECF) for Zambia.**

## Section I. Context of Zambia’s macro-critical governance weaknesses and corruption vulnerabilities

**Corruption is generally associated with weak economic growth, lower investment and fiscal revenue, higher inequality, and worse inclusive growth performance.**<sup>4</sup> Reducing corruption vulnerabilities in Zambia can have significant impact on macroeconomic performance in the medium- and long-term and on the ability of the government to pursue policies to achieve external viability and sustainable growth. Effectiveness of anti-corruption strategies are largely determined by their responsiveness to political, social and economic context in which these weaknesses and vulnerabilities emerge.

**Zambia’s macroeconomically critical governance and corruption vulnerabilities are deeply rooted in decade-long policies and practices that weakened institutions, transparency and accountability mechanisms.** Over past decades, an overlap of public positions and private business interests slowly became a common feature in Zambia with the dominance of informal political processes of patronage and corruption and concentration of power and resources in the hands of politico-economic entrepreneurs.<sup>5</sup> The impunity for officials who engaged in corrupt practices created an expectation and perception of tolerance towards extensive corruption.<sup>6</sup>

**Acknowledging the need to address corruption, strengthen governance and the rule of law, the President and authorities of Zambia have announced a series of important initiatives.** President Hakainde Hichilema was elected on the back of the strong anti-corruption pledges in August 2021. In his inaugural speech, the President promised: *“To enhance transparency and accountability in our national affairs, we will review the policy and legal framework for oversight institutions to enable them to effectively fight corruption and economic crimes. We will increase funding and enhance operational independence of oversight institutions. Further, we will introduce specialized fast-track stolen assets recovery mechanisms and courts for corruption and economic crimes. We will also enact legislation on ethics and integrity for improved transparency and accountability.”*<sup>7</sup> The specialized courts have been established and efforts are being made to improve asset recovery as well as operational effectiveness of anti-corruption institutions (see Section II on Effectiveness of Anti-Corruption and Anti-Money Laundering Frameworks), but it is important for the speed of progress to accelerate and generate concrete and visible change and momentum for further reforms.

**Institutionalization of governance and anti-corruption reforms, along with political will of the authorities, is a *sine qua non* for their effectiveness and sustainability.** Since its independence, Zambia went through the periods of reforms to address corruption vulnerabilities, strengthen

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<sup>4</sup> IMF Framework on Enhanced Fund Engagement on Governance, 2018.

<sup>5</sup> Caesar Cheelo & Marja Hinfelaar, State capacity building in Zambia amidst shifting political coalitions and ideologies, 2021.

<sup>6</sup> The 2016 FIC report revealed huge unexplained financial transactions by ‘politically connected’ companies and individuals implicating Zambia’s prominent political elites. No investigation followed the publication of the report.

<sup>7</sup> Speech by H.E. President Hakainde Hichilema, September 2021

institutions and the rule of law. These efforts, largely driven and determined by the dispositions of the president in office at the time, were hardly sustainable and institutionalized.<sup>8</sup> Therefore, when political will faded, the anti-corruption efforts followed, despite the existence of legislative and institutional frameworks. For instance, the attempts to address democratic deficits and corruption in 2001-2008 was halted by the untimely death of President Levy Mwanawasa in 2008. Under the administrations that followed (2009-2021), Zambia saw a return of a clientelistic groups where informal rules became dominant and the overlap of public positions and private business interests became a common feature. Appointments in public service often were based on party/political affiliation and being representative of a particular social identity rather than necessarily on competence. Political competition, short-term goals from election to election, accompanied by the enduring politics of clientelism affected Zambia's bureaucracy to fulfil its mandate effectively.<sup>9</sup> As a result, key institutions, including the Anti-Corruption Commission (ACC), the FIC and the judiciary were weakened, public sector politicized and the corruption increased.<sup>10</sup>

**Corruption became particularly entrenched and institutionalized during 2016-2021, which further eroded public trust in institutions.** A steady decline in anti-corruption efforts and the downward trend is showed in different governance and corruption indicators. (See Box 1) In 2020, substantial proportion of Zambians saw "most" or "all" officials in the Presidency (40 percent), local government councilors (36 percent), members of Parliament (MPs) (36 percent), civil servants (29 percent), judges and magistrates (29 percent), and officials in the Zambia Revenue Authority (25 percent) as corrupt (AfroBarometer 2021).<sup>11</sup> Bribery, including facilitation payments, have become a common feature in the utilities sector, for obtaining licenses and conducting business (GAN Integrity 2020).<sup>12</sup>

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<sup>8</sup> O'Brien Keeba & Marja Hinfelaar, Adjust, Resist, or Disband: How Does Civil Society Respond to Repression in Zambia? (2019).

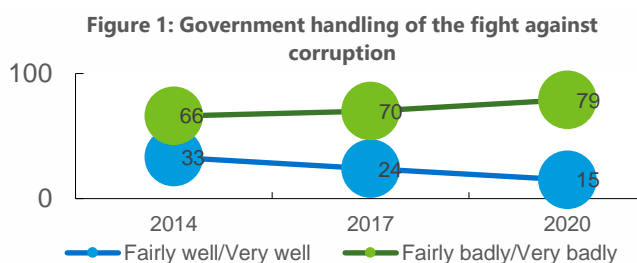
<sup>9</sup> Caesar Cheelo & Marja Hinfelaar (2021).

<sup>10</sup> O'Brien Keeba & Marja (2019).

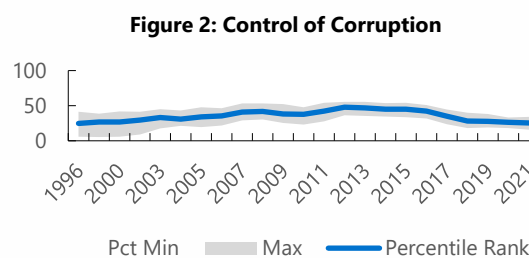
<sup>11</sup> AfroBarometer, Dispatch no. 493 (2021).

<sup>12</sup> See in Zambia: Overview of corruption and anti-corruption (u4.no).

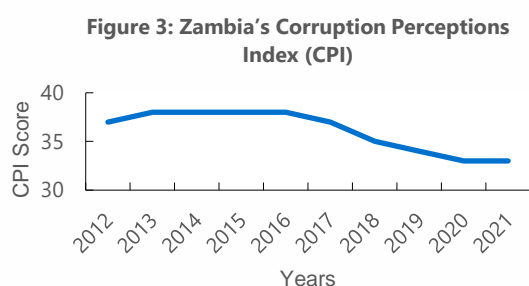
## Box 1. Graphs showing downward path of Corruption Indicators



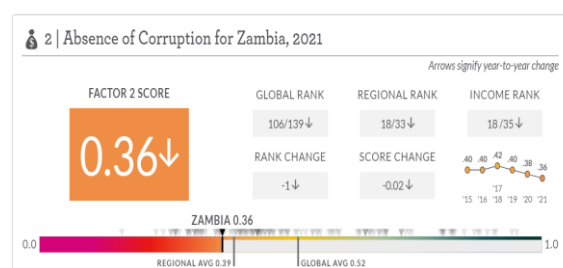
Source: AfroBarometer<sup>13</sup>



Source: WB Worldwide Governance Indicators



Source: Transparency International<sup>14</sup>



Source: World Justice Project Rule of Law Index 2021<sup>15</sup>

**Weak transparency and accountability mechanisms allowed political and economic elites to bend rules and mismanage vast resources.** Large public investment projects were often transformed into vehicles for political patronage and rent seeking opportunities.<sup>16</sup> Corruption is believed to have inflated the costs of numerous high-profile tenders and construction projects (Bertelsmann Stiftung 2020).<sup>17</sup> For instance, enormous financial resources invested in infrastructure projects, such as road construction, provided avenues for corruption, especially in the award of tenders, where political connections allowed members of the elite to bend the rules and access to lucrative contracts.<sup>18</sup> It provided opportunities for rent seeking and patronage, as the government often interfered in the

<sup>13</sup> Respondents were asked: How well or badly would you say the current government is handling the following matters, or haven't you heard enough to say: Fighting corruption in government?

<sup>14</sup> The Corruption Perceptions Index evaluates countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean) See at [Zambia Corruption Index - 2022 Data - 2023 Forecast - 1998-2021 Historical - Chart \(tradingeconomics.com\)](https://tradingeconomics.com/zambia/corruption-perceptions-index-1998-2021-historical-chart).

<sup>15</sup> The WJP Rule of Law Index shows a slight improvement in overall score (by 0.45 points) and in the control of corruption (by 0.38 points) in 2022, see at [WJP Rule of Law Index | Zambia Insights \(worldjusticeproject.org\)](https://worldjusticeproject.org/wjp-rule-of-law-index-zambia-insights).

<sup>16</sup> [Zambia's Black box - Case studies.pdf](#)

<sup>17</sup> [BTI Zambia \(2020\)](#).

<sup>18</sup> [Zambia's Black box - Case studies.pdf](#); See also Raballand, G; Bridges, K; Beuran, M and Sacks, A (2013), World Bank Policy Research Working Paper no. 6585.



selection of contractors and awarded contracts to politically connected companies.<sup>19</sup> Another example of political considerations overriding public interest in economic projects is the Farmer Input Supply Program (FISP), which was introduced in 2002 and soon perceived as ineffective due to corruption, poor targeting, leakage to non-beneficiaries, among others.<sup>20</sup> Despite these concerns and proposals to reform the FISP, the program processes vulnerable to corruption were retained given their value in funneling political largess to political supporters.<sup>21</sup> Anecdotal evidence suggests that FISP favored a few input suppliers who appeared to be politically connected and selected in the program by bending the tender procedures.<sup>22</sup> The authorities' declared commitment to strengthen governance and efficiency of FISP requires increased transparency, compliance with the public tender procedures for procuring input and publishing summary information on contracts in line with the new Public Procurement Act and its implementing regulations.

**Numerous governance weaknesses in the management of public finances, including the weak parliamentary oversight over the Executive, contributed to the recent sovereign debt crisis.<sup>23</sup>**

While unfavorable macroeconomic factors played a significant role, the embedded governance weaknesses cannot be overestimated in accumulation of sovereign debt and the subsequent crisis. Recognizing the problem, the authorities have embarked on a number of governance measures to strengthen debt management going forward. A new Public Debt management Act was adopted to tighten control on the authority to borrow, strengthen oversight, clarify objectives of debt contraction and enhancing risk management around government guarantees. The authorities have started publishing a quarterly debt statistics bulletin with comprehensive statistics publishing summary information on the financing agreements for all newly contracted external loans every quarter as required by the ECF.

**To ensure success and sustainability of anti-corruption efforts announced by the authorities of Zambia, it is necessary to institutionalize these efforts by enhancing transparency in the public sector, introducing and enforcing high accountability standards for top officials, strengthening anti-corruption and oversight institutions, ensuring clear delineation between political party/leadership and civil service and upgrading key anti-corruption and related legislation.** The authorities' declared prioritization of the anti-corruption agenda and initiation of long-awaited policies in fiscal governance and BoZ in particular, are welcome, but the impact is too early to assess.

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<sup>20</sup> Resnick, D and Mason, N, "What Drives Input subsidy policy reform? The case of Zambia, 2002-2016," pp.24-25.

<sup>21</sup> [Zambia's Black box - Case studies.pdf](#)

<sup>22</sup> Id.

<sup>23</sup> The Ministry of Finance and National Planning (formally Ministry of Finance) of Zambia is responsible for determining when, where and how much to borrow, as well as the terms of a loan with minimal checks and balances exercised through legislative oversight. For years, the MOFNP requesting debt ceiling increases whenever it was close or in excess, and the National Assembly subsequently approving them, reveals a lack of effective legislative oversight over debt contraction. See Ndhlovu & Chishimba (2019) in [Charles & Lascu \(2019\)](#).

## Section II. Effectiveness of Anti-Corruption and Anti-Money Laundering<sup>24</sup> Frameworks

**This section identifies the main legal and institutional constraints faced by Zambia in its fight against corruption.** The measures suggested to address the shortcomings aim at strengthening the overall anti-corruption and AML frameworks and supporting governance arrangements in relevant state functions to reduce opportunities for corruption.<sup>25</sup>

**Zambia’s anti-corruption and anti-money laundering (AML) legal framework and the institutional setup are generally in line with international standards.** The Constitution, along with more than a dozen legal acts cover all major aspects of prevention and prosecution of corruption and ML offences and regulate the organization and functions of the key institutions, such as the ACC, NPA, FIC the Auditor-General (AG) and the Drug Enforcement Commission (DEC).<sup>26</sup> Zambia is a party to the United Nations Convention Against Corruption (UNCAC), the African Union Convention on Preventing and Combatting Corruption and the Southern Africa Development Community Protocol Against Corruption. The FIC, Zambia’s FIU, was admitted into the Egmont Group of Financial Intelligence Units in 2018. Zambia was last assessed in an on-site visit by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 2018 with the latest Mutual Evaluation Report published in 2019. The UNCAC country implementation review on preventive measures and asset recovery (2<sup>nd</sup> cycle) is ongoing and is expected to be concluded by the end of 2022.

**However, significant legal and structural weaknesses, and deficient implementation practices hinder Zambia’s ability to fight corruption and money laundering effectively.** Significant governance weaknesses in anti-corruption and AML/CFT include: limited transparency and accountability in the public sector, lack of public access to information, compromised independence and operational autonomy, limited technical, operational and financial capacities of anti-corruption and AML/CFT institutions, inadequate anti-corruption and AML/CFT policy formulation and

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<sup>24</sup> This report focuses on money laundering-related vulnerabilities because the overall terrorist financing risk in Zambia is medium low according to the [National AML/CFT Risk Assessment 2016](#). [ESAAMLG’s 2019 Mutual Evaluation Report of Zambia](#) assesses that “the risks of terrorism and terrorism financing are well understood by the Zambian authorities. The authorities are of the view that the threat of TF or terrorism does not arise from the locals but from some of the foreign nationals whose origins are from high-risk TF countries”. Zambia as cash-heavy economy and regional transit country however remains vulnerable to terrorist financing risks, which could increase. The FIC’s [Trend Report 2021](#) observed a recent uptick in suspicious transaction reports related to terrorist financing, “suggest[ing] an increase in threats associated with TF activities in Zambia and the region at large.”

<sup>25</sup> Corruption vulnerabilities can directly affect a country’s AML/CFT framework. The FATF states in its Methodology that contextual factors such as the level of corruption and the impact of measures to combat corruption can significantly impact the effectiveness of a country’s AML/CFT measures. Pervasive corruption represents a significant factor that affects Zambia’s ML/FT risks and can also reduce the effectiveness of AML/CFT measures implemented.

<sup>26</sup> Key AC and AML laws include: Financial Intelligence Center Act, National Prosecutions Authority Act, Mutual Legal Assistance in Criminal Matters Act, Public Interest Disclosure (Protection of Whistleblowers) Act, Forfeiture of Proceeds of Crime Act, Narcotic Drugs and Psychotropic Substances Act, Parliamentary and Ministerial Code of Conduct Act, Prohibition and Prevention of Money Laundering Act, Plea Negotiations and Agreements Act, Public Finance Management Act, Public Procurement Act, Penal Code Act, Criminal Procedure Code.

coordination mechanism, incomplete policies and/or ineffective systems for prevention and detection of corruption and ML, and lack of prioritization in investigating and prosecuting corruption and ML offences.

**Addressing corruption and strengthening governance are publicly declared as top priorities by the authorities of Zambia.** After a decade of impunity and erosion of institutions, the authorities have renewed implementation of existing anti-corruption frameworks, but significant challenges remain, which are discussed in the present report. President H.E. Hakainde Hichilema was elected on a strong anti-corruption agenda. His declared commitment to good governance, rule of law and anti-corruption has been reiterated in the inaugural speech and many other public statements, and reflected, by significantly increasing anti-corruption and AML agencies' budgets in 2022.<sup>27</sup>

**According to Zambia's most recent mutual evaluation, the authorities and financial institutions have a "relatively good understanding of money laundering (ML) and terrorism financing (TF) risks".**<sup>28</sup> Law enforcement agencies (LEAs) "have reasonably contributed to the investigation and prosecution of all types of ML and TF" and "effectively use financial intelligence from the FIC", which is considered of good quality. Zambia has "a good legal and institutional framework to cooperate and exchange information with foreign counterparts".<sup>29</sup> The overall effectiveness of Zambia's AML/CFT regime however is low to moderate. Remaining shortcomings include a lack of adequate resources for AML/CFT institutions to investigate and prosecute ML and associated predicate offences, ineffective application of sanctions, lack of a comprehensive risk-based approach to AML/CFT supervision, and delayed operationalization of the legal framework on beneficial ownership information.

## A. PREVENTION OF CORRUPTION AND MONEY LAUNDERING

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### Limited Transparency and Accountability in Public Sector

**Limited transparency and accountability in the public sector constitute significant impediments for prevention of corruption.** The rules related to access to information, asset disclosure by top officials, BO transparency, monitoring of PEPs and legal protections for whistleblowers are identified as insufficient, limiting citizens' ability to hold those in power Accountable.

**The constitutional recognition of proactive and timely provision of accurate information as a guiding principle of the public service (art. 173.1.h) remains declaratory without an enabling law.** The mission was informed that a draft access to information act is being finalized and it is planned to be adopted by the end of 2022. A robust access to information framework, including requirements for proactive publication, can help decrease corruption opportunities especially in activities with increased corruption risks, like public expenditure, revenue administration, mining and procurement.

**Delays in the preparation and publication of activity reports across government is yet another contributing factor to the weaken institutional accountability.** While the authorities cite lack of

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<sup>27</sup> Estimates of Revenue and Expenditure for the Year 1st January 2022 to 31st December 2022.

<sup>28</sup> [ESAAMLG 2019 Mutual Evaluation Report of Zambia](#)

<sup>29</sup> Id.

resources and the capacity constraints as impediments to publication of activity reports (including those on budget spending and performance), the root cause is a strong tendency for opacity in the public sector, including in the institutions, which should set a high standard for transparency and accountability. The authorities were unable to provide updated statistical data and activity reports from public agencies, including the ACC, AML institutions, SOEs and justice sector.

## Anti-Corruption Information Sharing, Formulation of Policies and Strategies

**Formulation, monitoring, coordination and evaluation of anti-corruption policies and strategies are sporadic, not based on needs and priorities.** There is no legal requirement for corruption risk-mapping and assessment, or for the preparation, periodic update and evaluation of the National Anti-Corruption Policy and related strategies.<sup>30</sup> No entity is designated by law to lead the anti-corruption policymaking and coordination. The first and the only five-year National Anti-Corruption Policy was adopted in 2009 under the auspices of the ACC. Implementation of the 2009 Policy, like any other government policy, was coordinated by the Secretary to the Cabinet through a steering committee composed of different agencies and civil society actors. The implementation of the 2009 Policy was formally evaluated in 2015. The MOJ was recently entrusted with coordinating the development of a new Anti-Corruption Policy.

**Internal Audits, available in all public institutions, can contribute to systematic detection, analysis and communication of corruption risks and vulnerabilities.** The Public Finance Management Act (PFM Act) provides that all government agencies must have internal auditors, who carry out financial, performance, compliance and forensic audits and are in prime position to observe and report on areas where control systems are inefficient or insufficient and detect corrupt and corruption-enabling practices. Internal audit findings from across the government are consolidated by the Controller of Internal Audit, who prepares reports and recommendations for the Treasury Secretary for remedial and in-house disciplinary actions. Sharing the findings related to corruption with the ACC (or other anti-corruption institutions) can contribute to effective follow-up, risk mapping and strategy formulation.

## Asset Disclosure by Public Officials

**The lack of a comprehensive and effective framework for asset disclosure by public officials limits the integrity, accountability and prevention of corruption in public service.** The Constitution requires a person holding public office<sup>31</sup> to disclose assets and liabilities, before assuming or leaving office (art. 263). The option to disclose assets either at the time of assuming or leaving the office renders the system ineffective, as assets verifications require initial, exit and periodic

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<sup>30</sup> The mission was informed that the government has developed guidelines for preparing national policy documents which stipulate the steps and stages for policy formulation, implementation as well as monitoring and evaluation, but it was not able to consult them.

<sup>31</sup> "Public office" means an office whose emoluments and expenses are a charge on the Consolidated Fund or other prescribed public fund and includes a State office, Constitutional office and an office in the public service, including that of a member of a commission (article 266).

declarations. Enabling legislation has not been adopted since the Constitutional revisions in 2016. The current Parliamentary and Ministerial Code of Conduct Act of 1994 only requires Ministerial office holders, the Speaker and Deputy Speaker to disclose assets, liabilities and interests within thirty days after their appointment and within thirty days after each anniversary of the appointment (sect. 10), and all members of the National Assembly, the Vice-President, Ministers or Deputy Ministers are to disclose any interest in government contracts (sect. 6). The Chief Justice is required to register declared information in a special registry and make it available to the public at all reasonable times (sect. 11). Failure to disclose interests, assets, liabilities and incomes or making a false declaration amount to a breach of the Parliamentary and Ministerial Code (sect. 6, 7), yet it does not provide sanctions or a mechanism to monitor the accuracy of the disclosed information. The mission was informed that these provisions are hardly implemented in practice. For instance, only 21 assets and liabilities declarations were filed in 2019-2020 and 64 in 2021. As of May 2022, only the Speaker, two Deputy Speakers and 17 Ministers complied. Employees of the ZRA, the ACC and the DEC are required to file assets and interest disclosures, but enforcement is very limited (on the ZRA see Section IV below).

### Monitoring Politically Exposed Persons (PEPs)

**PEPs play a major role in creating and exploiting corruption vulnerabilities across various sectors of the economy.** Zambian authorities, financial institutions and Designated Non-Financial Business and Professions (DNFBPs) are aware of the corruption and Money Laundering/Terrorism Financing (ML/TF) risks posed by PEPs (known in Zambia as prominent influential persons – PIPs), yet “some reporting entities both in the financial sector and DNFBPs compromised on their reporting obligations because of heavy dependence on some prominent influential persons for business.”<sup>32</sup> The FIC annually disseminates reports on patterns of PEPs’ illicit involvement, including related to public contracting processes, large cash deposits or the creation of opaque beneficial ownership structures to evade taxes, hide relationships with public officials or funnel funds outside of the country. To date, the FIC has compiled numerous case studies on the main predicate offences of corruption and tax evasion, which reveal (i) prominent patterns of “influence peddling by PIPs and suspected abuse of office by using strategically appointed officials”, (ii) PEPs as the beneficial owners of companies bidding for procurement contracts and (iii) PEPs as holders of accounts used for large cash deposits or suspicious transfers. In their analysis of currency transactions reports (CTRs) submitted by the ZRA in 2021, the FIC also observed a general increase in CTRs reported for individuals, of which “an excess of ZMK 50 million and USD 3.5 million in cash withdrawals was accounted for by Prominent Influential Persons.” This trend in frequent withdrawals was eminently observed before and after the general elections.<sup>33</sup> The FIC publishes several policy recommendations in each annual Trends Report, based on the trends and risks observed in a given year. However, the follow-up to implement these recommendations has been limited. The FIC is also still lacking an appointed Board to support the Acting Director General and the FIC’s work, affecting the FIC’s decisions as to which policy and operational recommendations should be publicized.

**Zambia has recently revised its legal framework for PEPs to cover domestic and foreign persons.** The FIC (Amendment) Act No.16 of 2020 does not differentiate between foreign and domestic PEPs,

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<sup>32</sup> [FIC 2021 Trends Report](#).

<sup>33</sup> [FIC 2021 Annual Report](#).

instead applying a comprehensive definition of “prominent influential persons,” which is in line with the FATF standards to include heads of state, political functionaries and senior public officials, as well as immediate family and close associates. Magistrates, judges “and other senior officials of quasi-judicial bodies” are also covered under the definition. The legal framework also includes a specific focus on potential sole and joint beneficial ownership or control legal entities and arrangements involving ‘close associates’ of PEPs. In 2021, the FIC issued a *‘Revised Guidance Note – AML/CFT Procedures for Prominent Influential Persons’*<sup>34</sup> to highlight the amendments of the FIC Act of 2020 and provide further guidance on related AML/CFT measures. All reporting entities are required to apply appropriate risk management systems to identify domestic, foreign and international organization-related PEPs, including the verification of the identity of a beneficial owner of a client legal entity or of the person acting on behalf of a beneficial owner.<sup>35</sup> The BoZ’s Corporate Governance Directives (art. 6.11) differentiate between ‘politicians’ and PEPs and place a restriction on politicians to serve as directors of a regulated entity. For a PEP, there are specific restrictions to serve on a Board, but the BoZ can “determine on a case-by-case basis whether such a person is eligible for appointment as a director of a regulated entity”.

**The lack of reliable information on BOs limits effectiveness of identification of PEPs and creates significant challenges for supervisors and regulated entities in Zambia.** In line with the FIC guidance, the BoZ applies enhanced due diligence measures when dealing with potential PEPs. It incorporates PEP screening into the risk assessment and vetting process of its supervised institutions and includes a focus on PEPs in its supervisory examinations. The reliable identification and verification of PEPs and their associates however still presents practical challenges. The BoZ finds that banks’ policies on PEPs are generally adequate, but the identification of PEPs remains a weakness depending on the size and sophistication of an entity. Larger institutions, especially those that are part of an international banking group, use not only BoZ’s and FIC’s PEP guidelines to calibrate their own internal lists, but also subscribe to third-party providers’ global PEP lists, while smaller institutions often rely on information provided by their customers. The FIC underlines that the customer itself presents a valuable source of information to determine PEP status, but additional sources such as commercial third-party databases are often needed to identify the source of wealth and source of funds. Reporting entities are encouraged to develop their own in-house databases and share information with foreign subsidiaries to the extent possible. The DNFBP sector remains particularly vulnerable to illicit involvement of PEPs, due to “poor identification of clients and [difficulties] obtaining of beneficial ownership information [and] establishing the source of income used in large cash transactions.”<sup>36</sup>

## Transparency of Beneficial Ownership Information

**Zambia’s revised legal framework on BO transparency is advanced for the region, but enforcement and operationalization are not yet effective and impede the use of this information.** The Companies Act No. 10 of 2017 requires companies to maintain, update and share a beneficial ownership register of all shares of a company (both domestic and foreign) and their associated voting rights, and to provide a statement with information on each beneficial owner during

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<sup>34</sup> [FIC PIP Guidance Note 2021](#).

<sup>35</sup> See FIC Act no. 16 and FIC’s Guidance Note of 2021.

<sup>36</sup> ESAAMLG 2019 Mutual Evaluation Report of Zambia.

the application for incorporation. The regulations provide for unrestricted access to the beneficial ownership register by law enforcement officers and allows requests for access by persons “showing sufficient interest to the Registrar”, but also allow PACRA to restrict the publication of certain beneficial ownership information. The Companies Amendment Act of 2020 broadened the definition of beneficial owner [to bring it in line with the Financial Action Task Force (FATF) standard]. Authorities also amended the Land (Perpetual Succession) Act governing trusts in 2020 to require the submission of beneficial ownership statement for incorporation of trusts and applicable sanctions for non-compliance.

**Transparency of companies and trusts should be strengthened to support an effective AML/CFT regime and protect the financial system from abuse by corrupt officials and the launderers of the proceeds of corruption.** Legal persons and arrangements can be used to obfuscate payments of bribes by firms to public officials (e.g., by hiding the ultimate beneficial ownership). Collecting and making information on their BO available to competent authorities without impediments limits opportunities for corruption through the misuse of legal persons and arrangements. The current lack of reliable BO information presents a significant vulnerability for corruption and other ML predicate crimes in Zambia. Shortcomings in the implementation of the BO framework are also impacting corruption-vulnerable sectors, such as mining, procurement and tax collection/administration. The FIC’s annual Trends Reports regularly present anonymized case studies describing how certain PEPs and their close associates are using legal persons such as limited liability companies and sole proprietorships to hide ownership structures and transfer illicit funds, in particular related to contract awards in public procurement and tax evasion.

**Applicable sanctions for different types of breaches with the BO obligations of companies and trusts remain unclear.** Authorities could not demonstrate any examples of sanctions imposed for non-compliance, noting enforcement-related shortcomings, as that the current legal framework focuses more on penalties against individuals such as directors instead of a company-level focus on fines and de-registrations. Another key weakness is the quality of beneficial ownership information collected by PACRA. Supervisors, banks, and LEAs cite the quality of available beneficial ownership information as inadequate, either due to lack of such information in the database or because the information is not regularly updated, verified, or does not provide details on complex ownership structures.

### **Application of AML/CFT Preventive Measures**

**The understanding of ML/TF risks and the application of preventive measures varies between financial institutions and DNFBPs in Zambia.** Under the FIC Act of 2020, financial institutions and DNFBPs are obliged to apply AML/CFT preventive measures and evaluate the ML/TF risk profiles of their customers. Depending on their size and sophistication, larger financial institutions and DNFBPs have a better understanding and management of ML/TF risks whereas small to medium-sized entities are not yet on par with regards to tools and procedures to effectively implement AML/CFT preventive measures.

**Despite the BoZ’s good understanding of sectoral ML/TF risks, more work is needed to implement an effective risk-based approach to AML/CFT supervision.** According to the 2016 National Risk Assessment (NRA), banking is the largest sector in the financial system and plays a

prevalent role in the Zambian economy, and it was assessed with a 'medium' risk for ML vulnerability.<sup>37</sup> The ESAAMLG 2019 MER however identifies banks as the channel most vulnerable to money laundering activity due to their material importance to Zambia's financial sector. Understanding current issues related to risk-based banking supervision and related enforcement is therefore a key focus for this AML/CFT assessment. While the FIC had issued a risk-based supervision framework and guidance manual, supervisory bodies had yet to apply it to develop an effective risk-based approach to AML/CFT supervision.<sup>38</sup> Currently, the BoZ's AML/CFT inspections form part of its prudential supervision schedule. Although every full scope on-site examination covers AML/CFT, these examinations are primarily driven by prudential risk assessments. However, since 2020 the BoZ has developed its approach to AML/CFT examinations based on ML/TF-specific assessments as required by the FATF's risk-based approach to AML/CFT supervision. To this end, the BoZ conducted a pilot on-site AML/CFT examination in 2020-2021, based solely on a dedicated AML/CFT risk assessment. The mission was informed that, since 2016, information on AML/CFT risk assessment is collected through quarterly returns and questionnaires completed by supervised banks, instead of collecting the information during an examination. The information includes risk gradings of natural and legal persons, PEPs, wire transfers and suspicious transactions.

**The BoZ has committed to establish a dedicated AML/CFT supervision unit to support effective risk-based supervision of reporting entities.** The BoZ currently has 38 staff that cover both prudential and AML/CFT examinations for banks and non-bank financial institutions. In addition, the BoZ conducts AML/CFT on-site examinations and transaction monitoring for *bureaus de change*. Another department provides prudential and AML/CFT oversight over the payment system service providers. In 2020, one virtual AML/CFT examination was conducted. In 2021, two prudential examinations were conducted, which included AML/CFT. In 2022, two AML/CFT-specific examinations were conducted. The BoZ imposed sanctions on three banks in 2020-2021 for AML/CFT-related breaches, which reportedly made a positive impact on the sanctioned entities. Based on information provided by the BoZ, one bank was sanctioned for AML/CFT breaches in 2022, and the sanctions for another are pending. The establishment and resourcing of a dedicated AML/CFT supervisory unit is intended to address the identified shortcomings by supporting the BoZ's risk-based approach to AML/CFT supervision and the effective application of sanctions, in particular for high-risk entities and customers including politically exposed persons.

**Lack of resources and a broadened mandate are hampering supervisors' effectiveness and enforcement of preventive measures.** Zambia's legal framework under the FIC Act of 2010 and related amendments provide for a range of sanctions, including supervisory directives and license suspensions. In practice, however, supervisors do not apply effective, proportionate, and dissuasive sanctions, and "mainly opt for issuing recommendations, directions and, in few instances, suspension of licenses."<sup>39</sup> Neither remedial actions nor sanctions have been issued by DNFBP supervisors, owing to the lack of inspections. The FIC Amendment Act no. 16 of 2020 introduced administrative sanctions that can be imposed by supervisors and by the FIC itself, including financial penalties. The introduction of sanctioning powers for the FIC under this act was finalized in 2021 and the FIC is in the process of

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<sup>37</sup> [National AML/CFT Risk Assessment 2016](#).

<sup>38</sup> [ESAAMLG 2019 Mutual Evaluation Report of Zambia](#).

<sup>39</sup> *Id.*



operationalizing its administrative sanctions regime. In addition to the BoZ's supervision, the FIC, as the "supervisors of the last resort" is tasked with risk-based AML/CFT supervision of the DNFBPs.<sup>40</sup> As such, in 2021 the FIC undertook AML/CFT supervisory activities for banks (2 on- and off-site inspections and 16 post-monitoring reviews) and DNFBPs including accountants, real estate brokers and casinos (33 off-site monitoring engagements and 95 post-monitoring reviews). As a result, the FIC froze 55 bank accounts held with eight commercial banks due to suspected illicit activities, but still chiefly relies on awareness raising and training sessions for reporting entities.<sup>41</sup> Overall, the FIC's effective fulfillment of its broadened mandate is hampered by budget and operational constraints. It currently operates at about 50% of its envisaged staff capacity and requires additional budget, staff and office space to effectively fulfil its expanded role, while ensuring the quality of its disseminations.

## B. ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING INSTITUTIONAL ARRANGEMENTS

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**There are several institutions involved in the fight against corruption and money laundering in Zambia.** The ACC, the Auditor-General (AG), the DEC, FIC, National Prosecution Authority (NPA,) and the Economic and Financial Crimes Court (EFCC) are the most directly involved.<sup>42</sup>(See Appendix II-1) These institutions support anti-corruption and AML/CFT efforts within their different mandates and responsibilities and contribute to prevention, detection, investigation, prosecution and sanctioning of corrupt acts and money laundering.

**In the past decade, most oversight institutions were weakened or compromised, and an informal network of actors wielded influence over key policy decisions.**<sup>43</sup> While Zambia has made progress in introducing legal safeguards against undue interference, they have not been sufficient to ensure independence and professionalism of anti-corruption and AML entities in an environment of highly concentrated Presidential powers. The laws and governance structures lack important protections and contain mechanisms and prerogatives that allow the President to exert control and influence over these bodies, curtailing their institutional, operational and financial autonomy and the effective discharge of their mandates. The main institutional weaknesses include:

- **The Executive preserves broad discretion in the appointment and dismissal of key anti-corruption and AML officials.** While some presidential appointments are subject to ratification by a simple majority of the National Assembly (e.g. Director General of the ACC, AG, DPP), selection of candidates is closed, lacks transparency and public participation. The parliamentary ratification process of selected candidates is more transparent and includes testimonies about the candidates and public vote by the full House. The eligibility requirements and fit and proper criteria, especially those related to independence, are weak. For instance, an appointment of the ACC Director-General is subject

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<sup>40</sup> FIC Act 2020 sect. 2

<sup>41</sup> [FIC Trends Report 2021](#).

<sup>42</sup> The Constitution also provides for the Anti-Financial and Economic Crimes Commission (article 235), but it has not been created and it is unclear what would be the exact role it plays in the anti-corruption and AML institutional structure.

<sup>43</sup> DIA, "The Shadow State in Africa", 2020, p. 99.

to “such terms and conditions” as the President determines; while an appointment of the DEC Commissioner is guided by “general or specific directions” [of the President] and an appointment of FIC’s Director-General- by “directions considered necessary in the public interest.”<sup>44</sup>

As a general statutory rule, the ACC’s Director-General is in office until the retirement and its removal involves a complex procedure where the three branches of government intervene.<sup>45</sup> However, the causes for removal are very broad, leaving an ample space for arbitrary and politically motivated decisions. Media reported about the instances when the Executive dissolved the ACC, NPA and FIC Boards in disregard of the respective statutory terms.

The AG is appointed by the President on the recommendation of the State Audit Commission (SAC) and subject to the ratification by the National Assembly.<sup>46</sup> Yet all members of the SAC are direct Presidential appointees and there are no eligibility criteria for AG currently in place.

- **The operational and financial autonomy of anti-corruption and AML agencies is limited by the legal framework and Executive decisions.**
  - *The ACC’s budgetary and PFM treatment is less favorable than those awarded to other constitutionally autonomous commissions.* The ACC was designated a non-grant aided institution by the Executive, which means that for budgetary and PFM purposes, it is treated like any other ministry or department in government and must go through the Treasury to carry out payments and operations, including payroll, and obtain MoFNP’s approval for its personnel structure. Similar constitutionally independent bodies, such as the Electoral and Human Rights Commissions, were designated as grant aided entities, and are authorized to manage their own expenses and determine their own internal organization. Also, the law requires Executive consent for the ACC, DEC, AG and FIC to receive donor grants, limiting their ability to procure additional funding for their operations, thereby restricting their financial autonomy and further subordinating them to the Executive.
  - *The operationalization of the AG’s new legal framework, designed to significantly strengthen the institution, has been delayed by the Executive for more than six years.* The new 2016 Public Audit Act (PAA) and the State Audit Commission Act (SACA) granted the AG safeguards and tools to enhance its performance and autonomy, including the ability to issue regulations,<sup>47</sup> collect audit fees,<sup>48</sup> surcharge or disallow illegal expenditures<sup>49</sup> and, through the State Audit Commission, approve its own organizational structure and terms and conditions of service for its staff.<sup>50</sup> However, the PAA and SACA are not yet in force awaiting a formal enactment resolution by the

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<sup>44</sup> ACC Act Sect 9(2), NDPS Act Sect 7(2) and FIC Act Sect. 6(2).

<sup>45</sup> ACC Act Sect 10.

<sup>46</sup> Constitution (2016), art 249.

<sup>47</sup> Public Audit Act No. 29 (2016), Sect 39.

<sup>48</sup> Id. Sect 24 (1) (e) and 32 (2) (b).

<sup>49</sup>Id. Sect 26.

<sup>50</sup> Id. Sects 5 (1) (b) and (c) and 39.

MoFNP,<sup>51</sup> which has significantly delayed the strengthening of a fundamental and effective institution in the fight against corruption. The mission was informed that lack of ability to define and manage its staff is one of the main operational challenges faced by the AG, as its staff are currently appointed, assigned and transferred by the Public Service Commission and the personnel structures are authorized by the MoFNP. This puts the AG in a vulnerable position against the Executive.

- **Coordination of anti-corruption and AML efforts takes place mainly on a case-by-case basis.** There is currently no overarching body or formal mechanism where the heads of anti-corruption relevant entities can interact and exchange views on policy priorities, planning and challenges, prevention strategies, risk assessment, information exchange or resource allocation. For the AML entities, the Anti-Money Laundering Authority (AMLA) offers a forum for interaction on these issues. Operational coordination for high-profile cases occurs through the Joint Investigations Team, where ACC, NPA, DEC, FIC and the Police join forces to undertake investigations and prosecutions. For AML/CFT, authorities coordinate policy matters and advise the government on preventive measures through the Anti-Money Laundering Authority (AMLA) and the National Task Force of Senior Officials on AML/CFT.<sup>52</sup>
- **The effectiveness of anti-corruption and AML/CFT efforts is further hampered by limited resources.** Anti-corruption and AML/CFT agencies have been significantly underfunded for the past decade, resulting in serious operational challenges. All institutions reported that even though enhanced personnel structures had been long approved, budgetary constraints have held up hiring for newly created positions. Low salary structures vis-à-vis other public and private institutions make it difficult to attract and retain skilled professionals, and the efforts to invest in training are not capitalized. Training needs are significant across institutions but planning and prioritization are lagging. Severe vehicle shortages and little territorial presence were also cited as major obstacles to operations. The authorities have made efforts to increase budgetary provisions. For 2022, DEC's budget dedicated to AML/CFT increased by 85.1 percent, FIC's overall budget increased by 27.6 percent, the ACC's budget - by 39.8 percent and the AG's budget - by 5.7 percent.<sup>53</sup>

**Despite the overarching challenges, some institutions managed to perform their mandate and expose corruption and ML risks.** For example, the AG and FIC have been impactful despite facing serious legal, operational and financial constraints. The AG prepares and publishes well-structured and clear audit reports that have uncovered dozens of cases of mismanagement, inefficiency and corruption. It has maintained a high level of integrity and enjoys citizens and civil society's support and confidence. Many corruption investigations and prosecutions have been initiated based on the AG's reports. In 2018, the previous President and law enforcement agencies publicly criticized the FIC's work,

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<sup>51</sup> Per Section 1 of the Public Audit Act of 2016, and section 1 of the State Audit Commission Act, in order for both acts to come into force, the Ministry of Finance needs to issue a statutory instrument to that effect.

<sup>52</sup> [FIC AML/CFT Framework](#).

<sup>53</sup> Estimates of Revenue and Expenditure for the Year 1st January 2022 to 31st December 2022.

which led to political pressure on its leadership, changes to the Board, and to Transparency International Zambia's verdict of the 2020 FIC's Annual Typology Report as "shallow and lacking in detail" (notably, no Trends Report was issued that year).<sup>54</sup> Despite the impact of this political pressure on the FIC's publication of information, media reports have welcomed the FIC's tenacity and issuance of annual trends reports again in 2021, while authorities rate the quality of supporting information and intelligence disseminated by the FIC as helpful and have indicated that most cases forwarded by the FIC have led to further investigations.

### **Economic and Financial Crimes Court – a new anti-corruption institution**

**In January 2022, the Economic and Financial Crimes Court (EFCC) was established as a "fast-track" specialized division in the High Court,<sup>55</sup> to hear corruption, ML and asset recovery cases, but legislative reforms are needed to materialize swifter adjudications.**<sup>56</sup> The EFCC was granted general jurisdiction to adjudicate matters relating to economic and financial crimes and corruption, but no legal instrument clarifies what precise offenses are included in these categories to adequately establish its jurisdiction. Authorities and legal practitioners recognize that tangible fast-tracking of corruption and ML cases will require targeted training and legal reform to provide for more agile procedures. Comprehensive fit and proper criteria and eligibility requirements for the appointment of EFCC judges should be established. It is of paramount importance that judges sitting on the EFCC are impartial and independent and prosecute corruption and financial crimes on their merit free of external influence and are perceived so. The mission was informed that eight judges at the EFCC will be designated by the Chief Justice from the cohort of 51 sitting judges on the High Court, that currently there are no plans for providing specialized trainings to EFCC adjudicators to handle complex corruption and related ML cases and that additional resources are needed. While the EFCC is pending to be operationalized, eight magistrates (seven in Lusaka and one in the Copperbelt) were designated by the Chief Justice at the subordinate court level to hear corruption and economic and financial crimes cases. These magistrates have started trials, but no judgements have been rendered (as of July 1<sup>st</sup>, 2022). The magistrates' judgements can be appealed at the EFCC.

**Along with strengthening the EFCC, addressing low public trust, as well as the perception of corruption in the judiciary, recognized by the Chief Justice in his inaugural speech,<sup>57</sup> is important for the sustained effectiveness of anti-corruption and AML efforts.** Increased transparency in the work of the judiciary, as well as in the procedures and practices related to appointment, promotion, discipline and dismissal of judges, should help build greater public trust, which as the Chief Justice noted, is a "sine qua non to an effective judicial system which supports the rule of law that is in turn crucial to democracy and good governance."<sup>58</sup> Under the Constitution of Zambia, judges are appointed by the President upon the approval of the Parliament (art. 140). The candidates are proposed by the

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<sup>54</sup> [TI Statement on FIC 2020 Typology Report](#)

<sup>55</sup> The Chief Justice of Zambia, exercising his powers under Art 133 (3) of the Constitution and Sect 3 of the High Court Act established the Economic and Financial Crimes Court as a specialized division of the High Court through Statutory Instrument No.5 of 2022.

<sup>56</sup> The structure and organization of the judiciary is described in Appendix II-3.

<sup>57</sup> Chief Justice Hon Dr. Mumba Malila SC, 22 December 2022.

<sup>58</sup> Id.

Judicial Service Commission (JSC). There are no publicly available rules and procedures for selection of judicial candidates by the JSC and the mission was informed that vacancies are not publicized. Little information is available on the discipline of judges by the Judicial Complaints Commission (JCC) or their removal by the President upon JCC's recommendation. Recently, the media reported on the removal of one High Court judge and the suspension of another by the President on corruption allegations.<sup>59</sup>

### C. ANTI-CORRUPTION ANTI-MONEY LAUNDERING ENFORCEMENT

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**The legal framework does not effectively promote exposing corruption, as it puts whistleblowers under the risk of retaliation.** While the Public Interest Disclosure (Protection of Whistleblowers) Act grants legal safeguards to individuals who expose corruption in public and private sectors, reporting can be discouraged by criminalization of “frivolous, malicious or vexatious” complaints.<sup>60</sup> International experience shows that such a liability, even when aimed at the protection of reputation of others, can be used to deter whistleblowers from disclosing illegal activities.<sup>61</sup> The fear of consequences is identified as one of the main reasons for reluctance to report corruption.<sup>62</sup> In 2017 the ACC noted and expressed concern over a declining trend in corruption-related reports and complaints from 2011-2017<sup>63</sup>, but no updated data was provided to ascertain the current state of reports. According to the AfroBarometer, eight in 10 (79%) respondents said ordinary people risk retaliation or other negative consequences if they report corruption to the authorities.<sup>64</sup>

**Corruption investigations and prosecutions seem to have increased since the new government took office, but they are undertaken without clear risk-based prioritization criteria or strategies and lack of updated statistical information impedes assessing the effectiveness of enforcement efforts.** The ACC was unable to provide up-to-date data and statistics to the mission.<sup>65</sup> Reports on corruption received by the ACC are analyzed by the internal Complaints Review Committee (CRC).<sup>66</sup> The CRC makes recommendations on launching investigation to the Director-General.<sup>67</sup> Recently, priority has been given to high profile cases and those where asset recovery is more likely to be attained. The ACC's Prosecutions Department confirmed the absence of a strategy or specific criteria for prioritizing prosecutions and allocation of resources. The Investigations Department conveyed the

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<sup>59</sup> [President Hakainde Hichilema Fires High Court Judge Joshua Banda](#)

<sup>60</sup> Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 (2010) Sect. 39.

<sup>61</sup> See for instance G20 Anti-Corruption Action Plan, Protection of Whistleblower.

<sup>62</sup> [TI, Whistleblowing - Our priorities](#)

<sup>63</sup> ACC Annual Report (2017).

<sup>64</sup> [AfroBarometer Zambia 2021](#), Figure 9.

<sup>65</sup> The latest available data dates back to 2017 and showed that 78 percent of concluded investigations were closed with no further action, while only 7 per cent resulted in convictions.

<sup>66</sup> Committee members are the Directors of the Investigations, Central information Unit, Education, Prevention and Legal & Prosecutions Departments of the ACC.

<sup>67</sup> Cases that were not considered suitable for criminal investigation by the ACC are either channeled to Corruption Prevention Exercises by the Prevention Department or referred to other institutions for appropriate actions (e.g. disciplinary measures).

need for better capacities and trained professionals in financial investigations, intelligence gathering, asset tracing and forensics. The investigations manual is currently under the review.

**Effectiveness of investigation and prosecution of corruption and ML cases has been undermined by strained relationship between anti-corruption and AML agencies and the DPP.** According to the ACA and ACC Act, the ACC has power to conduct investigations in corruption cases, but it shall seek for the DPP's consent to prosecute.<sup>68</sup> The DPP can terminate (*nolle prosequi*) or take over cases from the ACC.<sup>69</sup> Likewise, all ML-related investigations conducted by the DEC shall be sent by the AMLIU to the DPP for prosecution.<sup>70</sup> The DPP reviews all corruption and ML cases grants, denies or conditions the consent in no particular timeframe. The mission was informed that this power of the DPP has become a significant bottleneck in corruption and ML prosecutions in Zambia and has resulted in unjustified delays and duplication of efforts. Relying on the legal framework, the DPP does not usually explain why it denies the consent for prosecution or grants immunities to defendants in corruption or ML cases. These factors diminish accountability and create a public perception of external undue influences over the prosecution service.

**Centralization of prosecution of corruption cases can increase efficiency and consistency in practice, when there are clear statutory guarantees for independence and accountability both at institutional and individual levels.** It is of paramount importance to ensure that individual prosecutors exercise their duties without improper interference and with high professional standards of integrity. For this end, fair, transparent, merit-based procedures for appointment and promotion/demotion, and the safeguards against arbitrary dismissal shall be in place and enforced. In the centralized systems like in Zambia, the selection of the chief prosecutor (i.e. DPP) shall enjoy confidence from public and the legal profession. International practice is increasingly tilted towards the involvement of professional, non-political expertise in the selection process and the creation of a commission of appointment comprised of respected professionals with highest integrity.<sup>71</sup> The guarantees for independence shall be accompanied with transparency and accountability, which can include a requirement for a regular publication of activity reports, prosecution guidelines and policy priorities, as well as a requirement for a reasonable timeframe for well-grounded decisions. Prosecutors are expected to demonstrate the utmost commitment to keep public informed about the decisions that allow termination of criminal proceedings in cases of corruption or other offences involving public officials.<sup>72</sup>

**Investigations, prosecutions, and convictions of corruption-related money laundering do not correspond to the existing risks.** Corruption (along with tax evasion) is the most prevalent predicate offence for money laundering (ML) in Zambia.<sup>73</sup> PEPs such as politicians and public procurement

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<sup>68</sup> ACC Act Sect 9(b) & 46; ACA Sect 6(1)(b)(ii).

<sup>69</sup> Constitution (2016), art 180.4.

<sup>70</sup> In the past, prosecutions of ML cases were handled centrally within the DEC, which contributed specific expertise on parallel financial investigations and recovery of proceeds of crime.

<sup>71</sup> Council of Europe, (CDL-AD(2010)040), para. 34.

<sup>72</sup> For international good practice on prosecutorial independence and accountability see Appendix II-2.

<sup>73</sup> National Risk Assessment (2016).

officials, along with their associates, are predominantly involved in these predicate crimes.<sup>74</sup> The inadequate effectiveness in implementing legal and administrative measures by various law enforcement agencies, along with other factors such as tolerance to corrupt practices, contribute to very high ML risks.<sup>75</sup> The authorities understand the specific money laundering risks related to corruption in different high-risk sectors but did not share specific data on the number of related investigations, prosecutions, and convictions. Several authorities, including the ACC, DEC's AMLIU, and Zambia Police are actively investigating ML offences through joint investigations, but no specific statistics on case numbers are available. The FIC as Zambia's FIU is the main disseminator of intelligence, but it also makes policy recommendations to the government and is tasked as the AML/CFT "supervisor of last resort." The FIC indicated that in 2021, it made 25 requests for information to the competent authorities, received 33 requests and undertook 4 joint operations with LEAs.<sup>76</sup> There are however no correlated statistics on the number of resulting prosecutions and convictions.

**The constitutional definition of "public officer" creates a legal impediment to hold top officials, such as the President, members of Parliament, ministers and judges, accountable under the anti-corruption legislation.** The ACA provides a broad and inclusive definition of public officer<sup>77</sup>, in line with UNCAC, but the constitutional definition introduced in 2016 excludes top government officials, such as State<sup>78</sup> and Constitutional Office<sup>79</sup> holders, counsellors, judges and judicial officers<sup>80</sup> (art. 266). As the main corruption offences apply to public officers, in order to avoid legal challenges for not meeting the elements of a corruption related crime, the ACC has resorted to bringing charges under other offenses, such as theft of public property, illegal expenditures or failure to comply with regulations.

## International Cooperation

**International cooperation and exchange against corruption, money laundering and for asset recovery is increasingly important, supported by the FIC's admission to the Egmont Group.** Regarding mutual legal assistance processes, the authorities indicated that some regional mutual legal assistance agreements are of limited usefulness due to lack of responses from receiving countries or differing legal definitions of predicate crimes. The authorities are therefore looking to strengthen

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<sup>74</sup> ESAAMLG typology study, "Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region" (2019).

<sup>75</sup> National Risk assessment (2016).

<sup>76</sup> [FIC Trends Report 2021](#).

<sup>77</sup> Section 3: "public officer means any person who is a member of, holds office in, is employed in the service of, or performs a function for or provides a public service for a public body, whether such membership, office, service, function or employment is permanent or temporary, appointed or elected, full time or part time, or paid or unpaid, and public office shall be construed accordingly".

<sup>78</sup> State Office" includes the office of President, Vice-President, Speaker, Deputy Speaker, Member of Parliament, Minister and Provincial Minister.

<sup>79</sup> "Constitutional Office" means the office of the Attorney-General, Solicitor-General, Director of Public Prosecutions, Public Protector, Auditor-General, Secretary to the Cabinet, Secretary to the Treasury and Permanent Secretary.

<sup>80</sup> "Judicial officer" includes a magistrate, local court magistrate, registrar and such officers as prescribed.

mutual legal assistance agreements with additional jurisdictions. For the informal exchange of information, the authorities noted that the exchange is generally improved under the umbrella of ESAAMLG membership in the region. The access to the Egmont Group's platform in 2018 is supporting the FIC's requests and receipt of information, originating from a diverse group of countries from the ESAAMLG region, Asia, the Middle East and Europe. Other authorities such as the DEC also request occasional assistance from foreign FIUs via the FIC, such as information related to cross-border transactions in the region and off-shore jurisdictions. In 2021, the FIC collaborated with 11 Egmont Group member FIUs and 4 non-Egmont member FIUs. The FIC made 10 requests for information to foreign FIUs (compared to 5 in 2019 and 20 in 2020), but only received 5 requests (compared to none in 2019 and 4 in 2020)<sup>81</sup>. However, the authorities did not demonstrate current data or information on any case management system, which precludes an assessment of whether the current processes to provide mutual legal assistance and exchange information are working effectively in practice. A focus area going forward is asset tracing within the ESAAMLG region and selected overseas jurisdictions, which is however still hampered by long response times or lack of responses. International cooperation in anti-corruption is weak and the authorities underlined the importance of improving the legal framework in this area to better respond to the transnational character of corruption-related offences, expedite asset recovery processes, and support extradition procedures between jurisdictions.

## Asset Recovery

**Along with prosecution of corruption and money laundering, recovery of proceeds of crime is a priority for the authorities of Zambia.** A robust asset recovery framework is in place. The Forfeiture of Proceeds of Corruption Act (FPOCA) of 2010 allows conviction and non-conviction-based forfeiture of the proceeds of crime; deprivation of any person of any proceeds, benefits, or property derived from the commission of any serious offence; facilitation of the tracing of any proceeds, benefit, and property derived from the commission of any serious offence. The Asset Forfeiture Department (AFD) is responsible for leading the implementation of FPOCA. The AFD has shown some successes in its efforts to recover proceeds of corruption but also recognizes the challenges, such as the need for continuous capacity development, enhancement of inter-agency, regional and international cooperation. Other institutions involved in the process (i.e. ACC and NPA) have conflicting views on the effectiveness of the current framework but agree that judges require training in the adjudication of these types of cases. The data on recovered assets is incomplete and does not allow monitoring progress.

**Decisions on seizure are being challenged by defendants, exposing the State to liability for mismanagement or undue deterioration of seized assets.** Seized and confiscated asset management is increasingly becoming a serious operational challenge. Due to the absence of a proper legislative framework, law enforcement agencies experience difficulties in adequate management of seized/forfeited assets. Roles and responsibilities are not clearly defined and involved institutions require sufficient resources and skills to perform the task. The authorities recognize the complexity of the asset management and put effort to find a solution.

## D. RECOMMENDATIONS ON ANTI-CORRUPTION AND AML FRAMEWORKS

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<sup>81</sup> Id. see also the [FIC 2020 Annual Report](#).



- **Adopt a legal framework that guarantees public access to information** (including proactive transparency requirements for government agencies) in line with Zambia’s international obligations and designate an agency responsible of overseeing the implementation of the law.
- **Ensure that all public entities prepare and publish activity reports in a timely manner.**
- **Strengthen protection of whistleblowers** by removing criminal liability for filing frivolous, vexatious or malicious complaints under Section 13(3) of the Public Interest Disclosure (Protection of Whistleblower) Act of 2010.
- **As part of the ongoing Constitutional review process, amend the definition of “public officer” in line with Zambia’s international obligation under UNCAC.**
- **Introduce and implement a legal framework on comprehensive conflict of interest and asset disclosure system in line with international best practices (G20 HL Principles on Asset Disclosure by Public Officials).** In particular ensure that:
  - All senior officials and others in positions of influence are obliged to disclose upon taking and leaving the office as well as with regular intervals.
  - Assets, income, fiduciary rights, credits, and debts, in the country and abroad, that are owned directly or beneficially owned, by the obligated public officials their family members and associated, are subject to disclosure.
  - Work history, activities, membership on boards of directors, representation power granted by or to third parties, creditors, donors, clients, relations, and interests relevant for the detection of conflicts of interest in the exercise of public office are subject to disclosure.
  - An effective monitoring mechanism is in place and a responsible institution (e.g. ACC) designated.
  - Proportionate and dissuasive sanctions for non-compliance and false declarations are in place.
  - Asset disclosure declarations of senior public officials are published (ST)
- **Operationalize PACRA’s beneficial ownership register**, including ensuring the availability of accurate, complete and up-to-date beneficial ownership information and imposing effective sanctions on entities for non-compliance.
- **Bring the Public Audit Act of 2016 and the State Audit Commission Act of 2016 into force by issuing the statutory instrument by MoFNP.**
- **Strengthen the existing anti-corruption information sharing** by mandating the Controller of Internal Audit to share findings related to corruption with the ACC.
- **Adopt and publish guidelines for the prioritization and effective investigation and prosecution of corruption and ML cases.**

- **Introduce necessary measures to ensure that top anti-corruption and AML officials such as Director General of ACC, Director General of DEC, Director General of FIC, DPP are selected and appointed through transparent, merit-based and participatory processes,** based on sound fit and proper criteria that are narrowly tailored to each position and ensure independence, professionalism, capacity and absence of conflicts of interest.
- **Prepare, with participation of civil society, academia and legal profession, a comprehensive reform strategy to strengthen the independence, professionalism and efficiency of the judiciary and prosecution services,** including by introducing a transparent, participatory and merit-based selection and appointment process, clear and robust accountability standards and professional ethics for judges, magistrates and prosecutors.
- **Strengthen the institutional, financial and operational autonomy of the ACC by**
  - Classifying it as a grant-aided institution (like Electoral Commission) and removing the consent requirement for donor funding.
  - Providing ACC with a clear legal mandate for formulation, coordination, monitoring and evaluation of anti-corruption policies and strategies.
- **Take necessary measures to improve cooperation between anti-corruption and AML investigative agencies (ACC and DEC in particular) and the DPP, by**
  - Introducing and enforcing clear procedures and timeline for the DPP to act on corruption and ML cases.
  - Creating a consultative process for anti-corruption/AML bodies and DPP to exchange information, identify policy priorities and working methods on a regular basis.
- **Consolidate the EFCC and strengthen its capacity by**
  - Preparing and publishing procedures and criteria for selection/assignment of judges to the EFCC,
  - Providing targeted capacity development opportunities for EFCC judges and personnel,
  - Enacting legislation that clearly establishes the EFCC's jurisdiction and facilitates the fast-tracking of corruption and ML cases.
- **Increase resources to FIC to support effective risk-based AML/CFT supervision.** In line with the identified high risk posed by PEPs across numerous sectors of the economy, the FIC should consider establishing a dedicated sub-unit focused exclusively on PEP-related intelligence gathering and analysis to support LEAs' investigations and prosecutions
- **Expedite the appointment of the FIC's Board of Directors.**
- **Increase investigations, prosecutions, and convictions of corruption-related money laundering in line with the identified risks of laundering of proceeds of corruption.**
- **Develop a strategy, legal and institutional framework to facilitate management of seized and confiscated assets.**

## Section III. Fiscal Governance

**This section provides analysis of the key weaknesses in fiscal governance (i.e. public financial management, public procurement, revenue administration, natural resource management and oversight of SOEs) that elevate corruption vulnerabilities.** Namely,

- Significant corruption vulnerabilities are present in the public investment project management, where the lack of compliance resulted in major inefficiencies. Governance weaknesses with macro-critical impact are present in the limited ability of Sub-National Governments (SNG) to exercise financial controls, weak expenditure controls in general and inadequate utilization of information technology.
- Lack of transparency in the procurement system, over-reliance on manual operations and delays in implementation of e-GP is a significant governance weakness, while absence of BO transparency and influence of PEPs create corruption risks in procurement.
- The resilience of ZRA's core business systems and processes against corruption is weak and its anti-corruption framework has shortcomings. ZRA corruption risks are particularly high in VAT refund process, which is characterized by massive backlogs and inefficiency. Limited availability of IT, poor compliance risk management and ZRA's organizational structure increase corruption vulnerabilities. Limited fiscal transparency elevates corruption and money laundering risks and is a cause of the revenue lost for years.
- The processes for allocating mining licenses and monitoring their implementation are not well managed. Moreover, laws related to environmental rehabilitation and digitization of key regulatory functions would help reduce contingent liabilities for the state and safeguard against corruption.
- Weak SOE governance framework increases risks of political interference, patronage and corruption.

### A. PUBLIC FINANCIAL MANAGEMENT

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#### Public Investment Management

**Over the past several years, the weaknesses in the public investment management framework have resulted in major inefficiency and waste of government spending in multi-year infrastructure contracts.** Several large public projects have been stalled at different levels of completion due to inadequate funding caused by poor planning and budgeting. The Strengthening Expenditure Controls and Arrears Management report by IMF shows that roads construction contracts are the largest category in the outstanding stock of arrears (15.5 billion ZMK as of July 1, 2021), and arrears related to public investment projects in water, education, health sectors are also significant (2.9 billion ZMK as of July 1, 2021).<sup>82</sup>

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<sup>82</sup> Tchelishvili et al *Zambia: Strengthening Expenditure Controls and Arrears Management*, IMF 2022

**Key recommendations made by IMF’s Public Investment Management Assessment (PIMA) remain valid and should be implemented without delay.**<sup>83</sup> The PIMA noted weaknesses such as lack of investment project appraisal for domestically financed projects; the absence of a central screening process to be underpinned by feasibility studies; the inclusion in the budget of projects that have not been identified in sectoral development plans; uncertainty of funding for multi-year contracts. (see Box 2).

**Box 2. IMF’s PIMA made nine key recommendations to strengthen the Public Investment Management (PIM) framework in Zambia**

- Institute an integrated planning and budgeting system across the public sector.
- Develop tools to screen proposals for capital projects for relevance, viability and affordability before they are included in the budget.
- Prepare regulations to clarify the PPP procurement process and the roles and responsibilities of all parties.
- Improve the usefulness of the medium-term expenditure framework as a multi-year budgeting and information tool for capital investments.
- Clear arrears and ensure that future arrears are prevented.
- Provide funding certainty for capital projects.
- Update the procurement legislation and systems to increase transparency.
- Strengthen the framework for monitoring the use and maintenance of public assets.
- Develop a targeted program to build skills and systems for effective PFM.

**Zambia’s PIM Guidelines (see Box 3) along with the National Planning and Budgeting Act (NPBA) of 2020 provide sound legal basis for public investment management but the ongoing efforts to improve the implementation should be accelerated.** There is work in progress to align the guidelines to the NPBA. The MoFNP has been working on a standard methodology for project appraisal, which is expected to be finalized soon. The lack of capacity in ministries, provinces and spending agencies (MPSAs) in undertaking projects in compliance with the guidelines is a major challenge. Cooperating Partners have been proactive in supporting capacity development activities; last year, MPSAs staff have been trained in new regulations with support of the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ). PIM implementation is hampered by the lack of an available software solution and advanced technical skills to use easily accessible software applications, such as MS Project and MS Excel.

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<sup>83</sup> Taz Chaponda et al *Zambia: Public Investment Management Assessment, IMF 2017*

**The role of the National Planning Directorate (NPD) of the MoFNP as a central “gateway” is yet to be strengthened and institutionalized.**

After the Ministry of Finance and Ministry of National Planning merged into the Ministry of Finance and National Planning, the National Planning Directorate (NPD) resumed the role of the secretariat to the Public Investment Board<sup>84</sup> and the central “gateway” of investment projects. The NPD,

working in coordination with the Budget Directorate, is responsible for ensuring a cohesive process (i.e. starting from including projects in the government PIP and budget, continued to securing project funding for the complete cycle, and maintaining the expenditure). So far, only some of the line ministries’ investment project proposals include the project appraisal. To be effective as the gateway, NPD should have a role in providing advice before major projects are approved (regardless of funding source). The NPD should also have access to timely, periodically updated information on major capital projects at the sector level to develop a comprehensive pipeline of public investment projects. The channel for communication between NPD and the Budget Office should be leveraged and ensured.

**Project selection should strictly adhere to the availability of funding in an annual budget and a medium-term budget timeframe, to avoid waste of public funds.** Project selection is mostly guided by the NDP’s (and sectoral) priorities and an affordability criterion based on sectoral resource envelopes. MoFNP considers NDP priorities while developing resource envelopes for sectors and communicates these priorities in the budget strategy paper. Ministries submit investment project proposals to the Cabinet for a final decision.

### **Weak Expenditure Controls and Inadequate Utilization of Financial Management Information Systems**

**Governance weaknesses arise from weak expenditure controls and persistent accumulation of arrears.** Large number of budget expenditure commitments occur in MPSAs with limited visibility to the MoFNP. Due to acute cash constraints and cash rationing, large portion of government bills remain

#### **Box 3. The key principles of PIM Systems (PIMS)**

- The guidelines apply to public investment projects financed from the national budgets as well as to projects that impose fiscal costs and fiscal risks to the government, such as public-private partnerships.
- MPSAs are required to initiate projects in line with the government and sectorial policies.
- MPSAs are required to carry out feasibility studies and develop a project concept note for the submission to the MoFNP and subsequent to the Public Investment Board for appraisal.
- The MoFNP as the secretariat to the Public Investment Board facilitates the technical review and appraisal of projects.
- Only projects contained in their product pipeline shall be considered for implementation by government through the national budget or another mode of financing.

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<sup>84</sup> In 2020 Government formally established Public Investment Board with the mandate to review projects and issue recommendations to the Cabinet of Ministers about including projects in Public Investment Plan. The board is not yet operational.

unpaid. Arrears outstanding as of December 2021 is ZMK 82.1 billion, equivalent of 20 percent of the GDP. Interest payments charged on overdue invoices are a significant source of waste in public finances as well. The AG 2020 report indicates that wasteful expenditure on delayed payments comprised 1.4 bln ZMK in 2022. The authorities made a commitment under the Extended Credit Facility to prevent the accumulation of new arrears and publish a strategy for clearing the expenditure arrears, which includes the criteria for prioritization and timing of the payments.

**Inadequate functionality and coverage of the Financial Management Information System (FMIS) and heavy reliance on manual expenditure processing are major impediments to effective expenditure controls.** The major bottlenecks to efficient expenditure controls, identified by IMF's past CD mission, remain outstanding:

- (i) **The FMIS commitment functionality is not fully utilized, and a parallel paper-based process is still followed.**<sup>85</sup> Most of the government contracts and commitments are processed outside the FMIS. The standard functionality of budget and cash releases are modified to accommodate the cash rationing approach. The process of daily allocation of cash releases to MPSAs is discretionary and raises corruption vulnerabilities. The practice of daily cash releases does not allow a sufficient planning horizon and make it difficult to manage the government expenditures. Therefore, only prioritized commitments are entered into FMIS for processing and payment and a large part of expenditures is undertaken outside of the FMIS.
- (ii) **Compliance to commitment control is not adequately enforced.** Clear directives should be issued to all MPSAs to use the FMIS platform not only for expenditure at the payment stage but importantly at the commitment stage. Failure to comply with the rule, leads to a non-recognition and non-payment of the expenditure by the government. Infractions to commitment control should be dealt with through appropriate measures, such as disciplinary proceedings and surcharge, as prescribed under the PFM Act 2018.
- (iii) **The coverage of FMIS is limited and currently includes 59 MPSAs and 10 provinces.** Statutory bodies established under the line ministries, such as Zambia Medicine and Medical Supplies Agency and Zambia Roads Development Agency, with considerable budget spending, along with district-level spending agencies and Grant-Aided Institutions are outside the FMIS.

**Current efforts to enhance and expand the FMIS system should be accelerated.** A contract has been signed on the FMIS enhancement with the system provider to activate the budget release process as intended and facilitate the expenditure control process. After completion of the user acceptance testing, Office of the Accountant General will take a lead in training the MPSAs staff in updated system functionality. The consultations are underway on potential inclusion of statutory bodies into the FMIS. A few institutions have been identified as potential pilots, like the University Teaching Hospital (UTH) controlled by Ministry of Health, which has been connected to FMIS. The authorities have reached out to Cooperating Partners to carry out a feasibility study of rolling out FMIS in districts and Grant Aided Institutions (GAIs), versus deploying alternative solutions.

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<sup>85</sup> The MoFP has reconfigured the commitment control functionality and trained the MPSA's staff to use the upgraded functionality. The system went live in July 2022 enabling the MPSAs to register all purchase orders and other financial commitments in the FMIS.

**Digitalization of PFM processes can promote greater transparency and integrity.** Digital systems and platforms allow greater and more prompt access to information and automation of services. It also increases efficiency, decreases costs to businesses, helps reduce corruption vulnerabilities, for example by minimizing personal contact and excessive discretion.

**PFM information systems are critical to support good governance, allow effective controls and oversight and promote transparency of public funds.** International experience shows that digitalization efforts can have important gains in PFM workstreams like procurement, budget and expenditure controls, payroll and Government-to-Private (G2P) payments. To fully realize the potential benefits, development and roll out of IT systems should be closely coordinated and integrated, where suitable. The fragmented use of IT systems creates risks to operational and governance efficiency and inflate development and maintenance costs. At present, there are number of different information systems and digital solutions utilized in PFM, including central FMIS, budget management information systems in statutory bodies and districts, e-GP and toll-fee management system of NRFA, Public Service Pensions Fund; however, these efforts have not been coordinated and integrated with each other.

**Zambia has invested in developing institutional and legal frameworks to implement a digital transformation agenda but a more integrated approach and stronger leadership from relevant agencies are needed to fully benefit from the system.** The Smart Zambia Institute is in charge of leading and coordinating the development of IT system, IT infrastructure, IT services and compliance. Special information and communication technology (ICT) units are established at ministries and the provincial level. Zambia Information and Communication Technology Authority is an ICT regulator. The President has recently signed the commencement order for the Electronic Government Act No 41 of 2021. Implementing regulations to ensure digital transformation are being developed. Focus areas and priority programs include transitioning to a Cash-lite Economy and migrating bulk government cash payments onto a digital platform, development of key public sector infrastructure and application of the digital signature, construction of an integrated national data center infrastructure, extension of the government wide area network backbone infrastructure, and integration and enhancement of a secure government ICT network connectivity infrastructure in underserved districts. It is critical that the authorities continue focusing on providing connectivity and infrastructure. The authorities should ensure synergies among different types of systems and available technical and technological capabilities. The in-house IT and IT project management capacity needs to be strengthened to facilitate the demand driven approach.

**Strengthening digital information systems is critical to support good management, promote transparency and allow effective control and oversight.** Elimination of manual intervention will reduce unnecessary administrative burdens that generate inconsistency and a lack of information and traceability of final expenditure. The lack of integration of budgetary accounting information prevents adequate monitoring of the transaction in a timely manner.

## Fiscal Decentralization

**Substantial work remains to be done to establish key principles of fiscal decentralization, inter-governmental fiscal architecture and assignment of revenues and expenditures, including development of the equalization formula, which is in its infancy.** The fiscal decentralization agenda is jointly led by MoFNP and the Ministry of Local Governments and Rural Development (MLGRD). It aims at inclusion of local communities in budget decision-making and supporting local socio-economic development programs. Both ministries are in consultation with the line ministries to identify main areas of expenditure and revenues for delegating and/or devolving to local authorities. Within the reform, the MoFNP is also considering the need to further clarify borrowing and debt management arrangements for local governments.<sup>86</sup>

**The Constituency Development Fund (CDF), one of the mechanisms for intergovernmental transfers,<sup>87</sup> has increased considerably, but significant capacity gaps at local level pose risks to its effective management.** In 2022, the budget allocated to the CDF comprised 25.7 million ZMK (increased from 1.6 million in 2021) per constituency. With the support from the GIZ, trainings were provided to the CDF committee members, yet, there remains a need for capacity development in budget management. The districts use locally developed budget management systems, which should be improved or replaced.

**Progressing the government’s decentralization agenda without parallel capacity building in budget management and introduction of accountability and oversight mechanisms can expand the areas of corruption vulnerabilities.** Going forward, it will be important to provide clarity and transparency of roles and responsibilities for central, provincial and local authorities, to ensure the accountability necessary for efficient and sound decentralization. Adequate flexibility should be given to local authorities to decide on expenditure priorities within the given budget constraint. The clarity of the CDF guidelines on the roles of involved stakeholders and the framework for managing and utilizing public funds can help achieve a balance between centralized control and local autonomy in managing the CDF funds. Building administrative and technical capacity, in preparing, managing, accounting, reporting and auditing budgets, as well as mechanisms to ensure coordination and cooperation both at the political and the technical level are key pre-requisites for successful decentralization. With the help of CPs, the authorities have taken steps in building the technical capacity necessary to move the fiscal decentralization reform forward.<sup>88</sup>

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<sup>86</sup> As of March 2021, outstanding stock of debt amounted ZMK 2.7 billion.

<sup>87</sup> Constituency Development Act No. 11 of 2018 and the recently approved Guidelines for Management, Disbursement, Utilization and Accountability of the Constituency Development Fund (February 2022) provide a legal and regulatory framework for the management of intergovernmental transfers through the CDF.

<sup>88</sup> Under the program Decentralization for Development (D4D), GIZ has trained CDF Committee members in local authorities, including the members of parliament, community representative and traditional leaders in the constituency. The WB Devolution Support Program provides targeted capacity building support town council staff



## B. PUBLIC PROCUREMENT

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**The authorities recognize that public procurement remains one of the key areas of government weaknesses and corruption vulnerabilities in Zambia and have prioritized its reform.** Public procurement entails high corruption risks according to international experience due to the large amounts of funds involved in procurement transactions and space for discretionary decisions. Complex procedures may add further incentives and opportunities for rent seeking. The risks are particularly significant in sectors where public spending is substantial, such as health, education, roads and agriculture.

**The 2021 report of the AG identified several incidents of public procurement irregularities, questionable contract prices and failure of suppliers, including the ones contracted through direct bidding, to deliver goods and services as per contracts.** For example, the Ministry of Health signed a contract with Barakatel Investments Ltd for the supply of 1,500 Tricycle Ambulances through direct bidding, in excess of US\$2,380,806 of what was submitted to ZPPA to obtain the No Objection. The supplier failed to deliver 386 tricycle ambulances.

**The authorities recognize the critical role of the public procurement function in obtaining value for public money.** The Constitution mandates state institutions to procure goods or services, in accordance with a system that is fair, equitable, transparent, competitive and cost-effective (Part XVI, Article 210). The Public Procurement Act (No 8 of 2020) provides the legal basis for procurement operations and replaced the Procurement Act of 2008. To support operationalization of the Act, the Public Procurement Regulations have been recently developed and approved by Statutory Instrument in April 2022. Zambia Public Procurement Authority (ZPPA) is an independent regulatory body responsible for regulations, standard setting, compliance and performance monitoring in public procurement.

**Over the past few years, progress has been made in strengthening the legal and regulatory framework for public procurement, yet strong efforts are needed to ensure compliance.** Changes have been introduced in streamlining procurement procedures and improving accountability and transparency, in line with the findings of the Methodology for Assessing Procurement Systems (MAPS) assessment carried out by the World Bank in 2019. For example, the Public Procurement Act 2020 enhanced provisions for transparency of procurement for public projects funded through private lenders and reference market price indices developed for benchmarking procurement for standard goods and services. With the help of the WB, the authorities are considering updating national standard bidding documentation to facilitate implementation of the act and regulations, and incorporation of specific provisions from other laws, including how to disclose and assess beneficial ownership, how to adhere to and assess environmental safeguards, etc. Enforcement of compliance has proved challenging due to capacity constraints, the lack of access to relevant information (companies database, tax information...) and underutilization of e-GP. An annual procurement audit plan is prepared based on a risk profile of procuring agencies and is agreed with the Auditor-General. ZPPA carries out procurement audit mostly manually, due to the lack of use of the electronic portal, limiting the number of audits. ZPPA should consider undertaking pre-audit of procurement of major investment projects.

## Electronic Government Procurement

**Ensuring transparency in public procurement processes is critical for holding decision-makers accountable to the public.** It also helps promote competition and, hence, obtaining value for money. It is important to ensure transparency and disclosure of procurement throughout the cycle - from the procurement plans and budget allocations to implementing contracts and auditing performance. Electronic procurement systems and platforms are essential tools to provide access to procurement related information.

**The electronic government procurement system (e-GP) has been live since 2015 in Zambia and its mandatory application was provided for in the Public Procurement Act of 2020, but utilization has been uneven.** Procuring Entities must use e-GP for publication of bidding documents, notices and invitations to tender; for submission and opening of tenders; bid evaluation; and publication of procurement contracts and their performance. Procuring Entities were given three years from commencement of this Act to comply with this provision. ZPPA is mandated to provide trainings for procuring entities, assess and facilitate their e-readiness and provide capabilities for the private sector and citizens to access the system.

**E-GP utilization has been limited with no clear timeline to bring all Procuring Entities into the portal, and the e-GP is not integrated with the FMIS.** Currently, there are 115 active users connected to e-GP and 160 entities use the system to publish their procurement plans. In total, 169 Procuring Entities (including provincial level governments) have been trained in e-GP functionality. Reportedly, the connected Procuring Entities use the e-GP portal for about half of their procurements. The ministries have reported that they see less active participation in online bidding compared to traditional manual process. ZPPA has carried out an assessment for e-readiness of procuring entities who are not yet connected. The issue of access to adequate infrastructure and connectivity needs to be resolved. The AG 2020 report includes the failure to integrate FMIS with e-GP in the list of main findings not being resolved during the audit.<sup>89</sup> Despite the technical requirements of the contract, the system provider is not able to interface with the FMIS. As a result, the e-GP system is unable to ensure checks of annual procurement amounts against the relevant budget line, and therefore, it is unable to avoid contracting over available budget. According to the ZPPA, a change request to address this issue has been initiated, and joint work with the MoFNP is underway. There are issues in business continuity and incidents management in the event of disruption of the e-GP procurement.<sup>90</sup>

**To ensure transparency in the procurement processes, the government should further invest in strengthening the e-GP.** It is key that the portal is simple and consistently used across procurement agencies. The ZPPA should lead capacity building efforts through providing trainings and online video-guides. A time-bound plan for adding procuring entities to the system should be developed and its implementation strictly monitored. Building the IT capacity internally to manage incidents and address minor change request should be developed. The portal should also provide easy access to the private

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<sup>90</sup> AG report for 2020 highlights that a review of e-GP infrastructure revealed that there was no infrastructure to provide for business continuity in the event of disruption of the e-GP system.

sector for active participation and for civil society engagement to ensure external oversight. It is also important to sensitize private sector and civil society representatives.

### **Influence of PEPs in Public Procurement**

**In Zambia, procurement-related corruption is particularly affecting the health, construction, transport and mining sectors.** Annual analyses by the FIC confirm that “cases of corruption continue to be linked to public procurement contracts and are often perpetrated by Prominent Influential Persons (PIPs) or their associates.”<sup>91</sup> Common patterns during the contract award stage include: PEPs abusing their positions of power in public institutions to influence contract awards in exchange for financial or material rewards such as cash, real estate or cars; contract awards to individuals with advance payments but without execution of the project; contract awards to entities owned by close associates of PEPs to conceal their beneficial ownership; and contract awards to companies that do not meet the capacity requirements and are not tax-compliant. After contract award, observed issues relate to collusion between employees and vendors, defrauding by employees or vendors and submission of false claims.

**Corruption in public procurement is consistently cited among Zambian authorities as a particular vulnerability and predicate offence to money laundering.** An ESAAMLG 2019 typology study on ‘Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region’ found that “the main perpetrators of procurement corruption in the Region were Politically Exposed Persons (PEPs), investors, public procurement officials, suppliers, agents of suppliers, political party members and foreign companies and governments.”

## **C. GOVERNANCE WEAKNESSES AND CORRUPTION VULNERABILITIES IN ZAMBIA REVENUE ADMINISTRATION**

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### **Effectiveness of ZRA’s Anti-Corruption Framework**

**ZRA has a sound anti-corruption framework in place, but the implementation should be strengthened to address the weaknesses in the asset and financial disclosure and corruption reporting.** Key elements of ZRA’s anti-corruption framework include:

- Integrity Committee with the mandate to prevent corruption by inter alia, conducting corruption vulnerability assessments, developing annual corruption prevention plan, advising and training staff on ethical matters, handling complaints on unethical conduct and preparing quarterly progress reports to management and the Secretary to the Cabinet through the Anti-Corruption Commission.<sup>92</sup>
- Trained focal point representing the Integrity Committee at stations and the head office.
- Key policy documents such as Code of Ethics, taxpayer charter, gifts and benefits policy, conflict of interest policy, whistle blower policy and asset disclosure instructions.

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<sup>91</sup> FIC 2020 Typology Report’

<sup>92</sup> The creation of integrity committees was legislated through Sect 6(1) (a) (iv), ACA 2012.

- Internal Affairs Unit with resources, experience and training to investigate professional conduct issues and cooperate with the ACC and police department.
- Independent Internal Audit with trained and experienced auditors who perform investigative, operational, IT and specialized audits.
- Independent external oversight by a dedicated unit in the Office of AG responsible for annual audit of the financial statements and operations of the ZRA, which is submitted to the Parliament and is publicly available.<sup>93</sup>
- ZRA contracts private external auditors to assess the risks and potential misstatements of major account balances and transactions.

**The assets and financial interest disclosure declarations submitted by ZRA employees are not verified in practice.** Asset disclosure and verification of accuracy of information is a cross-cutting challenge, manifested in the ZRA too (for weaknesses in asset disclosure system see Section II on Anti-Corruption and AML/CFT Frameworks). Upon appointment, a new employee is required to submit a Declaration of Assets and Business Interests (known as Form HR15A) to the Human Resources Department. This Declaration should provide valuable information on the financial situation and wealth of a new employee. However, its accuracy is not verified, and the information is not integrated in a database that would allow its utilization. The Code of Ethics provides disciplinary sanctions for the failure to declare assets in accordance with the policy (point 9.0), but it is not enforced.

**Corruption reporting channels and related instructions are not publicized and therefore not effectively used.** The ZRA has policies and instructions, such as the whistleblower policy, to encourage its employees and general public report corruption allegations through a mobile hotline, email, and the “suggestion boxes” at station. However, these policies and instructions remain on paper. Neither staff nor public is sensitized about the process and specially designated, effective reporting channels are not available.

### Resilience of Core Business Systems and Processes against Corruption

**The functioning of ZRA’s ICT, VAT refund process, compliance risk management and organizational structure increase corruption vulnerabilities in the system.** The delays in transition to TaxOnline II and ASYCUDA World has negatively affected the control of core businesses and key processes, such as VAT refund, transit management, customs warehouse management, bonded warehouse modules, bond redemption process and clearing agent, all of which have been operating in different environments and combined with legacy systems and manual processes. In addition, the lack of electronic case management systems for several ZRA units such as Finance Division, Internal Affairs, Human Resource, Investigations Department, Legal Services Department and Enforcement Unit makes it difficult to control the operation therein. The instability of the systems weakens confidence in audit trails, which are key deterrents to corruption.

**The massive backlog in VAT refunds, exacerbated by cumbersome refund processes, creates significant corruption risks.** The backlog is partially a product of a strict application of the VAT Rule

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<sup>93</sup> The Revenue Audits Directorate of the Audit Division

18 of 2014<sup>94</sup> and the inability to pay the refund timely due to the insufficient budget funds. The refund claims are paid from gross revenue collections with the annual cap of ZMK15.6 billion.<sup>95</sup> The refund cap also affects new refund claims as it is used to cover backlog too. This mechanism creates potential for discretionary decisions, as companies can pressure ZRA for preferential treatment to get their refunds.

**The VAT refund is managed both electronically and manually; the process is cumbersome with different rules and procedures applying depending on the year of its submission.** Although the law and the Taxpayer Charter stipulate a 30-day processing time for VAT refunds, only 0.5 percent of claims and 1.2 percent by value made for 2021 were processed within the legal time frame, generating a significant number of unprocessed cases. Any VAT refund decision requires audit of all refund claims, without a risk-based approach which allows quick and simplified process for low-risk tax-payers. This policy renders the system ineffective and inefficient. Excess VAT credits are offset against other tax arrears generating transparency issues and creating a room for errors. This is so because it is not fully integrated into the ICT systems (e.g., the refund/offset notification is sent manually to the taxpayer rather than electronically through the system) and requires the MoFNP to verify what taxes are owed by a company.

**The lack of a comprehensive compliance risk management (CRM) framework hampers ZRA's capacity to prevent corruption.** In the recent Tax Administration Diagnostic Assessment Tool (TADAT assessment) report of March 2022, ZRA was ranked the lowest, category D, in each of the five performance indicators used to assess the compliance and institutional risk management.<sup>96</sup> The core business processes in risk-assessment, audit, debt management and taxpayer services are fragmented with no single owner. The tax audit cases, opened to assess a taxpayer's compliance with the tax obligations, are not selected based on the risk-assessment. These elements create opportunities for personal influence, staff discretion, revenue officers' intrusion into the affairs of compliant taxpayers and dilution of responsibilities.

**Streamlining ZRA's organizational structure will help strengthen governance and reduce corruption vulnerabilities.** ZRA does not follow international best practices in organizing its functions and operations: the domestic tax division is split into two divisions (direct taxes / indirect taxes and excise); the ICT department is split into two departments (information and communication technology

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<sup>94</sup> The Rule 18 (Proof of Exports) of the VAT General Rules required exporters to provide the following documentation for their exports to be zero rated: copies of export documents, bearing a certificate of shipment provided by ZRA; copies of import documents bearing a certification of importation provided by the customs authority of the country of destination; tax invoices for the goods exported; proof of payment by the customer for the good; documentary evidence, proving that the payment for the goods has been made by the customer into the exporter's bank account in Zambia; and, other documentary evidence as ZRA may reasonably require. The rule has been in existence since 1997 but since the introduction of tough requirements in 2014, mining companies have been struggling to get their VAT refunds. Approximately K3 billions of VAT refunds due to the mining companies had been withheld. The rule has recently been relaxed.

<sup>95</sup> As informed during the meeting discussions, MOFNP approved a monthly cap of \$1.3B, after submission from ZRA based on refund estimates.

<sup>96</sup> "Risk management is essential to effective tax administration and involves a structured approach to identifying, assessing, prioritizing, and mitigating risks. It is an integral part of multi-year strategic and annual operational planning", TADAT field Guide, April 2019 Edition.

/ innovations and project management); the finance division is in charge of functions and operations that should be part of the core business, such as debt stock reduction and refund verifications audits; there are 13 units under the direct responsibility of the Commissioner General, which makes effective management/oversight difficult; and the legal services department is understaffed (20 employees) relative to its responsibilities and workload. Revamping the ZRA's organizational structure through resolving the above issues helps reducing vulnerabilities by establishing nationwide clear standardized processes and monitoring operational performance on field offices effectively.

## Effectiveness of the ZRA's Information Framework to Prevent Corruption

**Information is a crucial ingredient to build a solid system that strengthens the capacities of the different agencies to fight corruption.** Given the nature of their mandate and functions, the revenue administrations are key in generating useful information - beyond guaranteeing due compliance with tax obligations - to analyze, identify and refer corruption cases to relevant agencies for prosecution. However, ZRA faces internal and external weaknesses that impede its ability to operate an effective information framework (see Box 4).

**Box 4. Governance Weaknesses in ZRA** Error! Bookmark not defined.

Internal	External
<ul style="list-style-type: none"> <li>Inaccuracies in the taxpayer register: weak data integrity, incomplete taxpayer information; individuals with multiple national registration cards (NRCs) and business registration numbers.</li> <li>There is no large-scale automated cross-checking of third-party data from external sources against tax declarations: ZRA does not utilize third-party data to detect under-reporting of core tax declarations from the following sources: financial institutions; stock exchange; employers; real estate property registers; online (internet-based) vendors; and data received from other jurisdictions.</li> <li>Implementation of the Bulk Intelligence Data Project (BIDA) it is in the right direction but is currently limited to internal tax sources and ZRA's customs operation data, and data from the road development agency, and Zambia tourism agency.</li> <li>Lack of consolidated views of all taxpayer information</li> </ul>	<ul style="list-style-type: none"> <li>There is a mismatch between the taxpayer information number (TPIN) handled by ZRA and the information on the NRC that would allow identity theft or make it difficult to identify a specific individual.</li> <li>The TPIN is not mandatory in all commercial transactions, or it is only required for the seller and not the buyer, which makes it difficult to track transactions.</li> <li>Although ZRA manages the information electronically, other agencies do it manually, which complicates the exchange of information.</li> <li>Data and privacy protection issues pose some obstacles that hinder the exchange of information.</li> <li>The beneficial owners register is not yet operational and will be administered by the Patents and Companies Registration Agency, which would make it difficult to timely identify and prosecute cases of tax evasion and corruption without an effective exchange of information system.</li> </ul>

**Implementation of a comprehensive system that consolidates all sources of information about the wealth and income of each taxpayer will strengthen the ZRA capacity to detect corruption cases.** Beyond the benefits of reducing tax evasion, effective information system allows monitoring of the increase in the wealth of taxpayers and officials in particular. It also generates a virtuous circle where the capacity of other agencies to exchange and refine information is strengthened.

## Transparency in Revenue Mobilization

**Zambia’s transparency and allocation of responsibilities related to revenue mobilization is generally strong, although there are important areas of weakness.** The MoFNP is the primary fiscal policymaker, with the responsibility to submit budgets and fiscal policy changes to Parliament where special committees debate the submissions prior to Parliamentary votes. Investment incentives are granted in a transparent and non-discretionary manner. However, a key weakness relates to a lack of information on tax expenditures.

**Zambia does not publish public tax expenditure (TE) reports, nor comprehensively cost TEs for internal purposes.**<sup>97</sup> TE reporting includes explicitly stating the purpose of a TE (e.g., to stimulate investment in the manufacturing sector) and estimating the associated revenue foregone, allowing for more transparent, regular assessment of whether the benefits of a TE outweighs its costs. As TEs can equal several percentage points of GDP, a lack of reporting and scrutiny can present a key weakness in fiscal transparency and governance.<sup>98</sup> Authorities acknowledge the presence of TEs and produce internal, monthly reports on TEs related to reduced customs rates, but expanding TE reporting to VAT exemptions and reduced rates (initially) and publishing annual reports would improve fiscal management and policymaking. Eventually, TE reporting could cover Multi-Facility Economic Zones (MFEZ) and provisions in the income tax codes and accompany any proposed, new TE for budget discussions in Parliament.

**Investment incentives are granted in a transparent and fair manner.** MEFZs are the primary avenue through which business can receive incentives, with incentives clearly stated in legislation and not provided on a case-by-case basis. Also, importantly, mining companies are subject to the general fiscal legislation and do not project-level, negotiated terms. More generally, the mission was told that tax incentives are not granted to other groups or individual companies.

## E. OTHER FISCAL ISSUES: NATURAL RESOURCE MANAGEMENT AND OVERSIGHT OF STATE-OWNED ENTERPRISES

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### Natural Resource Management

**Improved governance of Zambia’s macro-critical mining sector can help develop the sector in a sustainable manner and increase value for all stakeholders.** In 2019, the mining sector made large contributions to government revenue (28%) and exports (77% of exports), and there are prospects to expand investment and production significantly, with the new administration aiming to increase

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<sup>97</sup> Tax expenditures are tax policy measures that reduce tax liabilities relative to a “benchmark” tax system, such as reduced VAT rates, personal income tax allowances, and tax holidays granted to entities in Multi-Facility Economic Zones. See [IMF 2019](#) for more.

<sup>98</sup> The size of Zambia’s current tax expenditures is not known. ICTD 2017 describes specific tax expenditures but does not quantify their size. The VAT and MFEZ legislation indicates that TEs could be large—for example, several items that have reduced VAT rates or an VAT exempt, such as petrol, diesel, staple foods, agricultural supplies, and water services, and companies in MFEZ’s do not pay income tax on the portion of income related to exports.

production three-fold by 2030. Robust governance and regulatory processes are key to ensuring that the sector avoids harmful activities, such as mining license speculation and poor environmental practices, and promotes Zambia’s financial, social and environmental objectives.

**There are issues around transparency, potential political interference, and a lack of regulatory enforcement in the mining industry in Zambia, some of which the government is beginning to address.** Several topics have been raised in AG reports (2014 and 2020), a World Bank project proposal (2016), media reports, and discussions with authorities—these topics include license holders not adhering to reporting, workplan and environmental obligations, many licenses held by a few individuals, potential political interference into the mining license approval process and the lack of digitalization for regulatory processes. Recent or ongoing initiatives to address weaknesses include a conducting a forensic audit (led by the AG)<sup>99</sup> and general review of the mining license approval and monitoring process; suspending the issuance of new mining licenses; and establishing the Mining Appeals Tribunal.

**An overarching issue is that the MMMD does not have the resources to properly regulate the sector.** The MMMD is responsible for overseeing mining activities in the over 3,000 active mining licenses (3,570 as of 2020, EITI) spread across the country, review new license applications, as well as meet its other functions, with funding of Kwacha 96 million (~USD 5.5 million, or USD 1,600 per active license). This contributes to a lack of oversight and strained resources and creates several governance vulnerabilities, such as rushed regulatory processes (e.g., license applications that are not properly scrutinized); environmental and safety risks (e.g., damages such as those highlighted in the 2014 OAG report); (iii) a lack of sectoral expertise that can be shared with other government stakeholders (e.g., the ZRA and MoFNP said they would benefit from mineral valuation and engineering expertise from the MOM when designing and implementing the tax regime); and, (iv) more generally, an inability to ensure that license holders are actually adhering to their workplans (e.g., the 2020 OAG report found that 88 percent of exploration license holders did not submit the required quarterly reports and several of the sampled mining license holders that had not started mining within 12 months).<sup>100</sup> The resource strain is exacerbated by a lack of digital, automatized processes and the large number of approved mining licenses annually. The government should prioritize increasing the human and financial capacity of the MMMD, while ensuring there is robust oversight to minimize leakage.<sup>101</sup>

**The 2020 OAG report highlighted the mining licensing process as a specific area where the lack of resources harms governance.** The OAG report found that the Mining License Committee (MLC)<sup>102</sup> considers “seventy applications within two hours thirty minutes per meeting”, or roughly one application every two minutes. Although, the applications have been reviewed by the MLC Secretariat prior to the MLC, the MLC still does not have the time needed to properly scrutinize whether an

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<sup>99</sup> The mission team was not provided with a copy of the report but was informed that it has been submitted to the President [and the National Assembly] and is planned to be published shortly.

<sup>100</sup> See 2014 and 2020 OAG reports for more on the lack of resources and oversight.

<sup>101</sup> The previous administration had considered introducing an independent mining regulatory as a way to increase funding and autonomy of the mining sector regulator.

<sup>102</sup> The Mining Licensing Committee (MLC) approves mining licenses and renewals, while the Minister of the MMMD decides on transfer applications. See Appendix III-1 for details.



applicant can meet its obligations. The OAG report also found that the MLC Secretariat does not have the resources to properly audit licensees in the first place. An increase in resources for screening applications, digitalization of the process, and adjusting procedures to remove the bottleneck at the MLC level could help alleviate these issues.

**There is evidence of license hoarding/speculation by few individuals, which results in inefficiencies and reduced mining activity.** The prevalence of hoarding has regulatory and legal components: (i) the MMMD does not regularly exercise its authority to cancel or suspend licenses for not following their workplan (although such an activity was undertaken following the OAG 2020 report) and (ii) the MMDA limits the number of exploration licenses by “a single entity” (Art. 21.3) but uses an incomplete definition for “a single entity”<sup>103</sup> and also the MMDA provides no limits related to hoarding mining and processing licenses. Both the lack of suspending or revoking licenses due to unmet obligations and inadequate definition of an entity potentially results in mining licenses with no exploration, development, mining, or processing activity, reducing discoveries of new deposits, investment, and production. Both the legal and operational aspects should be reviewed and improved.

**The criteria to determine whether a license or transfer applicant has received local and federal approvals, as well as technical and financial resources, may not be comprehensive.** The 2020 OAG report found that many licensees did not have the necessary permitting from local authorities and Zambia Environmental Management Agency (ZEMA) and/or financial resources to begin mining activities.<sup>104</sup> Moreover, there is no clear criteria for deciding whether an applicant has the technical capacity to undertake its workplan (although this practice is common, see Appenix III-1), leaving room for discretion. These potential issues are applicable and worsened for transfer applicants as the MMDA does not require transfer applications to go through the MLC.

**There is no process for dealing with conflict of interest in the licensing process or identifying whether a license is held by a PEP.** License and transfer applications do not include information on the BO of the applying entity, creating the possibility that applicants could discretely influence the licensing process. A process to identify and safeguard the licensing process against conflicts of interest could improve governance, while authorities should consider whether PEPs are eligible to hold mining licenses.

**The paper-based licensing process creates room for discretion and increases corruption risks.** For example, there is no robust way for applicants to know whether their application was received or has missing information (and, thus, could be delayed or not evaluated) and to track where the application is in the licensing process. The lack of electronic, time-stamped documentation also makes the first-come, first-serve method to allocate licenses vulnerable to corruption as electronic records providing the time that an application is submitted and received is more reliable and easier to audit.

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<sup>103</sup> An entity is defined as “a company or its subsidiaries” (Art. 21.1.3.). An ultimate beneficial owner could own several companies to circumvent the hoarding related provision.

<sup>104</sup> Financial resources are determined using a bank statement, but it is suspected that companies have transferred money to an account (or taken a short-term loan) for the purposes of the application.

## Oversight of State-Owned Enterprises

**Strong governance of Zambia’s large state-owned enterprises (SOE) sector is key to ensuring that SOEs generate value for the country and budget.** Zambia has 34 SOEs, with estimated liabilities of 20 percent of GDP at the time of the latest IMF estimate in 2017 (IMF 2019).

**SOEs are primarily owned by the MoFNP through an entity called the Industrial Development Corporation (IDC).** The IDC is 100% owned by the MoFNP and acts as a holding company, with shareholdings in 41 entities across major economic sectors (e.g., mining, electricity, and banking) (AG 2021). The President has historically been the IDC’s chairperson of the board and effectively elected the board (which consists of three cabinet members, two civil servants, and seven private sector members). The Parliamentary Committee on Parastatal Bodies recently recommended that the President should not sit on IDC’s board.<sup>105</sup> IDC-owned SOEs are required to distribute dividends to the IDC (IDC 2017), while there is no requirement for the IDC to pay dividends to the MoFNP.

**Robust governance of SOEs is crucial as poorly governed SOEs can provide a mechanism for hidden, off-budget spending that is controlled by elected or appointed officials, resulting in substantial fiscal risks and opportunities for patronage and corruption.** Transparency into SOE decision-making processes by relevant stakeholders (e.g., the MoFNP), independence from political influence, and professional management of SOEs support good governance.

**The lack of a dedicated SOE legal framework and the President’s position as chairman of the board of IDC have facilitated undue political interference in SOEs, which has negatively impacted their performance.** As state ownership functions are not regulated in Zambia, government has considerable space for discretionary decisions on appointment and tenure of SOE board members (as evidenced by the frequent dissolution of SOE boards<sup>106</sup>). There are no fit and proper criteria to select board members based on their skills, experience, merits, and independence, nor transparency requirements for appointment and removal. Accountability for SOE performance is not clear among various government stakeholders (State House, line ministries, MoFNP and Cabinet Secretary) vis-a-vis IDC, boards of directors, and management.<sup>107</sup> The mission was informed that the MoFNP is developing a new legal framework for SOEs to streamline their oversight, but there is no clear timeline for its adoption.

**MOFND’s ability to manage fiscal risks is limited due to information gaps and consolidation of SOEs within the IDC.** The MoFNP struggles to properly monitor SOE financial performance, partly due to the fact that some SOEs do not produce audited financial statements (OAG 2021). Moreover, there is evidence of cross-subsidization within the IDC (e.g., dividends are received from profit-making entities are used to subsidize loss-making ones). Since the MOFND’s primary mechanism to influence

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<sup>105</sup> The Committee on Parastatal Bodies at the Parliament of Zambia, 2020.

<sup>106</sup> [President Hakainde Hichilema dissolves boards of directors for the Financial Intelligence Center \(FIC\) and the Industrial Development Corporation \(IDC\) – Mwebantu](#)

<sup>107</sup> The Auditor-General recommended several measures to address these and other issues related to the governance of SOEs in Zambia. See [REPORT ON THE TOPICAL ISSUE FINAL-APPROVED AND ADOPTED.pdf \(parliament.gov.zm\)](#)

SOEs is through conditions imposed when recapitalizing (i.e., funding) SOEs, the fact that cross-subsidization is done within the IDC limits the extent to which the MoFNP can impact SOE operations, strategy, and management. Cross-subsidization also reduces transparency. The annual budget contains single line items for spending on recapitalization of SOEs (ZMK ~2 billion in 2021, 1.5 percent of total spending), but no information on dividends received from SOEs. Moreover, the IDC has not recently published financial information (the latest annual report is for 2016), and the information that it does publish is aggregated across its entities (i.e., consolidated), although the 2020 OAG report on Parastatals provides SOE-entity level information. The mission was told that the MoFNP receives annual reports and financial statements from most SOEs, but the level of detail is unclear.

## **F. RECOMMENDATIONS ON FISCAL GOVERNANCE**

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- **Strengthen the role of MoFNP in major project decisions regardless of funding source.**
- **Review financial management capacity of local governments through a rolling review process.**
- **Ensure adequate resources, including at local level to provide the oversight of SNG financial management.**
- **Mandate the use of the FMIS system for all transactions currently able to be undertaken through the system, taking into consideration:**
  - Registering all purchase orders and other financial commitments in the IFMIS
  - Developing an agreed list of entities to be integrated in the FMIS
  - Accelerating infrastructure and connectivity development
  - Addressing the issue of multiple, incompatible software use and explore integration opportunities.
- **Take concrete measures to ensure implementation of public procurement legal and regulatory framework, including by updating national standard bidding documentation, and strengthening enforcement of BO disclosure.**
- **Mandate the use of E-government procurement for those agencies and Ministries already covered by the system, including by providing system enhancements, user training, communication within government, communication with businesses, and plans for internal oversight and reporting.**
- **Prepare a time-bound action plan and roll-out E-Government Procurement, including by providing system enhancements, user training, communication within government, communication with businesses, and plans for internal oversight and reporting.**
- **Prioritize improvements and development of systems that have large amounts of money at stake, such as the VAT refund process, including the promulgation of mandatory instructions to harmonize treatments for each VAT refund claim.**

- **Increase internal audits in VAT refund process and customs warehouse management, as well as in other processes where IT systems are not fully integrated or are unstable.**
- **Develop a comprehensive institutional framework for compliance risk management in the ZRA.**
- **Implement electronic case management systems for all ZRA units.**
- **Implement large-scale automated cross-checking of third-party data from external sources against tax declarations,** with processes to improve data integrity, and strengthen the BIDA project to have a consolidated view of all of taxpayer information, including information of assets.
- **Revamp the organizational structure of the ZRA.** As part of a function-based organization design, introduce a clear separation of duties and appropriate numbers of staff assigned to each function based on workload, with strong headquarter functions providing oversight and uniform operations across the network of stations.
- **Take measures to raise awareness about means and channels for reporting corruption in the revenue administration and introduce a dedicated channel for reporting.**
- **Mandate regular preparation and external publication of tax expenditure reports on measures expected to result in significant foregone revenue.** This could start with evaluating VAT reduced rates and exemptions, and gradually expand the taxes covered for public TE reporting as the MoFNP builds capacity.
- **Strengthen the MMMD’s capacity to properly scrutinize license and transfer applications, and monitor the associated commitments on safety and environment, work programs, and production.**
- **Require transfers of licenses to go through the Mining License Committee and be evaluated using the same criteria as the initial granting of a license.**
- **Introduce processes to identify and resolve conflicts of interest in the licensing approval process,** such as including beneficial ownership information on the license application and automatically cross-checking the beneficial owners against PEPs.
- **Digitalize the mining license granting, transfer and oversight process so that all aspects of the licensing process and license holder reporting, including case management, are handled electronically.**
- **Align rehabilitation fund payment levels with international best practice**—periodic payments (or guarantees) are made to a mine-level escrow account until the account value reaches the full expected value of rehabilitation costs. Consider a one-time third-party audit of each large-scale mine’s expected rehabilitation costs to calibrate future rehabilitation fund payments.

- **Enact a new SOE law in line with international standards and best practice which includes**
  - Robust ownership, corporate governance, transparency and accountability frameworks for IDC as the state's holding company, including (i) a clear mandate for IDC, (ii) a distinct division of roles and responsibilities, particularly vis-a-vis MoF and Line Ministries, (iii) a rationale for state ownership, (iii) introducing safeguards for the appointment and removal of professional and independent board members, and (iv) eliminating the State House membership in the IDC Board.
  - Strong corporate governance framework for SOEs, including a rationale for state ownership, clear division of roles and responsibilities, and safeguards for independent board members.
  - The requirement for the government to issue and periodically update a dividend policy covering IDC and SOEs
  - Increased transparency standards and accountability mechanisms for SOEs and for the government as owner including on cross-subsidization in IDC
  - Strengthened role and powers of MoFNP in monitoring and overseeing IDC and SOEs' financial performance and fiscal risks.
  
- **Ensure that IDC and other SOEs timely prepare and publish pending and future annual audited financial statements and annual reports as required by the Public Financial Management Act.**

## Section IV. Central Bank Governance and Operations

**Autonomy of the BoZ, which is a pre-requisite for the central bank to fulfill its mandate, is safeguarded in a context of an enhanced framework for transparency and accountability.**<sup>108</sup> In addition to autonomy, strong governance arrangements, including a robust system of “checks and balances” to ensure independent oversight of the BoZ in the conduct of its daily operations are important.

**This Section summarizes the governance weaknesses and vulnerabilities in the Bank of Zambia that remain after the adoption of the amended BoZ Act in August 2022 (the 2022 BoZ Act).** The 2022 BoZ Act is substantially in line with IMF recommendations and was adopted in the context of intensive engagement by IMF staff with the BoZ and the Ministry of Finance.

### A. CENTRAL BANK GOVERNANCE AND OPERATIONS

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#### BoZ’s Legal Framework

**The 2022 BoZ Act addresses many governance weaknesses related to the mandate, autonomy (institutional, personal and financial) and governance arrangements identified by the GDA.** Namely,

- **Mandate.** The 2022 BoZ Act clarified the provisions on the “lending of last resort” function to distinguish a temporary liquidity assistance to solvent banks from a solvency support for financial stability purposes. In addition, it revised the provisions related to the BoZ’s acquisition of shares, establishment of subsidiaries and borrowing in foreign currency to explicitly link such activities to the core objectives of the Bank. It also prohibited the BoZ to issue guarantees for Government and public institutions’ loans and debts. However, the micro-prudential supervision mandate of the BoZ needs to be further aligned with Basel Core Principles for Effective Supervision (BCP1 EC2) and be enshrined in primary legislation.
- **Institutional autonomy.** The 2022 BoZ Act does not fully safeguard the BoZ’s institutional autonomy as it still maintains a representative of the Secretary to the Treasury as an *ex-officio* director on the Board, who is entitled to attend and participate in any Board meeting without a right to vote. However, it is welcome that the 2022 BoZ Act includes additional safeguards on a quorum for Board meetings and a prohibition for such a representative to sit on the Audit and Finance Committee (AFC) of the BoZ. This is an important shield against a potential political interference in the work of the independent oversight mechanism.
- **Personal autonomy.** The 2022 BoZ Act does not fully safeguard personal autonomy as the appointment procedure for the Board members and Deputy Governors does not provide for a double veto mechanism for the appointment of the Board members and Deputy Governors. However, it is welcome that the personal autonomy for Board members is underpinned by

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<sup>108</sup> The concept of autonomy, which refers to the ability of central banks to exercise their mandate and functions without the interference of political bodies and private economic interests, can be broken down into functional, institutional, personal, and financial autonomy.

strong eligibility criteria and safeguards against arbitrary dismissal, which are essential for independent oversight without fear of a reprisal.

- **Financial Autonomy.** Provisions on profit distribution now clarify that unrealized gains should be explicitly deducted from the Bank's net income before distributing profits. The monetary financing provision provides for the monitoring of compliance with the maximum permissible financing (15% of the ordinary Government revenue in the previous financial year), beyond which no further financing is permitted.
- **Governance and oversight.** The 2022 BoZ Act now explicitly entrusts the Board with the oversight function, which normally provides checks and balances over the executive management. However, the BoZ's governance arrangements are not supported by an explicit reference to collegial decision-making with respect to the management of the BoZ, which is important for strong checks and accountability within the governance structure. Instead, such collegiality continues to be established in practice as a matter of policy through the Executive Committee comprised of the Governor and Deputy-Governors and facilitated by a Board-approved delegation framework.
- **Accountability mechanisms.** Audit and financial reporting mechanisms appear to be well established. The 2022 BoZ Act does not establish an audit committee (although the AFC exists as noted above). However, it is welcome that the 2022 BoZ Act clarifies that the Board appoints the Head of Internal Audit and adopts the Internal Audit Charter.

### Assessment of BoZ's Governance Arrangement and Oversight

**The composition of the Board creates the opportunity for government influence.** The BoZ is governed by a unitary Board chaired by the Governor and comprising six non-executive Directors, and a government official — alternate to the Secretary to the Treasury — as a non-voting *ex-officio* member. The Board is fully constituted and actively engaged in discharging its mandate, including through policy decisions and approval of the budget and annual accounts/financial statements of the BoZ. However, the participation of a government official on the Board is a departure from central bank governance norms as it risks actual or perceived compromise of the autonomy of the BoZ and could lead to undue government influence over its decisions.<sup>109</sup>

**A collegial approach to decision-making exists as a matter of policy at the management level, although it is not provided for in the law.** Executive management is vested in the Governor and two Deputy Governors (Operations and Administration), who collectively form the Executive Committee; the latter is not formally provided for in the BoZ Act. The governance structure also includes different (specialized) management committees, chaired by either the Governor or one of the Deputy Governors, to assist in daily management. This collegial approach is complemented by a "delegation of authority" that facilitates collegial decision-making. This has been approved by the Board (last revised in 2021) and includes the terms of reference of all management committees. Until collegial

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<sup>109</sup> During the mission, the authorities indicated that the current composition of the Board is not a concern in practice. They also added that in recognition of perceived undue influence and potential conflict, a directive was issued by the Ministry of Finance to substitute the Secretary to the Treasury by an alternate (less senior and no decision-making powers). While the BoZ argued that such representation facilitates coordination with government, staff stressed that there are other models adopted by other central banks that involve dedicated fora outside of the central bank for such purposes.

decision-making at the management level is formally enshrined in the BoZ Act, there is a risk that the current policy could be reversed and executive powers could become exclusively concentrated with the Governor, resulting in governance modalities that cease to provide for an appropriate system of “checks and balances” and raise internal control risks.

**The BoZ Board is formally entrusted with an oversight role.** Also, according to its charter, the AFC is responsible for oversight of audit mechanisms (internal and external), financial reporting, internal controls, and budget performance. It has the requisite capacity and is actively engaged in its role. The AFC is composed of three non-executive Directors, and at the time of the GDA it also included the alternate to the Secretary of the Treasury as a member. As noted, the 2022 BoZ Act now prevents this. The AFC charter and its composition still needs to be revised to only include independent non-executive members of the Board in line with the amended 2022 BoZ Act.

### Assessment of the financial autonomy of the BoZ

**Monetary financing of the government, in breach of statutory limits, undermines the autonomy of the BoZ.** As of end-December 2021, the BoZ had total assets of K120 billion (about US\$7.2 billion), including credit extended to the government and related securities of K 16 billion or 13 percent of total assets and government securities acquired on the secondary market of K 13 billion or 11 percent of total assets. The claims on the government includes a portfolio of government bonds and treasury bills that is being rolled over in the primary market, and may have contributed to the breach of statutory limits on credit to the government. This portfolio resulted from past debt consolidations through various conversions of BoZ’s advances and loans provided to the government in previous years. This is indicative of government pressures on the central bank in the past, as well as weak internal mechanisms to ensure compliance with the law.<sup>110</sup>

### Assessment of BoZ’s transparency and accountability

**Audit and financial reporting mechanisms appear to be well established.**

- **External audit.** The external audits have been conducted by PwC Zambia—a full member of the global firm—since FY 2020. The appointment of external auditors is subject to strong procurement rules and a public tender that sets independence and quality criteria. The external auditors issued unmodified (clean) audit opinions for FY 2019–2021, stating compliance with International Standards on Auditing.
- **Internal audit.** The internal audit function is provided for in the Act, and its independence and authority are well maintained. The audit approach is comprehensive and risk-based. An external quality assessment of the function, conducted in December 2020, confirmed adherence to the Institute of Internal Auditors (IIA) standards.
- **Financial reporting.** The BoZ applies International Financial Reporting Standards (IFRS), with timely audits and publication of audited financial statements.

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<sup>110</sup> The mission team was informed that the measurement and compliance issues around credit to government were subsequently addressed



## **B. RECOMMENDATIONS ON THE GOVERNANCE AND OPERATIONS OF THE BANK OF ZAMBIA**

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- **The Board should revise the composition of the Audit and Finance Committee and approve an amended charter to govern its modalities**, ensuring that the committee's membership comprises non-executive Directors exclusively (i.e., ex-officio government representative does not qualify).

## Section V. Financial Sector Oversight

### **This Section provides analysis of key governance weaknesses in the financial sector oversight.**

While Zambia made a good progress in aligning legal and regulatory framework with international standards,<sup>111</sup> there are remaining constraints in performing the oversight function effectively. The Banking and Financial Services Act of 2017 has empowered the BoZ to issue regulatory statements, while a few powers related to supervisory matters remain vested in Minister of MoFNP. The BoZ needs to revise the decision-making framework for licensing, regulatory and supervisory decisions. The establishment of the Financial Stability Committee under the new BoZ Act will contribute to a collegial decision-making. A more disciplined approach is needed for enforcing prudential requirements and dealing with exemptions and exceptions. There is limited public accountability and transparency around banking supervision mandate. Banking supervision remains not fully effective also due to insufficient human resources in terms of both number and capacity. There are specific risks and challenges for banks and specialized financial institutions with Government ownership.

**Vulnerabilities in governance-related prudential framework could be addressed by further aligning them more closely with international standards.** Zambia has strengthened the regulatory framework for banks' corporate governance; however, supervisory oversight is limited due to lack of comprehensive methodology and capacity constraints. The regulatory and supervisory frameworks of banks' transactions with related parties and fit and proper assessment of banks' board members and senior management need to be aligned more closely with international standards and best practices. Banks' disclosure and transparency framework should be strengthened. There remains scope for further improvement of banks' licensing function.

### A. FINANCIAL SECTOR OVERSIGHT

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**The Zambian banking sector, which comprises of seventeen banks, remains broadly resilient despite the impact of the pandemic.** The banking sector is dominated by subsidiaries of foreign banks (ten banks); three smaller banks are locally owned commercial banks, and four banks, including the country's largest bank, are partially owned by the Government of the Republic of Zambia.<sup>112</sup> Total banking sector assets represented 37 percent of GDP as of December 2021. The 2017 FSAP<sup>113</sup> concluded that the banks had high capital and liquidity buffers to withstand shocks, and the sector

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<sup>111</sup> A focused review of banking sector oversight against selected BCPs was undertaken during the IMF-World Bank's 2017 Financial Sector Assessment Programme (FSAP) in Zambia. The BoZ has subsequently made progress on implementing recommendations in the 2017 FSAP. The BoZ has also benefited from regular TAs on banking supervision from AFRITAC South.

<sup>112</sup> Zambia National Commercial Bank Plc (ZANACO), the largest shareholders of which are: the Zambian Government through the Industrial Development Corporation (IDC) - 25% and the National Pension Scheme Authority (NAPSA) -10%; Arise B.V. (an African investment company backed by the Dutch Entrepreneurial Development Bank (FMO), RaboBank and Norfund) - 46%, and the Lusaka Stock Exchange Free Float – 19 %.

<sup>113</sup> [Zambia: Financial Sector Assessment Program-Financial System Stability Assessment \(imf.org\)](https://www.imf.org/en/Publications/FSAP/Reports/2017/01/01/Zambia-Financial-Sector-Assessment-Program-Financial-System-Stability-Assessment).

has thus far weathered the impact of COVID-19.<sup>114</sup> In 2016, Zambia experienced its first bank failure since 2002. The BoZ took possession of the insolvent bank, which was subsequently restructured. This resulted in the increase of number of banks with Government's ownership.<sup>115</sup> In 2020, the acquisition and subsequent merger of two small banks took place.<sup>116</sup>

**There are specific risks and challenges for banks and other non-bank financial institutions with Government ownership.** Such institutions are typically subject to political influence over their operations,<sup>117</sup> which can create potential associations with corruption. There are two types of public ownership of such institutions in Zambia: (i) four commercial banks<sup>118</sup> are partially owned by the Government, and (ii) the Government is the major shareholder in three specialized non-bank financial institutions.<sup>119</sup> In these commercial banks and financial institutions, the Government is a shareholder through the SOE - Industrial Development Corporation (IDC), and a public entity – the National Pension Scheme Authority (NAPSA). There are indications that the financial situation of some of the smaller commercial banks and financial institutions with the Government ownership has been deteriorating, while the challenging macroeconomic environment, governance weaknesses and corruption vulnerabilities remain. The AG's annual reports have repeatedly highlighted the worsening financial situation in some of the non-bank financial institutions.<sup>120</sup> Consequently, these institutions started to search for ways to handle long-lasting problems, including credits to politically exposed persons, government-related public entities and civil servants. All these banks are regulated and supervised by the BoZ<sup>121</sup> and are, in principle, subject to the same laws and regulations as commercial banks.<sup>122</sup>

**To promote the safety and soundness of banks and non-bank financial institutions with Government ownership and to prevent them from being used for corruption, banking supervisory processes should be strengthened.** In particular, supervisory processes should be developed and reinforced to: (i) avoid supervisory forbearance and address unsafe and unsound

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<sup>114</sup> Banking sector's liquidity conditions remained favorable partly due to the liquidity support rendered under the BoZ's Targeted Medium Term Refinancing Facilities (TMTRF). Regulatory forbearance for COVID-19 restructured loans may also give rise to deteriorating asset quality in the future (some measures were extended until end 2022). The BoZ has been performing an asset quality review across the banking sector, the results of which will inform its decision on unwinding COVID-19 policy interventions.

<sup>115</sup> The BoZ restructured Intermarket Banking Corporation Zambia Limited (IBC) following possession of the bank in 2016. Following the restructuring, a new bank (the Zambia Industrial Commercial Bank Limited (ZICB)) emerged and opened to the public for business in 2018. The major shareholder of the ZICB is a public entity – the National Pension Scheme Authority (NAPSA).

<sup>116</sup> In 2020, the BoZ granted approval to Access Bank Zambia Limited to acquire Cavmont Bank Limited.

<sup>117</sup> [Regulating, Supervising, and Handling Distress in Public Banks \(imf.org\)](#)

<sup>118</sup> Zambia National Commercial Bank Plc (ZANACO), Zambia Industrial Commercial Bank Plc (ZICB), Investrust Bank PLC, and Indo-Zambia Bank Plc.

<sup>119</sup> Development Bank of Zambia, National Savings and Credit Bank, and Zambia National Building Society.

<sup>120</sup> See the AG Report on the Parastatal Bodies and Other Statutory Institutions, 2020.

<sup>121</sup> The BoZ has informed the mission that they have formulated proposals specific to state-owned financial services providers, which include possible amalgamation of SOEs and is also considering the formulation of specific prudential regulatory framework for institutions such as the Development Bank of Zambia, which has a unique development finance mandate.

<sup>122</sup> Public non-bank financial institutions are regulated additionally by specific Acts.

practices at an early stage; (ii) identify specific risks and challenges that arise from state ownership and address them timely, and (iii) ensure effective implementation of the BoZ Corporate Governance Directive and upcoming new regulatory framework (Basel II/III). In addition, the fit and proper (re) assessment of board of directors and senior management of these institutions by the BoZ should be enhanced. International good practices in supervising public banks are highlighted in Appendix VI-1.

## Governance of Supervisory Agency

**The 2022 BoZ Act substantially addresses the weaknesses in the governance legal framework of the BoZ, and strengthens its ability to operate as an independent and effective banking supervisor.** As highlighted in the section on Central Bank Governance and Operations, the amended Act improved the central bank's legal framework and strengthened its autonomy and governance arrangements. In particular, these amendments were important with respect to the BoZ's banking supervision function, including by: (i) safeguarding further the BoZ's institutional, personal and financial autonomy; (ii) strengthening the BoZ's governance, with particular regard to the Board oversight over executive management; and (iii) enhancing the BoZ's accountability mechanisms.

**The micro-prudential supervision mandate of the BoZ should be further aligned with international standards (BCPs) in primary legislation.** Currently, the BoZ Act defines its banking supervision mandate as the formulation and implementation of supervisory policies. Also, section 5 (3) specifies the BoZ's supervisory functions as follows: "(d) license, regulate and supervise financial service providers and credit reporting agencies; and (i) to foster the liquidity, solvency and proper functioning of a stable market-based financial system". In line with the BCPs (CP1 EC2) the primary objective of banking supervision should be the promotion of the safety and soundness of individual banks and the banking system more generally (S&S mandate). To achieve this objective, the banking supervisor licenses, regulates, and supervises banks. If the banking supervisor is assigned broader responsibilities (e.g., development objectives, financial inclusion, etc.), these objectives should be subordinate to and not in conflict with the supervisor's primary S&S objective.

**While some progress has been made since the 2017 FSAP, resource constraints continue to limit the effectiveness of banking supervision.** The 2017 FSAP concluded that Zambia had fallen increasingly behind international regulatory standards and good supervisory practices. The revised Banking and Financial Services Act 2017 aligned many licensing, regulatory and supervisory requirements closer to international standards,<sup>123</sup> but the preparation of secondary legislation is still underway.<sup>124</sup> Implementing the Basel Framework is rightly a key priority for the authorities (Appendix VI-2) but requires adequate dedicated resources. Nevertheless, although the situation has improved

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<sup>123</sup> The revised Banking and Financial Services Act 2017 needs further enhancement. FSAP 2017 stated that "the BFSFA improves the framework for the corporate governance of financial services providers and strengthens the BoZ's power to issue secondary instruments. However, it does not address the weaknesses on market access, ownership changes, prudential requirements, auditing, consolidated supervision, enforcement and early intervention, and resolution". Majority of these areas were not in the scope of this governance diagnostic assessment.

<sup>124</sup> Drafts are prepared for Basel II/III implementation: capital framework, updated requirements for large exposures and transactions with related parties, ICAAP, disclosures, etc. The BoZ plans to issue these regulations this year.

following the recruitment of additional examiners, the resource-constraints, identified in the 2017 FSAP, remain and Banking Supervision Department is still operating below its agreed level of staffing. Recruitment of additional examiners is underway, but concerns remain about the level of experience of supervisors below Principal Examiners (team leaders). The BoZ should focus on capacity building, enhancing the supervisors' integrity framework<sup>125</sup> and strengthening the control in this area. It is important to continue taking steps to ensure the transparent and merit-based recruitment of supervisors to reduce the risk of political interference or influence in the recruitment process and to contribute to enhanced supervisory capacity.

**Additional legislative changes are necessary to limit the potential Government interference compromising the operational independence of the BoZ in its role as banking supervisor.** The BoZ has established its credibility in the country, and day-to-day banking supervision is currently carried out independently. However, there are potential multiple channels through which the BoZ's independence could be compromised.<sup>126</sup> As noted in the section on Central Bank Governance and Operations, additional safeguards were included in the amended 2022 BoZ Act to strengthen the autonomy of the BoZ, but addressing the remaining vulnerabilities related to its autonomy is equally necessary for effective exercise of the financial sector oversight function. Although the revised Banking and Financial Services Act of 2017 reduced the MoFNP's involvement in the day-to-day supervisory activities,<sup>127</sup> the authorities should consider further limiting such involvement.<sup>128</sup> In particular, the Minister's involvement in the examination of an appeal of a supervisory decision by the Tribunal could compromise the operational independence of the supervisor. The Ministry of Finance has been considering establishment of an independent Financial Sector Tribunal for appeals, which, if implemented, will address this issue. Furthermore, the MoFNP currently has a power to be involved in making regulations for prescribing fees and charges, offences and penalties, the forms for applications, licenses, approvals, registers and orders. These powers should be carefully revised as the responsibility for such regulations falls normally within the remit of the banking supervisor. Also, the primary legislation should protect the BoZ and its staff against costs of defending their actions and/or omissions made while discharging their duties in good faith.<sup>129</sup>

**There is substantial space to enhance the BoZ's public accountability and transparency around its banking supervision mandate.** Accountability is essential for the transparency, legitimacy and independence of supervisory decisions and can help prevent corruption and abuse. The BoZ has published its Strategic Plan 2020-2023, which includes five strategic initiatives aimed at strengthening

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<sup>125</sup> The BoZ Staff Handbook and Code of Conduct are both applicable for banking supervisors, and examiners are required to declare conflicts of interest before every examination, but still it is important to enhance supervisors' integrity framework, including the internal procedures and processes, and to strengthen the control in this area by considering specific risks and challenges related to effective supervision of individual banks and the banking system.

<sup>126</sup> For example, possible undue influence of Ministry of Finance; insufficient human resources to carry out effective supervision; insufficient powers to enforce supervision, etc.

<sup>127</sup> In particular, the BFSa strengthened the BoZ's power to issue secondary instruments.

<sup>128</sup> Banking and Financial Services Act 2017: Sect 35 (2), 138, 139 (1), 139 (2), 145 (b), 148 (4b), and 169 (1),

<sup>129</sup> The Banking and Financial Services Act includes provisions for legal protection of BoZ officers, employees or agents (Section 156). Additionally, Section 23(2) and Section 64 of the BoZ Act limit the BoZ's liability to losses which arise out of negligence or misconduct of officials, including staff and agents.

micro-prudential regulation and supervision. The BoZ's Annual Reports provide statistical information on the banking sector's performance and briefly disclose regulatory measures taken (e.g., the 2020 Report describes COVID-19 relief measures), but there is no detailed information on how the BoZ delivered on its prudential supervision mandate. Furthermore, no information is provided on the actions taken to address unsafe practices or to strengthen banks' resilience. The BoZ website provides limited disclosure on its supervisory framework, policies, governance, operations and effectiveness of its banking supervision function. Moreover, secondary banking legislation is not subject to public consultations (drafts are usually submitted to banks and other stakeholders for comments). The accountability framework<sup>130</sup> needs to be prescribed more clearly and disclosed publicly. The BoZ should develop a culture that encourages public disclosures<sup>131</sup> within banking supervision and promote the highest standards of public accountability through disclosures and an effective communication process.

**The BoZ supervisory decision-making framework does not fully ensure that decisions are taken at a level appropriate to the significance of the issue, nor does it sufficiently promote a collegial decision-making.** The internal document "Delegation of Authority" is intended to set out the formal delegations from the board to the senior management of the BoZ. However, this document does not clearly cover all licensing, regulatory and supervisory decisions. Under the Banking and Financial Services Act 2017, the BoZ has a significant responsibility for prior approvals and taking decisions on exemptions and corrective and sanctioning measures. The BoZ Board's participation in the supervisory decision-making such as approval of all internal policies that govern the supervisory function, taking possession of a financial service provider, decisions on whether an entity should be liquidated or not and decisions on termination of entities under liquidation. The authorities should consider increasing Board oversight of all licensing, regulatory and supervisory decisions<sup>132</sup> and the most significant decisions in banking supervision should be taken at Board level. Currently, the majority of licensing, regulatory and supervisory decisions are signed/approved by Deputy Governor-Operations (DGO).<sup>133</sup> The Supervisory Policy Committee (chaired by the Governor) and the Licensing Committee (chaired at Departments' level) provide a good forum for discussing supervisory matters at operational level, and for making recommendations. The Registrar of banks and financial institutions, currently the DGO, is established through the Banking and Financial Services Act and takes all decisions for licensing

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<sup>130</sup> Including the BoZ Governor/Deputy Governors participation in National Assembly (its Committees) sessions.

<sup>131</sup> On confidential information, good practice is to have a clear confidentiality policy that explains and justifies the choices made by supervisory authorities on the disclosure of sensitive information.

<sup>132</sup> The Board receives a quarterly Banking Supervision Department report on the situation in the banking sector.

<sup>133</sup> Deputy Governor-Operations is responsible for Banking Supervision; Non-Bank Financial Institutions Supervision; Banking, Currency and Payment Systems; Economics; Financial Markets and Regional Office. The new regulatory and supervisory regime will lead to a substantial increase of the workload related to banking supervision; there is a risk that the total workload of the DGO will be such that hamper efficiency of the supervision of other central areas of policy for the BoZ.

function.<sup>134</sup> Concentration of power could potentially lead to problems in decision-making. The establishment of the Financial Stability Committee under the 2022 BoZ Act will contribute to a collegial decision-making. The most important decisions could be made at the higher level (for example, at the Financial Stability Committee), and the less significant ones could be made at the Banking Supervision Department level. The BoZ needs to have a comprehensive decision-making framework for all licensing, regulatory and supervisory decisions, taking into account the significance of the issue.<sup>135</sup>

**A more disciplined approach is needed for dealing with exemptions and exceptions with the BoZ's prior approvals.** Exemptions and exceptions are widespread (Appendix VI-3). The Banking and Financial Services Act 2017 allows that the BoZ can exempt any financial service provider from any of the provisions of the Act, but only "on such terms and conditions as it may prescribe." These exemptions are aimed at serving a wide range of purposes, which are granted at the BoZ's discretion. However, the secondary legislation does not always include the specific terms, conditions and circumstances, which should be followed by the BoZ in its decision-making on exemptions. The BoZ usually decides on exemptions using a case-by-case justification. Similar situation arises with the BoZ's approach to prior-approvals.<sup>136</sup> In some cases, banks are allowed to not comply with prudential requirements if they have received the BoZ's prior-approval. This approach shifts the responsibility for compliance with regulatory standards from banks to the supervisor and creates an environment for supervisory forbearance and increases the vulnerability for corruption. The BoZ should conduct a stocktaking exercise to determine which exemptions and prior approvals can be eliminated. For those which cannot be eliminated, the BoZ should prescribe specific terms, conditions and circumstances.

**To avoid supervisory forbearance and prevent abuses in the banking sector, the application mechanism of enforcement measures should be strengthened.** Supervisory forbearance could lead to increased corruption vulnerabilities and allow room for potential malfeasance and abuse. The BoZ has the main corrective and sanctioning powers to deal with breaches and unsafe and unsound practices, including a power to impose administrative fines. The Banking and Financial Services Act 2017 contains many different offences for breaching prudential requirements, including for corporate governance. Often offences are dealt with through the agreement process and sanctions are applied rarely.<sup>137</sup> There is evidence of supervisory forbearance when a bank's capital is below the minimum requirements. From a decision-making perspective, there was no structured or rigorous framework of timely supervisory responses to address breaches and unsafe and unsound practices at an early stage (e.g., there was no classification of the severity of issues and clear prioritization of supervisory actions

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<sup>134</sup> The recommendation of the Licensing Committee (chaired at Department's level) is submitted to the Registrar who is vested with the power to grant and reject a license.

<sup>135</sup> For example, Banking and Financial Services Act 2017 gave the BoZ power to introduce certain rules by a statutory instrument, but the BoZ still has not taken the decision on how to use this power and at what level these rules will be approved.

<sup>136</sup> According to the BoZ, (i) prior-approvals are necessary as the banking sector is not sufficiently mature in Zambia; (ii) the exemptions are aimed at ensuring that the regulatory burden is not disproportionate to the size, nature and complexity of the financial service provider, and (iii) the exemptions are necessary to avoid arbitrariness and to ensure that the BoZ's actions are within the law.

<sup>137</sup> 2017 FSAP highlighted that the BoZ has never taken action for offences identified in the BFSAs. Currently, the BoZ indicated that monetary penalties were applied on four banks since January 2018 and there are currently two pending cases.

to be taken), but recently approved new regulations<sup>138</sup> may partially address these issues. Introducing such a framework would help the BoZ to operationalize the application of its corrective and sanctioning measures.

## **Banks' Licensing, Corporate Governance and Related Parties**

**There is a formal structure in place for the bank licensing (authorization) process, but certain elements need to be strengthened.** The licensing is broadly in line with generally accepted practices. Although no bank has been licensed since 2011, the BoZ has approved one transfer of significant ownership and one acquisition of a small bank since 2018. The Banking and Financial Services Act 2017 contains a requirement that a beneficial owner should be identifiable, but it does not have a definition of the 'ultimate beneficial owner'.<sup>139</sup> The BoZ faces challenges with ex-post assessments when the transfer of a significant shareholder has been completed (for example, in Stock Exchanges). Further, clear requirements are necessary for removing such shareholders when the ex-post assessment has resulted in rejection. It would be beneficial to dedicate more resources to the licensing function (currently only four supervisors are responsible for performing research, prudential regulatory policy and licensing).

**The BoZ Corporate Governance Directive 2016 has played an important role in strengthening corporate governance in the Zambian banking sector; but the implementation could be further enhanced.** Strong governance requirements can prevent banks from being used as a conduit for public sector misbehavior and political pressure. The BoZ Corporate Governance Directive 2016 contains key elements from the Basel Corporate Governance Principles for Banks 2015.<sup>140</sup> The Directive requires that the chairperson of the board submit to the BoZ for each year a compliance statement certifying that a bank has complied with the provisions of the laws, regulations, directives, and guidelines, including this Directive. Banks also issue a statement in their Annual Report that they 'comply'/'materially comply' with the requirements of the Directive. There is evidence to suggest that banks put efforts to ensure compliance with requirements on board composition, board committees, requirements for CRO, etc., and all banks have been disclosing the members of their board and management, with relevant biographies. However, more attention should be given to the proper implementation of this Directive. In particular, the effective Board oversight, conflicts of interests, corporate and risk culture, risk management, disclosure and transparency. The BoZ should consider issuing additional guidance to banks on its expectations for the most relevant corporate governance issues.

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<sup>138</sup> The BoZ informed the mission that the "Supervision and Resolution of Problem Institutions Policy" and the "Problem Institutions Indicators and Supervisory Actions" were issued in May 2022.

<sup>139</sup> According to BoZ, the BFSA defined "beneficial ownership" as "control" and when read together these definitions covers the meaning intended under the "ultimate beneficial owner". The Basel Core Principles for Effective Supervision requires that supervisor "identifies and determines the suitability of the bank's major shareholders, including the "ultimate beneficial owners."

<sup>140</sup> Currently, the BoZ has been revising this Directive to include new requirements for promoting gender diversity, financial inclusion, and extending these requirements to broader range of regulated entities. Also, the banks' corporate governance framework includes other directives: Effective Board Oversight – Directive 7; Conflict of Interest – Directive 10; Risk Management – Directives 15 and 16; Transparency and Disclosures – Directive 21.



**The supervisory framework should include a more comprehensive assessment of banks' corporate governance.** Currently, the BoZ uses the CAEL rating system for off-site supervision and "Management" component that is carefully assessed during the on-site examinations. Additionally, "Board and senior management oversight" is reviewed by examining each risk (credit, market, liquidity, operational). The BoZ's Risk-based Examination Manual 2008 has not been updated to include the requirements of the Corporate Governance Directive 2016. It would be useful to develop a comprehensive methodology to assess banks' corporate governance during off-site supervision, on-site inspections and supervisory review process. The BoZ should consider having more experts specialized in governance. A capacity building program is necessary to prepare supervisors in carrying out comprehensive assessments of the effectiveness of banks' corporate governance policies and practices, including a forward-looking assessment.

**The framework for assessing the suitability of members of the board of directors and senior management needs to be aligned more closely with international standards and effectively implemented.** Strong senior managers in banks can help to safeguard the integrity of the banking sector and minimize opportunities for corruption. The BoZ performs a careful security screening on the 'probity, personal integrity and reputation' of all potential candidates. However, the criteria for assessing the qualifications of members of the board and senior management are too general ('leadership, enterprise, and judgement'). International standards require that the competencies of board members and senior management commensurate with the experience, requisite degree of knowledge and decision-making ability to fulfill that role, taking into account the bank's size, complexity and risk profile. Furthermore, the BoZ requirements do not include the criteria such as (i) the assessment of potential conflict of interests (personal, professional, financial and political); (ii) members of the board of directors, particularly in the case of non-executive directors, possessing independence of mind given their responsibilities on the board; and (iii) members of the board of directors having sufficient time to fully carry out their responsibilities. The BoZ should adopt a more risk-based approach to assessing the suitability of board members and senior management for particular roles, with increased use of supervisory judgment, structured interviews with members of the board of directors and senior management, collective assessment of the members of the board, and to update other tools and techniques for such assessments, taking into consideration good practices.<sup>141</sup>

**In order to prevent abuses arising from transactions with related parties, the regulatory framework and supervisory oversight of banks' policies and practices in this area should be enhanced.** The FSAP 2017 provided a number of recommendations to enhance the related party regime, and some of them were addressed in the Banking and Financial Services Act 2017 and in drafts of Regulations (statutory instruments) 96 and 97. However, Regulation 97 still has the word "substantially" for describing requirements of arm's length (*the related party exposures should be made 'on substantially the same terms and conditions' as for comparable transactions*). This could give rise to misinterpretation and increase vulnerability to corruption. Furthermore, the Regulation 97 does not

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<sup>141</sup> The BoZ has prepared draft Guidelines for the Fit and Proper Assessment.

include a requirement that ‘write-offs’ of related party exposures and other dealings<sup>142</sup> (‘loan’ or ‘credit facility’ does not cover them) to be subject to the prior approval of a bank’s board. Although Zambia has strict requirements for the prior approval of credit exposures by a bank’s board and to address the potential risk of conflicts of interest, governance requirements for oversight and monitoring these transactions should be enhanced. For example, related party transactions should be monitored through an independent credit review or audit process. The BoZ should also ensure that exposures to related parties should be at least as strict as those for large exposures, in particular those to public entities. The identification of ultimate beneficial owners (UBO) of banks is also very important from a related party perspective. In terms of supervisory oversight of related party transactions, the BoZ should develop its supervisory tools<sup>143</sup> to enable a comprehensive assessment of a bank’s policies, practices and exposures to related parties, and to ensure actions are taken to address unsound practices in this area. The BoZ should consider issuing additional guidance to banks on its expectations for the most relevant related party issues.<sup>144</sup>

**Disclosure and transparency requirements for banks should be strengthened.** The Banking and Financial Services Act 2017 requires banks to publish its quarterly financial statement and audited annual financial statements in a newspaper of general circulation in Zambia. The BoZ Corporate Governance Directive contains more additional requirements on disclosure (corporate governance, risk management strategies and practices, transactions with related parties, ownership, etc.), and banks usually disclose these topics in their Annual Reports. However, some banks still do not publish financial statements and Annual Reports on their websites, which hampers accessibility of information by a wider audience. International standards require that disclosures should be easily accessible to the public, depositors, market participants and other stakeholders. Market discipline encourages that all these stakeholders can effectively monitor and properly hold the board and senior management accountable. The Basel Pillar 3 framework, which promotes market discipline through enhanced disclosure requirements, has not been implemented in Zambia, although the draft of the Directive on public disclosure of capital and risk exposures has been prepared.

## B. RECOMMENDATIONS ON FINANCIAL SECTOR OVERSIGHT

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- **Enhance the governance of the BoZ in its role as banking supervisor:**

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<sup>142</sup> Dealings such as service contracts, asset purchases and sales, construction contracts, lease agreements, derivative transactions, borrowings.

<sup>143</sup> Currently, the BoZ collects regular information on credit exposures and examines ‘insider loans and loans to affiliates’ as a part of ‘Asset quality and Credit risk’ and ‘insider transactions’ as part of ‘Management’. A broader scope is necessary to examine a bank’s service contracts, asset purchases and sales, construction contracts, lease agreements, derivatives transactions, and write-offs. Also, bigger attention is necessary for identifying hidden (“unofficial”) related parties and its transactions. Thematic reviews on related party topic would be very useful.

<sup>144</sup> It is important to ensure that all banks interpret the relevant definitions such as “associated person”, “insider” and ‘related party transactions’ in the same way (for example, the definition of ‘related party transactions’ in Banking and Financial Services Act 2017 is too general also, the perimeter of ‘related parties’, described in Banking and Financial Services Act 2017 and relevant regulations, should be clarified (in particular, for bank’s subsidiaries and affiliates).

- Align the micro-prudential supervision mandate of the BoZ closer with Basel Core Principles for Effective Supervision (BCP1 EC2) in primary legislation.
  - Strengthen the institutional set up and capacity of the banking supervision function.
  - Improve the accountability and transparency of the banking supervision function through additional disclosures.
  - Enhance the banking supervisory decision-making (including the Financial Stability Committee) and response frameworks; revise the Banking and Financial Service Act in promoting collegial decision making, particularly for licensing function (Registrar of banks and financial institutions).
  - Ensure that the secondary legislation includes specific terms and conditions for all exemptions and exceptions with prior approval, prescribed in the Banking and Financial Services Act 2017; conduct a stocktaking exercise for these exemptions and exceptions.
  - Revise the Banking and Financial Service Act to further limit Ministry of Finance interference.
- **Strengthen the governance-related prudential regulatory and supervisory frameworks by aligning them closer with international standards and good practices:**
    - Enhance supervisory oversight for ensuring that all banks properly implement the BoZ Corporate Governance Directive’s requirements, in particular effective board oversight, conflicts of interest, corporate and risk culture, and disclosure and transparency. The BoZ should strengthen its capacity and supervisory methodologies to enable conducting comprehensive assessments of corporate governance.
    - Modernize the framework for the suitability assessment of members of the board of directors and senior management.
    - Enhance the regulatory and supervisory framework for transactions with related parties.
    - Strengthen disclosure and transparency requirements for banks.
    - Include the definition of the “ultimate beneficial owner” in the Banking and Financial Services Act.
- **Develop and reinforce supervisory processes for banks and non-bank financial institutions with Government ownership to ensure:**
    - Unsafe practices in these banks and non-bank financial institutions are effectively addressed at an early stage.
    - Specific risks and challenges associated with these special entities are identified and timely addressed.
    - Fitness and propriety of members of entity’s board and senior management.
    - Comprehensive evaluation of corporate governance.
    - Full application of all prudential requirements, including for corporate governance and disclosure.

## Section VI. Rule of Law – Protection of Property Rights and Contract Enforcement

**This Section focuses on the efficiency of legal and institutional frameworks (including judiciary) pertinent to protection of property rights and contract enforcement and corruption vulnerabilities therein.** The need to streamline procedures for land alienation, change of the status from customary to State land as well as improvement of broader land management and dispute resolution, including the land tribunals and other courts involved, are recognized by the authorities of Zambia.<sup>145</sup>

**The legal framework for recognizing and enforcing contract rights is well developed, but enforcement systems require strengthening.** Formal mechanisms for commercial dispute resolution, such as Commercial Courts (CC) within the High Court (HC) and Small Claims Courts (SCC) lack necessary resources to provide effective justice to all. Alternative Dispute Resolution (ADR) is not effectively used, due to legislative shortcomings such as fixed, low fees for mediators that force professionals out of the system. Customary dispute resolution mechanisms are recognized by the Constitution and reportedly most frequently used by Zambians, but the constitutional recognition is considered declaratory in the absence of a support mechanism to strengthen the system.

**The need for comprehensive judicial reform, based on a well elaborated strategy, that covers all aspects of dispute resolution and aims at stronger, more independent and efficient judiciary is a priority recognized by the authorities and the judiciary of Zambia** (See the Section I and Section II.B). Independent and efficient judiciary can make a significant difference in protection of property rights and enforcement of contracts.

### A. LEGAL AND INSTITUTIONAL FRAMEWORKS PERTAINING PROPERTY RIGHTS AND CONTRACT ENFORCEMENT

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#### Protection of Property Rights

**Zambia ranks high among regional and income-level peers in the CPIA property rights and rule-based governance rating (see Box 5)<sup>146</sup>, but elevated corruption risks are present in the process of transforming customary land into state land and in managing state land.** Protection of property rights in Zambia should be evaluated in light of the existence of customary and State land (art. 254 of the Constitution of Zambia). Customary land is held and managed by communities and chiefs and

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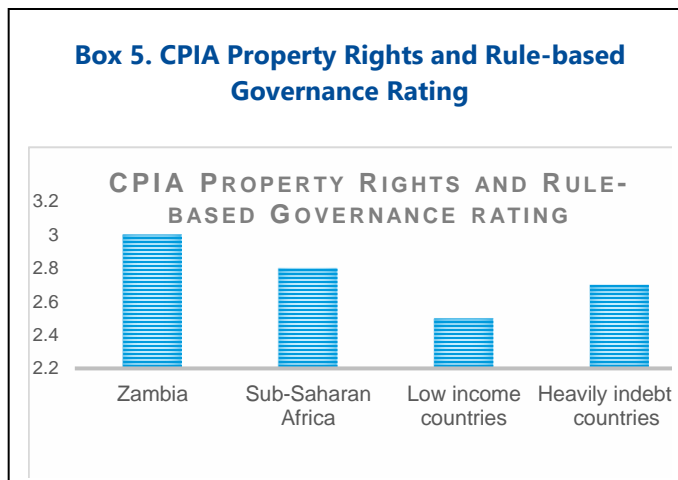
<sup>145</sup> The AG Report on Government's Efforts to Ensure Access to Land in an Effective Manne (2017). The Parliamentary Committee of Agriculture, Land and Natural Resources, (2018); National Land Policy (2021).

<sup>146</sup> The Property Rights and Rule-Based Governance assess the extent to which private economic activity is facilitated by an effective legal system and rule-based governance structure in which property and contract rights are reliably respected and enforced. The score is measured from 1=low to 6=high. Information on Zambia available at [CPIA property rights and rule-based governance rating \(1=low to 6=high\) - Zambia | Data \(worldbank.org\)](https://data.worldbank.org/indicators/SH.UV.GOV.RV)

is subject to conversion into the State land. The poorly enforced system for land status conversion increases corruption vulnerabilities and the risks of mismanagement of valuable resources.

**The existing legal framework is inadequate to secure land ownership rights, properly manage land resources and address emerging challenges in environmental degradation and natural resource depletion.** Zambia has vast land resources, but population increase,

migration from rural to urban areas and inadequate land administration systems create challenges for prudent use of resources, a pre-condition for sustainable economic growth.



**All land, customary of State, is held by the President in perpetuity for and on behalf of the people of Zambia.** By estimations, 80% of the land is customary. The President has the power to alienate State land to citizens and non-citizens through the Commissioner of Lands (art. 254.2 of the Constitution). Access to State land starts with an application to the Commissioner of Lands through the local authorities while customary land may be accessed through the Chiefs. Zambian citizens can also access land through Resettlement Schemes, which is administered by the Office of Vice President and/or Farm Blocks under the Ministry of Agriculture.<sup>147</sup>

**Customary land can be held indefinitely by members of the clan and be transferred within the clan through male lineage,<sup>148</sup> but Customary land does not have formal documentation and land holders cannot use it as commodity.** Customary land is recorded in registries managed by local Chiefs. In most cases, the registries provide little or no information on size or exact mapping of a plot. The work has been undertaken at the local level to sensitize the Chiefs and local authorities on the importance of economic empowerment of women through access to land resources. The mission was informed that a pilot implemented by the Land Alliance, a conglomerate of 13 NGOs, in southern Zambia supports Chiefs in preparing and issuing an accurate land holding certificate. This certificate is not a title but has been used in “village banking” where communities borrowed and lent internally without risk that the land would be lost to entities outside the community.

**As a general rule, state land can be held for a definite tenure up to 99 years.** The law provides four types of leases for State land: (i) 10 years through the land record card, (ii) 14-year lease for unsurveyed land, (iii) 25 to 30-year land occupancy licenses for residential settlements and (iv) a 99-year lease for surveyed land. In undefined special circumstances, the President can lease land for

<sup>147</sup> National Land policy (2021), p. 13.

<sup>148</sup> In some areas in the North, matrimonial communities transfer land through female lineage. In rare cases, local chief may allocate land to a single/widowed woman, especially if she has children.

more than 99 years (art. 3 of the Land Act). No information is available if such discretion has been used but it gives rise to corruption opportunities.

**The authorities recognize that the land registration and management system need to be reformed to ensure equitable access to customary and State land.** Land registration in Zambia requires physical filing of documents with the Deeds Registry,<sup>149</sup> although the registration system is partially digitalized and the digitalization process continues. The mission was informed that the system is overloaded and Certificates of Titles are issued with delays as registration of land and related interest is currently undertaken only in Lusaka and Ndola. The AG reported in 2017 that issuing offer letters and title deeds by the Ministry takes too long and is a source of corruption.<sup>150</sup> Information on the State land subject to alienation is made public by the Ministry of Lands but the mission team was informed that public awareness of the process is limited. The applications are lodged in the local councils, which do not have uniform standards for selection of candidates.<sup>151</sup> In practice, applicants are required to provide a bank statement, pay slip or proof of residence and demonstrate the ability to develop.<sup>152</sup> These criteria marginalize those without formal employment who cannot bring a bank statement or afford a pay slip.

**The poor system of land registration and management contributed to an increased number of land disputes.** Land disputes on State land are resolved by Land Tribunals while Chiefs decide on conflicts on customary land applying local traditions. Land Tribunals are fast-track circuit courts under the umbrella of the Ministry of Land created to promote resolution and fair adjudication of land disputes. Their mandate also covers public awareness-raising on land acquisition procedures. The effectiveness of the initiative has been extremely limited as its members are part-time practitioners with other duties to attend to, compounded by inadequate resources for travel. The Lands Tribunal is not sufficiently autonomous from the Ministry of Lands, which is often a respondent in the case. The Task Force on Illegal Land Allocation chaired by the Ministry of Home Affairs was created to curb illegal land acquisition and allocation.

## Contract Enforcement

**The legal and institutional frameworks for contract enforcement are in place in Zambia but challenges in application persist.** The key legislation, based on the common law of contracts, provides protection. Contract enforcement disputes are decided by the Commercial Court and the Small Claims Court. The Court of Appeal and the Supreme Court serve as appellate bodies in accordance with the procedures prescribed by law.<sup>153</sup> The Commercial Court is a fast-track mechanism within the High Court of Zambia. Lower value commercial claims of less than ZMK20,000 are resolved in Small Claims Courts located in Lusaka, Kitwe and Ndola, but sit at such times and places it considers

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<sup>149</sup> Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, Part II.

<sup>150</sup> The AG Report on Government's Efforts to Ensure Access to Land in an Effective Manner,(2017).

<sup>151</sup> Id.; Report of the Parliamentary Committee of Agriculture, Land and Natural Resources (2018).

<sup>152</sup> Id.

<sup>153</sup> The structure and organization of the judiciary is described in Appendix II-3.

necessary for the speedy resolution of disputes.<sup>154</sup> Claimants appear in person in Small Claims Court and are not represented by lawyers. Cases are decided by part time arbitrators known as Commissioners, usually lawyers with at least five years standing at the bar.<sup>155</sup>

**It is difficult to assess the extent to which judicial independence is guaranteed in practice in Zambia.** According to the AfroBarometer survey (2021), 78 percent of sampled respondents believe that some elements of the Zambian judiciary are corrupt.<sup>156</sup> As the Chief Justice noted in his inaugural speech, “pockets of the Zambian society, including our politicians, civil society organizations, lawyers, clergymen, litigants and accused persons, have not concealed their shrinking faith in the Zambian Judiciary as a sanctuary for the vindication of those principles which are prized in any true democracy namely, truth, justice, fair play and equality before the law.”<sup>157</sup> At the same time, many users of the courts informed the mission team that the Commercial Court is viewed as independent and professional.

**The efficiency of the contract enforcement system is severely undermined by a lack of resources, resulting in limited geographical reach of courts, poor infrastructure (especially lack of courtrooms), high workload and a low number of adjudicators, poor data management practices, lack of technology and inadequate administrative support as well as limited continuous education and professional development opportunities.** With 18 million people in the country of about 752,617 square meters, there are only two Commercial Courts, one in Lusaka and the other in Kitwe, with 8 judges in total.<sup>158</sup> Small Claims Courts are operational in 3 locations with 30 commissioners throughout the country.<sup>159</sup> In order to access a court, physical filing of a complaint is required and remote options are not available in law and in practice. The Commercial Court in Lusaka (7 judges) shares its premises with the Constitutional Court and the Industrial Relations Court, negatively affecting the case disposal rate.<sup>160</sup> Judges at all levels have been overwhelmed by assigned cases—for example, in 2021, 7 judges in the Commercial Court in Lusaka were responsible for 780 cases.<sup>161</sup> Lack of technology, including basic equipment such as scanners and printers, force adjudicators and support staff in Commercial and Small Claims Courts to manage the process manually, which exacerbates inefficiency. Administrative support beyond registrars is unavailable, putting additional burden on adjudicators. There is a backlog of cases in most courts, but it has improved in the Commercial Court and the Small Claims Court due to the hard work of the judiciary

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<sup>154</sup> Constitution of Zambia (2016), art 120(1) (b); The Small Claims Court Act Cap. 47 of the Laws of Zambia.

<sup>155</sup> SCC Act, Sect. 6 and 7.

<sup>156</sup> [Zambia – Afrobarometer](#) 2021.

<sup>157</sup> [Inaugural address by His Lordship Hon. Justice Dr. Mumba Malila SC, Chief Justice of the Republic of Zambia | ZambiaLII](#)

<sup>158</sup> According to the World Bank 2022 Judicial Sector Public Expenditure and Institutional Review Report, in 2020, the rate of Judicial Officer per 100,000 population in Zambia was 5.70, with more than half of the adjudicators located in the Local Courts of Zambia. Subtracting the local court magistrates, the Judicial Officer per population of 100,000 decreases significantly to just 2.09 per 100,000 in Zambia.

<sup>159</sup> The World Bank Judicial Sector Public Expenditure and Institutional Review Report (2022).

<sup>160</sup> Id.

<sup>161</sup> Id.

and the Task Force on Backlog created in 2018. The mission team was informed that case disposition time from the final submission date is 180 days in Commercial Court and this timeline is respected at the expense of hard work of adjudicators and registrars. Excessive workload may result in lower quality of judicial decisions and contribute to more cases. This is particularly problematic when adjudicators have limited access to well-set induction training and continuous education opportunities. Commercial Court judges examine all kinds of commercial disputes without specialization. In light of the rapidly evolving nature of commercial activities, specialized trainings are much desired.

**Alternative dispute resolution mechanisms exist but are ineffective.** Arbitration, court-annexed mediation and traditional dispute resolution are recognized by the Constitution and the laws of Zambia. Court Annexed Mediation was formally introduced in 1997.<sup>162</sup> Statutory Instrument No 72 of 2018 amending the High Court Rules on Mediation requires a judge to refer the case to mediation at the scheduling conference and before setting the action down for trial, except for a case involving a constitutional issue, liberty of a person or injunction or any other ground when a judge considers the case unsuitable to mediation. The legislation recognizes party autonomy, which is an important principle in ADR. The law now requires that parties be given a chance to choose their Mediator from a list of accredited mediators.<sup>163</sup> The mission was informed that use of court attached mediation proves to be ineffective in practice. One of the reasons for inefficiency is low remuneration (ZMK750 per day) for mediators, which excludes professional and dedicated mediators from the pool. Any mediation outcome as a result of a process initiated outside the Court system is not recognized, hence enforcement of any outcome is a challenge when a party defaults. Arbitration in commercial matters is governed by the Arbitration Act No. 19 of 2000, which incorporates United Nations Commission on International Trade Law (UNCITRAL) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Act applies to both domestic and international arbitration. Zambian courts have no jurisdiction if parties have agreed to an arbitration clause in their contract. Arbitration awards are recognized and enforced in the High Court of Zambia, and judgments enforcing or denying enforcement of an award can be appealed to the Supreme Court.

**Traditional dispute resolution mechanisms, such as Chiefs and local courts have a significant role, especially in rural areas.** Article 118 (2) (d) of the Zambian Constitution as amended in 2016 provides that alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted provided that they do not contravene the Bill of Rights, are inconsistent with the Constitution and other laws, and are not repugnant to justice and morality. Most Zambians resolve disputes at the informal level using traditional forums.<sup>164</sup> Local Courts are the most organized form of traditional dispute resolution. With a defined territorial jurisdiction, Local Courts examine inheritance claims up to a certain value (among other local disputes) and apply African Customary Law.<sup>165</sup>

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<sup>162</sup> Statutory Instrument No. 71 of 1997.

<sup>163</sup> Statutory Instruments No. 73 and 72 of 2018.

<sup>164</sup> World Bank Judicial Sector Public Expenditure and Institutional Review Report (2022).

<sup>165</sup> Constitution of Zambia (2006), art 120(1)(c). Local Courts Act, 1966: Section 13 of the Local Courts Act declares that the Minister of Legal Affairs can confer jurisdiction on the Local Courts to administer written laws, as specified in an order drafted to that effect. Such orders will also specify any restrictions and limitations on the penalties that may be imposed by the Local courts in the relevant circumstances.



## C. RECOMMENDATIONS ON PROTECTION OF PROPERTY RIGHTS AND CONTRACT ENFORCEMENT<sup>166</sup>

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- **Accelerate registration and digitalization of titles on State land to create a reliable database with easily traceable and verifiable information.**
- **Develop detailed procedures and fair and uniform criteria for alienation of State land, with clearly defined roles and responsibilities of central and local authorities.** Provide capacity building and resources to local authorities to ensure proper implementation of land alienation rules.
- **Streamline the procedures and processes for transforming customary land into State land to minimize the risks of abuse and corruption.**
- **Strengthen the capacity and efficiency of the Commercial Court**, in particular, by
  - Introducing electronic filing of commercial claims, counter claims and other submissions to ensure that citizens outside Lusaka and Kitwe have access to commercial justice
  - Adding adjudicators and support staff to manage workload and maintain high quality of judgments.
  - Develop and implement specialized training programs for Commercial Court judges and personnel. The trainings should include substantive and procedural laws as well as court management.
- **Strengthen the capacity of Small Claims Courts** by expanding to all districts of Zambia, recruitment of additional commissioners, support personnel and allocation of resources for operation.
- **Strengthen the ADR and traditional dispute resolution mechanisms** by
  - Allowing competitive remuneration for mediators.
  - Introducing non-court attached mediation.
  - Developing a detailed framework for traditional dispute resolution in line with art. 118.2.d. of the Constitution.

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<sup>166</sup> Recommendations in Section II related to strengthening judiciary apply to CC and SCC too.

# Appendices

## APPENDIX I: TABLE OF RECOMMENDATIONS

Table Recommendations				
Measure	Authority	Objective	Timeline	
<b>I. Effectiveness of Anti-Corruption and AML Frameworks</b>				
<b>Transparency and Accountability in Public Sector</b>				
1	<b>Adopt a legal framework that guarantees public access to information</b> (including proactive transparency requirements for government agencies) in line with Zambia’s international obligations and designate an agency responsible of overseeing the implementation of the law.	MOJ, Ministry of Information, ACC, SH, NA	Strengthen transparency and accountability in public service	ST
2	<b>As part of the ongoing Constitutional review process, amend the definition of “public officer” in line with Zambia’s international obligation under UNCAC.</b>	MOJ, SH, National Assembly	Strengthen accountability in public service	MT
3	<b>Ensure that all public entities prepare and publish activity reports in a timely manner</b>	All public entities	Strengthen transparency and accountability in public service	ST
4	<b>Introduce and implement a comprehensive conflict of interest and asset disclosure system and legal framework in line with international best practices (G20 HL Principles on Asset Disclosure by Public Officials).</b> In particular ensure that: <ul style="list-style-type: none"> <li>- All senior officials and others in positions of influence are obliged to disclose upon taking and leaving the office as well as with regular intervals (MT)</li> <li>- Assets, income, fiduciary rights, credits, and debts, in the country and abroad, that are owned directly or beneficially owned, by the obligated public officials their family members and associated, are subject to disclosure. (MT)</li> <li>- Work history, activities, membership on boards of directors, representation power granted by or to third parties, creditors, donors, clients, relations, and interests relevant for the detection of conflicts of interest in the exercise of public office are subject to disclosure. (MT)</li> <li>- An effective monitoring mechanism is in place and a responsible institution (e.g. ACC) designated. (MT)</li> <li>- Proportionate and dissuasive sanctions for non-compliance and false declarations are in place. (MT)</li> </ul>	MOJ, ACC, SH, NA	Strengthen transparency and accountability in public service	ST/MT

	- Asset disclosure declarations of senior public officials are published (ST)			
5	<b>Operationalize PACRA’s beneficial ownership register</b> , including ensuring the availability of accurate, complete and up-to-date beneficial ownership information and imposing effective sanctions on entities for non-compliance.	PACRA, MoFNP	Strengthen transparency and accountability in public service, reduce AML/CFT risks	Immediate
<b>Oversight Institutions</b>				
6	<b>Introduce a legal framework to ensure that top anti-corruption and AML officials, such as DG of ACC, DG of DEC, DG of FIC, DPP, are selected and appointed through transparent and participatory processes</b> , based on sound fit and proper criteria that are narrowly tailored to each position and ensure independence, professionalism, capacity and absence of conflicts of interest.	MOJ, SH, NA	Strengthen transparency and accountability in public service	MT
7	<b>Strengthen financial and operational autonomy of the ACC</b> by, <i>inter alia</i> <ul style="list-style-type: none"> <li>- Classifying it as a grant-aided institution (like Electoral Commission) and removing the consent requirement for donor funding. (MT)</li> <li>- Providing ACC with a clear mandate for formulation, coordination, monitoring and evaluation of anti-corruption policies and strategies. (ST)</li> </ul>	MOJ, ACC, SH, NA	Strengthen AC & Oversight institutions	ST/MT
8	<b>Bring the Public Audit Act of 2016 and the State Audit Commission Act of 2016 into force by issuing the statutory instrument by MoFNP</b>	MoFNP	Strengthen AC & Oversight institutions	Immediate
9	<b>Strengthen the existing anti-corruption information sharing</b> by mandating the Controller of Internal Audit to share findings related to corruption with the ACC.	MOJ, MoFNP, SH,	Strengthen AC & Oversight institutions	ST
<b>Enforcement of anti-corruption and AML measures</b>				
10	<b>Strengthen protection of whistleblowers</b> by removing criminal liability for filing frivolous, vexatious or malicious complaints under Section 13(3) of the Public Interest Disclosure (Protection of Whistleblower) Act of 2010.	MOJ, ACC, State House, National Assembly	Strengthen corruption and ML detection, investigation and prosecution	ST
11	<b>Adopt and publish guidelines for the prioritization and effective investigation and prosecution of corruption and ML cases.</b>	ACC, DEC, NPA	Strengthen corruption and ML detection, investigation and prosecution	ST
12	<b>Take measures to improve cooperation between anti-corruption and AML investigative agencies (ACC and DEC) and the DPP</b> by <ul style="list-style-type: none"> <li>- Introducing and enforcing clear procedures and timeline for the DPP to act on corruption and ML cases;</li> <li>- Creating a consultative process between anti-corruption/AML bodies and DPP to exchange</li> </ul>	ACC, DEC, NPA/DPP	Strengthen effectiveness of anti-corruption and AML enforcement	ST

	information, identify policy priorities and working methods on a regular basis.			
13	<p><b>Consolidate the EFCC and strengthen its capacity by</b></p> <ul style="list-style-type: none"> <li>- Preparing and publishing the procedures and criteria for selection/assignment of judges to the EFCC;</li> <li>- Providing targeted capacity development opportunities to EFCC judges and personnel;</li> <li>- Enacting legislation that clearly establishes EFCC's jurisdiction and facilitates fast-tracking of corruption and ML cases.</li> </ul>	Judiciary, MOJ, NA	Strengthen effectiveness of anti-corruption enforcement	ST
14	<p><b>Increase resources to the FIC to support effective risk-based AML/CFT supervision.</b> In line with the identified high risk posed by PEPs across numerous sectors of the economy, the FIC should consider establishing a dedicated sub-unit focused exclusively on PEP-related intelligence gathering and analysis to support LEAs' investigations and prosecutions</p>	BoZ, FIC, MoFNP	Reduce AML/CFT risks	ST
15	<p><b>Expedite the appointment of the FIC's Board of Directors</b></p>	State House, MoFNP, Secretary of Treasury	Strengthen core AML/CFT institutional framework	ST
16	<p><b>Increase investigations, prosecutions, and convictions of corruption-related money laundering in line with the identified risks of laundering of proceeds of corruption.</b></p>	DEC, ACC, NPA	Strengthen AC by effective AML investigation and prosecution	MT
17	<p><b>Develop a strategy, legal and institutional framework to facilitate management of seized and confiscated assets.</b></p>	MOJ, SH, NA	Strengthen corruption and ML detection, investigation and prosecution	ST
<b>Strengthening Justice Sector Institutions to Effectively Tackle Corruption</b>				
18	<p><b>Prepare, with participation of civil society, academia and legal profession, a comprehensive reform strategy to strengthen the independence, professionalism and efficiency of the judiciary and prosecution services,</b> including by introducing transparent, participatory and merit-based selection and appointment processes, clear and robust accountability standards and professional ethics for judges, magistrates and prosecutors.</p>	MOJ, Judiciary, State House	Strengthen Judicial independence and efficiency	MT
<b>II. Fiscal Governance</b>				
<b>Public Financial Management</b>				

19	<b>Strengthen the role of MOF in major project decisions regardless of funding source.</b>	MoFNP	Strengthen PFM	ST
20	<b>Review financial management capacity of local governments through a rolling review process</b>	MoFNP	Strengthen PFM	ST
21	<b>Ensure adequate resources, including at local level to provide the oversight of SNG financial management.</b>	AG	Strengthen PFM	ST
22	<p><b>Mandate the use of the FMIS system for all transactions currently able to be undertaken through the system, taking into consideration:</b></p> <ul style="list-style-type: none"> <li>- Registering all purchase orders and other financial commitments in the FMIS</li> <li>- Development of an agreed list of entities to be integrated in the FMIS</li> <li>- Accelerating infrastructure and connectivity development</li> <li>- Addressing the issue of multiple, incompatible software use and explore integration opportunities.</li> </ul>	MoFNP	Strengthen PFM	Immediate
<b>Public Procurement</b>				
23	<b>Mandate checking of tax registration of companies prior to awarding procurement contracts and disallow signing of contracts with entities that are not registered</b>	ZPPA	Strengthen PFM	ST
24	<b>Take concrete measures to ensure implementation of public procurement legal and regulatory framework,</b> including by updating a national standard bidding documentation, and strengthening enforcement of BO disclosure.	ZPPA	Strengthen transparency and reduce corruption vulnerabilities in PP	ST
25	<b>Prepare a time-bound action plan and roll-out E-Government Procurement,</b> including by providing system enhancements, user training, communication within government, communication with businesses, and plans for internal oversight and reporting.	ZPPA	Strengthen transparency and reduce corruption vulnerabilities in PP	Immediate
<b>Revenue Administration</b>				
26	<b>Prioritize improvements and development of systems that have large amounts of money at stake, such as the VAT refund process, including the promulgation of mandatory instructions to harmonize treatments for each VAT refund claim</b>	ZRA	Strengthen transparency and efficiency in fiscal governance	ST
27	<b>Increase internal audits in VAT refund process and customs warehouse management, as well as in other processes where IT systems are not fully integrated or are unstable.</b>	ZRA	Strengthen transparency and efficiency in fiscal governance	ST

28	<b>Develop a comprehensive institutional framework for compliance risk management</b>	ZRA	Strengthen transparency and efficiency in fiscal governance	ST
29	<b>Implement electronic case management systems for all ZRA units</b>	ZRA	Strengthen transparency and efficiency in fiscal governance	ST
30	<b>Implement large-scale automated cross-checking of third-party data from external sources against tax declarations</b> , with processes to improve data integrity, and strengthen the BIDA project to have a consolidated view of all of taxpayer information, including information of assets.	ZRA	Strengthen transparency and efficiency in fiscal governance	ST
31	<b>Revamp the organizational structure of the ZRA.</b> As part of a function-based organization design, introduce a clear separation of duties and appropriate numbers of staff assigned to each function based on workload, with strong headquarter functions providing oversight and uniform operations across the network of stations.	ZRA	Strengthen transparency and efficiency in fiscal governance	MT
32	<b>Take measures to raise awareness about means and channels for reporting corruption in the revenue administration and introduce a dedicated channel for reporting.</b>	ZRA	Strengthen transparency and efficiency in fiscal governance	ST
33	<b>Mandate regular preparation and external publication of tax expenditure reports on measures expected to result in significant foregone revenue.</b> This could start with evaluating VAT reduced rates and exemptions, gradually expand the taxes covered for the public TA reporting as the MoFNP builds capacity.	MoFNP	Strengthen transparency in fiscal governance	ST
<b>Natural Resource Management</b>				
34	<b>Strengthen the MMMD's capacity to properly scrutinize license and transfer applications, and monitor the associated commitments on safety and environment, work programs, and production</b>	MoFNP, SH, MMMD	Strengthen transparency and efficiency in fiscal governance (revenue mobilization)	ST
35	<b>Require transfers of licenses to go through the Mining License Committee and be evaluated using the same criteria as the initial granting of a license</b>	MMMD	Strengthen transparency and efficiency in fiscal governance (revenue mobilization)	MT
36	<b>Introduce processes to identify and resolve conflicts of interest in the licensing approval process</b> , such as including beneficial ownership information on the license application and automatically cross-checking the beneficial owners against PEPs	MMMD	Strengthen transparency and accountability in fiscal governance (revenue mobilization)	MT
37	<b>Digitalize the mining license granting, transfer and oversight process so that all aspects of the licensing process and license holder reporting, including case management, are handled electronically</b>	MMMD	Strengthen transparency and efficiency in fiscal governance (revenue mobilization)	ST
38	<b>Align rehabilitation fund payment levels with international best practice</b> —periodic payments (or	MMMD	Strengthen transparency and efficiency in fiscal	MT

	guarantees) are made to a mine-level escrow account until the account value reaches the full expected value of rehabilitation costs. Consider a one-time third-party audit of each large-scale mine's expected rehabilitation costs to calibrate future rehabilitation fund payments		governance (revenue mobilization)	
<b>SOE</b>				
39	<p><b>Enact a SOE law in line with international standards and best practice which includes</b></p> <ul style="list-style-type: none"> <li>- Robust ownership, corporate governance, transparency and accountability frameworks for IDC as the state's holding company, including (i) a clear mandate for IDC, (ii) a distinct division of roles and responsibilities, particularly vis-a-vis MoF and Line Ministries, (iii) a rationale for state ownership, (iii) introducing safeguards for the appointment and removal of professional and independent board members, and (iv) eliminating the State House membership in the IDC Board.</li> <li>- Strong corporate governance framework for SOEs, including a rationale for state ownership, clear division of roles and responsibilities, and safeguards for independent board members.</li> <li>- The requirement for the government to issue and periodically update a dividend policy covering IDC and SOEs.</li> <li>- Increased transparency standards and accountability mechanisms for SOEs and for the government as owner including on cross-subsidization in IDC.</li> <li>- Strengthened role and powers of MoFNP in monitoring and overseeing IDC and SOEs' financial performance and fiscal risks.</li> </ul>	SH, MOJ, MoFNP	Strengthen transparency and efficiency in fiscal governance	MT
40	<p><b>Ensure that IDC and other SOEs timely prepare and publish pending and future annual audited financial statements and annual reports as required by the Public Financial Management Act.</b></p>	MoFNP, IDC	Strengthen transparency and efficiency in fiscal governance	ST
<b>III. Protection of Property Rights and Enforcement of Contracts</b>				
41	<p><b>Accelerate registration and digitalization of titles on State land to create reliable database with easily traceable verifiable database.</b></p>	Ministry of Lands/Commissioner of Lands	Reduce Corruption vulnerabilities in protection of property rights	ST
42	<p><b>Develop a detailed procedures, fair and uniform criteria for alienation of State land, with clearly divided roles and responsibilities between the central and local authorities.</b> Provide capacity building and resources to local authorities to ensure proper implementation of land alienation rules.</p>	Ministry of Lands/Commissioner of Lands	Reduce Corruption vulnerabilities in protection of property rights	ST

43	<b>Streamline the procedures and processes for transforming customary land into State land to minimize the risks of abuse and corruption.</b>	Ministry of Lands/Commissioner of Lands	Reduce Corruption vulnerabilities in protection of property rights	ST
44	<b>Strengthen the capacity and efficiency of Commercial Court</b> , in particular, by <ul style="list-style-type: none"> <li>- Introducing electronic filing of commercial claims, counter claims and other submissions to ensure that citizens outside Lusaka and Kitwe have access to commercial justice; (MT)</li> <li>- Adding adjudicators and support staff to manage workload and maintain high quality of judgments; (ST)</li> <li>- Develop and implement specialized training programs for CC judges and personnel. The trainings should include substantive and procedural laws as well as court management. (ST)</li> </ul>	MOJ, Judiciary, MoFNP	Improve effectiveness of contract enforcement	ST/MT
45	<b>Strengthen the capacity of Small Claims Courts</b> by expanding to all districts of Zambia, recruitment of additional commissioners, support personnel and allocation of resources for operation.	Judiciary, MoFNP	Improve effectiveness of contract enforcement	
46	<b>Strengthen the ADR and traditional dispute resolution mechanisms</b> by <ul style="list-style-type: none"> <li>- Allowing competitive remuneration for mediators;</li> <li>- Introduction of non-court attached mediation</li> <li>- Developing a detailed framework for traditional dispute resolution in line with art. 118.2.d. of the Constitution.</li> </ul>	MOJ, Judiciary	Improve effectiveness of contract enforcement	MT
<b>IV. Central Bank Governance and Financial Sector Oversight</b>				
47	<b>The Board should revise the composition of its Audit and Finance Committee and approve an amended charter to govern its modalities</b> , ensuring that the committee's membership comprises non-executive Directors exclusively (i.e., ex-officio government representative does not qualify).	BoZ	Strengthen BoZ's governance and independent oversight.	ST
48	<b>Enhance the governance of the BoZ in its role as banking supervisor:</b> <ul style="list-style-type: none"> <li>- Align the micro-prudential supervision mandate of the BoZ closer with Basel Core Principles for Effective Supervision (BCP1 EC2) in primary legislation (MT)</li> <li>- Strengthen the institutional set up and capacity of the banking supervision function (ST);</li> <li>- Improve the accountability and transparency of the banking supervision function through additional disclosures (ST);</li> <li>- Enhance the banking supervisory decision-making (including the Financial Stability Committee) and</li> </ul>	BOZ MOJ, NA	Strengthen financial sector oversight	ST/MT



	<p>response frameworks (MT); revise the Banking and Financial Service Act in promoting collegial decision making, particularly for licensing function (Registrar of banks and financial institutions) (MT);</p> <ul style="list-style-type: none"> <li>- Ensure that the secondary legislation includes specific terms and conditions for all exemptions and exceptions with prior approval, prescribed in the Banking and Financial Services Act 2017 (ST); conduct a stocktaking exercise for these exemptions and exceptions (MT).</li> <li>- Revise the Banking and Financial Service Act to further limit Ministry of Finance interference (MT)</li> </ul>			
49	<p><b>Strengthen the governance-related prudential regulatory and supervisory frameworks by aligning them closer with international standards and good practices:</b></p> <ul style="list-style-type: none"> <li>– Enhance supervisory oversight for ensuring that all banks properly implement the BoZ Corporate Governance Directive’s requirements, in particular effective board oversight, conflicts of interest, corporate and risk culture, and disclosure and transparency. The BoZ should strengthen its capacity and supervisory methodologies to enable conducting comprehensive assessments of corporate governance (MT)</li> <li>– Modernize the framework for the suitability assessment of members of the board of directors and senior management (MT).</li> <li>– Enhance the regulatory and supervisory framework for transactions with related parties (ST).</li> <li>– Strengthen disclosure and transparency requirements for banks (MT).</li> <li>– Include the definition of the “ultimate beneficial owner” in the Banking and Financial Services Act (MT)</li> </ul>	BoZ	Strengthen financial sector oversight	ST/MT
50	<p><b>Develop and reinforce supervisory processes for banks and other financial institutions with Government ownership to ensure:</b></p> <ul style="list-style-type: none"> <li>– Unsafe practices in these banks and non-bank financial institutions are effectively addressed at an early stage.</li> <li>– Specific risks and challenges associated with these special entities are identified and timely addressed.</li> <li>– Fitness and propriety of members of entity’s board and senior management.</li> <li>– Comprehensive evaluation of corporate governance.</li> <li>– Full application of all prudential requirements, including for corporate governance and disclosure.</li> </ul>	BoZ	Strengthen financial sector oversight	MT

## APPENDIX II-1: ANTI-CORRUPTION INSTITUTIONS AND THEIR MANDATES

Anti-Corruption Commission	The ACC was established by an act of Parliament over 40 years ago (1980), but since 2016 it is considered a constitutional investigative commission. The Anti-Corruption Commission Act of 2012, the current legislation governing the organization and functions of the ACC, designates it as the “lead agency in matters of corruption”. It is responsible for corruption prevention policies (including education and sensitization) and for the investigation and prosecution of corruption offences. In order to move forward with corruption prosecutions, the ACC is subject to the direction and consent of the Director of Public Prosecutions. Its Board members and Director-General are appointed by the President subject to parliamentary ratification.
Drug Enforcement Commission	The DEC is an independent entity charged with, among other matters, the investigation of money laundering offenses, which are then sent for prosecution to the National Prosecutions Authority. It is also a constitutional investigative commission, but its Board and Director-General are direct presidential appointees. Its Anti-Money Laundering Investigative Unit (AMLIU) is responsible for all AML investigations.
Director of Public Prosecutions (National Prosecutions Authority)	The DPP is the highest prosecutorial authority in Zambia and head of the National Prosecutions Authority, which is responsible for prosecuting money laundering offenses. The DPP has the constitutional power to take over or terminate any criminal investigation, including those conducted by other agencies, .
Auditor-General	The Auditor-General is Zambia’s supreme audit institution, responsible for auditing all government and public agencies, bodies and institutions. It is empowered to carry-out financial, performance, compliance, forensic and special audits. The Auditor-General is appointed by the President subject to parliamentary ratification, from a list of candidates recommended by the State Audit Commission.
Financial Intelligence Centre	Zambia’s financial intelligence unit is responsible for receiving, analyzing, and disseminating suspicious transaction reports and financial intelligence to law enforcement institutions and other competent authorities. The FIC also supervises regulated entities to monitor and enforce AML/CFT measures. It is headed by a Director-General who is directly appointed by the President.
Anti-Money Laundering Authority	A collegiate body composed of the Attorney-General as chair, the Auditor-General, the Inspector General of the Police, the Director-General of the DEC, the Director-General of the ACC, the Governor of the Bank of Zambia, the Commissioner-General of the Zambia Revenue Authority and 2 others appointed by the Minister of Justice. Its main function is to provide general or specific policy directives and to advise government on measures required to prevent and detect money laundering in the Republic of Zambia.
Police	Conducts criminal investigations and collaborates with other law enforcement agencies.
Economic and Financial Crimes Commission	Established as another constitutional investigative commission in 2016. However, it has not been formally created, it has no governing law and its mandate and role in the anti-corruption institutional structure is unknown.
Ministry of Justice	The Ministry is the justice sector’s lead agency. Its Governance Department is responsible for coordinating good governance policies and strategies for the government. It was

	recently charged by the Secretary of the Cabinet to formulate a new Anti-Corruption National Policy.
Zambia Public Procurement Authority	The government's procurement regulatory and oversight body, responsible for issuing regulations and for overall coordination polices of procurement in Zambia and for carrying out procurement audits. Its board and Director-General are direct presidential appointees. Entrusted with regulating and putting in operation the electronic procurement portal.
Zambia Revenue Authority	Charged with collecting taxes and enforcing tax laws. This entity is part of the Executive.
Controller of Internal Audit	Coordinator of all internal auditors assigned to government ministries, departments and agencies, who undertake financial, performance and compliance audits. The Controller is part of and reports to the Secretary to the Treasury. It is also responsible for follow-up of implementation of Auditor-General recommendations (adopted by the Parliament) across government and reporting thereof to the National Assembly, through the Public Accounts Committee.
Economic and Financial Crimes Court	A specialized section of the High Court created in January 2022 to hear appeals of corruption and ML criminal cases.
Joint Investigations Team	A coordination mechanism for high profile corruption and money laundering investigations. Composed of the ACC, DEC, NPA and the Police. Heads of these agencies sit on a steering committee for coordination purposes.
Integrity Committees	Every government entity in Zambia is required by law to have an Integrity Committee composed of its public officials. They are responsible for assessing corruption risks, developing and implementing Institutional Annual Corruption Prevention Programs and action plans and receiving and treating complaints.
Public Accounts Committee and the Committee of the Parastatal Bodies of the National Assembly	These committees receive and analyze the Auditor-General's reports and prepares their own reports where they endorse the Auditor-General's recommendations. Approval of these reports gives full effect to the Auditor-General's recommendations. These Committees are also responsible for monitoring follow-up of implementation of such recommendations.

## APPENDIX II-2: INTERNATIONAL GOOD PRACTICE ON PROSECUTORIAL INDEPENDENCE AND ACCOUNTABILITY<sup>167</sup>

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**Prosecutorial independence implies the independence of the prosecution as an institution from other state agencies, as well as the independence of individual prosecutors from undue influences originated from inside the system or externally.** The structure and organization of a prosecution service depend on a legal system and traditions of the country. Binding international standards reinforce the importance of independence and impartiality but they do not provide the peculiarities.<sup>168</sup> International good practice shows that appropriate safeguards to ensure institutional independence from political and other undue influence, such as appointment/dismissal procedures of the senior prosecutors, recruitment and promotion rules, budget allocation procedures, should be enshrined in the legal framework.

**Even where the prosecution as an institution is independent, the system may be organized along hierarchical lines, so that the individual prosecutors may be subject to instructions from a more senior colleague.** A hierarchical system provides strong advantages for organizational control and management and is perceived as better able to deliver a consistency of approach. However, some countries, especially those with a tradition of too powerful prosecution services (e.g. former Soviet states with *Prokuratura*) as well as others determined to avoid Executive interference have chosen to follow a different, decentralized, structure.<sup>169</sup>

**In any system, individual prosecutor should be able to perform professional functions without intimidation, hindrance, harassment or improper interference.** This can be achieved through the following legal guarantees:

- Fair and impartial merit-based procedures for appointment and promotion/demotion mechanisms for individual prosecutors; safeguards against arbitrary dismissal.
- Clear definition of powers and duties of the superior prosecutors, including with regard to assignment and transfer of cases.

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<sup>167</sup> There are no legally binding conventions in relation to the matter. What does exist is in the realm of “soft” law. From the existing texts, the three most important are the United Nations Havana Guidelines on the Role of Prosecutors, adopted in 1990, the Council of Europe Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system, and the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors on 23 April 1999. The Venice Commission Report on European Standards as regards the Independence of the Judicial System.

<sup>168</sup> See art. 11.1 of the United Nations Convention against Corruption: Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

<sup>169</sup> In Italy for instance, there is no hierarchical organization of prosecution offices exists at a national level and the power to prosecute is diffused and not centralized. This has been usually considered as a means of avoiding interference by the Executive and of guaranteeing the equal treatment of citizens.

- Appropriate reporting mechanisms and transparent criteria for evaluation of work of individual prosecutors by their superiors.

**Prosecutorial independence should be accompanied by strong accountability mechanisms.**

There are different models of accountability systems in different jurisdictions. Some countries have established prosecutorial council or a board. The European Commission for Democracy through Law suggests such council/board to provide democratic legitimacy from having at least some of its members elected by parliament. The United Kingdom, for instance, has an inspectorate as a method of accountability, which, without having power to change a decision, can review the work of the prosecutor and report on it.<sup>170</sup> At the institutional level, the prosecution service is usually expected to:

- Publish reports at regular intervals. Even when the reports are submitted to the legislature, publication enhances citizen’s ability to receive information and exercise accountability. Prosecution services are accountable to the public they serve and as such they should inform and explain actions they have taken in the administration of justice.
- Set out and publish the working methods, such as guidelines, policy priorities, code of conduct. The publication of prosecution guidelines and rules of conduct also facilitates public scrutiny of the prosecution service.
- Be accountable to bodies such as public auditors in respect of financial and organizational issues.

**At the individual level, methods to ensure the selection of good prosecutors and to protect them against unfair dismissal are essential for their independence.** It is important, especially in the centralized systems, that the selection of the chief prosecutor (usually called Prosecutor/Attorney General, Chief Prosecutor, Director of Public Prosecution) enjoys confidence from the public and the legal profession. Good international practice suggests involvement of professional, non-political expertise in the selection process and the creation of a commission of appointment comprised of respected professionals with highest integrity.<sup>171</sup>

**Transparency and accountability should apply throughout the work of a prosecutor, but certain types of decisions, such as plea bargains, granting immunity to a defendant or refusing to prosecute, where prosecutorial discretion is involved are most sensitive.** When the prosecutor decides not to bring a case to court, the case ends with no consequences for the alleged offender. Therefore, this decision should be considered as bearing the highest risks of abuse and corruption.<sup>172</sup> In many jurisdictions, such decisions are subject to judicial review or scrutiny by a superior prosecutor. While the opportunity to review is important, one should make sure that these challenges are not

<sup>170</sup> See Crown Prosecution Service Inspectorate in the UK, at <https://www.justiceinspectors.gov.uk/hmcpsi/>

<sup>171</sup> Council of Europe, “Report on European standards as regards the independence of the judicial system: part II—The Prosecution Service” (CDL-AD(2010)040), para. 34.

<sup>172</sup> These countries provide the review the decision not to prosecute. Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine and Uzbekistan, cited in <https://www.oecd.org/corruption/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf>

regulated or applied to obstruct the course of the investigation or used as a means to procrastinate the proceedings indefinitely. To strike the balance, international good practice suggests providing (i) clear and proper mechanisms for challenging a prosecutor's decisions not to prosecute before higher prosecutors and/or before the court; and (ii) a decision not to prosecute should be well grounded and communicated shortly after it has been taken to the complainant and to the offended party, and a reasonable deadline be given to them to file a complaint. In the decisions that allow termination of criminal proceedings in cases of corruption or other offences involving public officials, prosecutors should demonstrate utmost responsibility to keep public informed.<sup>173</sup>

## APPENDIX II-3: ORGANIZATION AND ADMINISTRATION OF JUDICIARY IN ZAMBIA

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Judiciary in Zambia is composed of superior courts (High Court, Court of Appeals, Supreme Court, Constitutional Court) and lower courts (the local courts, the subordinate courts and the small claims courts. Each court is established by the Constitution and regulated by a dedicated act. Local Court, authorized to apply African customary law is recognized by the Constitution.

The judiciary is administered by the Chief Justice, Judicial Services Commission and Judicial Complaints Commission.

### I. Lower Courts

**Local Courts:** Established in its current form under Article 120.1.c of the Constitution and regulated by the Local Courts Act, Local Courts (LCs) apply African Customary Law to matrimonial or inheritance claims up to a certain value and infractions, which entail probation or imprisonment not exceeding two years. LCs may be conferred jurisdiction to administer written laws, as specified in an order drafted to that effect. Such orders will also specify any restrictions and limitations on the penalties that may be imposed (section 13 of the Local Courts Act).

**Small Claims Court:** Established by Article 120.1.b of the Constitution and regulated by the Small Claims Court Act the Small Claims Court (SCC) adjudicates low value commercial claims of less than K20,000 using less complex court procedures and rules of evidence. Cases are decided by part-time Commissioners with legal education and practice. Claimant must appear in person and legal representation is barred. Currently the SCC only has presence in Lusaka, Kitwe, and Ndola. The awards of a SCC can be appealed to the High Court on points of law only.

**Subordinate Court:** Subordinate Court (SC) are established by the Constitution of Zambia and governed by the Subordinate Courts Act. SC exercises jurisdiction within a defined geographic area, a District, on criminal offences that entail punishment for up to 9 years of imprisonment and civil cases, whether arising from contract, from tort or from both, where the value of the property, debt or damage claimed does not exceed K5 million (art. 19 and art. 20 of the Subordinate Courts Act). SC shall

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<sup>173</sup> See The UN Guidelines on the Role of Prosecutors: Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

ordinarily conduct proceedings at such places as the Chief Justice determines or at any other place within the limits of their territorial jurisdiction.

There are three classes of SC presided by magistrates:

- 1) First class – presided by a principal resident magistrate, a senior resident magistrate (), resident magistrate or a magistrate of the first class
- 2) Second class presided over by a magistrate of the second class
- 3) Third class presided over by a magistrate of the third class.

The Subordinate Court operates two specialist fast track courts in selected districts: (i) the Gender-Based Violence (GBV) fast track court in Kabwe, Lusaka, Mongu, chipata, Choma and Ndola) and (ii) Road Traffic fast track court in Lusaka. All judgments and decisions of the SC can be appealed at the High Court.

## II. Superior Courts

**High Court:** Established under Article 133 of the Constitution and governed by the High Court Act, the HC has unlimited and original jurisdiction in civil and criminal matters. It can hear any case without geographic or monetary restrictions. There are 51 sitting judges in the HC.

The HC has a general and four specialized divisions: the Industrial Relations Court, the Commercial Court, the Family and Children’s Court, and the newly established Economic and Financial Crimes Court. The HC currently sits in the following towns: Lusaka, Ndola, Livingstone, Kitwe, Kabwe, Mongu, Chipata, Mansa, Kasama, Solwezi and Mazabuka.

**Court of Appeal:** Established in 2016 under Article 130 of the Constitution, the Court of Appeal (CA) has jurisdiction to hear appeals from the High Court, other courts, except for matters under the exclusive jurisdiction of the Constitutional Court and quasi-judicial bodies, except a local government elections tribunal (art. 131.1 of the Constitution).

A decision of the CA can be appealed to the Supreme Court (art. 131.2 of the Constitution). The CA sits in Lusaka and has 12 sitting judges, including the Judge President and Deputy Judge President of the Court.

**Supreme Court:** Established in its current form under Article 124 of the Constitution, the Supreme Court (SC) is the court of highest jurisdiction and ultimate appeal in Zambia (art. 125 of the Constitution). As an appellate court, the SC hears appeals related to Bill of Rights from the HC and any other appeal from the CA. The SC ranks equal to the Constitutional Court. The SC sits in Lusaka, with circuits in Kabwe and Ndola, and is composed of the Chief Justice, the Deputy Chief Justice and 11 other Judges.

**Constitutional Court:** Established in 2016 under Article 127 of the Constitution of Zambia, the Constitutional Court (CC) is composed of the President, the Deputy President and eleven other judges or a higher number of judges. The SC has original and final jurisdiction to hear any matter relating to the interpretation of the constitution; violation or contravention of the constitution; the election of the

president and vice president; appeals relating to the election of members of parliament; and any matter about the court's jurisdiction (art.128 of the Constitution). When a Constitutional matter within the jurisdiction of the Constitutional Court arises in any other court, that court is required to refer that matter to the Constitutional Court (art 128.2 of the Constitution). Subject to Article 28 of the Constitution, a person may petition the Constitutional Court for redress if it alleges that an Act of Parliament or statutory instrument, an action, measure or decision taken under law, or an act, omission, measure or decision by a person or an authority, contravenes the Constitution (art. 128.3 of the Constitution).

A decision of the Constitutional Court is final and not appealable to the Supreme Court (art 128.4 of the Constitution).

### III. Administration of Judiciary

**Chief Justice as the Head of Judiciary:** Under Article 136 of the Constitution of Zambia, the judiciary is headed by the Chief Justice with the following functions:

- be responsible for the administration of the Judiciary;
- ensure that a judge and judicial officer perform the judicial function with dignity, propriety and integrity;
- establish procedures to ensure that a judge and judicial officer independently exercise judicial authority in accordance with the law;
- ensure that a judge and judicial officer perform the judicial function without fear, favour or bias; and e. make rules and give directions necessary for the efficient and effective administration of the Judiciary.

Chief Justice is appointed by the President of Zambia, as are every other judges (art. 140 of the Constitution).

**Judicial Service Commission (JSC):** Created under Article 219 of the Constitution, the JSC has authority to

- constitute offices in the Judicial Service;
- make recommendations to the President on the appointment of judges;
- appoint, confirm, promote, and hear appeals from judicial officers; and
- carry out functions provided for in the Constitution, or as prescribed (art. 220 of the Constitution).

The JSC is composed of the chairperson who is appointed by the President, a judge nominated by the Chief Justice, the Attorney General, the Permanent Secretary responsible for public service management, a magistrate nominated by the Chief Justice, a representative of the Law Association nominated by the Association, the Dean of a Public law school nominated by the minister, and another person appointed by the President.

**Judicial Complaints Commission (JCC):** Created in its current form by Article 236 of the Constitution and regulated by Judicial Code of Conduct Act, the JCC has authority to enforce the Judicial Code of Conduct and ensure that judges and judicial officers are held accountable in the performance of their



functions. The JCC is composed of five members qualified to hold high judicial office who are appointed by the President, subject to ratification by the National Assembly (part VII of the Judicial Code of Conduct Act). The JCC is empowered to investigate complaints and make recommendations accordingly.

## APPENDIX III-1: PROCEDURES FOR GRANTING LICENSES IN MINING SECTOR IN ZAMBIA

**The Mining Licensing Committee (MLC) approves mining licenses and renewals, while the Minister of the MMMD makes decisions on transfer applications.**<sup>174</sup> Mining licenses are awarded on a first-come first-serve basis using the following process:<sup>175</sup> (i) the Director of the Mining Cadastre receives the initial application, (ii) the MLC, with the MLC Secretariat's<sup>176</sup> technical support, recommends whether to award the license based on financial, technical, environmental, and other eligibility criteria (Art. 22.1. and 31.1.), and (iii) the Minister makes a final decision, with a written reason required if the Minister overrules the MLC (Art. 6.7.). Transfer applications are received and approved by the Minister (the MMMD does not outline the decision-making process on transfers in detail, Art 66). Licensing procedures are currently mostly paper based, although there are plans to digitalize the process. The appendix provides information on the various types of mining licenses and stipulated timeline for the licensing process.

**There are a range of permits available to mining sector participants (MMMD 13.1-2).** These include mining rights/licenses (large and small exploration licenses, artisanal mining, small-scale mining, and large-scale mining) and non-mining rights/licenses (mineral processing licenses, mineral trading permits, and gold panning certificates). Holders of exploration licenses may apply for (and have priority to) a mining license within the exploration area if the application is submitted six months before the exploration license expires.

Mining license type	Length	Application requirements	Ongoing requirements
Large-scale exploration	4 years with possibility to renew for two periods of 3 years	For all: Exploration work program, with expected expenditure, size, and duration Financial and technical resources to conduct the work program	For all: Meet all components in the work program  For exploration: Report exploration results Meet expenditure listed in the work program
Large-scale mining	25 years	<ul style="list-style-type: none"> <li>Adequate environmental and safety protection and approvals</li> </ul>	For large-scale: Submit annual audited financial statements
Mineral processing	25 years		

<sup>174</sup> The MLC includes the Director of Mines, Geological Survey, Mines Safety, the Mining Cadastre (secretary), and representatives from four different ministries (finance, labor, environment, and land), the Attorney General, Zambia Development Agency and Engineering Institution of Zambia.

<sup>175</sup> The Minister can issue an invitation (in a daily newspaper) for bids to mine a specific tract of land, but no licenses have been granted using this process (EITI 2021).

<sup>176</sup> The MLC Secretariat is part of the Mining Cadastre's office.

		For large-scale miners only: Local content plan Feasibility study Capital investment forecast	Submit annual mine plans, production, and production costs, Submit updated ore and reserves estimates For mineral processing: Submit sources, quantities, and grade of inputs/ore Submit production
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**Aspects of the mining license approval process is compared across several other Sub-Saharan Africa countries and Zambia.** The comparison only covers aspects of the license approval and transfer process that are discussed in the main text of the document—specifically, the technical and financial criteria to award licenses, the process and criteria to approve license transfers, and financial provisioning for mine rehabilitation. Zambia has similar processes to many comparator countries across these dimensions, although there is still room for improvement. Botswana and Ghana have the most robust technical and financial criteria needed to receive a mining license, while Kenya is the only country where transfer explicitly go through a technical committee. All countries, except Zambia, have explicit requirements for guarantees or bonds to cover rehabilitation.

Country	Legislation	Technical and financial criteria to award licenses	Criteria to approve transfers	Rehabilitation
Botswana	Mines and Minerals Act Cap 66:01	No objective definition, except must have relevant mining industry experience and a parent company guarantee (14, 39)	Consent by Minister, same criteria as awarding licenses (50)	Adequate financial provisions but no clear requirements (65)
DRC	Law 18/001	Account with five times surface fee, no objective definition for technical adequacy (41)	Consent by the Ministry, no clear criteria (232)	Financial guarantee for the full amount (218)
Ghana	Minerals and Mining Act, 2006; Minerals and Mining (Licensing) Regulations 2012	Detailed requirements for the reserves estimate, in-house geologist, competency of the management team, etc., bank deposit or guarantee for financial (11)	Written consent by the Minister, no clear criteria (14.1.)	Periodic payments into an escrow account for rehabilitation required
Kenya	The Mining Act, 2016	No objective criteria, except must have mining industry experience (103)	Recommendation from technical committee, approval by Minister, clearance of tax and other fees (51)	A bond to cover the full rehabilitation costs (181)
South Africa	Mineral and Petroleum Resources Development Act, 2002	No objective definition for technical and financial adequacy (14.1., 17.1)	Consent by Minister, same criteria as awarding licenses (11)	Financial provision at the project onset, with annual adjustments (41)
Tanzania	The Mining Act, 2019	No objective definition for technical and financial adequacy (31.c., 50.e.c.)	Written consent of the licensing authority, with specific conditions related to reasons for transfer and clearance of tax and other fees (9.3.)	Unclear
Zambia	Mines and Minerals Development Act, 2015	No objective definition for technical and financial adequacy (22, 31, 39)	Approval from Minister, tax clearance certificate, same criteria as awarding licenses (66)	Contributions to a rehabilitation fund (86)

### Background

- Public banks (partially or fully owned by the government) typically remain a subject to political influence on their operations and have potential to be associated with corruption. They can also create risks to financial stability.
- Public banks are vulnerable to political interference, particularly in countries with weak governance and institutional structures, leading to unsound lending practices and inefficiencies.
- Public banks exist for variety of reasons (legacy, ideology, public policy).

### Supervisory approach to public banks

Mitigating the risks to financial stability posed by public banks requires a comprehensive policy response, including an appropriate legal and institutional framework; sound corporate governance and risk management practices; comprehensive and forward-looking supervisory approaches backed by an adequate regulatory framework; and adequate crisis preparedness. In particular:

- Public banks should have well-defined mandates, sound governance structures, and practices that safeguard against political intervention. It is key that public banks have a properly functioning, independent board of directors in place to flag and address issues in the bank's operations, and a well-established and transparent nomination and dismissal process for board members and senior management that consistently nominates knowledgeable and experienced professionals.
- The legal framework should endow the supervisors with the provisions and tools necessary to exercise full authority over public banks. In practice, these banks' links to the government pose challenges for supervisors. Taking corrective measures over public banks requires not only formal powers and tools but also independent supervisors with a clear mandate to promote safety and soundness of banks and banking sector, encouraging timely corrective action.
- The regulatory framework that applies to public banks should be no less stringent than the one that applies to private banks. Ownership arrangements should be designed to avoid conflicts of interest.

### Corporate Governance

Many banking problems are associated with weaknesses in corporate governance, and this is no different for public banks. Relatively common weaknesses in public banks: i) the nomination process for senior management and board members of public banks is often not transparent; ii) Government officials acting as shareholders may intervene in day-to-day operational decisions (for example, who to lend to and on what terms); iii) board members may lack the independence, professional skills, and experience necessary to undertake their duties effectively; iv) lack of accountability may allow senior managers to act unchecked, pursue unintended objectives, and operate in a manner contrary to sound business and/or governance principles.

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<sup>177</sup> Based on the IMF paper [Regulating, Supervising, and Handling Distress in Public Banks \(imf.org\)](https://www.imf.org/publications/fti/fti.aspx?fti=1)

Implementation of sound corporate governance frameworks in public banks remains a key challenge in many countries. Transparent nomination processes and clear responsibilities for the board and senior management are critical. Processes for appointment and dismissal should be well-established and merit based. The board should be accountable for the bank's business strategy, financial soundness, and key personnel decisions. The board should be fully capable of flagging and addressing problems in the bank's operation. The board charter should clearly define the role and the terms of reference for board members, including the government officials on the board.

Supervisors should have clear authority to evaluate corporate governance in public banks. Supervisors should ensure the fitness and propriety of board members and senior management and that they are subject to appropriate conflict of interest rules. Evaluating the quality of corporate governance should be a key component in the supervision of public banks.

### Disclosure Requirements

Public banks should be required to provide high-quality, timely, and reliable information to the market and the public. In addition, authorities should consider expanding disclosures in sensitive areas including: (1) the relationship between the public bank and the state (for example, lending to state-owned enterprises, policy or directed lending, funding from the state or other state-related entity, civil servants), (2) public banks' activities to fulfill their mandate, (3) assessments of progress in achieving objectives, and (4) any concessions (such as tax exemptions or discounts) provided to the bank.

### Prudential Requirements

The regulatory framework for public banks should be no less strict than the one applied to private banks. However, prudential approaches may need to be reinforced to address some of the specific risks and challenges that arise from state ownership.

- Capital and liquidity. In addition, as in the case of private banks, supervisors should have the power to impose specific capital charges to address any material risk exposures that result from the operation of public banks. To address risks, which are not typically fully addressed by prudential limits, authorities should develop an appropriate set of supervisory monitoring tools and regulations that require public banks to build sound risk management policies and processes.
- Concentration risk and transactions with related parties. The potential concentration of exposures to state-owned enterprises warrants special attention. Lending to public sector entities often accounts for an important share of public banks' loan portfolio. Supervisors should carefully monitor these exposures including exposures to the sovereign and, on a case-by-case basis, consider introducing additional limits, restrictions or capital charges that mitigate the risks of excessive concentration. It is also important that supervisors monitor the exposures of public banks to related parties—that is, entities directly controlled by the public bank, board members, senior management and key staff, their direct and related interests, and their close family members as well as corresponding persons in affiliated companies—and ensure that they are aligned with Basel Core Principle 20: Transaction with Related Parties.

- Risk management. There is a need to enhance public banks' risk culture by establishing well-functioning risk management committees and hiring experienced chief risk officers. Banks' boards and supervisors should ensure that public banks' strategies do not lead to excessive risk taking.
- Asset quality. Supervisors should also strongly enforce asset classification and provisioning rules. Public banks may be more prone than private ones to restructuring and evergreening nonperforming loans (NPLs), significantly delaying recognition of such loans and reducing recovery on collateral, thereby increasing the eventual loss.

## Supervision

Public banks' links to the government pose practical challenges for effective supervision. Political pressures may result in forbearance and gaps in the institutional framework often hamper effective supervision. Supervisors should be free from government and industry interference. Legal clarity in supervisory objectives, adequate supervisory powers, and robust accountability and governance frameworks are critical. Supervisors at times lack the legal powers to remove government-appointed board members or management, force a merger of weak public banks, suspend or revoke licenses, or trigger resolution of public banks, all of which are important supervisory powers for ensuring safety and soundness of banks and banking system.

- Supervisory powers and enforcement tools. Supervisors at times lack the legal powers to remove government-appointed board members or management, force a merger of weak public banks, suspend or revoke licenses, or trigger resolution of public banks, all of which are important supervisory powers for ensuring safety and soundness.
- Independence, Mandate, and Accountability of the Supervisor. Even when supervisors have the necessary legal powers, it may be difficult in practice to take actions against public banks. The presence of government appointed executives and board members may intimidate supervisors and hamper the full exercise of their independent judgment, particularly when issues reflect mismanagement, or a weak board. It is important establishing an institutional framework that promotes supervisor's willingness to act. Key institutional elements include clear mandates,<sup>4</sup> operational independence and a transparent system of accountability; legal protection for supervisory actions taken in good faith; and sufficiency of powers, skills, and resources.
- Supervisory tools and approach. Supervisors should have a process to understand the bank's risk profile both at a point in time and on a forward-looking basis. Banks should be required to include specific risk concentrations in their stress testing programs. Supervisors should ascertain that the stress testing program captures all material sources of risk of public banks. Supervision of public banks should be comprehensive and use an appropriate range of techniques and tools. Coordination with the government as a shareholder is critical to ensure supervisory findings are addressed without delay. If a capital injection is needed, a concerted effort should be made by government and the supervisor to effect it.

## APPENDIX IV-2: REGULATORY AND SUPERVISORY REFORMS IN ZAMBIA

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Stepped-up reform efforts are underway to implement international standards. The revised Banking and Financial Services Act 2017 aligned many regulatory and supervisory requirements closer to Basel Framework, and the implementation of these new requirements is a high priority for the BoZ.

Currently, capital adequacy requirements in Zambia remain broadly in line with Basel 1. The BoZ has been in the process of implementing Basel II since 2013 with a parallel run still ongoing, and Basel Pillar 2 requirements, which can be a fundamental element of an effective banking supervision framework, have not yet implemented. Banks has been reporting on ICAAP and the BoZ provides feedback on these reports. The BoZ indicated that these reports were useful for taking decisions on banks' dividends distributions.

The new regulatory framework should be aligned with Basel standards (considering proportionality), and the existing supervisory framework should be revised to integrate the risk-based supervision framework, and new regulatory framework (Basel Pillar 1 and Pillar 2 requirements).

The BoZ's strategic objectives to implement Supervisory Technologies (SupTech) by digitizing reporting and supervisory processes, and introducing a micro-prudential stress testing framework will be instrumental to enhancing supervisory effectiveness.

The BoZ also plans organizational reforms to promote the Banking Supervision Department's ability to deliver on its core banking supervision mandate. The BoZ's plans to restructure the Banking Supervision Department by transferring its financial stability (macroprudential supervision), consumer protection and market conduct functions to other departments and to create separate AML/CFT and problem banks (resolution) units are seen as positive steps to facilitate the BoZ's ability to deliver on its core S&S mandate.

### APPENDIX IV-3: EXAMPLES OF EXEMPTIONS AND EXCEPTIONS WITH PRIOR APPROVAL

Section	Paragraphs	Exemptions/exceptions with the prior approval
<b>The Banking and Financial Services Act 2017</b>		
Exemptions	162	The Bank may, on such terms and conditions as it may prescribe, <b>exempt</b> any financial service provider from any of the provisions of this Act and may, in like manner, provide for the variation or revocation of any exemption granted.
Rules	168	(1) The Bank may, by statutory instrument, make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by the Bank, or that is necessary to be prescribed for purposes of carrying out or giving effect to this Act. (2) Without limiting the generality of subsection (1), rules made under subsection (1) may make provision for— (i) <b>the exemption</b> , on such terms and conditions as may be prescribed, of any financial service providers from any specified provision of this Act or any rule made in accordance with this Act, and the revocation of any such exemption or the modification of any such terms or conditions.
Limitations on granting credit facilities	82	(1) A bank or financial institution shall not, directly or indirectly— <b>except with the prior written approval of the Bank, and on such terms and conditions as may be prescribed by the Bank</b> , grant or permit to be outstanding any secured or unsecured grants, advances and guarantees which are more than five percent of common equity tier one capital of the bank or financial institution, to (i) its directors, whether such advances are obtained by the directors individually, jointly or severally; (ii) a person that has control of the bank or financial institution; or (iii) a body of persons in which one or more of its directors has control or is a director, partner, manager, agent or member; or (d) grant or permit to be outstanding to a senior officer or other employee of the bank or financial institution, unsecured advances that on aggregate exceed the respective annual remunerations of the senior officer or other employee, <b>except with the prior written approval of the Bank and on such terms and conditions as the Bank may prescribe.</b>
Restriction on trade	83	A bank or financial institution shall not, directly or indirectly, <b>without the prior written approval of the Bank and on such terms and conditions as may be prescribed</b> , engage in any

		trade or business for which it is not licensed, except where it is necessary for a period not exceeding twelve months or such longer period as <b>the Bank may allow</b> , to secure any debt due to the bank or financial institution.
Restriction on equity investments	84	(1) A bank or financial institution shall not, directly or indirectly, <b>without the prior written approval of the Bank and on such terms and conditions as may be prescribed</b> , acquire ownership of an interest in a commercial, agricultural, industrial or other business undertaking, <b>except</b> as an interest that is necessary for securing or satisfying a debt or other liability payable to the bank or the financial institution and which is disposed of within two years or subsequently extended with <b>the prior written approval of the Bank</b> . (7) Despite subsection (6), <b>the Bank may approve</b> the holding of more than fifty-one percent equity interest in a subsidiary <b>on such terms and conditions as the Bank may determine</b> .
Opening branches, subsidiaries and other establishments	19	(1) A financial service provider shall not open a branch, subsidiary or other establishment <b>without the prior written approval of the Bank</b> .
Ownership	27	(1) A beneficial owner shall not own shares in the capital of, or acquire or maintain control in, more than one financial service provider, <b>without the prior written approval of the Bank</b> .
Qualifications of directors, chief executive officers, chief financial officers	34	(3) A person shall not be a director of more than one financial service provider without the <b>prior written approval of the Bank</b> . (4) A person who is a director or senior officer in a financial service provider, whose license is cancelled in accordance with this Act, shall not, <b>without the prior written approval of the Bank</b> , be elected or appointed as a director or senior officer of another financial service provider.
Restriction on lease or other interest in real property	85	(1) A bank or financial institution may acquire an interest in real property if the acquisition is necessary for— (b) securing or satisfying a debt or other liability to it, which is disposed of within two years or subsequently continued <b>with the prior written approval of the Bank</b> . 2) A bank or financial institution shall not, directly or indirectly, <b>without the prior written approval of the Bank and on such terms and conditions as the Bank may prescribe</b> — (a) purchase, lease or acquire an interest in real property; or (b) lease or make available any personal property owned by the bank or financial institution in consideration of periodic payments, rent or other instalment payments.