embedded tax holidays.[257] This analysis is also based on the fact that despite the enactment of the new Mining Act in 2010, the existing gold mines remain governed by their respective agreements which were made before the enactment of this new Act.[258]

3.1.4 Tanzania Export Processing Zone Assessment

Tanzania's Export Processing Zones (EPZs) Act was passed in April 2002,[259] Export Processing Zones Authority (EZPA) is an autonomous Government agency that operates under the Ministry of Industry, Trade and Marketing and is the principal Government Agency for promoting investments in the Tanzanian Economic Zones particularly the Export Processing Zones (EPZ) and the Special Economic Zones.[260]

In 2006, the government established Special Economic Zones (SEZs) aiming at attracting FDIs and promote exports, increase employment opportunities and promote technology transfer, which include EPZs, Free Ports, Free Trade Zones, Industrial Parks, Science and Technology Parks, Agricultural Free Zones, and

[257] International Monetary Fund, *Staff Report for the 2011 Article IV Consultation and Second Review under the Policy Support Instrument* (2011) 14

[258] The International Monetary Fund notes that gold exports have risen from around US$ 500 million to US$ 1.5 billion in the last five years due to rising gold prices, but that government revenues have remained at around US$ 100 million a year

[259] The Export Processing Zones (EPZ) Act was established in April 2002, effective implementation of the Act started in March 2003 and In Feb., 2006 the Act was amended to strengthen supervision of the programme and to improve the Incentive package

[260] Section 12 of The Export Processing Zone (Amendments) Act of 2006

Tourism Development Zones.[261] Investors qualify under the Special Economic Zones' scheme if it is demonstrated that their investment is new, achieves a minimum annual export turnover of US$ 5 million for foreign investors and US$ 1 million for domestic investors, provide adequate environmental protection and utilize modern production process and new machinery.[262]

The annual turnover of companies should not be less than US$ 500,000 for foreign investors and US$ 100,000 for local investors.

Zanzibar has also established Free Economic Zones and Free Ports which also offers investors various incentives.[263]

Based on the tax arrangement established in the Export Processing Zones, the issues of concern in the context of tax exemption for the first ten years is that it creates a big room for manipulation by foot loose investment since the investor easily close their operations after the expiry of the tax incentives and relocate in other EPZs and SEZs within the country as a new investment or even fly out to other countries. This implies that even after the ten years of tax exemptions, it is not guaranteed that investors in EPZs and SEZs will pay taxes.[264]

3.1.5 Dar es Salaam Stock Exchange and Tourism Assessment

Newly-listed companies on the Dar es Salaam Stock Exchange (DSE) with at least 30 per cent of their shares issued to the public pay only 25% corporate income tax

[261]Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 36
[262]Available at http://www.epza.go.tz/(accessed on 18 July 2013)
[263]Tanzania Revenue Authority *Taxes and Duties at a Glance 2010/2011* (2011) 6
[264]Tax Justice Network-Africa & Action Aid International *Tax Competition in East Africa: A race to The Bottom? Tax Incentives and Revenue Losses in Tanzania* (2012) 6

compared to the standard 30 per cent for the first three years, therefore, shares of companies listed on the Dar es Salaam Stock Exchange are exempted from paying capital gains tax whose normal rate is 30per cent.[265]

With regard to tourism in Tanzania, Tanzania Tourist Board is a government organization which was legally established under Tanzania Tourist Board act,[266]and amended by act No. 18 of 1992. Tanzania Tourist Board was formed after the disbandment of the Tanzania Tourist Corporation, and the Board is mandated with promotion and development of all the aspects of tourism industry in Tanzania.[267]

Conditions and regulations for issuing tourist agent licence are specified in Tourist Agents (Licensing) Act of 1969 and Tourist Agents (Licensing) Regulations, 1998, tourist agent after fulfilling all necessary requirements has a mandate to obtain Value added Tax exempt.[268]

3.2 Analysis of the Legal Framework and Investment Institutions in Zambia

In 1991, there was implementation of a privatisation programme in Zambia, which was one of the important steps in changing different policies to allow flow of FDI into the country. The Zambia Privatisation Agency (ZPA) was established.[269]

[265]Dar es salaam Stock Exchange website http://www.dse.co.tz/ (accessed on 10 July 2013)
[266][CAP 364 of 1962]
[267] Tanzania Tourist Board website http://www.tanzaniatouristboard.com/about-us/ (accessed on 20 July 2013)
[268]Tanzania Revenue Authority webite http://www.tra.go.tz/ (accessed on 20 July 2013)

[269]Part II of The Privatisation Act [Chapter 386 Volume 21] (Repealed By Act No. 11 2006)

In 2006, Zambia enacted the Development Agency Act which repealed the Privatisation Act.[270] The new act established the Zambia Development Agency (ZDA).[271] This agency is managed by a board whose chairperson and vice chairperson are appointed by the minister.[272]The other fifteen members are the representatives from Zambia Chamber of Commerce and Industry, the farmers, civil society organizations involved or interested in commerce and industry, and agencies promoting small scale industries,two private Businesspersons,a representative of the Environmental Council of Zambia,eight representatives from the Ministries responsible for trade and industry, finance, labour, agriculture, tourism, education, skills training and mining, and the attorney General or the Attorney General's representative.[273]

3.2.1 Zambia Development Authority Analysis

The Zambia Development Authority is the body corporate established by the Government of Zambia to promote efficiency, investment and competitiveness in business and promoting exports from Zambia.[274]

FDI in Zambia is managed by Zambia Development Authority. Under the Zambia Development Act, foreign investor is entitled to invest in any activity open to the private sector whereas the only restriction is made on arms production, security

[270]Act No. 11 of 2006
[271]Part II of Zambia Development Agency Act [No. 11 of 2006]
[272]Current chairperson of Zambia Development Agency is Mr. Luke Mbewe
[273]Section 6 of Zambia Development Agency Act [No. 11 of 2006]
[274]Section 5(1) of Zambia Development Agency Act [No. 11 of 2006]

printing and the manufacture of dangerous substances, for which in each case investment approval is needed.[275]

The Zambia Development Act brought in a new set of incentives applicable only to investments that are over $500,000 as specified by Income Tax Act and Customs Excise Act[276]. Investors are licensed by the Zambia Development Agency and are operating within a sector designated as a priority by the Minister of Commerce, Trade and Industry.[277]

The incentives are specified in the 2006 budget and it has been stipulated that for the first five years of operation, corporate tax should be calculated on 50 percent of profits, dividends should be exempt from tax and that capital expenditure on the improvement or upgrading of infrastructure should qualify for an improvement allowance of 100 percent, in addition, imported machinery and equipment is exempt from customs duty.[278]

Zambia, through Zambia Development Authority attracted foreign direct investment (FDI) worth US$10.1 billion in 2012, the highest ever recorded in the history, meanwhile, the country's export earnings rose to about US$9,381.5

[275]UNCTAD *Investment Policy Review of Zambia* (2006) 15
[276] Section 56 of Zambia Development Agency Act [No. 11 of 2006]
[277]Part VIII of Zambia Development Agency Act [No. 11 of 2006]

[278]Feb, 2006; Hon.by Honourable Ng'andu P. Magande, Member of Parliament, Minister of Finance and National Planning,in addressing the National Budget at the Zambian Parliamentary session, giving out details regarding incentives in Zambia

million last year from US$2,209.8 million in 2005.[279]

Investment incentives in Zambia include direct instruments such as grants or subsidies, tax holidays, investment tax credits, and depreciation allowances aiming at reducing the fixed costs of making an investment, and indirect instruments, trade tariffs and quotas and foreign exchange restrictions that affect the decision to invest.[280]

All investors in order to obtain certificates of investment,[281] are required to apply to the Zambia Development Authority in order to obtain the approval for the particular investment to commence in Zambia.[282] The authority conduct a screening process in order to determine the eligibility of the investment and foresee if the investment will contain developmental benefits and will not harm the environment.[283]

[279]Chitala N ' *Zambia in Historic FDI Zambia'Daily Maily* 28 June 2013 1
[280]CUTS *Investment Policy in Zambia: An Agenda for Action* (2003) 20

[281]In the repealed Investment Act [Act No. 39 0f 1993], the approval process in order to obtain an investment certificate was not required although it was a de facto requirement to avail of protections and incentives. The principal form of approval under The Zambia Development Agency Act [Act No. 11 of 2006] is the grant of an investment licence which acts as a guarantee for foreign investors on important matters such as funds transfer, due process in expropriation and recourse to adequate dispute settlement will apply. Larger investors may also be eligible for privileges under certain conditions in relation to taxes and expatriate recruitment

[282]The introduction of compulsory licensing of investors was designed to give the Zambia Development Authority powers to first approve every foreign investor prior to investment. The reasoning behind this provision may be partly premised on a belief that an investment promotion centre should in the first place determine whether an investor's business plan is a good one and thereafter monitor operations to ensure compliance with the plan. The best judge of the business plan is the investor that provides the finance to Zambia

[283]These requirements are made in addition to regulatory requirements in the activity concerned

These requirements are in addition to regulatory requirements in the activity concerned. For example, manufacturing enterprises need to obtain licences from city, municipal or district councils.[284]

The investor who is interested in applying to develop premises as a multi facility economic zone, export prescribed goods and services, or invest in any business enterprise, register a micro or small business enterprise, education enterprise, skills training enterprise or rural business enterprise in a multi-facility economic zone is mandated to submit an application to the board of Zambian Development Authority in a prescribed form and the application shall be accompanied by a prescribed fee and such documents and information as may be required by the Board.[285]

3.2.2 Zambian Tourism Industry Analysis

Tourism in Zambia is monitored by Zambia Tourism Board is statutory body charged with the responsibilities to assure active participation at select trade, consumer shows trade, tours and the provision of information about areas of tourism interest available in the country and investment opportunities in Zambia.[286]

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[284] The Zambia Development Agency Act, the Government is involved in judging whether every proposed investment is worthwhile on a number of broad criteria of promoting economic development, employment, exports and transfer of technology

[285] Section 68 of The Zambia Development Agency Act [Act No. 11 of 2006], The Board of Zambia Development Authority shall, within fourteen days of the submission of an application approve or refuse to approve the application and, immediately thereafter, communicate the approval or refusal to the applicant. Where the Board approves an application made, it will grant a licence to an investor,a permit to a business enterprise, other than a micro and small business enterprise or rural business enterprise anda certificate of registration to a micro and small business enterprise, education enterprise, skills training enterprise
or rural business enterprise

[286] Zambia National Tourist Board was established by Part II of The Tourism and Hospitality Act[Act No. 23 of 2007]

FDI into Zambia has witnessed positive growth over the years thanks to efforts by the government to encourage private sector involvement in economic growth, in 2010,[287] the country recorded a remarkable increase in the value of FDI and a substantial amount of the inflows went into travel and tourism.[288]

Corporate tax in the tourism industry is levied at the national rate of 35% with the following exceptions;[289]

- Tourism businesses such as lodges and hotels in rural areas are subject to a corporate tax rate of 30%,[290] during the first five years of operation,[291]
- Small business receives a tax holiday for the first 3 years of operation in urban areas and 5 years in rural areas.[292]

Full Value Added Tax is charged on all tourism products and services except package tours, sold by licensed operators to international tourists, are zero rated and all tourism services with the exception of food and beverages are zero rated in Livingstone.[293] The tourism industry does receive preferential treatment with respect to accelerated depreciation allowances.[294]

[287]Travel and tourism has been attracting more foreign investors in recent years, especially in the development of hotels and recreational facilities, rehabilitation of roads and airports, developing infrastructure in game parks, as well as the opening up of the Northern Circuit for tourism

[288]Available at http://www.euromonitor.com/travel-and-tourism-in-zambia/report (accessed on 30 July 2013)

[289] Zambia National Tourist Board annual questionnaire completed by licensed tourism operators (1995 - 2003)declared that Tourism generated US $148.8 million dollars in 2003, representing a 11% growth on the previous year, but only representing less than 3 percent of total GDP

[290]According to the investment Act 1993 Cap.385 rural area is defined as any area which is not an area declared or deemed to have been declared as a city or municipality under the Local Government Act except for the area declared to be Kafue Township under that Act

[291] Zambia Investment Act of 1993 states that income received from a rural enterprise for each of the first five charge years is reduced by such amount as is equal to one-seventh of that tax

[292] Small business needs to be registered with the Small and Medium Business Development Board (SMDB)

[293]This agreement was initially meant to be for two years beginning January 2001 in order to establish Livingstone as a world class tourist destination capable of competing with the Zimbabwean side of Victoria Falls. This incentive has since been extended for an additional two years and should be discontinued in December 2004.

3.2.3 Zambia Mining Sector Analysis

Zambia is the most dependent of African countries on its mining industry, mining industry has been the backbone of the economy, and copper-belt mining contributed 90% of export earnings in the mid-1990s, a situation which has been largely unchanged since the 1960's.[295] In addition to copper and cobalt, the Zambian mining industry also produces lead, zinc, gold, coal and precious and semi precious stones.[296]

The current mining policy was formulated in 1995, and its primary focus was on the privatization of state mining corporations.[297] The legal framework for the mining sector comprising the Mines and Minerals Act (1995), the Prescribed Minerals and Materials Act, Explosives Act, and various regulations are outdated due to new developments, especially technology, however, Zambian Government has proposed changes to the country's policy on mining that will subject investment deals in the sector to more public scrutiny and Parliamentary approval.[298]

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[294] International Service Corporation & The World Bank *Zambia: Sectoral study of Effective Tax Burden* (2004) 20

[295] Ministry of Energy and Water Development website http://www.mewd.gov.zm/ (accessed on 31 July 203)

[296] OECD *Global Forum on International Investment: Foreign Direct Investment and the Environment: Lesson from the Mining Sector* (2002) 25

[297] Zambia's current mining policy was adopted in 1995 to guide development in the sector. Efforts to update the policy are underway in order to bring it in line with the changing mining environment. It is expected that the revised policy will be adopted and implemented during the period of the FNDP

[298] Mwila R Zambia 'Seeks To Change Its Mining Policy' *Mine Web* 2 August 2007, also available at http://www.mineweb.net/mineweb/content/en/mineweb-mining-finance-investment-old?oid=24484&sn=Detail (accessed on 2 August 2013)

3.2.4 Zambia Department of Migration

Work Permit Requirements in Zambia: Under the provisions of The Immigration and Deportation Act,[299] a foreign national who invests a minimum of USD 250,000 or equivalent in convertible currency is entitled to a self-employment permit and employment permits for up to five expatriates. [300] In practice, however, some foreign companies have had difficulty securing these permits, especially smaller-scale investors.[301]

3.2.5 Analysis of the Legal Framework for Taxation in Zambia

The legal framework for taxation administration in Zambia is governed by the following Act of the parliament:

- Zambian Revenues Authority Act,1993
- The Income Tax(Amendment) Act, 2010
- Value Added Tax Act,1995
- Regulations to the Value Added Tax Act,1995
- Value Added Tax General Rules,1997
- Customs and Excise (Amendment) Act,2009

Zambia, in the creation of more efficiency and simplicity in tax sector to allow more FDI in the country, The Government has concluded Double Taxation

[299] [No. 18 of 2010]
[300] Part IV of The Immigration and Deportation Act [Act No. 18 of 2010]
[301] The Zambian Department of Immigration websitewww.zambiaimmigration.gov.zm(accessed on 31 July 2013)

Treaties with 21 countries to avoid double taxation of companies operating in Zambia and other countries at the same time.[302]

Tax and incentive policies are key parameters in defining a business climate of any particular nation, taxes are therefore essential for the financing of government activities, but at the same time, taxes should be set and administered to be as growth enabling as possible.[303] In Zambia, the revenue licencing authorities which are Zambia Revenue Authority (ZRA),[304] and The Ministry of finance have been trying to administer set of tax policy which meets both ends, in so doing number of incentives aiming at promoting industrial development and general investment have been introduced and or implemented since the early 1990s.[305]

The Zambia Development Authority offers a wide range of incentives in the form of allowances, exemptions and concessions for companies, which are applied uniformly to both local and foreign investments.[306] Investors who invest at least USD 10 million in an identified sector or product are entitled to negotiation with the government for additional incentives other than what they might already qualify for under the Zambia Development Act.[307]

From a macroeconomic perspective, tax policy in Zambia has been effective at raising revenues, as measured by tax/GDP ratios. The 18 percent tax/GDP ratio,

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[302] Countries includes: Canada, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, Mauritius, Norway, Romania, South Africa, Sweden, Tanzania, The Netherlands, Uganda, U.K., Yugoslavia and Zimbabwe.
[303] Tanzania Revenue Authority Website www.tra.go.tz/(accessed on 15 August 2013)
[304] Established by Zambia Revenue Authority Act [Act No. 28 of 1993] on 30 April 1993
[305] World Trade Organisation *Zambia's Trade Policy Review* (2009) 5
[306] United States Department of State website http://www.state.gov/ (accessed on 26 July 2013)
[307] The 2012 Zambian national budget however disallowed this practice as a way to make the investment climate more uniform and transparent

which has been maintained over the past 4 years, is among the highest rates in Africa.

Total central government revenues in 2003 amounted to approximately US$ 888 Million, 80% of which was collected through taxation, with the largest sources being personal income tax at 31% of revenues and VAT (including import VAT) at 23%.[308]

The low revenue Zambian Government derives from taxes is one of the major reasons why FDI is not contributing as it should to sustainable development.[309] A breakdown of the 2010 budget shows that the largest contributors to revenue are Pay as you earn individual employees' tax at 19% and Value Added Tax at 18%.[310] The focus on incentives to attract FDI is disproportionately weighted towards economic incentives because the Government does not invest in workforce skills through support for sectors such as education and health, which would reduce poverty much more substantially.[311]

3.3 Treatment and Protection of FDI in Zambia

The Zambia Development Agency Act is a special act that deals with investment matters applicable to both domestic and foreign investors, moreover the act has no provisions mentioning national treatment for foreign investor.[312]

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[308]International Service Corporation & The World Bank *Zambia: Sectoral study of Effective Tax Burden* (2004) 9

[309]Company Income Tax contributes 8% and mineral royalty tax contributes 2%. As metal prices soared after 2004 a windfall tax was introduced in 2007, however, after a lot of pressure from the mining companies, this tax which could have contributed a lot more to the treasury was repealed in 2009

[310]Deloitte and Touche *Zambia Budget 2010- Keeping the Right Balance* (2010) 7

[311] Muyoyeta L *Direct Investment and the Fulfilment of the KeyRights* (2010) 185

[312]The Zambia Development Agency Act does not mention national treatment for foreign investors. However, additional guarantees for foreigners are contained in the Bilateral Investment Treaties (BITs) which are signed by

With regard to protection of FDI, The act clearly enshrine that an investor's property (local and foreign investor) will not be compulsorily acquired nor will any interest in the right over such property be compulsorily acquired except for public purposes under an act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation for such acquisition.[313]The act stipulate further that any compensation payable will be made promptly at the market value and will be fully transferable at the applicable exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies and other duties, except where those are due.[314]

Zambia, according standards of fair and equitable treatment, National Treatment and Most Favoured Nation treatment to foreign investors. However, of those recently signed, only one, Switzerland, has been ratified. The only other BIT to have been ratified was with Germany; BIT was signed in 1966 and therefore, unlike Switzerland, do not accord standards of fair and equitable treatment, national treatment and MFN treatment. At the same time, Zambia's BITs take account of its membership of various regional agreements under which it has committed to provide preferential treatment for investors from regional countries. Thus, Zambia's BITs make an exception from these treatment standards of special advantages to nationals of third states by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions

[313] Section 19 of The Zambia Development Agency Act[Act No. 11 of 2006]

[314]The Zambia Development Agency Act [Act No. 11 of 2006] under Section 20, provides rights for investors to repatriate profits, debt service, fees, royalties and disinvestment proceeds, whereby in the process of externalisation of funds, a foreign investor may transfer out of Zambia in foreign currency and after payment of the relevant taxes dividends or after tax income, the principal and interest of any foreign loan,management fees, royalties and other charges in respect of any agreement or the net proceeds of sale or liquidation of a business enterprise. The Foreign Exchange Control Act was repealed in 1994 hence there are no controls on the transfer of capital in or out of Zambia and Export permits are no longer required

3.3.1 Dispute settlement

Zambia is a signatory to the 1958 New York Convention, has signed the UNCITRAL model law and is a member of the International Centre for the Settlement of Investment Disputes (ICSID).[315]

The Government of Zambia has also enacted The Arbitration Act, 2000, the act provides for domestic arbitration, which has been used in various cases dealing with investment issues.[316]

The Zambian Arbitration Act applies to both domestic and international arbitration and is based on the UNCITRAL Model Law in which arbitration agreements must be in writing, parties may appoint an arbitrator of any nationality, gender or professional qualifications. Foreign lawyers cannot be used to represent parties in domestic or international arbitrations taking place in Zambia.[317]

Arbitration awards are enforced in the High Court of Zambia, and judgments enforcing or denying enforcement of an award can be appealed to the Supreme Court.[318] For example the case of private mobile phone provider Telecel versus

[315]Zambia is also a member of several multilateral agreements on investment such as The Washington Convention, which put in place International Centre for Settlement of Investment Disputes(ICSID) since 1970, and Multilateral Investment Guarantee Agency(MIGA)since 1988

[316] [Act No. 19 of 2000], gazette on 29 December 2000, which is an act to repeal and replace The Arbitration Act with provisions for domestic and international arbitration through the adoption, with modification of the Model Law on International Commercial Arbitration adopted by The United Nations Commission on International Trade Law on 21 June 1985

[317] United States Bureau of Economics and Business Affairs *2012 Investment Climate Statement – Zambia* (2012) 2

[318]On average, it takes about 14 weeks to enforce an arbitration award rendered in Zambia, from filing an application to a writ of execution attaching assets. It takes about 18 weeks to enforce a foreign award. Contracts involving state entities commonly rely upon arbitration as a dispute resolution tool

state-owned ZAMTEL, the case took seven months to be solved by domestic arbitration.[319]

3.4 Conclusion

Chapter three analysed the institutions dealing with FDI in Tanzania and Zambia. Based on the analysis done, it is clear that both Governments have played significant role in the modifications of the existing legislations to safeguard institutions facilitating FDI and assuring more attractions to FDI and more benefits obtained by the investments. Moreover, the chapter clearly shows that there is a great need for both Governments to continue improving the legal frameworks in order to utilise FDI exclusively and to facilitate more economic development into the country, and to allow FDI to flow into more economic sectors hence creating more diversification in the economic activities.

The next chapter will analyse how different constraints found in Tanzania and Zambia hinder the efficiency of the existing FDI and the overall flow of FDI to these two countries.

[319] USAID and the Law Association of Zambia are currently in the process of reviewing the legal and institutional framework in favour ofstrengthening national arbitration

CHAPTER FOUR

EXISTING CONSTRAINTS FACING FDI IN TANZANIA AND ZAMBIA

4.0 Different countries have been taking various approaches to attract FDI due to the assumed role in these countries. These roles include, but are not limited to, possibility for increased Government revenue mainly from taxation, employment creation, improved balance of payment by increasing export or by reducing imports, transfer of technology, improve managerial and entrepreneurship skills, increase competitiveness in the market, and linkage with the rest of the economy.[320]

This chapter is centred on examining existing constraints facing FDI in Tanzania and Zambia.

4.1 Existing Constraints facing FDI in Tanzania and Zambia

Although both governments have done a great deal to create an enabling investment environment for private sector growth and with specific measures to ensure greater inflow of FDI, there are some areas where more efforts need to be directed.

[320] Ngowi H Tax Incentives for Foreign Direct Investment (FDI): Types and Who should / Should not Qualify in Tanzania (2010) 19

The constraints facing FDI in both countries are analysed below;-

4.1.1 High Operating Costs

The high cost of operating a business in Tanzania is currently the greatest impediment to FDI in Tanzania, especially the utility and transport costs,[321] the cost of doing business in Tanzania is benchmarked against other Sub-Saharan African countries, Tanzania scores very low indicating higher operating costs than Lesotho, Zambia, and Senegal.[322]

Tanzania depends on hydro-electricity as its main source of power hence affecting manufacturing businesses whenever there is a failure or breakdown and the utility costs are relatively higher in Tanzania than other members of the East African Community.[323]

The situation in Zambia is not so different from Tanzania with regard to operating cost of doing business. During the third quarter of 2009, firms reported that average operating costs remained high due to high prices of raw materials, high water and electricity tariffs, moderately high inflation and poor infrastructure. 38.9% (44.2%) of the firms recorded high operating costs compared with 11.4% ,(11.1%) that reported lower operating costs, along with 40.3% (32.2%) maintained their average operating costs in the same quarter, firms expect operating costs to

[321]The power sector in Tanzania is also characterised by high tariffs, poor service and frequent power interruptions that causes great frustrations to manufacturing plants

[322] Tanzania Investment Centre *Benchmarking Tanzania's Foreign Direct Investment* (2004) 28

[323]Douglas K Tanzania: 'A Land of Obstacles and Untapped Opportunities for Businesses' *How We Made It in Africa*26 October 2012 1

remain high in the quarter ending December 2009 for the same reasons cited above. [324]

Insufficient infrastructure services in Zambia such as transportation, telecommunication and electricity services are a formidable barrier to private productive investment in Zambia, making many activities and industries uncompetitive since the existing services are among the most expensive and unreliable in Africa. [325]

4.1.2 Lack of Financial Resources

Lack of financial resources to fund private sector development continues to be a major constraint to the growth of the private sector in Tanzania and Zambia, therefore impeding the growth of FDI.

In Tanzania, Domestic credit to the Private Sector fell from 14 percent in 1990 to 5 percent of GDP in 2001, but according to World Bank report, 2012 the rate has risen to at 17.89 in 2011.[326]Distribution of commercial lending by sector shows most of the commercial lending going to the mining and manufacturing sector in Tanzania. Only 15 percent of the total commercial credit of 2002 went to the agriculture sector.[327]

While the financial sector has developed quickly over the last few years, it remains highly concentrated and dominated by over liquid banking institutions whereby

[324]Bank of Zambia *Quarterly Survey of Business Opinion and Expectations Report for Third Quarter* 2009 (2010)
[325] World Bank *World Business Environment Survey 2000*(2000) 43
[326]Trading Economics website http://www.tradingeconomics.com/tanzania/ (accessed on 18 August 2013)
[327]Government of Tanzania Website www.tanzania.go.tz/(accessed on 18 August 2013)

56% of the population, and in particular small businesses in rural areas, remains excluded from any financial service.[328]

The private sector participation in the economy has been undermined by weak macroeconomic stability and lack of an appropriate economic infrastructure despite Zambian Government's effort to assure citizens are encouraged to engage into different economic activities.[329] The most important constraint to the development of a sound private sector is the cost of long term investment finance whereby commercial lending is very expensive on account of the government's enormous borrowing requirements which crowd out the private sector's requirement.[330]

The various donor funded capital access schemes for the private sector had little impact and a succession of several state owned development banks providing credit to small farmers have failed owing to low recoveries, political interference and poor management.[331]

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[328] The Global Competitiveness Report 2012-13, access to financing is cited as the second-most problematic factor for doing business in Tanzania, closely followed by infrastructure. Credit from commercial banks has increased significantly over the last five years but only 12% of this credit went to agriculture

[329] Specific problems include high inflation, erratic exchange-rate movements, steep interest charges and high import duties on fuel and other essential inputs which all make investment planning difficult with increased uncertainty and risk

[330] Commercial Banks hold around 70 per cent of Zambia's total Treasury bill's issuance where as the actual rates charged to investors are closer to 50 per cent nominal, even in real terms, these rates remain extremely high, at around 20 per cent, per annum

[331] The vacuum has determined that only individual entrepreneurs with sufficient collateral are able to borrow from private banks but high interest charges and stringent borrowing requirements still severely restrict small traders and farmers' access

4.1.3 Low Levels of Investments

Despite having increasing number of investments in both countries over the years, the levels have not yet managed to have a great impact on poverty alleviation.

Tanzania is one of the world's poorest economies in terms of per capita income, however, it has achieved high growth based on gold production and tourism, the economy depends on agriculture, which accounts for more than one-quarter of GDP, provides 85% of exports, and employs about 80% of the work force.[332] In 2008, Tanzania received the world's largest Millennium Challenge Compact grant, worth $698 million.[333]

In Zambia, the poverty situation has dramatically worsened in parallel with the poor economic performance of the country over last thirty years, per capita income in 2000 was about 60 per cent of its level in late 1960s.[334]

The majority of people suffer from weak purchasing power, and in most of the rural poor are small scale farmers followed by medium scale farmers. Rural poverty is largely attributed to poorly functioning markets for agricultural output

[332] Tanzania Economic Profile 2013 available at http://www.indexmundi.com/tanzania/economy_profile.html (accessed on 5 August 2013)

[333] Dar es Salaam used fiscal stimulus and loosened monetary policy to ease the impact of the global recession. GDP growth in 2009-12 was a respectable 6% per year due to high gold prices and increased production

[334] According to World Bank, The Gross Domestic Product per capita in Zambia was last recorded at 439.13 US dollars in 2011. The GDP per Capita in Zambia is equivalent to 4 percent of the world's average. Zambia GDP per capita averaged 446.97 USD from 1960 until 2011, reaching an all time high of 626.13 USD in December of 1965 and a record low of 314.31 USD in December of 1999. The GDP per capita is obtained by dividing the country's gross domestic product, adjusted by inflation, by the total population, available at http://www.tradingeconomics.com/zambia/gdp-per-capita(accessed on 5 August 2013)

and to low agricultural productivity because of poor utilisation of agricultural inputs and inadequate irrigation systems.[335]

4.1.4 Underdeveloped Infrastructure System

Tanzania suffers from a poor infrastructure that hinders investment growth and technology development. Poor infrastructure raises the cost of doing business in Tanzania, which deters potential investors from exploiting Tanzania's resources.[336]

The lack of adequate infrastructure hinders private investment in agriculture and reduces the competitiveness of agricultural supply chains, due to poor infrastructure development, in the Global Competitiveness Report (2012-2013) Tanzania ranks 120 out of 144 in the 2012-13, against only 104 out of 139 countries in the 2009-10 Report, indeed, Tanzania ranks 132 out of 144 for infrastructure (WEF, 2012).[337]

Tanzania faces a lack of adequate public management and capacity for infrastructure development especially for encouraging and structuring private participation in infrastructure. [338] Public sector capacity in designing and negotiating infrastructure projects remains weak and communication and coordination across different government levels on infrastructure development

[335]AFDB/ OECD *African Economic Outlook: Zambia* (2003) 349

[336] Tanzania Investment Centre (2008), declared that high investment levels are necessary to trigger even mild increases in Tanzanian GDP, in large part due to a lack of complementary human skills and infrastructure that can enhance the productivity of invested capital. Tanzania ranks 132nd out of 144 economies in the infrastructure dimension of the 2012-13 Global Competitiveness Report. The lack of adequate infrastructure discourages foreign and domestic private involvement. Enabling infrastructure for Production, transport, processing and marketing is not integrated in a multi-modal manner, which 21reduces trade and value addition opportunities

[337] World Economic Forum *The Global Competitiveness Report 2012-2013* (2012) 46

[338] OECD *Investment Policy Reviews: Tanzania: Working Draft* (2013) 94

strategies is relatively inefficient.[339] Potential sources of finance for infrastructure investment in Tanzania include Government budget, bonds, grants, and non-concessional borrowing. However the country's financial sector as a whole remains under-developed, even outside of capital markets: in 2010-11 less than 17% of formal businesses reported that they borrowed from financial institutions, and private sector credit only constituted 16-17% of GDP.[340]

Tanzania and Zambia are both sub-Saharan Africa countries which are in the midst of a power crisis. Sub-Saharan African's power generation capacity is lower than that of any other world region, and capacity growth has stagnated compared with other developing regions, which makes the average price of power in Sub-Saharan Africa to be double than other developing regions, but the supply of electrical power is unreliable throughout the continent.[341]

Zambia is therefore characterized by poor infrastructure system,[342] which creates problems to the investors in the country, for instance: Zambia's rural road accessibility is poor compared to other countries in the sub Saharan.[343] The poor road system and delays on account of truck and fuel shortages considerably reduce Zambia's attractiveness as a location for FDI aimed at supplying markets in the

[339]Performance management to meet end-user needs in infrastructure provision, and the role and independence of regulatory authorities such as the Energy and Water Utilities Regulatory Authority (EWURA) and the Consolidated Holding Corporation (CHC), are irregular across infrastructure sectors. While Government clearly acknowledges the strategic importance of improved infrastructure, the dominance of parastatals in infrastructure provision also limits opportunities for private investors to operate on an equal footing, and past attempts at PPP management and divestiture have rarely been successful

[340] AFBD, United Republic of Tanzania Country Strategy Paper 2011-2015 (2011) 11

[341]The World Bank Africa's Power Infrastructure : Investment, Integration, Efficiency (2011) 1

[342]Less than 10 percent of the total roads in Zambia are tarred and accessible in all weather conditions. The road freight cost from any of the regional seaports to Lusaka is higher than the cost to the capital city of other countries in the Southern African region

[343]While 70 percent of Zambians depend on agriculture for their livelihood, only 17 percent of this population liveswithin 2 km of an all-season road—about half the African average. The condition of the existing rural networks is exceptionally poor, with only 21 percent in good or fair condition, compared with around 60 percent in the relevant peer groups. There may thus be a case for shifting attention and resources to the rural networks in the future

region such as in agricultural production or in food processing, of which more than half of all exports are to the Democratic Republic of the Congo, in spite of Zambia's privileged access to these markets.[344]

In attempt to rescue the situation, The World Bank has invested significantly in improving the road network in Zambia, during the past decade, total investments in the roads sector have amounted to US$120 million, through Road sip 1 (1997-2004) and Road sip 2 (2004-13).[345]

Access to electricity in Zambia has been low in Zambia and stagnant over time, only 20 percent in Zambia, less than half of what is found among the relevant African peer groups which create an increase in the cost of doing business for private sector.[346] Inequitable access to power and water makes subsidized tariffs a highly regressive policy, Zambian power consumers are having the full capital costs of their service subsidized by the state. [347] Every year the Zambian Government spend about $95 million more than needed to meet Zambia's estimated infrastructure requirements, most of this overspending is on the transport sector, $65 million, which in recent years is being funded at rates apparently over and above long-term requirements.[348]

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[344]UNCTAD *Investment Policy Review of Zambia (*2006) 49
[345]The World Bank *The World Bank in Zambia* (2012) 8
[346]Power access lags behind in both urban and rural areas, but the gap for rural electrification is particularly large more than 3 percent in Zambia versus 30 percent in the peer groups.Low power tariffs undermine the sustainability of the power sector. At $0.03–$0.04 per kWh, Zambia has some of the lowest power tariffs in Africa. Looking across the developing world, Zambia's power tariffs fall below the typical price range of $0.05–$0.10 per kWh. While Zambia's power production costs are low, tariffs are lower

[347] Zambia's infrastructure funding gap amounts to $0.5 billion per year or about 6.5 percent of GDP and is mainly associated with spending needs in the power and water sectors
[348] AICD *Zambia's Infrastructure: A continental Perspective* (2010) 32

However, Zambia is endowed with a relatively large amount of cost effective hydropower, in terms of electricity supply, Zambia enjoys a much more favorable position than many of its neighbours but due to the demands of its large-scale mining sector, Zambia has a relatively large generation capacity and power consumption per capita, several times higher than that of other resource-rich countries in Africa.[349]

4.1.5 Difficulties in accessing land for large scale agricultural investors

According to The Land Act, 1999 all land shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.[350] However, land can be owned in three different ways; Government granted right of occupancy by the private sector, Tanzania Investment Centre derivative rights and sub leases created out of granted right of occupancy by the private sector.[351]

Foreign investors are not allowed to own land but it can be leased through the Tanzania Investment Center , which issues a derivative right, leasehold agreement for duration starting from 32 to 98 years.[352]Foreign companies in Tanzania can obtain granted rights of occupancy or Tanzania Investment Centre derivative rights on general land only. [353]If foreign investors are interested in village land, the land must first be transferred to general land before being allocated, while derivative

[349] AICD *Zambia's Infrastructure: A continental Perspective* (2010) 16
[350]Section 1(1) of The Land Act, 1999
[351] Tanzania Investment Centre *Tanzania Investment Guide: 2008 and Beyond* (2008) 46
[352] Available at http://tanzania.eregulations.org/show-list.asp?l=en&mid=274 (accessed on 15 August 2013)
[353]Tanzania Investment Centre only facilitates investors to obtain land that already has title deed.General land is a surveyed land usually located in urban and peri-urban centres, the centre deals only with lease for general land

rights may be easier to obtain than granted rights of occupancy, in practice, very little land is readily available in the Tanzania Investment Centre Land Bank where available land parcels are too few and small.[354]

Moreover, an inventory of public lands and their geographical location does not exist and normally is undertaken only on an ad hoc basis, such as if divestiture is contemplated, no information about availability of public lands is accessible to the public.[355] Investors are unable to get a good sense of land availability without incurring major transaction costs, something that recently prompted the government to establish a bank of land that has been cleared preemptively from all interest to make it available for investors.[356]

The situation in Zambia is different from Tanzania. The Zambia ministry of Land has been working in cooperation with the Zambia Development Agency and line ministries such as the Ministry of Agriculture and Cooperatives, and managed to set up successful land blocks for reservation for investors willing to invest in priority sectors, for instance in the agriculture sector, farm blocks have been identified in all the nine provinces for possible development by interested investors. [357]

This creates easier access for Land for investors, as 94 percent of Zambia's total land falls under the Customary Land Tenure System and the farm blocks have been established with the consent of local authorities which is very important given the

[354] OECD *Investment Policy Reviews: Tanzania Working Draft* (2013) 22
[355] The lack of information not only encourages informal occupation of public land by squatters, but also makes it very difficult to assess the efficiency of the public institutions that manage such lands
[356] The World Bank *The Land Governance Assessment Framework* (2012) 85
[357] NEPAD/OECD *Highlights for the Policy Framework for Investment in Zambia* (2010) 5

sensitive nature of land ownership for investment in Zambia, but heavy land development approvals can lead to delays in registering land.[358]

Currently, land can be bought and sold by private buyers, and title deeds issued by the Commissioner of Lands upon application. In all instances 'State Consent' has to be obtained by the vendor before title deeds can be passed on to the purchaser. If consent is not granted within 45 days of filing the application, then the application is approved by default. Land disputes are referred to the Lands Tribunal for arbitration to fast track the resolution of land disputes.[359]

The government has also opened up a Customer Service Centre at the Ministry of Lands to provide information on land transactions whereby a foreign investor can acquire and obtain land titles as long as they have been granted investor status under the Lands Act or any other law pertaining to investment in Zambia.[360]

4.1.6 Low level of Good Governance

Poor governance and lack of accountability among leaders have been cited as two major factors have been a stumbling block in attracting more FDI in the country. Failure to control the crimes committed by the ruling class is also great indicator of bad governance and a great threat to development in any country.[361]

Tanzanian Government has shown great commitment to good governance as a key requirement for promoting foreign investors to allow more economic growth and

[358] NEPAD/OECD *Highlights for the Policy Framework for Investment in Zambia* (2010) 5
[359] Zambian Ministry of Land website http://www.ministryoflands.gov.zm/ (accessed on 17 August 2013)
[360] Zambia Development Agency website
[361] Tanzania Governance Review *Kikwete's First Two Year* (2007) 1

poverty reduction.[362] In spite of big strides made on promoting good governance and accountability, Tanzania is still facing challenges on how to eradicate the existing corruption practices for both petty corruption, and grand corruption involving big contracts which has been seen in government Ministries, Departments and Agencies.[363]

Failure to deal with corruption is among the greatest indicators of bad governance. One of the basic principles of rule of law is that no one should be above the law, but in Tanzania a whole lot of corruption cases have erupted and at the end of the day the people concerned have not been taken to court or told to return what they took illegally.[364]

The situation is the same in Zambia whereby that government effectiveness is the area of governance in which Zambia is worst performing, below the Sub-Saharan average and public services are plagued by staff shortages, unmotivated and often ineffective or absent staff.[365] Until recently, most financial releases from the

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[362]Various measures and reforms towards strengthening good governance have mainly focused on the areas of democracy and human rights, legal and institutional systems. The Government of Tanzania has carried out sustained reforms of the legal sector in the pursuit for strengthening the rule of law, democratic governance, transparent and accountable conduct of public affairs. The Human Rights Commission was also established in 2002. The National Governance Framework and specific on-going reforms including Public Service Reform Programme (PSRP), Local Government Reform Programme (LGRP), Public Financial Management Reform Programme (PFMRP), the Legal Sector Reform Programme (LSRP) and Financial Sector Reform are among the necessary measures aimed at contributing towards good governance outcome, improved public services delivery, better economic management, positive cultural change and democratic development

[363]The United Republic of Tanzania *Country Report on the Implementation Status of Brussels Plan for Action*(2001) 4

[364]A good example of this is the former prime minister of the country, Mr. Edward Lowassa and two former ministers who were forced by the parliament to resign from their positions because their names appeared in a multibillion (In Tanzania Shillings) scandal famously known as the Richmond scandal, the scandal resulted into restructuring the council for ministers

[365] European Union Delegation *Zambia - European Community, Country Strategy Paper and National Indicative Programme for the period 2008- 2013* (2008) 16

Treasury to spending ministries and agencies was very minimal, unpredictable and focused on meeting personal emolument expenses for civil servants with trickling funding to development projects. [366] The government still struggles with accountability for public resources and inability to effectively deliver services.[367]

Good corporate governance and zero tolerance to corruption are among the main global conditionalities which multilateral donors and foreign governments have set for investment flow, poor corporate governance and widespread corruption in Zambia have therefore continued to beleaguer the country's investment environment causing the country not to be first choice investment destination for high profile investors despite the conducive attractions found.[368]

4.1.7 Poor Technology in Production Sector

Tanzanian and Zambian Government has made a lot of effort to develop technology used in different productive sectors to assure maximum attraction of FDI in the country, but these countries still lag behind in technology utilisation even though the situation is different in mining sector, economic growth by sector shows most of the major sectors growing at relatively low levels.[369]

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[366] There was an upswing of government undertaking and allocating resources to projects such as building of roads, schools and health facilities two years prior to the 2011 elections. Even then most of those projects remained poorly funded despite high visibility provided to their commissioning by high ranking officials, including former President Banda warranting them to be labelled as political-expediency projects

[367] Yezi Consulting & Associates *Political Governance Study in Zambia* (2013) 20

[368] Available at http://english.peopledaily.com.cn/200612/10/eng20061210_330638.html (accessed on 16 August 2013)

[369] Tanzania Investment Centre Benchmarking Tanzania's Foreign Direct Investment (2004) 52

Low technology utilisation has lagged far behind in the agricultural sector as a result of the utilisation of outdated technology that has not changed much since independence whereby most agriculture production is done on a small scale using the hand hoe.[370]

4.2 Conclusion

FDI flows in Tanzania and Zambia has been increasing over the years. Both neighbouring countries belong to the third world countries facing same economic, social, political challenges which affect the flow of FDI into these two countries.

Although both Governments have done a great deal to create an enabling investment environment for private sector growth and with specific measures to ensure greater inflow of FDI, still both Governments needs to allocate more resources in eliminating the existing constraints in order to facilitate the increase of flows and operations of FDI into Tanzania and Zambia.

[370] Despite having source of water within reach, a large portion still depends upon the rain rather than irrigation. Export of agricultural produce largely dominated by unprocessed produce with very little value added and thus fetching very low prices in international markets

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 This is the final chapter that sums up the findings of the study and emerges with various recommendations aiming at helping the government to establish effective legal framework and policies that will facilitate not only FDI inflows but also the level of development anticipated to be achieved in Tanzania and Zambia via FDI.

5.1 Summary and Conclusion

The study has examined the legal frameworks for FDI in the East African neighboring countries of Tanzania and Zambia. The study has attempted to demonstrate critically the current status of the FDI legal framework and how the current status has affected the FDI in those particular nations and the overall impact that has been on the economy of Tanzania and Zambia.

Chapter two of the study described in detail the concept of FDI, by looking at different definitions given out by different experienced scholars and recognized institutions. Moreover, the study looked at the world history of FDI, the trend of FDI in Africa especially after African countries obtained their independence. The study went further by examining how the African countries reformed their policies to accommodate FDI. Since the study is centered on Tanzania and Zambia, the study has analysed critically the trend and performance of FDI in these two countries, and what extent the economy of these countries have been affected.

Lastly, the chapter analysed the institutional framework governing FDI in both countries.

Chapter three assessed the institutions that handle FDI in Tanzania and Zambia. The assessment was attained by looking at the relationship between the FDI and the legal framework of the host nation. The study concentrated on the weakness found on the institutions guiding FDI and other institution that support the role of the core institution in assuring efficiency and maximum exploration of FDI. Moreover, the study also looked at various sectors accommodating FDI by looking at the weaknesses found and how those weaknesses affect the host nations.

Chapter four examined different constraints facing FDI in Tanzania and Zambia. The constraints which were analysed are the ones that act as the stumbling block for the investors to start investing and the one causing the FDI not to advance further once the operation commence in both countries.

FDI is an important tool in the economic development of the nation. Contribution of FDI through financial resources, technology and innovative techniques raise the overall productivity of diverse sectors of economy. If properly navigated, FDI truly acts as a catalyst for development of sectors such as agriculture, manufacturing, service, SME and many more.[371]

Both countries have fast growing economies for the last decade and have witnessed a large amount of FDI poured in various sectors. Both Governments have formulated policies aimed at attracting more funds considering the domestic and

[371] Moghe D *Critical study of Foreign Direct Investment in Indian Retail with special reference to Multi Brand Retail Sector* (2013) 1

exportation business simultaneously. It is argued in this study that, the current legal frame work for FDI in both countries have managed to facilitate FDI but the existing problem is that the current legal framework for FDI is set to attract more FDI and once the FDI are in place both Governments do not profit as expected because of the existing gaps found in the legal framework which are sometimes abused by the investors. Therefore, legal frameworks are not constructed to allow Government to obtain maximum benefits possible from incoming FDIs.

The findings reveal that both countries have managed to make reforms in legal frameworks to allow more FDI, but the reforms were not constructed strictly enough to allow maximum benefit to be obtained by both Governments hence leaving loop holes for the investors to use which assures more ratio of benefits to their side. For example, Tax system found n both countries as clarified in the study gives a manipulation field for the investors to use hence the Governments end up losing large amounts of income which could be easily obtained.

5.2 Recommendations

5.2.1 Recommendation for Zambia

After the Zambian Government decided to change economic policy to accommodate more private investments especially FDI, the changes has helped to boost the economy.

The Zambian Government through FDI has managed to reboot the mining industry in the country which faced critical down fall during the 1980s through the privatization policy. The privatization policy was initiated all over the country, prospects remain good as world demand for copper and prices increased considerably. Moreover, the Government has managed to attract more FDI in other sectors apart from mining to decrease dependency on mining.

The study has observed that private sector is not performing as it was supposed to due to various setbacks such as high cost of capital and domestic inputs for local production. However Zambia still has potential to grow more because of the potential contained in the country, for instance, rich in copper deposits despite long exploration that has been done so far.

Following are the recommendations as a result of observed several weaknesses in the FDI legal framework in Zambia;-

- **Further improvements in the FDI policy and regulatory framework**

Despite the efforts attained by the Government of Zambia in restructuring the FDI framework, which managed to enact the Zambia Development Agency Act in 2006 as a legislation special to safeguard FDI activities in the country, the following should be done to assure more efficiency;-

The screening and approval process introduced by The Zambia Development Agency Act is one of the important procedures in assuring advantageous investments are the only ones accommodated in the country, however the process should not be incorporated to all investors who are interested in registering for investment purposes. This will enable agency to minimise bureaucracy in the registration process since the process will only be extended to investors who have the intention of applying for incentives given by the agency or the investors interested in mining sector or infrastructure. Other investors who for instance, are registering for information purposes should not be screened hence allowed to obtain information directly relevant to monitoring FDI statistics.

The Zambia Development Agency Act has given the Zambia Development Agency enormous power to issue incentives to investors which in practice should be restricted because the study has shown that as a result the Zambian Government has continued to lose large amounts of revenue resulting from excessive issuance of incentives to FDI investors. Furthermore, clarification should be made to give more detailed explanations as to which investors fits the criteria to obtain fiscal incentives. The Zambia Development Agency Act gives the threshold of US$ 500,000 as the requirement to obtain incentives which creates loop holes since there is no concrete restriction made after the investor attained the threshold.

Provisioning of high taxes as a way of covering the lost revenue due to issuance of certificates of incentives should be amended to allow maximum accommodation of FDI investors in the country. The introduction of general level of corporate tax will manage to boost local and foreign investment across all sectors. The Government should therefore concentrate on improving the business environment to promote more FDI investors to all sectors available in the country which will increase more deviation from mining dependency income.

- **Policy rationality and investment promotion**

The Zambian Government despite having Zambia Development Agency as a one stop centre for FDI issues, should examine the role played by other Governmental institutions and departments supporting FDI in the country since the study has realized the existing lack of coordination which reduces the effectiveness of the Government's effort to attract and benefit from FDI.

The existing policy lacks consistency which has made it practically impossible to implement efficiently. Changes in policy are frequent and unpredictable whereby in most cases, there is no apparent logic for the change beyond political agenda of the Government. This problem has become a setback in attracting more FDI in to the country because of lack of predictability in the policy which creates fear. The Zambian government should therefore, set and explain clearly the vision and objectives regarding the role and benefits to be obtained by FDI that already exist in the country and the ones expected to commence in the country.

- **Consolidation of recent improvements in macroeconomic policy**

Although the macroeconomic policy climate of Zambia has improved in recent years, additional efforts are required in the area of macroeconomic policies in order to strengthen business confidence and create a stable policy environment.

Zambia business industry faces the problem of high interest rates which create a major setback to FDI especially in nontraditional activities where the investors founds are normally small to medium scale operators.

- **Increasing the availability and competitiveness of infrastructure services**

The study has observed that transportation, energy and telecommunication services are not adequate in many parts of the country which creates a big burden to FDI investors. The cost of these services which are very important for production and exports are relatively high. The Government should allocate more resources in building infrastructure in order to attract more FDI, to allow maximum utilisation of the investment opportunities found in the country and minimise the cost of doing business in the country.

- **Develop and strengthen the domestic private sector**

Zambia faces the problem of weak domestic private sector which is a disadvantage to the country since less benefit is obtained from FDI. The Government should focus on constructing an advanced domestic enterprises sector that will lead to more FDI attraction since the country will be in a good position to demonstrate reliable and strong economy climate.

5.2.2 Recommendation for Tanzania

FDI inflows have a significant contribution to the economic growth of Tanzania. The Government of Tanzania has managed to make various reforms aiming at improving and attracting FDI in the country. However the study managed to find various loop holes found in the legal framework, and the followings are the recommendations to assure that the increase of FDI in the country goes in hand with the revenue collected out of it

- **Review of the Tanzania Investment Act**

The current act that deals with legal and regulatory issues that govern investments and business operations in Tanzania is the Tanzania Investment Act. The act needs to be revised in order to be in harmony with the demands of the market economy and continue providing an enabling environment by improving the regulatory regime, the judiciary, strengthening the Tanzania Investment Centre and the private sector institutions.

The Act is outdated, For example; citing different statutes that no longer exist, for instance, the reference is made on The Sales Act which is has been repealed and replaced by The Value Added Tax Act. The amendment should be made to avoid any loop holes and contradictions.

Based on what Tanzania is experiencing currently, it is sufficient to say investment reform is past due. The delay that is still going on in enacting a new investment law is affecting various important issues such as minimum investment size required by Tanzania Investment Centre, issuance of certificate of incentives to investors which has caused a lot of revenue loss to the Government because of the statutory unlimited power invested on Tanzania Investment Centre, and the loop holes found in the statute which allows the investors to abuse. Example: the changing of names of company before the lapsing of tax free duration. Other factors that need attention are factors that contribute to creating an attractive investment climate such as commercial dispute resolution, arbitration settlements, contract enforcement and expatriate labours which have been poured in the country in a large number.

The Tanzania Investment Act needs to address issues related to FDI such as employment, transfer of skills and technology, repatriation of capital, foreign exchange, business linkages and capital injection of FDI inflow to Tanzania.

Government should set human resource development policies and initiatives that encourage the transfer and diffusion of technology and formation and utilisation of networks with FDIs. For instance higher learning institutions need to enter into dialogues with FDIs regarding their knowledge and skill requirements so that the former can produce graduates who meet educational requirements. The Government should therefore address the issue in such a way that the local economy will be in a good position to benefit from the FDI, hence contributing to the economy of Tanzania in a feasible way.

Tanzania needs to abandon the disjointed approach in various activities hence the Government should make sure that the policies for investment especially FDI are interlinked with other policies found in the country in order to avoid contradictions. For example: While the Ministry of Finance policy is aimed at collecting more tax/ revenues, while Tanzania Investment Centre is issuing a lot of incentives to FDI investors which leads to loss of enormous amount of tax. Therefore, there should be a joint effort to harmonize all national policies in different sectors to assure no contradictions and targeting single major goal which is development.

- **Infrastructure development**

Tanzania despite having resources which attract a lot of prominent FDI investors, poor infrastructure is still has a major setback. Tanzania has made significant headway in developing strategies, formulating plans and securing investor interest in infrastructure development, but the projects have been delayed in implementation.

Access to global markets is directly related to the country's existing infrastructure. Most of the agriculture activities take place in remote areas where produce is wasted due to lack of storage facilities and access to markets. For Tanzania to attract significant amounts of FDI into the agro-processing sector, deliberate efforts have to be made to reduce the cost of utilities and transport in Tanzania. Manufacturing processes require high consumption of energy, the cost of energy becomes a major factor in determining the degree of processing to take place inside the country. The cost of transport is related to the linkage between local agriculture producers and foreign investors.

- **Land Law Reforms**

The study has shown that investors have major problems in accessing land for various development activities including agriculture. The Government in solving this problem has managed to come up with a project aiming at modernizing the land system in the country so as to obtain revenue which will result from FDI in commercial agriculture. Currently, the Government is failing to realize investment opportunities in the agriculture sector, the allocation and procedures for land bank needs to be improved to allow more access for foreigners in the reserved lands.

- **Investment promotion**

There is a need to have a strategic and comprehensive promotion and facilitation of investment that need to achieve the interest of Tanzania. Tanzania Investment Centre needs to more frequently use the targeting tools that it in order to assure new FDI investors are captured. Blanket promotion efforts to a sector or to investors by region are not sufficient. TIC staff working on investment promotion should be trained and well versed in targeting techniques in order to assure efficiency in promotion strategies. The Government needs to advance promotion techniques by allowing more coordination from different sectors since most of the activities do overlap. FDI promotion should remain set firmly under the auspices of the Tanzania Investment Centre and implementing a coordination mechanism with the individual ministries be involved effectively in FDI promotion activities.

- **Develop Clusters to Link FDI and SMEs in the Global Value Chain**

In order to attract substantial amounts of FDI into the agro-processing and natural resource industries and benefit from FDI, deliberate policies have to be made to build clusters in both urban and rural communities. Companies and associated institutions in a particular field, including producers, service providers, suppliers, distributors, training and research institutions can be connected together to form clusters in targeted geographic locations to develop capabilities in selected products. In the Morogoro region, for instance, agricultural producers can link up together with farmers associations, food processing plants, suppliers of farm inputs, private sector business support institutions and knowledge providers, consumers, and foreign companies. Once such clusters are developed, investors will be attracted to move in to take advantage of emerging opportunities. This fits in well with the global value chain linkages where clusters will provide room for having a greater portion of the value adding activities to take place in regions where most of the poor live. As clusters develop and grow the community prospers and creates a market by raising purchasing power.

- **Directing FDI to meet Development Objectives**

The Government should examine how FDI fits in with development objectives which may deter inflows. FDIs are of various types and can have different impacts on the domestic economy of the host nation. FDI can lead to capital intensive projects that embody technology with regards to the extraction of resources.

Development objectives may require a certain type of FDI. For instance, in the extractive industry, FDI help to achieve the objective of exploiting natural resources for economic development, but attracting FDI in the textile industry helps to achieve the objectives of low skill job creation and exports while on the other hand in the high tech industry, FDI can lead to further innovation, exports and high-skill job creation. Given Tanzania's natural resources and its development objectives which aim at poverty reduction, growth job creation and financing current account deficit, there is a great demand for the Government to determine what type of FDI is needed and how the positive and negative, long-run and short-run characteristics of the various types of FDI fit in. Tanzania has attracted FDI by privatisation of state utilities this has enhanced efficiency but it has not guaranteed affordability of services for all and has required putting in place regulation and competition policy.

The study clearly shows that FDI can play an important role in attaining development and economic growth. An effective regulatory framework to monitor and regulate all related activities will ensure the existing FDI helps to boost the economy of the country. Tanzania and Zambia should not only continue to reform their regulatory framework in order to ensure the existing gaps found in the regulations are sealed but also continue to eliminate existing constraints that hinder the flow of FDI in these neighbouring countries.

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