Corpus
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Zambia's Economic Sector Insights

Legal Perspectives Across Zambia's Growth Sectors




Energy & Extractive Sector

Public Sector

Manufacturing Sector

Services Sector

Table of Contents

This publication contains general information and should not be construed as legal advice or opinion or as a substitute for the advice of Counsel.

Welcome to Zambia's Economic Sector Insights

Legal Perspectives Across Zambia's Growth Sectors

It is with great pleasure that I welcome you to the inaugural issue of *Zambia's Economic Sector Insights*, a publication dedicated to unpacking Zambia's evolving regulatory and commercial landscape across key growth sectors.

At Corpus Legal Practitioners, we believe that sound legal insight is not only about interpreting the law but also about anticipating how it shapes business realities. Through this publication, our team of experts offers sector-specific analyses, from energy and extractives to manufacturing, public and services sectors, providing both clarity and practical guidance to businesses, investors, and policymakers navigating Zambia's dynamic economy.

Each article in this issue reflects our Firm's commitment to excellence, thought leadership, and proactive engagement with emerging trends that influence commerce and governance. We aim for *Zambia's Economic Sector Insights* to serve as a resource that informs strategic decisions, stimulates dialogue, and contributes to a deeper understanding of Zambia's legal environment.

On behalf of the entire team at Corpus Legal Practitioners, I thank you for taking the time to engage with this publication and invite you to share your feedback as we continue to refine and expand this platform for legal and sectoral knowledge exchange.

Charles Mkokweza

Senior Partner
Corpus Legal Practitioners

Energy & Extractives Sector

Navigating the New Regulatory Landscape: A Structural Shift under Zambia's Minerals Regulation Commission Act, 2024

By Rabecca Banda and Francis Muzimu

Regulation Commission Act, 2024

Zambia's mining sector has entered a new era with the enactment of the Minerals Regulation Commission Act No. 14 of 2024 (the "**MRCA**"), which repeals and replaces the Mines and Minerals Development Act of 2015 (the "**Mines Act**") as at 13 June 2025. This landmark legislation introduces a comprehensive overhaul of the mining regulatory framework, establishing a more robust new regulator and significantly altering compliance obligations for mining companies, processors, and traders. For existing operators and new entrants, understanding the nuances of this new regime is fundamental to ensuring operational continuity, mitigating risk, and leveraging new opportunities.

This article is the first of the series and will focus on the main regulatory changes that a company in the mining sector must consider going forward. A more detailed analysis of each significant change following the introduction of the MRCA will accordingly be set out in the subsequent articles of this series.

Introduction of the Minerals Regulation Commission

A substantial change in Zambia's mining regulatory framework is the establishment of the Minerals Regulation Commission (the "**MRC**" or the "**Commission**"). It is important to note that this change is not generally a simple renaming exercise. The MRC has been established as a robust, independent corporate body with enhanced authority, moving beyond the advisory and administrative roles of the Mining Licencing Committee or the authorised officers under the repealed legislation.

Given that the Commission has been established as a body corporate, the Commission can be sued in its own name as the Commission. The Attorney General would no longer be required to be sued for disputes relating to mining and non-mining rights. In theory, this should reducethe time it takes to resolve disputes as this is currently dependent on the backlog of cases at the office of the Attorney General. This change should also allow the Commission to settle some disputes where possible without the disputes having to be litigated.

We have considered some of the notable functions of the MRC below:

(a) Transfer of mining and non-mining rights and interests

By vesting the authority to approve applications to transfer mining and non-mining rights and interests in the Commission, the MRCA has significantly reduced the approval process time. The Commission is required to consider applications within thirty days of receipt of an application. The repealed Mines Act also required the Minister of Mines to approve applications of this nature within 30 days, in practice however, such applications were subject to the backlog of applications at the office of the Minister as well as the Minister's Cabinet functions.

Therefore, the MRCA appears to attempt to eliminate the delays occasioned by the Minister of Mines. However, the MRCA like the repealed Mines Act does not state the consequence of the failure to render a decision within the stated 30-day period. Accordingly, this does very little to alleviate the challenges that were previously experienced in this respect.

(b) Monitoring and prevention of illegal mining

The MRCA grants the Commission the authority to monitor and prevent illegal mining. Under the repealed Mines Act, the obligation to ensure that there are no illegal miners at the licensee's tenements was placed on holders of mining licences. It will be interesting to see how the Commission will achieve this mandate particularly that the MRCA does not appear to; (i) create any reporting obligations in this respect; (ii) create an enforcement unit to monitor illegal mining activities; and (iii) create enforcement mechanisms. However, it would appear that the Commission, being a corporate body, is poised to have the capacity (both in terms of manpower and resources) to take on such a responsibility.

It will, therefore, be important for the statutory regulations to be issued pursuant to the MRCA to critically consider including actionable provisions to manage illegal mining activities in light of the increased number of deaths resulting from illegal mining operations. However, it must be noted that curbing illegal mining is not solely a matter of ensuring due enforcement mechanisms in legislation, but it also includes adopting policies favorable to the artisanal mining sector as well as the small-scale mining sector that encourage would-be illegal miners to undertake regulated activities.

(c) Regulating and monitoring mineral marketing

Regulating and monitoring mineral marketing within the mining sector is a critical function of the Commission that is pertinent in helping to prevent illicit trading, ensure fair market practices, and maximize revenue generation from mineral exports. However, it would appear that effective regulation requires robust enforcement mechanisms, collaboration with relevant stakeholders, and addressing challenges such as smuggling and market distortions. Therefore, it will be good to note the strategy of the Commission in implementing this function under subsequent subsidiary legislation such as a statutory instrument.

(d) Advising the government on the management and development of mineral resources

The MRCA further requires the Commission to advise Government on all matters relating to the management and development of mineral resources. In our view, this initiative demonstrates a commitment by Government to informed decision-making and sustainable resource management. Therefore, it will be good to note the strategy that the Commission (once constituted and operative) has in place for achieving this function. Furthermore, we note that there is no obligation placed on the government to take into account the recommendations/advice of the Commission. Thus, while this generally appears to be a good provision, it could have no effect in practice.

The Directors

Further to the above, the repealed Mines Act made provision for directors, who were appointed by the Public Service Commission and whose mandate was among others, to supervise and regulate the proper and effectual development of mines and conduct of mining operations and be responsible for the administration of mining rights and mineral processing licences. The MRCA on the other hand does not re-enact this provision and as noted above, most of the administrative functions including ensuring compliance with the law by mining rights holders has been moved to the MRC. Currently, the authority of the directors is now embedded in a new legislation, the Geological and Minerals Development Act, 2025 (to be discussed in a separate series) which now establishes the Director of Geological Survey, the Director of Artisanal, Small Scale Mining and Value Addition; and the Director of Large-Scale Mining and Mineral Investment Promotion.

Introduction of the Inspectorate

The MRCA enhances provision for inspectors that form part of the Inspectorate and who are this time around appointed by the MRC. Similar to the repealed Mines Act, the inspectors are granted extensive powers to enforce the MRCA. They may enter licensed premises without notice at any reasonable time to conduct inspections, search individuals, audit financial and operational records, seize evidence, take samples, and remove equipment used in violations. Furthermore, inspectors can demand explanations for any records, make copies of documents, and make any enquiries necessary to ascertain compliance with the law.

These broad powers underscore the need for license holders to maintain transparent and compliant operations at all times, as inspections can be unannounced and thorough.

Proactive Compliance

The MRCA represents a seismic shift in Zambia's mining governance. It creates a more proactive and interventionist regulator with a mandate to enforce stricter technical, financial, and ESG standards. For mining companies, the era of passive compliance or reactive regulation appears to be over. The need to ensure proactive and full compliance at all times with the MRCA has become reality. Furthermore, we would recommend that mining companies proactively and transparently engage early with the MRC, especially regarding licence transfers, changes in control, and compliance orders.

In light of the above, our team of experts in the Energy and Extractives Sector has extensive experience in Zambian mining law including previous transitions and is perfectly positioned to guide you through these changes. We are happy to provide a detailed compliance checklist tailored to your specific operations, whether you are an existing large-scale miner, a junior explorer, or a new investor considering entry into the Zambian market to ensure compliance with the MRCA.

Cross-Border Transfer of Personal Data: What Zambia’s Mining Companies Need to Know

By Christine Mwambazi

Zambia’s mining sector collects and processes large volumes of personal data about employees, contractors, suppliers and local communities. Under the **Data Protection Act, 2021 (the “DPA”)**, mining companies fall within the definition of “data controllers” and must comply with strict localisation and transfer requirements when handling personal information.

In this article we explore the following key concepts:

(a) Personal Data;

(b) Data localisation;

(c) Cross-border data transfer; and

(d) All data vs. Sensitive data.

What Is “Personal Data”?

The DPA defines “personal data” to mean data which relates to an individual who can be directly or indirectly identified from that data. This includes a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person. In short, if data can point to a specific individual, directly or indirectly, it is personal data.

Data Localisation – Default Rule

The DPA requires all data controllers to process and store personal data on servers or data centres located in Zambia. Storing personal data abroad is only permitted if the Minister of Technology and Science has prescribed that a specific category of personal data may be stored outside the country. Currently, no such categories have been prescribed. Mining companies should therefore ensure that their human resource (“HR”), community relations, and operational data are hosted locally.

Limited Exceptions for Cross-Border Transfers

Personal data may be transferred and stored outside Zambia only if one of the following conditions is met:

- Consent plus approved mechanism: The data subject consents to the transfer and the transfer is made under a standard contract or intra-group scheme approved by the Data Protection Commissioner (the “Commissioner”).
- Consent plus ministerial prescription: The data subject consents, and the Minister has prescribed that the specific transfer is permissible.
- Commissioner’s approval in exceptional cases: Approval is sought from the Commissioner on the basis of necessity for a particular transfer or set of transfers.

In light of the foregoing, approval of the Commissioner is required for any standard contracts or intra-group schemes to be used for data transfers, or approval must be specifically sought on grounds of necessity.

How to Obtain Approval for a Cross-Border Transfer

Approval can be obtained from the Commissioner by submitting a written request for the cross-border transfer. This request should:

- Outline the necessity for the transfer;
- Specify the nature and type of personal data to be transferred;
- Indicate where the data will be stored; and
- Describe the safeguards that will be implemented to protect such data.

Scope of Approval – All Data vs. Sensitive Data

The Commissioner’s approval applies to all categories of personal data except sensitive personal data, which must always be processed and stored on a server or data centre located in Zambia.

Despite section 70(2) of the DPA which authorises the Minister to prescribe categories of personal data that may be stored outside the Republic sensitive personal data is excluded from transfer and must remain local.

“Sensitive personal data” is defined broadly to include personal data which, by its nature, may be used to suppress the data subject’s fundamental rights and freedoms. Examples include:

- Race, marital status, ethnic origin or sex of a data subject;
- Genetic and biometric data;
- Child abuse data;
- A data subject’s political opinions;
- A data subject’s religious or similar beliefs;
- Trade union membership; and
- A data subject’s physical or mental health or condition.

Conclusion and Key Take-Aways for Mining Companies

- Host locally by default. Review where your HR, medical, biometric or community-related data is stored and migrate to Zambian servers where needed.
- Build robust consent and approval processes. Where offshore storage is unavoidable, obtain explicit, documented consent from each data subject and, where required, seek the Commissioner’s approval.
- Segment sensitive data. Ensure sensitive personal data (e.g. medical or biometric information) remains stored locally regardless of any approvals.
- Monitor regulatory developments. Keep track of the Commissioner’s guidance on standard contracts, intra-group schemes and approvals to stay compliant as rules evolve.

By acting now, mining companies can manage regulatory risk, protect employees and community trust, and position themselves for smooth compliance once the Data Protection Commissioner issues further approvals and prescriptions.

Security Interests, Control Rights and Competition Law – Financing the Extractive Sector

By Grace Kapembwa Longwe and Jemimah Banda

Introduction

In Zambia’s extractive sector, financiers often secure their investments through instruments such as share charges, charges over mining licences, and long-term offtake agreements. While these mechanisms are essential for risk mitigation, they may also raise competition law concerns, especially when enforcement leads to a shift in control over strategic mineral assets. This article examines how secured lending intersects with competition regulation under Zambian law, focusing on:

- whether security interests over mining assets could trigger merger control under the Competition and Consumer Protection Act, 2010 (“**CCP Act**”);
- impact of lenders’ control rights on competition dynamics; and
- how Zambian regulators view creditor enforcement in the extractive sector.

This article is the first of the series of managing financial or funding risk in the sector and will focus on the main trigger points for competition law issues. More specific financial or funding risk issues relation to the sector will be considered in the subsequent articles of this series.

Security Interests and Merger Control Triggers

Under the CCP Act, a merger is defined broadly to include any acquisition of control, whether direct or indirect, over another enterprise. The Guidelines for Merger Regulations(the “Merger Guidelines”) issued by the Competition and Consumer Protection Commission (“CCPC”) clarify that financial arrangements can confer material influence when the terms create a level of dependency that allows the lender to exert significant control over the borrower enterprise's policies or operations.[1] This means that if a lender enforces a security interest (i.e transferring shares under a share charge or taking control of a mining licence), and thereby gains material influence over the borrower’s operations, the transaction may be reviewable by the CCPC, even if it arises from default rather than a voluntary acquisition.

The CCPC assesses mergers based on market concentration, potential for coordinated effects and public interest considerations (such as employment, national resources). In Zambia’s highly concentrated copper and cobalt markets, enforcement of security interests could reduce competition or consolidate control over strategic resources, triggering regulatory scrutiny.

Protective Rights and Competition Dynamics

Finance agreements in the extractive sector in Zambia often include protective rights for lenders, such as step-in rights upon default, board observer or veto rights, restrictions on asset disposal or new debt and control over operational budgets or production schedules.

While these rights are designed to protect the financier’s investment, they may also confer material influence over the borrower’s strategic decisions. In this respect, if such rights influence market behaviour such as production volumes, pricing, or access to infrastructure, it could raise competition concerns, especially if the lender has interests in multiple competing projects. The CCPC’s Merger Guidelines recognize that financial

Regulatory Views on Creditor Enforcement

The Minerals Regulation Commission Act, 2024 (“MRCA”) has introduced a more centralized and compliance-driven framework for mining regulation in Zambia. The Minerals Regulation Commission (“MRC”) has powers to approve transfers and encumbrances of mining rights, review changes in control of mining right holders, to mention a few. This means that enforcement of security interests, especially those involving mining licences, must be pre-approved with the MRC.

From a competition law perspective, the CCPC may also intervene if enforcement leads to market distortion or vertical integration that harms consumers or other market participants. For instance, if a lender is an interested stakeholder in the mining sector (i.e. holds many positions or is an upstream player) with step-in rights or powers under the lending or security instrument to take over the operations of the borrower which is a mining company in case of a default, the enforcement of such powers could raise competition concerns. In such circumstances, the CCPC may treat the enforcement as a reviewable merger, despite it arising from a security interest rather than a conventional acquisition.

Conclusion

As the landscape of financing the extractive sector evolves, the intersection of secured lending, control rights, and competition law presents both opportunities and risks for financiers. The CCP Act and the MRCA, impose obligations that lenders must navigate carefully, particularly when structuring security interests that may confer control or influence over mining operations. For financiers and legal advisors, the following considerations are key:

(a) ensuring that any protective clauses and enforcement rights under security agreements, especially those involving charges over shares or mining rights, are assessed for potential merger control triggers under Zambian law;

(b) drafting protective rights with clarity, ensuring they do not inadvertently confer material influence that could attract regulatory scrutiny;

(c) proactively engage with regulators when structuring or enforcing security interests, particularly in concentrated markets or strategic sectors such as the extractive sector;

(d) monitor exposure across multiple mining projects to avoid coordinated effects or vertical foreclosure risks that may raise competition concerns; and

(e) include clauses in financing agreements that address merger control compliance, regulatory approvals, and contingency planning for enforcement scenarios.

[1] Guideline 6 of the Guidelines for Merger Regulations, 2015.

Development of Energy Projects in Zambia

By Kudatha Sakala and Jemimah Banda

Introduction

As Zambia continues to experience an energy deficit that impacts crucial aspects of the economy, investments in energy generation, supply, and trading have emerged as profitable ventures for investors.

The Zambian legal framework comprises a comprehensive set of regulations, including the Energy Generation Act of 2019, the **Energy Regulation (General) Regulations of 2023, and the Electricity Act of 2019**, among others. It is essential for all energy producers to understand these legal intricacies to avoid subjecting their operations to regulatory scrutiny.

This article is the first of the series and will focus on the main regulatory risk areas of the electricity sub-sector for independent power producers and for consumers of power produced or sourced by such producers. A more detailed analysis of each significant risk area will accordingly be set out in the subsequent articles of this series.

Qualifications and Incentives for Energy Investors

Under the **Investment, Trade and Business Development Act of 2022 (ITBD)**, any individual or company that invests capital by establishing a new business or rehabilitating an existing one is viewed as pursuing an investment.

In an effort to enhance investments, the ITBD offers fiscal and non-fiscal incentives to individuals registered as investors. Consequently, an energy investor must register and obtain a Certificate of Registration from the Zambia Development Agency (**ZDA**) to qualify for benefits under the ITBD.

Beyond statutory protections, the ITBD authorizes the ZDA to negotiate and formalize an Investment Promotion and Protection Agreement (**IPPA**) with investors, which ensures that incentives are encapsulated within a contractual framework, providing increased stability and assurance for the investor.

Implementation Agreement

An implementation agreement serves as a foundational contract between the Government of the Republic of Zambia and the project developer, usually an IPP. An implementation agreement outlines the terms and conditions under which a power generation project is to be developed, constructed, and operated. The implementation agreement is important because it represents the government’s commitment to supporting the project and safeguarding investor interests, particularly in large-scale or strategically significant energy initiatives. Depending on the project's scope and nature, an implementation agreement is typically executed by the Ministry of Energy and/or the Ministry of Finance and National Planning on behalf of the government.

Licensing Requirements

Obtaining licences and approvals is paramount in energy projects. The type of licence an investor requires depends on the project's stage and intended activities. For instance, an investor aiming to develop an energy project will need a construction permit, whereas an entity focused on generating and selling energy from an existing operation requires a generation and electricity supply licence. These licenses are issued by the Energy Regulation Board (**ERB**) upon submitting the specified applications.

Furthermore, licensing requirements in the energy sector do not function in isolation; they align with other sectors. Thus, energy investors must also secure environmental approvals from the Zambia Environmental Management Agency, development permits from the Planning Authority, and construction approvals from the National Council of Construction, among others.

A lack of compliance with licensing requirements may result in severe consequences, such as hefty fines, imprisonment for responsible officers, or closure of operations. Therefore, adhering to the licensing framework is vital for all energy projects.

Interests of Third Parties

Energy projects frequently impact third-party interests because the project's transmission and distribution lines might traverse their property. In such cases, the Electricity Act mandates obtaining wayleave consent from the third party.

Wayleave Consent is necessary to legally place and maintain transmission or distribution lines across land that is under the ownership and preserve of a third party.

If a third party unreasonably withholds consent, the Electricity Act allows the project developer to seek recourse from the Minister of Energy. The Minister's decision is binding on both parties, and if approval is granted to the developer, they must compensate the third party for any damage or loss caused to their land by the distribution lines.

Power Purchase Agreements

Power Purchase Agreements (**PPAs**) are essential contractual documents for energy projects, defining the terms and conditions for power sales. While the terms are subject to the freedom of contract doctrine, the Electricity Act mandates inclusion of key terms such as power quantity, tariff structure, technical conditions, and any additional requirements set by the ERB.

It is crucial for a PPA to comply with the Electricity Act's stipulations. Moreover, a PPA has to be submitted to the ERB for its consideration and approval and as such, adherence to the Electricity Act is a condition precedent.

Given that disputes can arise in contractual agreements, a PPA should incorporate a strong dispute resolution framework, including arbitration clauses or choice-of-law clauses. With respect to the choice of law governing PPAs regulated by the Electricity Act, Zambian law recognises the principle of party autonomy in commercial contracts. This allows parties to freely choose both the governing law and the forum for dispute resolution. Accordingly, where a PPA includes an express and unambiguous choice of law, Zambian courts are likely to give effect to that choice.

However, it is trite law that Zambian courts are presumed to have jurisdiction unless the contrary is clearly established. While Zambian courts uphold the sanctity of contracts, the inclusion of a foreign jurisdiction clause does not automatically oust the jurisdiction of domestic courts. The courts retain discretion to determine whether to decline jurisdiction in favour of a foreign forum. In exercising this discretion, the courts may consider whether enforcement of a foreign jurisdiction clause would be fair and consistent with public policy, particularly where the agreement is closely connected to Zambia — for instance, where a PPA is governed by the Electricity Act.

In light of this, it is important for legal practitioners to approach the drafting of choice of law clauses in PPAs with foresight, especially where parties intend for the agreement to be governed by foreign law. The clause should anticipate the possibility that certain provisions may be deemed unenforceable under Zambian law, particularly where they conflict with public policy or mandatory statutory protections. To address this, the contract may provide that any such provisions shall be treated as void to the extent of their inconsistency with Zambian law.

Acquisition of Existing Entities and Competition Notifications

Foreign acquisitions of controlling interests in private Zambian power generation companies are not uncommon. Such

Foreign Currency Clauses Under Threat? The Impact of Zambia's Proposed Currency Regulations on Power Supply Agreements

By Salifyanji Simwanza

Prologue

Recently, the Bank of Zambia ("BoZ") announced a proposal to introduce the Bank of Zambia Currency Regulations, 2024, designed to localise currency clauses in transaction agreements into Zambian Kwacha (ZMW). If enacted, these changes will have significant implications for both existing and future power supply agreements (PSA). This note highlights the legal and commercial issues that arise when a change in law alters the traditional allocation of currency risk in PSAs.

This article is the first of the series and will focus on the main risk areas of the PSA whether in relation to the independent power producers ("IPPs") or to the consumers of power produced or sourced by such producers. A more detailed analysis of each significant risk area will accordingly be set out in the subsequent articles of this series.

Introduction

In an instant, everything stops: the lights go out, production lines stall, and business operations grind to a halt. Electricity crises in emerging economies do not just dim homes—they erode economic progress by disrupting enterprise. For large industrial buyers, securing reliable power through private supply agreements has become a business imperative.

Yet the viability of such agreements depends not only on physical supply but also on financial stability. One of the most critical financial risks under the PSA is currency risk—how the contract manages the volatility between local and foreign currencies. With BoZ proposing to restrict domestic contracts to Kwacha-only, the landscape of PSAs in Zambia could change dramatically.

Currency Risk Allocation and Mitigation in Power Supply Agreements

Risk allocation in energy contracts follows the general rule that risk should be allocated to the party best able to manage such risk. In power transactions, currency risk is generally borne by the buyer. Sellers (often IPPs or power traders) finance projects in hard currencies such as the United States Dollar (USD) or Euro (EUR), where capital markets are deeper and lenders more comfortable. Tariffs are therefore denominated—or at least indexed—in those currencies. By paying in USD or EUR, the buyer insulates the seller against local currency depreciation. This preserves the seller's ability to service debt and attract international finance.

Unlike long-term PPAs for large generation projects, PSAs are often shorter-term, but they still adopt USD denomination for the same logic—protecting the seller from ZMW depreciation. If a change in law forces this risk to shift, the party newly saddled with it will expect compensation or contract adjustment.

The Proposed Law: Currency Change and Shifting Burdens

The Bank of Zambia Currency Regulations, 2024 (the "Proposed Law") are expected to:

(i) (Require all domestic transactions to be conducted exclusively in Zambian Kwacha;

(ii) (Permit foreign currency use only for cross-border transactions;

(iii) Mandate that existing contracts denominated in foreign currency be amended into ZMW within one year of commencement; and

(iv) Prescribe an interim conversion formula to apply at the official exchange rate on the date of payment until amendments are made.

This would directly affect most PSAs in Zambia, which are currently denominated in USD.

Scope of Application

BOZ has emphasised that the Proposed Law applies only to domestic transactions. Transactions with cross-border elements—such as where one party is incorporated outside Zambia—would remain unaffected.

According to the statement issued by BoZ Governor at the recently held at public-private dialogue forum in August 2025, the rationale behind the measure includes:

(i) Currency sovereignty: Reducing dollarisation of the economy and strengthening the role of the Kwacha;

(ii) Market stability: Enhancing BoZ's control over monetary policy; and

(iii) Cost reflection: Forcing local buyers and sellers to transact in a currency that aligns with local costs and revenues.

Failure to comply could expose parties to regulatory sanctions and potential unenforceability of payment obligations. Moreover, interim payments in Kwacha under a conversion formula may expose sellers to losses if the Kwacha depreciates significantly against the reserve currencies.

Effect on Risk Allocation in Power Supply Agreements

By mandating that all tariffs be denominated in Zambian Kwacha, the Proposed Law would fundamentally alter one of the core assumptions underpinning power supply agreements: that the buyer ordinarily bears the burden of foreign currency risk. For buyers, such as large industrial consumers, the immediate advantage of the new regime is clear—they would make payments in local currency and avoid the logistical and financial challenges of sourcing foreign exchange. However, this benefit may prove short-lived. Sellers, faced with the erosion of value from potential depreciation of the Kwacha, are likely to respond by insisting on indexation mechanisms or negotiating higher base tariffs to preserve their expected returns. Over time, this may translate into higher costs for buyers despite the apparent relief of paying in local currency.

For sellers, which include power traders and IPPs, the shift is more challenging. They would lose the natural protection that USD-denominated revenues provide against local currency depreciation, even though their financing obligations—often secured in hard currency—remain in place. To address this imbalance, sellers will almost certainly push for contractual safeguards, such as tariffs indexed to the (USD/EUR)/ZMW exchange rate or tied to foreign inflation indices, in order to maintain revenue stability and meet debt service obligations.

In practice, the Proposed Law would therefore redistribute foreign exchange risk away from buyers and onto sellers. Unless carefully balanced through contract renegotiation and regulatory guidance, this redistribution could introduce new friction into negotiations and potentially undermine the bankability of power supply arrangements in Zambia.

Recommendations for Managing Risks in Light of the Proposed Law

1. **Currency Redenomination Clauses:** Include automatic conversion provisions that redenominate tariffs into ZMW if required by law, but with agreed indexation mechanisms to preserve value.

2. **Hybrid Tariff Structures:** Split the tariff into local (indexed to Zambian CPI) and foreign (indexed to USD/ZMW exchange rate) components.

3. **Change-in-Law Adjustments:** Ensure the PSA contains a robust change-in-law clause that allows tariff renegotiation or compensation if regulatory changes impose new financial burdens.

4. **Engagement with ERB:** As the Energy Regulation Board must approve tariffs, secure early regulatory alignment on how indexation will be treated under the Electricity Act, 2019.

5. **Investor Communication:** For sellers with international financing or source of power, engage lenders or foreign based suppliers early to explain compliance mechanisms and avoid breach of financing covenants.

Conclusion

The BoZ's Proposed Currency Regulations represent a major shift in Zambia's transactional landscape. For PSAs, the move to Kwacha-only payments will disrupt established risk allocation frameworks. Buyers stand to gain short-term relief from foreign currencyexposure, but may face higher indexed tariffs. Sellers must adapt to a new regime where their revenue is in local currency while their debt obligations remain in hard currency.

The lesson for both parties is clear: future PSAs must embed flexible currency adjustment and change-in-law mechanisms to remain bankable, enforceable, and fair in a shifting regulatory environment.

Applying for Mining Rights in Licensed Areas: A Gap in Zambia’s New Legal Framework

By Chifunilo Chikoya and Suwilanji E.T. Namumba

Introduction

Zambia’s mining industry has entered a new regulatory era. The repeal of the Mines and Minerals Development Act No.11 of 2015 (the “MMDA”) and the enactment of the Minerals Regulation Commission Act No. 14 of 2024 (the “MRCA”) mark a significant shift in how mineral rights are granted and managed. One key area of uncertainty under the new regime concerns the treatment of applications for mineral rights over areas already covered by existing licences.

Consent under the MMDA

Under Section 16 of the MMDA, there was a clearly defined process through which applicants could obtain written consent from existing rights holders before applying for new licences in areas already subject to mining or exploration rights.Applicants were required to apply for consent from the existing license holder, who was not permitted to withhold consent unreasonably. In deciding whether to grant consent, the existing license holder would consider factors such as:

(a) the minerals or metals applied for are different from those indicated on the holder’s licence;

(b) the geographical position of the minerals or metals applied for is different from the holder’s resource indicated in the approved programme of operations; and

(c) the geographical location of the application for the mining right does not compromise the integrity of the exploration or mining programme of the holder of the existing mining right.

The licence holder had ninety (90) days to consider the consent request. If consent was withheld, the applicant could to the appeal to the Minister of Mines and Mineral Development, who would determine the matter by considering the factors listed above.

Consent under the MRCA

The MRCA adopts a different approach to the issue of consent for overlapping mining rights applications. Unlike the MMDA, which addressed consent for overlapping rights in a standalone section, the MRCA incorporates the consent requirement into the broader license application process, without setting out a distinct procedure. Specifically:

(a) section 18(1)(c) for exploration license applications.

(b) section 21(3)(d) for mining license applications.

While these provisions acknowledge the requirement for consent for overlapping mining rights applications, they do not expressly replicate the procedural safeguards or clarity previously provided under the MMDA such as:

(a) the obligation not to withhold consent unreasonably;

(b) criteria for evaluating consent requests;

(c) timelines or obligations to respond; and

(d) an appeal mechanism for applicants facing refusal or non-response.

New Risks

The absence of a clearly defined consent process under the MRCA creates several risks and challenges for applicants seeking to acquire mineral rights over areas already covered by existing licences. In particular:

(a) existing licence holders may now unreasonably withhold consent without consequence, as the MRCA does not impose a duty to act reasonably or in good faith when responding to such requests;

(b) the MRCA allows existing licence holders to determine their own grounds for refusing consent, as it does not prescribe any objective or statutory criteria for evaluating consent requests. This opens the door to arbitrary or self-interested refusals;

(c) There is no obligation to respond within a specified timeframe, meaning that an existing rights holder could indefinitely delay a new application simply by failing to respond;

(d) In the event of a dispute, the absence of a defined dispute resolution or appeal mechanism creates uncertainty as to the appropriate forum or process for challenging a refusal or non-response. This could lead to protracted, unclear, or inconsistent resolution paths, further undermining procedural fairness and investment certainty.

Until this legislative gap is addressed through regulations or interpretive guidance, existing licence holders and applicants as well as the regulators are likely to face uncertainty and practical difficulties when seeking or granting consent for applications over areas subject to existing licences.

Conclusion

The repeal of the MMDA and the introduction of the MRCA has shifted the ground on overlapping mineral rights applications. The removal of a clear, standalone process for obtaining consent in overlapping licence applications creates a legislative gap with potentially far-reaching implications. Without procedural safeguards such as timelines, criteria for evaluation, and an appeal mechanism, both applicants and existing licence holders face increased legal uncertainty and operational risk.

Until this gap is addressed through future regulations or policy guidance, stakeholders must proceed with caution, anticipate potential delays or disputes, and consider seeking legal clarification when navigating overlapping rights.

Public Sector

The Regulatory Requirements of Carriage by Land in Zambia

By Dalitso Ng'ona and Chifunilo Chikoya

Introduction

Carriage of goods and passengers by land is central to Zambia's commercial and logistics sectors. Effective regulation ensures safety, legal compliance, and efficiency. The legal framework provides obligations for carriers, protection for passengers and consignors, and promotes orderly transport operations.

Key legislation includes:

(a) The Railways Act, Chapter 453 of the Laws of Zambia ("Railways Act");

(b) The Road Traffic Act No. 11 of 2002, as amended by Act No. 8 of 2022 ("Road Traffic Act");

(c) The Road Traffic (Public Service Vehicles) Regulations, S.I. No. 63 of 2013 ("Road Traffic Regulations"); and

(d) The Tolls Act No. 14 of 2011

Oversight and policy direction fall under the Ministry of Transport and Logistics.

Key Regulatory Bodies

Some of the key regulatory bodies include:

(a) Road Transport and Safety Agency: Oversees vehicle registration, driver/operator licensing, and enforcement of road safety laws.

(b) Road Development Agency: Maintains public roads, enforces axle load limits, and manages toll infrastructure under the Public Roads Act and Tolls Act.

(c) Zambia Revenue Authority: Regulates customs, and taxation of transport activities.

(d) Zambia Railways Limited: Manages rail transport operations.

Regulatory Requirements

(a) For Road Transport

(i) Vehicle Registration & Licensing: Mandatory for all vehicles, with additional licenses for public service vehicles.

(ii) (Driver Licensing: Issued based on passing driving and medical tests.

(iii) Vehicle Roadworthiness: Regular safety inspections required.

(iv) Insurance: Compulsory Third-Party Insurance.

(v) Operational Compliance: Commercial operators must hold permits and comply with safety and fare rules.

(b) For Passenger Transport

The Road Traffic Regulations govern operational standards for taxis and buses, among these standards includes:

(i) Regulation 14: Duties of drivers/conductors.

(ii) Regulation 19: Passenger luggage handling.

(iii) Regulation 21: Passenger behavior and safety.

For Rail Transport

(c) Under the Railways Act: Section 43–47: Define passenger rights, luggage conditions, and freight responsibilities. The Railways (Transportation of Heavy Goods) Regulations, 2018 regulate the movement of bulk commodities and allow flexible logistics in areas without rail access.

Safety and Load Regulations

The Road Traffic Act includes specific provisions: for instance, section 164 requires secure loading of goods. Section 168 further prohibits unrestrained children in vehicles, emphasizing child safety.

Empowerment of Local Transporters

The Citizens Economic Empowerment Act No. 9 of 2006, along with Statutory Instrument No. 35 of 2021, reserves at least 50% of the carriage of bulk/heavy commodities for Zambian-owned transporters. Enforcement includes training compliance officers and applying penalties to non-compliant operators.

Challenges

Despite a solid framework, challenges persist:

(a) Poor enforcement of safety standards on the roads such as unlicenced drivers, poor road construction and lack of adequate signage and road markings;

(b) Overloading and infrastructure strain as most heavy goods are transported by road;

(c) Limited monitoring resources for law enforcement; and

(d) Outdated rail systems needing modernization.

Conclusion

Zambia's regulatory framework for land transport is broad and inclusive, covering road and rail transport, passenger and freight safety, and local economic empowerment. The laws aim to ensure safe, fair, and efficient land transport services while contributing to the nation's economic development. However, there are many challenges and if overcome, can lead to better regulation and increased safe in the carriage by land.

Statutory requirements for establishing an NGO in Zambia

By Jemimah Banda and Kudatha Sakala

Introduction

The establishment and regulation of Non-Governmental Organizations ("NGOs") in Zambia is intricately guided by statutory frameworks designed to foster organized civic participation and advocacy. One of the fundamental legislative instruments is the Non-Governmental Organisations' Act No 16 of 2009, commonly referred to as the NGO Act.

This Act delineates the specific processes, requirements, and legal obligations that NGOs must adhere to in their formation and operation within Zambia. Through the said legislative framework, this article will lay the groundwork for understanding the statutory necessities for NGO establishment in the country, which encompass detailed application procedures, documentation standards, and operational guidelines.

Statutory requirements for establishing an NGO in Zambia

Definition

An NGO means a private voluntary grouping of individuals or associations, whether corporate or unincorporated, not established or operated for profit, partisan politics or any commercial purposes, and who or which have organised themselves for the promotion of civic education, advocacy, human rights, social welfare, development, charity, research or other activity or program for the benefit or interest of the public, through resources mobilised from sources within or outside Zambia.

Registration

According to the NGO Act, a person (including an international NGO) is prohibited from operating an NGO in Zambia unless it is registered as an NGO under the NGO Act. A person who operates an NGO in Zambia without registration, commits an offence and is liable, upon conviction, to a fine not exceeding ZMW 120,000 (approximately USD 5,000) or to imprisonment for a term not exceeding three (3) years, or to both. Additionally, a person who is convicted of an offence under the NGO Act, including operating a non-registered NGO, faces disqualification from holding office in any NGO for a period of ten (10) years from the date of conviction.

An NGO is required to apply to the Registrar of the Non-Governmental Organisations' Registration Board (the "Board"), within thirty (30) days of the formation of the NGO, adoption of the constitution or commencement of operations in Zambia. Should such an NGO apply for registration with the Board, it may continue its operations until a decision on the application is rendered.

Registration procedure

An application for registration of an NGO is made to the Board by completing the prescribed Form 1 in the Non-Governmental Organisations' (Forms and Fees) Regulations SI 62 of 2011, which is required to be submitted in triplicate and upon payment of an application fee of ZMW 2,240 (approximately USD 93.30) for an international NGO and ZMW 1,120(approximately USD 46.67)for a local NGO.

In addition to the Application Form, the NGO is required to submit the following documentation and information:

(a) copies of identification documents and contact details must be submitted in respect of the office bearers of the NGO. It is important to note that all the office bearers or members of the NGO requiring registration must obtain police clearance prior to the Application Form being submitted;

(b) three (3) certified copies of the NGO's constitution must be attached;

(c) details of the head office and postal address of the organisation;

(d) the sections of the proposed operations of the NGO;

(e) the districts, divisions and locations of the proposed activities of the NGO;

(f) the duration of the NGO's activities;

(g) all proposed sources of funding of the NGO;

(h) any information national and international affiliation and the relevant certificates of incorporation; and

(i) such other information as may be requested for by the Board.

NB: If the proposed NGO being registered is a branch of an international NGO, the NGO is required to submit a recommendation letter from that international NGO.

In furtherance of the procedural aspects for registering an NGO in Zambia, it is essential to thoroughly prepare the documentation to ensure compliance with the statutory requirements.

A meticulous completion of Form 1, accompanied by the requisite application fee, lays the foundation for the application process. NGOs must recognize the importance of ensuring all office bearers have obtained necessary police clearance to uphold the integrity and legal standing of the organization. The submission of certified copies of the NGO's Constitution, establishing a clear framework for operations, alongside detailed information regarding the organization's structure, proposed activities, funding sources, and affiliations, will be crucial.

Moreover, if applicable, obtaining and attaching a recommendation letter from an international NGO can fortify the application process. Comprehensively addressing and submitting all requested details can significantly impact the timely and favourable consideration of the application by the Registration Board. It is paramount for applicants to liaise closely with the Board and adhere to any additional information requests or updates, ensuring a seamless registration process that aligns with the NGO Act's mandates.

Conclusion

Setting up an NGO within the Zambian jurisdiction is a legally prescribed activity that ought to be adhered to with the utmost intricacy. Failure to do so may lead to undesirable penalties, that are avoidable in the circumstances. Therefore, a comprehensive appreciation of the NGO Act is essential to any individual that is interested in setting up an NGO in Zambia. NGOs have been instrumental in Zambia's quest for economic development and thus compliance with the law from inception is cardinal so that the long term existence of the NGO is guaranteed.

Forever Contracts? Limitation of Actions in regard to Loan Agreements

By Salifyanji Simwanza and Dalitso Ng'ona

When Benjamin Franklin remarked that: "Creditors are a superstitious sect, great observers of set days and times", he may well have been alluding to the one indispensable feature of loan agreements which is time. Yet, despite its centrality, surprisingly little is said about the time limitation of rights under loan agreements. This article seeks to provide clarity, for both lenders and borrowers, on how statutes of limitation affect the enforceability of loan facility agreements.

Do Loan Claims Go on Forever?

A limitation of action (sometimes called a statute of limitations), sets the maximum period within which legal proceedings may be brought. Put simply, once this time lapses, the claim is said to be "statute-barred" and can no longer be pursued in a court of law.

The General Rule for Loan Agreements

The period of limitation in Zambian legal actions are governed by the British Limitation Act, 1939 (the "**Limitation Act**") which is applicable in Zambia by virtue of the British Acts Extension Act Chapter 10 of the Laws of Zambia. Other statutes other than the Limitation Act also provide for specific periods of limitation. The general rule for simple contracts is that any action for breach must be commenced within six years from the date the cause of action accrues. Section 2 of the Limitation Act establishes this position. Accordingly, a lender must bring an action within six years from the date the right to sue first accrues.

However, loan agreements do not always fit neatly within this general rule. Their treatment under the law often depends on how the contract defines default and when the right of first accrual arises i.e. the right to receive or benefit.

When Does Time Begin to Run?

The critical factor in limitation law is the date of accrual—the moment when the Claimant first becomes entitled to sue.

For ordinary contracts, this typically occurs as soon as one party fails to perform a contractual obligation. From that point, time starts to run against the wronged party.

For loan agreements, however, the picture is more complex. Loan contracts generally contain continuing obligations. For example, most loan agreements provide a clause allowing the debtor to repay instalments or service debt over time. Default is therefore not always a single event, but can be a recurring breach as each missed date would constitute a breach in itself.

Standard loan agreements usually stipulate that default does not automatically terminate the contract. Instead, the obligation continues until the lender lawfully elects to terminate the facility and demand repayment of the outstanding balance.

As Andrew McGee explains in ***Limitation Periods*** (5th ed., 2006, p. 217):

> *"Where the obligation can be performed at any time during an extended period, the cause of action cannot accrue before the beginning of that period and will accrue at the latest at the very end of that period."*

This reasoning has been endorsed in comparative jurisprudence. In **Marvelous Mario's Inc. vs. St. Paul Fire and Marine Insurance Co. (2019 ONCA 635)**, the Ontario Court of Appeal explained that a rolling limitation period may apply where there is a recurring contractual obligation:

> *"The jurisprudence suggests that a rolling limitation period may apply…where the defendant has a recurring contractual obligation…In cases where there have been multiple breaches of ongoing obligations, it is equitable to impose a rolling limitation period."*

Similarly, in **Lankshmijit vs. Sharani [1974] AC 605**, the Privy Council held that the right to sue under an agreement of this nature only arose upon notice being given, with the cause of action accruing at the end of the contractual period.

Noting the above, while limitations may be fixed for contract breaches, for so long as a contract is not terminated, breach may continue on perpetuity subject to the terms and conditions therein.

The Role of Acknowledgment and Admission

Limitation periods in loan agreements can also be affected by acknowledgments or admissions of debt. Under Section 23(4) of the *Limitation Act*:

> *"Where any right of action has accrued to recover any debt… and the person liable…acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment."*

Thus, a borrower's acknowledgment—or even part-payment—resets the clock. This principle was recently affirmed in **Finance Bank Zambia Limited vs. African VSAT Systems Limited (CAZ Appeal No. 62 of 2022)**.

Does Timing of the Admission Matter?

Interestingly, under Zambian law, an acknowledgment remains valid even if made after the limitation period has expired. Section 23(4) does not require that an acknowledgment be made within the initial limitation period. In fact, Section 25 (6) of the Limitations Act, confirms that payment can be made after the initial limitation period.

This differs from similar common law jurisdictions:

i. In England, under the Limitation Act, 1980 (which replaced the 1939 Act), once a claim is statute-barred it cannot be revived by a subsequent acknowledgment or payment. As the statute now provides in Section 29 (7):

> *"...a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment."*

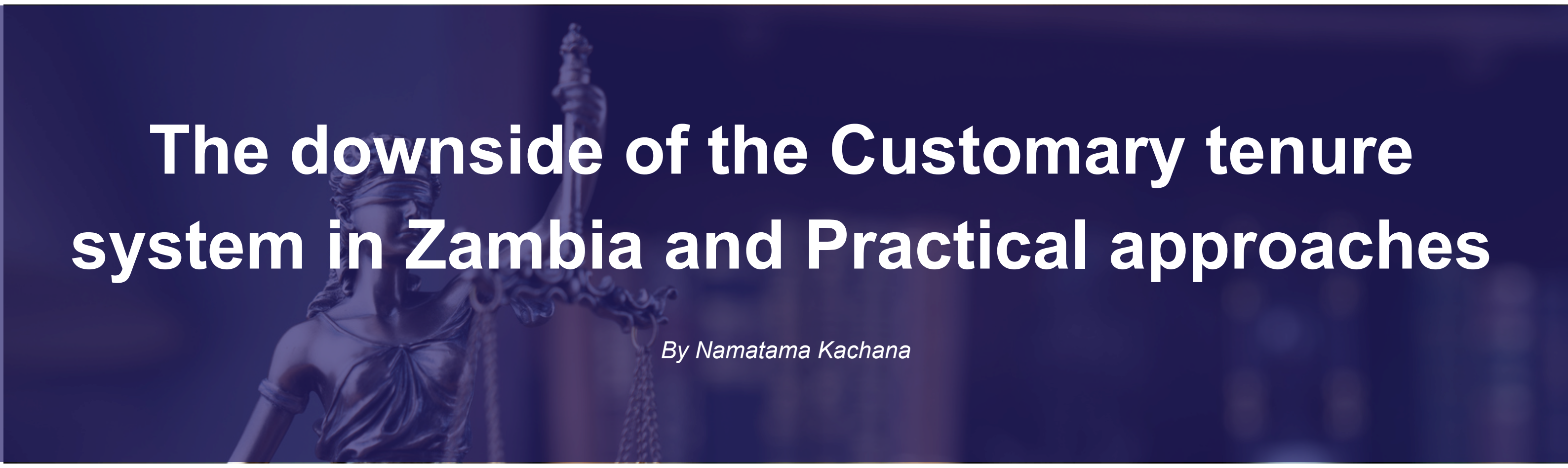
ii. Similarly, the Limitation Act, 1963 of India—also modelled on the 1939 Act—takes the same approach. Section 18 requires that an acknowledgment be made **before the expiration of the prescribed period.** The Supreme Court of India in **Asset Reconstruction Company (India) Limited vs. Tulip Star Hotels Limited, Civil Appeal Nos. 84–85 of 2020**, confirmed this interpretation.

The absence of such a restriction in Zambia suggests that, unless and until Parliament enacts a limitations statute expressing otherwise, a borrower's acknowledgment may revive a claim long thought extinguished.

Conclusion

Loan facility agreements, with their recurring obligations and flexible default provisions, raise unique issues under limitation law. Unlike ordinary contracts, time does not necessarily start to run at the first missed payment. Instead, the terms of the facility, the lender's election to terminate, and any acknowledgments or part-payments made by the borrower all shape when and how the limitation clock runs.

For lenders, this underscores the importance of vigilance—not only in enforcing rights promptly but also in securing written acknowledgments of debt when negotiations stall. For borrowers, it is a reminder that time does not always extinguish liability. Ultimately, Franklin's observation still resonates: in credit transactions, time is everything.



The downside of the Customary tenure system in Zambia and Practical approaches

By Namatama Kachana

Introduction

In Zambia, the land tenure system is dual structured, namely – Statutory tenure and Customary tenure. Under the Statutory tenure, all land is vested in the state whereas under Customary tenure, the land is governed and managed by traditional leaders. While this system reflects Zambia's rich cultural heritage and legal evolution, it also presents significant challenges that hinder sustainable development, equitable access, and efficient land management. This article explores the downsides of Zambia's land tenure system and suggests practical approaches to address these challenges.

Downsides of the land tenure system in Zambia

Customary tenure

1. Insecurity of tenure

Whilst accessibility to land under the customary tenure system may be flexible, the lack of formal documentation presents a challenge in the registration process in the necessary registries such as the Ministry of Lands and Deeds Registry. This makes it difficult to assert ownership and deal with land for an individual's desired purpose i.e. assertion of rights over own's land.

2. Limited access to credit

If landholders are desirous to access credit facilities through leverage of their land, financial institutions and banks would require legal documentation proving legal title over the land. This provides security to both parties before/after the grant of such credit facilities. The failure to provide such legal documentation may hinder entrepreneurship and agricultural development, particularly among smallholder farmers both in urban and rural setups, limiting economic growth at both individual and nationwide level.

3. Gender inequality

In many Zambian communities, land rights are passed down through male lineage, leaving women with limited or no access to land ownership. This exclusion undermines women's economic empowerment and contributes to persistent poverty and inequality.

4. Land administration challenges

Recently, the Ministry of Lands digitized the process of registration of title. Unfortunately, this presents a challenge to landholders who are not tech savvy and tends to be a challenge as the process of converting customary land to statutory leasehold is often slow, bureaucratic, and costly. Many landholders are deterred by complex procedures and high fees, resulting in a reluctance to formalize land rights. This inefficiency can also foster corruption and favouritism in land allocation.

5. Land grabbing and displacement

Weak governance and lack of clear documentation make communities vulnerable to land grabbing by elites or even political cadres aligned. Large-scale land acquisitions can lead to the displacement of local populations, loss of livelihoods, and social unrest.

6. Conflict and disputes

Over the years, we have seen a rapid growth in population and this too, has seen an increase in demand for land for various reasons ranging from investment to agricultural developments. This has led to an overlap between traditional leaders and state officials leading to disputes in land allocation and boundaries.

Practical approaches to address the challenges

1. Land registration and documentation

A nationwide campaign to register and document customary land rights can enhance tenure security. Simplifying the process and reducing costs will encourage more landholders to formalize their ownership, making it easier to access credit and resolve disputes.

2. Legal reforms

Reforming land laws to harmonize customary and statutory systems can reduce confusion and overlap. Clear guidelines on land conversion, inheritance, and dispute resolution will strengthen governance and protect vulnerable groups.

3. Empowering women

Increased sensitization to promote women's land rights are essential. Legal reforms, awareness campaigns, and support for women's groups can help break down cultural barriers and ensure equitable access to land.

4. Strengthening land administration

Capacity-building for land administration officials and traditional leaders can improve transparency and efficiency. Digital land registries and decentralized services can make land management more accessible and accountable.

5. Community participation

Engaging local communities in land use planning and decision-making fosters ownership and reduces conflict. Participatory approaches ensure that land policies reflect the needs and aspirations of all stakeholders.

6. Monitoring and enforcement

Establishing robust monitoring and enforcement mechanisms can deter land grabbing and protect community rights. Collaboration between government, civil societies, and traditional authorities is key to safeguarding land tenure.

Conclusion

The land tenure system in Zambia, especially customary tenure presents significant challenges that impede development and social equity. However, with targeted reforms, inclusive policies, and community engagement, these downsides can be addressed. Securing land rights for all Zambians, (male or female) and marginalized groups, will unlock the country's potential for sustainable growth and prosperity.

Manufacturing Sector

Case Study: Safeguarding Intellectual Property

Lessons from Natural Valley Ltd v Fairly Bottling (Z) Ltd & Others (Appeal No. 16 of 2016)

By Rabecca Banda and Kawana Kawana

Overview

In Natural Valley Ltd vs. Fairly Bottling (Z) Ltd & Others (Appeal No. 16 of 2016), the Supreme Court of Zambia delivered a seminal judgment on trademark protection, brand misuse, and unfair competition in the manufacturing / FMCG (fast moving consumer goods) sector. The case offers valuable guidance for businesses seeking to protect their brand assets, especially those that depend on distinctive packaging or trade dress.

Key Facts

Trademark and Branding: Natural Valley Ltd ("**Natural Valley**") manufactures bottled water under the registered trademark "MANZI VALLEY," used on its 18.9-litre bottles. The bottles are embossed with "MANZI VALLEY" and additional inscriptions (e.g., "PROPERTY OF NATURAL VALLEY LIMITED," etc.). The trademark was registered with PACRA and renewed.

Alleged Misuse: Natural Valley alleged that Fairly Bottling (and other respondents) were reusing its branded 18.9-litre bottles, removing old labels (or using empty bottles from Natural Valley), affixing their own adhesive labels, filling them with their own water, and distributing them, thereby misleading consumers and infringing Natural Valley's trademark and brand goodwill.

Defense: Fairly Bottling argued that bottle reuse (or bottle exchange) is an established practice in the industry; that once bottles are sold, ownership transfers; that its own labels identified the product; and that there was no intent to mislead consumers or dilute the distinctiveness of Natural Valley's brand.

Supreme Court's Decision

The Supreme Court allowed Natural Valley's appeal and granted an interim injunction. It set aside the High Court ruling.

The Court held that Natural Valley had established a prima facie case of trademark infringement.

The evidence showed that Fairly Bottling's use of the bottles posed a real risk of eroding the distinctiveness of Natural Valley's brand identity.

The Court further recognised that such conduct threatened to dilute Natural Valley's goodwill and reputation in the FMCG market.

The Court held that without the injunction, the harm would be irreparable, and that monetary damages would likely be inadequate and speculative given the extent of distribution and difficulty of tracking misuse.

The balance of convenience was held to favour Natural Valley, despite the respondents' claims about industry practice. The Court emphasized that established practices do not legitimize wrongful acts under the law.

The interim relief ordered included that Fairly Bottling and the other respondents cease using Natural Valley's bottles, stop distributing water in them, and surrender all such bottles in their possession. Costs were awarded to Natural Valley.

Lessons & Takeaways for Manufacturing / FMCG Businesses
Below are the key lessons this case offers, particularly for businesses in manufacturing, packaging, or brands where distinct packaging is part of the product identity.

Register Strong Trademarks & Brand Elements	The registered trademark (and its renewal) was central to Natural Valley's ability to bring the action. Without registration, trademark protection is much weaker.	Ensure strategic registration of trademarks, brand-names, logos, embossing, industrial designs etc. especially for distinctive bottle shapes or markings. Maintain renewals and keep registration records current.
Protect Packaging & Trade Dress	The case shows that even when someone uses a competitor's physical containers with their own labels, courts may find misuse/infringement if consumers are likely to be confused.	When designing packaging, consider both regulatory protection and practical control (e.g. limiting resale or reuse practices). Clarify ownership of packaging, labelling, what parts are proprietary/design protected.
Don't Rely on "Industry Practice" as a Defense	The Court rejected "we've always done it this way" as a sufficient justification where rights are being infringed. Laws don't give blanket immunity to long-standing but wrongful practices.	Audit your supply chain and packaging practices. If some legacy or customary practices risk infringing others' rights, re-evaluate them. Legal compliance must evolve with industry and competitive context.
Injunctions & Interim Relief Can Be Critical	Sometimes the harm is not just financial, but reputational; tracking damage later may be difficult. The possibility of irreparable harm can make interim protection essential.	Be ready to seek interdicts (injunctions) when misuse is discovered. Document evidence early (photos, samples, consumer confusion instances) so you can present a strong prima facie case.
Ongoing Monitoring & Enforcement	Even after registering rights, you need to enforce them: monitor markets, look out for misuse and act early.	Establish internal legal / compliance monitoring. When infringements occur, consider non-litigious means first, such as cease-and-desist letters, negotiation, then litigation if needed. Budget for enforcement in brand / Intellectual Property (IP) strategy.

Implications for Risk Management & Brand Strategy

Brand-asset value is real: The investment in registering and maintaining brand assets (trademarks, embossing, etc.) can pay off in preventing dilution, misuse, and corrosive competitive behaviour.

Packaging is part of your IP portfolio: Physical assets like bottles, labels, embossing, design, shape can carry IP rights or at least support claims of unfair competition or passing off.

Evidence matters: Potential for irreparable damage often turns on whether you can show likely confusion, reputation risk, brand association, etc. Keep good records.

Costs vs Delay: Sometimes enforcing rights early (even at some cost) is more cost-effective than letting misuse become entrenched with larger loss of market share and brand equity.

How Corpus Legal Practitioners Helps

We assist manufacturing, consumer goods, and packaging companies with:

- Strategic registration of trademarks, designs, and trade dress.
- Advising on packaging contracts, ownership of containers, labelling, and brand assets.
- Monitoring and enforcing IP rights (evidence gathering, cease-and-desist, litigation).
- Advisory on best practices in packaging reuse, resale, and industry norms to avoid vulnerability.
- Tailoring risk mitigation to your brand's distribution footprint and reputation exposure.

Conclusion

The Natural Valley case is an important reminder: securing intellectual property rights is only half the battle. Vigilance in enforcement, proper packaging practices, and willingness to act quickly are what ensure that IP protection delivers real value. For FMCG and manufacturing businesses in Zambia, this case underlines that well-protected brands are stronger brands.

Establishing a Retail Pharmacy in Zambia: A Compliance Roadmap for New Entrants

By Dalitso Ng’ona and Salifyanji Simwanza

Expanding into Zambia’s pharmaceutical retail sector presents real growth potential. Rising demand for healthcare access, a growing urban population, and increasing consumer awareness make pharmacies a resilient business model.

But the sector is also heavily regulated. Compliance is not just a legal formality, it is central to building consumer trust, protecting public health, and ensuring a smooth launch.

This article offers a practical roadmap for investors, entrepreneurs, and operators seeking to establish a retail pharmacy in Zambia.

Step 1: Business Formation & Local Authority Permits

What to do

- Incorporate your entity with the Patents and Companies Registration Agency (PACRA).
- Obtain a Taxpayer Identification Number (TPIN) from the Zambia Revenue Authority.
- Secure local authority permits, including:
  - Business Licence (issued by the local council following zoning checks and inspection).
  - Fire Certificate (renewable annually, fees vary by size/location).
  - Health Permit (based on hygiene standards and staff numbers, renewable annually).

Why it matters

These are foundational permits, without them, operations cannot legally begin.

Step 2: Registration with the Zambia Medicines Regulatory Authority (ZAMRA)

What to do

• Apply for a Certificate of Registration under the Medicines and Allied Substances Act, No. 3 of 2013 (MASA).

• File a separate application for each premises to be operated as a pharmacy.

• Ensure a registered pharmacist manages the pharmacy at all times.

Why it matters

Only ZAMRA can authorise the operation of a retail pharmacy. Operating without ZAMRA approval is a criminal offence.

Step 3: Application Documentation & Fees

What to do

- Complete ZAMRA’s application form and pay the prescribed fee.
- Submit supporting documentation, including:
  - Certificate of incorporation (PACRA).
  - TPIN registration.
  - Pharmacist’s practising certificate.
  - Sketch or floor plan of the premises.
  - Evidence of ownership or lease of premises.

Why it matters

Applications are document-driven. Missing paperwork is the most common cause of delay.

Step 4: Premises Standards & Pre-Licensing Inspection

What to do

- Prepare your premises in line with ZAMRA’s Guidelines for Establishing a Pharmaceutical Retail Business.
- Ensure suitable layout for dispensing, storage, and customer service.
- Maintain sanitary and safety standards (ventilation, waste disposal, lighting, and security).
- Facilitate ZAMRA’s inspection and address any deficiencies promptly.

Why it matters

Premises must meet design and safety standards before registration is granted. Failing inspection can delay opening by months.

Step 5: Final Approval & Issuance of Certificate

What to expect

- ZAMRA’s Licensing Committee reviews the application and inspection findings.
- Certificate is processed by the Director of Licensing and endorsed by the Director-General.
- Once granted, the certificate must be displayed in a conspicuous place.

Why it matters

This is the final legal step before operations may begin.

Step 6: Post-Licensing Compliance

What to do

- Renew local permits (fire, health, business licence) annually.
- Submit annual or “no change” returns to ZAMRA.
- Renew the pharmacist’s practising certificate.
- Maintain proper records of prescriptions, inventory, and recalls.
- Prepare for periodic inspections by ZAMRA and local authorities.

Why it matters

Compliance does not end once the doors open. Non-compliance can lead to suspension or cancellation of a licence.

Key Risks & Pitfalls to Avoid

- Operating without ZAMRA approval: A criminal offence under MASA.
- Incomplete applications: Missing documents are the most common delay.
- Premises shortfalls: Layout and storage deficiencies often cause failed inspections.
- Staffing gaps: Pharmacies must have a registered pharmacist in charge at all times.
- Advertising breaches: Marketing of medicines is tightly controlled and must avoid misleading claims.

Why Getting It Right Matters

A compliant pharmacy:

- Avoids fines, closure, or costly delays.
- Builds trust with customers, regulators, and investors.
- Secures long-term stability in a growing market.

How We Support Clients

- We work with investors, entrepreneurs, and pharmacy chains to:
- Map regulatory requirements specific to location.
- Prepare and review ZAMRA and council applications.
- Advise on inspection readiness and premises standards.
- Establish internal compliance systems for records, renewals, and reporting.
- Navigate licence renewals, amendments, or ownership changes.

If you are considering entering Zambia's retail pharmacy sector, speak to us before you begin. We can help you avoid costly missteps, accelerate approval, and ensure your operations launch on a strong, compliant footing.

Services Sector

The Tailings Trap: Avoiding the Pitfalls in Securing Mining Collateral

By Mutinta Annel Zulu

By-products of the extraction processes in mining are known as tailings. Tailings occur when a commodity of interest is extracted from ore containing an economically recoverable commodity, the resultant waste stream is termed tailings. It is not always possible to extract all commodity of interest in ores in the extraction process due to various factors including the method of extraction used and the limitations of available technology. Consequently, tailings frequently contain significant amounts of valuable materials that were unrecovered during the initial mining operations. These materials may increase in economic value particularly in light of technological advancements that now allow for more efficient processing of minerals in tailings. As a result, tailings are rapidly emerging as untapped reservoirs of economic potential.

Legal Status of Tailings

Tailings typically occur on the surface and are not physically integrated with the land they occupy. This distinctive characteristic precludes tailings from becoming part of the land through annexation, as recognised under property law - where anything physically attached to the land becomes part of the land. Since tailings are not inherently attached to the land on which they are piled, they are not regulated under property law. Instead, beneficiation (processing) of minerals found in tailings is governed by the Minerals Regulation Commission Act No. 14 of 2024 (the “MRC Act”).

The MRC Act defines minerals to include any substance occurring in tailing dams, slag dumps, waste, rock dumps, residue waste rock dumps, residue stockpiles or residue deposit. The MRC Act further defines mining as the extraction of minerals, whether solid, liquid of gaseous, from land or from beneath the surface of the earth in order to win minerals. Accordingly, any person seeking to deal in the tailings which contain minerals must comply with the provisions of the MRC Act which require possession of either a mineral processing licence or a mining right. Extraction of minerals in tailings without an appropriate licence or permit under the MRC Act is prohibited, even if the tailings are located on the land owned by the person intending to undertake the extraction.

Charging Tailings as Assets

Most items of economic value constitute an asset and can serve as attractive collateral to lenders. This is particularly true for tailings, and these are therefore capable of being charged in financing arrangements. However, enforcement of a charge over t ailings is contingent on whether the chargee holds the appropriate mineral processing licence or a mining right.

The intrinsic characteristics of tailings combined with the regulatory framework of the MRC Act, creates complexities in effectively creating a charge over tailings. It is generally not possible to create an effective charge over the tailings independent of a charge over the mining right or mineral processing licence associated with the tailings. Similarly, taking security over the land containing the tailings alone is insufficient to grant a chargee or mortgagee of such land a security interest in the tailings.

If a chargee or mortgagee does not hold a charge over the relevant mining right or mineral processing, they will be unable to beneficiate the materials in the tailings at enforcement of their security. Particularly that it may not be possible to apply for the necessary permit at enforcement as overlapping mining rights are typically not permitted without the consent of the existing licence holder. Consequently, a mere charge over tailings or a mortgage of land on which the tailings are piled cannot guarantee the ability to acquire a mining right over the area containing the tailings.

Strategic Considerations for Secured Creditors

To navigate these complexities, lenders must undertake thorough assessments and carefully structure their security packages. Such security packages should incorporate a clear charge over the tailings, relevant licences, and guaranteed access rights. This approach enables the chargee to enforce the security efficiently and achieve their objectives, including the potential recovery and beneficiation of resources within the tailings.

Conclusion

As Zambia’s mining sector evolves, tailings are no longer viewed as mere remnants of extraction only attractive to illegal miners and artisanal miners, they are strategic assets with latent value. Yet, their legal and regulatory treatment demands a more sophisticated approach from financiers, operators, and policymakers alike. Without the right legal representation, licences and access rights, even the most promising tailings deposits remain legally inaccessible. To unlock their full potential, stakeholders must move beyond conventional security models and embrace integrated, forward-looking strategies that align legal compliance with commercial ambition. In doing so, tailings may well become the cornerstone of a more

From Rainfall to Resilience: Closing the Protection Gap for Zambian Farmers with Smart Drought Insurance

By Suwilanji E.T. Namumba

Climate Change and the Role of Insurance

Agriculture is the backbone of Zambia's economy and food security. However, climate change has made farming increasingly unpredictable. Recent studies show that Zambia is experiencing more frequent and intense climate events, especially prolonged dry spells and droughts, that repeatedly damage crops and devastate livelihoods.

Most farmers lack formal insurance and instead rely on loans or government aid when harvests fail. One promising solution is weather-index insurance, which pays out when a specific weather condition, like rainfall below a certain level, is recorded. This system can deliver support after a drought. But in practice, it is hard to ensure that the weather data used in the insurance matches the actual damage farmers experience.

For example, rainfall measured over ten-day periods has been shown to closely reflect farmers' experiences of crop loss in Zambia. In contrast, using total rainfall over an entire season can miss short but severe dry spells that ruin crops. This mismatch, known as basis risk, means farmers might not get paid when they suffer real losses, or they might receive payouts when damage was minimal.

The Challenge of Designing Effective Insurance Triggers

This leads to a key dilemma: how to design insurance that is both simple and accurate. If the weather index is too broad, it may not reflect actual crop damage. But if it is too detailed, it can become difficult to manage or explain.

Take a typical policy: it might define a drought as a certain amount of rainfall missing over a month. Yet, a single dry week during the growing season can destroy crops, even if the rest of the season is wet. Unless the insurance is carefully tailored to local conditions, farmers may be left without help when they need it most.

Legal Ambiguity and Disputes Over Claims

Another challenge is the legal wording of insurance contracts. If terms like "drought" or "dry spell" are not clearly defined, disputes can arise. In insurance law, the doctrine of contra proferentem dictates that any unclear language in the contract is interpreted in favor of the farmer, since insurers write the contracts. This makes it a commercial and legal imperative for insurers to define triggers with utmost clarity. For instance, one policy might define drought as "rainfall below 40% of normal for 30 consecutive days," while another might use a 10-day average or soil moisture levels. If a farmer is denied a payout because the insurer uses a strict definition, they could challenge it in court. This makes it crucial for insurers to write clear, measurable definitions of drought triggers.

Regional Lessons: Kenya, Ethiopia, and South Africa

To improve Zambia's system, it helps to look at what neighboring countries have done.

Kenya has used weather-index insurance for over a decade. The Kilimo Salama project (later ACRE Africa) bundled insurance with farm inputs like seeds and fertilizer. Farmers activated insurance by buying these products, and payouts were triggered by rainfall falling below historical norms. However, farmers sometimes did not receive payouts despite visible crop losses. To address this, Kenyan insurers introduced hybrid products that combine weather data with on-the-ground checks. Digital tools and supportive government policies have helped expand coverage.

Ethiopia took a different approach. In 2025, a pilot program linked insurance to fertilizer purchases. Farmers were automatically enrolled when they bought subsidized fertilizer. Instead of using rainfall data, the insurance paid out if average crop yields in a district fell below a set level due to drought, pests, or disease. This area-yield index covers multiple risks and avoids relying solely on weather data. Government coordination helped overcome logistical challenges, although it requires more complex data.

South Africa has traditionally used standard crop insurance for commercial farmers, but rising costs made it unsustainable. In 2021, the government introduced subsidies: 25% of premiums for commercial farmers and 75% for smallholders using weather-index insurance. These simpler products use rainfall or satellite data to trigger payouts. Still, experts warn that index insurance alone may not fully cover losses, and building trust with farmers is essential.

Path Forward for Zambia

Zambia can learn from these experiences. Here are three key priorities:

1.Smarter Product Design

Insurance should use shorter time frames or multiple triggers to better reflect real crop risks. For example, splitting the season into early, mid, and late phases allows payouts for mid-season dry spells—even if total rainfall looks normal. This reduces mismatches between weather data and actual losses.

2. Clear Contract Language and Legal Protections

Insurance policies must define drought triggers in precise, measurable terms—like "rainfall below X mm at Y weather station." As climate patterns shift, these thresholds should be updated regularly using local data. If disputes arise (e.g., whether extreme heat without low rainfall counts as drought), the contract should clearly explain how claims are handled. Regulators can help by recommending standards for trigger definitions and requiring insurers to publish past performance data.

3. Farmer Education and Trust Building

Farmers need to understand how index insurance works, when it pays out, and how to file claims. Training programs, mobile alerts, and awareness campaigns can help build confidence. With clearer policies and better-designed indices, drought insurance can become a reliable safety net.

Conclusion

Zambia's farmers face growing climate risks, but insurance can offer real protection—if it is designed and communicated effectively. By combining smart data, clear legal drafting, and lessons from regional peers, Zambia can close the gap between abstract rainfall thresholds and the real impact of dry spells. It is natural, therefore, that closing this gap requires more than just intention; it requires precision. This is where legal expertise becomes crucial. Legal advisers who transform innovative insurance concepts into reliable, actionable protection for agribusinesses and insurers alike are therefore critical in this journey. When drought strikes, farmers should not be left without support and with robust legal foundations, they won't be.

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