NEPAD-OECD AFRICA INVESTMENT INITIATIVE ROUNDTABLE

Testing the draft PFI Users' Toolkit Guidance to Zambia for the Self-Assessment Phase of the APRM process

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Background Paper for the Regional Roundtable on

Strengthening Investment Climate Assessment and Reform in NEPAD Countries

Lusaka, Zambia

27-28 November 2007

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1.0 Introduction

The initiation and implementation of robust investment reforms for promoting economic growth and poverty reduction has assumed critical importance in recent years. Within the context of the African Peer Review Mechanism (APRM), the APR Secretariat is working on improving the investment-climate content of Africa's own peer review mechanism. African countries are also looking for more comparisons of investment climate assessment, country reform agendas and their impact in specific sectors.

This paper tests the Policy Framework for Investment (PFI) draft guidance – the Toolkit - as a resource aimed at building capacity and supporting governments completing the investment-related content of the Self-Assessment APRM questionnaire, using Zambia as a pilot case study. It offers an initial assessment of the usefulness of the PFI guidance for completing the Self-Assessment phase of the APRM. Issues covered include what was missing, user friendliness of the PFI guidance, its relevance in an African country, how could the PFI Toolkit guidance be improved, what are its strengths and its weaknesses.

The paper is selective in choosing the parts of the PFI guidance used. It mainly focuses on the PFI chapters relating to Investment Policy, Investment Promotion and Facilitation and Public Governance (Chapters 1, 2 and 10). The OECD provided a matrix showing the correspondence between the APRM Self-Assessment questions with the PFI questions. Various documents on the investment climate in Zambia, including UNCTAD (2006)'s *Investment Policy Review in Zambia*, the *Zambia Development Act*, the *Investment Act, and* The World Bank's *Doing Business 2008* Report, were also reviewed for the assessment.

2.0 The APRM Process

The APRM is a self-monitoring tool voluntarily acceded to by member states of the African Union (AU). Its main objective is to foster the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional and economic integration through sharing of experiences and reinforcement of successful best practices, including identifying deficiencies, and assessing the needs for capacity building of participating countries.

Assessment under the APRM is conducted within the framework of agreed values, codes and standards as contained in the Declaration on Democracy, Political, Economic and Corporate Governance under four substantive thematic focus areas:

(i) Democracy and political governance;

(ii) Economic governance and management;

(iii) Corporate governance; and

(iv) Socio-economic development

At the inception of the APRM, the Base Documents along with the 88-Page Master Questionnaire were developed as tools to guide the self-assessment process in APRM member countries in the above four thematic areas of the APRM. To ensure the technical soundness of the process, the questionnaire was developed with detailed criteria and indicators for assessment to underscore the commitment of a country on the implementation of the standards and codes of the NEPAD *Declaration on Democracy, Political, Economic and Corporate Governance*.

Although the questionnaire has been widely used by several countries, some concerns have been raised by some about its bulkiness, repetition on some cross-cutting issues such as corruption, and the neglect or inadequate attention paid to some critical governance and development issues, such as a country's investment climate. Against this background, one of the themes of the NEPAD-OECD Africa Investment Initiative Lusaka roundtable is the investment climate content of the APRM.

One of the main aims of the roundtable is to develop policy capacity building tools that are intended to help NEPAD countries improve the investment-related content of Africa's peer review process and to support implementation of investment climate reform policies, with a specific focus on the investment environment conditions conducive to attracting investment for development in the water and sanitation sector.

In order to set the scene for the ensuring assessment of the PFI investment tool in relation to the APRM process, this paper begins with a brief review of the investment climate in Zambia. This will serve as a basis for determining the extent to which the tool kit is relevant in the Zambia context.

3.0 The Investment Climate in Zambia

Zambia has in recent years embarked on a vigorous reform programme aimed at attracting investment, especially foreign investment, into the country. Since the 1990s, the Government has taken policy, legal and institutional measures aimed at creating an enabling environment for the private sector. This is a change from the more statist approach adopted in the 1970s, which included nationalisations and a greater role for the state in economic management.

3.1 Key Investment Policy Initiatives in Zambia

The current focus on attracting investment in Zambia has resulted in some complementary reforms, including the 1993 Investment Act with liberal provisions for foreign investment. This has now been superseded by the Private Sector Development Programme (PSD) programme which is the Government's flagship investment promotion programme.

In 2005, the Government of the Republic of Zambia (GRZ), in partnership with the private sector through the Zambia Business Forum (ZBF), initiated implementation of a broader Private Sector Development Reform Action Plan and Implementation Framework to address existing barriers to investment. The PSD Reform Programme, which requires GRZ to implement a comprehensive programme of investment climate reforms on an accelerated basis, was approved at a stakeholders' forum (PSD Forum

2004) and launched as the roadmap to creating the right environment for investment, infrastructure development and private sector - led economic growth.[1]

Six reform areas were identified under the PSD Reform Programme:

- Policy environment and institutions;
- Regulation and laws;
- Infrastructure;
- Business facilitation and economic diversification;
- Trade expansion; and,
- Citizens empowerment.

Although the PSD Reform Programme got off to a slow start, efforts have since been made to quicken the pace of implementation. A PSD Steering Committee, with stakeholder representation from the Government, the private sector and Cooperating Partners (CPs) was established, to enhance the implementation of the programme. The Steering Committee is being assisted by an Implementation Committee to oversee the introduction of the PSD reforms.

PSD desk officers have also been appointed as contact points for the PSD Reform Programme in all participating ministries. In addition, 11 Working Groups were constituted to work on the identified priority reform areas.

The Ministry of Commerce, Trade and Industry (MCTI), through the Office of the Special Assistant to the President, assumed a coordinating role in the implementation of the PSD Action Plan. The CPs have also recognised the need to coordinate among themselves and formed an informal PSD committee to enhance the PSD agenda.

3.2 Macro-Economic Stability

The promotion of investment in Zambia has significantly benefited from recent improvements in Zambia's macro-economic environment. Since the MMD Government came to power in 1991, it has, under close guidance from the International Monetary Fund (IMF) and the World Bank, been pursuing prudent fiscal and appropriate monetary policies.

As discussed later, these policies have resulted in improved economic management in Zambia. During 2000–05, real GDP growth averaged 4.5 percent a year, as mining recovered and construction picked up because of a surge in housing demand. In 2006,

[1]The preparation process for the PSD Forum 2004 effectively started with the commissioning of two new studies on barriers to private sector development in Zambia with the support of the World Bank. These studies revealed a number of significant barriers to investment, especially the following: the cost of finance,

macroeconomic instability, tax rates and administration, regulatory policy uncertainty, crime and corruption, and infrastructure. Others include custom regulations, labour regulations, business licensing and operating permits, and duty draw back.

Zambia's GDP growth rate was 6.2 percent. According to the ZHDR (2007), real per capita GDP has grown from K234,933 in 1998 to K276,416 in 2004. Table 1 below summarises Zambia economic performance in the period 2000 and 2006.[2]

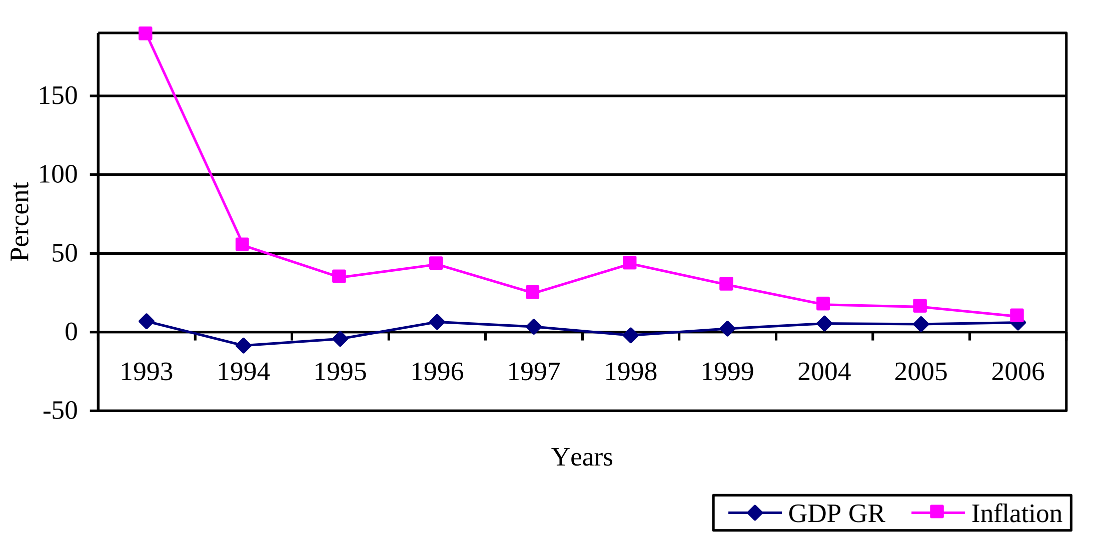
Table 1: Zambia's Key Macroeconomic Indicators, 2000- 2006

	2000	2001	2002	2003	2004	2005	2006
GDP (current US$ Bn)	3.2	3.6	3.6	4.3	5.4	7.3	***
Real GDP growth rate	3.6	4.9	3.3	5.1	5.4	5.2	6.2
Inflation rate, annual (%)	30.1	18.7	26.7	17.2	17.5	15.9	8.2
Long term debt (US$ Bn)	4.5	4.9	5.3	5.9	6.2	***	***

Source: Economic Reports 2000 – 2006.

Gross national savings grew from 16.5 to 20.6 percent of GDP from 2002 to 2003. There has also been a steady growth in non-traditional exports most of which are agricultural-based, such as cotton, tobacco, floriculture and horticulture, and coffee. Inflation—in double digits (15.9 percent) during most of 2005 – moderated at year-end, partly in response to the sharp appreciation of the Zambian kwacha. Zambia has now attained single digit inflation at 8 percent. Figure 1 below captures recent trends in GDP growth and inflation for Zambia.

Graph 1: Trends in GDP Growth and Inflation, 1993 - 2006



Source: various CSO publications.

From Graph 1, it is clear that the economy has assumed an upward trend in economic growth since about 2000 and a declining trend in overall inflation. However, economic growth has not translated yet into a significant reduction in poverty levels.

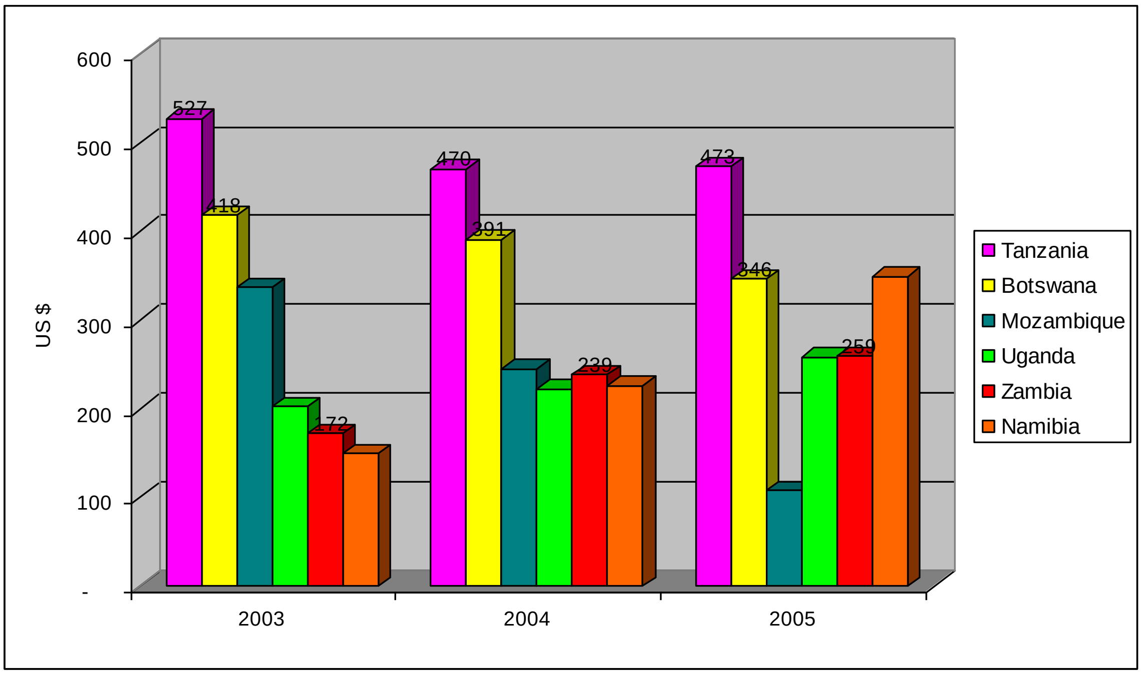
[2] At present, the exchange rate between the US dollar and the Zambian Kwacha is about $1: K3390

Through improved fiscal management, Zambia has reduced its overall deficit (including grants) while allowing for increased spending for poverty reduction. As discussed later, the Government is also implementing structural reforms to increase the efficiency and effectiveness of the public sector, improve debt management, deepen the financial sector, and promote private sector development.

3.3 Flows and Impact of Investment Promotion

As the Government embarked on serious economic reforms, the levels of foreign investment began to rise. UNCTAD (2006) notes that the level of FDI rose from 121.7 million in 2000 to $334 million in 2004. According to the Minister of Commerce and Industry, FDI is now expected to reach 1.4 billion by December 2007. In general, however, FDI in Zambia has been among the lowest in the Southern African region (Graph 2).

Graph 2: FDI Flows in Zambia and Southern and Eastern Africa Region



Source: UNCTAD World Investment Reports

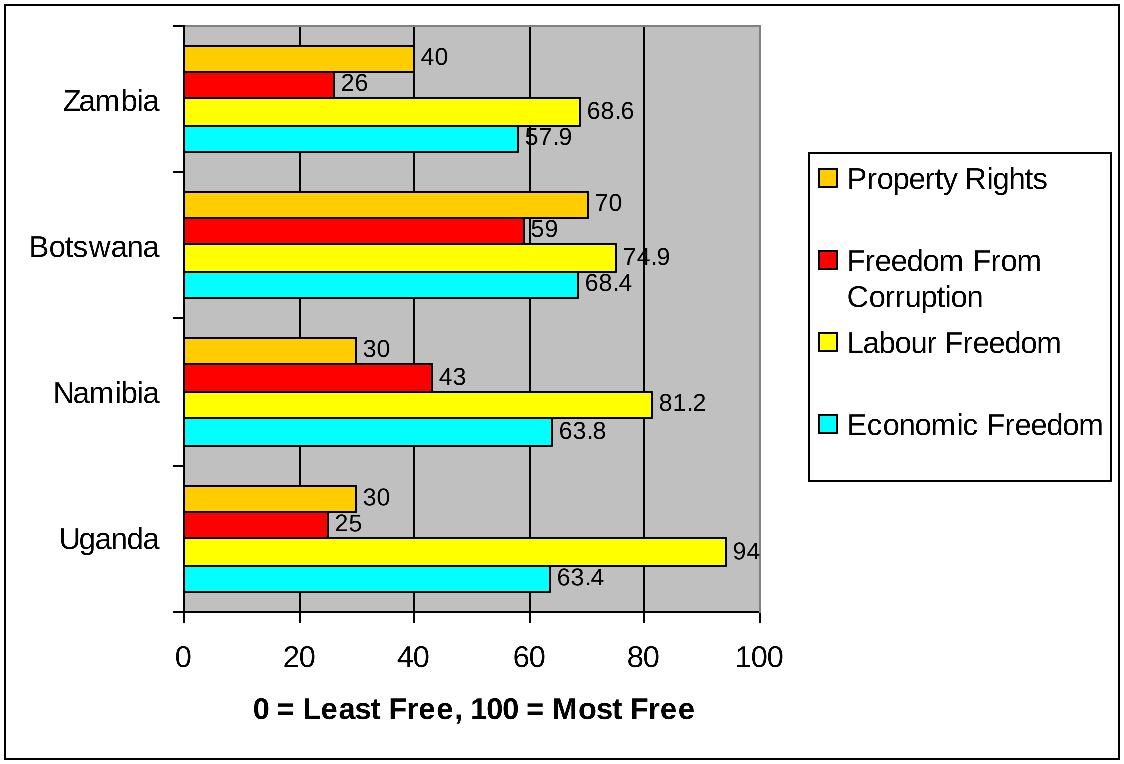
Systematic data on FDI inflows by sector, industry or country of origin are not easily accessible. In general, FDI in Zambia has been concentrated in the mining sector, both in terms of stocks and flows since the mid-1990s. Other key sectors that have benefited from foreign investment are the services sector and agriculture, especially agri-business.

The overall impact of FDI in Zambia is difficult to assess. Nonetheless, the following are notable: rehabilitation of copper mines, export diversification, modernised services, and increased employment opportunities. FDI is yet to contribute significantly to the development of stronger business relationships with domestic enterprises, which, as UNCTAD (2006) observes, is an essential condition for sustained skills transfer and technological capability.

3.4 Key Investment Challenges

Despite the above efforts aimed at promoting investment in Zambia, there remain significant legal and administrative challenges. According to the World bank (2004), the key challenges include the cost of finance, tax rates and administration, regulatory policy uncertainty, crime and corruption, and poor infrastructure. Others are cumbersome and complex custom regulations, labour regulations, business licensing and operating permits, and duty draw back. Graph 3 gives an index of economic freedom in Zambia and selected African countries.

Graph 3: The Index of Economic Freedom in Selected African Countries



Source: Heritage Foundation Index of Economic Freedom 2007.

However, Zambia has great potential to attract higher levels of investment, especially FDI. UNCTAD (2006) notes that the country has strong assets such as a rich resource base; arable land; political stability; and, a relatively skilled labour force.

UNCTAD (2006) further notes that, besides these assets, Zambia has special market access opportunities under the Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC), African Growth and Opportunity Act (AGOA) of the United States of America and the Everything But Arms Initiative of the European Union.

Zambia can realize its investment potential by streamlining its investment policy framework, infrastructure, and the costs of doing business in order to make the country's producers competitive globally and regionally. It is against this background that this paper examines the investment climate content of the APRM Self-Assessment questionnaire and the PFI Users Toolkit (initial draft) to assess the country's investment climate.

4.0 Applying the PFI Users' Toolkit to the Investment Climate Content of the APRM Process in Zambia

As part of the assessment, we completed the investment climate related questions in the APRM Self-Assessment questionnaire, using Zambia as a case study. In doing so, we dealt with questions selected from the four thematic areas of the review process: Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Development.

In the case of the PFI Users' Toolkit Guidance, we used some questions from selected chapters in order to assess the usefulness of the PFI guidance for fulfilling the Self Assessment phase of the APRM. The point of this exercise was not, of course, to make headway with Zambia's APRM process. Rather, it is designed to help us identify what was missing, the user friendliness of the PFI guidance, and its relevance in an African country context.

4.1 The PFI Users' Toolkit and the APRM Self-Assessment Questionnaire

Below we give the responses to the PFI questions which are mapped with what are considered as questions from the APRM Self-Evaluation questionnaire that concern or relate to the investment climate. The mapping of the investment climate content of the APRM Self-Assessment questionnaire takes a very broad interpretation of what bears on the investment climate. It is not intended, nor possible to interpret the mapping as a direct correspondence between the two sets of questions. Often the Self-Assessment questions themselves have relevance to both the investment climate and broader governance arrangements, whereas the PFI questions are more specific to policies for investment.

Democracy and Good Political Governance

APRM Obj 2, Q.2: ***What weight do provisions establishing the rule of law and the supremacy of the constitution carry in practice?***

The Constitution of Zambia (under review) provides the bedrock for the rule of law. It is the supreme law of the Republic of Zambia. Laws, regulations, policies, practices or conduct inconsistent with the Constitution are invalid and the obligations imposed by it must be fulfilled.

The Constitution also entrenches a comprehensive set of inalienable rights. These include the right to freedom of association; the right to assembly; the right to form a political party; and, the right to equality before the law. Others are the right to protection from discrimination and the right to freedom of religion.

The Government of the Republic of Zambia (hereafter GRZ) has also established watchdog institutions like the Human Rights Commission (HRC). However, some of these institutions face capacity problems. In some cases, corrupt practices, low performance, lack of accountability, and over-centralisation constrain the effective enforcement of law and order.

At present, the constitutional review process has attracted heated debate in Zambia. Unfortunately, the debate and arguments over a suitable mode for adopting the constitution have become somewhat acrimonious. The major contentious issue appears to be the composition of the proposed Zambia Constitutional Conference (ZCF), which is supposed to adopt the new constitution, with opponents arguing that it has an in-built ruling party majority.

PFI Ch 1, Q. 1: ***What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium-sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens?***

The laws and regulations dealing with investments and investors, including small and medium-sized enterprises, are contained in the Investment Act. The principal law relating to both local and foreign investment in Zambia is the Zambia Development Act (ZDA Act) of 2006.

GRZ passed the Zambia Development Agency Act in 2006, which has resulted in the establishment of the Zambia Development Agency (ZDA) – a one stop investment shop.[3] The ZDA Act spells out the rights and incentives of investors.

According to Mr Siazongo Siakalenge, Director of Industry at the MCTI, the government consulted all stakeholders widely before enactment of the ZDA Act.[4] He stated that the government made an attempt to review and amend the Investment Act of 1993 prior to the enactment of the ZDA Act.

Although the law still has yet to be tested, there are already some ambiguities as regards the incentives to be enjoyed by investors and the respective thresholds that trigger these incentives. There is, therefore, a need to issue clear guidelines or regulations in respect to the Act to avoid ambiguities and confusion with investors or adhoc granting of incentives to investors. According to the Permanent Secretary in the Ministry of Commerce, Trade and Industry, the ZDA is currently being reviewed.

Moreover, GRZ does not seem to have a good communication system in place, which it can use to raise awareness about the contents of the ZDA Act. This has resulted in limited understanding and visibility of the PSD Reform Programme.

APRM Obj 3, Q.2: ***What steps have been taken to facilitate equal access to justice for all?***

As noted above, the Constitution in Zambia guarantees equality before the law for all citizens. This is backed by a relatively independent judiciary. In addition, the Government established the HRC whose mandate is to investigate the violation and abuse of human rights. The Legal Aid Department was established to assist those who cannot afford the services of a private lawyer. There is also the Police Complaints Authority (PCA)

[3] The one-stop shop concept is defined as the provision of services such as land, customs, immigration and utilities under one roof.

[4] *Proceedings of the Zambia Business Forum (ZBF) Private Sector Conference on the Zambia Development Agency (ZDA) Act (2006) Implementation* (2006).

Besides these initiatives, there are several civil society organizations (CSOs) that are engaged in human rights advocacy. Others such as the Legal Resources Foundation (LRF) also provide legal services to poor members of society. However, the extent to which ordinary citizens access the services of these organizations is not clear.

PFI Ch 1, Q.4: ***Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?***

Zambia has a chequered history of investment disputes dating back to the period of nationalization. However, the situation has improved since 1991. International arbitration is a right for investors covered by Bilateral Investment Treaties (BITs). Otherwise, and if both parties agree, investors may resort to international arbitration, under the 2000 Arbitration Act. 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). This means that where international arbitration is used, the resulting arbital award is binding and must be enforced in Zambia.

The 2000 Arbitration Act also provides for domestic arbitration, which was used successfully in the case of private mobile phone provider Telecel versus state-owned ZAMTEL. The dispute was settled in seven months. The results of domestic arbitration are also legally binding. USAID and the Law Association of Zambia are currently in the process of reviewing the legal and institutional framework in favour of strengthening national arbitration.

APRM Obj 5, Q.1: ***What measures have been taken in the country to strengthen institutions for an efficient and an effective public service?***

GRZ is presently implementing a public sector reform programme based on the following three pillars: Public Expenditure Management and Financial accountability; Public Sector Management; and, the decentralisation process.

(i) Public Expenditure Management and Financial accountability (PEMFA)

Under PEMFA, the key milestones will be the piloting of an Integrated Financial Management Systems (IFMS) in a few ministries, provinces and spending agencies (MSPAs). It is envisaged that IMFIS will be rolled out to all MSPAs by 2009.

(ii) Public Sector Management (PSM)

The Zambian government has been implementing the Public Sector Reform Programme (PSRP) for more than ten years. The primary objective of the PSRP is the reduction in the size of the civil service, improvement in the quality of the civil service, and streamlining the administrative process in public service management.[5] Under PSM, the main focus will be the 'right-sizing' of government and the completion of the reconstruction of the remaining institutions.

Cabinet Office, under the Office of the President, has the overall responsibility of implementing the reform programme. More specifically, the Management Development

[5] UNDP, Governance: Enhanced Public Sector Managerial Skills Development (ZAM/02/004/01/99/A) p.4.

Division (MDD) within Cabinet Office is charged with the responsibility of introducing and developing new systems and procedures for implementing the reform programme in the line ministries; the Public Sector Management Division (PSMD) is in charge of assessing and developing the capacity needed to ensure that the introduced systems and procedures are implemented in the line ministries and that they are efficient and sustainable. The Public Service Commission, on the other hand, is responsible for ensuring the impartiality of the human resources management process as well as the overall restructuring process of the public service.[6]

However, it appears that progress in reforming the public sector has been slow. As a result, nothing much seems to have changed in terms of efficiency and effectiveness – a clear manifestation of reduced state capacity. This is despite a reduction in the number of public workers.

(iii) Decentralisation process

At independence in 1964, Zambia retained the strongly centralised and exclusive administrative structure of the colonial system. Over the years since independence, successive governments have failed to restructure the inherited system of local governance, resulting in the lack of significant transfer of responsibilities, authority, functions, as well as power and appropriate resources, to provincial, district and sub-district levels.

The current MMD Government is making an attempt to decentralise authority to provincial, district and sub-district levels. In 2002, GRZ adopted a new National Decentralisation Policy (NDP), which was officially launched by the President in September 2005. Under the Decentralisation Policy, the district level is expected to be the focus for the planning and delivery of public services.

One of the processes of decentralisation is 'fiscal decentralisation' which is the allocation of revenue responsibilities and the rationalisation of expenditures between and among various tiers of government (basically between the central and local governments). It is envisaged that fiscal decentralisation will improve implementation of programmes and service delivery at the local level.

Fiscal decentralisation is expected to start in 2007. Underlying this process is the recognition that successful decentralisation, especially fiscal decentralisation, is dependent on municipal authorities that have the capacity to carry out their service delivery assignments. When municipal authorities lack such delivery capacity, transferring additional capital resources and/or recurrent responsibilities will not produce desirable results/outcomes.

In recognition of this, GRZ has identified three steps which are seen as key towards the establishment of a sustainable inter-government transfer system. These are:

- That local authorities are appropriately structured with adequate human resources and systems to conduct their core business;

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[6] Ibid.

- That local authorities have adequate recurrent financial resources to retain the capacity to deliver services; and
- That local authorities optimise the generation of their own resources, rationalise and reassign sectoral responsibilities and resources, and conditionally fund capital requirements through predictable and transparent mechanisms.

The government has in this regard identified three modalities of fiscal transfers to municipal authorities, which are currently being worked out: restructuring grant, recurrent grant and capital grant.

- *Restructuring grant*: this is meant to facilitate the restructuring of local authorities by clearing retrenchment/retirement costs and other debts;
- *Recurrent grant*: this is intended to support the recurrent costs of running local authorities in addition to their own resources such as property tax, personal levy and user charges and thereby address both vertical and horizontal fiscal imbalances. It is envisaged that the recurrent grant would replace the current *ad hoc* general purpose grant being given to local government; and,
- *Capital grant*: this grant is meant to serve as a mode through which resources for development will be channelled to local authorities.

However, it is yet to seen how these measures will work out in practice. The burden of running local government in Zambia is enormous. Critics argue that most local authorities in Zambia are either dysfunctional or insolvent, or both. This raises some fundamental questions about government capacity to restructure local authorities in Zambia. The CRC should seriously explore this issue.

PFI Ch 2, Q.2: ***Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed by and benchmarked against international good practices?***

In order to improve the business environment in the country, GRZ has established the Zambia Development Agency as a one-stop investment shop under Act 11 of 2006 which became effective on July 11, 2006. The ZDA is responsible for fostering economic growth through promotion of Micro, Small and Medium Enterprises (MSMEs) and trade and investment promotion in the country.

ZDA was formed after five separate institutions[7] collapsed by repealing the Acts which set up their operations. The ZDA formation as a one-stop shop came as a result of the need to improve efficiency and effectiveness of the five merged institutions. The board composition of the ZDA, however, was dominated by officials from the Government and/ or public institutions. There's a need to exclude those Government ministries or departments from the Board of Directors (BoD) that were not essential to achieving the ZDA mandate. Critics argue that the domineering presence of Government ministries on

[7] These are the Export Board of Zambia (EBZ), Small Enterprises Development Board (SEDB), Zambia Export Processing Zones Authority (ZEPZA), Zambia Investment Centre (ZIC) and Zambia Privatisation Agency (ZPA).

the BoD compromises board independence, especially that it is constituted and dissolved by the Minister, MCTI. It has been suggested that Parliament should appoint and ratify BoD to guarantee autonomy.

Before the formation of the Zambia Development Agency (ZDA) in 2006, the role investment promotion was carried out by the Investment Centre. The *Investment Centre*, following the formation of ZDA, is now operating under ZDA. The Investment Centre was, however, plagued with funding problems and was therefore not able to carry a number of its designated functions effectively and efficiently.

ZDA's vision is aimed at making it the most professional and efficient economic development body in the region by attracting a high quality and motivated staff. But for ZDA to succeed in achieving goals and objectives there is need to spend 90 percent of its resources on operations and the remainder on staffing costs. There is also need for physical reduction in red tape and increased internal synergies for export promotion, MSME development and investment promotions at the ZDA.

A conference on the ZDA Act held from June 19th to 20th 2007 at the Intercontinental Hotel, Lusaka, was challenged to come up with an Action Plan anchored on the following three pillars:

- Make ZDA fully operational. There was need to address transitional issues. The Government has already provided in the budget an allocation of ZMK 23 billion for redundancies. This also includes recruitment of a new CEO for ZDA. All this is earmarked for 1st July 2007;
- Need to set up operational and strategic performance benchmarks for ZDA. The Board of ZDA needs to be informed of what private sector needs are constituted of; and
- Medium and long-term direction of ZDA. How does the current set-up of ZDA lead to accomplishment of the Fifth National Development Programme (FNDP) Vision 2030. The nation also needs economic growth higher than 6 percent.

The three pillars were anchored on reducing the cost of doing business, expanding the export base, increasing investment flows and creating an investor-friendly environment. The minister challenged ZDA and ZBF to hold quarterly meetings with MCTI to monitor and review performance.

However, it is not clear the extent to which the structure, mission, and legal status of the ZDA has been informed by and benchmarked against international good practices. Information on this was not made public. But much pressure is being put on ZDA by stakeholders and partners to follow good practices in the region and further afield, while domestic investors are pressuring ZDA to support local investment initiatives.

Economic Governance and Management

APRM Obj 1, Q.3: ***What sectoral or microeconomic policies has your country developed and implemented to promote economic growth and sustainable development?***

In order to improve the business climate, the government has, as previously noted, established the Private Sector Development Programme. The PSD programme action plan covers 72 measures. These can be grouped into policy environment and institutions, trade expansion, infrastructure, citizens' empowerment, business facilitation and economic diversification, and laws and regulation.

Despite attempts to strengthen the implementation structure in order to quicken the pace of PSD reforms, the general consensus among senior Government officials, PSD Desk Officers and Working Group Chairpersons and programme staff is that the pace of implementation has been very low and should be increased.

In interviews, several PSD Desk Officers, Working Group Chairpersons and other stakeholders admitted that the reforms were still in their infancy. They were, therefore, not able to give any tangible programmes that had been implemented. Where there was some progress, as in the case of the labour law reform, participating ministries have been forced to use their own resources to drive the reform process forward.[8]

The government officials and members of the private sector interviewed for this study commonly cited the following as some of the major reasons that account for the slow pace of the PSD Reform Programme implementation process:

- Delays in formalizing and standardizing processes (took time to create common standards);
- Lack of commitment in some government ministries;
- Lack of time (owing to many assignments);
- Capacity problems in some working groups;
- Resistance to change among some civil servants; and
- Bureaucracy and lengthy approval processes and procedures.

Other challenges identified by the officials were:

- Delays in decision-making with regard to release of PSD funds;
- Mutual suspicion between the public and private sectors (although the relationship has now considerably improved);
- Delays in implementing activities that require cabinet approval; and
- The 2006 elections.

These challenges have resulted in a gap between reforms and implementation. However, there is also some consensus among various stakeholders that the PSD programme has achieved some limited success. The notable successes include the establishment of the

[8] While the Labour Working Group has not done much, the Ministry of Labour has used its own funds to undertake the labour law reforms. The Implementation Committee just approved a work plan and budget of this Working Group. As a result, the labour law reforms have almost been completed without any financial contribution from the Private Sector Management Unit according to ministry officials.

Zambia Development Agency (ZDA); minimum wage legislation; and, the establishment of the Citizens Economic Empowerment Commission (CEEC).

PFI guidance

A case could be made for the whole of the PFI applying to this question. More narrowly, it most closely relates to all of the PFI questions in Chapters 1, 3 and 4. While micro-economic policies generally focus on investment, the question in the APRM questionnaire is too general to bring out specific issues on a country's investment climate. Moreover, the indicators under this question in the APRM questionnaire are not specific to an investment climate.

APRM Obj 1, Q.4: ***What has your country done to increase domestic resource mobilisation including public and private savings and capital formation, and reduce capital flight?***

The Government has taken a number of measures to improve domestic resource mobilization:

1) GRZ has reduced its borrowing in an effort to free up capital for private investment;
2) GRZ is gradually raising government revenues—by improving tax administration and widening the tax base by further bringing in the informal sector into the tax base—while exercising strict control on government expenditures;
3) Government is exploring the scope for revising the taxation of mining (given the current high copper price and increased copper production), without violating existing agreements;
4) Expected increases in donor assistance, including in the form of budget support, as a result of HIPC qualification would provide room for a greater expansion of government spending; and
5) A strengthening of budget execution will not only be critical to enable donors to increase budget support, but also to improve public sector service delivery and investment.

PFI guidance

A case could be made for the whole of the PFI applying to this question. A more limited interpretation on capital formation would relate to Chapters 1 and 2. Thus, in a narrower sense, the emphasis on the creation of a robust investment climate can be seen as an attempt to increase domestic resource mobilisation by attracting investment for enterprise creation. The assumption is that an increase in the creation of new enterprises or an increase in production and productivity in existing enterprises can broaden the tax base in a country. But this should be seen as one of the measures needed to increase domestic resource mobilisation. As the response to the APRM questionnaire shows, there are several measures that can be taken to increase domestic resource mobilisation. In this sense, the question in the APRM questionnaire is much broader and more encompassing than the PFI Guidance.

APRM Obj 2, Q.2: ***What measures has your country taken to make economic policies predictable?***

GRZ has initiated several national planning frameworks to make economic policy predictable. In July 2002, the Zambian Government officially launched its first Poverty Reduction Strategy Paper (PRSP) for the period 2002-2004. In October 2002, the Government adopted the Transitional National Development Plan (TNDP) for the period 2002-2005 incorporating and expanding the scope of the PRSP. The TNDP encompassed all the areas in the PRSP and included others such as the Judiciary, Law and Order, and Defence and Security. GRZ has now launched the Fifth National Development Plan and Vision 2030. In addition, GRZ relies on the Medium Term Expenditure Framework for medium term budgeting.

To make policies predictable, these planning frameworks have a 'vision' as in Vision 2030 and goals and objectives (FNDP) which should be pursued in order to attain this vision. On the other hand, the MTEF is a medium-term (three-year) budget framework within which resources, from government and donors are allocated to achieve set objectives. It is based on current projections and resource commitments. The objectives and the targets for the MTEF are the same as those under the FNDP. Moreover, the MTEF is supposed to be supportive of the medium term development plans of a country anyway. Critics, however, argue that despite their good objectives, the FNDP and Vision 2030 do not set any specific programmes or indicators that can be monitored.

PFI guidance

The predictability of policies, is closely related to the concept of transparency, a principle that transverses the PFI. But it should be noted that in the PFI guidance, there are no specific questions on economic policies. Moreover, the PFI takes the existence of a stable macro economic environment as a pre-condition for an enabling investment climate. Hence, the focus is mainly on the transparency of policies for investment. In contrast, the APRM questionnaire appears to be strong on economic policy and weak on specific issues relating to the investment climate.

APRM Obj 2, Q.3: ***What are the main challenges that the country faces with respect to coordinating the efforts of various departments in implementing sound, transparent and predictable economic policies?***

In Zambia, development planning and economic policy formulation is highly centralised. This is mainly due to the nature of the current administrative system in the country, which successive governments have so far failed to address through effective decentralisation.

At national level, there exists the Cabinet Office, which is responsible for the management and coordination of the civil service. In order to enhance the operations at national level, Cabinet Office is expected to coordinate development activities through the National Development Coordinating Committee (NDCC).

In terms of development planning, sector ministries prepare plans based on their core functions, which they submit to the Ministry of Finance and National Planning (MoFNP) for funding. Although sectoral ministerial plans were to be submitted to the NDCC for scrutiny and approval, this has not been the case due to administrative and management problems, which has resulted in poor coordination. The focus has now shifted to the use of multi-stakeholder Sector Advisory Groups (SAGs). The SAGs are supposed to provide a public forum for discussing developmental programmes in a particular ministry.

PFI guidance

Although the PFI is a flexible tool with multiple applications, it does not specifically address the issue of coordination in the same manner that the APRM questionnaire does. While there is potential for users in the centres of government and the macro-structural government policy departments, whose responsibilities include ensuring policy coherence across government, to use the PFI guidance as a self-evaluation mechanism, the absence of specific questions on coordination challenges might make it difficult for policy makers to do so. Guidance on how to instigate a co-ordinated process of investment climate assessment is a gap in the PFI that the first part of the PFI Users Toolkit will usefully address.

APRM Obj 5, Q.1: ***Is your country a member of any regional economic integration arrangement and what are the benefits and challenges of such membership?***

Zambia presently belongs to two regional groupings: the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). The country derives benefits from both organizations.

<u>SADC</u>

Zambia has immensely benefited from SADC through trade (exports and imports). South Africa is Zambia's major source of imports and a major export destination. Although cautious, Zambia hopes to gain more from the proposed SADC free trade zone.

<u>COMESA</u>

As in the case of SADC, Zambia benefits in terms privileged market access to COMESA. Although the volume of trade is not as high as that with SADC the potential for growth is immense.

<u>Zambia's dual membership dilemma</u>

With calls for countries in the SADC region to avoid dual membership of regional organizations, Zambia finds itself in a big dilemma regarding which regional organization to withdraw from. There are strong arguments for and against Zambia's continued membership in the two regional groupings.

In view of this, it is important for Zambia to conduct an analysis and carefully address the issue of dual membership to SADC and COMESA with a view to designing a strategy to avoid, or cope with, possible policy conflicts between the two regional groupings.

PFI Ch 1, Q.7: ***Are investment policy authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment? Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment? What measures exist to ensure effective***

compliance with the country's commitments under its international investment agreements?

The Zambia Development Agency is working with other IPAs in the sub-region to set and adopt common standards for goods and services. Deliberations in SADC and COMESA meetings constantly review existing treaties and regulations. Zambia is a signatory to many treaties, protocols and resolutions but several have not yet been domesticated.

PFI Ch 2, Q.8: ***Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks?***

GRZ has used international and regional initiatives to acquire investment promotion expertise. At present, the government is using UNCTAD and the Japanese Bank for International Cooperation (JBIC) to assist government in investment promotion and facilitation.

But there is a need to ensure local capacity is built in the process. According to the Chairperson of the Private Sector Development Association (PSDA), regional initiatives have borne some fruits, while international initiatives have had very little impact so far. In the case of ZDA, it is not yet clear whether it is making use of such expertise since it is not fully operational. It is also not clear whether ZDA has joined regional and international initiatives to learn and adopt best practices.

PFI Ch 2, Q.9: ***To what extent has the government taken advantage of information exchange networks for promoting investment?***

The PSDP lacks a comprehensive and integrated communication strategy. There is presently a disjointed or an uncoordinated approach to information dissemination on the PSDP, with isolated messages appearing in the media. Some working groups within the PSDP have initiated their own communication programmes and have sponsored a number of meetings, briefings and radio programmes to explain their reforms and the progress made thus far. These messages do not provide a broader picture of the PSDP reforms. Thus, far, no serious effort has been made to coordinate existing working group outreach campaigns and activities, and promote coherence or complementarities within the PSD Reform Programme. As a result, there is presently lack of or little awareness of the PSD reforms among the intended beneficiaries.

APRM Obj 5, Q.2: ***What measures has your country taken to ensure that national policies, including policies in respect of intra-African trade and investment promotion, are consistent with and supportive of regional economic integration objectives?***

As a member of both SADC and COMESA, Zambia has taken measures to implement policies that are agreed within the framework of regional cooperation. Sometimes, this has been done at the expense of Zambia's national interests. An example is the reduction in tariffs. At present, Zambian manufactures are struggling to survive because of increased competition from neighbouring countries. While duty on imported finished products has been significantly reduced, inputs or raw materials that local manufactures use still attract duty. This makes their products uncompetitive on the domestic market.

PFI Ch 1, Q.7: ***Are investment policy authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment?***

Zambia has signed bilateral, reciprocal, promotion and protection of investment protocols with most of the Common market for eastern and Southern Africa and the Southern African development Community member states, offering enormous trade and investment opportunities. In November 2001, COMESA signed a Trade and Investment Framework Agreement with the United States, in which Zambia is included. In 2000, Zambia became a beneficiary of the African Growth and Opportunity Act (AGOA), a framework for US trade, investment, and development policy for sub-Saharan Africa. Zambia is also party to the Cotonou Agreement, which gives rise to new opportunities that allow foreign investors preferential access to the markets of industrialised countries for a range of products exported from Zambia. Zambia is also a signatory to the Multilateral Investment Guarantee Agency (MIGA), which guarantees foreign investment protection in case of war, civil strife, disasters, other disturbances, or in case of expropriation.

Zambia is also a member of several multilateral agreements on investment, notably, the Washington Convention, which put in place ICSID (since 1970), and MIGA (since 1988). The country has signed 12 Bilateral Investment Treaties (BITs)[9], with Belgium, China, Croatia, Cuba, Egypt, France, Germany, Ghana, Italy, Luxemburg, the Netherlands and Switzerland, of which only the BITs with Germany and Switzerland have been ratified. Thus the BITs network is thin and important investors, such as the United Kingdom and South Africa, are not represented.

In addition, Zambia has entered into Double Taxation Agreements (DTAs) with 21 countries, including Canada, Denmark, Finland, France, Germany, Holland, India, Italy, Japan, Kenya, Mauritius, Norway, Romania, South Africa, Sweden, Tanzania, Uganda, United Kingdom, Serbia and Zimbabwe. In principle, double taxation agreements enable offsetting tax paid in one of the two countries against the tax payable in the other, in this way preventing double taxation.

PFI Ch 2, Q. 1: ***Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures?***

All efforts aimed at attracting foreign investors and mobilizing local investment has become a part of the government's development agenda. It is government policy to promote private sector – led economic growth and development. In this respect, the strategy for developing a sound, broad-based business environment in Zambia is the FNDP and Vision 2030. In line with the provisions of the FNDP, domestic policies and regulations on private sector development are being amended to facilitate private sector-

[9]BITs primary focus is the protection of investment of the investing country and promotion of investment between the two signatory countries.

led growth. Within the context of the PSDP, investment promotion and facilitation is one of the key identified reform areas. However, business facilitation is still problematic.

PFI Ch 2, Q.6 ***What mechanisms has the government established for the evaluation of the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the economic interests of other countries?***

GRZ conducts cost-benefit analysis on each investment permit application and evaluation to ensure that investors meet their commitments. At present, the ZDA Act involves the government in judging whether every proposed investment is desirable on a number of broad criteria of promoting economic development, employment, exports and transfer of technology. The ECZ also carries out environmental impact assessments (EIA) on certain types of investment. GRZ has also set up the Citizens Economic Empowerment Commission (CEEC).

However, the ZDA does not seem to have an effective tracking system to follow up on investment commitments. Not surprisingly, it has been observed that, under the first Investment Act of 1992, before it was revised in 1996 and incorporated in the ZDA Act in 2006, a number of foreign investors abused the incentives. They came in the country to take advantage of the incentives and left immediately at the end of the incentive period**.**

PFI Ch 2, Q.7: ***What steps has the government taken to promote investment linkages between businesses, especially between foreign affiliates and local enterprises?***

GRZ uses foreign missions accredited to Zambia and Zambian missions abroad to provide or obtain information, which can support the development of linkages between local enterprises and foreign affiliates. Available evidence, however, shows that business relationships between foreign affiliates and local companies are limited. The mining industry is linked to some support sectors that provide maintenance and basic machinery. Agriculture has provided more links with local producers, such as in the cotton and horticulture sectors. Linkages have been established with the local population through the use of outgrower schemes.[10]

In view of this, the government should recognise the importance of promoting the growth of domestic enterprises. The presence (or absence) of strong local enterprises and industries is one of the determinants for FDI location.

PFI Ch 2, Q.8: ***Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks?***

As noted above, GRZ has used international and regional initiatives to acquire investment promotion expertise. But, according to the Chairperson of the (Private Sector Development Association) PSDA, regional initiatives have borne some fruits, while international initiatives have had very little impact so far. In terms of networking, ZDA has joined regional and international initiatives to learn and adopt best practices.

[10] Where cotton and flower supply arrangements have been made with small individual farmers.

APRM Obj 5, Q.3*: What measures has your country taken to ensure effective implementation of decisions and agreements made within regional economic integration arrangements?*

While some measures have been taken to implement policies that are agreed within the framework of these regional organizations, as noted above, there has been a major problem with implementation. This is particularly the case with regard to international treaties, many of which are yet to be ratified.

PFI Ch 1, Q.7: ***Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment? What measures exist to ensure effective compliance with the country's commitments under its international investment agreements?***

As previously noted, Zambia belongs to SADC and COMESA. Deliberations in these regional groupings constantly review existing treaties and regulations. Zambia has also signed and ratified many treaties, protocols and resolutions but several have not yet been domesticated.

Zambia is also a member of several multilateral agreements on investment, notably, the Washington Convention, which put in place ICSID (since 1970), and MIGA (since 1988). The country has signed 12 BITs, with Belgium, China, Croatia, Cuba, Egypt, France, Germany, Ghana, Italy, Luxemburg, the Netherlands and Switzerland, of which only the BITs with Germany and Switzerland have been ratified. Thus the BITs network is thin and important investors, such as the United Kingdom and South Africa, are not represented.

In addition, Zambia has entered into Double Taxation Agreements (DTAs) with 21 countries, including Canada, Denmark, Finland, France, Germany, Holland, India, Italy, Japan, Kenya, Mauritius, Norway, Romania, South Africa, Sweden, Tanzania, Uganda, United Kingdom, Serbia and Zimbabwe. In principle, double taxation agreements enable offsetting tax paid in one of the two countries against the tax payable in the other, in this way preventing double taxation

Corporate Governance

APRM Obj 1, Q.2: ***What is the regulatory framework for economic activities and to what extent does it facilitate commercial enterprise in the country?***

GRZ has come up with laws and regulations aimed at creating a supportive regulatory framework for companies. These include:

- The Companies Act;
- ZDA Act;
- Employment Act; and
- Industrial and Labour Relations Act.

However, many of the current commercial or business-related laws are outdated and some modern business practices are not covered by current laws. As noted by UNCTAD

(2006)’s *Investment Policy Review in Zambia*, Zambia’s legacy from a one-party state command economy means that many of country’s commercial or business-related laws, including labour legislation, the land tenure system, licensing, are lagging behind current business practices.

PFI Ch 1, Q.1: ***What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens?***

As previously noted, GRZ passed the Zambia Development Agency Act (1996) which has resulted in the establishment of the Zambia Development Agency (ZDA) – a one-stop investment shop. The ZDA Act spells out the rights, obligations and incentives of investors. Implementation is a bit problematic. While working groups within the PSD programme can initiate reforms or recommend, it is not clear how far they could go in pursuing the reforms with the government. This lack of clarity is a potential source of mistrust between the private sector and the government. Moreover, GRZ does not seem to have a good communication system in place, which it can use to raise awareness about the contents of the ZDA Act.

PFI Ch 1, Q.4: ***Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?***

Zambia has a chequered history of investment disputes dating back to the period of nationalization. However, the situation has improved since 1991. International arbitration is a right for investors covered by BITs. Otherwise, and if both parties agree, investors may resort to international arbitration, under the 2000 Arbitration Act. 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). This means that where international arbitration is used, the resulting arbital award is binding and must be enforced in Zambia.

The 2000 Arbitration Act also provides for domestic arbitration, which was used successfully in the case of private mobile phone provider Telecel versus state-owned ZAMTEL. The dispute was settled in seven months. The results of domestic arbitration are also legally binding. USAID and the Law Association of Zambia are currently in the process of reviewing the legal and institutional framework in favour of strengthening national arbitration.

PFI Ch 10, Q.1: ***Has the government established and implemented a coherent and comprehensive regulatory reform framework, consistent with its broader development and investment strategy?***

As noted elsewhere, GRZ established the Private Sector Development Programme. The PSDP’s action plan covers 72 measures. These can be grouped into policy environment and institutions, trade expansion, infrastructure, citizens’ empowerment, business facilitation and economic diversification, and laws and regulation. These measures have now been mainstreamed into the FNDP.

PFI Ch 10, Q.2: ***What mechanisms are in place for managing and coordinating regulatory reform across different levels of government to ensure consistent and transparent application of regulations and clear standards for regulatory quality?***

In the area of PSD programme reforms, the level of coordination across different levels of government is very weak. Anecdotal evidence shows that, despite interest in working together among government officers, there is no forum for them to do so. Although the relationship or level of cooperation between the working groups and PSD Desk Officers was generally described as 'cordial', it was not structured. There are no clear guidelines on coordination and information sharing.

PFI Ch 10, Q.3: ***To what extent are regulatory impact assessments used to evaluate the consequences of economic regulations on the investment environment? Are the results of these assessments made public on a timely basis?***

It is not clear the extent to which regulatory impact assessments to evaluate the consequences of economic regulations on the investment environment have been conducted in Zambia.

PFI Ch 10, Q.4: ***What public consultation mechanisms and procedures, including prior notification, have been established to improve regulatory quality, thereby enhancing the investment environment? Are the consultation mechanisms open to all concerned stakeholders?***

At present, there is no institutionalised dialogue mechanism between ZDA and investors. However, ZDA tries to dialogue with investors through workshops and seminars. In general, however, policies are developed by a small group of technocrats who are not representative of the private sector.

But, unlike in the past, there now appears to be a generally and fairly reasonable degree of trust between the private sector and the government. The PSD Reform Programme, through the Zambia Business Forum, has created a good forum for the private sector to interact with the government. However, the space for interaction is still limited.

Business associations have noted that there is need to further enhance the growing relationship between the private sector and the government through:

- More interaction between the public and private sectors;
- Involvement of the private sector in the design of government programmes;
- Providing support to the private sector for capacity building; and,
- Undertaking joint trade or investment missions abroad.

It is yet to be seen how GRZ will respond to the concerns raised by the business associations.

PFI Ch 10, Q 5: ***To what extent are the administrative burdens on investors measured and quantified? What government procedures exist to identify and to reduce unnecessary administrative burdens, including those on investors? How widely are***

information and communication technologies used to promote administrative simplification, quality services, transparency and accountability?

GRZ, through the PSD programme, is seeking to address many of the current administrative barriers to investment. This is being done through the working groups on Policy Environment and Institutions and Regulation and laws. However, it has been observed that there has been an increase in the creation of new laws or regulations and a rise in the levels of bureaucracy. This is said to be having a negative impact on the levels of investment.

Moreover, as previously noted, the knowledge base of the PSD programme and its potential benefits is very low among the intended target audiences. This is largely because the PSDP lacks a coordinated and integrated communication strategy. However, it is not clear whether the working groups have quantified the cost of the administrative barriers to investors.

APRM Obj 1, Q.3: ***What are the external and internal factors that impact on business activity?***

There are several external and internal factors that impact negatively on business activity in Zambia.

External factors

Externally, the main problem is market access for goods from Zambia. Apart from copper and other primary products that are mostly exported in raw form, slightly processed products face several barriers. These barriers include:

- Quotas;
- Tariffs;
- Subsidies; and
- Quality control.

Internal factors

Internally, business activity is constrained by capacity problems. These problems mainly arise from the following:

- High cost of finance[11];
- High tax rates and cumbersome administration;
- Regulatory policy uncertainty;
- Crime and corruption; and
- Poor infrastructure.

[11] Mr Yusuf Dodia, from Private Sector Development Association (PSDA) notes that the cost of money in Zambia averages 45 percent, one of the highest in the region. This makes banking one of the most lucrative business in the country today.

Others include:

- Complex custom regulations;
- Labour regulations;
- Business licensing and operating permits;
- Lack of business information, and
- Duty draw back.

Given these constrains, local businesses are unable to effectively and efficiently participate in the economic development of the country and job creation.

PFI guidance

This question relates to many parts of the PFI. The APRM Self-Assessment questionnaire gives some guidance, citing the state of infrastructure and financial market development (PFI chapter 9), investor promotion (PFI chapter 2) and SMEs (PFI questions and annotations, e.g. Q1.3). However, the APRM question is broader in scope than the PFI question in the sense that it also seeks to capture the impact of external factors such as market access on local business activity. The PFI question only focuses on internal factors.

APRM Obj 2, Q.1: ***Are there measures in place to ensure that corporations recognize and observe human and labour laws?***

Labour or employment conditions in Zambia are covered by the *Employment Act*. This is Zambia's fundamental employment law, which provides for basic employment terms such as the minimum contractual age, establishment of employment contracts, settlement of disputes, and appointment of labour officers. It also provides for certain conditions of employment, such as ordinary leave, sick leave, maternity leave, redundancy and welfare of employees.

The rights and obligations of employers and employees are covered mainly by the 1993 *Industrial and Labour Relations Act*. The Act encourages consultation with employees by management through work councils. The Act also defines the role of trade unions and outlines frameworks for strikes and minimum wages. According to the Act, the Industrial Relations Court is the final arbiter of disputes.

Despite these measures, there is growing consensus among members of the public, as reflected in press reports, that there is a need to review a number of labour laws to address their current inadequacies.[12] Although there is an industrial court, as noted above, the general view is that employers do not respect the rights of employees. Examples are Chinese and Indian copper mining firms.

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[12] Zambia's labour relations are currently under review with a view to improving and refining existing legislation, including the *Employment Act* and the *Industrial and Labour Relations Act*. A comprehensive social security programme has been designed but is yet to be implemented.

At the official company level, there is no report of violation of international labour standards or the core labour standards at NFC Africa Mining Plc (Chinese) and KCM Plc (Indian). According to company policy, workers are free to organize and join trade unions of their choice. Besides, there was no reported forced labour or child labour. Also, no official case of discrimination or racism has been put on record. Admittedly, it might be the case that while on paper, Chinese and Indian investors commit to respecting core labour standards; such intent is often not matched by actual practice.

In some cases, adherence to national labour laws and regulations is at times undermined by the Development/Sales Agreements entered into between the companies and government at the time of acquisition. The agreements tend to give a lot of leverage and flexibility to the mining companies.

It is, therefore, not surprising that even safety standards tend to be poor in these companies. The nature of occupation health and safety in the Chinese and Indian owned companies was recently brought to light following a spate of industrial accidents on the copper belt, leading to the death of about 52 employees at a Chinese owned explosive manufacturing company (BGRIMM Explosives) in April 2005. However, most of Chinese and Indian companies could be said to have policy statements on occupational health and safety. Konkola Copper Mines plc, for instance, has argued in one of its policy statements that, "in line with world best practices, KCM plc environment, health and safety policy and management system embody the principles of sustainable development, as defined by the Brutland Commission". But, the problem would seem to be that occupational health and safety practices are hardly consistent with policy statements. Taking KCM as a reference point, it is unfortunate that at least 30 people are reported to have died in industrial accidents over the period of four years.

The lax labour standards and human rights violations can also be attributed to institutional constraints such as the weakness and lack of capacity in responsible institutions. A case in point is lack of capacity by the Ministry of Labour to undertake labour inspections. The complexity of the judicial process is another constraint.

In view of this, there is need for the government to consider *promoting compliance* to the '*OECD Guidelines for Multinational Companies'*, and *UN Global Compact Ten Principles* as one way of promoting responsible business conduct by investors.

PFI guidance

As noted in response to the APRM question, employment conditions in Zambia are covered by the *Employment Act*. The rights and obligations of employers and employees are covered mainly by the 1993 *Industrial and Labour Relations Act*. The Act encourages consultation with employees by management through work councils. The Act also defines the role of trade unions and outlines frameworks for strikes and minimum wages. According to the Act, the Industrial Relations Court is the final arbiter of disputes.

APRM Obj 2, Q.2: ***To what extent are corporations responsive to the concerns of the communities in which they operate?***

Few companies in Zambia have corporate social responsibility (CSR) as a requirement or a strategic business objective. As a result, it is difficult to determine the extent to which corporations are responsive to the needs of the communities in which they operate. But the resistance shown by many communities, especially those in rural areas, to give land to foreign investors appears to be a reflection of the prevalent societal perception that foreign investors are only interested in maximizing profits at the expense of local communities.

In some cases, the corporations cause environmental problems for communities in which they operate. Mining companies still emit sulphur dioxide in the atmosphere and discharge toxic industrial waste without effective pollution and degradation control. In addition, most admit under-providing for dust capturing systems at their smelter plants. A more recent incident of negligence happened on 6 November 2006, following the pollution of the Kafue River by a spillage of mining effluent from the KCM plant. The result was that residents of Chingola township were deprived of fresh water for six days. Beyond just deprivation of fresh water, however, continued consumption of water from Kafue river, eating fish from the river, or plants with polluted water is likely to have wide-ranging short-term and long-term health implications. Moreover, the chemicals spilled into the river cause lung and heart problems, respiratory diseases and liver and kidney damage. Brain damage effects in the local population are also likely to show up in the future generation due to exposure to manganese. The costs for disregarding environmental concerns are therefore huge.

Several major corporations are, however, now attempting to become good corporate citizens by adopting corporate social responsibility. Some of these firms have established outgrower schemes in their areas of operation, while others have provided local communities with social amenities.

Some observers have noted that investors need to enter into ‘smart partnerships’ with communities and the Government for the ultimate development of the communities in which they operate. It has further been observed that traditional leaders need to be consulted more often in development issues as the majority of Zambia’s land is under the jurisdiction of customary or traditional leaders.

PFI guidance

The above APRM question relates to PFI Chapter 7 on policies for promoting responsible business conduct. As previously noted, few companies in Zambia have corporate social responsibility (CSR) as a requirement or a strategic business objective. As a result, it is difficult to determine the extent to which corporations are responsive to the needs of the communities in which they operate. Several major corporations are, however, now attempting to become good corporate citizens by adopting corporate social responsibility. Some of these firms have established outgrower schemes in their areas of operation, while others have provided local communities with social amenities.

But the resistance shown by many communities, especially those in rural areas, to give land to foreign investors appears to be a reflection of the prevalent societal perception that foreign investors are only interested in maximizing profits at the expense of local communities.

APRM Obj 3, Q.1: ***What is the overall assessment of the corporate integrity in the country?***

The behaviour of some firms, especially those that are seen as poorly treating workers, has affected public perception of corporate integrity. This has not been helped by the lack of CSR among many firms.

There are currently three corporate governance codes with the aim of promoting good corporate governance in especially the private sector:

- Currently, the Lusaka Stock Exchange (LuSE) Corporate Governance Code for companies listed on the Stock Exchange is the best guide on corporate governance. The Code was issued in 2005;
- Following the LuSE Code, Bank of Zambia issued a '*Corporate Governance Guideline*' for banks and non-bank financial institutions towards the end of 2006;
- Recently in April 2007, the Institute of Directors of Zambia issued a draft '*Corporate Governance Code for SMEs and Large Non-Listed Companies'*;
- The three constitutes currently the corporate governance framework whose objective is to ensure transparency, accountability, responsibility and fairness in the conduct of affairs of enterprises in Zambia and an efficient economy;
- Companies Act of 1994 has elements of good governance enshrined in law; and
- The Ministry of Commerce, Trade and Industry (MCTI) is in the process of amending the Companies Act and it is hoped that some best practices in corporate governance will be incorporated in the revised final Act.

However, these codes and guidelines are voluntary and have limited exposure. There is, therefore, need for government to encourage investors to comply with the codes and guidelines. On the core principles of good corporate governance, there is need to incorporate these principles in relevant legislation as appropriate, as is currently the trend elsewhere.

APRM Obj 4, Q.1: ***To what extent does the corporate governance framework protect shareholder's rights?***

The protection of shareholders' rights is enshrined in the Companies Act. The Companies Act does ensure equitable treatment of shareholders: '*All shares shall rank equally apart from differences due to their being in different classes or series'*

Other pieces of legislation that seek to protect shareholders' rights include the ZDA Act, Bankers Act and Tax Act. The latter allows for full externalization of profits. These acts are backed up by the judiciary. However, it appears that there is inadequate protection for minority shareholders. Anecdotal evidence suggests that minority shareholders often do not know their rights. As a result, they appear unaware of their ability to influence decision-making through voting by proxy or forming coalitions of shareholders.

PFI Ch 6, Q.2: ***How does the corporate governance framework ensure the equitable treatment of shareholders?***

As previously noted, the protection of shareholders' rights is enshrined in the Companies Act, ZDA Act, Bankers Act and Tax Act. The latter allows for full externalization of profits. These acts are backed up by the judiciary. However, it appears that there is inadequate protection for minority shareholders. Anecdotal evidence suggests that minority shareholders often do not know their rights. As a result, they appear unaware of their ability to influence decision-making through voting by proxy or forming coalitions of shareholders.

PFI Ch 6, Q.3: ***What are the procedures and institutional structures for legal redress in cases of violation of shareholder rights? Do they function as a credible deterrent to such violations? What measures are in place to monitor and prevent corporate insiders and controlling owners from extracting private benefits?***

It has been observed that the Companies Act provides mechanisms for legal redress in case of infringements of shareholder's rights

Sections 218-220 of the Companies Act prohibits directors using their positions at the expense of the company and shareholders, and acting in their own interests

In addition, sections 3.1 and 3.2 of the Institute of Directors of Zambia (IoDZ) Corporate Governance Code (Refer to Appendix 4), though voluntary, places on company directors *fiduciary duties of care and loyalty* respectively to the company and shareholders.

PFI Ch 6, Q.4: ***What procedures and institutions are in place to ensure that shareholders have the ability to influence significantly the company?***

As noted in the response to the APRM question, the role that shareholders can play in influencing the company is provided for in the Companies Act and the ZDA Act.

APRM Obj 4, Q.2: ***Does the corporate governance framework recognise the rights of stakeholders (other than shareholders)?***

As used here, other stakeholders comprise other shareholders, employees, suppliers, customers and consumers, government and the community.

The Government has come up with measures aimed at protecting the rights of stakeholders. These measures are included in the provisions of the Cooperative Act, Bankruptcy, and Receivership and Liquidation laws. However, there is a common perception that these laws are ineffective in protecting the rights of stakeholders. This can be attributed to lack of enforcement capacities and the perceived leniency of the judiciary. There is also no clear policy for consumer protection.

PFI Ch 6, Q.6b: ***How does the corporate governance framework recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises?***

There is great convergence between the APRM question and the PFI guidance question. Thus, the response to the PFI question is similar to the one for the APRM question.

APRM Obj 5, Q.1: ***Does the corporate governance framework ensure that timely and accurate disclosure is made on all material matters regarding the corporation?***

The Companies Act requires companies to maintain a shareholders register, which is available for inspection by shareholders and other persons.

In addition, companies are required to submit to the Registrar of Companies annual returns and other documents relating to the management of the company within a given time period. These documents are available for inspection by the public.

Compliance by companies to a number of these requirements is however generally poor despite the penalties if there is default by a company. Enforcement is also poor.

Further, as previously noted, the Zambia Revenue Authority (ZRA) requires companies to submit their financial reports On the other hand, the Securities and Exchange Commission requires companies that are listed on the Lusaka Stock Exchange (LUSE) to make certain disclosures.

PFI Ch 6, Q.5: ***By what standards and procedures do companies meet the market demand for timely, reliable and relevant disclosure, including information about the company's ownership and control structure?***

There is great convergence between the APRM question and the PFI guidance question. Thus, the response to the PFI question is similar to the one for the APRM question.

PFI Obj 5, Q.3: ***Does the corporate governance framework ensure the strategic guidance of the corporation, effective monitoring of management by the board (governing body or supervisory body) and the board's accountability to the corporation and the shareholders?***

The various bodies involved with a company's corporate governance such as the Institute of Directors (IoD) and the Institute of Certified accountants do not seem to have formally established fora to exchange views and come up with common strategies on how to improve the status of governance at corporate level.

PFI Ch 6, Q.6a: ***How does the corporate governance framework ensure the board plays a central role in the strategic guidance of the company, the effective monitoring of management, and that the board is accountable to the company and its shareholders?***

The legal and regulatory framework does provide for a central role for the board to play in the management of the company. In general, however, the role that the board can play in providing strategic guidance of the company is guided by the shareholders mandate who own the firm. It can also be guided by a company's CSR code.

Socio-Economic Development

APRM Obj 2, Q.1 and Q.2: ***What is the country doing to accelerate socio-economic development and achieve sustainable development and poverty eradication? What are the outcomes of the policies and mechanisms to achieve sustainable development and poverty eradication?***

<u>Acceleration of socio-economic objectives</u>

With the formulation and implementation of the PRSP 2002-2004 (and its related TNDP covering 2002-2005), GRZ has set into motion an ambitious programme to reduce poverty. The programme focuses mainly on promoting economic growth through macroeconomic stabilization, diversification and improving the quality of service delivery, while addressing crosscutting issues of governance, HIV/AIDS, gender, and the environment.

- Raising economic growth is a key government objective and a precondition for poverty reduction

The Government is vigorously promoting growth in Zambia. In addition to sound macroeconomic and financial policies, raising economic growth to over 7 percent a year would be supported by strong private sector investment, an expansion of energy supplies, and pro-poor growth policies to encourage labor-intensive sectors, including small-scale mining, agriculture, manufacturing, and tourism. Recent and ongoing large-scale investment in the copper sector is expected to greatly boost mining sector output over the medium term, while strong growth in both residential and infrastructure construction is expected to continue. Monetary policy—supported by prudent fiscal policy— will focus on achieving price stability. External policies will be centered on maintaining a liberal trade regime, while ensuring a competitive, expanded and diversified export base.

- The reduction in the Government's domestic borrowing over the medium term is the anchor to Zambia's macroeconomic stabilization effort

The Government has reduced its borrowing in an effort to free up capital for private investment. Further reductions will be achieved by gradually raising government revenues—by improving tax administration and widening the tax base by further bringing in the informal sector into the tax base—while exercising strict control on government expenditures. In addition, Government will explore the scope for revising the taxation of mining, without violating existing agreements. Expected increases in donor assistance, including in the form of budget support, would provide room for a greater expansion of government spending. A strengthening of budget execution will not only be critical to enable donors to increase budget support, but also to improve public sector service delivery and investment. The government has a large outstanding stock of arrears to the Public Service Pension Fund (PSPF). Over 2006-2008, about 1.5 percent of GDP will be allocated to reducing the stock of pension arrears.

- The structural reform agenda is mainly aimed at increasing productivity

The Government expects the private sector to create wealth and employment. Implementation of the Financial Sector Development Plan (FSDP) and the Private Sector Development (PSD) action plan are seen as instrumental in addressing the main credit and administrative constraints on the private sector in Zambia. The structural reform agenda will also include measures to improve the quality, efficiency, cost effectiveness, and delivery of public services. Increasing productivity in the public sector will rely on continued progress with ongoing reforms to strengthen public expenditure management and financial accountability, public service management, including rightsizing of the civil service, and decentralization.

<u>Outcomes of the policies and mechanisms</u>

After more than two decades of stagnation, Zambia's economy has recently grown robustly, according to the IMF's latest economic review.[13] During 2000–05, real GDP

[13] Adapted from IMF Source: *www.imf.org*

growth averaged 4.5 percent a year, as mining recovered and construction picked up because of a surge in housing demand. According to the ZHDR (2007), real per capita GDP has grown from K234,933 in 1998 to K276,416 in 2004.

In 2005, however, growth slowed, owing to a drought-related shortfall in maize production and disruptions in mining activity. But this was reversed in 2006 when the country registered a growth rate of 6.2 percent, driven by strong growth in mining, agriculture and construction. The country expects to record a growth rate of over six percent per year until 2010. While this rate is below the eight percent growth rate required to achieve PRSP targets, this positive outlook is evidence that improved fiscal management and macroeconomic stability are beginning to yield a dividend.

Gross national savings grew from 16.5 to 20.6 percent of GDP from 2002 to 2003. Projections for 2004 to 2007, however, show a steady decline from 18.6 to 15.4 percent of GDP. Overall, the balance of the central government budget is expected to decline from 6.3 percent of GDP in 2002 to 2.4 percent by 2007, if tight fiscal discipline remains.

In terms of equity, there has been a reduction in income inequality. The Gini coefficient declined from 0.66 in 1998 to 0.57 in 2004 (ZHDR, 2007). Whereas the last 20 percent of households accounted for 67.8 percent of the total income in 1996, this dropped to 44.9 percent in 2004. Despite this improvement, income inequality remains extremely high at 0.57.

There has also been a steady growth in non-traditional exports most of which are agricultural-based, such as cotton, tobacco, floriculture and horticulture, and coffee. Other non traditional exports including electricity, gemstones, tourism, and wood products, have also become growth areas. Zambia now has one of the most liberal economies in the sub-region.[14]

Inflation—in double digits (15.9 percent) during most of 2005—moderated at year-end, partly in response to the sharp appreciation of the Zambian kwacha. The appreciation was driven by strengthened market sentiment stemming from record-high world copper prices, a perceived commitment to prudent fiscal and monetary policies, and Zambia's improved debt sustainability outlook. Zambia has now attained single digit inflation at 8 percent.

Through improved fiscal management, Zambia has reduced its overall deficit (including grants) while allowing for increased spending for poverty reduction. As noted above, it is also implementing structural reforms to increase the efficiency and effectiveness of the public sector, improve debt management, deepen the financial sector, and promote private sector development.

Zambia has further made efforts to strengthen public finances, which have helped improve macro-economic stability and boost growth, and the authorities' commitment to increase poverty-reducing spending. Because of potential pressures during an election year (2006), the authorities were urged to maintain disciplined financial policies to safeguard the gains. They were also encouraged to accelerate pension reforms—necessary to avert a major risk to the public finances— and to remove impediments to

[14] UNDP; Zambia Human Development Report 2003

business activity, expand access to credit, and improve infrastructure through the Private Sector Development Programme (PSDP).

Debt relief, under the enhanced Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative (MDRI), has greatly improved Zambia's external debt sustainability. The authorities have resolved to avoid building up new external debt. Critics, however, note that Zambia is likely to incur some more debt as there is no safe guard in place to prevent the government from doing so.

In spite of the positive developments in the economy, there remain a number of formidable hurdles before the economy is able to offer the population a reasonable opportunity to improve their position. Generally, economic growth in recent years has not been broad-based enough. As a result, poverty remains widespread (see Table 2), and the economy is still vulnerable to shocks.

Table 2: Poverty Status in Zambia (In Percentage of Total Population)

Location	Total Poor (%)	Extremely Poor (%)	Moderately Poor (%)	Non-Poor (%)
All Zambia	68	53	15	32
Rural	78	65	13	22
Urban	53	34	18	47

Source: LCMS (2004).

Table 2 illustrates the poverty status of Zambia. As seen from the table, the rural population is predominantly poor with the overall poverty level at 78 percent compared to urban areas at 53 percent. The incidence of extreme poverty is also high in rural areas; two thirds of the poor are extremely poor, whilst one third is extremely poor in urban areas. People who are moderately poor are more in urban areas at 18 percent than rural areas at 13 percent. Furthermore, the non-poor persons in rural areas are just about half of the urban non-poor persons, 22 percent and 47 percent respectively.

Although, as shown in Table 2 above, the 2004 *Living Conditions and Monitoring Survey* claims that poverty actually declined from 72 percent in 1998 to 68 percent in 2002, some critics have argued that the decline has more to do with changes in the definition and measures of poverty. This presents some methodological problems for comparing previous data sets on poverty with the current one.

PFI guidance

Although the objective of the PFI is to mobilise private investment that supports steady economic growth and sustainable development, and thus contribute to the prosperity of countries and their citizens and the fight against poverty, it does not come out strongly on the social outcomes of investment. This is in contrast to the APRM questionnaire, which has specific questions on socio-economic development.

APRM Obj 3, Q.1 and Q.2: ***What measures has government taken to strengthen policy, delivery mechanisms and monitor outcomes in order to make progress towards the social development targets? What are the outcomes of the policies and mechanisms on social indicators?***

Strictly speaking, this question is not very different from the previous one. Thus, the response to this question will largely be similar to the one above. In terms of policies and delivery mechanisms, GRZ has, as previously noted, taken a number of initiatives to strengthen public services delivery. However, the quality of state capacity still remains weak.

PFI guidance

Objective 3 of the Self-Assessment questionnaire refers to policies, delivery mechanisms and outcomes in key social areas including education and combating of HIV/AIDS and other communicable diseases. This relates to PFI chapter 8 on human resource development, especially questions 1, 2 and 5. But the focus in the PFI is more squarely centred on promoting investment.

PFI Ch 8, Q.1: ***Has the government established a coherent and comprehensive human resource development (HRD) policy framework consistent with its broader development and investment strategy and its implementation capacity? Is the HRD policy framework periodically reviewed to ensure that it is responsive to new economic developments and engages the main stakeholders?***

The government in Zambia has not established a coherent and comprehensive HRD policy framework consistent with its broader development and investment strategy and its implementation capacity. Attempts to review the school curriculum to make it more relevant to the developmental needs of the country have not been successful.

Nonetheless, GRZ, through the Ministry of Science, Technology and Vocational Training (MSTVT), established the Department of Technical Education and Vocational Training (DTEVT). The DTEVT framework was designed to operate a centralised training system. This was intended to improve effectiveness and efficient delivery of technical and vocational training programmes. The Department offers a range of full-time crafts certificates and diploma programmes in engineering fields, commercial subjects, applied arts and teacher training through a national network of trade schools.

In 2004, there were 319 registered technical and commercial training institutions in Zambia, with an estimated total enrolment of 20,000. These institutions are operated by the Government, industry, the Church, NGOs and private providers. Most of these institutions are urban-based and found mainly along the line of rail. The rest are spread throughout the country.

However, questions have been raised about the effectiveness and relevance of the training offered by the DTEVT and the DoY. Evaluations of vocational education and technical training (VET), though problematic, indicate that numerous initiatives to create more relevant, vocationalised curricula have generally failed in Zambia, as in many SSA countries. Observers cite the following as problems that have constrained the operations of DTEVT: inadequate funding; lack of qualified instructors; obsolete and inadequate equipment; lack of training materials; irregular updating of the curricula; run-down physical infrastructure; and poor staff morale. Not surprisingly, the enrolment in technical colleges has been falling, while a growing number of DTEVT graduates are unemployed. Similar problems face the skills training programmes run by the Department of Youth (DoY) in the Ministry of Youth.

PFI Ch 8, Q.2: ***What steps has the government taken to increase participation in basic schooling and to improve the quality of instruction so as to leverage human resource assets to attract and to seize investment opportunities?***

The Government has implemented the Education Strategic Plan (ESP) which was presented to the donors in February 2003. A memorandum of understanding was signed at the same occasion, providing the framework for donor support. Several Cooperating Partners (CPs) have already signed the MOU. This means that there is harmonization among these donors according to their comparative advantages, through dialogue. The ESP is articulated in Annual Work Plans (AWP), which follow the National Implementation Framework. There is also direct EC support to the Ministry of Education (MoE)

Most donor support has focused on the basic education sub-sector. In accordance with the Education Policy, the Basic Education sub-sector is oriented towards the final goal of Universal Basic Education (MDG Goal No.2).The MDG educational indicators are ‘strong’ for basic education in terms of enrolment and ‘fair’ for gender disparity. This is a reflection of a steady increase in enrolment in recent years. However, as noted above, attempts to reform the school curriculum have so far proved unsuccessful.

PFI Ch 8, Q.*5: Does the government have a coherent strategy to tackle the spread of pandemic diseases and procedures to evaluate public health expenditures aimed at improving public health outcomes and, through inter-linkages, the investment environment?*

Since 1992, there have been significant reforms in the Health Sector in Zambia, whose underling principal was decentralisation of healthcare delivery from the centre to districts and hospitals. The reforms have been complemented by the government’s commitment to the realisation of the MDGs. The health-related MDGs presently serve as output indicators on investments in the health sector. As part of the health reforms, GRZ has come up with action plans to tackle the spread of pandemic diseases, such as HIV/AIDS, malaria, and tuberculosis.

The main sources of financing public healthcare services in Zambia include allocations from the Central Government, donor support, user fees and insurance schemes, employer contributions and other miscellaneous receipts, including donations in kind. The Government also receives financial support for the fight against HIV/AIDS from the Global Fund for the fight against HIV/AIDS, the World Bank (under the Zambia National Response to AIDS – ZANARA – Project) and the USA President’s Emergency Plan for AIDS Relief (PEPFAR). This support is channelled through GRZ, NGOs, FBOs and other projects at various levels of intervention.

Under the current health reforms, GRZ and cooperating partners have been moving towards targeted Health Sector budget support for Human Resources (HR) retention, increased efficiency, financial management systems, drug supply systems and a Management Information System (MIS). The Ministry of Health (MoH) plays the leading role in the coordination of partners involved in the health sector. The key approach to donor coordination is built on the sector-wide approaches (SWAps), which emphasize pooling of government and donor funds, and from which from the National Health Sector

Strategic Plan (2001 – 2005) is financed. A good example of this approach is the district basket, which supports the delivery of the basic health care package by providing unearmarked funds directly to District Health Management Teams.[15]

The other donors not placing their resources in the common basket participate in the SWAp through ensuring that the activities they fund fall within the agreed sectoral priorities. These donors include the multilaterals WHO and UNICEF, JICA, and USAID as the major ones. These are also the main EPI donors. Up to 50 – 60 percent of resources from the cooperating partners, and 50 percent of GRZ's resources are channeled to the district and health centre levels. The balance of resources is made available for use at all levels.

The basket funds are managed through the Central Board of Health (CBoH) and MoH, in consultation with the Health Sector Support Steering Committee (HSSSC), which is chaired by the Permanent Secretary, MoH. The utilisation of funds in the basket is reflected in the MoH and CBoH annual plan.

The shift under SWAps to common working arrangements ensures longer time horizons of commitments for external support through an MTEF. The MTEF is currently at the stage of stakeholder input. Currently the basket is being expanded in order to include hospitals human resource and drug supplies. Other cooperating partners allocate their funds to the MOH on a project basis.

There are, however, weak financial management systems at lower levels. The absorption capacity (utilisation of allocated funds) in the Health Sector is also limited (as reflected in low drug procurement).

APRM Obj 4, Q.1: ***What policies and strategies has the government put in place to ensure that all citizens, in particular the rural and urban poor, have affordable access to basic needs?***

GRZ has come up with a number of policies and initiatives aimed at promoting affordable access to basic needs. However, these measures have not been effective in improving poor people's access to basic needs. Not surprisingly, the overall level of poverty at 68 percent of the population, as discussed above, is very high. This high poverty level manifests itself in people's lack of access to the basic necessities of life such as food, clean drinking water and sanitation, decent housing, and electricity.

In rural areas, where most households are dependent on agriculture, challenges relate to poor conditions of irrigation systems, lack of access to credit, infrastructural deficiencies, and lack of proper and consistent marketing channels. In addition, a human resources crisis, directly related to income poverty, weak education and health systems and the AIDS/HIVS endemic, continues to frustrate efforts to increase productivity in agriculture.

In urban areas, many poor people live with low access to acceptable public services, providing for all needs and contingencies through a variety of informal livelihood

[15] The EC member states and other CPs have signed the Harmonisation – In – Practice (HIP) memorandum of understanding (MOU) to coordinate their funding to the Health Sector. The Ministry of Health has its own sector budget support. This is seen as a good arrangement by MoH officials as there is no guarantee that the Ministry of Finance and National Planning (MoFNP) can fund the MoH priorities.

strategies and coping mechanisms, some of which are harmful. The high and growing poverty levels in Zambia have influenced the tendency towards the initiation of survivalist economic activities in urban areas. In the absence of reliable employment statistics, it is generally assumed that the labour force outside the formal sector is working in the informal sector.

PFI guidance

Although this question might relate to PFI chapter 9 on infrastructure and financial sector development, the PFI discusses infrastructure and financial sector development in a narrow perspective that does not really address the issue of access. The main focus is mostly on the need to improve the investment climate.

5.0 Assessment of the Investment Climate Content of the APRM Questionnaire

The above responses suggest that the major advantages of the APRM questionnaire are that:

- It is a broad document that touches on the key dimensions of good governance. This provides an opportunity for consultation on various issues;
- It is used as a checklist for issues that are critical to governance;
- It highlights the importance of the importance of good political governance and economic management in creating a conducive business environment. As the World Bank (2006) notes, reform is most likely to succeed in a supportive political climate; and
- It helps in the standardisation of assessment reports across member countries.

5.1 Issues arising from the use of the APRM Self-Assessment Questionnaire

In responding to the APRM Self Assessment questionnaire, we identified the following as the limitations of the APRM Self-Assessment questionnaire vis-à-vis investment:

- There is an absence of specific questions on the investment climate. While there are questions on the micro-economic environment under the theme on Economic Governance and Management and the need for a friendly environment for private investment is acknowledged, the questions relating to the investment climate tend to be general and lack indicators specific to investment;
- Related to the above, it is evident from the above responses to the APRM questions that the questionnaire does not lead to a detailed discussion of the investment climate in a country. The responses merely bring out general features of the environment in which economic activity occurs. This makes it difficult to gain a detailed understanding of a country’s investment climate reforms;
- In particular, the APRM questions do not sufficiently capture the institutional dimension of the investment climate. Key variables of organisations (i.e. organisational form, administrative systems and coordination mechanisms) pertaining to institutions that promote investment such as investment promotion agencies are not addressed;

- The APRM questions, while addressing the issue of implementation of sectoral or micro-economic reforms, do not seem to address the issue of sustaining investment climate reforms. This can be a critical component of the reform cycle;
- The APRM questions relating to the investment climate do not address the importance of measuring and monitoring the results of implementing investment policy reforms;
- The general nature of questions relating to the investment climate in the APRM questionnaire makes it difficult to translate the objectives into specific performance targets or indicators that can then be independently monitored; and
- There is no discussion of international standards and codes on investment in the APRM questionnaire.

5.2 Value of the PFI Toolkit in support of the Investment Climate Content of the APRM Process in Zambia

The PFI Guidance is strong on the following:

- **Flexibility**

  The PFI can be used as a flexible organising framework for identifying where investment bottlenecks lie, highlighting the strong points of a country's investment climate, outlining government policies that address the barriers to investment and for measuring outcomes and the pace of progress;

- **Focus**

  The PFI Guidance has a very clear focus on the need to create a robust investment climate in a country. It, therefore, asks specific questions on the investment climate, which is helpful in pinpointing investment measures that are not treated in the APRM questionnaire;

- **Clarity, simplicity and transparency**

  The questions in the PFI Guidance are clear and easy to understand. They are also critical in stressing the importance of transparency in policy formulation and implementation;

- **Detail**

  Applying the questions in the PFI Guidance brings out detailed information on the nature of investment climate reforms in a country. This is very useful in gaining a detailed understanding of a country's investment climate.

- **Monitoring**

  The PFI Guidance stresses the importance of measuring and monitoring the results of investment climate reforms. This is an aspect that is usually overlooked in policy discussion on the investment climate.

5.3 Issues arising from the PFI Guidance

Our responses to the PFI guidance questionnaire have led us to the following observations:

- The PFI guidance appears to be silent on others forms of investment, such as portfolio equity investment. It, therefore, seems to ignore the volatility and pro-cyclicality associated with this type of investment, especially in the context of a weak institutional framework such as those found in Africa;
- The PFI Guidance does not take sufficient account of the role of political factors in the initiation, design, implementation and sustenance of investment reforms. While these may be taken as a given in developed countries, they still constitute a critical component of investment reforms in developing countries. As previously noted, reform is most likely to succeed in a supportive political climate;
- The PFI Guidance appears to take for granted the existence of a stable macro-economic environment in a country. While this might be the case in developed countries, it certainly is not the case in Africa where there is a dominance of imperfect markets and limited information;
- Similarly, the PFI takes for granted the strength and quality of institutional or state capacity in African or developing countries. While this might be the case in developed countries, it certainly is not the case in Africa;
- Related to this is the role of structural and cultural factors in the success of investment reforms. Any approach that puts strong emphasis on formal institutions in promoting investment promotion without sufficient appreciation of the role of structural and cultural factors in the reform process is bound to face problems in Africa where such factors may even be stronger than the formal institutional framework;
- Although the PFI guidance is a comprehensive tool for self-evaluation and gives a good assessment of the investment climate in a country, especially favourable measures for foreign investors, the perception one gets from reading the questions in the PFI guidance is that it seems to be limited in its advocacy for the proper treatment of local or domestic investors;
- Related to the above, the PFI Guidance appears to assume that foreign investors may suffer undue discrimination in developing countries. While this might be true in some cases, the tendency is for foreign investors to receive what is seen as ‘special’ or ‘preferential’ treatment compared to local investors in many African countries. The PFI guidance should stress the importance of a vibrant domestic private sector as being complementary to successful foreign investment;
- The PFI Guidance is clearly focused on the need to create a robust environment for investors, especially foreign investors, but less clearly and only implicitly concerned with the social impact of investment. In a developing country context, especially in Africa where there are high poverty and unemployment levels, it is important to pay attention to the social outcomes of investment. But this should not be done within the narrow context of focussing on investment as the ultimate goal. There may, therefore, be need for inclusion of some socio-economic performance indicators in the PFI guidance;

- While the PFI talks of the need to include small and medium enterprises, this leaves out the majority of enterprises in an African context. In most African countries, there is a dominance of the informal sector or micro-enterprises. This reality is ignored by the PFI Guidance
- The PFI guidance says very little about state-led investments. Instead, it generally perceives investment to be driven by private companies with superior technologies. Not all investment, however, is driven by profit-seeking private companies. A clear example of this is the Chinese investment flowing into Zambia and other African countries; and
- The stance of the PFI guidance on the regulation of investment is not clear. The PFI appears to take a very strong liberal view towards investment, especially foreign investment. The assumption is that all regulation of investment is bad, without carefully considering the circumstances under which such regulation may be necessary.

6.0 Conclusions and the Way Forward

There is no doubt that Zambia's investment policy and legal framework has improved over the last couple of years, especially since the launch of the Private Sector Development reform programme in 2004. However, the use of the APRM Self-Assessment questionnaire in assessing the investment climate in Zambia provided only modest insights. The general nature of the questions in the APRM questionnaire make it difficult to gain a detailed understanding of a country's investment climate, especially the institutional dimension.

On the other hand, the use of more specific investment climate questions from the PFI guidance as a separate supporting tool has revealed that Zambia's investment climate still faces many challenges. The main challenges relate to effective and efficient implementation of the policy and legal framework reforms. These challenges have resulted in the absence of a robust investment climate.

Not surprisingly, Zambia tends to perform poorly on international indicators of investment. According to the recent World Bank's *Doing Business 2008* Report, Zambia was ranked among the bottom countries (116 out 178 economies) in terms of international competitiveness. However, the PFI guidance is weak on the social outcomes of investment, especially in the area of poverty reduction and access to basic services. These are issues of great importance to African countries. In this sense, the PFI can draw some lessons from the APRM questionnaire.

6.1 Main Lessons

The following are the key lessons that emerge from the assessment:

- The investment climate content of the APRM questionnaire is small. The questions in the APRM questionnaire are very general. For this reason, they offer limited support in identifying where specific investment bottlenecks lie. However, the APRM is broader in its focus and addresses the key dimensions of good governance, especially good political governance and economic management;

- The PFI guidance has a useful focus on the investment climate with specific questions that are relevant in identifying investment bottlenecks, strong points of a country's investment climate, outlining government policies that address the barriers to investment and for measuring outcomes and the pace of progress. This is very useful in highlighting the strengths and weaknesses of the legal and institutional foundation for the investment climate in a country;
- The investment content of the APRM questionnaire can be strengthened by incorporating specific questions on investment;
- Similarly, the PFI guidance can broaden its focus to embrace issues that it takes for granted in order to be of greater relevance in the African context; and,
- In general, the legal and institutional foundation for a robust investment climate which the PFI guidance seeks to capture is either weak or absent in many African countries. The PFI, thus, outlines a useful tool and process which can greatly help African countries to systematically strengthen their legal and institutional framework for investment.

6.2 Strengthening the Investment Content of the APRM Questionnaire

Based on the discussion and observations in this paper, there is a need to strengthen the investment climate content of the APRM Self-Assessment questionnaire.

My suggestions include the following ideas:

1. **Incorporate specific questions on the investment climate in the APRM questionnaire. In particular, there is a need to incorporate specific questions on the following:**
    a. Investment policy;
    b. Investment promotion and facilitation; and
    c. Trade policy.
2. **The incorporated questions must be institution sensitive or including, that is, they should sufficiently capture the institutional dimensions of the investment climate in terms of:**
    a. Organisational form;
    b. Administrative systems;
    c. Coordination mechanisms; and
    d. Benchmarking.
3. **Include international standards and codes on investment under the theme on Economic Governance and Management in the APRM questionnaire. These codes and standards include the following:**
    a. Bilateral Investment Treaties (BITs);
    b. 2000 Arbitration Act;
    c. 1958 New York Convention;

d. The Washington Consensus; and
e. WTO treaties.

4. **Come up with some specific indicators on the investment climate such as:**
    a. Ratification and domestication of international standards and codes;
    b. Ratification of all outstanding BITs;
    c. Full operationalisation of IPAs; and
    d. Institutionalisation of dialogue mechanisms for investors.

Matrix 1: Testing the draft PFI Users' Toolkit to Zambia for the Self Assessment phase of the investment climate content of the APRM

APRM Questionnaire	PFI Guidance	Observations
Democracy and Good Political Governance		
Obj 2, Q.2: What weight do provisions establishing the rule of law and the supremacy of the constitution carry in practice?	Ch 1, Q. 1: What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium-sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens?	There is no convergence between the APRM question and the PFI question. The APRM question is broader in nature and focuses mainly on constitutional democracy in a country. This implies that the PFI guidance only implicitly covers issues related to political governance.
Obj 3, Q.2: What steps have been taken to facilitate equal access to justice for all?	Ch 1, Q.4: Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?	There is a lot of divergence between the APRM question and the PFI question. The APRM focuses on constitutional democracy while the PFI question focuses on contract enforcement.
Obj 5, Q.1: What measures have been taken in the country to strengthen institutions for an efficient and an effective public service?	Ch 1, Q.4: Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost? Ch 2, Q.2: Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed by and benchmarked against international good practices?	The response to the PFI question indicates that there is no convergence between the APRM question on justice and the selected question from the PFI. The APRM question is broad in nature and focuses mainly on the rule of law and political justice for all citizens in a country. Hence, the response to this question differs from the mapped PFI question. The PFI guidance question is mainly concerned with contract enforcement, which is quite different from what the APRM questionnaire is trying to establish. This further underscores the weakness of the PFI on political governance. The convergence between the APRM question and the PFI questions is implicit. The APRM is mainly concerned with the civil service and service

		delivery. There is no specific mention of an investment promotion agency.
Economic Governance and Management Obj 1, Q.3: What sectoral or microeconomic policies has your country developed and implemented to promote economic growth and sustainable development. Obj 1, Q.4: What has your country done to increase domestic resource mobilisation including public and private savings and capital formation, and reduce capital flight? Obj 2, Q.2: What measures has your country taken to make economic policies predictable? Obj 2, Q.3: What are the main challenges that the country faces with respect to coordinating the efforts of various departments in implementing sound, transparent and predictable economic policies? Obj 5, Q.1: Is your country a member of any regional economic integration arrangement and	A case could be made for the whole of the PFI applying to this question. More narrowly, it most closely relates to all of the PFI questions in Chapters 1, 3 and 4. A case could be made for the whole of the PFI applying to this question. A more limited interpretation on capital formation would relate to Chapters 1 and 2. A case could be made for the whole of the PFI applying to this question The PFI is seen as a flexible tool with multiple applications. Ch 1, Q.7: Are investment policy authorities working with their counterparts in other economies	There is convergence between the APRM question and the whole of the PFI. However, the question in the APRM questionnaire is too general to bring out specific issues on a country's investment climate. While a case could be made for the whole of the PFI applying to this question, it appears that the PFI narrowly focuses on the issue of domestic revenue mobilization. The creation of a supportive investment climate is just one aspect of the measures that can be taken to support domestic revenue mobilization. In the PFI, there are no specific questions on economic policies. It appears that the tool kit takes the existence of a supportive economic policy environment as a given. In contrast, the APRM questionnaire appears to be strong on economic policy and weak on specific issues relating to the investment climate. Although the PFI is a flexible tool with multiple applications, it does not specifically address the issue of coordination in the same manner that the APRM questionnaire does. There is some convergence between the APRM question and the PFI questions. However, the

what are the benefits and challenges of such membership?	to expand international treaties on the promotion and protection of investment? Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment? What measures exist to ensure effective compliance with the country's commitments under its international investment agreements? Ch 2, Q.8: Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks? Ch 2, Q.9: To what extent has the government taken advantage of information exchange networks for promoting investment?	APRM question is limited in scope and mainly looks at regional integration as the ultimate end. The PFI questions are broader and bring out more detail on a variety of issues, some of which are not related to regional integration.
Obj 5, Q.2: What measures has your country taken to ensure that national policies, including policies in respect of intra-African trade and investment promotion, are consistent with and supportive of regional economic integration objectives?	Ch 1, Q.7: Are investment policy authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment? Ch 2, Q. 1: Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures? Ch 2, Q.6 What mechanisms has the government established for the evaluation of the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the	There is some convergence between the APRM question and the PFI question. However, the APRM question is more slanted towards investment initiatives aimed at promoting regional economic integration, while the PFI questions are more focused on investment promotion within an international framework.

	economic interests of other countries? Ch 2, Q.7: What steps has the government taken to promote investment linkages between businesses, especially between foreign affiliates and local enterprises? Ch 2, Q.8: Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks?	
Obj 5, Q.3: What measures have your country taken to ensure effective implementation of decisions and agreements made within regional economic integration arrangements?	Ch 1, Q.7: Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment? What measures exist to ensure effective compliance with the country's commitments under its international investment agreements?	Although the APRM is slanted towards regional integration, there is some strong convergence between the APRM question and the PFI question. The PFI is broader and bring out more detail than the APRM question.
Corporate Governance Obj 1, Q.2: What is the regulatory framework for economic activities and to what extent does it facilitate commercial enterprise in the country?	Ch 1, Q.1: What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens? Ch 1, Q.4: Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost? Ch 10, Q.1: Has the government established and implemented a coherent and comprehensive regulatory reform framework, consistent with its	The PFI questions are more focused and specific on particular issues of investment policy.

	broader development and investment strategy? Ch 10, Q.2: What mechanisms are in place for managing and coordinating regulatory reform across different levels of government to ensure consistent and transparent application of regulations and clear standards for regulatory quality? Ch 10, Q.3: To what extent are regulatory impact assessments used to evaluate the consequences of economic regulations on the investment environment? Are the results of these assessments made public on a timely basis? Ch 10, Q.4: What public consultation mechanisms and procedures, including prior notification, have been established to improve regulatory quality, thereby enhancing the investment environment? Are the consultation mechanisms open to all concerned stakeholders? Ch 10, Q 5: To what extent are the administrative burdens on investors measured and quantified? What government procedures exist to identify and to reduce unnecessary administrative burdens, including those on investors? How widely are information and communication technologies used to promote administrative simplification, quality services, transparency and accountability?	
Obj 1, Q.3: What are the external and internal factors that impact on business activity?	This question relates to many parts of the PFI. The APRM Self-Assessment questionnaire gives some guidance, citing the state of infrastructure and financial market development (PFI chapter 9), investor promotion (PFI chapter 2) and SMEs (PFI	There is some convergence between the APRM question and the PFI question. But, while the PFI addresses most of the internal factors that impact on business activity, they hardly address the external factors. This is a major concern for African

	questions and annotations, e.g. Q1.3).	countries.
Obj 2, Q.1: Are there measures in place to ensure that corporations recognise and observe human and labour laws? Obj 2, Q.2: To what extent are corporations responsive to the concerns of the communities in which they operate? Obj 3, Q.1: What is the overall assessment of the corporate integrity in the country? Obj 4, Q.1: To what extent does the corporate governance framework protect shareholder's rights? Obj 4, Q.2: Does the corporate governance framework recognise the rights of stakeholders (other than shareholders)?	This question relates to PFI chapter 7 on policies for promoting responsible business conduct. It also relates to Ch 8, Q.6: What mechanisms are being put in place to promote and enforce core labour standards? This question relates to PFI chapter 7 on policies for promoting responsible business conduct. This question relates to several parts of the PFI. The APRM Self-Assessment questionnaire gives some guidance, citing measures to combat corruption (PFI chapter 10, Q. 6 to Q.9) and regarding the effectiveness of measures to promote adoption of good business ethics with reference to, inter alia, capacity and appropriate skills in government institutions (PFI chapter 2, Q.2 and Q.3, chapter 4, Q.2 and chapter 10, Q.3). This question relates to PFI chapter 6 on corporate governance, especially Ch 6, Q.2: How does the corporate governance framework ensure the equitable treatment of shareholders? Ch 6, Q.3: What are the procedures and institutional structures for legal redress in cases of violation of shareholder rights? Do they function as a credible deterrent to such violations? What measures are in place to monitor and prevent corporate insiders and controlling owners from extracting private benefits?	There is some convergence between the APRM question and the PFI question (Q.6 in Chapter 8) because of its focus on the enforcement of core labour standards. There is some convergence between the APRM question and the PFI question. There is some convergence between the APRM question and the PFI question.

Obj 5, Q.1: Does the corporate governance framework ensure that timely and accurate disclosure is made on all material matters regarding the corporation?	Ch 6, Q.4: What procedures and institutions are in place to ensure that shareholders have the ability to influence significantly the company?	
Obj 5, Q.3: Does the corporate governance framework ensure the strategic guidance of the corporation, effective monitoring of management by the board (governing body or supervisory body) and the board's accountability to the corporation and the shareholders?	Ch 6, Q.6b: How does the corporate governance framework recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises? Ch 6, Q.5: By what standards and procedures do companies meet the market demand for timely, reliable and relevant disclosure, including information about the company's ownership and control structure? Ch 6, Q.6a: How does the corporate governance framework ensure the board plays a central role in the strategic guidance of the company, the effective monitoring of management, and that the board is accountable to the company and its shareholders?	
Socio-Economic Development Obj 2, Q.1 and Q.2: What is the country doing to accelerate socio-economic development and achieve sustainable development and poverty eradication? What are the outcomes of the policies and mechanisms to achieve sustainable development and poverty eradication?	The objective of the PFI is to mobilise private investment that supports steady economic growth and sustainable development, and thus contribute to the prosperity of countries and their citizens and the fight against poverty (Preamble). The PFI can be used as an organising framework for identifying where investment bottlenecks lie, pin-pointing the strong points of a country's investment climate, outlining government policies that address the	Unlike the APRM questionnaire, the PFI is weak on the social outcomes of investment.

	barriers to investment and for measuring outcomes and the pace of progress.	
Obj 3, Q.1 and Q.2: What measures has government taken to strengthen policy, delivery mechanisms and monitor outcomes in order to make progress towards the social development targets? What are the outcomes of the policies and mechanisms on social indicators?	Objective 3 of the Self-Assessment questionnaire refers to policies, delivery mechanisms and outcomes in key social areas including education and combating of HIV/AIDS and other communicable diseases. This relates to PFI chapter 8 on human resource development, especially questions 1, 2 and 5. Ch 8, Q.1: Has the government established a coherent and comprehensive human resource development (HRD) policy framework consistent with its broader development and investment strategy and its implementation capacity? Is the HRD policy framework periodically reviewed to ensure that it is responsive to new economic developments and engages the main stakeholders? Ch 8, Q.2: What steps has the government taken to increase participation in basic schooling and to improve the quality of instruction so as to leverage human resource assets to attract and to seize investment opportunities? Ch 8, Q.5: Does the government have a coherent strategy to tackle the spread of pandemic diseases and procedures to evaluate public health expenditures aimed at improving public health outcomes and, through inter-linkages, the investment environment?	The convergence between what the APRM questionnaire seeks to achieve and what the PFI is looking for is implicit. The APRM questionnaire is specific on social outcomes, while the PFI tends to view these outcomes within the narrow context of promoting investment.
Obj 4, Q.1: What policies and strategies has the government put in place to ensure that all citizens, in particular the rural and urban poor, have affordable access to basic needs?	Objective 4 of the Self-Assessment questionnaire refers to access to infrastructure services like water, sanitation, energy and finance. This relates to PFI chapter 9 on infrastructure and financial sector development.	The APRM questionnaire is specific on access to, and affordability of basic services while the PFI guidance narrowly addresses these within the context of investment promotion.