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Investment Policy Review
The United Republic of Tanzania



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CHAPTER II. THE INVESTMENT FRAMEWORK

Tanzania has an open investment environment with adequate standards of investor treatment and protection. This is, however, a characterization of policy and current conditions and practices, rather than of the statutory regime. The investment code, introduced in 1990 and modernized in 1997, has not kept pace with the rapid changes in the country. There is a need to overhaul the regulatory regime and enact new and modern legislation reflecting current conditions inside and outside Tanzania.

A. Evolution of the investment framework

Investment in Tanzania is a national and subnational concern. Zanzibar has separate legislation that governs investment promotion. However, the regime established in Zanzibar is subject to the Constitution and has many features in common with the provisions applicable in the Union. It must also be remembered that many important fiscal incentives can only be granted in Zanzibar under, and in accordance with, Union legislation (e.g. legislation relating to customs and excise and income Tax).

In Zanzibar, the basic legislation covering FDI is contained in the *Investment Promotion Act 1986* passed by the Zanzibar House of Representatives, which was enacted during a period when, as in mainland Tanzania, the local economy was centrally planned. In 1992, the so-called Zanzibar Declaration began the process of opening up and putting greater reliance on the private sector, both local and foreign. The Zanzibar Investment Promotion Agency (ZIPA) was established the same year. Subsequent legislation has established the Free Economic Zones and the Tourism Commission, which works closely with ZIPA to attract FDI to develop the tourism sector. In 1999, the Government of Zanzibar adopted a *Zanzibar Vision 2020*, which includes a commitment to building an investment climate that will further encourage FDI. It is expected that the 1986 Act will shortly be revised.

On the mainland, the first market-oriented investment code was introduced in June 1990, applying to all private investments, local and foreign. It opened up some sectors of the economy to private investors and paved the way for the establishment of the Investment Promotion Centre (IPC) to encourage and manage both domestic investment and FDI. The limitations of this initial approach became apparent to the Government and ODA donors quite soon, during the early 1990s, as the response of private investors was very weak. Donors were especially concerned that economic development would continue to be too dependent on ODA and public investment, and that foreign investors were obviously avoiding Tanzania.

The Government launched the New Investment Policy of Tanzania in 1996, which shortly resulted in the *Tanzania Investment Act 1997*. The Act introduced a number of important changes to the investment framework. It:

- Established the Tanzania Investment Centre (TIC), giving it a significantly expanded mandate compared with that of its predecessor, IPC;
- Identified investment priorities (box II.1);
- Introduced a new company registration process; and
- Determined investment incentives and investors' rights.

Box II.1. The evolution of investment priorities

The Government of Tanzania designates for the purposes of investment promotion and investment incentives priorities in the form of lead and priority sectors, which are in fact a mixture of industries and activities. These sectors, formally defined in the Customs Tariff Act 1976, and amended by the Financial Laws (Miscellaneous Amendments) Act of 1997, provided the operational interpretation of the 1997 Tanzania Investment Act concerning investment priorities. They included:

- **Lead sectors:** mining; infrastructure (roads, bridges, airports, power, telecommunications, water and essential support services); and export processing zones.
- **Priority sectors:** agriculture, including livestock; aviation; commercial buildings; commercial, development and microfinance banks; export-oriented projects; export processing zones; geographical special development areas; human resources development; economic infrastructure (including construction of roads, bridges, railways, airports, installation of electricity, telecommunications, water services and like services); manufacturing; natural resources, including fisheries; rehabilitation and expansion; tourism and tour operations; and radio and television broadcasting.

The designation of lead and priority sectors was criticized because they accounted for almost all of Tanzania's GDP and, as a result, there appeared to be very few "non-priority" sectors. In the 2001/2002 budget speech, the minister responsible for planning and investment indicated that the current lead sectors are: agriculture and agro-industries, mining, tourism and economic infrastructure. Investors in these sectors can be given additional incentives (under section 20 of the 1997 Investment Act) beyond general rights and incentives provided to the holders of the Certificate of Incentives.

Zanzibar has identified its own, much more limited set of investment priorities. They currently include tourism, export processing, fishing and fish processing. However, with the exception of tourism, which is being actively promoted through the Tourism Commission, no operational sector strategies or investment promotion programmes have been formulated by the Government of Zanzibar, although the formation of independent promotion agencies for the Export Processing Zone and Free Port will be followed by the preparation of strategies and business plans for both of these initiatives.

Although applying equally to all investors, the 1997 Act is the principal legal basis for Tanzania's present FDI framework. It includes a few specific references to foreign investors on some FDI-specific issues. Other laws affecting investment, such as the laws on employment, taxation and land acquisition as well as sector-specific laws such as mining laws, together with the 1997 Act, constitute Tanzania's FDI framework (box II.2).

The focus of this chapter is on the FDI environment at the Union level. Wherever there are significant differences between the mainland and Zanzibar, these are discussed in relation to specific issues.

Box II.2. Investment framework in Tanzania: principal Acts

- Planning Commission. *Composite Development Goal for the Tanzania Development Vision 2025*, February 2001
- Government of Tanzania. *Programme for Business Environment Strengthening for Tanzania (BEST)*, December 2000
- Ministry of Finance & Economic Affairs, Zanzibar, *Zanzibar Vision 2020*, December 1999
- The Tanzania Investment Act 1997
- The Mining Act 1998
- The Petroleum Act 1980
- The Land Act 1999
- The Hotels Act 1963
- The Tourist Industry Licensing Act 1969
- The Zanzibar Investment Promotion Act 1986

B. Specific FDI measures

1. Entry and establishment

Foreign investors wishing to open and operate a commercial business venture in Tanzania must first be licensed as a business to meet the requirements of the Business Licensing Act 1972, administered by the Business Registration and Licensing Agency (BRELA) of the Ministry of Industry and Trade. In Zanzibar all FDI applications and advice are handled directly by ZIPA staff, who liaise with relevant Union ministries where required. The licensing procedure and documentation requirements are fairly straightforward and not overly onerous (box II.3).

On completion of the registration process with TIC, investors, both foreign and local, receive the Certificate of Incentives. However, after changes in fiscal legislation in recent years, the Certificate in most cases gives investors access to rights rather than privileges. These include investment guarantees contained in the 1997 Investment Act, access to land or the right to transfer funds abroad and employ up to five expatriates.

For an investor to qualify for the Certificate, the 1997 Act establishes minimum levels of investment capital. The minimum level for foreign investment projects, including wholly owned affiliates and joint ventures, is \$300,000 and \$100,000 for local investors. The legislation is not clear on incentives and procedures for FDI projects below the threshold levels. It appears that FDI projects below this minimum level can still be registered with BRELA. They may be offered facilitation and support and help by TIC, but will not receive incentives available to projects above \$300,000 or \$100,000 as the case may be. This minimum level also applies in Zanzibar.

It is also unclear to what extent the Investment Centre is intended to have discretion in the issue of the Certificate of Incentives to an investor who is otherwise qualified in terms of the minimum level of capital investment. The language in subsection (2) of section 17 of the Investment Act is mandatory – “shall issue certificates in accordance with the provisions of this section” – and there is no reference in the section to approval of an investment. On the other hand, the information required of an applicant suggests that the Centre expects to exercise some

Box. II.3. Application and authorization procedures

The FDI entry and establishment process for Tanzania is defined in the 1997 Act. It sets out the requirements and steps for new investors to apply for entry, approval and business registration, and thereby obtain access to the fiscal incentives available to investment projects meeting the FDI eligibility criteria. The procedure is relatively simple and clear. All applications are dealt with by TIC.

Three copies of the completed application and business plan for the investment project should be submitted to TIC. Other required formalities are (1) a foreign investor profile and (2) a non-refundable \$750 registration fee.

Once this process is completed, a representative of the Ministry of Industry and Commerce will assess the business and issue a business certificate making the business eligible for investment incentives from TIC and then hand over the application to a TIC case officer. In Zanzibar all FDI applications and advice are handled directly by ZIPA staff who liaise with relevant Union ministries where required.

Enterprises seeking to invest in the mining or petroleum sectors are required to obtain registration and approval within the separate legislation (Mining Act 1998 and the Petroleum Act 1980) administered by the Ministry of Energy and Minerals. Tourism businesses and hotels have also to secure licences, both centrally and locally from the relevant ministries and local authorities.

Once FDI applications and the required associated documentation have been reviewed by the TIC case officers and the in-house ministerial and agency representatives, TIC registers the project. Normally, this process is a matter of days rather than weeks as was the case before. Copies of the project documentation of approved applications are sent to the Ministry of Industry and Commerce, the Ministry of Finance and the Tanzania Revenue Authority. Copies are also sent to the relevant ministry with authority over specific sectors such as agriculture, banking and financial services, telecommunications, tourism, energy and minerals. In practice, very few registration applications are refused either on the mainland or in Zanzibar.

TIC maintains a database, which is the main means of monitoring FDI project approvals in Tanzania. The database contains the six-month progress reports required of all FDI projects. The records also include registration documents for technology transfer agreements and all certificates of approval issued to companies and their expatriate staff.

judgement about the merits of the proposed investment. The current practice is, however, relaxed and very few applications are refused. The Centre does not approve or monitor projects but helps register and facilitate them. This is but one example of a discrepancy between the reality and the legislation, which should be dealt with when a new act is prepared.

2. Investment restrictions and requirements

The 1997 Act practically eliminated the remaining FDI industry restrictions on the mainland, limiting them to the manufacturing and marketing of hazardous chemicals, armaments and explosives. In Zanzibar, industries reserved for local investors, and thus closed to FDI, include retail and wholesale trading services; product brokerage; the operation of taxis; barber shops, hairdressing and beauty parlours; butcher shops; and ice-cream manufacture.

There are no ownership restrictions or requirements for a government equity holding in foreign investment projects, with only one exception. In the petroleum sector, under the model production sharing agreement now used as a basis for negotiation with the oil companies in the event of a

commercial discovery by the contractor, Tanzania Petroleum Development Corporation is entitled to exercise an option to acquire, on a working interest basis, a participating share in the contract rights held by the investor. The amount of the participating share is determined by a sliding scale based on the volume of production and ranging from 5 per cent to 20 per cent.

The 1997 Act does not set performance requirements or any other quantitative or qualitative investment goals for investment projects in either a formal or an indicative sense. There is an expectation that the job creation, investment expenditure and business growth targets provided by investors in the business feasibility plans attached to their business registration application will be actively pursued.

The specific project information required from foreign investors in greenfield, mergers and acquisitions or joint venture situations is detailed in section 17 of the 1997 Act. This must be supported by evidence confirming that the investors have sufficient capital to complete the project.

One serious concern in relation to production targets in feasibility studies approved by TIC, namely that investors could find themselves required to pay corporate tax and some fiscal duties *in advance* of their being operational, based upon these *ex-ante* forecasts has been rectified by the Financial Act of 2001. This was a burden in relation to TRA assessments, especially where the subsequent performance of a company or investor did not match expectations and forecasts. While under-performance was expected to result in reimbursement of the advance tax by TRA, there were delays, opportunities for bureaucratic inefficiency and occasionally corruption.

3. Treatment of FDI

(a) Standard of treatment

A policy priority in Tanzania is to treat foreign investors on a par with domestic investors. The provisions of the 1997 Act apply to both foreign and local investors without distinction, with the important qualification that the benefits and protection to be afforded by the Act to a foreign investor require a minimum capital investment of \$300,000 but are extended to a local investor on a capital investment of \$100,000.

Local investors are granted certain benefits on a par with foreign investors even in cases where it is common to grant such benefits only to foreign investors. These include the fiscal stability clause contained in Section 19(2), which provides that benefits accorded to a holder of the Certificate under applicable fiscal legislation will not “be amended or modified to the detriment of the investors enjoying those benefits.” Other examples include repatriation of funds and employment of expatriates. Section 21 guarantees to all Certificate holders the right to make transfer payments in freely convertible currency. Such payments include transfers to service loans in foreign currencies, transfers of dividends or profits and proceeds of sale or liquidation. Under Section 24 of the Investment Act every Certificate holder is granted an initial automatic immigrant quota of up to five persons during the start-up period.

(b) Repatriation of profits and capital

Under section 21 of the 1997 Act FDI projects holding Certificates of Investment are guaranteed unconditional transferability of FDI payments abroad through any authorized dealer bank in freely convertible currency. This covers FDI remittances of net profits and dividends, service charges for foreign loans, royalties and technology transfer charges, the proceeds of FDI liquidations or sale of capital assets in Tanzania, and salary payments to expatriate staff employed in Tanzania by a registered foreign company. Tanzania is at present largely free of exchange control restrictions and the foreign exchange payment framework is held by most FDI executives to have operated relatively efficiently over the past five years, especially with the privatization of previously State-owned dealer banks. In this respect, Tanzania is approaching best practice within the region delivering a foreign exchange regime that is strongly supportive of FDI. This is probably the most important single factor contributing to the striking improvement in the investment climate that has taken place in recent years. However, it should be kept in mind that in the mining and petroleum sectors where there are long-term projects with licences and agreements extending over 20 or 30 years, major investors will seek contractual undertakings from the Government which could give protection in the event that a more rigorous exchange control regime is reintroduced at some time in the future.

(c) Expatriate and immigrant labour

The basic legislation covering immigration to Tanzania is the Immigration Act of 1995 (which came into force in 1998) as modified by the Financial Laws Act of 1997, which assigns the management and administration of expatriate employment policy to the Tanzania Investment Centre. A similar devolved allocation of responsibility for expatriate immigration exists within Zanzibar through ZIPA.

Under the 1997 Act, every incoming business enterprise having a Certificate of Incentives is entitled to an automatic initial immigrant quota of up to five non-Tanzanian persons during the start-up period of a business, which is deemed to continue for five years. TIC administers the requests for expatriate staff, and maintains records of expatriates granted entry under the Act. Investors may apply to TIC for approval to bring in additional expatriate employees beyond the initial five. TIC then reviews this request with the Immigration Department in relation to the availability of qualified Tanzanian nationals, the complexity of the technology involved in the incoming business, and earlier TIC agreements with the foreign investors concerned.

The present perception of private sector businesses and organizations is that this immigration policy framework is working well: decisions are normally reached with little delay; and the management expatriates now arriving in Tanzania are filling an important gap in the country's business base. Most large foreign companies also use their expatriate staff in a mentoring role to develop and bring on Tanzanian managers and skilled staff. Such expatriates will also play a lead role in achieving the changes in Tanzania's business culture that lie at the core of the Business Environment Strengthening for Tanzania (BEST) Programme. Further improvements are planned in the administration of work permits, and a Work Permit Customer Charter is to be introduced by the middle of 2002.

No limits or quotas are applied to the number of expatriate managers and employees allowed

to enter Tanzania for mining, natural gas or petroleum projects, as it is recognized that the technical skills required are not yet available in Tanzania. All requests to TIC for expatriate staff for these sectors, over the five automatically allowed, have to be fully justified by the FDI company, and will have been identified as a priority in the initial feasibility study and business plan required under the 1997 Act.

4. Protection of FDI

The Tanzanian Government is aware of the long-term adverse effects of government expropriation or seizure of private sector corporate assets, and has specifically addressed this issue in the 1997 Act.

However, section 22 of the 1997 Act, which seeks to deal with the matter, is contradictory and confusing in its present form. Subsection (1) provides that no business enterprise shall be nationalized or expropriated by the Government, and that no person who owns, whether wholly or in part, the capital of any business enterprise shall be compelled by law to cede his interest in the capital to any other person. That statement looks clear and unambiguous but is subject to subsections (2) and (3), which provide that the State may not acquire a business enterprise to which the Act applies unless the acquisition is effected with due process of law, and there is payment of fair, adequate and prompt compensation with the right of access to a court or arbitration in the event of a dispute. What most investors will expect is an undertaking that if their assets are compulsorily acquired, that will be done for a public purpose with due process of law, adequate and prompt compensation will be paid, and disputes settled by reference to arbitration.

Revision of section 22 would help to sustain a favourable investment climate. However, it is important to understand that major investors, particularly those hoping to raise limited resource project finance, may not be fully satisfied by a statutory provision of this kind. Parliament in Tanzania cannot bind its successors. Undertakings by the Government, however carefully drafted, if not contained in the Constitution may be subsequently appealed or amended. For that reason, major investors will look for contractual commitments by the Government, with submission to international arbitration in the event of a dispute.

C. General investment measures and conditions

1. Commercial legislation and the rule of law

The present framework of commercial and contract legislation and the current judicial system are regarded by foreign investors operating within Tanzania as a constraint on the establishment and profitable operation of new international business ventures in the country. Reforming the commercial legal system is thus a high national priority within the investment framework.

Box II.4. The Investor Roadmap

The Tanzania Investor Roadmap was first prepared in 1996. Tanzania was about 10 years into market-oriented reforms and undergoing economic and policy instability. Investment applications had dropped from 365 in 1991 to 123 in 1995 and inquiries fell from a monthly average of 150 to 20. The Roadmap identified procedural and policy investment problems that deterred new foreign and domestic investment and impeded the expansion of existing enterprises. On the basis of the Government's evaluation of problem areas, the Roadmap offered recommendations which became the basis for subsequent institutional, managerial and policy reforms. An assessment in 1999 showed that the Tanzanian Government had achieved considerable progress but that many challenges remain in key areas of private firms' activities:

Employment

- Expatriate staff. Securing work permits was reduced from months to a matter of weeks, but is still too long;
- Local workforce. Recent changes in labour practices allowing for one and two-year contracts have eased concerns over what is considered excessively worker-protective labour laws. The cost and number of workers' benefits as well as the lack of skilled Tanzanian managers are still problems.

Locating

- Obtaining land leases still takes months or even years, partly because few plots are surveyed and current tenants must be compensated and partly because several authorities are involved in the process: the local authorities, district level officials, three divisions within the Ministry of Lands and the TIC. Non-Tanzanians are not allowed to own land; developing land, from obtaining construction permits to actual construction, is still a very cumbersome, uncertain and expensive undertaking; and establishing utilities connections is comparatively more time-consuming and expensive than in neighbouring countries.

Reporting

- Instead of approving and regulating investment, the post-1997 Investment Act TIC has taken on the role of registering and facilitating it. It has cut the time-lag for obtaining a Certificate of Incentives to weeks instead of months and has strengthened coordination with other government agencies, but there is still room for further improvement;
- the number and rates of taxes, as well as mode of collection, are a continued concern to investors. They are also serious deterrents for the formalization of the informal sector; and
- there are still too many licences and overlapping regulatory mandates, with too many official agencies that lack the capacity to regulate, but extract licensing fees or taxes nonetheless.

Operating

- Customs clearance now takes only 4-7 days, where it used to take at least two weeks, but investors still consider the process overly time-consuming and complicated;
- certain improvement in import/export procedures, but still not at sufficient level; and
- acquisition of foreign exchange and repatriation of profits no longer problem areas.

Other broader non-procedural issues identified by the 1999 Roadmap exercise that need to be resolved to make Tanzania a top investment destination are the obsolete legal system, poor infrastructure, declining education and increasing health problems.

Source: Services Group (1999).

The existing laws governing commercial disputes and contract enforcement are outdated and there are also gaps in relation to modern business organizations, commercial practices and modern business systems and technology. To avoid confusion and unnecessary expense in respect of legal and other fees to potential investors, these laws must be revised and made consistent with each

other. A more serious concern, identified as a priority for government action in the 1996 and 1999 Investor Roadmap surveys (box II.4), is the perceived lack of integrity in the Tanzanian court and justice system, which has been the subject of a continuing series of not always successful attempts at reform. This adversely affects the settlement of disputes.

2. Settlement of disputes

The 1997 Act contains provisions (section 23) for the negotiation and settlement of disputes among Tanzanian and foreign enterprises, TIC and central government. Where the preferred amicable settlement via negotiation between the parties is not achieved, the parties may then seek agreement through the arbitration laws of Tanzania, through the International Centre for the Settlement of Investment Disputes, or within appropriate bilateral or multilateral treaties. Zanzibar has similar provisions.

There are some ambiguities in the present legislation in relation to the settlement of disputes, but more importantly, there appears to be no defined statutory mechanism through which investors can ensure that progress is made in addressing concerns and disputes of investors that are less serious than full disputes. Should government or an agency not deliver on its promised support or intervention for resolving a contractual dispute with Tanzanian parties (as has been the case with two investors known to the review team), there is currently no easy way to break the impasse. This is especially important in relation to investor disputes and negotiations with TRA in spite of the tax appeal mechanism established by the TRA Act, which investors are encouraged to use.

The courts are widely regarded as slow, inefficient, capable of influence and (especially at lower levels) easily corruptible. As a result, foreign affiliates are normally loath to take contract, debtor or employment disputes to court, and seek resolution outside the legal system. These concerns also apply to taking commercial disputes to the national court system and to using the non-court dispute resolution mechanisms available within various Acts. Companies can thus feel vulnerable when doing business in Tanzania, and as corruption in the legal and court systems has not yet been prosecuted and punished, the image of Tanzania as an efficient, secure and profitable location for foreign investment has been affected. This is the prime area of weakness within the FDI operating framework.

Of equal concern is the difficulty in ensuring a fully transparent, efficient and timely resolution of commercial disputes within the present court system, especially in relation to enforcement of debt collection from Tanzanian customers of foreign affiliates. The dispute provisions within the 1997 Act need to be both strengthened and incorporated into the relevant commercial contract law of Tanzania.

The organization and authority of TIC are designed specifically to reduce foreign investor uncertainties and disputes through the secondment of executive staff from TRA, the Ministry of Lands and Urban Settlements, the Ministry of Labour, the Immigration Service, and the Companies Registration section of the Ministry of Industry and Commerce to the TIC offices. They have small, dedicated offices in the TIC building to investigate and resolve investor problems. In practice, the Ministries continue to make the key decisions. Whilst this has begun to create a genuine one-stop shop for investors, there are still problems, especially with the TRA's interpretation of its sometimes conflicting roles in investment promotion and national revenue priorities.

Each of the TIC's staff members has a portfolio of private investors, both Tanzanian and foreign, for which they act as client representatives through six monthly meetings with each client investor. This is meant to identify and rapidly respond to any emerging disputes or regulatory problems as well as to review the progress with investments; but a shortage of TIC transport and an inadequate budget make such support difficult.

3. Labour market legislation

The employment and labour laws largely reflect the political priorities of the pre-1990 period. They were designed to support the public sector in a centrally planned economy where issues such as security of employment or minimum wage were of paramount concern. Their current impact on investors is to make it relatively expensive for companies and employees to terminate or lay off employees. This has the consequence of making companies wary about creating jobs and taking on employees on permanent contracts until they have proved their suitability, and also of ensuring that the real cost of worker benefits is comparatively high for the companies, which tends to restrict basic wage levels.

The Government recognizes that it does not yet have employment laws capable of fully supporting a modern private sector economy, and that they will appear onerous and complex to foreign companies used to operating under more flexible employment regimes. The Ministry of Labour, with the support of Denmark, has begun to reform labour laws through simplification of existing legislation and processes, especially in relation to employee dismissal; to review and adjust the role of the Industrial Court; and to make the other changes to bring Tanzania into line with best practice standards in its competitor countries. This greater flexibility in employment is essential in the context of exports from Tanzania in the cyclical global economy.

4. Land issues

Ownership of land, both urban and rural, within Tanzania and Zanzibar is vested in the Government, and is available only as leaseholds. Structures built on land can be wholly owned. The Government is currently pursuing a major rationalization and restatement of land law to remove the present uncertainties that have evolved over the course of the past 50 years. The Land Act and the Village Land Act 1999, which came into force in May 2001, both contain provisions to make land available to private sector investors on a leasehold basis with a secure title. A series of parallel administrative changes, which are seen as being especially important in attracting FDI, have been implemented recently.

Although normally the distribution of land is the responsibility of the Ministry of Lands, the 1999 Land Act has empowered TIC to provide land to investors as part of the one-stop-shop service. Hence the presence within TIC premises of a Principal Land Officer stationed at TIC by the Ministry of Lands.

Under the 1999 Land Act, all districts are required to prepare “land use plans” which identify a specific area of land to be used for investment purposes. The Ministry then demarcates such land and announces its new status through the Government Official Gazette. Some of this land is subsequently transferred to the responsibility of TIC for distribution to potential investors.

Once an investor has made a decision to invest and has applied for land, TIC assists in identifying an appropriate size of land in areas suitable for the investor’s needs. TIC then grants land rights to the investor on a leasehold basis for a period ranging from 33 through 66 to 99 years. This system of land provision does not apply in mining or the oil and natural gas sectors, where mineral rights are granted by the Ministry of Mining and Energy.

While the recent changes in the administration of land allocation are encouraging, it is evident from the responses of investors, especially local investors, that the system requires further improvements to meet the demands of a growing market economy. For instance, delays experienced by foreign investors in obtaining land leases and the lack of transparency in the administration of applications for business uses need to be remedied. Another indicator of the limitation of the present system is the reluctance of commercial banks to use land as collateral in giving loans to investors. The Government intends to amend the Act in order to meet the requirements of the banks.

5. Taxation and investment incentives

Tax reform has been an important component of Tanzania’s reform programme. In the 1980s and the early 1990s the reform aimed at simplifying the tax system and enhancing tax revenue collection. Despite the reforms, the tax structure is still complicated (Levin, 2001). Value added tax (VAT) was introduced in 1998 and replaced previous sales tax and part of stamp duty and entertainment taxes.

The general corporate tax rate in Tanzania is 30 per cent, which compares with the rates in other countries in the region (table II.1). It is less than in Ghana (35 per cent) but higher than in Zimbabwe (25 per cent). There is no withholding tax on interest, which compares favourably with such countries as South Africa (20 per cent) and Ghana (5 per cent). Withholding tax on dividends is 10 per cent, less than that in South Africa (12.5 per cent) and Zimbabwe (20 per cent). VAT on capital goods is zero, comparable to the rate in the countries mentioned. On non-capital goods and services, VAT is 20 per cent. Depreciation allowances for capital assets are also very liberal: 100 per cent of the value is allowed to be deducted. In *The Africa Competitiveness Report 2000/2001*, corporate and income taxes were listed among assets of Tanzania’s business climate while employee payroll tax, tax evasion and import tariffs (including the average tariff rate) were among the liabilities (World Economic Forum, 2000, p. 219).

There is also a plethora of local licences, permits, duties and levies throughout mainland Tanzania and Zanzibar, which are significantly more numerous than in most countries and impose additional transaction costs on investors (box II.5). The multiplicity of taxes and non-transparent procedures can not only act as a barrier to FDI but also prevent local investors from entering formal business and result in the emergence of a significant informal sector. It is important that the Government fulfils the commitment made in the 2001/2002 budget to rationalize local and central government taxes.

All incentives have a fiscal base, and are delivered through a reduction in, or exclusion from, tax or duty payments to investors in lead and priority sectors with investment above \$300,000 in the case of foreign investors and above \$100,000 in the case of local investors (table II.2 and box II.6). As regards general incentives, until 1997 there were differences between lead

Table II.1. Comparison of fiscal regimes in selected countries
(Percentage)

Item	Tanzania	Zimbabwe	South Africa	Ghana	Peru
Royalty:					
Gold	3	0	0	3-12 ^a	0
Diamonds	5	0	0		0
Withholding tax on dividends ^b	10	20	12.5	3.5	None
Withholding tax on loan interest	None	None	20	5	None
Withholding tax on salaries and fees for foreign consultants	3	20	None	5	None
VAT on mining capital goods	None	None	None	None	None
Depreciation allowance	100	100	12.5 ^c	75	20

Source: Chamber of Mines, Tanzania.

^a All minerals.

^b Remitted abroad.

^c Compounded.

and priority sectors on the one hand and other sectors on the other hand with respect to corporation tax as well as between lead, priority and other sectors with respect to import duty on capital goods (which was, respectively, 0, 5 and 10 per cent). The 1997 Act and subsequent fiscal Acts have harmonized fiscal incentives, eliminating these differences as well as differences in value added tax on capital goods and carrying forward of losses, further eroding the value of the Certificate of Incentives as a provider of privileges to investors in priority areas. The Certificate continues to serve as a tool to distinguish investors according to the desired threshold levels determined by the 1997 Investment Act. There has been steady progress to making the award of investor benefits automatic.

Apart from the general incentives linked to the Certificate of Incentives, the 1997 Act under section 20 empowers the Minister of Planning and Privatization, in consultation with the Minister of Finance, to offer additional investment incentives or benefits over and above those specified in the Act, on a case-by-case basis, should an investment project have a special national economic development importance. TIC has a defined role in the determination of the need for specific investment incentives through identifying a project and agreeing that it has national strategic importance. Only two FDI cases, both in sugar growing and processing, have so far received such additional incentives; but it is possible that targeted incentives may be progressively introduced, especially for agricultural and infrastructure projects which have been recently confirmed to be among the lead sectors (box II.1).

Box II.5. Local taxes and levies collected by Ilala Municipal Commission: financial year 1999/2000

Development levy	Profession licence
Guest house levy	Local liquor business licence
City service levy	Market levy
Food licence application and fee	Livestock-keeping licence
Hotel registration application and licence fee	Small licence
Registration fee of health care, dispensary, pharmacy, professional and laboratories	Daily levy
Business licences under by-laws	Sign and advertisement fee
Liquor import licence application	Bus stand fee
Local liquor licence application	Road crossing fee (daladala)
Taxi cab and vehicle registration fee	Site fencing levy
Scale levy	Motor vehicle levy
Up-country business licence	Oil levy
	Building tax
	Fishing licence

Source: The United Republic of Tanzania (2000c, pp.28-29).

Table II.2. Taxation

Tax	Legislation	Year	Present level, percentage
A. CENTRAL GOVERNMENT			
Corporation tax	Income Tax Act	1973	30
Withholding tax on dividends	Income Tax Act	1973	10
Withholding tax on interest	Income Tax Act	1973	0
Payroll levy ^a	Payroll Levy Act	..	4
VAT on raw materials and traded products	VAT Act	1997	20
VAT on capital goods	VAT Act	1997	Deferred
VAT on mining, tourism services and education	VAT Act	1997	0
Import duty on capital goods and raw materials	Customs Tariff Act	1976	0
Training levy ^b	Training Levy Act	1972	2
Stamp duty	Stamp Duty Act	1972	2-3
Capital gains tax	Income Tax Act	1993	10
B. LOCAL GOVERNMENT			
Development levy	Local Govt Act	1982	1.0 per cent of income
Property rate	Local Govt Act	1982	0.15 per cent rateable value
City service levy	Local Govt Act	1982	0.3 per cent of turnover
Other local levies	Local Govt Act	1982	Various (box II.5)

Sources: The United Republic of Tanzania (2000c, Appendix 3) and TIC.

^a Per cent of gross wage bill.

^b Levied on gross payroll.

Box II.6. Other investment incentives

- VAT zero-rating on manufactured exports; and VAT deferment for new capital equipment assets purchased by VAT registered investors.
- 100 per cent investment allowances and deductions against Tanzanian corporate tax in the first year of income. A five-year carry-over of all business losses following start-up against future business profits.
- Automatic approval of the employment of up to five foreign nationals in any project granted a Certificate of Incentives.
- Access to land.

Sources: Investment Act 1997, Income Tax Act 1973, Customs Tariff Act 1976; and Sales Tax Act 1976.

Special investment incentives are also available to domestic and FDI projects in petroleum exploration and development (box II.7); and Zanzibar has introduced its own set of incentives for its Free Economic Zone and Freeport areas (box II.8) which are designed to be no less attractive than incentives offered by island countries in the region such as Mauritius. There are some concerns in the mainland about these Zanzibari incentives, especially where these are liable to be interpreted as “exporting” from Zanzibar to mainland Tanzania.

Box II.7. Incentives for petroleum exploration and development

The general investment incentives listed in table II.1 and box II.6 are supplemented by the following sector-specific allowances:

- The award of 11-year exploration and development concessions based on four initial exploration years with a four-year extension, and a second three-year extension to the point of production.
- Relatively large exploration area concessions up to a maximum of 60 blocks, with RSA certificates d for more than one licence.
- Generous and negotiable work programmes covering oil recovery cost allowances and oil profit splits with government.
- No import duties on all equipment brought in for petroleum exploration.
- No signature or production bonus payment.
- Full allowance for unrecovered exploration costs incurred under earlier PSAs by the company in all its contract areas once it has made a discovery in a subsequent PSA, i.e. no ring-fencing.

Sources: Tanzania Investment Centre; Petroleum (Exploration and Production) Act, 1980; Tanzania Investment Act, 1997.

The present structure and level of fiscal incentives to foreign investors in Tanzania as presented in the 1997 Investment Act and updated in annual financial legislation are still unclear. With the exception of mining and petroleum, there appears to be currently no difference in the level or type of investment incentives available to eligible investors in the lead and priority sectors and investment prioritization is thus promoted by other means. When reviewing the present incentives framework and levels, there is no reason to change incentives in mining, which have proved to be instrumental in attracting significant and beneficial FDI into this sector.

6. Export processing zones

In mainland Tanzania there have been moves to establish export processing zones (EPZs) since the early 1990s, when the African Development Bank was requested to conduct a study on EPZs. The study was completed in 1995 and recommended EPZs in Dar-es-Salaam, Kigoma, Tanga and any other suitable town. It estimated the cost of establishing a good EPZ, similar to EPZs in Malaysia and Mauritius, at \$29 million. The Government found the cost to be much too high to guarantee returns and decided to pursue alternative ways. As a result of another study completed in 2000, the National Development Corporation (NDC) was appointed to supervise the establishment of EPZs (box III.2). The current thinking is that the first zone will be created in the proximity of Dar-es-Salaam, close to the main roads and with easy access to power supply. The Government will not develop the zone, but will make it available to private investors as an investment opportunity, providing land and the appropriate, attractive legislation. The necessary infrastructure is to be developed by private investors. EPZ status is to be given to individual factories with the potential to export 80 per cent or more of their production. The expectation is that the cabinet will approve the establishment of EPZs in the early 2002, paving the way for EPZ legislation and operationalization during 2002.

Box II.8. Investment incentives in Zanzibar

- ZAFREZA-administered 10-year corporate tax holiday.
- No withholding tax on dividends, interest and any other income accrued from business transactions during the tax holiday period.*
- Free repatriation of dividends after taxation.*
- 25 per cent investment allowance and 100 per cent ownership retention.*
- Waiving of rent on leased property during the construction period.
- Exemption from customs and import duties for:
 - Manufacturing equipment and capital goods during the construction period**
 - Raw materials for the manufacturing process utilized for trial purposes*
 - Raw material inputs used in production of finished goods destined for export markets*
 - Personal effects of expatriate personnel during the first six months of their business commencement*
- Generous terms of government land lease for 49 years, which can be extended to 98 years.

* Union investment incentives.

Sources: Zanzibar Free Economic Zone Authority and Zanzibar Freeport Authority.

In Zanzibar a Free Economic Zone and a separate Freeport have been established under legislation from the House of Representatives, and these have additional investment incentives for companies locating in these zones.

The *Zanzibar Free Economic Zones Authority (ZAFREZA)* was established as an autonomous agency of the Government of Zanzibar. Free economic zones are currently being

planned and funded at Fumba and Micheweni to complement the first zone at Amaan Industrial Park outside Zanzibar town. Preference is given to attracting manufacturing projects, which will be required to export a minimum of 80 per cent of their output from Zanzibar. The incentives to investors within the zone are summarized in box II.8.

The *Zanzibar Freeport Authority (ZFA)* was created in 1998 as a public sector agency responsible for developing, managing and promoting a new bonded Freeport complex alongside the harbour in Zanzibar. This 39,000 square metre complex is designed to enable goods being transhipped or warehoused in Zanzibar to have minimal customs and administrative requirements and interference. Zanzibar, as a long-established entrepôt trading economy, sees Free Economic Zones and Freeports as enabling it to better compete against Mauritius in attracting international manufacturing and trading companies seeking access to Central African, East African and Gulf States' markets.

There are concerns in the mainland regarding the special zones in Zanzibar, when goods from these zones enjoying a number of benefits, are sold on the mainland, thereby putting businesses there at a competitive disadvantage. This is a Union matter which requires attention.

7. Technology in the new investment policy

The 1997 Act has provisions facilitating transfer of technology into Tanzania. Foreign investors that meet the minimum investment requirement can import machinery, capital equipment, vehicles (especially investments in mining and agriculture), installation material and, in the case of mining, explosives, lubricants and industrial items either free of import duty or at a rate not exceeding 5 per cent. Section 26 (1) removes all restrictions relating to technology transfer agreements with foreign suppliers of technology. It states that a person who has “established an enterprise may enter into such transfer of technology agreement as he considers appropriate for his enterprise.” Coupled with the guarantee of freedom of transfer in a freely convertible currency of royalties, fees and charges in respect of any technology transfer agreement and payment of emoluments and other benefits to foreign personnel employed in Tanzania investment projects, the 1997 Act goes a long way to bringing technology to Tanzania. Moreover, in order to make the process easier, the 1997 Act has removed the need for separate application for transfer of technology agreement.

In contrast to the old and cumbersome work permit procedure, under the new investment regime, holders of Certificates of Incentive are entitled to an initial automatic work permit for up to five persons during the start-up period. This has eliminated the concerns that the foreign companies often have about finding highly skilled managerial, supervisory and/or technical staff to oversee the establishment and operation stages of their investment. This new provision allows them to bring their own skilled personnel and it appears that most of the new foreign investment in the country has taken advantage of this regulation. In addition, if the need for additional technical expertise can be demonstrated, TIC, in consultation with the Immigration Department, can allow additional technical persons. There are no limits to the number of foreign experts or managers who can be brought to Tanzania in mining, natural gas and petroleum projects, as it is recognized that such expertise is not available in Tanzania at present. Thus, the 1997 Act has proactive measures for encouraging technology transfer to Tanzania.

8. Protection of intellectual property

Intellectual property rights (IPR) are an important issue for FDI, especially in relation to the statutory and practical protection of brands, logos, technology and products, the loss of which has been a cause for concern in many capital exporting countries. Tanzania, through its Patent Act and the Trade Services Marks Act (both enacted in 1987), has the basic statutory framework for protecting IPR and settling IPR disputes. The Government therefore seeks to ensure IPR protection for its investors, but as yet this has not been an active issue in that the indigenous SME sector has not yet evolved the manufacturing and marketing capability to cause concern to international investors in Tanzania. The 1997 Tanzania Investment Act requires that all technology transfer agreements by FDI and Tanzanian companies be registered with TIC as a means of monitoring technology and IPR flows.

Tanzania is a founding member of the World Trade Organization (WTO); the African Regional Industrial Property Organization (ARIPO); and the World Intellectual Property Organization (WIPO). It is a signatory to the Paris and Berne Conventions, and to other key international protocols governing the creation, ownership, use and sale of IPR. However, there is currently a lack of effective statutory and administrative mechanisms to identify, pursue and punish infringements of IPR: this is currently being addressed by the Government.

9. Environmental protection

There is a growing national awareness of the environmental consequences of unplanned and unregulated economic and commercial developments, especially in sensitive coastal and rural areas of Tanzania important to Tanzania's growing tourism economy. The current regulation for environmental protection is the National Environment Act of 1983, administered by the Ministry of Parks and Natural Resources. This legislation needs to be revised. It is now standard practice for major FDI projects in Tanzania to undertake Environmental Impact Assessment (EIA) studies in advance of their construction, and these are a precondition for construction and planning permits. FDI projects guaranteed by the Multilateral Investment Guarantee Agency (MIGA) must undertake EIAs to demonstrate that they do not damage the environment and are sustainable, especially for mining, oil and natural gas, and tourism projects in the wildlife parks and coastal areas.

Both TIC and ZIPA seek to assess FDI projects against environmental benefit and impact criteria; and can require EIAs where significant capital projects are involved. Such impact assessments will be extended to domestic SMEs once the necessary resources and skills are available.

10. Capital and financial markets

The Capital Markets and Securities Act 1994 provides the legislative basis for establishing a Capital Markets and Securities Authority for Tanzania with the aim of promoting and facilitating the creation of an efficient, fair and transparent capital and securities market. The Act introduces a series of regulatory requirements for stockbrokers and securities dealers, and regulates stockbroking and securities dealing for foreign companies operating in Tanzania. Banks and other financial enterprises are separately regulated through the 1991 Banking and Financial Institutions Act. Commercial, development and microfinance banking are three of the priority sectors for Tanzania to pursue in promoting investment; and the privatization of State-owned banks since 1995 has been the principal means of attracting FDI into these essential economic sectors. There has, however, been little real progress in attracting and developing microfinance banking via FDI.

11. Foreign exchange regulations

The administration of foreign exchange control is undertaken by the Bank of Tanzania through the 1995 Bank of Tanzania Act, which empowers the Bank to control all aspects of foreign exchange in Tanzania and Zanzibar, including authorizing payments abroad. Since 1993 the Bank's official local currency rates have been harmonized with those offered by commercial banks, and a single exchange rate now applies to all foreign exchange transactions.

The single exchange rate applies to both government and private sector imports; and there are no foreign exchange controls on trade although the release of foreign exchange in excess of \$5,000 requires a declaration form. Since July 1995 Tanzania has accepted the IMF obligations to refrain from imposing restrictions on foreign exchange payments or transfers of capital overseas, from engaging in discriminating currency transactions and from multiple currency practices without IMF approval.

12. Sectoral investment regimes

(a) Gemstone and minerals mining

This sector was originally dominated by the State Mining Corporation (SMC), established in 1973 to oversee all mines throughout Tanzania. SMC still owns and operates a small number of ore mining concessions, and the National Research and Development Corporation (NRDC) also became involved in operating iron ore concessions in the south and remains active within the sector. From 1990 the Government began to encourage FDI in mining gemstones, gold and other minerals, and this resulted in the Mineral Policy of Tanzania being introduced in 1997, followed by the 1998 Mining Act. This provides (with the 1997 Tanzania Investment Act) the present statutory framework for FDI in the mining sector.

The policy and operating framework is investor-friendly. In many ways it is "best of its kind" in terms of providing a positive supporting environment. The taxation and investment allowances

are attractive. The Ministry is relatively efficient and supportive and all necessary certificates are normally obtained within two weeks. The FDI framework is thus strongly positive. The industry, as well as the Ministry, is hopeful that Tanzania will become a significant international mining location in the future, creating employment and exports, thereby acting as a driving sector for change. The main areas for improvement are the removal of restrictions on land ownership, and infrastructure in the main mining areas.

(b) *Petroleum and gas*

The Petroleum (Exploration and Production) Act of 1980, recognizing the high costs and uncertain results of exploration and development, seeks to provide an attractive operating environment for international oil and gas companies.

As regards incentives, in addition to the standard fiscal incentives, these include zero import duties on any purchased equipment, and full allowance for unrecovered exploration costs incurred under earlier production sharing agreements (PSAs). An attractive feature is that international companies in this sector can opt to maintain their operating accounts for their Tanzanian activities in dollars, and to pay their Tanzanian taxes and charges in dollars at the prevailing exchange rate. This constitutes a dollar basis for investment, capital expenditure and purchases of the global oil and gas industry. The policy appears to be effective in encouraging FDI in the emerging Tanzanian hydrocarbon sector.

(c) *Tourism and hotels*

Attracting FDI in tourism and the hotel sector is a strategic priority for Tanzania, especially in relation to the major game parks, wildlife reserves and coastal areas. The emergence of Arusha as a significant new international airport in Northern Tanzania is an indication of the significant economic potential of tourism for the economy. Tourism FDI is generally governed by the 1997 Act, and its development is the responsibility of the Ministry of Natural Resources, which has the policy remit for the game parks, nature and coastal areas.

Investment in tourism enterprises in Tanzania is governed by the Hotels Act 1963 and the Tourist Agency Licensing Act 1969, both drawn up in the context of much less internationally competitive tourism markets. Licensing restrictions currently exist within this legislation and its implementing ordinances – that is, car hire and travel agency licences can be issued only to Tanzanian nationals – and travel agencies must employ at least two Tanzanian nationals holding certificates in tourism.

13. International agreements

Tanzania is signatory to several international agreements governing the protection of foreign investment in Tanzania (table II.3). It has also signed bilateral investment treaties (BITs) with ten countries and double taxation treaties (DTTs) with nine countries (table II.4). The present international, regional and bilateral treaty network is an indication of Tanzania's intent to actively promote and protect FDI. This can be further strengthened by signing BITs and DTTs with the

major home countries such as the United States, France and Japan as well as new dynamic home countries from Asia, such as Malaysia, Singapore and Thailand. The absence of a BIT with South Africa, a major regional home country, is striking.

Table II.3. International agreements

Agreement	Date established	Tanzanian accession
Convention on the Recognition and Enforcement of Foreign Arbitral Awards	1959	1964
Convention on the Settlement of Investment Disputes Between States and Nationals of other States	1966	1992
Paris Convention for the Protection of Industrial Property	1963	1994
Convention Establishing the Multilateral Investment Guarantee Agency	1988	1992
Marrakesh Agreement Establishing the World Trade Organization, Agreement on Trade-Related Investment Measures	1995	1995

Source: UNCTAD (2001a).

Tanzania is an active member of the main international treaties governing the protection of international investment, including the World Bank's MIGA and the International Centre for the Settlement of Investment Disputes (ICSID). Both TIC and ZIPA make clear to potential foreign investors and Tanzanian joint-venture partners that the Government recognizes the importance of providing a secure FDI framework through the provisions of the 1997 Act and the parallel legislation governing investment in the mining and petroleum sectors. In relation to FDI, these sectors and their legislation are deemed to be governed by the relevant FDI enabling and protection provisions (sections 15-26) of the 1997 Act.

Table II.4. Tanzania's bilateral investment treaties (BITs) and double taxation treaties (DTTs), as of December 2001

BITs	Year of signature	DTTs	Year of signature
Denmark	1999	Canada	1995
Egypt	1997	Denmark	1976
Finland	2001	Finland	1976
Germany	1965	India	1979
Italy	2001	Italy	1973
Korea, Republic of	1998	Norway	1976
Netherlands	1970, 2001	South Africa	1959
Sweden	1999	Sweden	1976
Switzerland	1965	Zambia	1968
United Kingdom	1994		

Source: Government of Tanzania.

D. Role of the Tanzania Investment Centre

Among its efforts to attract FDI, Tanzania established TIC with the mission “to coordinate, encourage, promote and facilitate investment in Tanzania and to advise Government on investment policy and related matters.” As part of an ongoing process of upgrading the TIC and strengthening its role, greater resources were allocated to it; the formation of an Investment Steering Committee was approved to ensure that other institutions fully cooperate with the TIC in investment promotion and facilitation; and recommendations have been made to restructure and reposition the TIC as an autonomous body in order to allow the flexibility to recruit highly qualified professionals.

As the guardian of the 1997 Act the Centre has acquired amongst the business community in Tanzania an enviable reputation for good sense, courtesy, and a willingness to help, inform and advise prospective investors. That is said by some investors to contrast with more negative and sometimes rather slovenly attitudes that can be encountered in a direct approach to the ministries involved in a particular project. The Centre should build on this core competence and steer away from activities that involve screening, approval or even registration of investments if that requirement is to be provided under the Companies Act. To that end, the Centre should play the role of guide to the applicable Acts and Regulations that an investor may need to understand. At present many investors seem to rely on anecdote, which can result in an exaggerated idea of the difficulties they are facing. However, the Centre should take care not to assume the function of legal adviser to prospective investors. To do so would be seen as encroaching on a legitimate private sector activity, and could open the Centre to liabilities regarding disgruntled clients.

Under section 16 of the 1997 Act the Centre is given an active role in securing for prospective investors licences and approvals that may be required for a particular investment. In the Centre and amongst some investors considerable importance is attached to what is described as the “fourteen-day rule.” Clearly this activity as facilitator should be continued. However, it would be prudent to examine carefully how the fourteen-day rule has actually worked in practice. It is not generally considered good administrative practice to provide by law for the way in which one government department should deal with another.

From the perspective of implementing the investment promotion and facilitation functions, the TIC Corporate Plan, covering the period from July 2001 to June 2006, specifies the following:

- Creating and maintaining a positive climate for private sector investment;
- Stimulating investments by the private sector;
- Attracting foreign investment; and
- Providing assistance to all investors.

Investor facilitation and servicing includes: improving procedures for processing inquiries, improving response time for inquiries and proactively responding to inquiries; developing investor tracking systems and a computerized information database; facilitating and servicing existing investors and assisting in project implementation. The development of the Centre’s after-care role is important. The existing stock of FDI provides a substantial demonstration effect for subsequent and sequential investment. Another objective is to try to integrate foreign investors into the economy as development and alliance partners by encouraging linkages with domestic enterprises. These include backward linkages with suppliers: as the company examples in this report show, some investors

import virtually all their requirements at the time of set-up, and efforts need to be made to encourage local sourcing subsequently. But there are other partnership possibilities too, such as in the area of education and training, collaboration with universities and research institutions on development projects, and the provision of management and marketing advice to local enterprises. Some of these activities will be sector-specific, but the TIC has a role as the body that should have the closest and most direct relationship with foreign-owned enterprises in Tanzania.

E. Assessment and recommendations

Tanzania has made considerable progress towards establishing an open and increasingly consistent and transparent legal framework for FDI. The establishment of TIC has been an important step in the direction of a single-door investment promotion agency with a direct Presidential remit to coordinate and deliver support from ministries and other agencies to foreign investors. A matching institutional capability has been achieved in Zanzibar through ZIPA.

The present investment framework is thus characterized by the relative ease of entry and establishment, with few industries not open to FDI and no ownership restrictions or performance requirements. The standards of treatment and protection of foreign investors have been raised to match the best practices of other countries in the region. General investment and operational conditions have improved because of the improvements in investment-related laws and regulations and the increasingly professional support of TIC and the ministerial representatives within the Centre. The improving economic situation and such changes in the investment environment as the emergence of private banks offering an increasing range of services have also helped in this respect. The rights of foreign investors are well secured through national legislation and Tanzania's participation in all important international investment agreements.

The adoption of the Mining Act 1998 has been a milestone in the improvement of investment frameworks in individual industries or sectors. The Act, considered by investors as "the best of its kind," was a single most important policy measure which, together with attractive sector-specific investment incentives, has attracted to Tanzania major mining transnational corporations (TNCs) and contributed to significantly increased FDI inflows into Tanzania. Some progress has also been achieved in streamlining the incentives system and moving towards automatic awards of investors' rights. The 1997 Act was instrumental in improving the investment framework and climate of Tanzania in the second half of the 1990s. However, the continuing process of change has outpaced reform of the statute book and, as a result, the Act is outliving its usefulness as an instrument to promote investment in the 21st century.

If Tanzania wants to consolidate its initial success in attracting FDI and move to new frontiers, it should continue to improve the investment framework. Recommended improvements include the following:

- Laws and regulations from the time of the centrally planned economy should be replaced with laws and regulations compatible with the requirements of the market economy and Tanzania's competitiveness. These include in particular employment and labour laws, commercial and contract law (including a new companies act) and tourism and fishing industry regulations.

- The commercial justice system should be further improved. A recently established commercial court is a step in the right direction. While large foreign investors will tend to resort to international arbitration, small investors, including the local business community, would benefit from a new arbitration act. A legal and administrative mechanism to identify, pursue and punish infringements of intellectual property rights is also required.
- The existing law embodied in the 1997 Act has become increasingly dysfunctional. The Act should be replaced by a new, modern act reflecting current conditions inside and outside Tanzania. Examples of areas where the Act has lost its relevance or should be updated include the functions of TIC, references to Acts which no longer exist or have been replaced by new Acts (e.g., the Sales Tax Act replaced by the VAT Act) and the Certificate of Incentives.
- The Fair Trade Practices Act of 1994, which focuses on traditional competition issues typical for developed countries, should be reviewed and amended if necessary, to reflect, among other things, the implications of the increased presence of foreign companies in Tanzania. The Tanzania Fair Trade Commission should be strengthened.
- A plethora of local licences, permits, duties and levies throughout mainland Tanzania and Zanzibar, significantly more numerous than in most countries and imposing additional transaction costs on investors, should be reviewed and their number reduced. In this respect, Government's commitment in the 2001/2002 budget to rationalize both local and central taxation is very timely.
- Investment incentives offered to both foreign and local investors should be reviewed and replaced by a simple and transparent system. The possible impact of the exclusion of FDI projects below thresholds determined by the 1997 Act on the inflow of FDI into manufacturing, agriculture and tourism should be examined. Should Tanzania decide to keep the thresholds, they should be lowered to levels competitive with those of other African countries. Provisions in the 1997 Act concerning additional non-specified incentives for strategic or major investments may lead to arbitrariness and discrimination among investors and should be reviewed. There is, however, no need to review incentives in the mining sector, which have proved to be instrumental in attracting FDI into this sector.
- The establishment of the first special economic zone should be used as an opportunity to create "a pocket of development" in addition to pockets already emerging around the gold mines. The first zone should fast-track Tanzania's push for industrial growth. It is therefore very important that the zone succeed. The existing and advanced concept of the EPZ near Dar-es-Salaam can be useful for this, but it could be improved in two respects. One is to broaden it to a Multi-facility Economic Zone (MFEZ). Secondly, the Government could be more involved than currently intended in order to make sure that the undertaking is successful.
- The network of BITs and DTTs should be expanded, particularly to include actual and potential home countries, including dynamic developing countries from Asia and the African region. The UNCTAD programme facilitating BIT negotiations among partner countries could be a cost-effective way of expanding the network.

- Efforts to turn both TIC and ZIPA into state-of-the art investment promotion agencies should continue. Their activities should initially concentrate on carrying the message that “Tanzania is open for business” and on focused targeting into areas of immediate FDI potential. These should gradually expand to include all functions of a fully fledged, one-stop investment agency. Needless to say, the promotion strategies of TIC and ZIPA, though coordinated, should take into account differences in competitive advantages between the mainland and Zanzibar.
- A comprehensive investment guide should be prepared identifying investment opportunities in the Tanzania, familiarizing foreign investors with FDI conditions, including entry and establishment procedures, the incentives available and the charges to be paid and providing practical information on the policy, legal and operating environment for investors. The recent TIC initiative in this respect is very timely and should be brought to a successful conclusion, producing a guide of professional quality.⁸

⁸ This could be done within the project on “Investment guides and Capacity-building for least developed countries,” a collaborative venture between UNCTAD and the International Chamber of Commerce, which has already resulted in five guides prepared for LDCs.