MANUAL ON INVESTMENT FOR COMMUNITY BASED ORGANISATIONS

ORGANISATION DEVELOPMENT AND COMMUNITY
MANAGEMENT TRUST (ODCMT)

Contents

Acknowledgements 4

1 Why a manual on Investment? 6

2 What is Investment? 8

3 Investment under globalization 11

4 What are Investment Agreements? 13

5 Changes in Investment Patterns 15

6 What is the Multilateral Agreement on Investment (MAI)? 21

7 What are the Existing Investment Provisions under the WTO? 24

8 The Investment Situation in Zambia 30

9 What is the Legal Framework for Investment Protection? 36

10 What are the Application Procedures for an Investment Licence 37

11 Policy Making Process for Investment 38

12 The Way Forward 41

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We sincerely hope from the revelations contained in these series, the consequences and impact of the subject issues on the livelihood of the poor in Zambia, could generate knowledge that should stimulate appropriate responsive decisions and actions from lessons learnt by all concerned stakeholders.

Francis S. Banda
Executive Director

November 2004
Lusaka

1 Why a manual on Investment?

This Manual on Investment for Community Based Organisations joins two others we have developed under this series. These Manuals are important because they attempt to tell the story of each topic simply and in a readable manner for the ordinary person.

The Organisation Development and Community Management Trust (ODCMT) has embarked on developing and producing manuals on various issues as advocacy tools in disseminating information to poor farmers in rural areas. Other manuals already developed include the Manual on Trade and the Manual on Pesticides.

The question why should there be a Manual on Investment can be answered by looking at the issues that involve money. We all need money to buy and sell or to invest in a house or a farm or a shop. Said differently, we all use money in our daily lives. In fact it would not be wrong to suggest that money is at the root of all human activities, including buying and selling of goods and services.

Thus in investment, movement of money to seek out opportunities for profit is at the heart of modern debate on trade. Much talk about the benefits of "free trade" is an argument to persuade us that it is good that governments liberalise trade. But the language used causes confusion because much of what is said to be trade is actually about opportunities for large companies, called Transnational Corporations (TNCs), to invest and move money and earn profits around the world without public accountability.

Under the debate of "free trade" a change has happened in the world, a change known as globalisation. In this period of "free trade" debates governments of developed

countries and big transnational companies have responded to declining profit rates in the 1970s by seeking new areas for profitable investment. They have sought new ways for governments to help big businesses make profits. It is for that reason we need to know and understand what investment is all about. We need to understand too, what lies behind the rhetoric of “free trade” and investment and a Manual on Investment is not only critical but necessary for the ordinary person to know and understand what is involved.

2 What is Investment?

We have already said above that Investment is about the movement of money. This may involve the buying of a plant (factory, a farm or a mine), or a company or shares in a company. When money is used to invest in this way, we call this money capital.

Investors invest money to make profits. And profits in turn are not, primarily, for the investors to consume - by buying food or houses for themselves - but for further investment. This process of re-investment to generate more money or have a continuous process of wealth is called accumulation.

Types of Investments
In this manual we shall distinguish between the geography, the agency and the form of investment.

Geographically investment can be within the borders of a country. Example is when companies or government in a particular country buy shares or set up factories within that country. We call this **domestic investment.**

During the second republic, the government invested heavily in what is called parastatal companies. Parastatals are companies wholly or partially owned by the government.

But investment can also be outside the borders of a country. Example is when a company buys shares or sets up plants inside another country. We call this foreign investment.

Foreign investment can either be **inward**. Example is when a South African company buys shares in a Zambian company. Or this can be **outward**. Example is when a Zambian company moves money to a country outside Zambia.

Zambia is only too aware of how South African companies have invested outside South Africa. This happened after the 1994 victory of democracy.

Agency investment can be made by private individuals or companies or by the state. When businesses and companies invest we call this **private sector investment.** But we call the building of new schools and public buildings by the state **public sector investment.**

A feature of globalization shows the extent to which governments have allowed the private sector to invest in the public sector through various forms of privatization of parastatals or the commercialization of services.

An important variant of private sector investment is sometimes called the social sector investment. This involves institutions, which can invest like private investors, but do not consist of shareholders. These institutions include pension funds, mutual societies and co-operative banks. Under globalisation many of these institutions have become major players in foreign and domestic investment.

But **Investment** can also take many other different forms. When a company sets up a factory, a mine or a farm or spends money to change the machinery or infrastructure or scale of production then we speak of **real fixed investment.** This kind of investment can be domestic or foreign but it is associated with increasing accumulation through increased production of goods and services. For

workers, even though they may be exploited by this kind of investment, there may be spin-offs in form of more jobs and cheaper and more commodities available to buy.

Investment can also be in the form of buying shares in companies domestically or across borders. This kind of investment is called **portfolio investment.**

Portfolio investment can be done for the sake of long-term involvement in the managing of a company. But many times companies buy shares not for the purposes of long-term involvement in the acquired company but for short-term possibility of buying shares cheaply and selling them or trading them at a profit.

This kind of portfolio investment is called **speculative** investment. It is a form of gambling and investors use many methods to minimize the risk of losses. Speculative investment is a feature of globalization, which underpins much of the changing role of the state in its desire to deregulate the flow of money. This is because speculators must have the freedom to buy and sell shares and government bonds (strictly speaking government debt) as flexibly as possible so as to make profits wherever and whenever the opportunity arises.

Questions for Discussion

1. What do you understand by the term “foreign investor”?
2. How many foreign investors are there in your community?
3. What benefits do you and your community get from the presence of the foreign investor?
4. Do you have local (Zambian) investors in your community?
5. What is the difference in the operations of the domestic and foreign investors?

3 Investment under globalization

Under globalization the speculative movement of money on a daily basis is 60-times the values of goods traded in the world. Speculative investment is, therefore, very big business.

This movement globally of speculative investment was a response to the fact that from the late 1960s and early 1970s the developed world was in a crisis of over-production. Thus instead of seeking to make profits out of increasing production investors sought to make profits from financial speculation.

In comparison with what investment meant for the late 19th and most of the twentieth centuries under globalization investment saw the change from banks providing money to finance from global speculators using money to make more money through speculative portfolio investment. This process reached its peak in the late 1990s with the rise of shareholder value and a financial bubble generated by high stock prices particularly in the United States of America.

How has Globalization Changed Investment?
Under globalization many changes have happened in

investment. For instance, there has been:

- A shift from productive investment as the main source of profits to investment in money markets
- An unprecedented expansion of foreign investment in many countries. This has, however, not occurred because of new investment or an increase in the total amount of investment but by share trading, mergers and acquisitions, privatization and the opening up of services to foreign investment.
- A change in the relationship between speculative and portfolio investment - which has become global - and real fixed investment - which remains largely national.

It is important to note that in comparison to trade, foreign investment is a politically much more sensitive issue. The reason for this is that it essentially raises the question of who owns and exercises control over national assets and resources?

In the post-World War two years, regulations were imposed on foreign investment due to past experiences where foreign firms not only indulged in restrictive and predatory business practices but also interfered in the domestic political affairs of the host countries. Consequently, in the aftermath of their independence from colonial rule several countries undertook measures like nationalization and appropriation of assets of foreign companies. Zambia also did the same when it nationalized the copper industry.

Questions for Discussion

1. What are the major foreign investments that you are aware of in your community?
2. What are the impacts of this investment in your community?
3. What changes would you like to see in the way investment comes to your area?

4 What are Investment Agreements?

Trade and investment agreements are about states being able to negotiate deals with other states in ways that suit, in theory at least, their needs.

Trade agreements have dealt with issues in which governments acting with other governments decide to reduce barriers such as tariffs and subsidies on particular goods traded between the countries.

Investment agreements on the other hand have been about governments deciding with other governments to make it easier for companies in one country to buy shares or set up companies and/or to take home the profits they make in the process.

It is possible to reduce tariffs and subsidies and thus liberalise trade but still keep or even increase regulations on foreign investment between two or more countries. It is also possible to ease foreign investment requirements and yet put barriers on trade.

Thus the whole issue of the balance of power between countries in the world is one that may be summed up as follows:

All countries in the world have to be involved in international trade, but only very few countries in the world are foreign investors.

The bulk of the world's countries receive foreign investment but do not themselves invest across boundaries.

Questions for Discussion

1. Which countries do you know with whom Zambia has signed investment agreement?
2. Who benefits from the investment agreements Zambia has signed with other countries?
3. Do you think Zambians should invest in other countries? (Give reasons for your answer)

5 Changes in Investment Patterns

For a long time in the history of capitalist development, investment or the buying and selling of companies and shares in companies and the movement of money to make this possible occurred within the borders of such countries.

At the end of the 19th century however there was a big movement in investment across borders. The Second Industrial Revolution saw the rise of big companies in Western Europe and the United States of America who set up factories and mines in the USA itself, in Central and Eastern Europe and then in Latin America, Asia and Africa.

To finance these investments major banks emerged and the sheer scale of these movements saw the rise of large banks. Often, direct relations between banks and large companies developed.

The two World Wars and their aftermath saw a change in the patterns of international investment. US companies benefited enormously from being a supplier to the armies of Europe. After World War two US companies further benefited from being the main investors in the reconstruction of Europe and Japan.

Other investment patterns saw German banks and manufacturers re-emerge largely as players in Europe. Reconstructed Japanese companies made major investments in the pacific countries of South East Asia. With these changes British investment lost the battle for manufacturing and thus shifted to speculative capital, investment in mining and food processing in their former colonies. In general developing countries largely became locations for foreign investment rather than centres for exporting investment.

With the rise of independence from the 1950s and the 1960s,

developing countries not only tried to protect their share of trade (through tariffs etc) but also attempted to regulate foreign investment. This regulation of foreign investment was done in a number of ways.

In general there have been two kinds of approaches to regulating investment – pre-admission requirements and post admission restrictions.

In the case of rules of entry foreign investors were only allowed to invest if they had satisfied conditions in advance. These conditions included only being in certain sectors, having a percentage of domestic shareholders and so on.

In the case of post admission restrictions foreign companies were allowed to invest but they would have to keep a percentage of their profits domestically, or only source their components from local suppliers and so on.

The following are some of the examples:

- Restrictions on what foreign companies could invest in. Here most governments identified strategic industries and simply made it impossible to have foreign investment either by passing laws that made this the case or by having a public utility. So sectors such as arms, telecommunications, public services (water, electricity, sewerage) were simply the exclusive domain of the state or of domestic private companies. Many of the most powerful countries in the world, notably the USA have extensive pre-admission requirements for foreign investors. The USA for example does not allow foreign investors in telecommunications, media and atomic energy.
- Limitations on the degree to which private companies could have non-nationals on their boards or limitations on the amount of shares a foreigner can own in a local company.
- Limitations on the degree to which foreign companies could repatriate profits. These measures often went hand in hand with limitations to which domestic

companies could send money out of the country. In the case of the latter most countries had exchange control laws which limited the amount of money which its citizens could take out of the country or how much foreign exchange they could keep inside the country.
- Moreover all foreign countries were compelled to adhere to all national laws including tax laws and labour laws so that developing countries could get revenue from the foreign investors and compel them to respect national legislation.

In general poor countries tried to use the eagerness of foreign companies to invest, or the fact that they had existing investment in the former colonies, which they feared losing to impose such conditions on investors that benefited poor countries in some ways.

In some cases newly independent countries nationalized foreign companies because they felt that this was an important strategic issue of development. Two examples relate to the case of newly independent Zambia nationalizing its copper mines soon after independence and Egypt nationalizing the Suez Canal. Other cases, such as the oil producing countries of the Middle East (e.g. Saudi Arabia) where foreign companies were allowed to invest in oil but mineral rights were retained by the state thus forcing the companies to pay a proportion of their revenue as royalties to the Saudi state.

Investment agreements arose when national governments negotiated more favourable conditions from companies of particular countries. After the independence of some colonies from Britain, for instance, the newly independent countries agreed through negotiations with the British government to give special dispensation to British companies in what were examples of bilateral investment agreements. In many instances these kinds of agreements were called “most favoured nation” agreements. They were given by government to the companies from certain

countries for strategic reasons or as a trade-off for getting other benefits from these countries (e.g. access to oil, or military support or better trading conditions etc).

History of investment agreements

The first attempt to create a multilateral agreement on foreign investment was made in the period immediately after the second world war. At a meeting in Havana in 1948 an attempt was made to set up an International Trade Organisation (ITO), which would have become the third leg of the post war economic structure alongside the World Bank and the International Monetary Fund (IMF).

Despite the fact that the US government was, at the time one of the driving forces behind the Havana Charter, the US Congress refused to ratify it. Consequently the proposal for an ITO was abandoned and the negotiations for a General Agreement on Trade and Tariffs (GATT) were launched. But for almost 40 years the various negotiating rounds of GATT excluded investment issues. It was only in the Uruguay Round of the GATT negotiations from 1986 to 1994 and the imminent rise of globalization that the issue of investment was put on the table.

The collapse of the ITO initiative was one of the main factors that saw the shift from multilateral to bilateral investment agreements. Thus in the 1950s and 1960s bilateral investment agreements were the dominant instrument. In those decades the governments of the rich countries negotiated terms with particular Third World countries to protect foreign investors from expropriation and nationalization. The World Bank set up the International Centre for Settlement on Investment Disputes (ICSID) in 1966 to facilitate the settlement of disputes between governments and corporations.

In the 1960s and 1970s the rich countries, led by the USA, shifted discussions on investment issues to the Organisation on Economic Co-operation and Development (OECD) whose member states

were all rich countries and also changed the emphasis in favour of investment liberalization.

But Third World countries fought against investment liberalization. They wanted the United Nations to judge instances of corporations abusing their control over investment. Two notorious cases of this kind of abuse were the United Fruit Company's responsibility for the collapse of the economy of Guatemala and the, even more notorious, efforts of the International Telephone and Telegraph's (ITT) sponsoring of the military coup which overthrew the democratically-elected government of Salvador D'Allende in Chile. As a result of the strength of the Third World lobby at the UN, the United Nations Commission on Transnational Corporations (UNCTC) and the Centre on Transnational Corporations were set up by the Economic and Social Council of the United Nations.

With the rise of neo-liberalism in Britain and the USA, the US government in 1977 unleashed attacks on the "bureaucracy" of the United Nations and blocked an attempt to establish a UN Code of Conduct for transnational corporation. By 1992 the US succeeded in getting the UNCTC abolished.

In the 1980s UN initiatives also lost momentum when many Third World countries got into a debt crisis that gave rich countries chance to call for liberalization of investment and for the introduction of the structural adjustment programmes. Further the drying up of commercial bank lending forced Third World countries to open their doors to foreign investment from a position of extreme weakness. As a result, Third World countries that once nationalized foreign companies now started wooing foreign companies with lax conditions for investment.

And with the UN marginalized from regulating investment and with many Third World governments in a weak position to resist wooing from foreign investors, the

USA attempted to establish multilateral investment agreements under the banner of trade in the GATT and through the World Bank.

At the completion of the Uruguay Round and the setting up of the WTO the USA finally succeeded in getting into GATT what it called “trade-related” investment agreements. The most notorious of these is the General Agreement on Trade in Services (GATS), which makes it possible to promote unregulated foreign investment in services. GATS is not only about the privatization of education, water or health services but also the sale of these services to foreign companies under the guise of “free trade”.

In 1998 the discussion at the World Bank on investment disputes led to the establishment of a Multilateral Investment Guarantee Agency (MIGC). The Agency was set up to encourage flow of private investment to the developing countries by guaranteeing the investment of foreign corporations against risks such as civil war, currency restrictions or nationalization.

Questions for Discussion

1. Do you think the Government should allow foreign investors to send 100% of their profits to their home countries or should government set limits to this? (Give reasons for your answer)
2. Should the Government make laws to unsure that foreign companies operating in Zambia have Zambians as shareholders and senior management positions? (Give reasons for your answer)
3. Should foreign retail shops be forced by Government to buy some of their products from local (Zambian) suppliers? (Give reasons!)

6 What is the Multilateral Agreement on Investment (MAI)?

The various initiatives on investments on the part of rich countries are driven by one of the cornerstones of globalisation – the need to free investment so that investors can make profits wherever they want and to direct their profits back to wherever the speculators and shareholders are located.

Thus bilateral investment agreements between a few countries and promising "most favoured nation" status was deemed not good enough. The whole world needed to have restrictions on the movement of capital removed and the policing of investment to be taken away from any kind of public accountability and transferred to where the balance of forces of power favoured the rich – the WTO.

It was with this logic in mind that the USA embarked on its most ambitious attempt to free investment and take the process out of the hands of accountability to citizens.

In the late 1990s the USA called within the OECD for a Multilateral Agreement on Investment (MAI). The MAI went further than what GATS, TRIPS and TRIMS made possible in the GATT.

MAI included major provisions for comprehensive investment liberalization, protection of foreign investors and, in anticipation of possible challenges from governments of poor countries, dispute resolution processes, which favoured the rich countries.

For the first time however differences began to emerge within the rich countries. The USA wanted the OECD countries to agree to take a joint position to the WTO. Fearing US domination of investment even in its own backyard, the EU wanted to have everything associated with the MAI discussed at the WTO. France wanted investment in culture deleted from a MAI while Japan and

the EU generally wanted the USA to repeal laws that punished foreign companies for investing in Cuba.

First India refused to negotiate a MAI in the WTO. Then widespread demonstrations by social movements, trade unions and NGOs occurred throughout the world. Finally, the MAI was defeated.

However despite these protests and divisions within the developed countries, the quest to free investment and get governments to underwrite transnational companies' profits has continued. Basically the free movement of money and profits out of the hands of any public authority has remained a dominant feature of the WTO and other multilateral and bilateral trade and investment agreements.

At a meeting of WTO ministers in Singapore in 1996 the rich countries introduced ideas similar to the MAI about investment liberalization and guarantees through existing WTO protocols. These included multilateral negotiations on investment along with competition policy, government procurement and trade facilitation. However strong resistance by some developing countries (particularly India) again led to a compromise whereby a Working Group on Trade and Investment was set up under the WTO to examine relations between investment and trade issues.

At Doha the arguments reached the point where the rich countries traded off vaguely worded commitments to reducing agricultural subsidies in exchange for introducing the “Singapore Issues” for negotiation at the next WTO Ministerial meeting in Cancun, Mexico. At Doha a declaration was also made that poor countries (who needed access to generic medicines for HIV/AIDS and other infectious diseases) could prioritize health issues over patent rights of transnational companies. These apparent concessions by the rich countries made some observers call Doha

"the Development Round" of the WTO. At Cancun, what caused the talks to collapse was the refusal by some larger Third World countries (the so-called G20 countries) to discuss processes around the Singapore issues until the EU made concessions on agricultural subsidies and the US discussed the implementation of the Doha concessions on drugs.

Questions for Discussion

1. Developed countries are keen to protect their companies investing in developing countries like Zambia. Why do you think they want to do so?
2. Should Zambia sign more investment agreements with other counties? (Give reasons for your answer)
3. Does Zambia have the capacity to negotiate good investment agreements with other countries that are favourable to Zambia? (Give reasons)

7 What are the Existing Investment Provisions under the WTO?

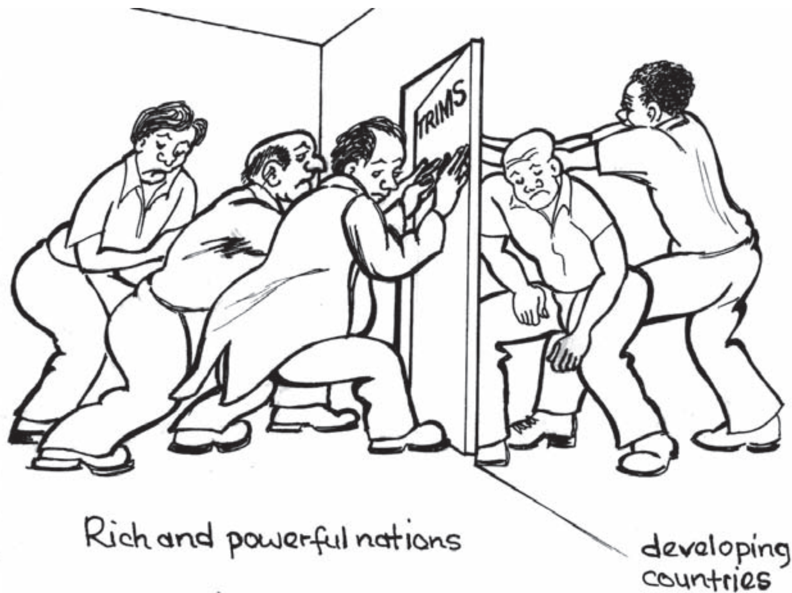
There is no comprehensive multilateral agreement on foreign investment under the WTO as envisaged by the MAI instead investment-related provisions are contained in a number of existing agreements. These provisions were introduced during the Uruguay Round of GATT negotiations and namely, these are the Trade Related Investment Measures (TRIMS) Agreement, the Trade Related Intellectual Property Rights (TRIPS) Agreement and the General Agreement on Trade in Services (GATS).

The Trade Related Investment Measures (TRIMS) Agreement

This agreement relates to international trade in goods where governments have intervened to protect domestic investment. TRIMS compels governments to do away with or reduce local content requirements for good produced for export by arguing that this is interference in free trade as espoused by GATT.

An example is the car industry in South Africa, which is affected by this agreement. In the past South African car manufacturers were compelled by the state to have a certain percentage of the components of the car to be made by South African companies, or produced in South Africa. But under TRIMS this local content requirement had to be done away with because the Agreement interprets this local content requirement for investment as a "trade related" issue.

Other instances of what the TRIMS calls "trade-related" investment issues are situations where governments intervene to balance imports and exports in certain industries so as to prevent imports over-riding exports. TRIMS outlaws such practices on the part of governments.



But because of poor countries' concerns that TRIMS would have a negative impact, different countries were given a time period to phase in the abolition of local content requirements and other trade-related investment measures. Rich countries were given two years, developing countries five years and very poor countries 7 years to phase in the TRIMS Agreement.

Since 1995 a number of countries including Argentina, Malaysia, Chile and Pakistan have applied to the WTO to have the phasing-in period extended. New countries joining the WTO after 1995 have to comply with TRIMS on entry without any grace period.

The General Agreement on Trade in Services (GATS)
This is the first multilateral, comprehensive and enforceable agreement covering trade and investment in services. GATS covers over 160 service activities including education, health, water, banking and energy. The GATS is aimed at doing away with any government measures that

can hamper foreign investors from investing across national boundaries in water provision, schooling, transport etc. It implies that governments who do not privatise social services and allow Transnational Corporations to buy or invest in these services are being discriminatory and are therefore guilty of putting up barriers to free trade.

Under the GATS the three most important principles are:

- Most favoured nation (MFN) treatment,
- Market access, and
- National treatment.

In reality or practice these words mean quite the opposite of what they suggest in English.

MFN treatment means that a government of a country has to treat all other countries in the WTO no less favourably than any other. This means that Zambia cannot give special trade and investment treatment to a country, say Mozambique with which it may be building a strategic relationship. If it does so a US company can claim that it is being discriminated against because there is a "most favoured nation" granted by the Zambian Government to Mozambique.

Market access means that a country cannot stop a foreign investor from investing in providing services. So the Zambian government would be denying a French water company "market access" if it doesn't privatise water services in terms of the GATS.

National treatment means that governments cannot favour domestic investors over foreign investors when it comes to the provision of services.

In GATS terms countries can keep some services within public ownership but then when they begin WTO negotiations they have to specify which services are to be exempted from MFN or market access principles. The arrangement is called "positive listing". If a country fails to specify which service is exempted then under GATS that service is open to foreign investment and privatization. This pushes governments into deals whereby they open some services in return for deals agreed by other countries.
In practice poor countries get pressurized into offering basic services because their bargaining power at the WTO is very weak. And once a country has agreed to open a service it cannot then stop the process without flouting the WTO processes and suffering the consequences.

Examples of communities reversing privatization and water concessions such as Cochibamba in Bolivia and Fort Beaufort in the Eastern Cape in South Africa exist. In terms of the GATS the water Companies concerned can and do take action against the national governments.

The GATS is an important instance of how the rich countries have used the ideology of free trade – i.e. the international trade of goods – to liberalise investment and this has become the hallmark of globalisation. This has allowed companies to invest in new areas and reap profits in sectors that were formerly the domain of the public service.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement
This agreement is in many senses the opposite of the ideology of free trade and the practice of liberalizing investment of the WTO. As opposed to TRIMS and GATS which is about opening the spaces for investment, TRIPS is about closing spaces and protecting the existing large investors. The reason is that TRIPS is about protecting the patents and copyright of companies who own such patents or copyrights (the so-called “intellectual property).

Patents have been the most powerful tools used particularly by pharmaceutical companies to protect their investment and guarantee levels of profits.
A major drug company such as Glaxo SmithKlein will patent an anti-depressant drug – meaning that, even though everyone else thereafter knows the chemical composition of the drug and can manufacture it, they are prevented from doing so by law and have to pay royalties and prices determined by Glaxo SmithKlein.

Without such patent rights drug companies would not make the profits they do and they would face competition from newer companies who could produce the same drug cheaply. Such drugs are then called “generic drugs”. TRIPS protects the investment of such companies from competition and TRIPS has been the means through which the WTO continues that protection and ironically in an organisation founded to promote “free trade”.

This example of protectionism in an organisation dedicated to preserving and extending the power of the rich countries is particularly significant in the case of the HIV/AIDS pandemic. India has for some years now been producing anti-retroviral drugs at something like 1/10 the cost of the major drug companies. And yet it is only because of popular pressure centred on the horror of the AIDS pandemic that has kept the WTO and the drug companies from taking action against India in terms of the TRIPS.

Questions for Discussion

1. What are the dangers of the TRIMS Agreement under the World Trade Organisation (WTO)?
2. The Africans have had a long tradition of using herbs and other natural resources to treat themselves. What dangers do the TRIPS Agreement under the World Trade Organisation (WTO) pose to this African heritage?
3. Should developing countries be allowed to get the technology developed by the developed countries free of charge or should they pay heavily for it? (give reasons for your answer)

8 The Investment Situation in Zambia

The situation outlined above gives a very brief account of the international situation regarding investment. The next question then is how is Zambia prepared in terms of handling investment issues? This is what we need to look at in this section of the manual.

The Investment Act 1993
The Zambian Government sees an aggressive policy of attracting investment both foreign and local as one effective way of improving the livelihoods of the people. In an effort to achieve this objective, the Government passed the Investment Act of 1993.

The Investment Act sets out to create an Investment Centre and an Investment Board to promote and coordinate investment in Zambia. Law requires the Investment Centre,, to monitor the activities of investors who have been issued with investment certificates to ensure that the conditions as outlined in the investment certificate are followed. The Investment Centre is mandated to liaise closely with all relevant institutions in carrying out its mandate.

The Investment Centre and its Board do not discriminate between local and foreign investors. In practice, however, it is known that more foreigners take advantage of the Investment Centre than local investors. This may be attributable to lack of information on the activities of the Investment Centre to potential local investors.

The targeted investment should be able to create jobs for the many unemployed Zambians. This is the thrust of the Zambian Investment Act of 1993, which will be briefly examined below with a view to determining the types of incentives that it offers to prospective investors.

General Incentives
The general incentives provided in the Act apply to any

investor investing in a business enterprise under the Act.

An investor shall be taxed on income as follows:

a) Received from farming at a rate of fifteen per cent.
b) Originating from the export of non-traditional products at a rate of fifteen per cent.
c) From a rural enterprise for each of the first five charge years for which such business enterprise is carried on, reduced by such amount as is equal to one-seventh of that tax which would otherwise be so chargeable on such income.

Investor capital allowances shall be as follows:

a) Buildings used for manufacturing, mining or hotels qualify for a wear and tear allowance of five per cent per year of the cost, plus an initial allowance of ten per cent of the cost in the year in which the building is first used:
b) Implements, machinery and plant used exclusively for farming, manufacturing or tourism qualify for a wear and tear allowance of fifty per cent per year of the costs in each of the first two years.
c) Capital expenditure on farm improvements qualifies for a farm improvement allowance of twenty per cent of such expenditure for each of the first five years.

An investor who incurs capital expenditure on the growing of tea, coffee, or banana plants, citrus fruit trees or other similar plants or trees, shall be entitled to a development allowance of ten per cent of such expenditure which shall be deducted in ascertaining the gains or profits that business enterprise for the charge year up to the first year of production.

An investor is entitled to a farm works allowance of one hundred per cent in respect of expenditure on farming land in his ownership or occupation, and for the purpose of farming, or stumping and clearing, works for the prevention of soil erosion, bore-holes, wells, aerial and geophysical surveys, and water conservation.

Zambia offers an open investment policy

An investor shall be entitled to the following deductions in ascertaining gains or profits:

a) any loss incurred by an investor, other than in an investment in mining, in any charge year shall be deducted only from the income of the investor from the same source as that in which the loss was incurred; such loss charge year, and so on from year to year.
b) Any payments made for the purpose of technical education relating to a business enterprise or for the purpose of obtaining further experience, training or qualifications, relating to that business enterprise;
c) Any expenditure, not being expenditure of a capital nature, incurred by a business enterprise during a charge year on experiments or research relating to that business enterprise.

Income received by way of a dividend declared from farming shall be exempt from tax for the first five years of operations.

Where a double taxation agreement exists between Zambia and another country,

foreign tax payable by an investor to the other country in respect of any foreign income shall be allowed as a credit for that investor against Zambian tax in respect of that foreign income.

Any investment in mining shall attract the mining deduction tax, including any mineral tax paid under the Mineral Tax Act.

An investor may apply to be appointed and licensed to establish and operate a bonded factory.

A small-scale enterprise or a village enterprise registered under the Small Industries Development Act, 1981, as amended in 1996, shall be entitled to the following incentives:

a) Exemptions from payment of tax on income for:-
    i) The first three years of operations for an enterprise operating in an urban area;
    ii) The first five years of operations for an enterprise in a rural area
b) Exemption from customs duties and sales tax payable on imported equipment to be used in the enterprise:
c) Operation of a manufacturing enterprise for the first five years without a manufacturing license required for such an enterprise under any law:
d) For an enterprise with an investment in plant and machinery of less than five million Kwacha (approximately One Thousand Three Hundred US dollars), exemption from the payment of licencing fees required for such an enterprise under any law; and
e) Exemption from the payment of rates on factory premises for the first five years.

(1) Notwithstanding the provisions of the Immigration and Deportation Act, an investor who invests a minimum of two hundred and fifty thousand United States Dollars or the equivalent in convertible currency and who employs a minimum of ten persons shall be entitled to a self employment permit or resident permit.

Under Part V of the Act, the incentives shall be given to an investor who fulfils the following conditions:

a) Is an exporter for non-traditional products, which result in net foreign exchange earnings;
b) Produces products for use locally in agriculture and the production of agricultural commodities or other agro-related products for exports;
c) Is engaged in tourism investment resulting in foreign exchange earnings in excess of twenty-five per cent of the gross annual earnings of the business unit;
d) Is an import-substitution industry with a significant proportion of local raw material usage which results in net foreign exchange savings; and
e) Is located in a rural area.

The Centre shall assist an investor who meets the requirements of subsection (1) to obtain work permits for up to five expatriate employees.

An investor who qualifies for incentives under the Investment Act in addition to the general incentives, shall be entitled to an exemption from customs duties and sales duties and sales tax on all machinery and equipment (other than motor vehicles) required for the establishment, rehabilitation or expansion of that enterprise.

Export Processing Zones Act 2001

In addition to the incentives in the Investment Act, the Zambian Government provided additional incentives in the recently introduced Export Processing Zones Act of 2001. Under this new Act, there is provision for the establishment of the Export Processing Zones Authority to administer the Act. Part VIII of the Act provides for incentives relating to business enterprises in Export Processing Zones as follows:

(1) A developer or an investor shall, in respect of the investment relating to the development of the export processing zone or as the case may be, the investment in a business or an activity authorised by the export

processing licence or permit, be exempt from –

a) Corporate tax;
b) Withholding tax on dividends and tax on interest or royalties;
c) Capital gains tax;
d) Duty on imported raw materials, plant and machinery intermediate and capital goods, and services;
e) Import value added tax; and
f) Excise duty.

An investor or developer shall be entitled to a refund on value added tax paid on goods and services purchased from a custom territory

The exemption granted by subsection (1) shall not apply to such motor vehicles.
The relief for which a developer or a licensed investor is eligible shall be effected as follows:
a) In full, upon the Authority certifying that the developer or the investor has complied fully with this Act and the conditions of the developer's permit or the investor's license, as the case may be; or
b) To the extent to which any relief is affected by the authorization of the Authority

Where an investor is entitled to an incentive under this Act which is of the same nature as an incentive to which the investor is also entitled under the investment Act, the investor shall exercise an irrevocable option for the incentive under either Act.

Questions for Discussion

1. Do you feel the Investment Act provides enough incentives for Zambian prospective investors or for foreign investors? (Give reasons for your answer)
2. What type of working conditions do you think will prevail in the export processing zones for Zambian workers?
3. Should the Government provide a law for a minimum wage? How can such a law be enforced?

9 What is the Legal Framework for Investment Protection?

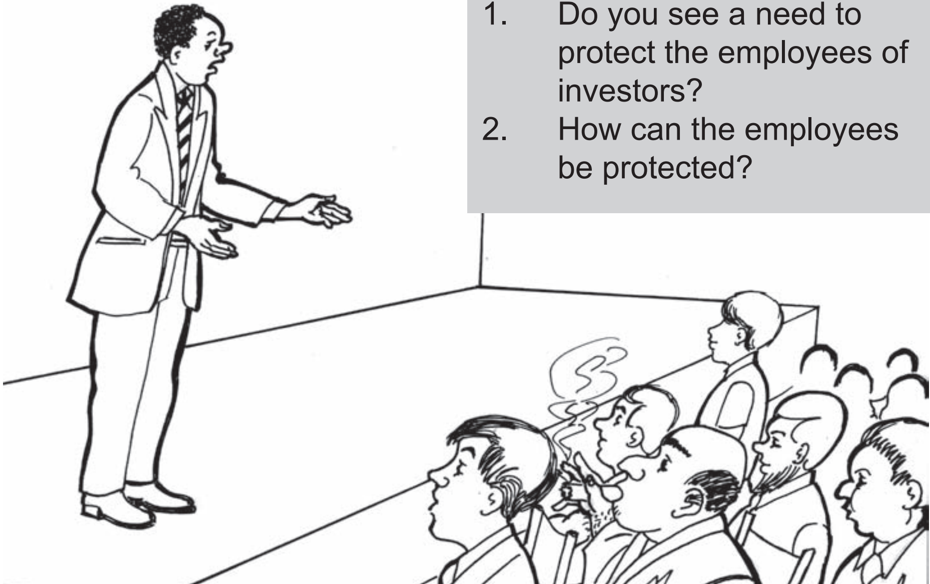
The Investment Act assures investors that property rights shall be respected. No investment of any description can be expropriated unless Parliament has passed an Act relating to the compulsory acquisition of that property. In the case of expropriation full compensation shall be made at market value and shall be convertible at the ruling exchange rate. In addition, investors are guaranteed that investments will not be adversely affected by any changes in the Investment Act for a period of seven years.

Zambia is a signatory to the Multilateral Investment Guarantee Agency (MIGA) of the World Bank and other international agreements. This further guarantees foreign investment protection in cases of war, strife, disasters, and other disturbances or in cases of expropriation.

Zambia has signed bilateral reciprocal promotional and protection of investment protocols with a number of countries.

Questions for Discussion

1. Do you see a need to protect the employees of investors?
2. How can the employees be protected?



10 Application Procedures for an Investment License

What is the procedure to be followed when obtaining an investment certificate under the Investment Act? This is outlined below.

Companies seeking to obtain Investment Certificates to set up new businesses, expand, rehabilitate or modernize existing enterprises in Zambia are requested to complete a standard application form. When completed they can submit the application to the Investment Centre once the following requirements are met including payment of US$250 plus value added tax (VAT) at 17.5% of the Processing Fee.

The Projects Approval Committee of the Investment Board meets every month to consider applications for Investment Certificates. It is required under the Act that promoters submit sufficient detailed information to enable the Investment Centre form an informed opinion on the project.

The applications should be submitted at least a week before the consideration date. This is to enable the Centre evaluate the investment proposal before presenting it to the Board for consideration. Once an application has been approved a Certificate Fee of US$1,500 plus VAT is charged before collection of the Investment Certificate.

Questions for Discussion

1. Can the poor in Zambia take advantage of the investment incentives?
2. What can be done to promote investment by the ordinary Zambian?

11 Policy Making Process for Investment

Accountability Issues

The policy-making process of the Government, accountability, transparency and the legal framework exert overriding influence on the investment policy environment of the country.

Public sector management is about efficiency of service delivery, transparency in transacting business as well as accountability so as to have effective good governance. Since public offices are a trust on behalf of the general public, it becomes imperative that individual office bearers are held responsible for their actions and that they exercise fair play and transparency.

In simpler terms, accountability involves at least the following four stages:

a) Who is answerable to whom?
b) Over what issues is one answerable?
c) Through what process is one answerable?
d) What is the reward or punishment?

In the Zambian situation, the processes of accountability are left so loose that it is difficult to ensure that the concept goes beyond mere rhetoric.

The above four questions help to check whether the system of accountability can work or not. Most systems move as far as the third question, but do not clearly spell out, let alone enforce the reward-punishment requirement. Accountability processes that do not effectively deal with the aspect of reward or punishment end up being ineffective.

What are the Impacts of Investment on Poverty in Zambia?

n the Zambian case the above question is difficult to answer because of a number of reasons. Some of the reasons are as follows:

i) Those issued with investment licences are not adequately followed up to ensure that they adhere to the conditions stipulated in the licence.
ii) Some of the investors do not want to be followed too closely and do not provide accurate information to the authorities
iii) It is not easy to assess whether pledged investment resources are actually invested.

Despite the above difficulties, it is possible to make some general statements about foreign investors in Zambia. There are a number of foreign investors who are doing a commendable job and have put in great effort in creating employment and reducing poverty in Zambia. This said, it is easy to see that the impact of foreign investment in Zambia is in many cases not helping much to reduce poverty. This is because of the following factors:

a) Most of the investment is along the line of rail and yet poverty is higher in the rural areas.
b) Many of the investors pay very low wages to their Zambian employees. Sometimes as low as K60, 000.00 per month.
c) Many of the employees in the new companies are not permanent but casual thus rendering them liable to dismissal any time.
d) Many of the employees do not receive training to sharpen their skills and enable them run their own businesses when they need to.
e) Some investors have closed their businesses and left the country at the end of the tax incentives stated in their licences leaving the Zambian workers in misery.
f) Some foreign (and local investors) have taken away land and other resources such as access to rivers and lakes from Zambian villagers making their poverty situation even worse off than before the investment.

The Zambian Government is working on measures to arrest this situation by for example strengthening the labour laws and environment protection laws.

Questions for Discussion

1. What do you think needs to be done to make the investment policy making process more responsive and favourable to the needs of the poor?
2. When there is a clash between a foreign investor and local people over land, who should be given priority? (Give reasons for your answer!)
3. Some traditional authorities have given away land to foreign investors without the knowledge of the local people. What should the Government do in such cases?

12 The Way Forward

Investment is a very powerful force in international trade and economic relations. Those countries whose economies are powerful want to introduce laws that allow them free movement of investment resources across national boundaries. Some developing countries, including Zambia, would like to have some form of control over this movement across their borders.

The battle lines are thus drawn. It is not clear how the war on investment will be resolved or whether developing countries will succeed to protect their rights. Hence, it is up to each and everyone, including you and me, to take time to read about these issues.

The Organization Development and Community Management Trust (ODCMT) is ready to assist you to take this step to address your own problems. We will work with you by providing materials you need to study and understand each of the issues before you can join the struggle and fight for what you believe in.