



# RESEARCH BRIEF

No. 8/2022

## Access to Information on Chinese Investments Contracts in Zimbabwe: The Law vs Practice

Obert Bore, Zimbabwe Environmental Law Association  
November 15, 2022

### Key Points:

- One of the thorny issues regarding Chinese investments in Zimbabwe is access to information and contract transparency – particularly agreements entered into by the Chinese companies with government or state owned entities. The major concern is the culture of secrecy.
- Whilst there is opacity surrounding Chinese investments in Zimbabwe's economic sectors, the Freedom of Information Act provides an opportunity to promote transparency and accountability.
- Testing this new law through filing information requests on the basis of protecting a constitutional right or promoting public accountability and transparency will enable citizens to hold Chinese companies and government entities accountable.
- There is still a dearth of cases law and evidence to ascertain the attitude of public institutions regarding giving effect to the Freedom of Information Act and if the state agencies are more prepared to enforce the law against investors of a particular nationality.

### Introduction

Chinese investments in Zimbabwe, as in many African resource-rich countries, have been growing rapidly in different sectors of the economy such as mining, agriculture, construction, and infrastructure development among others. These investments are contributing to the much-needed economic growth and poverty reduction in the country. However, the growth of the Chinese investment portfolio in Zimbabwe has had mixed reactions from different circles. One of the thorny issues of concern is access to information and contract transparency, particularly agreements entered into by the Chinese companies with government or state institutions. Access to such information concerning contracts and undertakings that the government enter into with foreign entities is central in the pursuit of transparency and accountability.<sup>1</sup> However, as in most African countries, in Zimbabwe there is a common culture of greater secrecy and opacity in awarding contracts to Chinese companies as compared to western investors.<sup>2</sup> This culture presents hurdles that inhibit citizens from monitoring contracts

and tracking the operations of Chinese entities. In this Research Brief, I discuss the nuances pertaining to access to information on Chinese investment contracts in Zimbabwe; with a focus on the law versus practice.

### Access to Information Law

The Constitution of Zimbabwe provides for the right of access to information.<sup>3</sup> It stipulates that *“every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interests of public accountability.”* The Constitution further states that every person including the Zimbabwe media have the right of access to information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.

The right of access to information implies that any person can approach a government department or agency responsible for regulating activities within a particular sector and request information for purposes of public accountability or protection of a right. For foreign investments, including Chinese investments, any person can write to the Zimbabwe Investments Development Agency (ZIDA) and seek information relating to investment licenses and certificates given to Chinese entities to operate in Zimbabwe. Further, section 62(4) of the Constitution also mandates the law makers to give effect to the right to access

to information through promulgating legislative instruments. Therefore, the legislature enacted the Freedom of Information Act [*Chapter 10:33*] No 1 of 2020, and Freedom of Information (General) Regulations, 2021, Statutory Instrument 229 of 2021 (hereinafter referred to as the “Regulations” or SI 229/2021) which are the principal information law in Zimbabwe.

The purpose of the Freedom of Information Act is firstly to give effect to the right of access to information in accordance with the Constitution. Secondly, it is meant to establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to information so as to facilitate swift, inexpensive and simple access. Thirdly and most importantly, it is intended to promote transparency, accountability and effective governance and ensure that appropriate assistance is afforded to members of the public seeking to exercise their right of access to information. Impressively, the law confers a duty on all public/government institutions to create, keep, organise and maintain information in the interests of public accountability or in the exercise or protection of a right.<sup>4</sup>

All public bodies, public commercial entities and holders of a statutory office are expected to have a written information disclosure policy through which it discloses information in the interests of public accountability or that is required for the exercise or protection of a right.<sup>5</sup> Section 2 of the Regulations gave the public institutions six months to publish their information disclosure

<sup>1</sup> Transparency International, *Natural Resource Transparency*, G20 Position Paper (May 2014), [https://www.transparency.org/files/content/activity/2014\\_TI\\_G20PositionPaper\\_NaturalResources\\_EN.pdf](https://www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_NaturalResources_EN.pdf).

<sup>2</sup> Clever Mapaure, *Chinese investments in Zimbabwe and Namibia: A Comparative Legal Analysis*, Centre for Chinese

Studies (Sept. 2014), [http://www.sun.ac.za/ccs/wp-content/uploads/2014/10/CCS\\_PhanW\\_Clever\\_2014.pdf](http://www.sun.ac.za/ccs/wp-content/uploads/2014/10/CCS_PhanW_Clever_2014.pdf).

<sup>3</sup> Section 62 of the Constitution of Zimbabwe Amendment (No. 20) Act 2012.

<sup>4</sup> Section 4, Freedom of Information Act.

<sup>5</sup> Section 5, Freedom of Information Act.

policies to help citizens on how to gain access to information. However, to date, several public bodies have not yet published this information on their websites, and some do not have function websites.

### How is Information Accessed?

The Freedom of Information Act provides a simple and straightforward mechanism for requesting access to information. It must be emphasised that the Act primarily applies to public entities, public commercial entities or holders of a statutory office. The implication is that information, held by public bodies or government institutions, that may be required for purposes of enforcing a right or promoting transparency and accountability, must be furnished if requested. For a person to access information, the person should apply in writing to the information officer (IO) of an entity.<sup>6</sup> Upon receipt of the request, the IO should acknowledge in writing and supply the information requested immediately.

However, the IO has 21 days to determine whether to grant the request and notify the applicant of the decision. If a request is granted, the information requested should be supplied within the 21-day period. Nonetheless, an IO may seek an extension of time where the request is for large files of information or where the request requires a search through huge amounts of information and meeting the original time limit would unduly interfere with the operations of the entity concerned.<sup>7</sup> The law provides recourse for an applicant to lodge an appeal to the Zimbabwe Media Commission (ZMC) if an applicant is of the view that the extension of time is merely dilatory, or the IO does not obtain the consent of the

applicant for the extension, but delays furnishing the information.

If an IO fails to make a decision or grant access to the information requested within the 21 days period or 14 days extension period, such a request is deemed to have been refused.<sup>8</sup> When a request is deemed to have been refused, the applicant then has the option of lodging an appeal to the ZMC (which is the regulator). It is worth noting however, that where the information requested contains third party information, the applicant may not be given access to such information until any right of the third party to appeal the release of the information has expired or until any appeal lodged by the third party has been determined by the ZMC.<sup>9</sup> It can be deduced that information on contracts entered into between Chinese companies and government entities or a joint venture between a local public entity and a Chinese entity cannot be denied because a government body is not a third party that would need to provide its consent before the information is disclosed. Government institutions have a direct duty to disclose the information for purposes of public accountability and transparency.

In instances where an IO notifies the applicant that a request has been granted, a fee may be charged for accessing the information, e.g., for making copies of the information requested. This has resulted in some progressive steps being implemented by some government departments regulating mining operations in the country. The Environmental Management Agency (EMA) is one such institution. As part of their information discharge policy, they offer access to the

---

<sup>6</sup> Section 7, Freedom of Information Act.

<sup>7</sup> Section 9, Freedom of Information Act.

<sup>8</sup> Section 10, Freedom of Information Act.

<sup>9</sup> Section 8 (7), Freedom of Information Act.

Environmental Impact Assessments (EIAs) of mining operations, including those of Chinese corporates, free of charge. This is positive step by the EMA to promote access to environmental information by mining operations including those of Chinese companies. Previously, the fee for accessing EIA Reports was pegged at US\$350, a figure which was prohibitive to most parties, and which inhibited many communities trying to protect their environmental rights.

### **Refusal to Access Information**

An application for access to information may be refused. Where the request is not granted, the IO must notify the applicant and provide reasons for refusal.<sup>10</sup> The applicant should also be informed of the right to appeal against the decision to the ZMC. While the Freedom of Information Act is a progressive piece of legislation, it also contains limitations on disclosure of information. For instance, information relating to trade secrets of a third party or financial, commercial, scientific or technical information that is proprietary to a third party, and the disclosure of which would be likely cause harm to the commercial or financial interests of that third party, is exempted.<sup>11</sup>

Additionally, information supplied in confidence by a third party whereby the disclosure of which could reasonably be expected to put that third party at a disadvantage in contractual or other negotiations, or to prejudice that third party in commercial competition, cannot be disclosed without the consent to the party concerned.

These provisions suggest that if any contracts entered into by Chinese companies with the Government of Zimbabwe or public entities have

confidentiality clauses, such information is not accessible to the public. If information is exempted from being disclosed, an application to access such information cannot be refused if the concerned third party has consented to its disclosure.<sup>12</sup> Again a non-disclosure clause cannot be relied upon to decline access to information if it is in the public interest to disclose the information.<sup>13</sup> Information relating to natural resources of the country is of great significance to the public since they are public resources which albeit vesting in the State, must be managed for the benefit of the public.

Additionally, exempted information pertaining to the commercial information of third parties such as mining companies shall not be refused if it also *facilitates accountability and transparency of decisions* taken by an entity, other than preliminary results of any tests, research, preparations or other investigations conducted for developing any policy. It therefore means that information relating to contracts with mining companies does not fall under the dictates of commercial trade secrets as the public cannot derive any economic value from its disclosure; it can therefore enable accountability and promote transparency in natural resource governance.

### **Practice**

The accompanying Freedom of Information (General) Regulations, 2021, Statutory Instrument 229 of 2021 (Regulations" or SI 229/2021) gave public institutions a six-month grace period within which to publish their Information Disclosure Policies. To date, not many institutions

---

<sup>10</sup> Section 8 (g), Freedom of Information Act.

<sup>11</sup> Section 22, Freedom of Information Act.

<sup>12</sup> Section 28 (5), Freedom of Information Act.

<sup>13</sup> M & G Media Ltd and Others v 2010 FIFA World Cup Organising Committee South Africa Ltd and Another 2011 (5) SA 163 (GSJ).

have published their information policies on their websites. This is in blatant disregard of the law.

To put the law into practice, and to ascertain the extent to which public entities are willing to disclose information relating to Chinese entities, the Zimbabwe Environmental Law Association (ZELA) requested information from ZIDA pertaining to two Chinese companies.<sup>14</sup> The information requested included: company profiles, investment licenses, certificates, and investment agreements with any Zimbabwean public entities. The 21 days for ZIDA to respond and furnish the information expired on 10 January 2022. There was no response, notwithstanding the extension of time accorded to ZIDA. On 16 February 2022, ZELA approached the ZMC to file an appeal in terms of section 35 of the Act. Four months passed without getting a hearing date from ZMC, which is required by law to deal with an appeal as soon as reasonably possible but within 30 days after the date of appeal.<sup>15</sup>

Thus, while the law is clear and provides a right to appeal, the right is worthless because of administrative delays occasioned by ZMC. No reasons were provided for the delays even after numerous letters were served on the regulator. Failure by the ZMC to determine the appeal within the timeframe allowed by law and failure to notify ZELA of the reasons is a violation of the Constitution of Zimbabwe which provides that everyone has a right to *administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair*.<sup>16</sup> Going forward, legal avenues

that exist include approaching the High Court to declare that ZMC's conduct was not prompt, efficient, reasonable, and impartial and procedurally fair. Part of the order that would be sought from the High Court would include compelling ZMC to determine the appeal to ensure finality of the matter.

In conclusion, the Freedom of Information Act is a new law, and is yet to be fully tested in all areas. Currently there is a dearth of case law and evidence to establish the attitude of the Government towards this new law. However, this law is central to the pursuit of transparency and accountability, as citizens can only hold institutions accountable if they have access to relevant information on contracts entered into by government and Chinese corporates. Considering that some Chinese companies (e.g., Zhejiang Huayou Cobalt and Sinomine Resource Group) are currently acquiring lithium mining rights and mining stakes in the biggest lithium companies in the country,<sup>17</sup> it is critical to file information requests to understand how the contracts are structured and their implications. Furthermore, testing the law in other areas including non-Chinese foreigners will create precedents as to whether the regulator is prepared to give effect to the new law when dealing with investors of a particular nationality.

---

Obert Bore  
Zimbabwe Environmental Law Association  
[obert@zela.org](mailto:obert@zela.org)

---

<sup>14</sup> Afrochine Smelting (involved in ferrochrome) and Dinson Private Limited (involved in coal mining).

<sup>15</sup> Section 38 of the Act.

<sup>16</sup> Section 68 of the Constitution.

<sup>17</sup> *China's Sinomine invests \$200 mln in Zimbabwe lithium project* REUTERS (June 17, 2022), <https://www.reuters.com/article/sinomine-zimbabwe-lithium-idUKL8N2Y43HA>; See also Bikita Minerals website, <https://bikitaminerals.com/>.