Module 001: Introduction to the Legal Framework regulating the Zambian Construction Industry

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Aim and purpose
The aim of this module is to introduce candidates to the concept of law; and the various pieces of legislation that regulate the Zambian Construction Industry (ZCI). The purpose is to empower candidates with legal knowledge so that their conduct is in line with the law.

Learning outcomes
On completion of this module a learner should:
1. Demonstrate basic knowledge of what law is;
2. Demonstrate understanding of the various sources of law in Zambia;
3. Demonstrate knowledge of Zambia’s conflict of law rules;
4. Demonstrate understanding of their roles and responsibilities as stipulated by law; and
5. Demonstrate understanding of the consequences of not complying with the law.
Module Overview

The Zambian Construction Industry (ZCI) is regulated by various pieces of legislation. These laws govern diverse industries or sectors and not the ZCI alone, e.g. the Occupational Health and Safety Act and the Public Procurement Act. There are at least 29 Acts of Parliament and several statutory instruments and circulars whose provisions have an impact on the ZCI. This module discusses 15 Acts, one statutory instrument and one circular that are directly linked to the activities engaged in by Small and Medium Enterprises (SMEs) in the ZCI today.

**Designed:** The target group for this module are the SMEs registered as Grades 3, 4, 5 and 6 by the National Council for Construction (NCC). Therefore it is necessary for business owners, managers and administrators of these SMEs to take the course and ensure that the activities of their business entities are in line with the law.

**Course also appropriate for:** Clients; Client’s Representative; Technical Consultants; and Local Road Authorities.
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1 INTRODUCTION TO LAW

This section provides a general and basic explanation of what law is; where we find the law in Zambia; and what rules are used to resolve conflict in case any two or more laws contradict each other.

2 THE DEFINITION OF LAW

Law is a highly contentious subject. Everything is debatable in law, including the definition of the concept itself. There is no single definition of law that is universally accepted. Some examples of definitions include the following:

a) Law is a set of rules of conduct which are enforced by the duly constituted courts;
b) Law is a set of commands of him or them that have coercive power;
c) Law is a set of rules of conduct imposed and enforced by the sovereign;
d) Law is a body of principles recognised and applied by the State in the administration of justice;
e) Law is a system adopted for the resolution of disputes, with the sanction of the State.

From these definitions, one can see that there are many varying angles from which to look at law; and each angle would then lead to a different definition.

In this Module, the definition of law that we will use is one that suits our analysis of the legal framework regulating the Zambian Construction Industry (ZCI). This definition is provided by Professor Margaret Mulela Munalula in her book *Legal Process in Zambia*, which is that:

> Law is a set of rules recognised as commanding or forbidding certain actions which are intended to regulate the conduct of all persons within a particular State and are enforceable by the courts of that State.

2.1 SOURCES OF LAW AND CONFLICT OF LAW RULES

The term ‘source of law’ is ambiguous. It can mean either where the law is found (e.g. the green ‘Law of Zambia’ volumes) or where the law originates. In this Module, the term ‘source of law’ means the authoritative text in which we find the law. The green volumes are not authoritative, but rather each piece of legislation contained therein is what carries authority.

The aim of this section is to briefly introduce the reader to the various material sources of law in Zambia; and the authority that each carries. The authority is dependent on the strata that a law occupies in the hierarchy of laws. What this means is that some laws are more important than others, hence they have more authority than others. Therefore should there be a conflict between a more important law and a less important law, the latter must take precedence. Below are the twelve sources of law in Zambia, and the various strata that each occupies:
Introduction to the Legal Framework
Regulating the Zambian Construction Industry
Training Manual

2.1.1 1st Stratum: The Constitution
Zambia is a Constitutional State with a written Constitution. Article 1(3) declares that the Constitution ‘is the supreme law of Zambia’ and that ‘if any other law is inconsistent’ with it, ‘that other law shall, to the extent of the inconsistency, be void’. By virtue of being supreme, the Constitution sits at the top of the hierarchy of Zambia’s material laws. Apart from declaring the supremacy of the Constitution, this provision also guides the resolution of conflict between the Constitution and all other laws.

2.1.2 2nd Stratum: Legislation and Statutory Instruments
The Laws of Zambia Act provides that ‘all Acts in force in the Republic’ and ‘all Acts which have been enacted but not yet brought into operation’ shall form part of the laws of Zambia. Article 23(2) of the Constitution subjects all written law to the Constitution. The Interpretation and General Provisions Act defines ‘written law’ as ‘an Act, an Applied Act, an Ordinance and a statutory instrument’. There are at least 30 pieces of written law that are significant to the ZCI. Most of the laws that will be discussed in this Module fall within this stratum.

Statutory instruments are subordinate legislation developed by ministries for the purpose of giving effect to certain provisions within a particular piece of legislation. Another name for them is ‘delegated legislation’. A statutory instrument derives its power from its mother legislation.

2.1.3 3rd Stratum: English Acts, Supreme Court Rules, Common Law and Equity
Generally speaking, the laws of England occupy a special place in Zambia. Zambia is a former British colony. It was during the colonial era that English law was first introduced into its legal system. This continued to operate even after independence in 1964. The English Law (Extent of Application) Act is an Act meant ‘to declare the extent to which the law of England applies in the Republic’. Section 2(c) stipulates that ‘the statutes which were in force in England on the 17th August, 1911’, i.e. the day Zambia became a British protectorate, ‘shall be in force in the Republic’. These statutes are subject to the Constitution and written law, meaning that Parliament has the power to enact new legislation that can repeal an English statute applicable in Zambia. In addition to this body of English statutes, Section 2 of the British Acts Extension Act provides that the ‘Acts of the Parliament of the United Kingdom set forth in the Schedule shall be deemed to be of full force and effect within Zambia’. The latest schedule in the Laws of Zambia (2006) Volume 1 lists several English Acts passed after 17th August 1911. None of the English Acts listed in the schedule applies to the ZCI.

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2 S6(b) and (c), The Laws of Zambia Act 9 of 1968, as amended by Act 21 of 1971.
8 The reference to ‘British Acts’ in one Act and ‘English Acts’ in another may create the impression that the former is wide and inclusive of Acts from other parts of Britain in addition to England. But that is not so: all the Acts incorporated in Zambian law through the British Acts Extension Act are English Acts.
Section 2(e) of the English Law (Extent of Application) Act stipulates that ‘the Supreme Court Practice Rules of England in force until 1999 shall be in force in the Republic’, provided they are subject to the Constitution and legislation of Zambia.  

In Zambia, the term common law ‘means the Common Law of England’. Sections 2(a) and (b) of the English Law (Extent of Application) Act provide that ‘common law’ and ‘the doctrines of equity’ shall be in force in Zambia, subject to the Constitution and written law. The underlying principle in the doctrines of equity is that ‘fairness’ must prevail. This means that when a court is deciding a case, apart from applying the black letter law, it must also strive to pass a fair judgement. In Zambia, when there is a conflict between equity and legislation, because of the stratum that equity occupies in relation to legislation, legislation will take precedence.

2.1.4 4th Stratum: Case Law
The High Court Act, the Local Court Act and the Subordinate Courts Act all mandate Courts to apply and uphold written law and common law when passing their decisions. This means that case law is subordinate to the Constitution, legislation and common law. Zambia follows the system of precedent hence decisions of her higher Courts are a primary source of law and bind lower Courts.

2.1.5 5th Stratum: International Treaty Law, the Writings of Prominent Authors and Foreign Law
All sources of law are either binding (i.e. they must be followed) or persuasive (i.e. they may be followed). All the sources of law discussed in 1st to the 4th strata above are binding. There are three non-binding yet very persuasive sources of law in Zambia:

(i) International Treaty Law
Zambia is a States party to many international treaties, some of which impact on the ZCI. Examples include the:
- African Convention on the Conservation of Nature and Natural Resources;
- Convention on Biological Diversity;
- United Nations Convention Against Corruption;
- Discrimination (Employment and Occupation) Convention;
- Employment Policy Convention of 1964;
- Equality of Treatment (Accident Compensation) Convention of 1925;
- Articles of Agreement of the International Bank for Reconstruction and Development;

These are: the Conveyancing Act of 1911, the Forgery Act of 1913, the Industrial and Provident Societies (Amendment) Act of 1913, the Larceny Act of 1916, the Bills of Exchange (Time of Noting) Act of 1917, the Married Women (Maintenance) Act of 1920, the Gaming Act of 1922, the Industrial and Provident Societies (Amendment) Act of 1928, the Limitation Act of 1939 and the Law Reform (Enforcement of Contracts) Act of 1954.

10 The Interpretation and General Provisions Act 60 of 1964, as amended by Act 13 of 1994
(ii) Writings of Prominent Authors

The opinions, research findings and conclusions of eminent authors carry also persuasive authority in Zambian Courts. In the absence of written law or other authoritative source of law, the court can rely on writings of prominent authors.

(iii) Foreign Law

Last but not least, one is permitted to use foreign written and case law to support arguments in Court. In other words, the pieces of legislation and court decisions from other nations carry persuasive authority in Zambian courts and legal discourse.

2.1.6 African Customary Law

African customary law is a binding source of law in Zambia. It is recognised in Article 23(4) of the Constitution of Zambia. Yet one of the challenges that exist is ascertaining the exact place it occupies or the stratum in which it falls. Article 1(3) of the Constitution of Zambia reads: ‘This Constitution is the supreme law of Zambia and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void’. The fact that it is the supreme law means that the Constitution is the highest law in the hierarchy of Zambia’s laws. Also, this Article implies that African customary law is subject to the Constitution. However, Article 23(4) of the Constitution excludes African customary law from Constitutional scrutiny in all matters involving discrimination. By so doing, African customary law which occupies a much lower position to the Constitution is given the opportunity and power to be the supreme law in several matters including marriage, property settlement and inheritance. While African customary law does not regulate the ZCI, it is here highlighted so the reader has a complete picture of Zambia’s sources of law and their hierarchy; as well as the challenges inherent in them.

3 OVERVIEW OF THE RELEVANT LEGISLATIVE FRAMEWORK FOR THE ZAMBIAN CONSTRUCTION INDUSTRY

There are many laws that either regulate or have an impact on the delivery of quality infrastructure in Zambia. These include the following:

i. Circular No. 3 of 2013, date 17 April 2013;

ii. Citizens’ Economic Empowerment Act No. 9 of 2006;
iii. Citizens Economic Empowerment (Preferential Procurement) Regulations, Statutory Instrument No. 36 of 2011;
v. Competition and Consumer Protection Act No. 24 of 2010;
vi. Engineering Institution of Zambia Act No. 17 of 2010;
vii. Environmental Management Act No. 11 of 2011;
ix. Housing (Statutory and Improvement Areas) Act No. 42 of 2010, CAP 194 of the Laws of Zambia;
x. Immigration and Deportation Act No. 18 of 2010;
xii. Lands Act No. 41 of 2010, CAP 184 of the Laws of Zambia;
xiii. Lands and Deeds Registry Act No. 40 of 2010, CAP 185 of the Laws of Zambia;
xiv. Local Government (Amendment) Act No. 6 of 2010, CAP 281 of the Laws of Zambia;
xv. Mines and Minerals Development Act No. 7 of 2008;
xvii. National Housing Authority Act No. 16 of 1971, CAP 195 of the Laws of Zambia;
xix. Occupational Health and Safety Act No. 36 of 2010;
xx. Public Finance (Amendment) Act No. 15 of 2004;
xxii. Public Interest Disclosure (Protection of Whistle Blowers) Act No. 4 of 2010;
xxiv. Public Procurement Act No. 12 of 2008;
xxv. Public Roads Act No. 12 of 2002;
xxvii. Urban and Regional Planners Act No. 4 of 2011;
xxvii. Water Resources and Management Act No. 21 of 2011;
xxvii. Water, Supply and Sanitation Act No. 10 of 2005;
xxvii. Zambia Institute of Architects Act No. 36 of 1995, CAP 442 of the Laws of Zambia; (and its relevant Codes of Practice); and

Copies of all the above named instruments will be made available, in case candidates wish to familiarise themselves with these laws. For purposes of this module, a brief discussion of certain provisions in the circular, statutory instrument and 11 Acts listed above will suffice. The provisions focused on this module are those that directly impact on the work and activities of SMEs in grades 3, 4, 5 and 6.

3.1 **REGISTRATION WITH AND REGULATION BY THE NATIONAL COUNCIL FOR CONSTRUCTION AS STIPULATED IN THE NATIONAL COUNCIL FOR CONSTRUCTION ACT NO. 13 OF 2003**

The National Council for Construction Act (herein after the NCC Act) establishes the NCC; whose main function is to regulate the entire ZCI, and provide for the promotion and development of the ZCI. Other functions listed in Section 5 of the NCC Act include setting
and promoting safety standards in the ZCI; assessing the performance of contractors; and regulating contractors’ conduct.

Therefore the NCC requires that all SMEs should register with them to facilitate their regulation. In fact, if an SME is not registered with the NCC, the law prohibits it from undertaking construction works in the public sector. Section 21(1) of the NCC Act reads in part: ‘A contractor shall not undertake … any construction works … for a public sector contract …. unless the contractor is registered with the Council and holds a valid certificate issued by the Council’.

To further regulate contractors’ conduct and promote safety standards in the ZCI, the NCC instructs that owners and employees of SMEs who are engaged in activities related to the construction industry be affiliated to the Council of professional bodies. Examples of such professional bodies include the Engineering Institution of Zambia and the Zambia Institute of Architects.

One of the purposes of the NCC is to promote Zambian construction companies. The NCC runs a Construction School, where it trains persons engaged in construction or in activities related to construction. Section 16(1) of the NCC Act tasks the NCC with the responsibility of regulating the behaviour of contractors and promoting minimum standards and best practice of contractors. SMEs therefore stand to benefit from NCC trainings and forging a good relationship with the NCC.

Lastly, it is important to note that there are cases in which the NCC has withdrawn practicing licences from contractors who are guilty of misconduct. The Act gives the NCC powers to punish erring construction companies.

3.2 Planning and the Urban and Regional Planners’ Act No. 4 of 2011
Some of the challenges faced in the ZCI are due to poor planning. Thus to curb these problems, the laws regulating planning must be respected. The Urban and Regional Planners’ Act establishes the Zambia Institute of Planners and provides for the registration of planners and planning firms. It also regulates the professional conduct of planners and planning firms. Section 13(1) bars persons from practicing as planners when they are not members of the Institute. Section 13(2) makes it a punishable offence to practice as a planner when one is not a member of the institute. Also, a planning firm is not allowed to provide any planning service or undertake any planning work unless it is registered in accordance with the Act (Section 16(1)). A planning firm that contravenes this law commits an offence and is liable, upon conviction, to a fine (Section 16(2)). In short, SMEs are not allowed to undertake any planning works unless they are registered as a planning firm.

3.3 Housing and the Housing (Statutory and Improvement) Act, Cap 194 of the Laws of Zambia
Zambia has 103 districts, with a total backlog of over two million houses. The Government has taken cognisance of this backlog and is looking for cooperating partners to address the deficit. Currently, the Government is the largest employer of both local and Small and Medium Enterprise (SME) contractors.

The above named Act is of great importance to the ZCI and SMEs undertaking construction works because construction of all housing must comply with its provisions. The Housing Act
aims to provide for the control and improvement of housing. Section 40(1) states that every building erected and every improvement effected on any land to which this Act applies shall be in accordance with specifications approved by the National Housing Authority or by the municipal council in whose jurisdiction such land is situated. Thus the National Housing Authority Act regulates the development and control of housing throughout the country.

The Act establishes the National Housing Authority, whose powers include developing, building, managing and controlling housing estates (Section 21(1)(a)). Section 22 instructs that no one shall initiate detailed planning until a preliminary plan of the site and a written memorandum explaining the nature of the proposed development has been submitted to and approved by the National Housing Authority.

Thus an SME that constructs a house without or before being given the necessary approval by the National Housing Authority contravenes the law. Clients who do not respect this requirement have sometimes had their structures demolished by the State. Section 26 of the Act permits entry to any land, building or structure for purposes of inspecting it and ensuring that the law has been complied with.

3.4 ROADS AND THE PUBLIC ROADS ACT NO. 12 OF 2002

As is the case with housing, the construction of roads is another highly regulated and specialised area of construction. The Road Development Agency is a statutory body whose functions include planning, managing and coordinating the road network in Zambia. It is also the duty of the Agency to carry out routine as well as emergency maintenance of roads through its employees or independent contractors. Any construction company authorised to construct roads can be deployed as an independent contractor by the Agency.

Another key function of the Agency is to make recommendations in relation to the siting of buildings on roadsides (Section 4(2)(f)). One of the major problems that exist in Zambia is that people build houses and other structures too close to the roadside. Section 43(1) of the Public Roads Act mandates land owners to leave a distance of 91 metres on either side, measured from the centre line of the road. This area is called the road reserve. Failure to comply with this rule is an offence, for which one could be fined; or imprisoned for not more than three months; or both (Section 46(2)). SMEs should therefore advise their clients accordingly to avoid such penalisation.

3.5 PROCUREMENT AND ECONOMIC EMPOWERMENT OF CITIZENS

A lot of funds in the ZCI go towards procurement. Through this sector, many SMEs can be empowered economically. This section of the module looks at the laws governing procurement and economic empowerment of Zambian citizens, both of which are currently undergoing revision.

3.5.1 Public Procurement Act No. 12 of 2008

The aim of this Act is to ensure transparency and accountability in public procurement. It is there to regulate and control public procurement practices in order to promote the fairness, integrity of and public confidence in the procurement process in State institutions.

Section 37 provides that a ‘bidder shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion not related to its eligibility or qualifications, except to the extent provided for in this Act’.
Section 26(3) provides that ‘participation in open national bidding shall be limited to citizen and local bidders’ only. Where open international bidding is used, a foreigner bidder shall partner with a citizen or local supplier (Section 26(6)). Section 28(2)(a) states that a procuring entity shall use open international selection where the estimated value of the procurement exceeds the prescribed threshold. This means that all SMEs (registered with the NCC) are permitted to bid for public procurement contracts. Those who wish to partner with foreign companies to strengthen their bid and increase their chances of success are also encouraged to do so.

The law provides for a very transparent process of procurement in the public sector. Section 46(1) provides for the method for selection of bidders. It states that the method shall be:

a) by publication of a bid notice or through a pre-qualification process for open bidding;

b) by publication of a notice requesting expressions of interest in order to develop a shortlist for open selection;

c) by development of a shortlist for limited bidding and simplified bidding; or

d) by selection of a single bidder for direct bidding.

As a measure to curb corruption and other ills, Section 73(1) prevents public officers and their close relatives from participating as bidders in the public procurement of the procuring entity which the public officer is employed (or over which the public officer exercises any supervisory or oversight authority). It is evident from the above that the law regulating public procurement is comprehensive. The Act also envisages the creation of statutory instruments to further amplify the provisions of the Act; and increase transparency and accountability.

### 3.5.2 Citizens’ Economic Empowerment Act No. 9 of 2006

In order to grow the economy in a manner that is sustainable, it is necessary to empower citizens. This is why the Citizens Economic Empowerment Act was passed. The Act establishes the Citizens Economic Empowerment Commission as well as the Citizens Economic Empowerment Fund that is now used to empower citizens economically. The Act targets specific citizens and three types of companies namely: citizen empowered companies, citizen influenced companies and citizen owned companies (Section 3). Its purpose is to promote equal opportunities for the targeted citizens and the three types of companies mentioned above in accessing and being awarded procurement contracts and other services from State institutions.

Furthermore, the Act is there to encourage gender-equality in accessing, owning, managing, controlling and exploiting economic resources. It aims to remove social customs, statutory provisions or other practices that limit access to any particular gender with regard to skills training that is essential for effective participation in the economic sector. Its goal is to remove structural and discriminatory constraints and in so doing ensure equitable income distribution.

While the aim to promote economic empowerment is positive and highly welcome, there is a problem in this Act. Section 3 which is the interpretation section defines a company as ‘a public or private company as defined in the Companies Act’. The same section also defines the three types of companies mentioned above. It stipulates that:

- ‘citizen empowered company’ means a company where twenty five to fifty percent of its equity is owned by citizens;
‘citizen influenced company’ means a company where five to twenty five percent of its equity is owned by citizens in which citizens have significant control of the management of the company; 

‘citizen owned company’ means a company where at least fifty point one percent of its equity is owned by citizens and in which citizens have significant control of the management of the company.

The issue of having two different methods of defining a company has been noted as a problem. The Zambia Public Procurement Authority (ZPPA) is currently reviewing the concepts of ‘citizen-influenced’, ‘citizen-owned’ and ‘citizen-empowered’ companies which are also defined in the Public Procurement Act. In the latter Act, the definitions of the three ‘citizen’ companies also include the following words at the end: ‘and is licensed to undertake business in Zambia’. This compounds the problem even further because it means that there is a difference between the definition of the three ‘citizen’ companies as provided in the Citizens’ Economic Empowerment Act and in the Public Procurement Act. Most certainly, there is a need to revise and standardise these definitions.

It is important for SMEs to understand these definitions because there are varying entitlements that accrue to each type of company. For purposes of accessing funds and other benefits provided for under the Act, all SMEs fall within one or the other category of companies defined in the Act.

3.5.3 Citizens Economic Empowerment ( Preferential Procurement) Regulations, Statutory Instrument (S.I.) No. 36 of 2011 and Circular No. 3 of 2013

In 2011, an S.I. was passed to guide the implementation of the Citizen’s Economic Empowerment Act. In 2013, a circular was issued to give further direction on empowerment of citizens and the thresholds established in the Public Procurement Act. The circular re-clarifies the thresholds for the national and international competitive bidding under Sections 26 – 28 of the Public Procurement Act and Regulation 8 of the Public Procurement Regulations of 2011. The Public Procurement Act, Citizens’ Economic Empowerment Regulations and Circular No. 3 of 2013 therefore speak to each other on the issue of reservation thresholds. Section 4 of the S.I. reads as follows:

A State institution may, in evaluating a bid, adjust the bid price in order to facilitate preferential evaluation of a bid as follows:

(a) For a citizen influenced company, by four percent;
(b) For a citizen-empowered company, by eight percent;
(c) For a citizen-owned company, by twelve percent; and
(d) For domestically manufactured goods by a citizen-influenced company, citizen-empowered company and citizen-owned company, fifteen percent.

Section 5 of the S.I. is devoted to reservation schemes and stipulates that:

(1) The Commission and the Authority shall reserve a public procurement for a citizen-influenced company, citizen-empowered company or citizen-owned company with estimated values as follows:

(a) with respect to goods, public procurement of goods not exceeding three billion kwacha (K3,000,000,000.00); and
(b) With respect to works –
   (i) building construction works not exceeding twenty billion kwacha (K20,000,000,000.00); and
(ii) civil and road works not exceeding thirty billion kwacha (K30, 000,000,000.00).
(2) A citizen-influenced company, citizen-empowered company or a citizen-owned company participating in a public procurement that exceeds the estimated values provided for in sub-regulation (1) shall not be eligible for reservation as specified in sub-regulation (1).

The 2013 Circular, cited in part, reads:

2. Controlling Officers and Chief Executive Officers are reminded as follows:
(a) Unless the goods, works and services cannot be obtained from local bidders, foreign bidders ARE NOT eligible to bid in National Competitive Bidding (NCB) tenders which are financed using internally generated public resources.
(b) Where a Procuring Entity fails to get the required goods, works or services from a local supplier, documentary evidence must be provided and kept as part of the procurement record before foreign bidders are invited. However, the foreign bidders will be required to partner with a local bidder for purposes of skills transfer.

At first glance, Sections 4 and 5 in the S.I. appear positive and meant to benefit indigenous local contractors. However, the three ‘citizens’ companies in the Public Procurement Act and CEE Act allows a foreign company to simply provide a citizen with a minimal shareholding and qualify to become a ‘citizen’ company. Thus in many instances, the reserved projects still end up being given to foreign companies. This means that the reservation scheme provided for in the S.I. also needs to reassessed in order for it to fully benefit SMEs.

It is unfortunate that many SMEs will not progress or grow even with the reservation pronouncement to subcontract twenty percent of the main contracts work to them. This is because many SMEs are only interested in receiving money rather than performing the work. As a result, foreign contractors prefer paying off some subcontracting SMEs, while the main contractor does all the work. This contracting strategy fails to empower SMEs with skills and knowledge transfer.

Another relevant provision in the 2013 Circular is that on the recommended thresholds specific to the ZCI. The Circular recommends that for construction works worth a maximum of K50 million rebased, only local or citizen bidders are eligible to bid. For construction works worth more than K50 million rebased, international bidders are permitted to participate on condition that they partner with local and/ or ‘citizen’ companies.

### 3.6 Occupational Health, Safety and Compensation

This section briefly looks at matters of health and safety in the workplace; as well as compensation of an employee in case of injury sustained or illness contracted due to one’s form or place of employment. While occupational health and safety (OHS) is a major subject taught as a separate module at the NCC Construction School, it is important for SMEs to have an overview of their rights and responsibilities as provided for in law.

#### 3.6.1 Occupational Health and Safety Act No. 36 of 2010

This is the new law in the area of occupational health and safety in Zambia. It establishes the Occupational Health and Safety Institute; and provides for the establishment of health and
safety committees at workplaces. The purpose of establishing the Institute and committees is to protect the health, safety and welfare of all persons at a workplace, including SMEs’ managers, administrators and general workers.

The functions of the Institute are outlined in Section 6 of the Act. One of them is to conduct medical examinations for occupational health and safety purposes in all industries. Through this Act, it is mandatory for SMEs to adhere to all health and safety requirements. Also, it is important to note that SMEs are mandated to provide for the protection of all persons on their premises (not only those at work) against risks to health or safety arising from the activities of persons at work. Section 16(1) and (2) of the Act outlines the various duties that all employers, including SMEs in the ZCI, have towards their employees. These duties range from provision of protective clothing; to placing an employee in an environment that is suitable to the employee’s physical and psychological ability; and providing adequate measures to deal with emergencies and accidents. Section 16(3) reads: “A person who contravenes subsection (1) and (2) commits an offence and is liable, upon conviction, to a fine … or to imprisonment for a period not exceeding five years, or both.”

Section 35 of the Act creates other general offences. For instance it criminalises the deliberate creation of a risk with the intention to causing a disruption at the workplace; as well as the willful furnishing of false information or documentation. If found guilty of any of these offences, one can be fined; or imprisoned for a maximum of two years; or both.

3.6.2  **Workers’ Compensation Act No. 10 of 1999, CAP 271 of the Laws of Zambia**

Workers who get disabled by accidents or contract diseases through their work are protected by the Workers’ Compensation Act. This Act provides for the establishment and administration of a Fund for the compensation of such workers. In case such a worker dies as a result of the accident or disease, the Act further provides for the payment of compensation to his/her dependants; and for the grant of pensions and allowances to certain dependants.

The Act also provides for the appointment and powers of a Workers' Compensation Commissioner; the establishment and powers of a Workers' Compensation Board; and an Appeal Tribunal. This means that there are statutory and independent bodies that an aggrieved party can approach.

Lastly, Section 10 of the Act stipulates that the Principal shall be liable for everything that happens on a construction site under a Principal and contractor relationship, unless otherwise agreed by the parties. The Act does not impose liability on the Principal in respect of any accident which occurs elsewhere and not on the premises the Principal undertakes to execute the work. Therefore this Act prevents the Principal from being liable for acts or omissions of the contractor that happen outside work premises.

3.6.3  **Public Health Act No. 22 of 1995, CAP 295 of the Laws of Zambia**

Section 78 of the Public Health Act states that it is the duty of every Local Authority to prevent any pollution dangerous to health of any water which the public has a right to use and does use for drinking or domestic purposes. One may wonder what the relationship is between construction and public health. An extract from the *American Journal on Public Health* explains that:
The built environment significantly affects the public’s health. This was most obvious when infectious disease was the primary public health threat during the industrial revolution; unsanitary conditions and overcrowded urban areas facilitated the spread of infection. ... Physical spaces can expose people to toxins or pollutants and influence lifestyles that contribute to diabetes, coronary vascular disease and asthma. Public health advocates can help shape the design of cities and suburbs in ways that improve public health.\textsuperscript{15}

In other words, all construction works must be undertaken in a manner that is not hazardous to the health of the public. The Public Health Act is the law that provides for the prevention and suppression of diseases; and it regulates all matters connected to public health. Section 109 makes it an offence to contravene any provision of the Act, and if found guilty, one is liable to pay a fine.

\subsection{3.7 The Environment and the Environmental Management Act No. 11 of 2011}

When dealing with construction, it is inevitable and imperative for one to consider the environment. There is a direct correlation between construction and the environment. For example, research shows that more water is demanded when population increases rapidly and the economy develops.\textsuperscript{16} Construction is a natural consequence of economic development; as well as a pre-requisite for further development. With construction comes interference with or a potential threat to vegetation and wildlife. This is why the law requires that an environmental impact assessment be conducted before construction commences. This section focuses on what the law provides regarding construction and the environment in Zambia. While the focus here is on the Environmental Act, it should be noted that Zambia has various pieces of legislation regulating different aspects of the environment, e.g. the Water Resources and Management Act No. 21 of 2011; the Water, Supply and Sanitation Act No. 28 of 1997 and the Zambia National Wildlife Act No. 12 of 1998.

The Environmental Management Act (EMA) is the most superior written law relating to environmental protection and management in Zambia (Section 3). It regulates the sustainable management and use of natural resources; provides for the preparation of the state of environmental management strategies; and for the conduct of strategic environmental assessments of proposed policies, plans and programmes likely to have an impact on environmental management. The EMA also regulates the prevention and control of pollution and environmental degradation; and public participation in environmental decision-making.

The EMA says that ‘every person living in Zambia has the right to a clean, safe and healthy environment’ (Section 3); and that ‘every person has a duty to safeguard and enhance the environment’ (Section 5). This duty also mandates everyone to inform the Environmental Management Agency ‘of any activity or phenomenon that affects or may affect the environment’. In short, it is every Zambian’s responsibility to protect all aspects of the environment in Zambia.


Furthermore, the EMA instructs that the proponent of any policy, programme or plan that has the potential of adversely affecting environmental management, sustainable management or utilisation of natural resources should conduct a strategic environmental assessment of that policy, programme or plan; and present a strategic environmental assessment report to the Agency for approval (Section 23(1)). Section 23(3) mandates such a proponent to prepare a strategic environmental impact assessment which should highlight both the positive and negative effects that the implementation of the proposed policy, plan or programme is likely to have on the environment. This means that before undertaking any construction works, the law requires a construction company or contractor to examine the impact of the proposed construction on the environment; and notify the Environmental Management Agency of whatever the effect of such a project is, whether good or bad. It is an offence to willfully fail to undertake an environmental impact assessment (Section 117).

3.8 LABOUR MATTERS AND THE IMMIGRATION ACT NO. 18 OF 2010
Section 28 of the Immigration Act provides for the granting of employment permits to foreigners who come to offer various services in Zambia. Class A of the First Schedule to the Act states that a permit should only be granted to a foreign applicant if ‘there is not already a sufficient number of persons engaged or available in Zambia to meet the requirements of the inhabitants of Zambia’. What this means is that SMEs are not permitted, for example, to employ foreign bricklayers, plumbers and electricians because there are sufficient Zambians who possess those skills.

In addition, Section 28 stipulates that employment permits must be granted in consultation with the Ministry of Labour. Further, Section 28 provides a penalty if the person granted an employment permit goes against the regulations of the permit.

4 CONCLUSION
It is evident from the above analysis that Zambia has a rich pool of laws regulating the ZCI. While many of the provisions in these laws are positive, protective and progressive; there are some lacunae that need to be filled. Also, the fact that legal provisions regulating the ZCI are scattered in so many Acts of Parliament, many of which are not focused on the ZCI, creates a fragmented body of law as far as the ZCI is concerned.