

## QUESTIONS AND ANSWERS FOR LIRA DEMO

Q#	QUESTION	ANSWER
<b>REAL ESTATE</b>		
1.	What is due diligence in real estate ?	Due diligence entails investigating or verifying facts about the physical and financial condition of the property as well as the area in which it is located. To avoid financial pitfalls, it is prudent to conduct due diligence on a property that one wishes to purchase. When purchasing an immovable property, and before signing an agreement of sale of an immovable property, it is important to engage a conveyancer/legal practitioner to carry out an investigation of the entire contract its terms. Due diligence prior to purchasing the property helps to ensure that the property one is buying exists, it identifies the seller against the name on the property, and it also helps to ensure that there are no other real or personal rights registered against the property that could impede the transfer of the property.
2.	What are the key issues to consider when one is purchasing an immovable property?	<p><b>a) The property</b></p> <p>It is crucial to determine the registered title of the property. It is important to establish whether an immovable property one wishes to purchase has a title deed attached to it or is under a cession or is state owned land or one controlled by the land developer or any other recognizable title before signing an agreement. There can be a scenario where someone buys a house under the impression that it has title deeds, only to discover that the house is registered under a cession. It's important to make sure there are no other real or personal rights registered against the property that could prevent the transfer of property. Examples of those real or personal rights include leases, mortgage bonds, and caveats etc.</p> <p><b>b) Property with title deeds</b></p> <p>Where the property being purchased is said to be held under a title deed, a copy of the title deed must be produced by the seller. One must verify whether the seller is the actual owner of that property, verify the property description and further verify whether there are any rights registered against the property. Title Deeds are kept at the Registrar of Deeds. One has to request a title deed and photocopy the Deed for perusal.</p> <p><b>c) State owned land</b></p> <p>If one is purchasing rural state land that is privately owned, the purchaser must make sure that there is a certificate of no present interest issued by the Minister of Lands. A certificate of no present interest is a written statement by the Minister of Lands stating that the President has no intention to acquire the land in question for the time being.</p> <p><b>d) Properties by land developers</b></p> <p>Purchasers run a number of dangers when purchasing properties without title deeds especially those being sold by land developers. The validity of the land development project must be verified. The purchaser must seek to see the original parent or holding deed to verify is the land developer is listed on it. Further, a dispensation certificate, the development permit, and the subdivision permit have to be produced before one purchases such property. Where the development is deemed to be finished, a certificate of compliance must be produced.</p> <p><b>e) Identity of the seller</b></p> <p>Verifying the information about the property's seller is also crucial. It's important to meet the person selling the property and to look over their identification paperwork. The most crucial step is to match the seller's name to the name on the title deed.</p> <p><b>f) Where the seller is an individual</b></p> <p>Where the seller is an individual there is need to match the images on the passport and national ID card to the seller's face. Particularly between the seller's face and the identity card, there should be at least some degree of similarity.</p> <p><b>g) Where the seller is a company or trust</b></p> <p>After verifying that the company or trust owns the property one has to investigate if the person who is negotiating the agreement has been given the authority to sign any documents.</p> <p><b>h) Where the person who is selling is an executor of the deceased estate</b></p> <p>When a seller claims to be a deceased estate's executor, one must conduct an investigation with the Master of the High Court. If the estate is registered, it is crucial to examine the letters of administration to confirm that the individual claiming to be the executor of the estate actually holds that position. It is important to remember that the property owned by the deceased cannot be transferred without the master's permission.</p>

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3.	<b>What does the law say about double sales?</b>	<p>The position of the law in relation to double sales is such that when ownership has not yet been legally transferred, the first purchaser who is the first to buy the property is the one who receives favour over the second purchaser by operation of the law. The second purchaser however, has an avenue to pursue the seller for damages or even compensation accruing from the conduct of the seller.</p> <p>There are however special circumstances with regards to double sales that might result in the law favoring the second purchaser over the first purchaser.</p>
4.	<b>What are the special circumstances that may favour a second purchaser over a first purchaser?</b>	<p>For a second purchaser to attain favour at law over the first purchaser in the event of a double sale, the circumstances must heavily be in his/ her favour. The question of special circumstances differs from case to case. The list of circumstances is in exhaustive and includes the following: -</p> <ol style="list-style-type: none"> <li>a. The Second buyer should have purchased the property without genuinely knowing that the Seller had already sold it to the First Purchaser.</li> <li>b. The property has not yet been legally transferred to either purchaser by the seller. The consequences surrounding such a circumstance is that in the event that title had been passed to the first purchaser, he or she therefore acquires an indefeasible right leaving the second purchaser with the remedy of only instituting an action for damages and restitution against the seller.</li> </ol> <p>In the event that title has been passed to the second purchaser, the second purchaser therefore acquires an indefeasible right subject to the fact that he/ she had no knowledge either at the time of the sale or at the time transfer was effected of the prior sale to the first purchaser. The only remedy for the first purchaser would be an action for damages against the seller.</p> <p>If, however, the second purchaser had knowledge of the prior arrangement between the seller and the first purchaser, the first purchaser can recover the property from the second purchaser taking into consideration that no special circumstances intervene to affect the interests of the first purchaser.</p> <ol style="list-style-type: none"> <li>c. The Second buyer has already expended a lot of money on the property and made visible developments to it such that depriving them of the property will only amount to great prejudice.</li> </ol> <p>It is therefore apparent from the above illustrations that the law has a two-pronged prerequisite that is, acquisition in good faith and registration of title in good faith. Good faith must concur with the registration. If it would be shown that a purchaser acted in bad faith, the alleged registration he /she has amounts to no registration at all. Good faith means that the registrant must have no knowledge of the defect or lack of title of the seller, or must not have been aware of facts that should have put him upon such inquiry and investigation as might be necessary to apprise him with the blemishes in the title of his seller.</p>
5.	<b>What should I do if I get caught up in a double sale?</b>	It is advisable to approach the courts to seek recourse or consult legal counsel to pursue one's interest of either acquiring the property or instituting an action to pursue damages and restitution against the seller.
Q#	QUESTION	ANSWER
<b>REPLACEMENT OF AN IMMOVABLE PROPERTY</b>		
6.	What is a property caveat	A property caveat is a notice recognized at law that informs the general public of a legal claim of interest in a property. It has the effect of delaying the purchase or sale of a property by serving as a formal notice to the public that an interest in the land or property in question exists. A property caveat can also be employed as means of delaying or staying a property transaction. A caveat is lodged with the office of the Registrar of Deeds so as to inform the public about an interest being claimed on the property.
7.	What Instances can one apply for a placement of a caveat on the property?	Situations where caveats are applied for include situations where the property owner has pledged the property as security in order to secure a loan or to stay the sell or purchase of the property due to claims from a party claiming to interest in the property. One can also employ a caveat as a tool to safeguard interests of a third party being a victim of a double sale to prevent and or delay the transfer of the property pending the finalization of issues and pursuance of other remedies at law which include court litigation.
8.	Can the Registrar of Deeds exercise of discretion in placement of caveats?	The Registrar of Deeds is empowered to place a caveat over someone's property in one of two ways the first instance being with the consent of the registered owner of the property. If the owner of the property consents to the placement of the caveat the Registrar shall place the caveat on the property. This could be done to protect the interests of a creditor with whom they have a contract. In the absence of the

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		property owner's consent, the second instance is when a court order instructs the Registrar of Deeds to place a caveat on the property. A person who intends to have a caveat placed over the property of another may file an application with the court for the placement of such.
9.	What are the requirements for placement of a caveat on the property through a court order	<p>If one intends to have a property of another caveated, he or she has the onus to demonstrate their interest in the property. It is a prerequisite in this regard therefore that, the alleged interest must be existent at the moment the application for the placement of caveat is placed before the court and cannot be one that will arise after the fact. Only interests related to the land are eligible to be the subject of a caveat.</p> <p>In essence, for an application for placement of a caveat on the property of another to sail through, the applicant must prove that he or she has a caveatable interest in the property in question, that the interest is in existence at the time the application is made and lastly, that the claim is arising from some dealing with the registered property.</p>

Q#	QUESTION	ANSWER
<b>EMPLOYMENT</b>		
10.	What are the main sources of employment law?	The main sources of employment law are the Constitution of Zimbabwe 2013, the Labour Act [Chapter 28:01] ("the Labour Act") and the various regulations promulgated thereunder, industry-specific Collective Bargaining Agreements, common law, judicial precedents and authoritative texts.
11.	What types of worker are protected by employment law?	The Labour Act applies to all employees save for members of the disciplined forces, members of the public service, and employees whose conditions of service are regulated by the Constitution. The conditions of service of members of the public service are regulated by the Public Service Act [Chapter 16:04], while members of the disciplined forces fall under the ambit of the Defence Forces Act [Chapter 11:02], the Police Act [Chapter 11:10] and the Prisons Services Act [Chapter 07:10] respectively. The conditions of service of members of the judiciary are regulated in terms of the Judicial Services Act [Chapter 7:18]. Employees whose conditions of service are regulated by the Constitution include the attorney general.
12.	How are different types of worker distinguished?	All types of employee are protected by employment law. This includes persons who are engaged on the basis of fixed-term and casual contracts, as well as those who are engaged on the basis of contracts without a limit of time.
13.	Do contracts of employment have to be in writing?  If not, do employees have to be provided with specific information in writing?	<p>There is no requirement that contracts of employment be reduced to writing. However, in terms of section 12 (2) of the Labour Act, the following should be recorded in writing:</p> <p><i>(a) the name and address of the employer;</i>  <i>(b) the period of time, if limited, for which the employee is engaged;</i>  <i>(c) the terms of probation, if any;</i>  <i>(d) the terms of any employment code;</i>  <i>(e) particulars of the employee's remuneration, its manner of calculation and the intervals at which it will be paid;</i>  <i>(f) particulars of the benefits receivable in the event of sickness or pregnancy;</i>  <i>(g) hours of work;</i>  <i>(h) particulars of any bonus or incentive production scheme;</i>  <i>(i) particulars of vacation leave and vacation pay; and</i>  <i>(j) particulars of any other benefits provided under the contract of employment."</i></p>
14.	Are any terms implied into contracts of employment?	Terms may be implied into contracts of employment from common law, legislation and practice. In addition, the terms which are stipulated in the Labour Act are implied into such contracts of employment as are governed by the Labour Act. Where the terms of the contract are inferior to those which are stipulated in the Labour Act, the latter prevails.
15.	Are any minimum employment terms and conditions set down by law that employers have to observe?	Part IV of the Labour Act stipulates minimum conditions of services relating to matters such as the accrual of vacation leave days, female employees' entitlement to maternity leave, sick leave, and employees' rights following the termination of the contract of employment. Industry-specific Collective Bargaining Agreements, which are made in terms of section 74 of the Labour Act, relate to the minimum conditions which are applicable to each industry or sector. Such conditions may surpass, but may not be inferior to, those which are stipulated in the Labour Act.
16.	To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?	The terms and conditions of non-managerial employees are largely regulated by Collective Bargaining Agreements. These are negotiated by trade unions and employers' organisations or federations in terms of section 74 of the Labour Act at industry or sector level, or by workers' committees at company level in terms of section 24 of the Labour Act. In terms of section 25 of the Labour Act, agreements which are negotiated at industry level take precedence over those negotiated at company level, save where the latter provide for more favourable conditions than the former. Collective Bargaining Agreements may regulate any conditions of employment which are of mutual interest to the parties, including rates of remuneration, permissible deductions from remuneration, vacation leave, the maximum hours of work, defence of an immediate threat to the existence of a workers' committee or a registered trade union.
17.	Are employers required to set up works councils?	In every workplace where there is a workers' committee representing employees other than managerial employees, an employer shall set up a works council in terms of section 25A of the Labour Act.
18.	What are the main rights and responsibilities work councils?	The main functions of the works council are to promote and maintain the effective participation of employees in the establishment, to secure mutual cooperation and trust between the employer and employees, and to promote the general and common interests of the employees and the establishment.
19.	How are works council representatives chosen/appointed?	A works council has the right to be consulted by the employer on proposals relating to matters such as retrenchment, restructuring, plant closures and transfers of ownership. A works council is constituted by an equal number of workers' committee members and employer representatives.

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20.	In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?	A works council does not have co-determination rights. It is merely entitled to be consulted on matters relating to retrenchment, restructuring, plant closures, transfers of ownership, the implementation of codes of conduct, the criteria for awarding discretionary bonuses, product development plans, job grading and training and education schemes affecting employees. The right to consultation arises under section 25A (5) of the Labour Act.
21.	How do the rights of trade unions and works councils interact?	Both trade unions and works councils have the mandate to facilitate the realisation of industrial harmony. Their rights are accordingly complimentary.
22.	Are employees entitled to representation at board level?	Employees do not have a right to representation at board level.
23.	Are employees protected against discrimination?	Section 5 (1) of the Labour Act relates to the protection of employees against discrimination.
24.	On what grounds is discrimination prohibited?	An employee cannot be discriminated against based on race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or any disability as defined in the Disabled Persons Act [Chapter 17:01]. The provision enjoys constitutional endorsement under section 56 (1) of the Constitution of Zimbabwe. In addition to the foregoing, the Constitution prohibits discrimination on the grounds of sex and age.
25.	What remedies are available to employees in successful discrimination claims?	In terms of section 5 (4) of the Labour Act, an employee may claim damages arising from the act of discrimination or seek an order directing the employer to redress the contravention, or both.
26.	Do "atypical" workers (such as those working parttime, on a fixed-term contract or as a temporary agency worker) have any additional protection?	In terms of section 12 of the Labour Act, an employee engaged on the basis of a casual contract is deemed to have become an employee on a contract of employment without limit of time on the day that his or her period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months. In addition, a contract for casual work, seasonal work or for the performance of some specific service shall be deemed to be a contract of employment without limitation of time upon the expiry of such period of continuous service as is stipulated by the appropriate employment council or prescribed by the Minister.  Finally, section 12B (3) (a) and (b) of the Labour Act provides that if, on the termination of a fixed-term contract, the employee had a legitimate expectation of the renewal of the contract and the employer employs another person instead of the employee, the employee shall be deemed to have been unfairly dismissed.
27.	Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?	There are none.
28.	How long does maternity leave last?	A female employee who would have served for at least one year may be granted 98 days' maternity leave on full pay in terms of section 18 of the Labour Act. Any maternity leave in excess of the 98 days may be granted as unpaid leave. Employees who would have served less than one year may also be granted unpaid maternity leave.
29.	What rights, including rights to pay and benefits, does a woman have during maternity leave?	An employee who would have served at least one year is entitled to maternity leave on full pay and benefits.
30.	What rights does a woman have upon her return to work from maternity leave?	In terms of section 18 (8) of the Labour Act, a nursing mother is entitled to either a break of one hour or two half-hour breaks in order to allow her to nurse her child. The right accrues for up to six months.
31.	Do fathers have the right to take paternity leave?	There is no right to paternity leave under the Labour Act. An employer is, however, at liberty to permit a male employee to take paternity leave.
32.	Are there any other parental leave rights that employers have to observe?	Section 14B of the Labour Act grants employees up to 12 days' leave in a calendar year on compassionate grounds, which include the death of a child. Attending to a sick child is generally interpreted as warranting leave on compassionate grounds.
33.	Are employees entitled to work flexibly if they have responsibility for caring for dependants?	There is no right to flexible hours. The parties are, however, at liberty to agree to flexible working hours or conditions.
34.	On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?	In terms of section 16 (1) of the Labour Act, the employees are automatically transferred to the buyer.
35.	What employee rights transfer on a business sale?	In terms of section 16 (1) of the Labour Act, upon the transfer of an undertaking, the employees are "deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted".

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36.	How does a business sale affect collective agreements?	The employees are at liberty to agree to the diminution of their rights upon transfer, the rights to social security, pensions, gratuities or other retirement benefits may not be diminished. Such rights as would have accrued to the employees under collective agreements will bind the transferee.
37.	Are there any information and consultation rights on a business sale?  How long does the process typically take and what are the sanctions for failing to inform and consult?	The employer is required to consult the works council in terms of section 25A (5) (c) of the Labour Act. There are no prescribed procedures or timeframes.
38.	Can employees be dismissed in connection with a business sale?	A reading of section 16 (1) of the Labour Act reveals that unless an employment contract is lawfully terminated prior to the transfer, no dismissals may take place as a consequence of the sale. In the event, however, that the transfer necessitates a reduction of the workforce, the affected employees may be retrenched.
39.	Are employers free to change terms and conditions of employment in connection with a business sale?	Section 16 (2) of the Labour Act permits the transferee to vary the terms and conditions of employment downwards only with the employees' consent. The right to diminish the employees' rights does not, however, extend to rights relating to social security, pensions, gratuities, or other retirement benefits. There is, naturally, no restriction on an upward variation of the terms and conditions of employment.
40.	Do employees have to be given notice of termination of their employment?	Section 12 (4a) of the Labour Act limits the right to terminate a contract of employment on notice to circumstances in which the termination is in terms of an employment code, or the parties mutually agree to the termination, or the employee was engaged on the basis of a fixed-term contract, or pursuant to retrenchment.
41.	How is the notice period upon termination of employment determined?	The applicable notice periods are stipulated under section 12 (4) of the Labour Act as follows: (a) three months in the case of a contract without limit of time or a contract for a period of two years or more; (b) two months in the case of a contract for a period of one year or more but less than two years; (c) one month in the case of a contract for a period of six months or more but less than one year; (d) two weeks in the case of a contract for a period of three months or more but less than six months; or (e) one day in the case of a contract for a period of less than three months or in the case of casual work or seasonal work.
42.	Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?	Yes, an employer may waive the right to require the employee to report for duty during the notice period. An employee may also elect to pay the employee cash <i>in lieu</i> of notice.
43.	What protection do employees have against dismissal?	In terms of section 12B (4) of the Labour Act, an employee may not be dismissed unless the dismissal is in terms of an employment code of conduct or the National Employment Code of Conduct. Any dismissal which is carried out in breach of this provision constitutes an unfair dismissal in respect of which an employee can claim redress in the form of reinstatement or the payment of damages.
44.	In what circumstances is an employee treated as being dismissed?	An employee is deemed to have been dismissed if the employee terminated the contract because the employer deliberately made continued employment intolerable for the employee, or where, in the case of a fixed-term contract, the employee had a legitimate expectation of renewal and the employer employed someone else in his or her stead.
45.	Is consent from a third party required before an employer can dismiss?	Dismissals are not subject to consent from a third party.
46.	Does an employer have any additional obligations if it is dismissing a number of employees at the same time?	There are no additional obligations where the dismissal relates to more than one employee, save that unless the code of conduct so permits, an employer may not hold "mass" disciplinary hearings. Each employee should be heard separately.
47.	What types of restrictive covenants are recognised?	Restraint-of-trade agreements are recognised at common law, provided that they are reasonable.
48.	When are restrictive covenants enforceable and for what period?	Restraint-of-trade agreements are enforced when they are reasonable, regard being had to the duration of the restraint, its geographical extent and the seniority of the employee. Each case turns on its own facts.
49.	Do employees have to be provided with financial compensation in return for covenants?	There is no legal requirement that an employee be compensated for the restraint.
50.	How are restrictive covenants enforced?	The employer may approach the courts in order to enforce the restraint.

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51.	How do employee data protection rights affect the employment relationship?	There are no legislative provisions which address employee data protection specifically. The Data Protection Act [Chapter 11:12] lays down the law on data protection and data transfer. The general practice is that employee data should be utilised only within the employment context (purpose). In addition, the right to privacy which is enshrined in section 57 of the Constitution prohibits an employer from disclosing an employee's health condition.
52.	Can an employer transfer employee data freely to other countries?	Yes, provided there is compliance with the Data Protection Act [Chapter 11:12] provisions on cross-border transfers.
53.	Do employees have a right to obtain copies of any personal information that is held by their employer?	<b>Employees are entitled to obtain copies of such information.</b>
54.	Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?	Employers are entitled to carry out such checks with the prospective employee's consent.
55.	Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?	Yes. This is usually done with the employee's consent under the employer's ICT policy.
56.	Can an employer control an employee's use of social media in or outside the workplace?	Yes. This is generally governed by the employer's ICT policy.
57.	Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?	<p><b>Labour Officer</b> – this is an official employed by the Ministry of Labour in terms of section 121 of the Labour Act. Labour Officers conduct conciliation proceedings in terms of section 93 of the Labour Act, and in the event that conciliation fails, they are entitled to make a ruling which will be subject to confirmation by the Labour Court in the event that the ruling is in favour of the employee.</p> <p><b>Designated Agent</b> – this is an individual employed by an employment council in terms of section 63 of the Labour Act. They have the same powers as Labour Officers in matters which arise in the industry in which the employment council is registered.</p> <p><b>Arbitrator</b> – they are appointed in terms of sections 89 or 93 of the Labour Act. One or more arbitrators may hear a matter. They may only hear disputes of interest where the parties are engaged in an essential service, or any other dispute where the parties have consented to the dispute being heard by an arbitrator.</p> <p><b>Labour Court</b> – in terms of section 89 (1) of the Labour Act, the Labour Court exercises the following jurisdiction:  <i>"(a) hearing and determining applications and appeals in terms of this Act or any other enactment; and  (b) hearing and determining matters referred to it by the Minister in terms of this Act; and  (c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;  (d) appointing an arbitrator from the panel of arbitrators referred to in subsection (6) of section ninety-eight to hear and determine an application;  (d1) exercise the same powers of review as would be exercisable by the High Court in respect of labour matters."</i>  Up to three Judges may preside over a matter.</p> <p><b>The High Court</b> – a maximum of three Judges can preside over a matter in the High Court. It has jurisdiction over certain labour matters, such as labour matters whose cause of action arises from the common law.</p> <p><b>The Supreme Court</b> – this is the Highest Court of Appeal. No less than three Judges may sit to hear a matter. Appeals from the Labour Court and High Court lie to this court.</p> <p><b>The Constitutional Court</b> – this is presided over by nine Judges. This is where an appeal on constitutional points from the judgments of the Supreme Court lies. In addition, where a constitutional question arises in the proceedings in any court or tribunal, it may be referred to the Constitutional Court for determination</p>
58.	What procedure applies to employment-related complaints?	. Complaints of an unfair labour practice are referred to conciliation in terms of section 93 (1) of the Labour Act.
59.	Is conciliation mandatory before a complaint can proceed?	Conciliation is mandatory. Failing conciliation, a ruling is made by the Labour Officer or Designated Agent. The ruling is subject to confirmation by the Labour Court where it is in favour of the employee, or to review by the same court where it is in favour of the employer. A Labour Officer is also entitled to refer the dispute to arbitration.
60.	Does an employee have to pay a fee to submit a claim?	An employee is not required to pay a fee in order to submit the claim.

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61.	How long do employment-related complaints typically take to be decided?	Complaints generally take about six months to be decided by a Labour Officer or Designated Agent. If the matter is thereafter referred to the Labour Court either for the confirmation of the ruling or on review, it will generally be concluded by the Labour Court within a year.
62.	Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?	Yes, an arbitral award may be taken on appeal or review to the Labour Court. A Labour Officer or Designated Agent's ruling may also be taken on review to the Labour Court. The Labour Court will generally hear matters before it within a year.

Q#	QUESTION	ANSWER
	INTERNATIONAL	ARBITRATION
63.	What are the legal requirements of an arbitration agreement under the laws of your jurisdiction?	<p>In terms of Article 7 of the Model Law on International Commercial Arbitration ("Model Law"), an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement must be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provides a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and is not denied by another.</p> <p>A reference to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract. In terms of section 5 (1) of the Arbitration Act [Chapter 7:15] where an enactment requires matters to be determined by arbitration in accordance with any law relating to arbitration, such requirement is deemed to be an arbitration agreement for the purposes of the Act.</p> <p>In <i>TelOne (Pvt) Ltd v Capital Insurance Brokers (Pvt) Ltd</i> SC 60 – 2018, the Supreme Court held that where there is no signed or written contract between the parties, the Model Law provides that the court can rely on the exchanges between the parties to come to the conclusion that there was an arbitration agreement.</p>
64.	What other elements ought to be incorporated in an arbitration agreement?	The Arbitration Act does not prescribe elements which ought to be incorporated in an arbitration agreement. Most arbitrations are <i>ad hoc</i> and not conducted under institutional rules. In such instances, the most significant elements would be for the parties to include provisions for the appointment of an arbitrator, and substitution of an arbitrator, the allocation of fees of the arbitrator, the governing law, the seat and location of the hearings. It is also useful to include provisions which deal with the language of the arbitration, the authority of the arbitral tribunal to grant interim measures and the use of experts in the determination of disputes.
65.	What has been the approach of the national courts in Zimbabwe to the enforcement of arbitration agreements?	<p>Zimbabwean courts have adopted a positive approach to the enforcement of arbitration agreements. This fact is evident from a plethora of decided cases which include <i>Independence Mining Pvt Ltd v Fawcett Security Operations (Pvt) Ltd</i> 1991 (1) ZLR 268 (H) and <i>Zimbabwe Broadcasting Corporation v Flame Lily Broadcasting (Pvt) Ltd t/a JoyTV</i> 1999 (2) ZLR 448 (H).</p> <p>In Zimbabwe, a court which is requested to refer a dispute to arbitration may only accede to that request and stay proceedings after the party so requesting has timeously outlined the dispute to the claim in its pleadings. A party that wishes to have a dispute referred to arbitration is expected, at the outset and at the time such party files their first statement on the substance of the dispute, to outline their defence in a plea if it is an action proceeding, or a notice of opposition if it is a motion proceeding.</p> <p>A failure to file a plea in abatement is fatal to a party's case (<i>Correia &amp; Another v Dollar &amp; Another</i> HB 211 – 2015). The courts respect arbitration agreements and will grant a stay of proceedings, unless there are good reasons why same may not be granted, e.g. if the arbitration agreement is null and void, inoperative or incapable of being performed.</p> <p>Commercial agreements can provide for the resolution of disputes through tiered dispute resolution, that is through a series of steps to be taken for the resolution of the disputes, through for instance, negotiation, or mediation. See <i>Bitumat Ltd v Multicomm Ltd</i> 2000 (1) ZLR 637 (H).</p> <p>In Zimbabwe, it is only when an arbitration clause is clear and unequivocal that arbitration will proceed as the "first choice" in the resolution of a dispute, or where the parties have followed the specified dispute process "the tiered dispute resolution process" in their agreement which serves as a condition precedent, but such parties have still not "found each other", that such an "clause" in agreement will in general have the effect of staying proceedings (<i>Croplink (Pvt) Ltd v Jesse &amp; Others</i> 1996 (1) ZLR 514 (H)).</p> <p>Thus, where a clause in an agreement provides for the resolution of matters through mediation, failing which matters are to be referred to arbitration, such agreements have been held not to constitute an arbitration agreement in Zimbabwe (<i>Waste Management Services (Pvt) Ltd v City of Harare</i> 2000 (1) ZLR 162 (H)).</p>
66.	What legislation governs the enforcement of arbitration proceedings in your jurisdiction?	The Arbitration Act is the principal legislation governing domestic and international arbitration in Zimbabwe. The Act, with modifications, adopted the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985 ("UNCITRAL"). The Act also gave effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention").
67.	Does the Zimbabwean arbitration law govern both domestic and international	Yes, it does. The Act gave effect to both the Model Law and the New York Convention.

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	arbitration proceedings?	
68.	<p>Is the law governing international arbitration based on the UNCITRAL Model Law?</p> <p>Are there significant differences between the two?</p>	<p>The law governing international arbitration is to a large extent based on the 1985 Model Law, with minor modifications. Under Article 10 (2) of the Model Law, where parties fail to agree on the number of arbitrators, the number of arbitrators will be three. Where each party to the arbitration has any one of the following in Zimbabwe: a place of business; and if such party has more than one place of business, a principal place of business; and if such party does not have a place of business, that party's place of habitual residence, the number of arbitrators will be one.</p> <p>Under Article 15 (2) of the Model Law, unless otherwise agreed by the parties, where a sole or presiding arbitrator is replaced, any hearings previously held shall be repeated; and where an arbitrator, other than a sole or a presiding arbitrator is replaced, any previous hearings held may be repeated at the discretion of the arbitral tribunal. Unless otherwise agreed by the parties, an order or ruling of an arbitral tribunal made prior to the replacement of an arbitrator is not invalid because there has been a change in the composition of the arbitration.</p> <p>Under Article 17 (2) of the Model Law, unless otherwise agreed by the parties, an arbitral tribunal has power to grant an interdict, or other interim orders, to order the parties to make a deposit in respect of the fees and costs of the arbitration. A party with permission from the arbitral tribunal, or the arbitral tribunal itself, may request from the High Court executory assistance in the exercise of power conferred on the arbitral tribunal to order interim measures.</p> <p>Under Article 19 (3) of the Model Law, every witness giving evidence, and every person appearing before an arbitral tribunal, is accorded the same privileges and immunities as witnesses and legal practitioners in proceedings before a court.</p> <p>Under Article 24 (4) of the Model Law, at any hearing or meeting of the arbitral tribunal, or in any proceedings conducted on the basis of documents or other material, the parties may appear or act in person or may be represented by any person of their choice. In the case of <i>Zimbabwe Assemblies of God Africa v Mashonganyika</i> SC 43 – 2018 it was held that the word “person” in Article 24 (3) does not come with any qualification except that such person should be of the relevant party's choice. In Zimbabwe, a “person chosen by a party can therefore be anyone, even a legal practitioner or an official or employee of a registered trade union or employer's organization”.</p> <p>Under Article 25 (d) of the Model Law, where a “claimant fails to prosecute his claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim”. This provision allows for the doctrine of want of prosecution in arbitration proceedings (<i>Stonewell Searches (Pvt) Ltd v Stone Holdings (Pvt) Ltd &amp; 2 Others</i> SC 22 – 2021).</p> <p>Under Article 27 (2) of the Model Law, the High Court may issue subpoenas to compel the attendance of witnesses before an arbitral tribunal to give evidence or produce documents. The High Court can order any witness to submit to examination on oath before the arbitral tribunal, or before an officer of the court or any other person for the use of the arbitral tribunal.</p> <p>In addition to such, the High Court is empowered under this provision to make an order for the discovery of documents and interrogatories, the issue of a Commission or request for the taking of evidence out of the jurisdiction and the detention, preservation or inspection of any property or thing which is in issue or relevant to the arbitral proceedings, and authorising for any of those purposes any person to enter upon any land or building in the possession of a party, or authorising any sample to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.</p> <p>Under Article 31 (5) of the Model Law, unless otherwise agreed by the parties, the costs and expenses of an arbitration including the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and other expenses related to the arbitration, are to be fixed and allocated by the arbitral tribunal in its award. Where an award does not specify otherwise, each party will be responsible for its own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.</p> <p>Under Article 31 (6) of the Model Law, where the parties fail to agree, an arbitral tribunal may award interest at such rate, on such sum and for such period as may be specified in the award, and where an award does not specify otherwise, a sum directed to be paid by the award shall carry interest from the date of the award up to the date of payment at the same rate as a judgment debt.</p> <p>Under Article 31 (7) of the Model Law, where the parties fail to agree, an arbitral tribunal is empowered to make interim, interlocutory or partial awards. Articles 34 (5) and 36 (3) of the Model Law provide that for the avoidance of doubt, and without limiting the generality of such acts, that an award is in conflict with the public policy of Zimbabwe if: the making of the award was induced or effected by fraud or corruption; or a breach of the rules of natural justice occurred in connection with the making of the award.</p>
69.	To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?	In Zimbabwe, subject to section 4 of the Act, where the place of arbitration is not in Zimbabwe, Articles 8, 9, 35 and 36 of the Model Law, as modified by the Act, apply to the arbitration.
70.	Are there any subject matters that may not be referred	Subject to section 4 (1) of the Act, any dispute which the parties have agreed to submit to arbitration may be determined by arbitration. However, the following matters are not capable of determination by arbitration: (a) an agreement that is contrary to public policy;

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	to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is “arbitrable”?	(b) a dispute which, in terms of any law, may not be determined by arbitration; (c) a criminal case; (d) a matrimonial cause or a matter relating to status, unless the High Court gives leave for it to be determined by arbitration; or (e) a matter affecting the interests of a minor or an individual under a legal disability, unless the High Court gives leave for it to be determined by arbitration.
71.	Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?	Yes, an arbitral tribunal in terms of Article 16 of the Model Law has competence to rule on its own jurisdiction.
72.	Under what circumstances can a Zimbabwean court address the issue of the jurisdiction and competence of an arbitral tribunal?	In instances where an arbitral tribunal rules on a plea as a preliminary question, any party may request within 30 days after having received notice of that ruling for the High Court to decide the matter, which decision shall be subject to no appeal. Therefore, where the issue of jurisdiction is taken as a preliminary question, an arbitrator should make a ruling ( <i>Chinhoyi Municipality v Mangwana &amp; Partners Legal Practitioners &amp; Another</i> 403 – 2016).
73.	What is the standard of review in respect of a tribunal’s decision as to its own jurisdiction?	While a request is pending before the High Court, the arbitral tribunal is empowered to continue with the arbitral proceedings and make an award ( <i>Zimbabwe Electricity Transmission and Distribution Company (Pvt) Ltd v Masawi t/a Masawi &amp; Partners Legal Practitioners</i> HH 404 – 2020).
74.	Under what circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?	There is no provision in the Act that allows an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves parties to the agreement to arbitrate. In terms of Article 8, arbitration agreements are inoperative for the reason that a party to proceedings is not a party to the arbitration agreement.
75.	What laws or rules prescribe limitation periods for the commencement of arbitrations in Zimbabwe?	The Act does not provide for the prescription of claims. The Prescription Act [Chapter 8:11] provides for a period of limitation of debts.
76.	What is the typical length of prescription of a claim for Arbitration?	The Prescription Act [Chapter 8:11] provides for a period of limitation of debts as follows:  (a) 30 years in the case of a debt secured by a mortgage bond, a judgment debt, a debt in respect of taxation imposed or levied by or under any enactment; and a debt owed to the State in respect of any tax, loyalty, tribute, share of profits or other similar charge or consideration payable in connection with the exploitation of or the right to minerals or other substances; (b) 15 years in the case of a debt owed to the State and arising out of an advance or loan or a sale of lease of land by the State and the debtor unless a longer period applies in respect of the debt concerned; or (c) six years in the case of a debt arising from a bill of exchange or another negotiable instrument or from a notarial contract; or a debt owed to the State.  In terms of section 15(c) (iv) of the Prescription Act [Chapter 8:11], unless an enactment provides otherwise, the period is of three years in the case of any other debt.
77.	How is the law applicable to the substance of a dispute determined?	According to Article 28 (1) of the Model Law, the parties choose the law applicable to the substance of the dispute. Article 28 (2) of the Model Law provides that, failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

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78.	In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?	Where the parties fail to designate the law or legal system applicable to the substantive dispute, in terms of Article 28 (2) of the Model Law, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable. The arbitral tribunal shall decide <i>ex aequo et bono</i> or as <i>amiable compositeur</i> only if the parties have expressly authorised it to do so.
79.	What choice of law rules govern the formation, validity, and legality of arbitration agreements?	There is no specific choice of law rule provided in the Arbitration Act.
80.	Are there any limits to the parties' autonomy to select arbitrators?	The Arbitration Act does not impose any limits to the parties' autonomy to select arbitrators.
81.	If the parties' chosen method for selecting arbitrators fails, is there a default procedure?	If the parties fail to agree on the appointment of an arbitrator, Article 11 (3) of the Model Law provides a default procedure. Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under such procedure, or the parties, or two arbitrators, are unable to reach an agreement, or an arbitration institution such as the Harare Commercial Arbitration Centre ("CAC") or the Africa Institute of Mediation and Arbitration ("AIMA") fail to appoint an arbitrator, a party may request the High Court to take necessary action.
82.	What are the requirements imposed by law or issued by arbitration institutions within in Zimbabwe as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?	<p>The High Court in <i>Mukuruva v Honourable Maganyani (Arbitrator) &amp; Another</i> HH 87 – 2017 held that Article 12 of the Model Law as a whole "strives to achieve transparency, independence, impartiality of arbitrators and efficacy of the arbitration process".</p> <p>In terms of Article 12 of the Model Law, an arbitrator from the time of appointment, and throughout the arbitral proceedings, is under a continuous obligation to be impartial or independent and to disclose any such circumstances to the parties which may give rise to justifiable doubts unless the arbitrator has already informed the parties.</p> <p>The High Court in <i>Mtemwa Holdings &amp; Another v Mutunja &amp; Another</i> HH 532 – 2016 held that an arbitrator must disclose those circumstances which are likely to give rise to justifiable doubts only, and that an arbitrator "is not required to disclose every circumstance even those that raise remote doubts as to his impartiality".</p> <p>The High Court, in terms of Article 11 (5) of the Model Law, shall in appointing arbitrators have regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.</p>
83.	Are there laws or rules governing the procedure of arbitration in your jurisdiction?	Article 19 of the Model Law gives the parties autonomy to agree on the rules governing the procedure of arbitration. Where the parties fail to agree, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The power conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
84.	Do the laws governing procedure of arbitration or rules apply to all arbitral proceedings sited in Zimbabwe?	In terms of Article 19 (3) of the Model Law, every witness giving evidence, and every person appearing before an arbitral tribunal, is considered to have the same privileges and immunities as witnesses and legal practitioners in proceedings before a court.
85.	In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?	No, there are no particular procedural steps that are required by law.
86.	Are there any particular rules that govern the conduct of counsel in Zimbabwe in	There are no specific rules that govern the conduct of counsel from Zimbabwe; however, the Legal Practitioners Act governs the conduct of counsel practising in Zimbabwe, whether before the courts of law, administrative tribunals, or commissions of inquiry and arbitrators.

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	arbitral proceedings sited in Zimbabwe?	
87.	Do the rules that govern the conduct of Counsel in Zimbabwe also govern the conduct of counsel from Zimbabwe in arbitral proceedings sited elsewhere?	The Legal Practitioners Act governs the conduct of counsel practising in Zimbabwe, whether before the courts of law, administrative tribunals, or commissions of inquiry and arbitrators.
88.	Are there rules restricting the appearance of lawyers from other jurisdictions in legal proceedings in Zimbabwe?	Yes, there are restrictions placed on foreign lawyers in legal matters in Zimbabwe. The Minister of Justice, Legal and Parliamentary Affairs may, after receiving an application, and upon being satisfied of the importance, complexity or special circumstances of the matters, issue an Exemption Certificate to a foreign lawyer from a reciprocating country who has special or particular experience relating to such matter. See section 7 (1) of the Legal Practitioners Act [Chapter 27:07].
89.	Do restrictions placed on foreign lawyers also apply to arbitration proceedings sited in Zimbabwe?	Foreign lawyers are permitted to act as arbitrators (see Article 11 (2) of the Model Law). They may also represent parties in arbitral proceedings pursuant to Article 24 (4), which allows parties to be represented by any person of their choice ( <i>Zimbabwe Assemblies of God Africa v Mashonganyika</i> SC 43 – 2018).
90.	What powers and duties does the national law of Zimbabwe impose upon arbitrators?	Article 18 of the Model Law provides for the equal treatment of parties, with each entity being given a full opportunity to present their case. The arbitrator has the power to rule on their own jurisdiction (Article 16). Unless otherwise agreed, an arbitral tribunal may make such interim measure of procedure and request any party to provide appropriate security in connection with such measure (Article 17). Where the parties fail to agree on the place of arbitration, the arbitral tribunal determines the place of arbitration having regard to the circumstances of the case, including the convenience of the parties (Article 20 (1)). Under Article 26, an arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal. The arbitral tribunal may request from the High Court assistance in taking evidence, and the High Court may execute the request within its competence and according to its own rules of taking evidence (Article 27 (1)).
91.	To what extent are there laws or rules in Zimbabwe providing for arbitrator immunity?	The Act is silent on this issue. However, the traditional approach at common law is that an arbitrator is not liable for negligence.
92.	Do the courts in Zimbabwe have jurisdiction to deal with procedural issues arising during an arbitration?	Article 5 of the Model Law limits the High Court's intervention in matters governed by the Arbitration Act. The limited instances in which the High Court can intervene are: <ul style="list-style-type: none"> <li>a) where a party approaches the High Court after unsuccessfully challenging an arbitrator (Article 13 (3));</li> <li>b) where a party approaches the High Court for the termination of an arbitrator's mandate for failure or impossibility to act (Article 14 (1));</li> <li>c) the determination of the jurisdiction of an arbitrator after the ruling by the arbitrator on the jurisdiction (Article 16 (3));</li> <li>d) application for court assistance to take evidence (Article 16 (3));</li> <li>e) to grant interim measures of protection under Article 9; executory assistance in the exercise of any power conferred upon the arbitral tribunal (Article 17);</li> <li>f) appointment of an arbitrator if there is a deadlock (Article 12); and</li> <li>g) application to set aside arbitral awards, (final) recognition and enforcement of awards.</li> </ul>
93.	Is an arbitral tribunal in Zimbabwe permitted to award preliminary or interim relief?	Unless otherwise agreed, an arbitral tribunal in terms of Article 17 of the Model Law may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such matter.
94.	What types of interim relief is an arbitral tribunal permitted to grant?	Unless otherwise agreed by the parties, an arbitral tribunal has the power to: <ul style="list-style-type: none"> <li>(a) grant an interdict or other interim order; and</li> <li>(b) order the parties to make a deposit in respect of the fees and costs of the arbitration.</li> </ul>

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95.	Must an arbitral tribunal seek the assistance of a court to do so?	The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the High Court executory assistance in the exercise of any power conferred upon the arbitral tribunal. The High Court shall, for the purpose of giving effect to the request, have the same powers it would have in civil proceedings before it.
96.	Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration?	The High Court, in <i>Northern Farming (Pvt) Ltd v Vegra Merchants (Pvt) Ltd t/a Vegra Commodities &amp; Another</i> HH 328 – 2013, held that, in terms of both the common law and the Act, the court can grant an order or interdict and that “Article 9 could not have been clearer”.
	In what circumstances can a party’s request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?	<p>In terms of Article 9 (1) of the Model Law, it is not incompatible for a party to request before or during arbitral proceedings, from the High Court, an interim measure of protection. Upon a request to the High Court, in terms of Article 9 (2), the High Court may grant:</p> <p>(a) an order for the preservation, interim custody or sale of any goods which are the subject matter of the dispute;</p> <p>(b) an order securing the amount in dispute or the costs of the arbitral proceedings;</p> <p>(c) an interdict or other interim order; or</p> <p>(d) any other order to ensure that any award which may be made in the arbitral proceedings is not rendered ineffectual.</p> <p>In terms of Article 9 (3) of the Model Law, the High Court shall not grant an order or interdict unless:</p> <p>(a) the arbitral tribunal has not yet been appointed and the matter is urgent;</p> <p>(b) the arbitral tribunal is not competent to grant the order or interdict; or</p> <p>(c) the urgency of the matter makes it impracticable to seek such an order or interdict from the arbitral tribunal; the High Court shall not grant any such order or interdict where the arbitral tribunal, being competent to grant the order or interdict, has determined an application therefor.</p> <p>The High Court has the power to hear an application as a matter of urgency not only when there is a serious threat to life or liberty, but also where the urgency arises out of the need to protect commercial interests (<i>Silver’s Trucks (Pvt) Ltd &amp; Another v Director of Customs and Excise</i> 1999 (1) ZLR 490 (H) at 492F-H). In terms of Article 9 (4) of the Model Law, the request for interim relief is not subject to appeal.</p>
97.	What is the approach of the Zimbabwean courts to requests for interim relief by parties to arbitration agreements?	The approach adopted by the courts in requests for interim relief in arbitral proceedings is that, save for the circumstances set out in Article 9 (3) of the Model Law, such relief should be granted by the arbitral tribunal. Before granting interim relief, the courts must be satisfied that the following requisites are satisfied:
		<p>(i) <i>prima facie</i> right;</p> <p>(ii) a well-grounded apprehension of irreparable harm if the relief is not granted;</p> <p>(iii) that the balance of convenience favours the granting of an interdict interim; and</p> <p>(iv) that there is no other satisfactory remedy (<i>Universal Merchant Bank Zimbabwe Ltd v The Zimbabwe Independent &amp; Another</i> 2000 (1) ZLR 234 (H)).</p>
98.	Under what circumstances will a court in Zimbabwe issue an anti-suit injunction in aid of an arbitration?	There are no reported cases in which a Zimbabwean court has issued an “anti-suit injunction” in aid of arbitration in another jurisdiction. There are diverging opinions as to whether a Zimbabwean court would have jurisdiction to grant an interdict prohibiting a party from instituting proceedings in a non-Zimbabwean jurisdiction.
99.	Does the law of Zimbabwe allow for the court and/or arbitral tribunal to order security for costs in arbitration?	Yes. Pursuant to Articles 9 (1), 17 (1) and 17 (2) of the Model Law, a national court or an arbitral tribunal may make an order for security for costs.
100.	What is the approach of the Zimbabwean courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in Zimbabwe and in other jurisdictions?	<p>The Act is based on the 1985 Model Law, and does not take into account the amendments introduced with regard to the enforcement of interim, interlocutory or partial awards in arbitration. This was expressed by the High Court in <i>Zimasco (Pvt) Ltd v Portnex International (Pty) Ltd &amp; Another</i> HH 34 – 2021 and <i>Zimasco (Pvt) Ltd v Portnex International (Pty) Ltd &amp; Another</i> HH 205 – 2021.</p> <p>In terms of Article 17 (2) of the Model Law, the arbitral tribunal is given the power to grant interim measures in the form of interdicts and interim orders (<i>Zimbabwe Electricity Transmission and Distribution Company (Pvt) Ltd v Masawi t/a Masawi &amp; Partners Legal Practitioners</i> HH 404 – 2020).</p> <p>In terms of Article 17 (3) of the Model Law, the High Court can “enforce an interim measure” to give effect to such in “executory assistance” only in cases where a tribunal or a party with the approval of the arbitral tribunal requests from the High Court such assistance.</p>
101.	What rules of evidence apply to arbitral proceedings in Zimbabwe?	<p>The parties are at liberty to agree on the rules of evidence. The Supreme Court in <i>OK Zimbabwe Ltd v Admbare Properties (Pvt) Ltd &amp; Another</i> SC 55 – 2017 held that, where the parties are unable to agree or are silent on the arbitration, the arbitral tribunal is allowed, and within the bounds of procedural and substantive fairness, to conduct the arbitration in such manner as it considers appropriate in terms of Article 19. The arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence.</p> <p>In terms of Article 19 (3) of the Model Law, every witness giving evidence, and every person appearing before an arbitral</p>

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		tribunal, shall have the same privileges and immunities as witnesses and legal practitioners in proceedings before a court.
102.	What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?	Unless such power is conferred by the parties, an arbitral tribunal has no power to order disclosure or discovery and to require the attendance of witnesses. It does, however, have the power to seek the High Court's assistance for such in terms of Article 27 of the Model Law.
103.	What laws, regulations or professional rules apply to the production of written and/or oral witness testimony in arbitration?	The parties determine the rules applicable, failing which the arbitral tribunal determines the procedure in terms of Article 19 of the Model Law.
104.	What is the scope of the privilege rules under the law of Zimbabwe in arbitration proceedings?	The issue of privilege is covered by the Civil Evidence Act [Chapter 8:01]. In terms of section 56 of the Civil Evidence Act, where an issue as to the admissibility of any evidence or the competence of any witness arises which is not provided for in the Civil Evidence Act, such issues are determined according to the law applicable in similar cases before the Supreme Court of Judicature in England as at 1 June 1927.
105.	In what circumstances is privilege deemed to have been waived in arbitration in Zimbabwe?	The issues of privilege that arise in arbitration proceedings are similar to those that arise in litigation, such as privilege of confidential communications, which includes negotiation privilege, i.e. "without prejudice" communications and privilege in public interest. Privilege also extends to the legal professional privilege ( <i>The Law Society of Zimbabwe v The Minister of Transport and Communications &amp; Another</i> SC 127 – 2004).
106.	What are the legal requirements of an arbitral award in Zimbabwe?	Article 31 of the Model Law deals with the form and contents of an award. Briefly, they are as follows: <ul style="list-style-type: none"> <li>■ it must be in writing and signed by the arbitrator; in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated;</li> <li>■ the award must state the reasons on which it is based, unless the parties have agreed that no reasons are to be given;</li> <li>■ the award must state its date and the place of arbitration; and</li> <li>■ after it is made, it must be signed and delivered to each party (<i>National Social Security Authority v Chairman, National Social Security Authority Workers Committee &amp; Others</i> 2002 (1) ZLR 306 (H)). The High Court in <i>Soft Drink Manufacturing Employee Association v Soft Drink Manufacturing Workers Union &amp; Others</i> HH 744 – 2015 held that where an arbitrator does not have legal training or background, all that is expected to constitute a reasoned award is "nothing more than basic identification of issues and reasoning from the evidence to the facts and the facts to the conclusion".</li> </ul> The Act does not provide for a judicial standard of reasoning with regard to awards.
107.	What powers do arbitral tribunals have to clarify, correct or amend an arbitral award in Zimbabwe?	The arbitral tribunal's power to clarify, correct or amend an arbitral award is limited to instances contained in Article 33 of the Model Law ( <i>Alliance Insurance v Imperial Plastics (Pvt) Ltd</i> SC 30 – 2017). An arbitral tribunal may on its own initiative or on application by a party, correct in the award any errors of computation, any clerical or typographical errors or any errors of a similar nature within 30 days from the date of the award ( <i>Machote v Zimbabwe Manpower Development Fund</i> HH 813 – 2015). The High Court in <i>Muvuti Investments (Pvt) Ltd v Old Mutual Investments (Pvt) Ltd &amp; Another</i> HH 422 – 2018 held that an arbitral tribunal which has made an award has no jurisdiction to change its mind. In terms of Article 33 (4) of the Model Law, the arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award.
108.	On what bases are parties entitled to challenge an arbitral award made in Zimbabwe?	Article 34 of the Model Law provides the only recourse to challenging an arbitral award. An award can be set aside if: <ol style="list-style-type: none"> <li>(a) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law agreed to by the parties, or under Zimbabwean law;</li> <li>(b) a party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;</li> <li>(c) the award deals with a dispute not contemplated by or not falling within the terms of submissions to arbitration or it contains decisions beyond the scope of the submissions to arbitration;</li> <li>(d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;</li> <li>(e) the subject matter of the dispute was not capable of determination by arbitration; or</li> <li>(f) the arbitral award is in conflict with the public policy of Zimbabwe.</li> </ol> Article 34 (5) of the Model Law clarifies for the avoidance of doubt, and without limiting the generality of Article 34 (2) (b) (ii), that an award will be in conflict with the public policy of Zimbabwe if:

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		(a) the making of the award was induced or effected by fraud or corruption; or (b) a breach of the rules of natural justice occurred in connection with the making of the award.
109.	Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law in Zimbabwe?	No, the parties cannot.
110.	Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws in Zimbabwe?	No, the parties cannot.
111.	What is the procedure for appealing an arbitral award in Zimbabwe?	Section 60 (8) of the Consumer Protection Act [Chapter 14:14] provides that any person aggrieved by the decision of an arbitrator may appeal to the High Court within 30 days. The Act does not provide for an appeal of arbitral awards. The setting aside of an arbitral award is not a review nor is it akin to an appeal ( <i>Zimbabwe Electricity Supply Authority v Maposa</i> 1999 (2) ZLR 452 (S)). As a general rule, the courts are loath to invoke Article 34 (2) (b) (ii) except in the most glaring instances of illogicality, injustice or moral turpitude ( <i>Peruke Investments (Pvt) Ltd v Willoughby's Investments (Pvt) Ltd &amp; Another</i> 2015 (2) ZLR 491 (S)).  An application for the setting aside of an arbitral award in terms of Article 34 of the Model Law can only be made to the High Court and not to any other court ( <i>Star Africa Corporation Ltd v Sivnet Investments (Pvt) Ltd &amp; Another</i> 2011 (2) ZLR 123 (H)).
112.	Has Zimbabwe signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards?	Zimbabwe has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the same was transposed into Zimbabwe legislation by the Act.
113.	Has Zimbabwe signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?	Zimbabwe has not signed any regional Conventions concerning the recognition and enforcement of arbitral awards.
114.	What is the approach of the national courts in Zimbabwe towards the recognition and enforcement of arbitration awards in practice?	The general approach in Zimbabwe is to give effect to an arbitral award for the purposes of enforcement, that is, to give an award the effect of a civil judgment ( <i>Ndlovu v Higher Learning Centre</i> HB 86 – 2010). A party making an application for recognition and enforcement is expected to make a formal court application to the High Court ( <i>Mandikonza &amp; Another v Cutnal Trading (Pvt) Ltd &amp; Others</i> HH 189 – 2004). In an application for the recognition and enforcement of an arbitral award, the courts generally do not deal with the merits of the matter ( <i>Conforce (Pvt) Ltd v City of Harare</i> 2000 (1) ZLR 455 (H)).
115.	What steps are parties required to take?	A party making an application for recognition and enforcement should supply a duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement or a duly certified copy thereof. If the award or agreement is not in English, the party applying for its enforcement should supply a duly certified translation in English.
116.	What is the effect of an arbitration award in terms of res judicata in Zimbabwe?	The issues determined by arbitration become <i>res judicata</i> and neither party may reopen such issues in a fresh arbitration or before the court ( <i>Monticello (Pvt) Ltd v Edgerton</i> 1981 ZLR 292 (GD)). However, in order to successfully ground a defence of <i>res judicata</i> , a litigant relying on it must demonstrate that the dispute was conclusively settled on the merits, and that the two matters are between the same parties, and concerning the same subject matter founded on the same cause of complaint ( <i>Gwaze v National Railways of Zimbabwe</i> 2002 (1) ZLR 679 (S)).
117.	Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being	The issues determined by arbitration become <i>res judicata</i> and neither party may reopen such issues in a fresh arbitration or before the court ( <i>Monticello (Pvt) Ltd v Edgerton</i> 1981 ZLR 292 (GD)). However, in order to successfully ground a defence of <i>res judicata</i> , a litigant relying on it must demonstrate that the dispute was conclusively settled on the merits, and that the two matters are between the same parties, and concerning the same subject matter founded on the same cause of complaint ( <i>Gwaze v National Railways of Zimbabwe</i> 2002 (1) ZLR 679 (S)).

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	re-heard in a Zimbabwean court?	
118.	What is the standard for refusing enforcement of an arbitral award on the grounds of public policy in Zimbabwe?	<p>Generally, where the reasoning or conclusion in an award goes beyond mere faultiness (i.e. defectiveness or incorrectness, or erroneous) and constitutes a palpable inequality (i.e. something plain to see or comprehend), that is grossly irrational (i.e. egregious or seriously irregular), that it is so far-reaching and outrageous (i.e. outlandish or shockingly bad), that a sensible and fair-minded person (i.e. realistically and practically and having thought the matter through), would conclude that the conception of justice in Zimbabwe would be intolerably hurt (i.e. unspeakably hurt by the award), then such an award would be contrary to the public policy of Zimbabwe.</p> <p>The same consequences apply where an arbitral tribunal fails to comply with its duties of independence and impartiality and so cannot consider the issues for determination, or where the arbitral tribunal has not applied its mind to the questions, or has totally misunderstood the issues, or failed to conduct the arbitral proceedings in accordance with the procedure agreed by the parties, and where the resultant injustice reaches the point above, the courts will set aside an award on the grounds of public policy (<i>Zimbabwe Electricity Supply Authority v Maposa</i> 1999 (2) ZLR 452 (S) at 465–466).</p>
119.	Are arbitral proceedings sited in Zimbabwe confidential?	The Arbitration Act does not provide for the confidentiality of arbitration proceedings. However, in terms of the common law, even when an arbitration agreement does not expressly provide that the arbitral proceedings are confidential, such a term is implied.
120.	Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?	There are no limits.
121.	What interest is available, and how is the rate of interest determined?	Unless otherwise agreed by the parties, an arbitral tribunal may award interest at such rate, on such sum and for such period as may be specified in the award. Where an award does not specify otherwise, a sum directed to be paid by the award shall carry interest from the date of the award up to the date of payment at the same rate as a judgment debt (Article 32 (6) (a) and (b) of the Model Law).
122.	Are parties entitled to recover fees and/or costs of arbitration and on what basis in Zimbabwe?	The parties are entitled to recover fees and/or costs. In general, costs are awarded in favour of the successful party. However, an arbitrator's power to order the payment of costs derives from (a) the arbitration agreement, (b) the application arbitration rules, and (c) the law of the seat. Article 31 (5) of the Model Law provides that, unless parties agree otherwise, the costs and expenses of an arbitration, including the expenses of the parties, the fees and expenses of the arbitral tribunal and other expenses related to the arbitration, shall be fixed and allocated by the arbitral award in its award. Where the award does not specify otherwise, each party shall bear its own legal and other expenses and an equal share of the fees and expenses of the arbitral tribunal, and any other expenses related to the arbitration.
123.	Is an arbitral award subject to tax?	The Act does not provide for taxation of costs, and where the parties fail to agree, costs can be subject to taxation before a Taxing Officer of the High Court.
124.	Are there any restrictions on third parties, including lawyers, funding claims under the arbitration laws Zimbabwe?	Section 22A of the Legal Practitioners Act [Chapter 27:07], read together with the Legal Practitioners (Contingency Fee Arrangements) Regulations, 2014, permit contingency fee arrangements. Apart from the above, there are no active, professional or other funders active on the market either for litigation or arbitration.
125.	Are contingency fees legal under the law of Zimbabwe to fund an arbitration?	Section 22A of the Legal Practitioners Act [Chapter 27:07], read together with the Legal Practitioners (Contingency Fee Arrangements) Regulations, 2014, permit contingency fee arrangements. Apart from the above, there are no active, professional or other funders active on the market either for litigation or arbitration.
126.	Are there any "professional" funders active in the Zimbabwean market, either for litigation or arbitration?	Section 22A of the Legal Practitioners Act [Chapter 27:07], read together with the Legal Practitioners (Contingency Fee Arrangements) Regulations, 2014, permit contingency fee arrangements. Apart from the above, there are no active, professional or other funders active on the market either for litigation or arbitration.

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127.	Has Zimbabwe signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?	On 20 May 1994, Zimbabwe ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 19 June 1994 through the Arbitration (International Investment Disputes) Act [Chapter 7:03].
128.	How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is Zimbabwe a party to?	<p>Zimbabwe has entered into several BITs, many of which are signed but not in force. The following are the countries Zimbabwe has entered into BITs with:</p> <ol style="list-style-type: none"> <li>i. the United Arab Emirates (2018);</li> <li>ii. the Russian Federation (2012);</li> <li>iii. Botswana (2011);</li> <li>iv. Korea (2010);</li> <li>v. South Africa (2009);</li> <li>vi. Malawi (2003);</li> <li>vii. Tanzania (2003);</li> <li>viii. Uganda (2003);</li> <li>ix. Ghana (2003);</li> <li>x. France (2001);</li> <li>xi. Austria (2000);</li> <li>xii. Singapore (2000);</li> <li>xiii. Mauritius (2000);</li> <li>xiv. Kuwait (2000);</li> <li>xv. Croatia (2000);</li> <li>xvi. Thailand (2000);</li> <li>xvii. Czech Republic (1999);</li> <li>xviii. Egypt (1999);</li> <li>xix. Iran (1999);</li> <li>xx. Italy (1999);</li> <li>xxi. Indonesia (1999);</li> <li>xxii. Jamaica (1999);</li> <li>xxiii. India (1999);</li> <li>xxiv. Sweden (1997);</li> <li>xxv. The Netherlands (1996);</li> <li>xxvi. Denmark (1996);</li> <li>xxvii. Serbia (1996);</li> <li>xxviii. Switzerland (1996);</li> <li>xxix. China (1996);</li> <li>xxx. Germany (1995);</li> <li>xxxi. the United Kingdom (1995);</li> <li>xxxii. Portugal (1994);</li> <li>xxxiii. Malaysia (1994); and</li> <li>xxxiv. Mozambique (1990).</li> </ol>
129.	Does Zimbabwe have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)?	The term "most favoured nation" is frequently used.
130.	What is the approach of the Zimbabwe courts in your jurisdiction towards the defence of state immunity regarding	Proceedings against the State are subject to the State Liabilities Act [Chapter 8:14], which grants the State immunity against execution.

## QUESTIONS AND ANSWERS FOR LIRA DEMO

	jurisdiction and execution?	
131.	Are there noteworthy trends or current issues affecting the use of arbitration in Zimbabwe?	Zimbabwe was the fifth African country to adopt the Model Law, on 13 September 1996, and it celebrates 25 years of the Model Law on 13 September 2021. Most Acts of Parliament provide for the resolution of certain disputes by arbitration, such as animal health, banking, co-operative societies, consumer protection, direct and indirect foreign investments, employment and labour, insurance, mines and minerals, the Mozambique-Feruka Pipeline, national payment systems, railways, road motor transportation, road traffic, troubled financial institutions, and finally in terms of the ZEP-RE(PTA Reinsurance Company). It is due to this fact that Zimbabwe has, for the 25 years of its use of the Model Law, maintained a respected body of decisions based on the Model Law in Africa.
132.	What recent steps have institutions in Zimbabwe taken to address current issues in arbitration (such as time and costs)?	The AIMA Rules of Procedure on Arbitration, 2017 are based on the current UNCITRAL Arbitration Rules, 2010. A new arbitration institution, the Alternative Dispute Solutions Centre, will be collaborating with the Law Society of Zimbabwe in providing arbitration training to legal practitioners in order to bring them up to speed with current international trends in arbitration.
133.	What is the approach of the national courts in Zimbabwe towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings?	On 31 May 2020, the High Court (Commercial Division) Rules Are in place in line with the need to improve the ease of doing business in Zimbabwe. In January 2023, the Zimbabwean judiciary moved to electronic management systems and e-filing, and be able to conduct virtual hearings in a Virtual Court.

Q#	QUESTION	ANSWER
<b>TRADEMARKS</b>		
134.	What is the relevant trade mark authority in Zimbabwe?	The Controller of Patents, Trade Marks and Industrial Designs is the relevant trade mark authority in Zimbabwe. This office is established in terms of section 3 of the Trade Marks Act (the Act).
135.	What is the relevant trade mark legislation in Zimbabwe	The relevant trade mark legislation in Zimbabwe is the Act (Chapter 26:04) and the Trade Mark Regulations, 2005 (the Regulations).
136.	What can be registered as a trade mark in Zimbabwe?	A slogan, device, brand, heading, label, ticket, name, signature, word, letter or numeral, presented in either two-dimensional or three-dimensional form, can be registered as a trade mark, provided that any of these is capable of identifying and distinguishing the goods and services of one from those of another.
137.	What cannot be registered as a trade mark in Zimbabwe?	Colour marks and smell marks cannot be registered as trademarks.
138.	What information is needed to register a trademark?	In order to register a trade mark, the following information is required: 1. The name of the applicant, who can be either a natural or juristic person. 2. Address and contact details. 3. Class specification and a description of the goods or services represented by the mark. 4. Evidence of actual use, or a declaration of intention to use, is required where the registration is facilitated through the African Regional Intellectual Property Organization (ARIPO), as discussed below. 5. Representations of the mark either with or without their colour specifications.
139.	What is the general procedure for trade mark registration in Zimbabwe?	The procedure for registration comprises the following steps: 1. An application is made in writing to the Registrar in the manner prescribed, indicating which part is to be registered. 2. The application proceeds to examination where the Registrar shall either refuse the application, accept it absolutely or accept it with amendments. In the case of either a refusal or conditional acceptance, the Registrar shall be required to provide reasons for such a decision. 3. Thereafter, if no appeals are filed by an applicant against the refusal or conditional acceptance of the mark, the applicant shall advertise the mark in the Journal. 4. Interested parties are permitted to object to the advertisement and must give notice in writing of the opposition. All oppositions are dealt with in the manner prescribed in section 22 of the Act. 5. The final step is the acceptance and registration of the trade mark. In registration, the Registrar shall issue out a certificate to the applicant.
140.	How is a trade mark adequately represented in Zimbabwe?	A trademark is adequately represented if it is reduced into material form. For purposes of registration, a representation of the mark is affixed to the application, and in terms of the Regulations, 10 additional representations of the mark will be required to accompany the application. In instances where representation is not possible on paper, the Registrar may require the applicant to submit a specimen of the mark in full size or reduced size.

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141.	How are goods and services described in Zimbabwe?	The Regulations provide for the classification and description of trade marks. The goods or services must be adequately named and described.
142.	To the extent 'exotic' or unusual trademarks can be filed in Zimbabwe, are there any special measures required to file them with the relevant trade mark authority?	Exotic trademarks are uncommon in the sense that they do not comprise a brand name or logo and do not fall within the usual definition of a trade mark. An example of exotic trade marks is colour marks; for instance, the famous red-sole shoes, a trade mark that is well known in the US. The general exclusion from registration is that exotic marks, in this instance, colour marks, lack distinctiveness. While, in other jurisdictions, evidence of acquired distinctiveness is permissible, in Zimbabwe, there is no framework for the registration of exotic marks and they are consequently not registrable.
143.	Is proof of use required for trade mark registrations and/or renewal purposes in Zimbabwe?	Proof of use is not required for the purposes of trademark registrations and renewals. However, a trademark may be removed from the Register for reason of non-use.
144.	What territories (including dependents, colonies, etc.) are or can be covered by a trade mark in Zimbabwe?	A trademark registered through the local office, the Zimbabwe Intellectual Property Office (ZIPO), covers Zimbabwe only. Applications that are filed through other routes in Zimbabwe provide for a wider coverage.
145.	Who can own a trade mark in Zimbabwe?	Any person, whether natural or juristic, can own a trade mark.
146.	Can a trademark acquire distinctive character through use in Zimbabwe?	In terms of section 12 (3) (b), a trade mark can acquire distinctiveness through use.
147.	How long on average does trademark registration take in Zimbabwe?	Registration can take up to 18 months from the date the application is filed.
148.	What is the average cost of obtaining a trade mark in Zimbabwe?	The cost of obtaining registration comprises official fees and professional fees. The Regulations state the official fees, which are adjusted from time to time. In terms of the TradeMarks (Amendment) Regulations SI 239/2020, the official fees payable to ZIPO range between US\$400–US\$700. The official fees are also denominated in the local currency and change from time to time. Professional fees are generally guided by the Tariff published by the Law Society of Zimbabwe.
149.	Is there more than one route to obtaining a trademark registration in Zimbabwe?	Yes. Apart from ZIPO, the local office, registration may also be obtained through the ARIPO and through the Madrid Protocol System of international trademarks. The ARIPO filing system involves the filing of an application under the Banjul Protocol, of which Zimbabwe is among the 10 member countries. The Trademark Act recognises ARIPO trademark applications and gives them similar status and protections as those enjoyed by locally registered trademarks. The Madrid Protocol System in Zimbabwe was established through the enactment of the Trademarks (Madrid Protocol) Regulations, 2017. The Act recognises Madrid Protocol trademarks, and these enjoy similar status and protections enjoyed by locally registered trademarks.
150.	Is a Power of Attorney needed when registering a trademark in Zimbabwe?	A Power of Attorney is required where the application is made by a person other than the owner of the mark.
151.	Does a Power of Attorney require notarisation and/or legalisation when registering a trademark in Zimbabwe?	A Power of Attorney does not require notarisation or legalisation. The signature of the applicant will suffice.
152.	How is priority claimed for a trademark in Zimbabwe?	Priority is claimed by filing a certified copy of the earlier application within the prescribed time. Where priority is claimed successfully, the registration takes effect from the priority date rather than the filing date.
153.	Does Zimbabwe recognise collective or Certification marks?	Yes. Collective and Certification marks are provided for in Part IX of the Act. In term of section 42, Certification marks are registrable in Part C of the Register. A Certification mark is registrable if it is inherently apt to distinguish and by reason of use.
154.	What are the absolute grounds for refusal of registration for a trademark in Zimbabwe?	Generally, registration may be refused if, upon examination, the mark is inherently unregistrable. A mark that does not constitute a trade mark, as defined in the Act, cannot be registered. Non-distinctive marks, i.e. those that are not capable of distinguishing goods or services of one owner from those of another, cannot be registered. Descriptive marks that speak to the characteristics of the goods and services cannot be registered. Generic marks cannot be registered. In terms of section 14 of the Act, marks that (1) are likely to deceive, (2) are contrary to law, (3) comprise scandalous matter, (4) are prohibited marks, and (5)

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		ordinarily would not be entitled to protection in a court of law, cannot be registered as trade marks. Marks containing protected emblems are not registrable.
155.	What are the ways to overcome an absolute grounds objection when registering a trademark in Zimbabwe?	Absolute grounds for refusal may be overcome in some of the instances mentioned above; for instance, by establishing that the trade mark has acquired distinctiveness through prior use, or that it has become well known in the Republic in respect of the goods and services the trade mark represents.
156.	What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office?	The right of appeal from the Intellectual Property Office lies in the Intellectual Property Tribunal (the Tribunal), which was established by the Intellectual Property Tribunal Act (Chapter 26:08).
157.	What is the route of appeal for refusal of a trademark registration?	An aggrieved party may appeal against any decision of the Registrar. Appeals must be filed within two months of the decision appealed against. In terms of section 12 of the Intellectual Property Tribunal Act, the President of the Tribunal is permitted to make rules for the Tribunal.
158.	What are the relative grounds for refusal of registration of a trademark in Zimbabwe?	These grounds relate to conflicts between marks and the existing rights of others. Marks that are identical to registered trade marks, or confusingly similar or likely to deceive, would be in conflict with the rights of others and would consequently be refused.
159.	Are there ways to overcome a relative grounds Objection of a trademark registration In Zimbabwe?	An applicant will be required to prove to the relevant authority that there are clear and distinct differences between the proposed mark and the registered mark, and that no confusion or deception would arise in the use of both marks in public.
160.	What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office in Zimbabwe?	The right of appeal lies with the Tribunal.
161.	<b>What is the route of appeal of a decision of refusal of registration from the Intellectual Property Office in Zimbabwe?</b>	Appeals must be filed within two months from the date of the Registrar's decision.
162.	On what grounds can a trade mark be opposed in Zimbabwe?	Registration of a trade mark may be opposed on the basis that the trade mark is (1) deceptive, (2) similar to or resembling a mark already on the Register and consequently in conflict with the prior rights of others, (3) likely to cause confusion to the public, (4) identical to a mark that is the subject of an earlier application by a different proprietor, or (5) identical or similar to a registered trade mark that is well known in Zimbabwe.
163.	Who can oppose the registration of a trade mark in Zimbabwe?	In terms of section 22 (2) of the Act, any person can oppose the registration of a mark. More commonly, the owner of a registered mark, or his agent, may oppose the registration of a trade mark.
164.	What is the procedure for opposition of a trademark registration?	The procedure for opposition is as follows: <ol style="list-style-type: none"> <li>1. In terms of section 22 (2) of the Act, a person intending on filing an opposition must first give notice to the Registrar.</li> <li>2. In terms of section 24 of the Regulations, the notice must be issued within two months from the date of advertisement in the Journal. The notice must be accompanied by a statement of the grounds of opposition. The statement must provide in sufficient detail the grounds of such opposition.</li> <li>3. The applicant has two months from the date of receipt of the opposing papers to file a counterstatement.</li> <li>4. Section 26 of the Regulations requires the opponent to file, within two months from the receipt of the counterstatement by the applicant, such evidence as may be necessary in support of the opposition.</li> <li>5. Upon receipt of the opponent's evidence, the applicant will have a two-month period within which to file evidence in support of the application.</li> <li>6. The opponent will be given a further two-month period to file evidence in reply. Thereafter, no further evidence will be permitted.</li> <li>7. The Registrar will give notice of a hearing, which date shall be at least 14 days after the date of the notice. The Registrar is required to give reasons for the decision upon request by either party.</li> </ol>

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165.	What happens when a trade mark is granted Registration in Zimbabwe?	A certificate confirming registration is issued by the Registrar and the trade mark is subsequently entered into the Register.
166.	From which date following application do an applicant's trade mark rights commence in Zimbabwe?	An applicant's trade mark rights commence from the filing date. Where priority is claimed, trade mark rights commence from the priority date.
167.	What is the term of a trade mark in Zimbabwe?	The term of a trade mark is 10 years.
168.	How is a trade mark renewed in Zimbabwe?	A trade mark is renewed by way of application to the Registrar, in the form prescribed in the Regulations.
169.	Can an individual register the assignment of a trade Mark in Zimbabwe?	Yes. In terms of section 47 (1) of the Regulations, an assignment may be registered by the person entitled to the assignment. This application may be made conjointly with the registered owner of the trade mark.
170.	Are there different types of assignment of a trademark in Zimbabwe?	The Act and Regulations provide for different circumstances in which a mark may be assigned. A trade mark may be assigned while its registration is still pending. In this instance, an application will be made for the substitution of the applicant with that of the assignee. Further, the Act provides for the assignment of unregistered trade marks provided that, at the time of assignment, the unregistered trade mark was used in the same business as a registered trade mark and it was assigned at the same time to the same person as that registered trade mark.
171.	Can an individual register the licensing of a trade Mark in Zimbabwe?	Yes. An individual can register the licensing of a trade mark.
172.	Are there different types of trademark licence in Zimbabwe?	Yes. The types of a licences recognised are a sole licence, an exclusive licence and a non-exclusive licence.
173.	Can a trade mark licensee sue for infringement in Zimbabwe?	A trade mark licensee can sue for infringement provided he gives notice to the proprietor of the mark of the infringement and calling upon the proprietor to sue in his own name. In the event that the proprietor does not sue in the prescribed time, the licensee can sue but is required to cite the proprietor as the defendant.
174.	Are quality control clauses necessary in a licence in Zimbabwe?	Yes. Quality control clauses are necessary in a licence agreement.
175.	Can an individual register a security interest under a trade mark in Zimbabwe?	The Act does not provide for the registration of security interests.
176.	What are the grounds for revocation of a trade Mark in Zimbabwe?	In terms of Part VII of the Act, a trade mark may be revoked if (1) the trade mark was registered without the bona fide intention to use it, or (2) a continuous period of five years has lapsed and there has been no bona fide use of the trade mark. A trade mark can be revoked if it has lost distinctiveness.
177.	What is the procedure for revocation of a trade Mark in Zimbabwe?	Revocation is initiated by way of an application lodged with the Registrar of Trade Marks. The Tribunal is also a court of first instance in applications of this nature.
178.	Who can commence revocation of a trademark	Any interested party may commence revocation proceedings.

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	proceedings in Zimbabwe?	
179.	What grounds of defence can be raised to a revocation action of a trademark in Zimbabwe?	The proprietor of the trade mark that is the subject of revocation must show that the mark was in fact used for the purpose of distinguishing his goods or services. The type of "use" required to be shown must be usage whose purpose is to further the proprietor's trade in the specific goods or services. Some authorities go further to state that only commercial use of the trade mark will suffice. Further, the proprietor must show, as a defence, that special circumstances existed that rendered the use of the marks impossible. It must also be demonstrated that it was not the intention of the proprietor to abandon the mark.
180.	What is the route of appeal from a decision of Revocation of a trademark in Zimbabwe?	An aggrieved party may appeal to the Tribunal from a decision of the Registrar. Where the application for revocation was determined by the Tribunal, an appeal is made to the Supreme Court of Zimbabwe.
189.	What are the grounds for invalidity of a trade mark in Zimbabwe?	A trade mark is deemed invalid if any of the absolute and relative grounds for refusal are proved. These have been discussed in earlier sections.
190.	What is the procedure for invalidation of a trademark in Zimbabwe?	An application is made to the Registrar or to the Tribunal for the invalidation of a trade mark.
191.	Who can commence invalidation proceedings of a trademark in Zimbabwe?	Any interested party may commence invalidation proceedings.
192.	What grounds of defence can be raised to an invalidation of a trademark action in Zimbabwe?	The factors that an applicant may raise against an objection based on relative and absolute grounds for refusal are applicable as grounds of defence against an invalidation action.
193.	What is the route of appeal from a decision of Invalidity of a trademark in Zimbabwe?	An aggrieved party may appeal to the Tribunal or to the Supreme Court of Zimbabwe.
194.	How and before what tribunals can a trade mark be enforced against an infringer in Zimbabwe?	A trade mark may be enforced in the High Court of Zimbabwe or in the Tribunal. Enforcement is usually by way of application proceedings.
195.	What are the key pre-trial procedural stages for a proceeding at court in Zimbabwe? and	The relevant pre-trial procedural stages are determined by the relief that is being sought by the aggrieved. For instance, an interdict application will not require a trial, but a formal hearing before a Judge or the relevant presiding officer. In such proceedings, evidence is adduced by way of an affidavit. Oral evidence is generally excluded. Where relief has been sought by way of action proceedings, through the issuance of summons, there are several pre-trial stages that apply.
196.	How long does it generally take for proceedings to reach trial from commencement in Zimbabwe?	Timelines vary, depending on the form of relief that is being sought and the adopted procedure. Generally, application procedures are more protracted as there are fewer stages to go through.

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197.	Are (i) preliminary, and (ii) final interdicts available in Zimbabwe? On what basis in each case?	Yes. Interim or preliminary and final interdicts are available, and specific requirements must be met in order to succeed in either case. The facts of each individual case will determine the type of interdict adopted.
198.	Can a party be compelled to provide disclosure of relevant documents or materials to its adversary in Zimbabwe court proceedings?	Yes. A party is required to disclose documents and materials that are relevant to the case. The relevant stage is called Discovery and is known in action proceedings. If, upon request to discover, the requested party fails to comply or where the requesting party considers that there are still relevant yet undisclosed documents in the possession of the other that have not been disclosed, the requesting party may bring an application compelling the other to further disclose documents in his possession. Discovery is not common in application proceedings
199.	Are submissions or evidence presented in writing or orally and is there any potential for cross-examination of witnesses in Zimbabwe court proceedings?	Oral evidence is permitted in action proceedings. Witnesses are cross-examined by the plaintiff and the defendant. In application proceedings, evidence is presented by way of an affidavit.
200.	Can infringement proceedings be stayed pending resolution of validity in another court or the Intellectual Property Office in Zimbabwe?	Yes. Infringement proceedings can be stayed pending resolution of validity in another court.
201.	After what period is a claim for trade mark Infringement time-barred in Zimbabwe	The general period of prescription is three years from the date the cause of action arose. Thereafter, a claim cannot be brought unless a plaintiff is able to provide special circumstances that prove that the applicant was not time-barred.
202.	Are there criminal liabilities for trade mark Infringement in Zimbabwe?	Yes. In terms of the general penalties clause, a person who has been found guilty of any offence under the Act shall be liable to a fine not exceeding US\$2,000 or imprisonment for up to two years, or both. Criminal prosecution is conducted by the State.
203.	What, if any, are the provisions for unauthorised threats of trade mark infringement in Zimbabwe?	The Act and Regulations do not provide for unauthorised threats of trade mark infringement.
204.	What grounds of defence can be raised by way of non-infringement to a claim of trade mark infringement in Zimbabwe?	In a claim of infringement, the defence of non-infringement is available in that the offending mark is not similar to the registered mark so as to be likely to cause confusion or deception.
205.	What grounds of defence can be raised in addition to non-infringement in Zimbabwe?	Other defences that may be raised will centre around the validity of a trade mark's registration. A counterclaim may also be raised for the revocation of the trade mark.
206.	What remedies are available for trade mark	The remedies available for trade mark infringement are: 1. Interdict. 2. Damages. 3. An Anton Piller Order.

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	Infringement in Zimbabwe?	4. Delivery up or destruction of infringing goods.
206.	Are costs recoverable from the losing party in Zimbabwe court proceedings?	Costs recoverable from a losing party are determined by the court.
207.	How are costs determined and what proportion of the costs can usually be recovered in legal proceedings in Zimbabwe ?	These are usually on a party and party scale. There are instances where costs are awarded on the higher scale of attorney and client. A Bill of Costs is drafted and submitted for taxation to the taxing officer of the High Court.
208.	What is the right of appeal from a first instance judgment and is it only on a point of law in Zimbabwe?	An aggrieved party may appeal on a point of law or request for the review of the decision of the first instance judgment.
209.	In what circumstances can new evidence be added at the appeal stage in legal proceedings in Zimbabwe?	Ordinarily, new evidence is not permissible at appeal stage. Special circumstances must be shown for it to be adduced
210.	Is there a mechanism for seizing or preventing the importation of infringing goods or services in Zimbabwe trademark law?	The Trademark Act provides for a mechanism for seizing and preventing importation of infringing material. The proprietor of a registered trade mark can give notice to the Director of Customs and Excise to treat as prohibited goods those that have been produced outside the jurisdiction and to which identical or confusingly similar marks have been applied. The Director shall prohibit the importation of the goods.
211.	How quickly are border control measures resolved for trademark in Zimbabwe?	The border control measures are readily effected provided that the proprietor furnishes the Director with the requisite security.
212.	To what extent are unregistered trade mark rights enforceable in Zimbabwe?	In terms of section 6 of the Trademark Act, no person shall be entitled to institute any proceedings to prevent or to recover damages for the infringement of an unregistered trade mark, provided that nothing in the Act shall affect the right of any person to bring an action under common law, against any person for passing off.
213.	To what extent does a company name offer protection from use by a third party in trademark law in Zimbabwe?	The Registrar is precluded from registering a trade mark that is similar in name to an existing registered company, or whose use is likely to cause confusion to the public.
214.	Are there any other rights that confer IP protection, for instance book title and film title rights in Zimbabwe?	There are no other rights that confer IP protection.
215.	Who can own a domain name in Zimbabwe?	Any person, whether natural or juristic, can own a domain name. The person or company wishing to register a domain name is known as a registrant.

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216.	How is a domain name registered in Zimbabwe?	An application for registration is submitted by a registrant to a recommended Registrar. The Zimbabwe Internet Service Providers' Association (ZISPA) provides for ZISPA Registrars who deal with registrants. Most Registrars are local Internet Service Providers. The filing of an application is usually preceded by a domain name search.
217.	What protection does a domain name afford per se in Zimbabwe?	Registration precludes third parties from unauthorised use.
218.	What types of country code top level domain names (ccTLDs) are available in Zimbabwe?	The most common domain names are ".co.zw" for commercial companies, ".org.zw" for non-profit organisations and ".ac.zw" for academic institutions.
219.	Are there any dispute resolution procedures for ccTLDs in Zimbabwe?	Domain name disputes are settled through the High Court or the Tribunal. ZISPA is not obligated to act as an arbiter of disputes arising out of the registration and use of domain names. However, where ZISPA is presented with evidence that indicates that a domain name is in conflict with a third party's rights, they have an obligation to provide the complainant with the applicant's name, address and other relevant information.
220.	What are the important judgments in the trademarks and brands sphere that have been issued within the last 18 months in Zimbabwe?	<ol style="list-style-type: none"> <li>1. Lion Match (Pty) Ltd v Lion Match Zimbabwe Limited IPT01/16.</li> <li>2. Bayer AG v Milborrow Animal Health (Zimbabwe) (Pvt) Ltd IPT 01/17.</li> </ol> <p>These cases are significant as they represent the first judgments handed down by the Tribunal, both of which were handed down in 2019.</p>