



# Projects & Infrastructure

Power Guide:  
Zambia

ONE REGION  
ONE VISION  
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## Introduction

This Power Guide has been prepared by ALN Zambia | Musa Dudhia & Co (**ALN Zambia**) and provides an overview of Zambia's power sector. The aim of this

guide is to provide useful information to investors and stakeholders on legal aspects of the industry, such as applicable regulatory standards and tariffs.

## Governing Law



- The Constitution, Chapter 1 of the laws of Zambia as amended by Amendment Act No. 2 of 2016
- **Statutes:**
  - The Energy Regulation Act, 2019
  - Rural Electrification Act, 2023
  - The Public Private Partnership Act, 2009
  - The Public Procurement Act, 2020
- **Other laws, regulations, and policies, including:**
  - The Lands Act, Chapter 184 of the laws of Zambia.
  - The Lands and Deeds Registry Act, Chapter 184 of the laws of Zambia
  - The Public Finance Management Act, 2018
  - The Investment, Trade and Business Development Act, 2022
  - The Environmental Management Act, 2011
  - The Electricity Act, 2019
  - The Income Tax Act, Chapter 323 of the laws of Zambia
  - The Water Resources Management Act, 2011
  - The Zambezi River Authority Act, Chapter 467 of the laws of Zambia
  - The Energy Regulation (Licensing) Regulations, 2008
  - The Energy Regulation (Consumer Protection and Standards) Regulations, 2008
  - The Electricity (Market Rules) Regulations, 2020
  - The National Energy Policy, 2019
  - The Rural Electrification Master Plan, 2008
  - The Renewable Energy Strategy, 2018

## Institutional Framework

### Energy Regulation Board (ERB)



ERB is the statutory regulatory body responsible for regulating the energy sector in Zambia. It issues licenses for electricity generation, transmission, and distribution, and ensures compliance with sector regulations. In conjunction with the Environmental Council of Zambia, ERB is in charge of formulating measures to minimize the environmental impact of the production and supply of energy and fuels.

### ZESCO Limited (ZESCO)



ZESCO is a government-owned company responsible for generating, transmitting, and distributing electricity in the country. Zambia predominately operates under a single-buyer model in which ZESCO is the off-taker for power generated by the independent power producers. In this regard, although legally the power sector is liberalized, most of the investment opportunities in power generation require a power

### Ministry of Energy (MoE)



MoE is responsible for the development and management of energy resources in a sustainable manner through the preparation and monitoring of energy policies, strategies, plans and programs and the coordination of stakeholders in the sector. The MoE is also in charge of creating energy policies and setting the strategic direction for the growth of the energy sector in Zambia.

### Rural Electrification Agency (REA)



REA is an agency established under the Rural Electrification Act to promote and facilitate access to electricity in rural and peri-urban areas of the country.

purchase agreement with ZESCO as the off-taker of the power generated. This is also because ZESCO materially owns the transmission and distribution system and is the main power supplier to domestic, commercial, and industrial customers, and also holds the license to operate and coordinate access to the grid of all power producers.





## Power Purchase Agreement (PPA) Between the Independent Power Producer (IPP) and ZESCO

- The term of a PPA is typically 20 - 25 years.
- Take or pay structures are typically used.
- Zambian laws do not provide for deemed generated energy payments, but the parties may include contractual obligations to this effect in the PPA.
- As a general guide, the PPA tariff is usually composed of fixed and variable charges. The capacity charge (i.e., for dispatched plants) and energy charges constitute the fixed and variable charges respectively. It is not however, uncommon for PPAs to have other charges (supplemental charges) — usually set to recover any other costs (such as start-up costs), or for providing any other services (such as reactive support, reserve energy, and black-start capability). Different PPAs will contain different balances of fixed and variable charges, and therefore pricing terms need to be converted into an average cost for a meaningful comparison.
- Tariffs are determined contractually by negotiation between ZESCO and the IPPs, or where a tender process is used, by a competitive bidding process. The agreed tariff is subject to ERB approval who may, in rare circumstances request the parties to vary the tariff.
- Adjustments to the tariff may be possible upon the occurrence of certain events, including changes in laws and taxes.
- The PPAs typically provide for payments from ZESCO to the IPPs to be made in United States Dollars. However, the parties are free to decide to use local currency.
- A PPA typically provides for payment within 30 to 45 days after receipt of invoice, but this is typically dependent on the negotiations between the IPP and ZESCO.
- ERB reviews the PPA including the tariff and tariff structure and therefore the tariff structure under the PPAs are subject to regulatory approval.

## Local Shareholding and Local Content Requirements

- There are no specific restrictions on ownership of shares by foreign investors in a project company in Zambia. However, foreign investors may be required to register with the Registrar of Companies, and companies registered in Zambia are required to have at least half of their director's resident in Zambia.
- This does not suggest that any director's resident in Zambia cannot be foreign directors.
- Additionally, there are restrictions relating to land ownership by foreigners in Zambia which have an impact on the land ownership arrangements for power projects. Foreign-owned IPPs can however own land by obtaining an investment license under the Investment, Trade and Business Development Act.

## Payments to ZESCO

Typically, IPPs may pay liquidated damages for:

- Delay in reaching the Commercial Operations Date; and

- failing to meet the availability thresholds during the operations of the plant.

## Feed-in Tariffs (FIT) Policy

- In 2017, Zambia adopted a renewable energy Feed-in Tariff (ReFIT) strategy to accelerate private party investments in small-medium sized renewable energy projects of up to 20 MW.
- Additionally, the government with the support from the German Government has been implementing the Global Energy Transfer- Feed-in Tariff (GET-FIT) Zambia program which is designed to assist with the implementation of the ReFIT strategy. The objectives of GET FIT Zambia are to:
  - i. enable the procurement of up to 205 MW of renewable energy capacity as GET FIT Zambia has become the official implementation programme for REFIT strategy;
  - ii. contribute to diversifying Zambia's power mix (both with regards to project size and geographically) while ensuring cost-effective and environmentally and socially sustainable projects to maximize value for Zambian end users;
  - iii. introduce standardized legal documentation for IPPs in Zambia and improving regulatory & licensing procedures;
  - iv. successfully integrate the procured renewable energy into the national grid; and
  - v. promotion of competition and private sector participation in the Zambian power sector.

## Credit Enhancements

- Sovereign guarantees in Zambia are provided in limited circumstances for the repayment of a loan where such loan is borrowed by a body corporate, statutory corporation, local authority or a company in which shares are held by or on behalf of the government. In the past, the Government, through the Minister of Finance, guaranteed some of the loan facilities obtained by ZESCO or ZESCO's obligations under some of its contractual arrangements under PPAs and/or entered into government support agreements with the IPPs to provide comfort to the IPPs in respect of ZESCO's obligations under the PPAs. However, there are no prescribed requirements or conditions setting out the provision of government support. Further, such support depends on the nature of the project

and typically occurs when a Government entity partners with the IPP on the power project. Therefore, generally, there are no sovereign guarantees provided by the Government of Zambia. However, credit enhancements may be available through international development finance institutions.

- Partial risk guarantees and political risk insurance have been developed for the Zambian market, as is the case with other developing countries, by the World Bank, Multilateral Investment Guarantee Agency (MIGA), International Development Association (IDA), Africa Development Bank (AFDB) and African Trade Insurance Agency (ATI).

## Key Approvals/Licenses Required to be Procured.

- Approval of the PPA by ERB is required before execution of the PPA.
- Construction permits are issued by ERB.
- Planning permission is granted by the local council.
- Electricity Generation Licenses' are issued by ERB.
- Environmental Impact Assessment (EIA) approval is granted by the Zambia Environmental Management Agency.
- Approval for grid connection is obtained from ZESCO.

## Governing Law and Dispute Resolution



- Parties are at liberty to agree on the governing law of the PPA, provided that they comply with the requirement to submit the PPA to ERB for approval.
- Parties are at liberty to agree on the dispute resolution mechanism to be relied on for their PPA. Typically, parties elect to use arbitration as opposed to foreign courts. This is because under the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the laws of Zambia, enforcement of foreign judgments in Zambia is based on reciprocity. As Zambia has not passed orders for the reciprocal enforcement of judgments for several jurisdictions, foreign judgments are enforced by the parties either: (i) relitigating the matter on the merits in Zambia; or (ii) using the foreign judgment as a cause of action. On the other hand, Zambia is a party to the

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention). Therefore, arbitral awards obtained in states or territories which are party to the New York Convention are enforceable in Zambia by registration of the arbitral award. Arbitration is therefore generally accepted as a preferred method for dispute resolution. Enforcement of arbitral awards may be subject to challenge under Zambian law under very limited circumstances specified in the Arbitration Act, 2000, including: if the arbitration agreement is invalid under the governing law; a party was not present or no proper notice of hearing was given; the composition of the arbitral tribunal was irregular; enforcement of the award would be contrary to public policy; or the award was induced by corruption, fraud and misrepresentation.

## Power Sector Experience

ALN Zambia has worked on key landmark transactions in the country and possess unique on-the-ground experience in energy deals in Zambia. ALN Zambia has strong business and regulatory relationships enabling

a concise understanding of structuring a deal in light of potential economic, political and financial risk. Specific examples of some of the power deals handled by ALN Zambia are set out below.



**Enel Green Power:** Acting for Enel Green Power in connection with the development of a 50MW solar power plant under the first ever scaling Solar project in Zambia. The project is a World Bank Group program designed to make it easier for governments to procure solar power quickly and at low cost through competitive tendering and pre-set financing, insurance products and risk products.



**Maamba Collieries:** Acting as local counsel to Clifford Chance on behalf of Standard Chartered Bank acting as Intercreditor Agent to provide advice in respect of the Maamba Collieries Limited's (MCL) intention to restructure the tariff arrangements under the power purchase agreement with ZESCO and consequently the financing arrangements under the finance documents.



**Aksa Energy Turkey:** Acting for Aksa Energy Turkey, a Company that participated in a tender by the Government for the procurement of emergency power plants in Zambia when Zambia was experiencing a critical power deficit, including negotiating the drafting of a power purchase agreement with ZESCO, the Zambian state-owned power utility company (the off-taker).



Acting as local counsel to an intentional mining company in connection with the supply of power to ENRC's frontier mine from ZESCO, a Zambian power utility company. Power from ZESCO would be wheeled to the mine via a third-party power utility company in Zambia (Copperbelt Energy Corporation, CEC).



We acted in a transaction that involved a joint venture between QIA and Enel Green Power in respect of Ngonye Power Company which owns a 34MW solar photovoltaic (PV) plant in Zambia.



**International Finance Corporation and the Government of Zambia:** Acting as local counsel to the International Finance Corporation and the Government of Zambia in connection with the USD 1.5 billion Kafue Gorge Dam construction project.



**Industrial Commercial Bank of China:** Acting for the Industrial Commercial Bank of China in connection with the USD 263 million (approx.) finance facility to ZESCO Limited, Zambia's power state company. The facility was secured by a guarantee provided by the Minister of Finance. The facility was contracted by ZESCO for purposes of, *inter alia*, funding 85% of the project costs for the design, manufacturing, construction, testing, delivery, installation, completion and commissioning of the Kasama Transmission Lines and Substations.



**European Investment Bank:** Acting for European Investment Bank in connection with three separate financing arrangements with the Government of Zambia for various projects undertaken by ZESCO, including an EUR 50 million loan to develop a hydropower plant and transmission line in Itezhi Tezhi; an EUR 78 million loan to reinforce power transmission and distribution infrastructure in Lusaka; and EUR 22 million loan in relation to the Kafue-Livingstone power transmission line.



**Standard Chartered Bank:** Acting for Standard Chartered Bank in connection with a transaction involving the finance of the Maamba Power Project.



Acting as local counsel in connection with a due diligence in relation to the financing of the Northwest Energy Corporation, a provider of electricity distribution to Lumwana Property Development Company as part of the Equinox Minerals Mining Development in North-western Zambia.

## Key Contacts



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## About the Firm

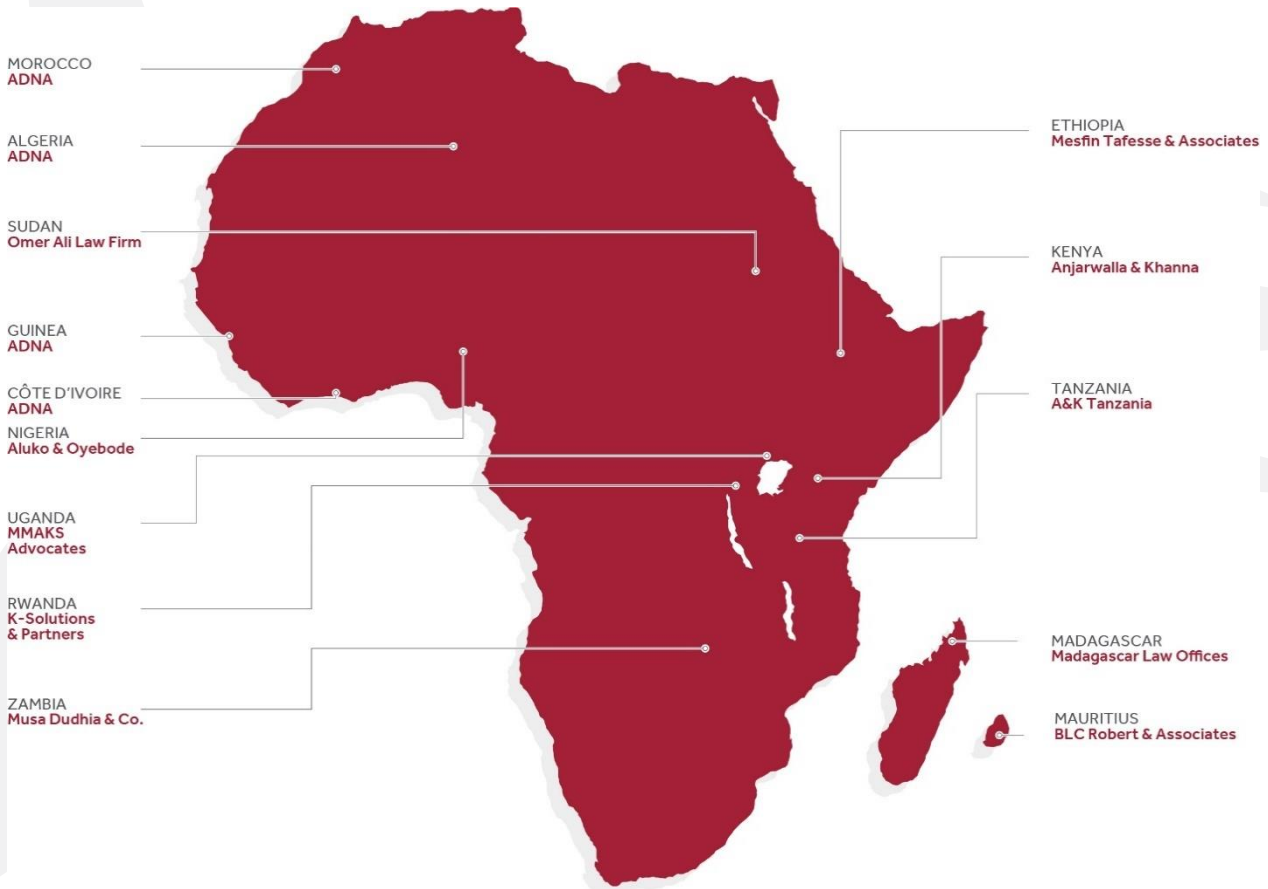
ALN Zambia is a premier law firm based in Zambia, well known as the Firm of choice for corporate and commercial transactions as well as commercial dispute resolution. ALN Zambia is widely recognized for providing regional and international clients with outside-the-box solutions to complex matters whether domestic or multi-jurisdictional.

Our team of lawyers has been involved in a number of sophisticated transactions, across the spectrum of legal areas, including corporate commercial, complex mergers and acquisitions, banking and project finance, infrastructure and projects, real estate, capital markets, insolvency and restructuring, mining, petroleum, energy and telecommunications.





# About ALN



ALN is an integrated alliance of the preeminent full-service corporate law firms in 14 African countries: Algeria, Côte d’Ivoire, Ethiopia, Guinea, Kenya, Madagascar, Mauritius, Morocco, Nigeria, Rwanda, Sudan, Tanzania, Uganda and Zambia. ALN also has a regional office in Dubai, UAE, which serves as a gateway to the Gulf region and beyond.

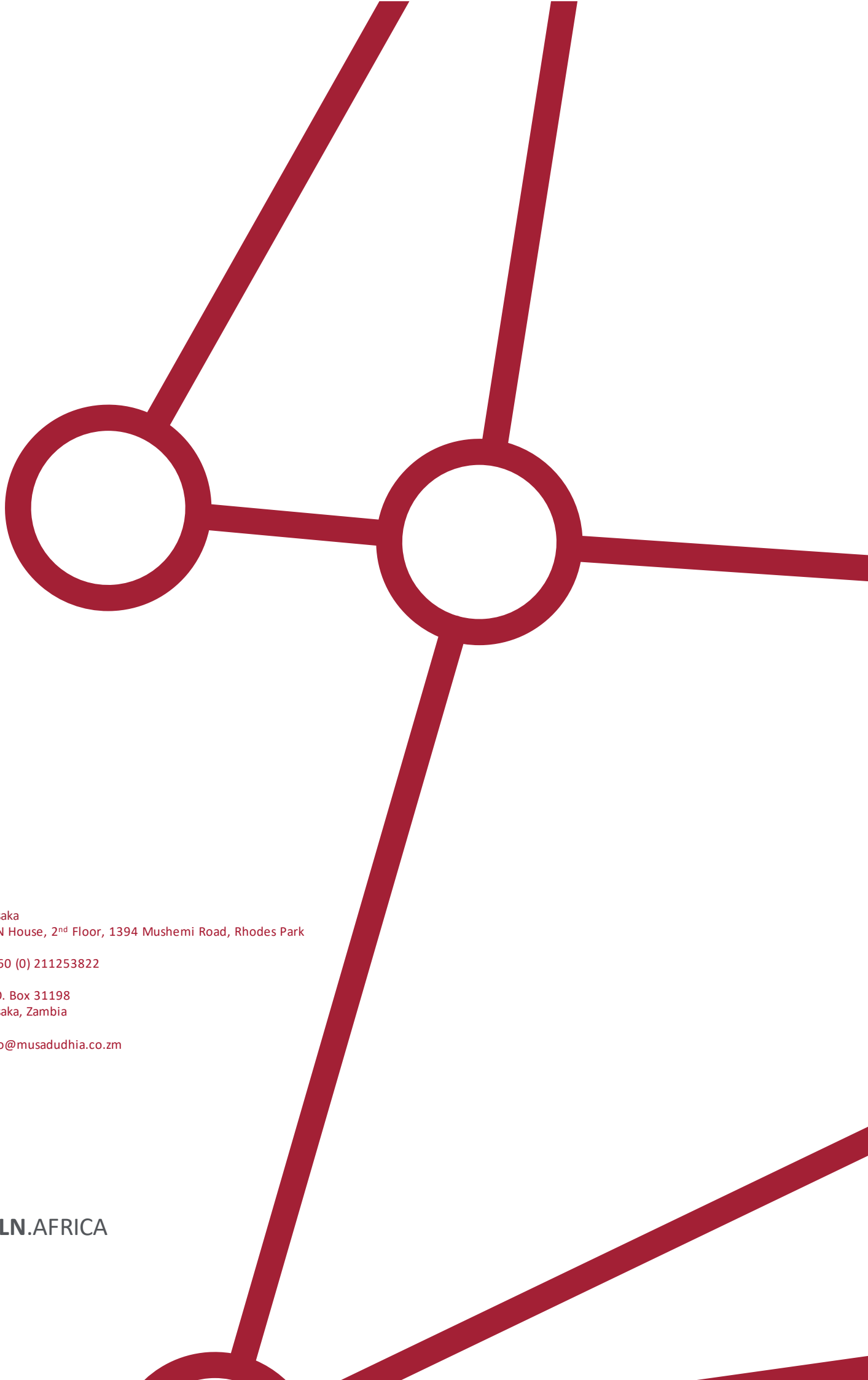
## Vision

ALN seamlessly connects the African continent. It brings its global expertise, continental reach and deep local know-how to help its clients navigate the multitude of opportunities and risks in Africa, holistically combining legal, tax, regulatory and commercial advice.

## Mission

ALN is dedicated to its clients’ success. ALN achieves this by providing world class legal, tax and regulatory advice in a commercial context. ALN’s lawyers are aware of the trends and events shaping the continent, deeply networked and respected in their communities as thought leaders and opinion shapers. ALN’s lawyers have a Pan African mindset, are down to earth, pragmatic, responsive, innovative and relentlessly determined.





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**ALN.AFRICA**