

Zambia

Zambia Development Agency Act, 2006 (2006)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Zambia Development Agency Act, 2006

Act No. 11 of 2006

[Preamble]

An Act to foster economic growth and development by promoting trade and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy; to establish the Zambia Development Agency as a one stop facility which will ensure, among other matters, client focus, dialogue with the private sector and create confidence in public sector support for business; to provide for the functions and powers of the Agency; to attract and facilitate inward and after care investment; to provide and facilitate support to micro and small business enterprises; to promote exports and globalisation; to streamline bureaucratic procedures and requirements faced by investors; to facilitate industrial infrastructure development and local services; to promote greenfield investments through joint ventures and partnerships between local and foreign investors; to promote and encourage education and skills training so as to increase productivity in business enterprises; to encourage measures to increase Zambia's capacity to trade and enable business to participate in a competitive global environment; to ensure that the private sector takes advantage of and benefits from international and regional trade agreements; and to provide for matters connected with or incidental to the foregoing.

Part I. Preliminary

Article 1. Short title and commencement

- 1) This Act may be cited as the Zambia Development Agency Act 2006 and shall come into force on such date as the Minister may, by statutory instrument, appoint.
- 2) The Minister may appoint different dates for the coming into force of the various Parts or sections of this Act.

Article 2. Application

- 1) This Act shall apply to an investor, who may invest in all regions of the Republic and in all sectors and industries other than the industries specified in the First Schedule.
- 2) Notwithstanding subsection (1) a foreign investor or local investor may with the approval of the relevant regulatory authority and subject to any written law be authorised to invest in any industry specified in the First Schedule.

Article 3. Interpretation

In this Act, unless the context otherwise requires:

"ACP-EU" means African Caribbean Pacific-European Union;

"Agency" means the Zambia Development Agency established by section four;

"agro processing" means the conversion of primary agricultural produce by manual, mechanical or biochemical means into a new product by changing the size, shape, composition, nature or quality of such produce;

"appointed date" means the date appointed by the Minister under section one;

"appropriate authority" means a statutory officer or body that was vested or bestowed with functions and powers under any of the repealed Acts;

"Board" means the Board of the Agency constituted under section six;

"bonded factory" means a warehouse that is bonded and licenced under the Customs and Excise Act and in which goods may be kept and secured without the payment of duty or until the requirements of the Act have been satisfied and includes any store, house, shed or other place in which goods are kept accordingly;

"business enterprise" includes any undertaking carrying on business in the field of manufacturing, agriculture, agro processing, transport, fishing, commerce, energy generation, communications, construction, mining, tourism, education and skills training;

"Chairperson" means the person appointed Chairperson of the Board under section six;

"COMESA" means the Common Market for Eastern and Southern Africa Organisation established under the Treaty Establishing the Common Market for Eastern and Southern Africa;

"commercial estate" means any building or premises designated as a commercial estate under section twenty-three;

"Commercialisation" means the reorganisation of specified Government departments into commercialised enterprises which shall operate as profit making commercial ventures without the subvention of the Government; and , "commecialise" shall be construed accordingly;

"Commissioner-General" means the Commissioner General of the Zambia Revenue Authority;

"committee" means a committee of the Agency established under section nine;

"common customs area" has the meaning assigned to it in the Treaty Establishing the Common Market for Eastern and Southern Africa;

"common facility " means any facility which is jointly used by a group of micro and small business enterprises;

"customs duty " has the meaning assigned to it in the Customs and Excise Act;

"Director-General " means the person appointed chief executive officer of the Agency under section eleven;

"Development Fund" means the Trade and Industrial Development Fund established under section forty-eight;

"development services" includes advisory services, promoting training and financing, facilitating the preparation of business plans, project proposals, loan applications, financial statements, audited statements of expenditure and income and other similar services;

"divestiture" means the disposing of the whole or part of the assets and shares of a State owned enterprise;

"divestiture sequence plan" means a list of state owned enterprises, as approved by Cabinet, categorised according to the sequence in which the whole or part of their shares will be disposed of over the period of the privatisation programme;

"economic resources" includes physical, technical, human and financial resources;

"established fund " includes pension funds, contributory social security schemes, compensation funds and superannuation funds;

"existing right" means any permit, licence or registration certificate granted by an appropriate authority under any of the repealed Acts;

"Export Board" means the Export Board of Zambia established by section two of the Export Development Act;

"Export Development Act" means the Export Development Cap. 418 Act repealed under section eighty-four;

"Export Processing Zones Act" means the Export Processing Zones Act repealed under section eighty-four;

"financial institution" has the meaning assigned to it in the Banking and Financial Services Act;

"foreign investment" means investment brought in by an investor from outside Zambia;

"foreign investor" means a person who makes direct investment in the country and who in the case of a natural person is not a citizen or permanent resident of Zambia and in the case of a company is incorporated outside Zambia;

"gender" means female or male and the role individuals play in society as a result of their sex and status;

"golden share" means a share with special rights which enables the Government, in the national interest, to intervene in the operations of a company which intervention is caused by specific actions undertaken or about to be undertaken by the company;

"greenfield investment" means new investment; HIV/AIDS " means the human immunodeficiency virus;

"industrial estate" means any building or premises designated as an industrial estate under section twenty-three;

"investment" means contribution of capital, in cash or in kind, by an investor to a new business enterprise, to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise from the State;

"investor" means any person, natural or juristic, whether a citizen of Zambia or not, investing in Zambia in accordance with this Act, and includes a micro or small business enterprise and rural business enterprise;

"Investment Act" means the Investment Act repealed under section eighty-four;

"joint venture" means an enterprise that is a business undertaking between two or more persons for mutual benefit;

"licence" means a licence issued under this Act;

"local investor" means a person who makes direct investment in the country and who in the case of a natural person is a citizen or permanent resident and in the case of a company is incorporated in Zambia;

"manufacturing" means the transforming, on a commercial scale, of raw materials into finished or semi-finished products and includes the assembling of inputs into finished or semi-finished products;

"matter pending" means any matter that had been received or commenced but not disposed of, by an appropriate authority, prior to its close of business on the day immediately before the appointed date;

"member" means a member of the Board;

"Micro and Small Enterprises Development Fund" means the fund established under section twenty-six of the Small Enterprises Development Act;

"micro business enterprise" means any business enterprise whose total investment, excluding land and buildings, and annual turnover and the number of persons employed by the enterprise does not exceed the numerical value or number prescribed;

"mineral" includes any valuable crystalline or earthy substance forming part of or found within the earth's surface and produced or deposited by natural agencies, but does not include any clay other than fire clay, gravel, sand, stone other than lime stone; or any other substance ordinarily won by way of a process of surface working known as quarrying;

"mining operations" means any operation for the purpose of winning a mineral from the earth; or any substance or constituent of the earth and carried on in conjunction with an operation under paragraph (a);

"multi-facility economic zone" means any area or premises in Zambia that has been declared a multi-facility economic zone under section eighteen;

"mutual fund" means an investment fund which purchases shares in a portfolio of companies and subdivides such portfolio into individual units for the sale of such units to investors;

"non-traditional products" means products other than minerals or electricity produced or manufactured in Zambia and excludes services;

"permit" means a permit issued under this Act;

"physical resource" includes land, personal property, intellectual property and infrastructure;

"prescribed" means prescribed by the Minister by statutory instrument and "prescribe" shall be construed accordingly;

"priority sector or product" means a sector or product that has a high growth potential, listed in the Second Schedule;

"privatisation" means the transferring to the private sector of part or the whole of the equity or other interest held by the Government, directly or indirectly, in a State owned enterprise;

"Privatisation Act" means the Privatisation Act repealed under section eighty-four;

"Privatisation Trust Fund" means the Fund established under section twenty-nine of the Privatisation Act;

"Privatisation Revenue Account" means the account established under section thirty-nine of the Privatisation Act;

"regulatory authority" means the Minister for the time being responsible for, or such public or statutory officer or body having powers under any other law, over any industry listed in the First Schedule or over the products of such industries;

"repealed Acts" means the following Acts;

Investment Act;

Privatisation Act;

Small Enterprises Development Act;

Export Processing Zones Act; and Export Development Act;

"rural business enterprise" means a business enterprise located in a rural area;

"SADC" means the Southern Africa Development Community established under the Southern Africa Development Treaty;

"small business enterprise" means any business enterprise whose total investment, excluding land and buildings, and annual turnover and the number of persons employed by the enterprise does not exceed the numerical value or number prescribed;

"Small Enterprises Development Act" means the Small Enterprises Development Act repealed under section eighty-four;

State institution includes a ministry or department of Government, a public office or agency or institution, statutory body or company in which the Government has a controlling interest, a local government authority, a commission or body established under the Constitution;

"State owned enterprise" means a corporation, board, company, parastatal or other body in which the Government has direct or indirect ownership, equity or interest and includes a partnership, joint venture or any other form of business arrangement or organisation in which the Government has direct or indirect interest, but does not include a Government ministry or department;

value chain includes the specific value additions at all levels of a process in the different sectors of industry;

"Vice-Chairperson" means the person appointed as Vice-Chairperson of the Board under section six; and

"WTO" means the World Trade Organisation established under the World Trade Organisation Agreement.

Part II. The Zambia development agency

Article 4. Establishment of Zambia Development Agency

- 1) There is hereby established the Zambia Development Agency which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name and with power, subject to this Act, to do all such acts and things as a body corporate may by law do or perform.
- 2) The Third Schedule applies to the Agency and the Board.
- 3) Except as otherwise provided under this Act, the functions and powers of the Agency shall be performed and exercised by the Board.

Article 5. Functions of Agency

- 1) The functions of the Agency shall be to further the economic development of Zambia by promoting efficiency, investment and competitiveness in business and promoting exports from Zambia.
- 2) Without limiting subsection (1), the functions of the Agency shall be to:
 - a. give advice to the Minister on matters relating to industry, industry development and productivity, investments, exports of goods and services, operations of multi-facility economic zones and matters relating to micro and small scale business enterprises;
 - b. on the request of Government, study market access offers received from trading partners under COMESA, WTO or SA DC and advise the Government on opportunities and challenges generated by those offers;
 - c. make detailed impact analysis on select sectors of the economy such as textiles, agriculture, mining, tourism, education, skills training, communication, transport, infrastructure development, automobiles, information technology, chemicals and steel and engineering goods, through a multi-disciplinary team;

- d. establish a database of facilities, human resources and their skills, sources of finance, technology, raw materials, machinery, equipment and supplies with a view to promoting accessibility of these to industry;
- e. develop entrepreneurship skills and a business culture in citizens of Zambia;
- f. promote and facilitate the development of micro and small business enterprises;
- g. formulate investment promotion strategies;
- h. promote and coordinate Government policies on, and facilitate, investment in Zambia;
- i. assist in securing from any State institution any permission, exemption, authorization, licence, bonded status, land and any other thing required for the purposes of establishing or operating a business enterprise;
- j. undertake economic and sector studies and market surveys so as to identify investment opportunities;
- k. plan, manage, implement and control the privatisation of State owned enterprises;
- l. oversee all aspects of the implementation of the privatisation programme;
- m. monitor progress of the privatisation programme in Zambia;
- n. monitor post privatisation activities to ensure compliance with any agreement entered into for the privatisation of any state owned enterprise;
- o. develop multi-facility economic zones or facilitate the development of multi-facility economic zones by investors;
- p. administer, control and regulate multi-facility economic zones and ensure compliance with this Act and any other laws relevant to the activities of multi-facility economic zones;
- q. monitor and evaluate the activities, performance and development of enterprises operating in multi-facility economic zones and prescribe and enforce measures, for the business or activity carried out within a multi-facility economic zone so as to promote the safety and efficiency of its operations;
- r. promote and market multi-facility economic zones among investors;
- s. undertake research generally on matters relating to industry, industry development and productivity;
- t. encourage and promote the transfer of appropriate technology and promote public understanding of matters relating to industry development and productivity;
- u. provide a framework for the provision of enterprise development services to industry and business enterprises and source for financial aid for the development of trade and industry in order to assist business enterprises meet economic and social costs of adjusting to a competitive international trading environment;
- v. encourage increased private sector investment in education and skills training for and in the labour market;

w. explore ways of fostering business linkages, such as partnerships, joint ventures and other strategic alliances, in greenfield investments;

x. provide marketing support services to business enterprises;

y. encourage measures that will increase Zambia's capacity to trade, including efforts to improve transport and communication infrastructure; and

z. cooperate with other State institutions and the private sector in areas linked with trade, such as:

i. the protection of intellectual property rights;

ii. standardisation and certification;

iii. sanitary and phytosanitary measures;

iv. trade and the environment;

v. trade and labour; and

vi. consumer policy.

3) In the exercise of its functions under subsection (1), the Agency shall have regard to the need to:

a. improve the overall economic performance of the economy through higher productivity in the public and private sectors in order to achieve higher living standards for all members of the Zambian community;

b. reduce regulation of industry where this is consistent with the social and economic goals of the Government;

c. encourage the development and growth of Zambian industries that are efficient in their use of resources, enterprising, innovative and internationally competitive;

d. facilitate adjustment to structural changes in the economy and the avoidance of social and economic hardships arising from those changes;

e. protect the interests of industries, employees, consumers and the community that are likely to be affected by measures proposed by the Agency;

f. increase employment in Zambia;

g. promote regional development, cooperation and integration;

h. monitor the progress made by Zambia's trading partners in reducing both tariff and non-tariff barriers;

i. ensure that industry develops in a way that is ecologically sustainable;

j. ensure that Zambia meets its international obligations and commitments, including those under the WTO, COMESA and SADC; and

k. maintain regular, productive and effective dialogue and cooperation with the public and private sector and encourage public-public dialogue, private-private dialogue and private-public dialogue.

Article 6. Board of Agency

1) There is hereby constituted a Board of the Agency which shall consist of the following sixteen members:

a. a representative of:

i. Zambia Chamber of Commerce and Industry;

ii. the farmers;

iii. civil society organisations involved or interested in commerce and industry; and

iv. agencies promoting small scale industries;

b. two private businesspersons;

c. a representative of the Environmental Council of Zambia;

d. eight representatives from the Ministries responsible for trade and industry, finance, labour, agriculture, tourism, education, skills training and mining; and

e. the Attorney General or the Attorney General's representative.

2) The Minister shall appoint the Chairperson and the Vice-Chairperson of the Board from among the members who are not public officers.

Article 7. Tenure of office and vacation of office

1) The Chairperson shall be appointed for a term of five years and shall be eligible for re-appointment for a further term of five years.

2) A member, other than the Chairperson, shall be appointed for a term of three years and shall be eligible for re-appointment for a further period of three years.

3) The members of the Board shall serve on a part-time basis.

4) A member may resign upon giving one month's notice, in writing, to the Minister and may be removed by the Minister at any time if the Minister is satisfied that the continuation in office of that member is prejudicial to the interests of the Agency.

5) The office of a member shall become vacant if the member:

a. dies;

b. is declared to be of unsound mind;

c. is adjudged or otherwise declared bankrupt or becomes insolvent;

d. is sentenced to a term of imprisonment exceeding six months;

e. is absent, without reasonable excuse, from three consecutive meetings of the Agency; or

f. serves the period for which the member was appointed.

6) Whenever the office of member becomes vacant, before the expiry of the term of office, the Minister may appoint another person in place of the member but such member shall hold office only for the unexpired part of the term.

Article 8. Allowances

A member of the Board shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Article 9. Committees of Agency

1) The Board may, for the purpose of performing the functions of the Agency under this Act, establish such committees as it considers necessary and delegate to any of those committees any of the functions of the Agency.

2) The Board may appoint as members of a committee persons who are or are not members of the Board, except that at least one member of the Board shall be a member of a committee.

3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

4) Subject to any specific or general direction of the Board a committee may regulate its own procedure.

Article 10. Delegation of functions and directions

1) Subject to this Act, the Board may, by directions in writing and subject to any terms and conditions as it considers necessary, delegate to the Director-General or any other member of staff any of the functions of the Agency under this Act.

2) The Minister may give to the Board general or specific directions, not inconsistent with this Act, relating to the discharge of the functions of the Agency and the Agency shall give effect to those directions.

Article 11. Director-General and other staff

1) The Board shall appoint a Director-General who shall be the chief executive officer of the Agency on such terms and conditions as the Board may determine.

2) The Director-General shall be responsible under the general direction of the Board for the:

a. management and administration of the affairs of the Agency;

b. implementation of the decisions of the Board; and

c. any other function assigned to the Director-General by the Board or by or under this Act.

3) The Director-General shall attend meetings of the Board and participate in the discussions of the Board but shall have no vote.

4) The person presiding at any meeting of the Board may request the Director-General to withdraw from the meeting.

5) The Director-General shall be assisted by a Secretary and such other staff as the Board may appoint, on such terms and conditions as the Board may determine.

Part III. Trade and industrial development

Article 12. Trade and industry development strategies

1) The Agency shall, in consultation with the private sector and, in particular, the business community, recommend to the Minister coherent trade and industry development strategies:

a. to facilitate the formation and operations of private sector business associations;

b. to develop guidelines for financing economic development programmes, including franchising;

c. for the provision of information on sources of finance, including instruments for granting subsidies for long-term development support and investment facilities for the promotion of the private sector in economic development:

d. for skills and development, in consultation with any private or State institution responsible for skills training, so as to enable citizens of Zambia effectively participate in the economic sector.,

e. to promote greenfield investments through joint ventures and partnerships between local and foreign investors;

f. to develop the capacity of business enterprises to trade in an international competitive market:

g. to promote gender equality in accessing, owning, managing, controlling and exploiting economic resources;

h. to address the impact of HIV/AIDS and other diseases on the economic sector; and

i. to encourage, support and facilitate the creation of micro and small scale business enterprises and promote their participation in trade and industry.

2) In formulating the trade and industry development strategy under subsection (1), the Agency shall have regard to the need to:

a. facilitate and protect infant industries;

b. develop, strengthen or facilitate the development of trade related and supportive services such as

i. insurance, freight, banking, warehousing, communication and transport; and

ii. professional, technical, management, training and commercial services;

- c. scale-up investment in rural infrastructure;
- d. support institutions, programmes, activities and initiatives that contribute to the development and transfer of technologies, know-how and best practices relating to business management;
- e. increase production, supply and the competitive nature of Zambia's products:
- f. attract inward investments;
- g. reduce poverty and, in the long term, eradicate poverty in line with the objectives of sustainable development;
- h. move towards larger and more unified markets in the form of free trade areas, common customs areas or single markets;
- i. participate in initiatives to strengthen the capacity of regional institutions and facilitate trade liberalisation;
- j. take cognisance of common or cross-border issues that arise in areas such as infrastructure development, the environment, education and research; and
- k. liaise and collaborate with relevant State institutions to encourage business enterprises to:
 - i. increase both the quantity and quality of their output in order to take advantage of trade options and openings;
 - ii. meet sanitary, phytosanitary, labelling and packaging standards for agricultural products and other goods; and
 - iii. meet stringent human and animal health standards and rules of origin so as to effectively participate in a competitive global system of trade.

Article 13. Trade and business development measures

- 1) The Agency shall facilitate and promote trade and business development by:
 - a. enabling the business community to participate in national and international trade fairs, exhibitions, specialised fairs and trade missions;
 - b. improving the quality, availability and access of financial and non-financial services to business enterprises by:
 - i. catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of business enterprises in accordance with Government policies aimed at developing a modern financial sector, including the strengthening of a capital market, financial institutions and sustainable microfinance operations;
 - ii. facilitating the development and strengthening of business enterprises and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to business enterprises;

- iii. improving access to essential inputs such as business information and development services;
 - iv. enhancing export activities, especially through capacity building in all trade-related areas; and
 - v. encouraging inter business enterprise linkages, networks and cooperation at national, regional and international levels; and
- c. concluding trading arrangements, compatible with the rules of the WTO, that remove, progressively, barriers to trade between the parties to the arrangements and enhance cooperation in all areas relevant to trade.
- 2) In consultation with the business community, the Board shall disseminate market information to SADC, COMESA and WTO.
- 3) The Agency shall establish a national and international database on trade information networks.
- 4) The Agency shall disseminate to the business community market information and information on all trade agreements to which Zambia is a party.

Article 14. Economic development measures

The Agency shall recommend, to State institutions, policy and institutional reforms and the measures necessary for equitable access by both gender and all business enterprises to economic and productive resources, in particular, the following:

- a. the development of training systems that help increase productivity in both the formal and the informal sectors;
- b. the availability of capital, credit, land and other property rights and their use;
- c. the development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;
- d. agriculture production strategies and sustainable development of natural resources;
- e. economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of an information society;
- f. the development of competitive industrial, mining and energy sectors while encouraging private sector involvement and development;
- g. trade development; and
- h. the development of scientific, technological and research infrastructure and services.

Article 15. Research and articulating country position

The Board under the direction of the minister shall undertake market research and participate in international and regional conferences and meetings for the purpose of:

- a. ensuring that Zambia takes advantage of international trade arrangements, such as those under COMESA, SADC, WTO and the ACP-EU Partnership Agreement; and

- b. articulating well developed and coordinated country positions in international and regional negotiations.

Article 16. Sector codes

The Agency shall promote discreet sector codes for different Sector codes sectors of the economy and shall cause a code to be published in the Gazette, for general information, if the Board is satisfied that the code:

- a. has been developed by the major stakeholders in that sector; and
- b. advances the objectives of this Act.

Part IV. Investment promotion and guarantees

Article 17. Investment promotion measures

The Board shall promote private investment by:

- a. taking measures and actions which help to create and maintain a predictable and secure investment climate;
- b. encouraging foreign investment, including the formation of strategic alliances with Zambian business enterprises;
- c. facilitating partnerships and joint ventures by encouraging co-financing;
- d. encouraging sector investment so as to promote foreign investment;
- e. supporting and taking into account policies of the Government for attracting financing, including private financing, for infrastructure investments and revenue generating infrastructure critical for private sector growth;
- f. supporting capacity building strategies for national investors;
- g. disseminating information on investment opportunities and business operational conditions in Zambia;
- h. analysing and providing relevant bodies with information on specific problems of a sectorial nature relating to trade and industry;
- i. giving development services to investors so as to assist in creating a responsive investment environment and information base to guide and encourage the flow of capital; and
- j. endeavouring to conclude investment promotion and protection agreements with prospective investors.

Article 18. Declaration of multi-facility economic zones

- 1) The Minister may, on the recommendation of the Board after consultation with the Minister responsible for finance and with the approval of Cabinet, by statutory instrument, declare an area, premises or building to be a multi-facility economic zone.

- 2) A statutory instrument made under subsection (1) shall prescribe the:
- a. limits of the area, premises or building declared as a multi-facility economic zone;
 - b. facilities to be provided and maintained within a multi-facility economic zone;
 - c. terms and conditions under which such goods produced and services provided in a multi-facility economic zone may be sold, exported or otherwise disposed of;
 - d. activities which are prohibited within a multi-facility economic zone;
 - e. conditions under which goods may be removed from a multi-facility economic zone;
 - f. the powers and obligations of an investor in a multi-facility economic zone; and
 - g. such other matters that are necessary for the effective and efficient operations of multi-facility economic zones.

Article 19. Protection from acquisition

- 1) An investor's property shall not be compulsorily acquired nor shall any interest in or right over such property be compulsorily acquired except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation for such acquisition.
- 2) Any compensation payable under this section shall be made promptly at the market value and shall be fully transferable at the applicable exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies and other duties, except where those are due.

Article 20. Transfer of funds

Notwithstanding any other written law relating to Transfer of externalisation of funds, a foreign investor may transfer out of funds Zambia in foreign currency and after payment of the relevant taxes:

- a. dividends or after-tax income;
- b. the principal and interest of any foreign loan;
- c. management fees, royalties and other charges in respect of any agreement; or
- d. the net proceeds of sale or liquidation of a business enterprise.

Article 21. Settlement of disputes

Any dispute arising as a consequence of an investment under this Act shall be settled in accordance with the Arbitration Act.

Part V. Micro and small business

Article 22. Promotion and development of micro and small business enterprises

The Board shall promote and facilitate the development of micro and small business enterprises by:

- a. creating a conducive environment for the attainment of that purpose;

- b. formulating, coordinating and implementing policies and programmes for promoting and developing micro and small business enterprises;
- c. providing marketing support services to micro and small business enterprises;
- d. registering, collecting, researching and disseminating information relating to micro and small business enterprises;
- e. registering, monitoring and coordinating activities and programmes to promotional agencies engaged in micro and small business enterprise development;
- f. assisting in the development and upgrading of appropriate productive technologies for micro and small business enterprises; and
- g. locating and developing commercial estates and common facilities for use by micro and small business enterprises.

Article 23. Industrial or commercial estates

- 1) The Board shall, in consultation with relevant State institutions and on such terms and conditions as may be agreed upon with those institutions, assist micro and small business enterprises, registered under this Act, with the provision of buildings or premises where those enterprises may undertake business activities.
- 2) The Board may, for the purpose specified in subsection (1), designate:
 - a. industrial estates for the location of micro and small business enterprises engaged in manufacturing; and
 - b. commercial estates for the location of micro and small business enterprises engaged in the retail of goods and services.

Article 24. Letting of buildings or premises

The Board may, in liaison with any person, institution, organisation or company, let out any building or premises for use by micro or small business enterprises as an industrial or commercial estate, on such terms and conditions as may be agreed upon.

Article 25. Application of Trade Licensing Act

The Trade Licensing Act shall not apply to a micro or small business enterprise registered under this Act.

Part VI. Privatisation and commercialisation

Article 26. Privatisation of State owned enterprises

A State owned enterprise shall be privatised in accordance with a divestiture sequence plan with a divestiture sequence plan.

Article 27. Golden share

The Minister responsible for finance may, in consultation with the Cabinet, retain a share in a State owned enterprise which is privatised and convert such share into a golden share.

Article 28. Allotment of shares

The shares of a State owned enterprise shall be allotted by Allotment of the Board in accordance with the companies Act.

Article 29. Obligations of holding companies and shareholders

The shareholders, director and management in any State Obligations owned enterprise, when requested by the Board, shall provide to the of holding companies Agency such information as the Board may require.

Article 30. Obligations of State owned enterprises

- 1) A State owned enterprise scheduled for privatisation shall:
 - a. carry out any recommendations, made by the Board, for owned preparing the company for privatisation; enterprises;
 - b. keep up to date all business records and books of account,
 - c. prepare a two to three years' investment and financing plan and a manpower development plan;
 - d. prepare statutory accounts and cause them to be audited not later than four months after each financial year;
 - e. maintain a fixed asset register which shall be reconciled with the financial statement;
 - f. not perform any action or actions that would result in the assets of the company being dissipated;
 - g. not undertake any new capital investment programmes, unless a project appraisal document approved by the Board, is prepared showing that:
 - i. routine plant, equipment and vehicle renewal is required;
 - ii. rehabilitation expenditure is essential to keep the operations of the State owned enterprise running or to improve the marketability of the State owned enterprise;
 - iii. new capital investment has a payback period of less than two years;
 - iv. capital investment will contribute to the promotion of export-import substitution;
 - v. the State owned enterprise is not earmarked for divestiture within two years of the investment being completed; or
 - vi. the State owned enterprise demonstrates that the investment will not allow a deterioration of the company's operations;
 - h. clear, as far as possible, all contractual, legal and other obligations;
 - i. not give any person information which might give undue advantage to that person or any potential investor;

- j. pay all costs incidental to the privatisation of the enterprise relating to:
 - i. valuation fees;
 - ii. legal costs;
 - iii. advertising charges;
 - iv. marketing expenses; and
 - v. other expenses;
- k. when requested by the Board disclose all or any information about the enterprise; and
- l. refrain from taking any action which may cause industrial unrest.

2) Any person or officer of a State owned enterprise who knowingly contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding three thousand penalty units or to a term of imprisonment not exceeding five years, or to both.

3) For the purposes of subsection (1), a State-owned enterprise is scheduled for privatisation if it is included in the divestiture sequence plan.

Article 31. Modes of privatization

- 1) The Board may employ the following modes of privatisation:
 - a. public offering of shares;
 - b. private sale of shares through negotiated or competitive bids or by private treaty;
 - c. offer of additional shares in a State owned enterprise to reduce Government shareholding;
 - d. sale of the assets and business of the State owned enterprise;
 - e. reorganisation of the State owned enterprise before the sale of the whole or any part of the State owned enterprise;
 - f. management or employee buyouts by management or employees in that State owned enterprise;
 - g. lease and management contracts; or
 - h. any other method the Board may consider appropriate.
- 2) The Board shall ensure that the shares or assets of a State owned enterprise are sold at market value.

Article 32. Valuation of State owned enterprise

- 1) The valuation of a State owned enterprise shall be performed by an independent valuer who shall issue a certificate of valuation.
- 2) The valuation of a State owned enterprise shall be done in accordance with the following:

- a. the valuation shall be based on the current value of the State owned enterprise;
- b. where the State owned enterprise is not operational or the assets do not form part of a core of the business, the valuation shall be based on the net asset value of the State owned enterprise; or
- c. any other prudent and acceptable valuation method.

3) The net asset value shall be based on the:

- a. market value of the real property valued by a real estate valuer;
- b. depreciated replacement value of tangible assets other than real property; or
- c. a fair value of other assets and liabilities valued by a valuer.

Article 33. Eligible buyer

The shares or assets in a State owned enterprise shall be Eligible sold to a citizen of Zambia or a person who is not a citizen of buyer Zambia.

Article 34. Sales of shares to member, employee or consultant

A member, member of a committee or any employee or Sale of consultant of the Agency or the spouse, child, mother, father, brother, sister or a professional business partner of a member, an employee employee or consultant shall not purchase shares or assets in any State owned consultant enterprise, unless the sale is by public offer of shares or assets.

Article 35. Political leaders

A political leader or public officer shall publicly disclose their intention to bid, directly or indirectly, for shares or assets in a State owned enterprise or to participate in any other form of privatisation.

Article 36. Declaration by potential investor

A potential investor shall disclose that investor's bid in a State owned enterprise and direct or indirect personal interest, whether through shareholdings, a nominee or otherwise, in a State owned enterprise.

Article 37. Established funds

An established fund may, with the consent of the contributors, purchase shares or assets in a State owned enterprise on behalf of the contributors.

Article 38. Purchase of shares by citizens of Zambia

The following shall apply to citizens of Zambia:

- a. shares or assets may be offered at a discount to persons who purchase a small number of shares or a few assets;
- b. a share bonus shall be given at the end of a prescribed period to small shareholders who hold onto shares;
- c. individuals, management and employees of the State owned enterprise may pay for shares or assets in instalments; or

d. individuals may participate in the acquisition of shares or assets which have been transferred in a State owned enterprise to a Privatisation Trust Account opened under section fifty-two.

Article 39. Mode of payment of shares

Subject to section thirty-eight or any other written law, the shares or assets of a State owned enterprise shall not be sold on credit.

Article 40. Negotiations for offer of sale

- 1) The Board shall appoint an independent negotiating team for each sale.
- 2) A person appointed on a negotiating team shall
 - a. have proper professional qualifications, experience and good business standing;
 - b. take an oath of secrecy; and
 - c. disclose any personal or professional interest before accepting the appointment: Provided that a person appointed to a negotiation team shall disclose any personal or professional interest which may arise at any time after accepting the appointment.
- 3) A person who does not comply with paragraph (c) of subsection (2) shall be removed from the negotiating team and shall be disqualified from being appointed to a negotiating team.

Article 41. Conversion of private companies to public companies

The Board may recommend to the shareholders and directors of a State owned enterprise which is scheduled for privatisation and is not a public company, that such State owned enterprise be converted into a public company, in accordance with the Companies Act.

Article 42. Trading in shares

Notwithstanding any other written law and for purposes of this Act. a bank or financial institution may carry on the business of a stockbroker or a dealer in stocks and shares.

Article 43. Liquidation

The Board may recommend to the shareholders and directors of a State owned enterprise that the state owned enterprise be liquidated in accordance with the Companies Act.

Article 44. Consummation of sale

- 1) The Minister responsible for finance shall sign the final Sales Agreement to transfer shares or assets to the selected bidder.
- 2) The transfer of shares or assets shall be in accordance with the Companies Act.

Article 45. Commercialisation of specified Government departments

- 1) The Minister, in consultation with the Minister responsible for a department to be commercialised, may specify, by notice in the Gazette, that the Government department shall be commercialised.

2) A Government department that has been commercialised under this section shall be incorporated under the Companies Act.

3) A Government department that has been commercialised under this section may:

- a. fix its own rates; prices and charges for goods and services provided.,
- b. capitilise assets; and
- c. borrow debenture stocks.

Article 46. Publication of information

The Board shall publish by notice in the Gazette:

- a. the names of the approved State owned enterprises to be of privatised or commercialised;
- b. the registered consultants, valuers, lawyers, public accountants, and merchant banks dealing with the privatisation or commercialisation process;
- c. the bidders and bid prices;
- d. the successful bidders and the reason for selecting those bidders;
- e. the price of shares and any other special conditions of the sale of shares; and
- f. any other matter considered appropriate by the Board.

Article 47. Claims in State owned enterprises

1) Any person having an interest in a State owned enterprise scheduled for privatisation or commercialisation shall make a claim to the Agency, within a period of thirty days after the notice referred to in section forty-six is published.

2) Any person having an interest in a State owned enterprise and who does not make a claim within thirty days of the notice, referred to in subsection (1), shall be deemed to have relinquished all interests in the State owned enterprise.

Part VII. Trade, and industrial development fund and privatisation trust account

Article 48. Establishment of Trade and Industrial Development Fund

1) There is hereby established the Trade and Industrial Development Fund to support economic growth and development by promoting trade and investment.

2) The Development Fund shall be used to support micro and small business enterprises, rural business enterprises and other business enterprises, as may be determined by the Board.

3) The Development Fund shall consist of:

- a. such moneys as may be appropriated by Parliament for the purposes of the Development Fund;
- b. moneys received by way of grants or donations for the purposes of the Development Fund; and
- c. interest accrued from loans and any other-investments made by the Board.

(4) The Board shall, in order to facilitate the flow of financial resources to business enterprises so as to promote trade and investment:

- a. on its own or in cooperation with other State institutions identify micro and small business enterprises, any rural business enterprise, education enterprise, skills training enterprise or other business enterprises which require financial assistance;
- b. provide information on sources of finance and promote investments for business enterprises specified in paragraph (a);
- c. on its own or in cooperation with other State institutions render assistance to business enterprises specified in paragraph (a) so as to enable them access financial resources;
- d. in conjunction with any financial institution, designated by the Minister for the purpose of financing micro and small business enterprises, rural business enterprises or other business enterprises, monitor, establish and design standards for loan administration, effective use of loan funds and repayment mechanisms by the business enterprises so as to curb misuse of financial resources and attain their objectives; and
- e. on its own or with any financial institution establish or source venture capital funds to promote investments in business enterprises specified under paragraph (a).

5) Where the Board proves to its satisfaction that any business enterprise, specified under paragraph (a) of subsection (4), is engaged in fronting, that business enterprise shall be barred from accessing any moneys from the Development Fund or from benefiting from any incentives under this Act and in addition shall be liable to any penalty specified under subsection (6).

6) Any director, shareholder or partner of a business enterprise who engages in fronting commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand penalty units.

7) In this section fronting includes holding out as being the de facto director, shareholder or partner of a business enterprise in order to hide the true identity of the director, shareholder or partner of that business.

Article 49. Management of Development Fund

1) The Development Fund, established under section forty-eight shall be vested in the Board and shall be managed and administered by the Board in such manner as the Board may determine.

2) The Board shall establish criteria for the application and disbursement of moneys from the Development Fund.

Article 50. Auditing of Development Fund

The Development Fund shall be audited every year by Auditing of auditors appointed by the Board with the approval of the Auditor-General.

Article 51. Statement of income and expenditure

1) The Board shall cause to be prepared an annual audited statement of income and expenditure with respect to the Development Fund which shall be submitted to the Minister.

2) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the audited statement of income and expenditure referred to in subsection (1), cause it to be laid before the National Assembly.

Article 52. Privatisation Trust Account

The Board shall open a Privatisation Trust Account in which the Agency shall hold shares in trust for citizens of Zambia for divestiture after a State owned enterprise has been privatised.

Article 53. Use of proceeds

1) Any net proceeds from completed sales of shares and assets shall be paid into a Privitisation Trust Account established by the Ministry responsible for finance and held at the Bank of Zambia.

2) The Board shall with the prior approval of the Minister and Minister responsible for finance the proceeds of sale referred to in subsection (1), may be used for:

- a. funding the cost of privatisation;
- b. initial financing of mutual funds;
- c. expanding existing productive capacities;
- d. financing credit creation by the Government for investors;
- e. rehabilitating existing plants;
- f. supporting new capital investments;
- g. supporting redundancy payment schemes in consultation with the Ministry responsible for labour;
- h. supporting alternative income generating projects; or
- i. funding any social project that will be in the public interest.

Part VIII. Incentives

Article 54. Regulations on incentives

The Minister responsible for finance shall in consultation with the Minister make regulations in respect of incentives offered under this Act.

Article 55. Validity period for incentives

An incentive offered under this Part shall be valid for a period of five years from the grant of the licence, permit or certificate or for such period as the Minister responsible for finance may prescribe.

Article 56. Qualification for incentives

An investor investing not less than five hundred thousand United States Dollars or the equivalent in convertible currency, in a priority sector or product, is entitled to incentives as specified by or under the Income Tax Act or Customs and Excise Act.

Article 57. Incentives for machinery or equipment

1) Any machinery or equipment acquired by:

a. a business enterprise conducting operations in a priority sector or in respect of priority products; or

b. a rural enterprise; shall be exempt from customs duties as specified by or under the Customs and Excise Act.

Article 58. Major Investment

The Minister responsible for finance may, for the purposes of promoting major investment in an identified sector or product, by statutory instrument, and in consultation with the Minister, specify additional incentives for investment in an identified sector or product of not less than ten million United States Dollars or the equivalent in convertible currency, in new assets that qualify for those incentives.

Article 59. No incentives without licence, permit or certificate

An investor shall not be entitled to the incentives provided for under this Part unless the investor holds a licence, permit or certificate of registration under this Act.

Article 60. Certification of investment for tax or duty relief or exemption

The relief or exemption from any tax or duty to which an investor is eligible under this Part shall be effected by the Commissioner-General upon the Board certifying that the investor has complied fully with this Act and any condition prescribed.

Article 61. Double taxation agreements

Where a double taxation agreement exists, between Zambia and another country, foreign tax payable by an investor to the other country in respect of any foreign income shall be as determined under that agreement.

Article 62. Bonded factory

An investor may apply to be appointed and licenced by the Bonded Commissioner-General to establish and operate a bonded factory under section fifty-five of the Customs and Excise Act.

Article 63. Licensing of bonded warehouse

The Commissioner-General shall, after consultation with the Agency, licence a bonded warehouse under section fifty-five of the Customs and Excise Act.

Part IX. Services

Article 64. Land

1) The Board, in consultation with the Ministry Land responsible for land, shall assist an investor in identifying suitable land for investment and shall assist the investor in applying to the responsible authorities for land, in accordance with established procedures.

2) Where an application is made under subsection (1), and the land has been demarcated for the purpose applied for and such land has not been allocated to any other person, body or authority, the authority responsible for the allocation of land shall, upon payment, by the investor, of the prescribed fees, charges, or rates, allocate the land to the investor and the officer responsible for the registration of such land shall make such entries in the appropriate register and shall issue to the investor a certificate of title in respect of that land.

Article 65. Immigration

1) Notwithstanding the Immigration and Deportation Act, Immigration an investor who invests a minimum of two hundred and fifty Cap. 123 thousand United States Dollars or the equivalent in convertible currency and who employs a minimum of two hundred persons shall be entitled to a self-employment permit or resident permit; provided that such number of the persons so employed by the investor as may be prescribed shall hold managerial and technical positions.

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

Article 66. Services and facilities

The Board shall assist an investor in obtaining water, electric power, transport and communication services and facilities required for the investment.

Article 67. Registration and licensing

The Board shall assist an investor in obtaining any licence, permit or certificate of registration or other authorisation for the purpose of commencing or operating a business enterprise.

Part X. Licences, permits and certificates of registration

Article 68. Application for and grant of licence, permit or certificate of registration

- 1) A person who wishes to:
- a. develop premises as a multi-facility economic zone;
 - b. export prescribed goods and services;
 - c. invest in any business enterprise;

- d. register a micro or small business enterprise, education enterprise, skills training enterprise or rural business enterprise for purposes of this Act; or
 - e. operate a business enterprise in a multi-facility economic zone;
 - shall submit an application to the Board in a prescribed form and the application shall be accompanied by a prescribed fee and such documents and information as may be required by the Board.
- 2) The Board shall, within fourteen days of the submission of an application under subsection (1), approve or refuse to approve the application and, immediately thereafter, communicate the approval or refusal to the applicant.
- 3) Where the Board approves an application made under subsection (1), it shall grant, subject to such terms and conditions as it may determine:
- a. a licence to an investor;
 - b. a permit to a business enterprise, other than a micro and small business enterprise or rural business enterprise; and
 - c. a certificate of registration to a micro and small business enterprise, education enterprise, skills training enterprise or rural business enterprise.
- 4) The Board may vary or amend any conditions of a licence, permit or certificate of registration:
- a. where there are changes relating to the investment, after consultations with the investor; or
 - b. on an application by the investor to vary the terms and conditions of the licence, permit or certificate of registration.

Article 69. Consideration before approving application for licence, permit or certificate of registration

In considering an application for a licence, permit or certificate of registration the Board shall have regard to:

- a. the need to promote economic development and growth in Zambia;
- b. the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources;
- c. the degree to which the project is export oriented;
- d. the impact the proposed investment is likely to have on the environment and, where necessary, the measures proposed to deal with an adverse environmental consequence in accordance with the Environmental Protection and Pollution Control Act;
- e. the possibility of the transfer of technology; and
- f. any other considerations that the Board considers appropriate.

Article 70. Contents of licence, permit or certificate of registration

- (1) A licence, permit or certificate of registration granted to an applicant shall specify:
- a. the name, nationality and address of the applicant;
 - b. the legal status of the business enterprise, whether it is a body corporate, firm, partnership, joint venture, association or other type of entity, its registered place of business and the names and nationalities of the chief executive officer, the directors and other office bearers as the Board considers necessary;
 - c. a description of the proposed investment, authorised by the Board, under the licence, permit or certificate of registration;
 - d. the nature and the amount or value of the foreign investment or other investment and, where applicable, the period within which the investment will be made;
 - e. the date of issue and expiry of the licence, permit or certificate of registration; and
 - f. the terms and conditions of the licence, permit or certificate of registration.
- 2) The Board may impose such conditions on the issue of a licence, permit or certificate of registration as may be prescribed.
- 3) An investor shall, without delay, inform the Agency of any material change in the information or particulars furnished by the investor when the investor applies for a licence, permit or certificate of registration.

Article 71. Period of validity of licence, permit and certificate of Registration

A licence, permit or certificate of registration shall be valid for a period of ten years from the date of issue, during which period the investor shall implement the proposed investment.

Article 72. Renewal of licence, permit or certificate of registration

- 1) An investor may, subject to subsection (2), apply for a renewal of a licence, permit or certificate of registration, before its expiry, for a period not exceeding ten years at a time.
- 2) An application for renewal shall be:
- a. made in such form and manner and within such period as may be determined or prescribed; and
 - b. accompanied by a prescribed fee.
- 3) The Board shall, where an applicant has not breached any provision of this Act or condition of a licence, permit or certificate of registration renew the licence, permit or certificate of registration and immediately thereafter, but not later than fourteen days, communicate the refusal or approval of the renewal to the applicant.

Article 73. Register of licences, permits and certificates of Registration

- 1) The Board shall maintain or cause to be maintained a register of:
- a. investors to whom licences, permits or certificates of registration have been issued and the particulars of the investors;

- b. the conditions attached to each licence, permit or certificate of registration;
- c. any amendments, suspensions or revocations of licences, permits or certificates of registration and the reasons for such decisions; and
- d. any renewals of licences, permits or certificates of registration.

2) The register kept, under subsection (1), shall be open for inspection by members of the public at all reasonable times at the offices of the Agency on payment of a prescribed fee.

Article 74. Investor to notify Agency of non-implementation of investment

Where for any reason an investor is unable to implement the investment described in the licence, permit or certificate of registration the investor shall notify the Agency of the inability to implement such investment, stating the reasons for the inability, within thirty days of the investor becoming aware of the non-implementation of the investment.

Article 75. Transfer of licences, permits or certificates of registration

An investor shall not assign, cede or otherwise transfer the investor's licence, permit or certificate of registration to any other person without the prior approval of the Board.

Article 76. Records to be kept

1) Every investor shall keep, at the investor's place of business or premises, and maintain in a form and manner conforming to accepted accounting standards the following:

- a. a register into which shall be entered the assets and liabilities; and
- b. books of account, invoices, customs permits and other documents connected with manufacturing operations or production.

2) Every investor shall furnish as and when the Board considers necessary any other information as may be requested by the Board which information shall be treated as confidential.

3) Every investor shall produce, on demand by an authorised officer of the Agency, at any time for inspection by the officer, the books, records, documents and such other information referred to in this section and shall allow the officer to make extracts from those documents for the Agency's records or reference.

4) Any person who does not comply with subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty' units or to imprisonment for a term not exceeding three months, or to both.

Article 77. Suspension or revocation of licence, permit or certificate of registration

1) The Board may suspend or revoke a licence, permit or certificate of registration, after due investigation where the investor is given an opportunity to be heard, if the investor:

- a. obtained the licence, permit or certificate of registration on the basis of fraud, negligent misrepresentation or any false or misleading statement;

- b. assigns, cedes or otherwise transfers the licence, permit or certificate of registration to another person without the prior approval of the Board;
- c. fails without reasonable explanation to implement the investment described in the licence, permit or certificate of registration within the period stipulated or any extension in respect of an initial period stipulated;
- d. breaches or fails to comply with any terms or conditions of the licence, permit or certificate of registration; or
- e. is convicted of an offence under this Act.

2) The Board shall, before taking any action under subsection (1), notify the investor of its intention to suspend or revoke the licence, permit or certificate of registration and the reason therefor, and call upon the investor to show cause, within such reasonable period as may be specified in the notice, why the licence, permit or certificate of registration should not be suspended or revoked.

3) If, on the expiration of the period specified in the notice given under subsection (2), and after considering any representations made by the investor the Board is satisfied for any reason specified in subsection (1), that the licence, permit or certificate of registration should be suspended or revoked, the Board may, by notice in writing to the investor, suspend or revoke the licence, permit or certificate of registration or take such other action as it considers appropriate, including suspending or revoking any incentives to which the investor may be entitled under this Act.

4) The Board shall not suspend or revoke a license, permit or certificate of registration where an investor takes remedial measures to the satisfaction of the Board, within such period as the Board may specify.

5) The Board may, where an investor fails to:

- a. show cause why the licence, permit or certificate of registration should not be cancelled; or

- b. take remedial measures within the period specified under subsection (4);

to the satisfaction of the Board suspend or revoke the licence, permit or certificate.

6) Where a licence, permit or certificate of registration is suspended or revoked, the holder of the licence, permit or certificate shall be entitled to the right or benefits conferred under this Act with effect from the date of the suspension or revocation and:

- a. in the case of a suspension, for the period of suspension; and

- b. in the case of a revocation, shall surrender the licence, permit or certificate of registration to the Agency forthwith.

Part XI. Miscellaneous

Article 78. Appeals

- 1) An investor who is aggrieved by a decision of the Board may, within fourteen days of receiving the decision, appeal to the Minister against the decision.
- 2) The appeal, referred to in subsection (1), shall:
 - a. be in writing;
 - b. specify in detail the grounds on which the appeal is being made; and
 - c. be accompanied by any information which the investor wishes to tender in support of the appeal.
- 3) The Minister shall, within thirty days of receiving the appeal confirm, set aside or vary the decision of the Board.
- 4) Any person dissatisfied with the decision of the Minister may, within thirty days, appeal to the High Court against the decision.

Article 79. False statements

- 1) A person shall not, in connection with an application for a licence, permit or certificate of registration or other record or return under this Act, make any statement knowing it to be false in a material particular.
- 2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding six months, or to both,

Article 80. State institution to consult Agency

A State institution shall, in the exercise of any power under any other law relating to trade and industry or having an effect on trade and industry, consult the Agency before exercising that power.

Article 81. Exercise of Presidential powers

- 1) The President shall, in the exercise of the President's powers under the Control of Goods Act or any other law relating to trade and industry or having an effect on trade and industry, consult the Agency before exercising those powers.
- 2) The Minister shall, on the advice of the Agency, advise or make recommendations to the President on any matter under the Control of Goods Act that requires the President to exercise certain powers relating to trade and industry.

Article 82. Regulations

- 1) The Minister may, after consultation with the Agency, Regulations by statutory instrument, make regulations for the purposes of this Act.
- 2) Without limiting subsection (1), regulations under subsection (1) may:
 - a. make different provisions in respect of different types of business enterprises and sectors of trade and industry;
 - b. provide for different types of multi-facility economic zones;
 - c. provide for the collection of data on industry and the procedure for such collection;

- d. prescribe the forms required under this Act;
- e. provide for fines not exceeding ten thousand penalty units or imprisonment for a term not exceeding three years or both, in relation to offences under those Regulations; and
- f. provide for anything which by this Act is required to be prescribed.

3) The Minister may by, statutory instrument amend the Schedules to the Act.

Article 83. Act to bind Republic

This Act shall bind the Republic.

Article 84. Repeal

1) Subject to the Fourth Schedule, the Export Development Act, the Export Processing Zones Act, the Investment Act and the Small Enterprises Development Act are hereby repealed.

2) When the Minister is satisfied that all pending matters have been disposed of the Privatisation Act shall stand repealed on the date appointed in accordance with subsection (2) of section one.

Article 85. Savings and transitional provisions

The Fourth Schedule relating to savings and transitional provisions shall apply to an appropriate authority and the Agency.

First schedule

(Section 2 (1) and (2))

1. An industry manufacturing arms and ammunition, explosives, military vehicles and equipment, aircraft and any other military hardware.
2. An industry manufacturing poisons, narcotics, dangerous drugs and toxic, hazardous and carcinogenic materials.
3. An industry producing currency, coins and security documents.

Second schedule

(Sections 3, 56 and 57)

- a. Floriculture: fresh flowers and dried flowers
- b. Horticulture: fresh and dried vegetables
- c. Processed foods
 - i. wheat flour
 - ii. Other processed foods
- d. Beverages and stimulants
 - i. tea and tea products

- ii. Coffee and coffee products
- e. Production and the processing of the following products in the textile sector
 - i. Cotton
 - ii. Cotton yarn
 - iii. Fabric
 - iv. Garments
- f. Manufacturing of the following engineering products
 - i. Copper products
 - ii. Iron ore and steel
 - iii. Cobalt
 - iv. Other engineering products
- g. Beneficiation of phosphates and any other related material into fertilizer
- h. Beneficiation of rock materials into cement
- i. Production and processing of raw timber into wood products
- j. Production and processing of the following products in the leather sector:
 - i. cattle hides
 - ii. crust leather
 - iii. leather products
- k. Building of Mini-hydro power stations Education and skills training
- l. Education and skills training

Third schedule

(Section 4 (2))

Part I. Administration of agency

Article 1. Seal of Agency

- 1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Secretary.
- 2) The affixing of the seal shall be authenticated by. the Chairperson or the Vice-Chairperson and the Director-General or any other person authorised in that behalf by a resolution of the Agency

3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Director-General or any other person generally or specifically authorised by the Agency in that behalf.

4) Any document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Article 2. Proceedings of Board

1) Subject to this Act, the Board may regulate its own procedure.

2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Chairperson may determine.

3) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least seven members.

4) If the urgency of any particular matter does not permit the giving of such notice as is required under subparagraph (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

5) Seven members shall form a quorum at any meeting of the Board.

6) There shall preside at any meeting of the Board—

a. the Chairperson; and

b. in the absence of the Chairperson, the Vice-Chairperson, and in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

7) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

Article 3. Allowances for members

The members or any member of a committee shall be paid such allowances as the Board may, with the approval of the Minister, determine.

Article 4. Disclosure of interest

1) If any person is present at a meeting of the Board or interest any committee of the Board at which any matter is the subject of consideration and in which matter, the person or person's spouse is directly or indirectly interested in a private capacity, is the subject of consideration the person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

2) A declaration of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

3) Any person who contravenes the provisions of subparagraph (1), commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

Article 5. Prohibition of disclosure of information

1) A person shall not, without the consent in writing given by, or on behalf of, the Board, publish or disclose to any person otherwise than in the course of duties; the contents of any documents, communication, or information which relates to, and which has come to that person's knowledge in the course of, duties under this Act.

2) Any person who contravenes the provisions of subparagraph (1), commits an offence and shall be liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three months, or to both.

Article 6

An action or other proceedings shall not lie against any member, member of staff, agent or representative of the Agency for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions of the Agency.

Part II. Financial provisions

Article 7. Funds of Agency

1) The funds of the Agency shall consist of such moneys as may:

- a. be appropriated to the Agency by Parliament for the purposes of the Agency;
- b. be paid to the Agency by way of fees, charges, grants or donations; and
- c. otherwise vest in or accrue to the Agency.

2) The Agency may:

- a. accept moneys by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, and the minister responsible for finance from any source outside Zambia;
- b. subject to the approval of the Minister and the Minister responsible for finance, raise by way of loans or otherwise such moneys as it may require for the discharge of its functions; and

c. in accordance with regulations made under this Act charge fees for services provided by the Agency.

3) There shall be paid from the funds of the Agency:

a. salaries, loans, gratuities and pensions of the staff of the Agency and other payments for the recruitment and retention of the staff;

b. such reasonable travelling and subsistence allowances or other allowances for members, members of any committee of the Board and staff of the Board when engaged on the business of the Agency and at such rates as the Board may, with the approval of the Minister. Determine;

c. such moneys as the Board may pay into the Development Fund as may be approved by the Board; and

d. any other expenses incurred by the Agency in the performance of the Agency's functions.

4) The Board may, with the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

Article 8. Financial year

The financial year of the Agency shall be the period of twelve year months ending on 31st December of each year.

Article 9. Accounts

1) The Board shall cause to be kept proper books of account and other records relating to its accounts.

2) The accounts of the Agency shall be audited annually by independent auditors appointed by the Board with the approval of the Auditor-General.

3) The auditor's fees shall be paid by the Agency.

Article 10. Annual report

1) As soon as practicable, but not later than ninety days report after the end of the financial year. the Board shall submit to the Minister a report concerning its activities during the financial .year.

2) The report, referred to in subparagraph (1). shall include information on the financial affairs of the Agency and there shall be appended to the report:

a. an audited balance sheet;

b. an audited statement of income and expenditure; and

c. respecting the Fund, such other information as the Minister may require.

3) The Minister shall not later than seven days after the first sitting of the National Assembly next after receipt of the report, referred to in subparagraph (1), lay the report before the National Assembly.

Fourth schedule. Savings and transitional provisions

(Section 85)

Article 1. Winding up of affairs of Appropriate authorities

1) From the commencement of this Act an appropriate authority established under a repealed Act shall exist only for the purpose of winding up its affairs and disposing of any matter pending and for no other purpose.

2) Notwithstanding anything to the contrary contained in the a repealed Act or in any other written law an appropriate authority shall have, for the purpose of winding up its affairs, power to do anything which is necessary or expedient for that purpose or which is incidental to that purpose, including, but without limiting those powers, power to enter into and carry out agreements and arrangements for the transfer of its assets, rights, liabilities and obligations to the Agency or the Government.

Article 2. vesting of assets and liabilities

1) On or after the appointed date, there shall be transferred to, vest in and subsist against the Agency by virtue of this Act and without further assurance all assets, rights and obligations which immediately before the appointed date were the assets, rights, liabilities and obligations of an appropriate authority.

2) Subject to subparagraph (1), every deed, bond and agreement, other than an agreement for personnel service, to which an appropriate authority was a party immediately before the commencement of this Act or on the appointed date whether or not of such a nature that rights, liabilities and obligations could be assigned, shall unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if:

a. the Agency had been party to it;

b. for any reference to an appropriate authority there was substituted, with respect anything falling to be done on or after the commencement of this Act, a reference to the Agency; or

c. for any reference to any officer of an appropriate authority, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act or appointed date a reference to such officer of the Agency as the Agency shall designate.

Article 3. Registration of property to be transferred

1) Where under this Act, any assets, rights, liabilities and obligations of an appropriate authority are deemed transferred to the Agency in respect of which transfer a written law provides for registration, the Agency shall make an application in writing to the appropriate registration authority for registration of the transfer.

2) The registration authority, referred to in subparagraph (1), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect of the transaction.

Article 4. Legal proceedings

1) Without limiting the other provisions of this Act, where proceedings any right, liability or obligation vests in the Agency by virtue of this Act, the Agency and all other persons shall, as from the appointed date, have the same rights, powers and remedies and, in particular, the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority for ascertaining or perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Agency.

2) Any legal proceedings or applications to any appropriate authority pending immediately before the appointed date by or against an appropriate authority in respect of any appropriate authority may be continued by or against the Agency.

3) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by an appropriate authority may be instituted by or against the Agency.

Article 5. Existing rights

1) After the commencement of this Act or on an appointed rights date, any existing rights shall continue to be held by the person, business enterprise or investor as if they were granted under this Act and for the purpose of this Act.

2) Any business enterprise or investor vested with an existing right, as specified under subparagraph (1), shall, within one year of the commencement of this Act, obtain a new licence, permit or certificate of registration under this Act.

Article 6. Engagement of employees of appropriate authorities

1) Subject to this Act, on or after the appointed date, the Board shall, on such terms and conditions as it may determine, appoint as officers of the Agency such employees of, or public officers from, any appropriate authority as may be necessary for the performance of the functions of the Agency.

2) Where a public officer or employee of an appropriate authority is appointed to the service of the Agency under subparagraph (1):

a. the terms and conditions of service with the Agency shall not be less favourable than those the officer enjoyed in the Public Service or in the service of the appropriate authority; and

b. the public officer shall be deemed to have retired under section thirty-nine of the Public Service Pensions Act.

3) On or after the appointed date employees of the appropriate authority who are not engaged by the Agency under subparagraph (2), shall be retained by the Government and shall:

- a. be redeployed in the service of the Government; or
- b. be retired under section thirty-nine of the Public Service Pensions Act or in accordance with their contracts of service.

Article 7. Engagement of employees of Privatization Agency

On the commencement of this Act, the staff of the Privatisation Agency dealing with post privatisation issues shall be engaged by the Agency in accordance with paragraph 6.

Article 8. Transfer of monies from various funds

- 1) On the appointed date monies from the Privatisation Revenue Account shall be transferred to the Privatisation Trust Account established under section fifty-two.
- 2) On the commencement of this Act, there shall be transferred to the Development Fund monies in the Micro and Small Enterprises Development Fund and the Privatisation Revenue Account.

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