

## Zambia

### Investment, Trade and Business Development No. 18 of 2022 (2022)

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# Investment, Trade and Business Development No. 18 of 2022

THE INVESTMENT, TRADE AND BUSINESS DEVELOPMENT ACT, 2022

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#### GOVERNMENT OF ZAMBIA

ACT No. 18 of 2022

Date of Assent: 10th November 2022

An Act to foster economic growth and development by promoting trade, business development and investment in the Republic through an efficient, effective and coordinated private sector led economic development strategy; promote economic diversification through the growth of exports; promote, facilitate, protect and monitor domestic and foreign direct investment; promote investment through joint ventures and partnerships between local and foreign investors; facilitate the development of industrial infrastructure and commercial services; promote research on matters related to industrial development; facilitate the protection of infant industries; and provide for matters connected with, and incidental to, the foregoing.

16th November 2022

ENACTED by the Parliament of Zambia.

## PART I PRELIMINARY PROVISIONS

### Enactment

1. This Act may be cited as the Investment, Trade and Business Development Act, 2022, and shall come into operation on the date the Minister may appoint by statutory instrument.

### Short title and commencement

2. In this Act, unless the context otherwise requires—

### Interpretation

“AfCFTA” means the African Continental Free Trade Area established in 2018 under the African Free Trade Agreement signed in Kigali, Rwanda on 21st March, 2018; No. 18 of 2022]

“ACP-EU Partnership Agreement” means the Cotonou Partnership Agreement that governs the relations between the European Union and countries in Africa, the Caribbean and the Pacific;

“Agency” means the Zambia Development Agency established under the Zambia Development Agency Act, 2022; Act No. 17 of 2022

“AIDS” has the meaning assigned to word in the National HIV/ AIDS/STI/TB Council Act, 2002; Act No. 10 of 2002

“authorised officer” has the meaning assigned to the words in the Zambia Development Agency Act, 2022; Act No. 17 of 2022

“Board” means the Board of the Agency constituted under the Zambia Development Agency Act, 2022; Act No. 17 of 2022

“business” has the meaning assigned to the word in the Business Regulatory Act, 2014; Act No. 3 of 2014

“certificate” means a certificate of registration issued under section 19;

“citizen” has the meaning assigned to the word in the Constitution; Cap 4

“citizen” has the meaning assigned to the word in the Constitution; Cap. 1

“citizen empowerment company” has the meaning assigned to the words in the Citizen Economic Empowerment Act, 2006; Act No. 9 of 2006

“citizen influenced company” has the meaning assigned to the words in the Citizen Economic Empowerment Act, 2006; Act No. 9 of 2006

“citizen owned company” has the meaning assigned to the words in the Citizen Economic Empowerment Act, 2006; Act No. 9 of 2006

“COMESA” means the Common Market for Eastern and Southern Africa Organisation established under the Treaty establishing the Common Market for Eastern and Southern Africa;

“Commissioner-General” means the Commissioner-General of the Zambia Revenue Authority;

“Director-General” has the meaning assigned to words in the Zambia Development Agency Act, 2022; Act No. 17 of 2022

“financial institution” has the meaning assigned to the words in the Banking and Financial Services Act, 2017; Act No. 7 of 2017

“Fund” means the Trade and Investment Development Fund established under section 37;

“Fund Manager” means the Fund Manager appointed under section 39;

“HIV” has the meaning assigned to word in the National HIV/ AIDS/STI/TB Council Act, 2002; Act No. 10 of 2002

“investment” means contribution of capital, in cash or in kind, by an investor to a new business, to the expansion, rehabilitation or diversification of an existing business or to the purchase of an existing business from the Government or the purchase of an existing private business;

“investor” means any person, natural or juristic, whether a citizen or not, investing in the Republic in accordance with this Act; No. 18 of 2022]

“licence” means a licence issued under section 19;

“local auditing firm” means a firm registered with Zambia Institute of Chartered Accountants operating in the Republic and not under an international franchise;

“local investor” means a person who makes a direct investment in the Republic provided that, that person in the case of a—

(a) natural person, is a citizen; and

(b) juristic person, is incorporated in the Republic and the person’s equity is hundred percent owned by citizens;

“manufacturing” means the act of transforming, through chemical, biological or physical processes, and adding value, on a commercial scale, from raw materials into finished or semifinished products, and includes the assembling of inputs into finished or semifinished products; “permit” means a permit issued under section 19;

“priority sector” means a sector or product that has a high growth potential as may be prescribed;

“regulatory agency” has the meaning assigned to the words in the Business Regulatory Act, 2014; Act No. 3 of 2014

“rural area” has the meaning assigned to the words in the Income Tax Act; Cap. 323

“SADC” means the Southern Africa Development Community established under the Southern Africa Development Treaty signed in Windhoek, Namibia on 17th August, 1992;

“special economic zone” means an area that is subject to unique economic regulations and includes multi-facility economic zones, industrial parks, inter-country trade zones and export processing zones;

“State institution” has the meaning assigned to the words in the Constitution; Cap.1

“repealed Act” means the Zambia Development Agency Act, 2006; Act No. 11 of 2006

“value addition” means any step that improves a product or service in the production process through the science of value adding technologies such as processing, preservation, dehydration and drying, freezing, improved packaging, labelling, grading and marketing for the customer and results in a higher net worth, and includes the generation, transmission and distribution of energy and development of tourism sites; and

“WTO” means the World Trade Organisation established under the World Trade Organisation Agreement signed in Marrakesh, Morocco on 15th April 1994.

#### **Administration of Act**

3. (1) This Act shall be administered by the Agency.
- (2) The seal of the Authority kept in terms of the Zambia Development Agency Act, 2022, shall be used for the purposes of this Act and the impression made for that purpose shall be judiciously noticed. (Act No. 17 of 2022)

#### **Application**

4. (1) This Act applies to an investor investing in a sector or an industry or any region of the Republic.
- (2) An investor shall not invest in an industry specified in the Schedule.
- (3) Despite subsection (2), an investor may, subject to any written law and with the approval of the relevant regulatory agency, be authorised to invest in an industry specified in the Schedule.

## **General principles governing investment and trade promotion**

5. The promotion of investment and trade in the Republic is governed by the following principles:
- (a) improving the overall performance of the economy through higher productivity in the public and private sector in order to achieve higher living standards for persons in the Republic;
  - (b) promoting diversification of the economy and mitigating social and economic hardships arising from those changes;
  - (c) protecting the interests of industries, employees, consumers and the community and promoting corporate social responsibility;
  - (d) ensuring that industry develops in a way that is ecologically sustainable;
  - (e) promote appropriate incentives that encourage biodiversity conservation and its sustainable use and initiatives that promote climate resilience;
  - (f) promoting exports and diversification of export markets;
  - (g) ensuring that the Republic meets its international obligations and commitments, including those under multilateral and bilateral treaties to which it is party, to the benefit of the economy;
  - (h) promoting value addition to the Republic's natural resources;
  - (i) promoting job creation; and
  - (j) promoting and upholding environmental, social and governance factors.

# **PART II INVESTMENT PROMOTION AND GUARANTEES**

## **Investment protection and promotion agreement**

6. (1) Subject to the approval of the Attorney-General, the Minister may enter into an investment protection and promotion agreement on behalf of the Government with another Government in which both parties shall agree on development and investment matters provided under this Act.
- (2) Subject to the approval of the Minister and the Attorney General, the Agency may enter into an investment protection and promotion agreement on behalf of Government with an investor in which the parties shall agree on development and investment matters provided for under this Act which shall include a detailed schedule relating to—
- (a) employment creation, technology and skills transfer, local business development, licensing and permits and an undertaking to complete the necessary environmental assessment required under the Environmental Management Act, 2011, where applicable; (Act No. 12 of 2011)
  - (b) the financial progression of a proposed project; and
  - (c) any other relevant information on the proposed project.

## **Declaration of special economic zone**

7. (1) The Minister may, in consultation with the Minister responsible for finance and with the approval of Cabinet, by statutory instrument, declare an area to be a special economic zone.
- (2) The Minister may, before declaring an area to be a special economic zone under subsection (1), issue a conditional permit in the prescribed manner and form to facilitate the establishment of a special economic zone.
- (3) A statutory instrument issued under subsection (1) may provide for—
- (a) the type and nature of the special economic zone;
  - (b) the unique regulatory conditions applicable to the special economic zone;
  - (c) limits of the area declared as a special economic zone;
  - (d) facilities to be provided and maintained within the special economic zone;
  - (e) activities which are prohibited within the special economic zone;
  - (f) the obligations of an investor in the special economic zone; and
  - (g) any other matter that is necessary for the effective and efficient operations of the special economic zone.

## **Declaration of priority sector**

8. The Minister shall, in consultation with the Minister responsible for finance and with the approval of Cabinet, declare a sector as a priority sector by statutory instrument.

## **Protection from compulsory acquisition**

9. An investor's property or an interest in or right over, that property shall not be compulsorily acquired except in accordance with the Constitution and the Lands Acquisition Act. (Cap. 189 Cap. 1)

## **Externalisation of Funds**

10. Subject to any other written law relating to externalisation of funds, an investor may transfer out of the Republic in foreign currency, and after payment of the relevant taxes and liabilities—
- (a) dividends;
  - (b) the principal and interest of any foreign loan;
  - (c) management fees, royalties and other charges in respect of any agreement;
  - (d) the net proceeds of sale or liquidation of a business; or

- (d) the net proceeds of sale or liquidation of a business, or
- (e) any other liabilities.

# PART III TRADE AND INDUSTRIAL DEVELOPMENT

## Trade and industrial development strategies

11. (1) The Agency shall, in consultation with the private sector and the business community, recommend to the Minister 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 in the Republic to effectively participate in the economic sector;
- (e) to promote greenfield investments and encourage growth of brown field investment;
- (f) promote joint ventures and partnerships between local and foreign investors;
- (g) to develop the capacity of businesses to trade in an international competitive market.
- (h) to promote gender equality in accessing, owning, managing, controlling and exploiting economic resources;
- (i) to address the impact of HIV and AIDS and other diseases on the economic sector; and
- (j) to encourage, support and facilitate the expansion of businesses 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 the Republic'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 large 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 businesses to—
  - (i) increase both the quantity and quality of their output in order to take advantage of trade options and openings;
  - (ii) meet, phytosanitary, labelling and packaging standards for agricultural products and other goods; and
  - (iii) meet human and animal health standards and rules of origin so as to effectively participate in a competitive global system of trade.

## Trade and business development measures

12. (1) The Agency shall facilitate and promote trade and business development by --

- (a) encouraging 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 businesses by—
  - (i) catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of businesses in accordance with Government policies aimed at developing a modern financial sector, including strengthening capital markets, financial institutions and sustainable microfinance operations;
  - (ii) facilitating the development and strengthening of businesses and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to businesses;

- (iii) improving access to essential inputs such as business information and development services;
  - (iv) enhancing export activities, through capacity building in trade related areas; and
  - (v) encouraging inter-business linkages, networks and cooperation at national, regional and international levels; and
- (c) concluding trading arrangements that remove, progressively, barriers to trade between the parties to the arrangements and enhance cooperation in all areas relevant to trade and investment.
- (2) The Agency shall, in consultation with the business community, disseminate market information to SADC, COMESA, AfCFTA and WTO.
- (3) The Agency shall establish a national and international database on trade information networks.
- (4) The Agency shall disseminate to a business community market information and information on all trade agreements to which Zambia is a party.
- (5) The Agency shall, under the direction of the Minister, undertake market research and participate in international and regional conferences and meetings for the purpose of—
- (a) ensuring that the Republic takes advantage of international trade arrangements, including those under COMESA, SADC, WTO, AfCFTA and the ACP-EU Partnership Agreement; and
  - (b) articulating well developed and coordinated country positions in international and regional negotiations trade information networks.

#### **Incentives for exporters of products and services**

13. An exporter of locally produced goods and services may be eligible for incentives as the Minister responsible for finance may, on recommendation of the Minister, prescribe by statutory instrument.

## **PART IV BUSINESS DEVELOPMENT**

#### **Promotion of business**

14. The Agency shall, in facilitating the growth of business—
- (a) collaborate with research and development institutions to develop and upgrade appropriate production technologies;
  - (b) develop tailored training for business in finance and management, and consulting services;
  - (c) undertake business brokering, subcontracting and other programmes linking businesses to local and export markets;
  - (d) facilitate access to finance by developing specialised products with financial institutions and other development partners; and
  - (e) implement programmes to develop marketing and export skills for businesses.

#### **Prohibition of incentives to business without licence, permit or certificate**

15. A business shall not be eligible for incentives provided under this Act unless the business holds a licence, permit or certificate issued under this Act.

#### **Eligibility for incentives by business**

16. A registered business, investing in a priority sector, is eligible for incentives as may be prescribed by the Minister responsible for finance, on the recommendation of the Minister.

#### **Validity period for incentives granted to business**

17. (1) Where an incentive is granted to a registered business, the incentive shall be valid for the period provided in the relevant written laws granted to business
- (2) A registered business that is accessing incentives shall, on the transfer of that business' ownership to another business during the validity period referred to under subsection (1), cease to enjoy the incentives.

## **PART V LICENCE, PERMIT AND CERTIFICATE OF REGISTRATION**

#### **Application for licence, permit or certificate of registration**

18. (1) A person may apply to the Agency for a licence, permit or certificate of registration in the prescribed manner and form and on payment of the prescribed fee, where that person intends to —
- (a) develop any premises as a special economic zone;
  - (b) operate a business in a special economic zone;
  - (c) invest in any business in a priority sector as prescribed;
  - (d) register a business; or
  - (e) operate a business in a rural area for purposes of this Act.
- (2) The Agency shall, within thirty days of receipt of an application under subsection (1), approve or reject the application.
- (3) The Agency shall, where the Agency rejects an application under subsection (2), notify the applicant in writing and give reasons for the rejection within fourteen days of the date of the decision.

#### **Conditions for approval of licence, permit or certificate of registration**

19. (1) The Agency shall, in considering an application for a licence, permit or certificate of registration under section 18, have regard to the—

- (a) need to promote economic development and growth in the Republic;
- (b) extent to which the proposed investment shall lead to the creation of employment opportunities and development of human resources;
- (c) extent of utilisation of domestic raw materials, supplies and services;
- (d) capacity to adopt value addition in processing of local materials and agricultural resource;
- (e) applicant's pledge for employment creation and training of citizens;
- (f) degree to which the project is export-oriented;
- (g) impact the proposed investment is likely to have on the environment and, where necessary, the measures proposed to deal with an adverse environmental impact in accordance with the Environmental Management Act, 2011; (Act No. 12 of 2011)
- (h) the possibility of the transfer of technology; and
- (i) other considerations that the Agency considers appropriate.

(2) The Agency shall, where it approves an application under section 18, on terms and conditions that the Agency may determine, issue a—

- (a) licence to develop premises as a special economic zone;
- (b) permit to operate a business in a special economic zone; or
- (c) certificate of registration for businesses operating outside a special economic zone.

#### **Conditions of licence, permit or certificate of registration**

20. The Agency may impose conditions on the issue of a licence, permit or certificate of registration as may be prescribed.

#### **Period of validity and renewal of licence, permit or certificate of registration**

21. (1) A licence, permit or certificate of registration shall remain valid for a period of five years, unless earlier suspended or revoked in accordance with this Act.

(2) An investor may, subject to subsection (1), apply for a renewal of a licence, permit or certificate of registration not less than sixty days before its expiry, for a period not exceeding five years at a time, in the prescribed manner and form on payment of a prescribed fee.

(3) A licence, permit or certificate of registration that is not renewed in accordance with subsection (2) is void.

#### **Investor to notify Agency of non implementation of investment**

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

(2) Where an investor notifies the Agency of the investor's inability to implement the investment—

(a) the investor shall apply to the Agency for a variation of licence, permit or certificate of registration; and

(b) the Agency may exercise the Agency's powers under the Act.

#### **Material changes in information furnished by the applicant**

23. A holder of a licence, permit or certificate of registration shall inform the Agency of any material change in the information or particulars furnished by the investor at the time of application for licence, permit or certificate of registration within seven days of that change.

#### **Variation or amendment of licence, permit, or certificate of registration**

24. The Agency may vary or amend any conditions of a licence, permit or certificate of registration, on payment of the prescribed fee—

(a) where there are changes relating to the investment, after consultations with an investor; or

(b) on an application by the investor to vary the terms and conditions of the licence, permit or certificate of registration.

#### **Suspension or revocation of licence, permit or certificate of registration**

25. (1) The Agency may suspend or revoke a licence, permit or certificate after due investigation, if the holder of the licence, permit or certificate of registration—

(a) obtained the licence, on the basis of fraud, negligence or misrepresentation;

(b) assigns, cedes or otherwise transfers the licence, permit or certificate of registration without the prior approval of the Agency;

(c) fails to comply with any term or condition of the licence, permit or certificate of registration; or

(d) operates the licensed, permitted or registered business activities in contravention of this Act or any other relevant written law.

(2) The Agency shall, before suspending or revoking a licence, permit or certificate of registration under subsection (1), notify the holder in writing of the Agency's intention to suspend or revoke the licence, permit or certificate of registration, giving reasons for the Agency's decision, and request the holder to show cause, within a reasonable period that may be specified in the notice, why the licence, permit or



certificate of registration should not be suspended or revoked.

(3) The Agency shall, where a holder of a licence, permit or certificate fails to correct the contravention within the period specified under subsection (2), suspend or revoke the licence, permit or certificate as it considers appropriate in the circumstances of the case.

(4) A holder of the licence, permit or certificate shall, where a licence, permit or certificate is suspended or revoked, under this section, surrender the licence, permit or certificate to the Agency, and the Agency shall cancel the licence, permit or certificate of registration subject to conditions that the Agency may impose with respect to the winding up of the licensed, permitted or registered business activity.

(5) A person who fails to surrender a revoked licence, permit or certificate of registration, commits an offence.

#### **Prohibition to assign, cede or transfer licence, permit or certificate of registration**

26. A holder of a licence, permit or certificate of registration shall not, without the prior approval of the Board assign, cede or otherwise transfer the licence, permit or certificate of registration to any other person.

#### **Surrender of licence, permit or certificate of registration**

27. (1) Where a holder of a licence, permit or certificate of registration decides not to continue with any business to which the licence, permit or certificate relates, the holder shall notify the Agency in writing and shall agree with the Agency on the terms and conditions of the surrender of the licence, permit or certificate with particular reference to anything done or any benefit obtained under the licence, permit or certificate.

(2) Where a licence, permit or certificate is surrendered under subsection (1), the licence, permit or certificate shall be cancelled and the holder of the licence, permit or certificate shall cease to be entitled to any benefits obtainable under the licence, permit or certificate of registration.

#### **Duplicate licence, permit or certificate of registration**

28. (1) A holder of a licence, permit or certificate of registration may, where a licence, permit or certificate of registration is destroyed or lost the holder, apply to the Agency for a duplicate certificate in the prescribed manner and form on payment of a prescribed fee.

(2) The Agency may, within seven days of receipt of an application under subsection (1), issue a duplicate licence, permit or certificate of registration to the applicant.

#### **Register of licence, permit, or certificate of registration**

29. (1) The Agency shall establish and maintain 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) A 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.

## **PART VI INVESTMENT INCENTIVES**

#### **Eligibility for incentives by investor**

30. (1) An investor shall be eligible for incentives under this Act if that investor invests in a—

(a) special economic zone; or

(b) business operating in a priority sector or rural area.

(2) An investor shall be eligible for an incentive under this Act if that investor is—

(a) a local investor investing a minimum of fifty thousand United States Dollars or equivalent in convertible currency;

(b) a citizen owned company investing a minimum of one hundred thousand United States Dollars or equivalent in convertible currency;

(c) a citizen empowerment company investing a minimum of one hundred and fifty thousand United States Dollars or equivalent in convertible currency;

(d) a citizen influenced company investing a minimum of five hundred thousand United States Dollars or equivalent in convertible currency; or

(e) investing one million United States Dollars or equivalent in convertible currency.

#### **Certification of investment for tax or duty relief or exemption**

31. A relief or exemption from any tax or duty to which an investor is eligible under this Part shall be effected by the Minister responsible for finance after the Agency certifies that the investor has complied fully with this Act and any condition prescribed.

#### **Prohibition of incentives to investor without licence, permit or certificate of registration**

32. An investor shall not be entitled to an incentive provided for under this Act unless the investor holds a valid licence, permit or certificate of registration issued under this Act.

a valid licence, permit or certificate or registration issued under this Act.

#### **Recommendation for incentives by Agency**

33. (1) The Agency shall, where the Agency determines from the investor's pledge and skills transfer to citizens that the investor shall create employment for citizens as pledged, recommend to the Minister responsible for finance that tax incentives be granted to the investor under the Income Tax Act or the Customs and Excise Act. Cap. 323, Cap. 322

(2) The Minister responsible for finance shall only grant incentives to an investor on the recommendation of the Agency under subsection (1).

#### **Withdrawal of incentives**

34. (1) Where an investor fails to comply with a term or condition of a licence, permit or certificate of registration or any provision of this Act, the Commissioner-General shall, on recommendation of the Agency, suspend or withdraw the tax incentive granted to the investor under the Income Tax Act or Customs and Excise Act for that year, on terms and conditions that the Commissioner-General may specify. Cap. 323 Cap. 322

(2) An investor affected by the decision under subsection (1) may appeal to the Minister responsible for finance.

(3) An investor whose tax incentives are withdrawn under subsection (1) shall remit the taxes due under the Income Tax Act or Customs and Excise Act, for the charge year in which the incentive is accessed or accrued. Cap. 323 Cap. 322

#### **Certification of compliance for relief or exemption**

35. The Minister responsible for finance shall, on the recommendation of the Director-General, where an investor has complied with the terms or conditions of a licence, permit or certificate of registration or any provision of this Act, grant an investor relief or exemption from any tax or duty to which the investor is eligible to under this Part.

#### **Double taxation agreements Cap. 323**

36. Subject to the Income Tax Act, where a double taxation agreement exists between the Republic and another country, foreign tax payable by an investor to the other country relating to any foreign income shall be as determined under that agreement.

## **PART VII TRADE AND INVESTMENT DEVELOPMENT FUND**

#### **Establishment of Trade and Investment Development Fund**

37. (1) There is established the Trade and Investment Development Fund for the purposes of promoting trade, investment and business growth.

(2) The Fund consists of monies that may—

- (a) be appropriated by Parliament for the purposes of the Fund;
- (b) be received by way of grants or donations;
- (c) be received from investments from both private and public entities; or
- (d) vest in, or accrue to the Fund.

#### **Purpose of Fund**

38. The Board shall, with the approval of the Minister, use the monies of the Fund to—

- (a) promote and support trade and investment;
- (b) expand existing productive capacities to support businesses;
- (c) finance credit for businesses;
- (d) address supply-side constraints to the growth of businesses;
- (e) support innovative income generating projects;
- (f) support feasibility studies for greenfield investments;
- (g) support the development of businesses in rural areas;
- (h) promote and support effective participation in local and international trade and investment expositions, fairs, seminars, missions and any other similar fora;
- (i) support product development and adaptation, market research and profiling of projects across priority sectors; (j) develop and publish investment profiles;
- (k) offer export credit for working capital, product development and reshipment and post shipment of exports;
- (l) support businesses to comply and conform to standards, quality assessment and metrological requirements; or
- (m) support businesses to comply with technical and sanitary and phytosanitary requirements in domestic and export markets.

#### **Management of Fund**

39. (1) The Fund established under section 37 shall vest in and be managed and administered by the Board in a manner that the Board may determine.

(2) The Board shall establish the criteria for the application of the monies from the Fund.

(3) The Board shall appoint a Fund Manager to manage and administer the Fund for the purposes specified under section 38.

#### **Control of use of Fund**

40. The Board shall ensure that prudent controls are established for the Fund relating to—

- (a) fiscal controls and accounting procedures governing the Fund;
- (b) reporting procedures for matters relating to the Fund; and
- (c) investment of the funds of the Fund.

#### **Books of accounts**

41. The Board shall cause to be kept proper books of accounts and other records relating to the accounts of the Fund.

#### **Auditing of Fund**

42. (1) The Fund shall be audited annually by the Auditor General or an auditor appointed by the Auditor-General.

(2) The auditor's fee shall be paid by the Agency.

#### **Annual report**

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

(2) The report referred to under subsection (1) shall include information on the financial affairs relating to the Fund and there shall be appended to the report—

- (a) an audited statement of financial position;
- (b) an audited statement of comprehensive income and expenditure; and
- (c) other information that 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 subsection (1), lay the report before the National Assembly.

## **PART VIII GENERAL PROVISIONS**

#### **Appeal**

44. (1) An investor who is aggrieved by a decision of the Agency may, within fourteen days of receiving the decision, appeal to the Minister against the decision.

(2) The Minister shall, within thirty days of receipt of the appeal confirm, set aside or vary the decision of the Agency.

(3) A person dissatisfied with the decision of the Minister may, appeal to the High Court.

#### **Submission of information by investor**

45. (1) An investor shall furnish, as and when the Agency considers necessary, any other information that may be requested by the Agency and that information shall be kept confidential.

(2) An investor shall produce, on the request of an authorised officer, books, records, documents and other information required by the authorised officer.

(3) Where an investor fails or refuses to give or provide the information requested by the Agency under subsection (2), the Agency shall recommend to the Minister of finance that a fiscal incentive granted to the investor be suspended or withdrawn for that year on terms and conditions that the Minister of finance may specify.

#### **Submission of annual returns**

46. (1) An investor shall submit annual returns accompanied by annual financial statements audited by a local auditing firm to the Agency in the prescribed manner and form.

(2) An investor who fails to submit an annual return specified in subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding twelve months, or to both.

(3) An investor who intentionally and wilfully submits misleading information to the Agency under this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding twelve months, or to both.

#### **Electronic submission and payment**

47. Where this Act requires the payment of a fee for the issuance of a licence, permit or certificate of registration that payment, issuance or receipt may be done electronically, where applicable.

#### **False statements**

48. (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 manner.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one

year, or to both.

#### **State institution to consult Agency**

49. A State institution may, in the exercise of any power under any other written law relating to or having an effect on export promotion, investment promotion and business development, consult the Agency before exercising that power.

#### **Regulations**

50. (1) The Minister may, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), Regulations made under subsection (1) may provide for—

- (a) different provisions in respect of different types of businesses and sectors of trade and industry;
- (b) different types of special economic zones;
- (c) the collection of data on industry and the procedure for such collection;
- (d) different provisions in respect of the processes relating to incentives offered under this Act;
- (e) prescribed forms required under this Act;
- (f) fines not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or both, in relation to offences under those Regulations;
- (g) a fee, levy or charge payable in respect of a licence, permit or certificate of registration for the sole purpose of defraying administrative costs of licensing; and
- (h) fees for publications, seminars consultation services and other services related to trade and investment information provided by the Agency.

(3) The Minister may, by statutory instrument, amend the Schedule to this Act.

#### **Savings and transitional provisions**

51. (1) A licence, permit or certificate of registration issued under the repealed Act shall continue to be valid until expiry,

5 revocation or surrender as if the licence, permit or certificate of registration was issued under this Act.

(2) An application for a licence, permit or certificate of registration pending under the repealed Act, shall, on commencement of this Act, be issued in accordance with this Act.

## **SCHEDULE**

(Section 4(2) and (3))

#### **INDUSTRIES EXCLUDED FOR INVESTMENT**

1. An industry manufacturing arms and ammunition, explosives military vehicle and equipment, aircraft and any other military hardware.
2. An industry manufacturing poisons, narcotics, dangerous drugs and toxic, hazardous and carcinogenic substances.
3. An industry producing currency, coins and security documents.
4. An industry manufacturing a product that is restricted by any written law.