EXPORT-LED INDUSTRIALISATION IN ZAMBIA: THE CASE FOR MULTI-FACILITY ECONOMIC ZONES

By

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A dissertation submitted to the University of Zambia in fulfilment of the requirements for the award of Degree of Master of Laws in Investment Law

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DECLARATION

I hereby declare that this dissertation is a product of my own work and effort and that it has never been submitted to any institution or body for any award. Where other sources of information have been used, they have been acknowledged.

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CERTIFICATE OF APPROVAL

This Dissertation of TENNIESON C. NYANGU has been approved as fulfilling the requirements for the award of the Degree of Master of Laws in Investment Law by the University of Zambia.

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ABSTRACT

Zambia gained its independence from British rule in 1964. Between 1964 and 2000 various economic policies and pieces of legislation aimed at accelerating economic growth and development had been passed. However, not much economic development as had been anticipated took place.

From 2001, the government embarked on a path of export-led industrialisation through the introduction of the Export Processing Zones (EPZs) and the Multi-Facility Economic Zones (MFEZs) policies. Both policies were aimed at increasing exports through value addition to raw materials that hitherto were exported in their raw form. To operationalise these policies, the government enacted the Export Processing Zones Act and the Zambia Development Agency Act in 2001 and 2006 respectively. However, the EPZ policy was abandoned in 2002. Following the enactment of the Zambia Development Agency Act, certain sections of society argued that MFEZs were nothing but a drain on the nation's revenue considering the generosity of the investment incentives, such as tax holidays, offered to investors. They further argued that MFEZs were bound to fail because the Zambia Development Act contained provisions that inhibited investment by local entrepreneurs in preference to foreign investors. The problem, therefore, was that local entrepreneurs were unable to invest in MFEZs because the Zambia Development Agency Act, 2006 was allegedly biased towards foreign investors. The efficacy of the ZDA Act was also questioned by many. This situation necessitated an investigation into MFEZs and the provisions of the Law.

The aim of this research was to investigate the prospects of MFEZs and determine gaps, if any, in the policy including the Zambia Development Agency Act, 2006. It was further hoped that the study would make a modest contribution to the debate and literature on MFEZs so that the public was aware of the ramifications of the policy as the country sought an accelerated economic development strategy.

In so doing, the research answered the following questions: (a) are MFEZs relevant in the economic development of Zambia? (b) to what extent did the EPZ Act contribute to the EPZ policy failure? (c) to what extent does the Zambia Development Agency Act, 2006 provide a balance between the needs of local and foreign investors particularly in MFEZs? and (d) is the Zambia Development Agency Act adequate or should there be a separate piece of legislation specifically for MFEZs?

The study was essentially desk review of both primary and secondary sources which included Parliamentary debates, statutes and scholarly journal articles. The review of statutes also involved an analysis of selected provisions in both the Export Processing Zones Act, 2001 and the Zambia Development Agency Act, 2006 to determine their efficacy, significance and import. Heads of selected government institutions were interviewed to provide qualitative aspects on government policy. The institutions included the Zambia Development Agency and the Ministry of Commerce, Trade and Industry.

The research showed that 67% of the developers of MFEZs were foreign while 89% of the operators in Chambishi MFEZs were not only foreign but also Chinese and argues that the prospects of MFEZs in Zambia are bright if properly managed.

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TABLE OF CONTENTS

Chapter Six

LIST OF ABBREVIATIONS

DBB	Duty Draw Back
EPZs	Export Processing Zones
EPZA	Export Processing Zones Authority
FTZ	Free Trade Zone
FDI	Foreign Direct Investment
FFYP	First Five Year Plan
GDP	Gross Domestic Product
ILO	International Labour Organisation
IMF	International Monetary Fund
LCDs	Least Developed Countries
MFEZs	Multi-Facility Economic Zones
MIDA	Malaysia Industrial Development Authority
MNCs	Multi-National Corporations
MUB	Manufacturing Under Bond
NEP	New Economic Policy
NDP	New Development Policy
NIC	Newly Industrialised Nation
NTEs	Non-Traditional Exports
PRC	Peoples Republic of China
SEZs	Special Economic Zones
TNCs	Transnational National Corporations
UNCTAD	United Nations Conference on Trade and Development

USD	United States Dollar
VAT	Value Added Tax
ZDA	Zambia Development Agency
ZCCM	Zambia Consolidated Copper Mines
ZCCZ	Zambia China Cooperation Zone

CHAPTER ONE

1.0 INTRODUCTION

Between 1950 and 1960 economic policies in many developing countries were biased towards import substitution[1]. Import substitution was a self-reliant industrial development strategy which emphasised on the production of consumer, intermediate and capital goods so as to reduce dependence on imports from western markets. According to *Osei-Hwedie*, the post 1960 era saw governments start transforming their economic strategies from import substitution to export-oriented industrialisation.[2] In her words "the import substitution policy encouraged national self-sufficiency while export-oriented policy championed international competitiveness of industry and exports were seen as the engines of growth."[3] She further asserts that export-oriented policies are behind the success of developed countries and are more sustainable for developing countries than import oriented policies.[4] In this regard, *Meir Eldar* states that there is a plethora of evidence to support a claim that export-led industrialisation out-performs import-substitution strategy.[5] He alleges that economic zones provide suitable bases for export-led industrialisation which provides access to both foreign and local markets especially in the preliminary stages of economic liberalisation.[6]

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[1] N D Karunarante, *Export Oriented Industrialisation Strategies,* Development Strategy, Inter Economics Magazine No. 5, University of Queensland, 1980, pp217 - 223

[2] B Z Osei-Hwedie, *Development Policy and Economic Change in Zambia: A Re-Assessment*, DPMN Bulletin Vol. X No.2, 2003, pp1-2

[3] Ibid

[4] Ibid

[5] M Eldar, *Towards Economic Growth and Independence: Establishment of Free Export Processing Zones in Israel,* Institute for Advanced Strategic and Political Studies, Jerusalem, No. 10, 1992. www.israeleconomy.org/eldra.htm (Accessed 13/09/2012)

[6] Ibid

In other words, *Eldar's* argument is that the essence of producing high value added goods is to be able to sell them on a large scale. The more the sales, the higher the returns as businesses take advantage of economies of scale in producing goods at a relatively low cost. This is in contrast with import substitution policies that focus on production of goods for local consumption as a substitute for imports.

In recent years, however, many countries have sought to attract foreign investment, especially Foreign Direct Investment (FDI) into economies.[7] FDI is considered beneficial not only because it brings in the much needed capital, but also generates employment and provides access to advanced technologies and other spill-overs especially in the manufacturing industry of a host country. Manufacturing is considered to be a driving force behind modernisation and job creation. For this reason, most governments encourage a certain level of private sector participation in the running of their economies. Private sector participation may be in the form of local and/or foreign investment. In this regard, countries have continued to devise ways of attracting increased private sector investment, especially FDI.[8] In this vein, *Wells* makes an important observation that in developing countries, tax incentives are a common way of attracting foreign investors and that such incentives are not available to domestic investors.[9] *Wells* cannot be more apt than this because, as is demonstrated below, countries like Zambia have put in place extremely generous tax incentives in order to entice potential investors to invest in priority sectors or products. It is not uncommon for developing countries to offer investment incentives such as tax concessions in the form of tax holidays so as to entice Multi-

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[7] Namibia, www.mcti.gov.na; see also Russia, Federal Law No. 116-FZ, 2005; further see Kenya, www.epzakenya.com

[8] Ibid

[9] L T Wells et al, *Using Tax Incentives to Compete for Foreign Investment: Are they worth the costs,* FIAS of International Finance Corporation & the World Bank, Washington DC, 2000: www.dundee.ac.uk/cepm/journal/html/Vol 15.pdf (Accessed: 21/08/09)

National Corporations (MNCs) or Trans-National Corporation (TNCs) to set up manufacturing plants in their jurisdictions.

However, *Mwenda* observes that "…generally fiscal incentives cannot be regarded as major determinants of foreign investment."[10] In his view a country requires what he calls a 'corporate strategy' as opposed to relying entirely on fiscal incentives to attract FDIs although he does not delve into what constitutes 'corporate strategy.'[11] Evidently, *Mwenda's* argument is based on various pieces of legislation enacted by the government of Zambia up to the year 1993 which provided various tax incentives and yet not much foreign investment was attracted into the country.[12]

This, notwithstanding, governments around the world continue to offer fiscal incentives in order to bring down the cost of doing business and thereby attract the private sector in the economy.[13] This study assesses the efficacy and adequacy of the law relating to investment in Multi-Facility Economic Zones (hereinafter referred to as "MFEZs") so as to determine the generosity of the incentives and how equitable they are to all investors regardless of their place of origin. In so doing, the study begins by tracing and discussing the development of investment legislation in Zambia from independence, in 1964, to-date. The study also examines investment incentives that Zambia, through the Zambia Development Agency Act, 2006, (hereinafter referred to as "the ZDA Act") offers to investors in the MFEZs. Further, the study also traces and examines the

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[10] Ibid, pp 2-14
[11] K K Mwenda, *Contemporary Issues in Corporate Finance and Investment Law,* Penn Press, Washington DC, 2000
[12] Ibid
[13] J K McCallum, *Export Processing Zones: Comparative data from China, Honduras, Nicaragua and South Africa,* ILO, 2011

development and management of Special Economic Zones (hereinafter referred to as "SEZs") internationally including legislation in China and Malaysia. These countries have been carefully selected as bench mark countries for reasons set out hereunder:

(a) China has been chosen because the first ever facility to be called a SEZ in the world was established and developed at Shenzhen in Guangdong Province in the early 1980s.[14] Besides, the Shenzhen SEZ is the most developed among all SEZs in China.[15] This notwithstanding, two of the six areas identified for development as MFEZs in Zambia, were being developed by a Chinese company, China Nonferrous Metal Mining (Group) Corporation.[16] In addition, when implementing the SEZ policy, Chinese authorities made use of the experiences of the EPZs[17] which concept failed to be implemented in Zambia.

(b) With regard to Malaysia, the country provided a good benchmark for three reasons:

   (i) the Lusaka South Multi-Facility Economic Zone (Lusaka South MFEZ) was being developed by the Government of Zambia with expertise from Kulim Technology of Malaysia on a Private-Public Partnership arrangement;[18]

   (ii) a number of economic policies that the Malaysian government had pursued in the past had been replicated by the government of Zambia without much success.

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[14] F V S Sit, *The Special Economic Zones of China: A New Type of Export Processing Zone?* in the Development Economies, XXIII-1, 1985, p69

[15] Ibid, p76

[16] P Carmody et al *Inclusive or Exclusive Globalisation? Zambia's Economy and Asian Development,* Institute of Integrated Studies, Reserve Bank of St.Louis: www.ideas.repec.org/p/iis/diapap/iii.dp297.html,(Accessed 6/10/10)

[17] F V S Sit, *The Special Economic Zones of China: A New Type of Export Processing Zone?* in the Development Economies, XXIII-1, 1985, p69, p18

[18] P Carmody et al *Inclusive or Exclusive Globalisation? Zambia's Economy and Asian Development,* Institute of Integrated Studies, Reserve Bank of St. Louis, www.ideas.repec.org/p/iis/diapap/iii.dp297.html, Accessed 6/10/10)

Examples included the pioneer industries policy introduced in Malaysia in 1958[19], while Zambia introduced a similar policy in 1965; the Malaysia Investment Incentives Act, 1968[20] and the Zambia's Investment Act, 1986, 1991 and 1993; the 1970-90 Free Trade Zones concept in Malaysia[21] and the EPZs policy in Zambia in 2001; and the Vision 2020[22] of Malaysia and the 2030 Vision of Zambia; and

(iii) Malaysia has generally been regarded as one of the most successful non-western countries to have a relatively smooth transition to modern economic growth over the last century or so.[23] The country had moved from being a major supplier of primary products such as tin, rubber, palm oil, timber, oil, liquefied and natural gas to become a lead country in the development of export-oriented manufacturing industries such as textiles, electrical and electronic goods and rubber products such that by 1990, Malaysia had largely met the criteria for a New Industrialised Country (NIC) status (i.e. 30% of exports consisted of manufactured goods) and 57.5% of the manufactured goods were from the zones.[24] At the time of the research, Malaysia aspired to achieve the status of a

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[19] J H Drabble, *An Economic History of Malaysia*, University of Sydney; p2 www.EH.net/encyclopedia/article/drabble.malaysia; (Accessed: 29/11/10)

[20] Karimi et al, *FDI and Economic Growth in Malaysia*, University of Putra Malaysia, MPRA Paper No. 14999, 2009: www.mpra.ub.uni-muenchen.de/14999, (Accessed 16/09/10)

[21] Ibid

[22] Ibid

[23] J H Drabble, *An Economic History of Malaysia, University of Sydney*, supra, p2

[24] G Sivalingam, *The Economic and Social Impact of Export Processing Zones: The Case of Malaysia*, ILO Working Paper No. 66, Geneva, 1994, p8

"fully developed industrialised economy by year 2020."[25] This means at least 80% of the exports from Malaysia will be finished products.

It is for these reasons that *Drabble*, states that Malaysia is the best example of a country in which the economic roles and interests of various groups have been pragmatically managed in the long-term without significant loss of growth momentum.[26] To this effect, he argues that many developing countries in Africa such as Zambia do not only admire but also desire to introduce, in their countries, economic measures that would spur accelerated growth rates comparable to, or even better than, Malaysia.[27] Notably, however, *Drabble* seems to advocate the 'one-size fits-all' approach and fails to warn developing countries that the 'copy and paste' approach does not and will not produce desired results.

1.1 STATEMENT OF THE PROBLEM

From the time the MFEZ concept was introduced in Zambia, debate on who the intended beneficiaries were, raged on for some time. On the one hand, some people argued that the MFEZs were aimed at benefiting foreign investors at the expense of local investors.[28] They have argued further that the ZDA Act deliberately made it difficult for local entrepreneurs to satisfy the necessary requirements needed for them to fully enjoy tax incentives that investors in MFEZs

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[25] Government of Malaysia, *Vision 2020*, Office of the Prime Minister of Malaysia, www.pmo.gov.my (Accessed 5/10/10)

[26] J H Drabble, *An Economic History of Malaysia*, University of Sydney: www.EH.net/encyclopedia/article/drabble.malaysia; 29/11/10

[27] Such as Pioneer Industries policy, The Malaysia Industrial Development Act,1965, www.EH.net/encyclopedia/aricles/drabble.malaysia and the Vision 2020 in Malaysia, Office of the Prime Minister of Malaysia: www.pmo.gov.my,(Accessed: 29/11/10)

[28] K Chulu, *Encourage Joint Ventures in MFEZs, ZAM challenges Government*; The Post, 13th July, 2009, see also C Sinyangwe, *Local Entrepreneur Complains Over MFEZ,* The Post, 13[th] October, 2009

were entitled to.[29] For example, they cited the initial capital requirement of K2.5 billion[30] as being out of reach of many local entrepreneurs thereby giving foreign investors an upper hand as far as investment in the MFEZs was concerned. Critics also argued strongly that Zambia did not need MFEZs to develop economically.[31] According to them, MFEZs were 'blunt tools', with little, if any, success. They maintained that MFEZs were bound to fail in the same way the Export Processing Zones (hereinafter referred to as the "EPZs") failed to be implemented.[32] Their argument seemed to be premised on the perception that the challenges that the EPZs faced still existed and that it was unreasonable, in this regard, to expect MFEZs to succeed where EPZs failed.

Besides, there were also fears that investors outside MFEZs, comprising mostly local entrepreneurs, were disadvantaged by the ZDA Act in the form it was.[33] In addition, critics vehemently argued that the government had previously enacted various pieces of legislation all aimed at achieving the very purpose MFEZs were designed to achieve but without much success.[34] However, the government, on the other hand, maintained that the MFEZ policy was a definite way of ensuring that Vision 2030 was realised.[35] It was for this reason that the government had been reiterating and emphasising the necessity of MFEZs as the life blood of the

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[29] Zambia, National Assembly, Report of the Parliamentary Committee on Economic Affairs and Labour, Lusaka, 2009, p13

[30] Approximately USD 500,000

[31] Zambian economist; www.zambianeconomist.com

[32] Ibid

[33] C Sinyangwe, *Local Entrepreneur Complains over MFEZ*, The Business Post, 13th October, 2009

[34] Times Printpak Limited, *Can EPZs Survive where other similar ideas have failed*, Sunday Times of Zambia, 2005, July 13th , www.allafrica.com, (Accessed 30/03/10)

[35] Vision 2030 is a 25-year plan which envisages Zambia as a Middle Income Country. The effective year of implementation being, 2006.

economy.[36] Further, the government stated that the law did not and would not discriminate against anyone and that investment in the MFEZs was open to all investors regardless of their countries of origin.[37]

Clearly, there was a misunderstanding as regards some provisions in the ZDA Act particularly, those relating to incentives available to investors in MFEZs vis-à-vis those provisions in the law relating to investment in the rest of the economy. For example, as discussed below, an investor in a MFEZ was entitled to generous incentives such as tax holidays to which an investor in the rest of the economy was also entitled although for different reasons**.** The problem, therefore, was that local entrepreneurs were unable to invest in MFEZs because the ZDA Act was perceived biased towards foreign investors. The efficacy of the ZDA Act had also been questioned by many. This situation had necessitated an investigation into the provisions of the law.

1.2 RESEARCH QUESTIONS

The main question that this research answered was whether export-led industrialisation was the right path for Zambia to embark on. Flowing from this question, the following sub-questions were answered:

(i) are MFEZs relevant in the economic development of Zambia?

(ii) to what extent did the EPZ Act contribute to the failure of the EPZ policy? and

[36]President Mwanawasa Speeches to the National Assembly, 2006- 2008 and President Banda Speech to the National Assembly on official opening of Parliament, Government Printers, Lusaka, 2009 and 2010.

[37] Ministerial Statement to National Assembly by Felix Mutati, on 14th August 2009, www.parliament.gov.zm/debates&proccedings (Accessed: 4/09/09)

(iii) does the ZDA Act adequately provide for investment in MFEZs or should there be a separate piece of legislation to specifically regulate investment in MFEZs?

1.3 SIGNIFICANCE FOR THE STUDY

Many scholars have written generally on trade and investment in Zambia over the past decade or so.[38] But none as far as this research is concerned, seems to have focused on investment in MFEZs. This study makes a modest contribution in terms of knowledge and literature on investment in MFEZs. The study may also assist government and policy makers strive to make investment in MFEZs mutually beneficial to the country and investors. Further, the research may enable policy implementers in the relevant ministries or institutions learn and apply best international practices which may be useful in amending existing policies, or in formulating new ones.

1.4 GENERAL OBJECTIVE

The general aim of this research was to establish why EPZs were not operationalised, particularly that the MFEZ concept borrows substantially from EPZs. The study was also aimed at assessing the provisions of the ZDA Act, so as to determine whether the law was in any way different from previously enacted investment-oriented pieces of legislation to ensure or guarantee the success of MFEZs. In this way, it was further hoped that the study would contribute to the debate on investment in MFEZs, especially, by foreign investors so that the

[38]See Trade and Investment: An Economic Review, www.netherlandsembassy.org.zm, see also K K Mwenda, *Contemporary Issues in Corporate Finance and Investment Law,* Penn Press. Washington DC, 2000

public was aware of the ramifications of this policy and, perhaps, lobby the policy makers to be cautious as they sought to accelerate investment and economic growth in the country in line with Vision 2030.

1.5 SPECIFIC OBJECTIVES

The specific objectives of the study are:

(i) to assess the efficacy of provisions relating to investment incentives in both the EPZ Act and the ZDA Act and their ramifications;

(ii) to establish the reasons for the failure of the EPZ policy;

(iii) to establish the relevance of MFEZs in the economic development of a country;

(iv) to compare the Zambian legal and regulatory framework to those of other jurisdictions where the MFEZ or similar concept had successfully been implemented; and

(v) to suggest a way forward with regard to investment in MFEZs.

1.2 METHODOLOGY

This research was essentially desk-based. The study reviewed primary sources such as statutes and interviews with relevant authorities were conducted. Among the people that were interviewed were heads of selected government institutions such as the ZDA and Ministry of Commerce, Trade and Industry. Further, secondary sources which included scholarly journals, periodicals, World Wide Web sites and newspaper articles were reviewed. In addition, commentaries made following the enactment Zambia Development Agency Act, 2006 were also reviewed. The desk review also involved quantitative analysis of salient provisions of both the EPZ Act and the ZDA Act to determine their significance and import. The research also carried out a quantitative analysis of legal regimes on zones from comparator jurisdictions.

The research is divided into six chapters. Chapter one introduces the research and outlines the statement of the problem necessitating the study. The chapter further states the questions from which the study proceeds. The significance and the methodology of the study are also elucidated in this chapter.

In chapter two the economic history of Zambia is traced and discussed. The focus period for this economic history is from 1964 to-date. In so doing, the provisions of the various pieces of legislation enacted prior to 2001 are examined and commented on. It must be noted that prior to 2001, nothing more than debate on the economic zones concept existed in Zambia. The first piece of legislation on zones was enacted in 2001. The chapter also discusses the reasons that led to the failure of the Export Processing Zones policy.

In chapter three the MFEZ concept is defined and the theoretical basis for the zone concept is elaborated upon. The need, if any, for MFEZs in the economic development of a country is discussed. The main thrust of chapter three is to appreciate the rationale behind the setting up of zones.

Chapter four examines the legal and regulatory frameworks for zones internationally. Particular focus is made on the legal and regulatory frameworks in China and Malaysia. The essence of chapter four, therefore, is to examine the legal and regulatory frameworks in the benchmark countries for comparative and learning purposes, with a view to identify in the ZDA Act and thus make viable recommendations aimed at enhancing investment in the MFEZs.

In chapter five, selected provisions in the ZDA Act are analysed. The focus of chapter five is on determining whether or not the ZDA Act does, in any way, favour foreign investors more than local entrepreneurs particularly with regard to investment in the MFEZs. In this regard, the selected provisions are critically examined so as to demonstrate the bias, if any, towards foreign investors.

In chapter six, the summary of the research and findings are outlined. The chapter also makes recommendations on the way forward so that investment in Zambia's MFEZs is not only attractive but also sustainable and economically beneficial to both the country and the investors.

CHAPTER TWO

2.0 ZAMBIA'S ECONOMIC AND INVESTMENT HISTORY

2.1 INTRODUCTION

In the preceding chapter, the aims, objectives and importance of the study have been outlined. The statement of the problem has been presented and the method employed during the study has also been stated. In this chapter, investment legislation that the government enacted from 1964 to-date is examined so as to appreciate the background upon which the current investment legislation and economic policies are based. The chapter also discusses the genesis of the zone concept in Zambia before answering the question whether or not the EPZ Act contributed to the failure of the EPZ concept and, if so, to what extent.

2.2 DEVELOPMENT OF INVESTMENT LEGISLATION IN ZAMBIA

Zambia's quest for private investor participation in the economy dates as far back as the pre-independence era.[1] In 1963, for example, the leadership of the African Transitional government remarked that "economically we have made it plain that we intend to create a society in which private enterprises will play an important role."[2] Zambia's economic policy at the time was generally referred to as a policy of permanent partnership with foreign investment.[3] This policy

[1] M Kamuwanga, *Negotiating Investment Contracts, Investment Law in the Context of Development*, Multi-Media Publications, Lusaka, 1995, p1
[2] Ibid,p1
[3] M Ndulo, *Mining Rights in Zambia*, Kenneth Kaunda Foundation, 1987, pp 194-95

continued at independence in 1964. It was government's intention, according to the Minister of Commerce and Industry, *Mubiana Nalilungwe,* that through partnership with the private sector, the government would encourage and promote the establishment of new industries that would, in turn, create employment, raise the standard of living and strengthen and diversify the economy.[4]

In this regard, the government enacted the Pioneer Industries (Relief from Income Tax) Act, 1965. The net import of this piece of legislation was to provide incentives, in the form of tax relief, to those enterprises granted pioneer status.[5] The purpose of this statute was aptly summed up in the words of *Nalilungwe* as, "to provide an attractive climate for investment of private capital in secondary industries."[6]

Apparently, the results of this policy were far below government expectations as very few pioneer industries were established particularly in rural areas which had been targeted in order to reduce the rate of urbanisation. The main reason for the limited success of the policy seems to have been that the law only provided incentives in the form of relief from payment of income tax to eligible investors when much more incentives than income tax relief were needed in order to attract investors to set up business enterprises in rural areas particularly that the rural areas had, and still have, poor physical infrastructure.[7]

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[4] Zambia, National Assembly (Debates 18th August 1965), Col. 1061
[5] The Pioneer Industries (Relief from Income Tax), Act No. 55 of 1965, preamble
[6] Zambia, National Assembly (Debates 18th August, 1965), Col. 1061
[7] Ibid

Besides, it is worth appreciating that the granting of income tax relief was both selective and at the discretion of the government.[8] Thus, income tax relief could not be claimed as a matter of right as both the choice of the types of industries and the products to be manufactured for an enterprise to enjoy these incentives, was a preserve of the government to determine.[9] As a general rule, however, income tax relief was only available to new industries or those industries that were not being carried on a substantially commercial basis.[10] In other words, anyone who produced goods either for self or community consumption would be eligible for the incentives.

In 1968, a major shift in the structure of Zambia's economy took place with the introduction of the Mulungushi Reforms.[11] It was government's new policy, following the introduction of the reforms, to acquire at least 51% equity capital in key foreign owned business firms.[12] Amazingly, this was a complete turnaround of government's prouncements concerning the private sector involvement in the running of the economy. The rationale behind the nationalisation of the economy was to encourage access to investment funds through revenue from parastatals, promote local entrepreneurship and to lessen regional or tribal inequalities in addition to creating employment.[13]

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[8] Ibid
[9] Ibid
[10] Ibid
[11] In a political speech, President Kaunda announced a programme of nationalization of privately owned companies, at a place in Central Zambia, known as Mulungushi Rock of Authority
[12] M M Burdette, *Nationalisation in Zambia: A Critique of Bargaining Theory*, Journal of African Studies Vol.11 No.3, 1977 pp 471-496 (Accessed 12/12/10), www.jstor.org/discovery/10.2307/483722?
[13] J Craig, *Evaluating Privatisation in Zambia: A Tale of Two Processes*, Review of African Political Economy No. 85.357-366, ROAPE Publication Ltd, 2000, www.jstor.org/discovery/10.2307/4006658?uid (Accessed 1/12/11)

Consequently, a wide range of commercial activities, including retail shops, quarrying operations, bakeries and breweries were taken over by the government.[14] The nationalised firms were controlled and managed by a parastatal conglomerate called the Industrial Development Corporation (INDECO).[15] In 1969, further reforms known as the Matero[16] Reforms concerning the takeover of the mining sector were announced. By 1970, the government had acquired majority shareholding in the operations of two major mining companies; the Anglo-American Corporation and the Roan Selection Trust (RST) and renamed them as the Nchanga Consolidated Copper Mines and Roan Consolidated Mines (RCM) respectively.[17] A few years later, another parastatal called the Mining Development Corporation (MINDECO) was created to control all mining activities.[18] Eventually, NCCM and RCM were merged into the Zambia Consolidated Copper Mines Limited (ZCCM).[19]

Later, yet another parastatal called the Finance and Development Corporation (FINDECO) was created to take control of all insurance companies and building societies. In 1971, INDECO, MINDECO, and FINDECO were brought under one omnibus parastatal called the Zambia Industrial and Mining Corporation (ZIMCO).[20] Clearly, the whole idea of the reforms was to ensure that the government took full control of economic activities in the country.

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[14] C M Fundanga et al, *Privatisation of Public Enterprises in Zambia: An Evaluation of the Policies, Procedures and Experiences,* Economic Research Papers No. 35, African Development Bank, p5, www.afdb.org/fileadmin/uploads/afdb/documents/publications/00157720-En-list- ERWp.PDF

[15] M M Burdette, *Nationalisation in Zambia: A Critique of Bargaining Theory*, Journal of African Studies Vol.11 No.3, 1977 pp 471-496 (Accessed 12/12/10), www.jstor.org/discovery/10.2307/483722?

[16] A Lusaka suburb at which President Kaunda announced further nationalisation programme

[17] M Ndulo, *The Nationalisation of the Zambian Copper Industry,* Zambia Law Report, Vol. 6, 1974 , UNZA Press, pp 55-60

[18] Ibid

[19] Ibid

[20] Ibid

Unfortunately, the nationalisation programme suffered major setbacks which, sooner than later, wrecked the country's economic and national development plans contained in the Mulungushi and Matero Reforms. A drastic increase in the price of oil on the international market coupled with a slump in the copper prices in the early 1970s, resulted in the diminution of export earnings.[21]

Twelve years after independence, the government realised that it was almost impossible for it to run the economy single-handedly without the participation of the private sector. In this regard, the government enacted the Industrial Development Act in 1977, so as to provide conditions conducive for economic development through the participation of both local and foreign private investors.[22] The Industrial Development Act, 1977 provided for a variety of incentives to the manufacturing sector satisfying certain economic requirements.[23] The Act also provided for making of contracts relating to transfer of technology. In other words, the Industrial Development Act, 1977 was aimed at revitalising the pace of industrialisation in Zambia in which the private sector played an active role. It was thought that this would, in turn, generate numerous socio-economic benefits to the country.

With the enactment of the Industrial Development Act, 1977, it was anticipated that the rate of industrialisation would be high and, therefore, certain measures needed to be put in place to cope with the anticipated high economic levels of development. Particularly, it was thought necessary

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[21] Ibid
[22] Zambia, National Assembly (Debates 18th August, 1977) Col.337
[23] Industrial Development, Act No.18 of 1977, ss.18-26

to ensure that enterprises were facilitated into exporting their products so as to earn the much needed foreign exchange.[24]

It is interesting to note that while both the pioneer industries and the industrial development policies were policies introduced in Malaysia in the early 1950s and 1960s respectively (as discussed in chapter four) in Malaysia, the policies have been successful while in Zambia, they have failed to produce significant positive results.

In spite of all these economic efforts, Zambia began to experience balance of payment problems and by mid-1980s; the country had become one of the most indebted in the world relative to its Gross Domestic Product (GDP).[25] A substantial amount of the country's debt was from the International Monetary Fund (IMF). From then on, the IMF insisted that the government introduces economic reforms aimed at stabilising the economy and restructuring it to reduce dependence on copper.[26] Subsequently, the government was compelled to end price controls, devalue the official currency- the Kwacha; reduce government expenditure; and remove subsidies on food items and farm produce.[27] These IMF reforms had serious political and economic repercussions.[28]

Although government enacted various pieces of legislation, as noted above, not as much industrialisation took place as had been initially anticipated. It was for this reason that, four years

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[24] Ibid

[25] M Burdette, *Nationalisation in Zambia: A Critique of Bargaining Theory*, Journal of African Studies Vol.11 No.3, 1977, pp 471-496, www.jstor.org/discovery/10.2307/483722?, (Accessed 12/12/10)

[26] Ibid

[27] Ibid

[28] Zambia, National Assembly (Debates 18th August, 1977) Col.337

after the enactment of the Industrial Development Act, 1977, the government, in 1981, enacted the Small Industries Development Act, to regulate the establishment of small industries in the country.[29] This followed government's view that a better way of encouraging investment of private capital in the economy was by way of promoting small industries and granting them a variety of incentives depending on their location.

Four years later, another piece of legislation, the Export Development Act, 1985 was enacted. The Act established the Export Council of Zambia whose functions, among others, were to formulate and approve national policies aimed at promoting and encouraging the export of goods and services from Zambia emanating from small industries.[30] The Council was headed by the Prime Minister while Ministers responsible for commerce, finance, agriculture, foreign affairs, co-operatives, mines, tourism and transport were members.

To further support the aims of the Export Development Act, 1985, another piece of legislation, namely the Investment Act, 1986 was enacted repealing the Industrial Development Act, 1977. The Investment Act, 1986 revised the law relating to investment in Zambia, particularly the provisions relating to granting of incentives, registration of manufacturing enterprises and agreements for the transfer of technology. The Act established a two-tier institutional framework charged with the regulation of investment in the country. At a higher level, was the Investment Council. The Investment Council was the highest policy making body insofar as foreign investment in Zambia was concerned. For this reason, the Council was headed by the Prime Minister. The Council's functions, *inter-alia*, included "formulating and approving national

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[29] The Small Industries Development, Act No. 18 of 1981, preamble

[30] The Export Development, Act No. 25 of 1985, ss.3-4

policies and annual priority programmes designed to develop and foster development in Zambia."[31] At a lower level was the Investment Co-ordinating Committee headed by the Director of Investments as chairperson, while representatives of various economic ministries were members. Notably, both the Investment Council and the Investment Co-ordinating Committee were government institutions with no representation from the private sector. This was done by design as, at the time, Zambia's economic orientation was skewed towards government. The government was directly involved in the running of the economic activities of the country.

The main role of the Investment Co-ordinating Committee was to assist potential investors as much as might be necessary to invest in Zambia by liaising with other government ministries and departments and local authorities so that an investor complied with the necessary formalities and permissions for investment, including land acquisition for purposes of setting up a business enterprise. However, the Act was silent on what specific steps the Investment Co-ordinating Committee was required to take to assist the would-be investors. Let alone the extent to which the assistance would be said to have been rendered. It can be argued that this vagueness of the law left the potential investors at the mercy of government authorities in terms of what kind of assistance to expect.

It was yet another requirement under the Act that a foreign investor applied for, and be granted, an investment licence prior to commencing operations of any business enterprise in the country. It is interesting to note, in this regard, that after filing an application, the processing period could take a minimum of 57 days and a maximum of 78 days before a response could be received by

[31] The Investment, Act No. 39 of 1993, s5

an applicant.[32] In addition to the licence, an investment permit was required to be applied for, and be granted separately, authorising the investor to make arrangements for commencement of actual operations of the business enterprise. With regard to incentives, the Investment Act, 1986 entitled business enterprises which were said to be 'net earners of foreign exchange' to the following incentives:

(i) retention by the business enterprise of a percentage of foreign exchange earnings. The determination of the rate of foreign exchange to be retained lay in the sole discretion of the Minister responsible for finance;

(ii) preferential rate of income tax determined by Parliament;

(iii) access to foreign exchange revolving fund which might be set up to promote exports from Zambia; and

(iv) access to any free trade zones which might be set up in Zambia.[33]

It is imperative to note, at this stage, that the Investment Act, 1986 neither established a foreign exchange revolving fund nor did it create any free trade zone even if the law made reference to them. It can reasonably be concluded that the law provided for the above incentives in anticipation that someday, in future, free trade zones and a foreign exchange revolving fund would be set up.

This notwithstanding and as usual, the incentives could not be claimed as a matter of right. An investor needed to apply for them, and be granted a certificate of incentives, in order to enjoy these incentives. In any case, the investor needed to begin operations before they could become

[32] The Investment, Act No.39 of 1993, ss16-17
[33] The Investment, Act No. 39 of 1993, s23

eligible to apply for any incentive under the Act. Depending on the sector in which the investor decided to invest, there were additional incentives available. For example, an investor who imported inputs for use in producing goods for export was eligible for drawback of import duties and sales tax. There was also a preferential reduction in the rate of income tax payable during the initial five years of commencing business operations. Where the investment involved the manufacture of any kind of goods for sale, either locally or internationally, the investor was obliged to be registered under the Investment Act, 1986 and any agreement relating to transfer of technology also needed to be registered. Failure to register meant that the agreements were of no effect and the goods produced could not be sold anywhere.[34]

In addition to providing a variety of incentives to qualifying enterprises, the Investment Act, 1986 was also intended to address the lack of investible funds as well as the necessary expertise and technological know-how accompanying industrial development.[35] According to the Minister of Commerce, Trade and Industry, the Act further sought to attend to the shortcomings in the Industrial Development Act, 1977 that were perceived to have been a hindrance to the attraction of private capital in the economy.[36] One example of such a hindrance in the Industrial Development Act was that incentives were restricted to the manufacturing sector and left out other sectors such as the agriculture, tourism and service without codified investment incentives. Besides, the Act required the investor to first invest in the manufacturing sector and thereafter, apply for incentives.[37] What was most amazing was that even after identifying the flaws in the Industrial Development Act, 1977, the government still failed to address them in the Investment

[34]Ibid, s33
[35] Zambia, National Assembly (Debates 11th March, 1986), Col. 2592
[36] Ibid
[37] Ibid

Act, 1986. For example, the requirement for an investor to commence operations before applying for incentives was replicated in the Investment Act, 1986.

By 1990, the economic ills of the country had reached their climax. As a result of the International Monetary Fund prescribed economic reforms which required removal of subsidies on food items as earlier alluded to above, food prices shot up and, consequently, riots erupted. The level of discontentment among the citizenry rose drastically. Eventually, multiparty elections were held in 1991 which ushered into office a new government led by President Chiluba. The new government was more committed to the economic reforms as proposed by the IMF than the former administration. Shortly after assuming office, the new government shifted the economic policy yet again from being one that was centrally planned and government controlled to a free market one.[38] Emphasis was once again placed on private sector participation as the engine for economic growth. As a result, there was massive privatisation of state owned and government controlled enterprises following the enactment of the Privatisation Act in 1992. According to *Felix Mutati,* then Minister of Commerce, Trade and Industry, at least 265 companies and units had been privatised as of December 2009.[39]

Subsequently, the Government repealed and replaced the Investment Act, 1986 with the Investment Act, 1991. The principal aim of the Investment Act, 1991 was to refine qualifications for business enterprises to enjoy investment incentives in specified sectors.[40] In terms section of 18 of the Investment Act, 1991, the Director-General of the Investment Centre

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[38] Ibid
[39] Zambia, National Assembly (Debates 9th July 2010); www.parliament.gov.zm/debates and proceedings, (Accessed 30/12/2010)
[40] Zambia, National Assembly (Debates 25th July, 1991), Col. 257

was the only person empowered to grant an investment licence. The licence had an unlimited period of validity provided it was utilised within twelve months from the date of issue.[41] Once issued, the licence did not, *ipso facto,* entitle the holder to investment incentives automatically. To enjoy the incentives, the holder was required to ensure that either the business enterprise was an exporter of non-traditional products, or services which would result in 'net foreign exchange earnings', or engaged in tourist activities resulting in foreign exchange earnings in excess of 25% of the gross annual earnings of the business unit. Alternatively, the investor ought to prove that the business enterprise was an import-substitution industry ultilising a substantial amount of local raw materials to earn foreign exchange or simply locate the business enterprise in a rural area set up.

Where any investor satisfied the qualifications for investment incentives, the investor was entitled to the following incentives:

(i) exemption from payment of customs duties and sales tax on all machinery and equipment required, and for use exclusively, by that enterprise;

(ii) exemption from tax on dividends for a period of 7 years from the date of commencement of business operations;

(iii) exemption from payment of company income for a period of three years from commencement date of the business and thereafter, at 75% for each subsequent year;

(iv) exemption from the payment of the business enterprise's gross foreign earnings for a period of 7 years; and

[41] The Investment Act,1991, ss18-19

(v) retention of 75% of the business enterprise's gross foreign currency earnings for the first 3 years and 60% and 50% for the second and third year respectively.[42]

In addition to these incentives, a licence holder was entitled, upon application to the relevant authorities, to various incentives specified under the Act.[43] The Act also provided for protection from compulsory acquisition of the investors' property in addition to making provisions for settlement of investment disputes.[44] These incentives could not be claimed as a matter of right under this Act. All these measures were aimed at gaining investor confidence especially of foreign investors so that foreign investment in Zambia could be more attractive.

Like under the Investment Act, 1986, the incentives under the Investment Act, 1991 were also granted at the discretion of government authorities. This, perhaps, explains why a paltry number of industries were established, particularly by foreign investors. It is more likely than not that investors were apprehensive about the viability of their investment considering the uncertainty that surrounded the availability of investment incentives. It is possible that investors were not sure whether or not they would be able to make a return on their investment in the event that their application for incentives was turned down. The rationale behind the issuing of an investor's licence without specifying the incentives was not immediately apparent but the law required the investor to apply for incentives only if they had established the business enterprise and operations had actually commenced. It must be appreciated that wherever there is a requirement to submit an application, there also exists a possibility of the application being denied for one reason or another.

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[42] The Investment Act, No. 19 of 1991, s32
[43] Ibid, ss33-39
[44] Ibid, preamble

In 1993, the Investment Act, 1991 was amended so as to, among other things, provide for qualifications for general and special incentives and income tax exemptions to would-be investors in specified areas and regions of the country.[45]

Approximately 10 years later, the Government felt that special areas needed to be created so that investors that established their business enterprises in those areas or in specified sectors could automatically be entitled to specified incentives. This was considered cardinal in that potential investors would know in advance the type of incentives they would enjoy if they invested in specified areas or sectors.[46] For this reason, the government, in 2001, enacted the EPZ Act. The main purpose of the EPZ Act was to establish the 'EPZs' and to regulate the granting of incentives to investors and business enterprises established in these EPZs.[47] Pursuant to the enactment of the EPZ Act, "the Export Processing Zones Authority (EPZA) was established as a regulatory institution.

2.3 THE DEVELOPMENT OF THE ZONE CONCEPT IN ZAMBIA

Though relatively new in Zambia, the zone concept has been in existence for many decades in various parts of the world.[48] Regardless of the name by which a zone is known in a country, its effect is for all intents and purposes the same, namely acceleration of economic development through export-led industrialisation. In spite of lack of clarity regarding the school of thought of

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[45] The Investment Act, No. 39 of 1993, preamble
[46] Zambia, National Assembly (Debates 1st November, 2001)
[47] The Export Processing Zones, Act No.7 of 2001, preamble
[48] The Shannon Free Zone, in Ireland, for instance, has been in existence since 1934

zone development Zambia ascribed to, the country eagerly embraced the concept.[49] Debate on the zone concept emerged in the early 1990s following the re-introduction of multi-party form of politics and subsequent elections in 1991.[50] The country's political landscape followed the wind of change that swept through Eastern Europe, which saw the reunification of East and West Germany.[51] One immediate consequence of the reunification of East and West Germany was the sharp rise in inflation as a result of the conversion of the currency from East German marks to West German Deutsche Marks.[52] Due to the fact that West German goods were superior to those produced in East Germany, there was a remarkable increase in the demand for West German products.[53] This invariably led to an increase in prices (i.e. inflation) which, in turn, caused a decrease in investment in East Germany and consequently, economic growth declined tremendously.[54] Due to decreased investment and low productivity in East Germany, there were job losses as many firms closed down as the economy suffered depression.[55] In order to stimulate investment, the Union government introduced tax incentives and other subsidies to be enjoyed by firms investing in East Germany.[56] For instance, a firm investing in East Germany would pay corporate tax at a reduced rate as compared to a firm established in West Germany.[57]

About the same time, Zambia was going through a similar economic malaise as East Germany. Following the multiparty elections in 1991, the new government embarked on an economic

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[49] Theoretical bases zone establishment are discussed in chapter three

[50] Zamnet Communication systems, *Kabwe: From Discovery to Recovery*: www.zamnt.zm/news/viewnews.cgi (Accessed 27/12/10)

[51] Interview with Ministry of Commerce, Trade and Industry officials held on 18th November,2010

[52] K Megan , *Economic Changes in Germany since Reunification*, Lehigh University, 2009 www.lehigh.edu/inctr/publication/perspectives/v14, (Accessed 18/11/10)

[53] Ibid

[54]Ibid

[55] Ibid

[56] Ibid

[57] Ibid

transformation from a socialist to free market economy.[58] In this respect, and to some extent, one may argue that initially the theoretical basis of zone establishment was the heterodox approach which advocates free market economy without government intervention. But as discussed below, it is not very clear as to what theory the country subscribes to as far as zone development is concerned. The liberalisation process which the government vigorously pursued, was prescribed by the International Monetary Fund (IMF). These IMF reforms advocated, *inter-alia,* the privatisation of State Owned Enterprises, removal of subsidies on consumption, decontrol of prices and introduction of cost sharing arrangements for social services such as education and health which, hitherto, had been provided freely by the government and monetary and fiscal reform (free exchange and interest rates, tightening monetary supply to curb inflation, creation of an autonomous revenue authority).[59]

Subsequently, most of Zambia's State Owned Enterprises were privatised between 1994 and 2000.[60] Goods produced by a number of the privatised enterprises, unfortunately, failed to compete against imported and relatively cheaper ones, especially from the neighbouring South Africa and Zimbabwe.[61] This resulted in the privatised firms either closing down or simply relocating production to other countries that were considered cost-effective in doing business.[62] This is precisely what *Perman* means when he noted that investment in zones could be precarious as investors might relocate at any time to other places where the investment climate

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[58] C M Fundanga et al*, Privatisation of Public Enterprises in Zambia: An Evaluation of the Policies, Procedures and Experiences*, Economic Research Papers No.35, African Development Bank, pp7-8; www.afbd.org/fileadmin/uploads/document, (Accessed 27/12/10)

[59] African Forum and Network on Debt and Development, *The Impact of Wrong Policy Advice on Zambia: A case Study,* 2007, Harare pp12-19, www.afrodad.org, (Accessed 22/12/11)

[60] Ibid

[61] M Kapende, *A Long Trail of Destitution in Zambia*, Fedrick Ebert Stiftung, Berlin, 2004, p2; www.fes.de/globalisation (Accessed 27/01/11)

[62] Ibid

was more favourable.[63] In turn, towns such as Kafue, Kabwe, Ndola, Livingstone and Luanshya became economically depressed.[64] In order to rejuvenate the economic activities in these towns, debate along the lines of the economic policies in the reunified Germany, particularly, regarding the granting of tax incentives to firms setting up businesses in the economically depressed towns began to emerge. As a result, calls to declare such towns as tax free zones were echoed and re-echoed.[65] The debate culminated in the introduction, by the government in 2001, of a new economic concept known as the Export Processing Zones. This marked the beginning of the zone concept in Zambia.

2.4 THE LEGAL AND REGULATORY FRAMEWORK FOR THE EXPORT PROCESSING ZONES POLICY

To give effect to the EPZ policy, government enacted the EPZ Act. The essence of the EPZ Act was to provide specified incentives to business firms established in particular locations in the country.[66] It was hoped that the private sector would be attracted to set up business enterprises in depressed towns and peri-urban areas once granted EPZ status.[67] Following the enactment of the EPZ Act, some commentators wondered how EPZs would survive where other similar ideas had failed. These comments were made against the backdrop of concepts such as Manufacturing Under Bond and Duty Draw Back schemes, as below elaborated, which failed allegedly due to

[63] S Perman et al, *Behind the Brand Names: Working conditions and Labour Rights in Export Processing Zones,* 2004, pp3-4, www.icftu.org/www/PDF/EPZreport.pdf, (Accessed 11/11/10)
[64] Times Reporter*, Congratulations to the City of Ndola*, Times of Zambia,18th July, 2004
[65] Zamnet Communication systems, *Kabwe: From Discovery to Recovery*; www.zamnt.zm/news/viewnews.cgi (Accessed 27/12/10)
[66] The Export Processing Zones, Act No.7 of 2001, preamble
[67] Interview with Ministry of Commerce, Trade and Industry officials conducted on 18th November, 2010

difficulties in implementing the schemes on the part of the Zambia Revenue Authority.[68] The concerns of stakeholders may be summed up in the words of then chairperson of the Zambia Chamber of Commerce and Industry, *Abel Mkandawire:*

> *...there have been so many of these initiatives, well intended, but the problem is implementation. We seem not know what we want. Today they will say they are giving us these incentives but few months down the line, they will come up with a statutory instrument revoking certain incentives...*[69]

In short, the business community was concerned about the inconsistencies in policy implementation, particularly, following a regime change. The government retorted by stating that the introduction of EPZs in Zambia would attract export-led investment which, in turn, would stimulate economic growth as the case was in Mauritius and Kenya.[70] According to *Bates Namuyamba*, then Minister of Commerce, Trade and Industry, "...it is because of how successful the EPZs have worked in Kenya and Mauritius that the Zambian government decided to introduce the concept in the Country."[71]

The EPZ Act established the Export Processing Zones Authority (hereinafter referred to as the "EPZA") as the institutional and regulatory body for zones in Zambia. The EPZA was clothed with all the powers and characteristics of incorporation. The EPZA was to be governed by the Board established pursuant to Section 7 of the EPZ Act. The Board comprised members who were manifestly chief executive officers of government ministries and/or departments considered

[68] Times Printpak Limited, *Can EPZs Survive where other similar ideas have failed*, Sunday Times of Zambia, 2005, July 13th , www.allafrica.com, (Accessed 30/03/10)
[69] Ibid
[70] Ibid
[71] Ibid

key to the promotion and success of the EPZ concept. The main function of the Board was, *inter-alia*, to develop and/or facilitate the development of EPZs in the country.[72] In so doing, the EPZA was required to consult experts in the Customs and Excise Division of the Zambia Revenue Authority. This is, perhaps, because by their nature, EPZs are economic enclaves fenced off and manned by customs officials on a 24-hour basis to ensure that materials and goods to and from EPZs comply with the rules and regulations relating to the zones. The EPZ Act, however, was silent on the stage at which the consultations needed to take place. It was not clear as to whether the consultations were necessary and needed to take place prior to, or after, an EPZ has been declared. Further, the purpose of the consultations was not clearly stipulated in the EPZ Act.

However, before an area or premises could be declared an EPZ, the EPZ Act required that the Board made a recommendation to the Minister responsible for Commerce (hereinafter referred to as 'the Minister') for its declaration. The Minister, in turn, would consult the Minister responsible for finance.[73] The consultations between the two Ministers were necessary because they were aimed at enabling the Minister responsible for finance to take into account those business firms operating in an EPZ in coming up with fiscal measures in the national budget for the subsequent fiscal year. The Minister was then required to present the recommendations of the Board to Cabinet for approval. Thereafter, the Minister would issue a Statutory Instrument, declaring an area or premises an EPZ. The Statutory Instrument was to define the perimeter of the area or premises so declared an EPZ. Interestingly, and for reasons discussed below, not a single Statutory Instrument was ever issued in this regard.

[72] The Export Processing Zones, Act No.7 of 2001,s6 (a)-(l)
[73] The Export Processing Zones, Act No.7 of 2001, s14(1) & (2)

The law further empowered the EPZA to specify facilities to be provided and maintained in an EPZ which included adequate fencing or enclosures so as to separate the zone from the customs territory.[74] There was, however, no provision in the EPZ Act regarding who was to meet the cost of providing the specified facilities in the zone.

The above notwithstanding, for a business enterprise to qualify to operate in an EPZ, it ought to have been producing at least 80% of the goods for the export market while 20% could be disposed off in the customs territory provided prior permission had been obtained from the Board. However, such goods were to be subject to customs laws and regulations applicable to imports into the customs territory. For instance, a business enterprise operating in an EPZ would be required to pay import duty, import VAT and excise duty, where applicable, if that enterprise decided to dispose of its goods in the customs territory.

There were two ways in which an investor could invest in an EPZ. The investor could invest either as a developer or a licensee.[75] Whereas a developer would have to develop the EPZ in accordance with the permit granted by the EPZA specifying the facilities to be made available therein, a licensee would have to operate more or less like a lessee of the developer.[76] In other words, the developer having provided the specified facilities in the EPZ, would invite other business enterprises to set up their firms in that zone. Notably, however, both the developer and the licensee needed to apply for, and be granted, approval by the Board prior to starting operations in the EPZ. All applications for such permits or licences were to be determined within

[74] Defined in Section 2 of the Export Processing Zones, Act No.7 of 2001 as "any part of Zambia other than an EPZ"
[75] The Export Processing Zones, Act No.7 of 2001, s16(2)
[76] The Export Processing Zones, Act No.7 of 2001, s17

30 days of the applications being submitted to the Board.[77] This was an improvement from the 78 days (maximum) that had been prescribed under the Investment Act, 1986. What this meant, in essence, was that a licensee needed to make at least two applications before commencing operations in the EPZ. The first application was directed to the Board for permission to operate in an EPZ. The second application was directed to the developer of the EPZ, again, for permission to operate in the specific developer's EPZ. In any event, each application attracted a prescribed fee to be paid by the applicant.

In addition, the law empowered the Board to vary or amend any condition relating to changes to the investment either at the volition of the Board or upon application by the developer or licensee themselves. By implication, therefore, a licensee who was a lessee of the developer could apply to the EPZA for variation of the terms of his investment in the zone. Among the considerations upon which the EPZA would grant or refuse to grant the application was the extent to which the proposed investment would result in creation of employment and the degree of its export orientation. Thus, an applicant who failed to meet the minimum export-orientation criterion would not be granted the permit or licence to operate in the EPZ.

The developer or licensee was further required to implement the proposed investment within the permit or licence validity period of 10 years in the first instance. An investor who failed to implement the proposed investment within the validity period, needed to apply for renewal of the permit or licence on payment of a prescribed fee for a further 5 years at a time. If, for some reason, an investor was unable to implement the proposed investment, they were required to

[77] The Export Processing Zones, Act No.7 of 2001, s20

notify the Board of that investor's inability within 30 days of the investor becoming aware of the inability.[78]

Other than the above licensing requirements, all business enterprises licensed or permitted to carry out operations in EPZs were required to maintain specified records in which raw materials used in the manufacturing, including quantities of such materials, semi-finished products and manner of their disposal were recorded and a return made to the EPZA on a quarterly basis.[79] In terms of Section 28(1) of the EPZ Act, the Board was empowered to revoke a permit or licence if it was satisfied that the holder had committed any of the offences stipulated under the Act. An aggrieved permit or licence holder or indeed any applicant had the right to appeal to the Revenue Appeals Tribunal within timeframes specified by the Minister.[80] It would appear that the government presumed that only tax-related disputes would arise. The EPZ Act failed to provide for any other investment related disputes. For example, it was difficult to appreciate how an investor aggrieved with the Board's decision to refuse his/her application for an investment licence would appeal to the Revenue Appeals Tribunal since an investment licence was not a tax-related dispute.

While a developer was obliged under the EPZ Act, among other things, to "provide within the zone adequate accommodation and security facilities for officers of the Customs and Excise Division as determined by the Board and the Commissioner-General of Zambia Revenue Authority," it was silent on who was to meet the cost of the accommodation and other facilities

[78] The Export Processing Zones, Act No.7 of 2001, s24(1)
[79] The Export Processing Zones, Act No.7 of 2001, s26
[80] The Revenue Appeals Tribunal is a court established under the Revenue Appeals Tribunal Act No. 11 of 1998 to determine tax related disputes

for the Customs and Excise officials in the zone and on what terms and conditions.[81] Presumably, the developer was to meet the cost.

It was also not clear from the EPZ Act whether the licensee needed only one licence to operate more than one business enterprise within the EPZ. For instance, if a holding company needed to operate more than one subsidiary company engaged in different business activities, the EPZ Act was silent on whether such a holding company would obtain a single or multiple licences before the subsidiary companies could start their operations in the EPZ.

It is worth noting that EPZs were to operate in such a way that goods and services contracted to be bought from, or performed by an EPZ firm in, the customs territory would be considered 'imports' into the EPZ while those goods or services sold to, or performed by an EPZ firm in, the customs territory were to be deemed 'exports' into the customs territory and subject to import taxes.[82] The law prohibited any form of retail trade in goods produced in, or imported into, the EPZ. Similarly, rendering any business service within an EPZ was prohibited. Thus, goods in an EPZ were to be removed therefrom only under strict supervision of customs officials or as the Board directed. Developers of, or investors who set up their business enterprises in, EPZs were entitled to predefined incentives such as exemption from payment of taxes and customs duty. For example, an EPZ firm or business enterprise would be entitled to exemption from paying the following:

(i) corporate tax;

(ii) withholding tax on dividends and tax on investor royalties;

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[81] The Export Processing Zones, Act No.7 of 2001, s30(2)
[82] The Export Processing Zones, Act No.7 of 2001,s31

(iii) capital gains tax (even though no such tax ever existed in Zambia);

(iv) duty on imported raw materials, plant and machinery, intermediate and capital goods and services;

(v) import Value Added Tax; and

(vi) Excise Duty.[83]

Furthermore, an investor was entitled to a refund on Value Added Tax paid on goods and services purchased from a customs territory. According to section 37 of the EPZ Act, these incentives, however, were to be triggered upon the Board being satisfied that the investor had fully complied with both the provisions of the EPZ Act and the terms and conditions contained in the permit or licence. It is amusing that the EPZ Act provided for exemption from payment of capital gains tax by an EPZ investor when no such tax ever existed in the country.

Besides the incentives above, and in order to encourage exports, investors in the EPZs were also entitled to other incentives offered under the Manufacturing Under Bond[84] (MUB) and Duty Draw Back[85] (DDB) schemes which were introduced in 1988.[86] In this regard, the Minister remarked during the inaugural meeting of the Board, that "… other than the incentives under the EPZ Act, companies granted EPZ status shall also continue to enjoy all other incentives that are currently offered to them under MUB and DDB schemes."[87] The

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83 The Export Processing Zones, Act No.7 of 2001,s36(1)
84 Trade incentive in which duty on inputs used in manufacturing for export is suspended
94 Trade incentive where manufactures that have paid duty on imported inputs were reimbursed the amount of duty paid when they exported their goods, www.times.co.zm/archives
86 World Trade Organisation, *Trade Policies and Practices by Measure*, WT/TP/S/219, 2009, p29; www.wto.org/english/traptop_e/s219-03_e.doc 26/01/11
87 Times Reporter, 2005, "*Can EPZ survive where other similar ideas have failed*?" Supra

World Trade Organisation, however, states that the MUB and DDB schemes in Zambia suffered from delays not only in processing claims and refunding the tariffs, but also, and perhaps more importantly, the Government frequently ran out of funds to finance the refunds.[88]

Like previous statutes on investment, incentives under the EPZ Act could not be claimed as matter of right. They had to be granted separately before an investor could enjoy them.

If circumstances arose whereby an investor was entitled to incentives under both the EPZ Act and the Investment Act 1993, the investor was obliged to opt for incentives under the EPZ Act.[89] In other words, where a conflict arose between incentives under the Investment Act, 1993 and those under the EPZ Act, the provisions of the EPZ Act prevailed.

2.5 FAILURE OF THE EXPORT PROCESSING ZONES POLICY

In spite of enacting the EPZ Act in 2001, the Government abandoned the EPZ concept in 2002, even though the Board had been appointed and inaugurated.[90] The reasons for the abandonment of the policy were not clear. It was evident, however, that the policy shift was, to a large extent, not on account of inadequacies in the EPZ Act but rather on fiscal reasons.

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[88] World Trade Organisation, 2009, Trade Policies and Practices by Measure, WT/TP/S/219, p29; www.wto.org/english/traptop_e/s219-03_e.doc (Accessed 26/01/11)

[89] The Export Processing Zones, Act No.7 of 2001, s38

[90] Zambia, National Assembly (Debates, 14th August, 2009), www.parliament.gov.zm/debates&proceedings (Accessed 31/12/10)

As shown in the table 1 below, the government ran a budget deficit continuously for 4 years, a situation that jeopardised effective implementation of the EPZ policy.

Table 1: Showing Budget Performance from 2000-2003

YEAR	REVENUE	EXPENDITURE		
	(ZMK)	APPROVED (ZMK)	ACTUAL (ZMK)	DEFICIT (%)
2000	2,832,989,935,617	2,956,989,935,617	3,261,961,793,194	**15**
2001	3,621,579,857,979	5,425,627,020,053	5,679,754,293,934	**56.8**
2002	5,188,505,180,001	5,676,754,293,934	6,126,413,302,488	**18**
2003	4,133,617,003,374	6,931,510,010,142	6,633,510,010,142	**60**

Source: Author, constructed from information obtained from the 2000, 2001, 2002 and 2003 National Budgets

From the foregoing, it is clear that the budget deficit averaged 37.5% from 2000 to 2003. It can be assumed that the deficit would have been higher had the government continued with the EPZ policy. This is because revenue that the government raised would have been lost through tax holidays and exemptions granted to EPZ firms. This assumption was fortified by officials at the Ministry of Commerce, Trade and Industry during an interview[91] when they indicated that, among other reasons, the non-approval of permits to EPZ investors was due to the fact that the World Bank and the International Monetary Fund had expressed concern over the loss of the much needed revenue if enterprises were granted EPZ status. This, perhaps, explains why, according to the Ministry of Commerce, Trade and Industry officials, even

[91] Interview by the author with Ministry of Commerce, Trade and Industry officials held on 18th November, 2010

though a few business enterprises had applied for EPZ status, not a single permit or licence was granted by the EPZA Board.[92]

2.6 OTHER CAUSES OF EPZ FAILURE

Although the budget over-run was largely to blame for the failure of the EPZ policy, the EPZ Act also did contribute, to some extent. In this regard, it is important to examine selected provisions in the EPZ Act that may have had an adverse effect on the policy. These provisions have been selected because the defects have been addressed in the ZDA Act.

2.6.1 Incentives to Investors in EPZs

One of the objectives of the EPZ Act was to provide for the granting of incentives to investors in EPZs.[93] In terms of Section 36 of the Act, developers of, and operators in, EPZs were entitled to incentives stated above. The incentives were exclusive to investors in the EPZs. Non-EPZ firms, even if their products were the same in quality as those produced by EPZ firms, could not enjoy the same incentives. This meant that products by non-EPZ firms would have been disadvantaged in that while the cost of production was lowered through tax rebates for EPZ firms, it remained high for non-EPZ firms, thereby making their products uncompetitive. In addition, the incentives so provided were open-ended. In other words, the EPZ Act did not specify the period within which the incentives such as tax holidays would subsist. This entailed that although more investors would have been attracted to EPZs so as to enjoy the generous incentives for indefinite

[92]Ibid
[93] The Export Processing Zones, Act No.7 of 2001, Preamble

periods, the government would have lost a lot of revenue through taxes holidays. It can reasonably be assumed that these shortcomings may have contributed to scepticism by many stakeholders including the IMF and the World Bank insofar as loss of revenue was concerned particularly that the tax break periods were indefinite**.**

These loop holes, however, were addressed in the ZDA Act, 2006 in that non-MFEZ investors enjoyed the same incentives as their counterparts in MFEZs provided they invested in the priority sectors.[94] Secondly, incentives such as tax holidays were for a definite duration unlike under the EPZ Act.

2.6.2 Promotion of Non-Traditional Exports

There is a plethora of evidence to support the view that non-traditional exports (NTEs) provide a sustainable economic growth of any country.[95] In this vein, the UNCTAD stated that "promotion of NTEs and private sector development were two main pillars of sustained high economic growth in Zambia.[96] It further argued that given the country's natural resources, Zambia had high potential for export diversification especially into agriculture, agro-processing, tourism, textiles and light manufacturing.[97] It was noted that the EPZ Act only applied to agriculture, agro-processing and manufacturing.

[94] The Zambia Development, Act No.11of 2006, ss56-57
[95] W Ge, *The Dynamics of Export Processing Zones*, UNCTAD, Geneva, 1999, see also D Kanjungu, *Export Processing Zones in Zambia: What Lessons Can be Learnt?,* University of Stellenbosch, 2010
[96] UNCTAD, *Growing Micro and Small Enterprises in LDCs*, Geneva, 1997, pp70-90
[97] Ibid

It is submitted that with poverty levels at 70%, Zambia's domestic market was too small to support sustained high economic growth in production and employment necessary to reduce poverty.[98] A dynamic and competitive private sector cannot flourish if it produces only for small domestic market. In this regard, it is imperative that any regulatory framework that seeks to promote NTEs should provide for assistance to small and medium enterprises access finances and also for specific investment incentives. However, the EPZ Act failed to provide for the promotion and development of NTEs. This gap was addressed, to a large extent, in the ZDA Act as NTEs were extensive.[99]

2.6.3 Institutional Framework for EPZs

As already pointed out above, the EPZ Act created the EPZA, as a body corporate whose functions included, inter-alia, administering, controlling and regulating EPZs to ensure compliance with the law.[100] The EPZA was also required to evaluate the performance of EPZs. However, the Act failed to specify the methodology of evaluating the performance of EPZs. For example, the Act was silent on whether or not EPZ enterprises were to submit periodic returns to EPZA for purposes of evaluation. Although it was possible to provide for such matters in subsidiary legislation, it is argued that effective implementation of EPZs requires transparent approval, monitoring and evaluation processes to eliminate discretionary decision making. In any case, subsidiary legislation that was issued subsequently did not provide for the submission

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[98] USAID, *Zambia Economic Performance,* 2006
[99] The Zambia Development, Act No. 11 of 2006, Second Schedule
[100] The Export Development, Act No. 7 of 2001, s3

of returns.[101] In short, the capacity of the EPZA to carry out its functions was cardinal to the success of EPZs.

In view of the above, it is reasonable to argue that the EPZ policy was not a well thought out business model and that the government rushed into implementing it at a wrong time. It would appear that no comprehensive research was carried out prior to implementing the policy; hence the abandonment of the policy no sooner had it been introduced. It was chiefly for these reasons that the EPZ policy failed and was subsequently replaced, in 2006, by yet another business concept known as the Multi-Facility Economic Zones (MFEZs).[102] As discussed below, the MFEZ concept was premised on the SEZ policy whose origins were in the Far East Asian countries mainly China, Malaysia and Singapore.[103] The policy also borrowed extensively from the EPZ approach to economic growth and development.

Although many scholars world-over have written on foreign direct investment generally none, as far as this study is concerned, has focussed on investment in MFEZs. *Sit,* for example, makes a very pertinent statement concerning FDIs in EPZs.[104] He states that EPZs target the same clients, that is, Multi-National Corporations, and that countries use the same approach in attracting investors which takes the form of incentive packages such as waivers of land costs, tax holidays, tax-reduction and accelerated depreciation offered to foreign investors, thereby creating

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[101] Statutory Instrument, No.34 of 2003

[102] Speech by President Levy Mwanawasa at the Official Opening of the Fifth Session of the Ninth National Assembly, 2006, p34 : www.parliament.gov.zm/debates and proceedings, 20/03/ 09

[103] Minister of Commerce, Trade and Industry's Statement to the National Assembly, 18 February 2009; www.parliament.gov.zm/debates & proceedings, 20/03/09

[104] F V S Sit, *The Special Economic Zones of China: A New Type of Export Processing Zone?* in the Development Economies, XXIII-1, 1985, p69

intense competition amongst EPZs.[105] He goes further and outlines what, in his view, matters the most to the foreign investors in the zones. He claims that investors seek, among others, quality of labour, efficiency of the managing authority and possibility of industrial linkages with surrounding areas.[106] Conspicuously missing from his list of factors of interest to the foreign investor is location of the zones. This research argues that proximity of zones to entry and exit points of the country are among the cardinal issues of interest to a foreign investor so as to reduce or minimise transportation costs. Further, the research argues that the consistency with which the investment policy of the host country is implemented also plays an important role in attracting foreign investment.

In the same vein, *Kamuwanga* dedicates a chapter to discussing experiences of some developing countries in relation to regulating foreign direct investment.[107] Notably, the focus of the chapter is on regulatory regimes of the Andean Sub Region (some Latin American Countries), Malaysia and Yugoslavia in as far as foreign direct investment is concerned. Although *Kamuwanga* acknowledges and advocates the need for regulating investment, she does not address the issue of investment in zones. This is appreciated as zones are relatively new in Zambia.

In 2006, the Government launched two documents namely; the Vision 2030 and the Fifth National Development Plan (hereinafter referred to as "the Vision and the Plan" respectively). The Vision was the longest-term written plan the country had ever had and was as a result of nation-wide consultations involving various stakeholders including traditional leaders, civil

[105] Ibid, p69
[106] Ibid
[107] M Kamuwanga, Negotiating Investment Contracts, Investment Law in the Context of Development, Multi-Media Publications, 1995, Lusaka, p1

society, government departments, cooperating partners and the ordinary citizenry.[108] It expressed Zambia's aspirations to be a "Prosperous Middle-Income Nation" by the year 2030.[109] The Vision envisaged that by 2030, the country would be a strong and dynamic middle-income industrialised nation with an optimistic Gross Domestic Product (GDP) per capita of USD 2,185.[110] The Vision was to be operationalised through the implementation of five 5-year national development plans beginning with the Plan, 2006-2010.

The central theme of the Plan is that Zambia should have a "broad-based wealth and job creation platform" through citizenry participation and technological advancement.[111] It strategically focused on economic infrastructure such as manufacturing and human resource development as spring boards for this advancement. The Plan was divided into various sectors that were expected to contribute to the realisation of the Vision. Among them was the economic sector which focuses on ways in which the country's wealth and services were produced and utilised.[112] The economic sector consisted of sub-sectors such as manufacturing, commerce and trade and science and technology.[113] With regard to manufacturing, the Plan acknowledged a broadened manufacturing base as a cardinal ingredient for the revitalisation of the country's economic development. Manufacturing was considered the chief driver of increased annual economic growth rates necessary to attain the over-arching national goal of poverty reduction through wealth creation.

[108]Government Republic of Zambia, *Vision 2030*, Government Printer, Lusaka, 2006, p7
[109] Zambia, National Assembly (Debates of 14th August, 2009), www.parliament.gov.zm/debates & proceedings, (Accessed 27/10/10)
[110]Government Republic of Zambia, *Vision 2030*, Government Printer, Lusaka, 2006
[111] GRZ, *Fifth National Development Plan, 2006-2010,* Government Printer, Lusaka, 2005
[112] Ibid
[113] Ibid

As a way of achieving these objectives, the Government, under the auspices of the Triangle of Hope (ToH), introduced MFEZs.[114] The ToH was a concept designed to encourage the leadership of developing nations to focus on three pillars essential for economic success. The concept had its origins in Asia, particularly in Malaysia and stressed that unless the three pillars namely; political will and integrity; civil service efficiency and integrity; and private sector dynamism and integrity work together, no jobs and wealth would be created for any nation.[115]

Political will and integrity required and emphasised that government and political leaders should be selflessly dedicated to national development and incorruptible.[116] According to the theory, leaders should have the same vision for the future of their nation and see themselves as "servants and gifted by God" to serve their nation and its people in a selfless manner.[117] The second pillar is civil service efficiency and integrity. This pillar refers to the need for civil servants to understand that they are servants of the people and not masters and as such they should be dedicated, incorruptible, and totally apolitical, serving the government of the day without fear or favour.[118] The third pillar, private sector dynamism and integrity, emphasises the need for the corporate world to appreciate that the private sector is dynamic and that the problems of the nation are ever changing. In this regard, the private sector must work with the government to achieve national prosperity and realise that only if the ordinary people are happy and prosperous can the private sector, too, succeed.[119]

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[114] Zambia, National Assembly (Debates, 18th February, 2009), www.parliament.gov.zm/debates & proceedings, (Accessed 27/10/10)

[115] D J Jegathesan et al, *Strategic Action Initiatives for Economic Development: Trade and Investment Promotion in Zambia* ,e-forum, Graduate Institute of Policy Studies, Tokyo, 2006 p 212 : www.grips.ac.jp/forum-e/DCDA , (Accessed 30/04/10)

[116] Ibid

[117] Ibid

[118] Ibid

[119] Ibid, p213

Proponents of the ToH concept argued, further, that if one or more of these pillars did not work to its full potential, a nation would not prosper. They contended that even in a badly governed nation which had these three pillars operating at the same wave-length, there would be a trickle of investment by companies hoping to reap the profits for high-risk activities, such as mining.[120] In the words of *Dato' J Jegathesan and Masayoshi Ono*[121] "for investment to trickle in requires changing the mindset at all levels of leadership, to move from a business as usual attitude to an awareness of the need for dynamic change and a strong commitment to growth and development."[122]

As earlier pointed out, the MFEZs, thus, emanated from the ToH theory and had been seen as an effective tool in assisting Zambia jump start its economic development by attracting more foreign investment particularly in the manufacturing sector. MFEZs were being implemented to make Zambia a 'centre of excellence' in economic development through increased activity especially in the trade and manufacturing sectors.[123] In order to facilitate the establishment of enterprises of international standards, MFEZs were to have the necessary physical and fiscal infrastructure put in place by the Government and private sector.[124] It was for purposes of constructing physical infrastructure that in the 2009 National Budget, Government allocated K30 billion[125] for the construction of access roads in various MFEZs.[126] The Government anticipated

[120] Ibid, pp211-212
[121] Experts engaged by JICA-sponsored ToH technical assistance on promotion of South-South/Asia-Africa Cooperation
[122] D J Jegathesan et al, supra
[123] Ibid
[124] Ibid
[125] Approximately USD 6.0 million
[126] 2009 Budget Address to the National Assembly by the Minister of Finance and National Planning, Republic of Zambia,p12 (Accessed 30/01/09)

that FDIs in the manufacturing sector, would at minimum, triple once the MFEZs are fully operational and that more employment opportunities will be created while NTEs earnings will increase, thereby raising the country's foreign reserves.[127]

To operationalise this new business model, the Government enacted the ZDA Act, 2006 as the legal and regulatory framework for investing not only in MFEZs but also in the rest of the country. According to *Dipak Patel*, then Minister of Commerce, Trade and Industry, the ZDA Act was enacted to "establish an efficient one-stop facility that would reduce the inconvenience to investors and exporters through bureaucracy arising from the functions of 5 statutory bodies namely; the Export Board of Zambia, the Zambia Investment Centre, the Small Enterprises Development Board, the Zambia Privatisation Agency and the Export Processing Zones Authority."[128] The ZDA Act repealed and replaced the various statutes that created these bodies.

At the time of this study, six areas had been identified and declared MFEZs. These were Chambishi MFEZ and Sub-Saharan Gemstone Exchange Industrial Park in the Copperbelt Province, Roma Industrial Park, Lusaka Sub-Zone and Lusaka South MFEZ in the Lusaka Province, and Lumwana in the North-Western Province.[129] There were also plans to set up MFEZs in border towns such as Nakonde in the Northern Province bordering with Tanzania, Kasumbalesa in the Copperbelt region bordering with Democratic Republic of Congo, Mpulungu

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[127] Speech to the Fifth Session of the Ninth National Assembly by President Mwanawasa, 2006. Government Printer www.parliament.gov.zm/ debates & Proceedings, (Accessed 20/09/09)

[128] Zambia, National Assembly (Debates, 14th March,2006): www.parliament.gov.zm/debates& proceedings, (Accessed 20/10/09)

[129] Statement to the National Assembly, (Minister of Commerce, Trade and Industry 18th February, 2009): www.parliament.gov.zm/debates, (Accessed 20/10/09)

on the shores of Lake Tanganyika which provides access to the Great Lakes Region and Chembe in Luapula Province also bordering with Democratic Republic of Congo before spreading them out to each district in the country.[130]

The development of the Chambishi and Lusaka Sub-Zone MFEZs was being spearheaded by the China Non-Ferrous Metal Mining Corporation Limited while the Lusaka South MFEZ is being developed by the Government of Zambia in conjunction with the Kulim Technology Industrial Park Corporation of Malaysia on a Private-Public Partnership arrangement. The MFEZ received technical assistance from the Japanese experts under the auspices of Japan International Cooperation Agency.[131] The developers of the Lumwana MFEZ were Lumwana Properties Development Company Limited with support from Lumwana Mine Plc, an Australian listed company[132] while the Ndola Sub-Saharan Gemstone Exchange Industrial Park was being developed by Zambian entrepreneurs. Roma Industrial Park was being developed by CPD Properties of South Africa.[133]

2.7 CONCLUSION

This chapter has traced and examined the country's development or investment legislation from independence to-date. This has been done in order to appreciate the economic structure that the government was pursuing. In so doing, some salient provisions of the various pieces of legislation enacted prior to 2001 have been examined and commented on. A conclusion has been

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[130] Ibid
[131] Ibid
[132]M.Kapekele, "*Lumwana Mine Heads plans for Multi-Facility Economic Zone"*, The Post, 16th May 2010; www.postzambia.com, 23/08/10
[133] CPD Properties web site: www.romapark.co.zm/index.php, (Accessed 05/10/10)

drawn that in spite of the numerous pieces of legislation on investment, not much economic development has taken place partly because of inconsistencies in economic policies by successive governments. In the proceeding chapter, the theoretical basis of the zone concept upon which MFEZs are premised is introduced and elaborated on.

CHAPTER THREE

3.0 THEORETICAL BASIS FOR THE ECONOMIC ZONE CONCEPT

3.1 INTRODUCTION

The preceding chapter has traced and discussed various investment laws the government enacted from independence. In this chapter the rationale behind the establishment and development of zones is discussed generally. The chapter determines the relevance of zones in the development of a country such as Zambia. It also addresses the reasons for embarking on zones in preference to other economic models. This is done in order to appreciate the theoretical basis of cluster economic planning and also to answer the question whether or not MFEZs are necessary in Zambia's economic development agenda.

3.2 ECONOMIC RATIONALE FOR ZONE DEVELOPMENT

The zone concept began to gain momentum in many parts of the world in the early 1980s.[1] The concept entailed, as it still does today, the setting up of tax-free enclaves for investors from both within the host country and abroad to set business enterprises therein.[2] The International Labour Organisation (ILO) estimated that as of 2006, there were at least 3,500 zones known by different names in different countries. For instance, in Mexico the zones were known as *maquiladoras,*[3]

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[1] L Lakshmanan, *Evolution of Special Economic Zones and Some Issues: The Indian Experience*, Reserve Bank of India Staff Studies, 2009, p6, www.kiet.re.kr/publication/kim.pdf. (Accessed 11/11/10)
[2] J A Dohrmann, *Special Economic Zones in India-An Introduction* in ASIEN Journal Vol. 106, 2008, pp60-80
[3] A Aggarwal, *Economic Impacts of SEZs: Theoretical Approaches and Analysis of newly notified SEZs in India*, 2010,p9 www.mpra.ub.uni-muenchen.de/20902, (Accessed 11/11/10)

whereas in Kenya and Mauritius they were called Export Processing Zones.[4] They were known as Special Economic Zones in India and China[5] whereas in the United States of America, they were called Urban Enterprises or Foreign Trade Zones.[6] In South Africa they were referred to as Industrial Development Zones[7] while in Brazil[8] and Malaysia,[9] they were called Free Trade Zones (FTZs) or Free Commercial Zones. In Zambia, zones were known as Multi-Facility Economic Zones.[10]

The ILO aptly described zones, especially EPZs, as industrial enclaves in which imported materials underwent some degree of processing before being re-exported and that these enclaves had special incentives meant to attract foreign investors.[11] These enclaves were created by way of offering special incentives to would be investors. Special incentives included exemption from payment of customs duty and payment of income tax at reduced rates, tax holidays and accelerated depreciation and other manufacturing incentives such as streamlined administration, cheaper utilities and superior infrastructure. It is in this light that *Chang* asserts that a SEZ, in essence, is a geographically defined area within which certain types of economic activities take place without some of the government taxation and regulation measures that would apply to them if they operated in the rest of the country.[12] He argues, further, that SEZs as designated areas enjoy exemption from payment of customs duties and import controls and that it is these

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[4]Ibid,p9

[5]Ibid, p9

[6]Lakshamanan, Evolution of Special Economic Zones and Some Issues: The Indian Experience, Reserve Bank of India Staff Studies,p8, www.kiet.re.kr/publication/kim.pdf.(Accessed 11/11/10)

[7]A Aggarwal, supra

[8] Ibid

[9]K Kim, *Free Economic Zones in Korea,* Korea Institute for Industrial Economic and Trade, 2006, P 2, www.kiet.re.kr/publication/kim.pdf (Accessed 11/11/10)

[10]Zambia Development Agency, Act No.18 of 2006, s18

[11] ILO, *Report of the In-focus Initiative on Export Processing Zones: Latest Trends and Policy development in EPZs*, Geneva, 2008, p2

[12] W N Chang et al, *Types of Tax Concessions for Attracting Foreign Direct Investment in Free Economic Zones*, CESIFO Working Paper No. 1175, 2004, pp 1-3 www.SSRN.com/abstract=534707 (Accessed 11/11/10)

exemptions that provide an attractive environment for investment, technology transfer, promotion of exports and creation of employment opportunities in zones.[13] *Chang,* however, differentiates between Free Trade Zones and EPZs. According to him, Free Trade Zones refer to warehousing areas where goods are stored and re-exported into the customs territory of the host country or abroad without substantial transformation, whereas EPZs are meant for processing export-oriented industrial products and are usually fenced off for that purpose.[14]

It is clear that the only difference between an EPZ and a SEZ from an ILO perspective is the fact that whereas an EPZ is an enclosed enclave meant for re-processing of goods for export, a SEZ is a geographically delineated area (not necessarily enclosed) within which multi-facility industrial and commercial activities take place simultaneously for purpose of producing goods mainly for sale on the international market.

In this vein *Aggarwal* observes that it is common for countries to offer exemptions from the application of certain aspects of the national labour laws and regulations to investors in zones.[15] For example, labour regulations may exclude formation of trade unions in zones. The whole essence of zoning, thus, is to provide an attractive environment for foreign investment in the host country through the use of investment incentives.

The fact that zones were known, and perhaps understood, to mean different things to different people is testimony enough that there is no universally accepted definition of a zone. Regardless of the name by which a zone is known, there is a common thread running through all of them.

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[13]Ibid

[14] Ibid

[15]A Aggarwal, *Economic Impacts of SEZs: Theoretical Approaches and Analysis of newly notified SEZs in India*,2010,p9 www.mpra.ub.uni-muenchen.de/20902,(Accessed 11/11/10)

They are designed, and intended, to attract foreign investors into the host country.[16] Countries set up economic zones for various reasons. In India, *Aggarwal* acknowledges that the impact of SEZs on employment, poverty reduction and human development particularly for women is positive as their employability and positions in the households are increased.[17] Although *Aggarwal* seems to restrict benefits emanating from SEZs to employment and poverty reduction, there are other benefits such as transfer of technology, skills development and increased foreign exchange earnings which accrue from zones.

Thus, from any perspective, economic zones are viewed as necessary tools in the economic growth. This perhaps explains why, as earlier stated, whereas there were only about 79 zones in 25 countries in 1975, there were at least 3,500 zones across 130 countries in 2006, employing about 66 million people of which China alone accounted for 40 million.[18] Over time, commercial activities in economic zones developed from merely being assembly and simple processing activities to being, *inter-alia*, high tech and science parks, finance zones, logistics centres and tourist resorts.[19] As can be seen in the pie chart 1 below, zones continued to gain momentum with North America and Asia taking the lead. The benefits emanating from zones cannot be denied or glossed-over.

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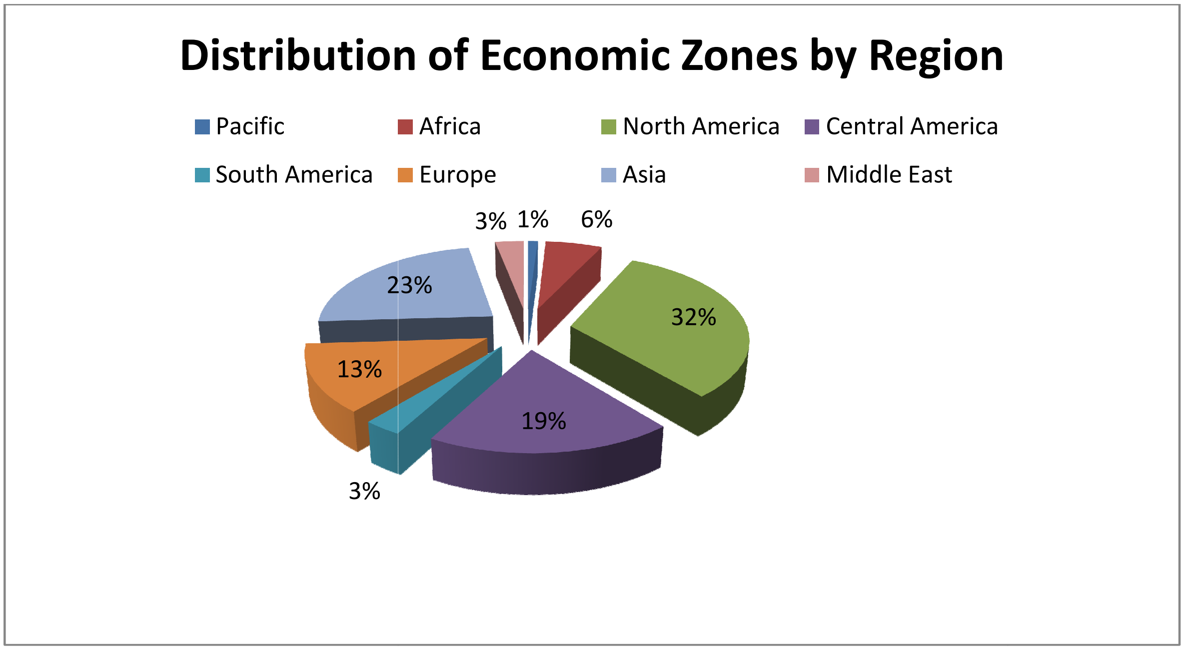
[16] S Perman et al, *Behind the Brand Names: Working conditions and Labour Rights in Export Processing Zones,* 2004, pp3-4, www.icftu.org/www/PDF/EPZreport.pdf, (Accessed 11/11/10)

[17] A Aggarwal, *Impact of Special Economic Zones on Employment, Poverty and Human Development*, Indian Council for Research on International Economic Relations, Working Paper No. 194, p1-5, www.Sicrier.org/page.asp? menuID=24F.sub catld=175 of subcatld=285,(Accessed 29/11/09)

[18] ILO, *Report of the In-focus Initiative on Export Processing Zones: Latest Trends and Policy development in EPZs,* Geneva, 2008, p2

[19] Ibid

Pie Chart 1: Distribution of Economic Zones by Region



Source: FIAS Bearing Point, Inc. 2004

Notably, a lot of countries particularly in the third world have become more zealous now than they were four decades ago in establishing economic zones of one type or the other. Although there is no consensus as to how countries should be classified as third world nations, the classification is generally based on political and economic status. While high levels of industrialisation, freedom of trade and political expression, democratically elected governments, respect for human rights, low rates of population growth and high levels of poverty are associated with the developed (first world) countries, military coups d'états, war, malnutrition, unsafe water supplies, widespread prostitution, inadequate health facilities characterise the third world countries.[20]

[20] *The Third World, www.eNotes.com (Accessed: 23/07/12)*

Problems facing third world countries led to a debate on whether the third world countries should follow the economic and political footprints of the first world countries. On the one hand, advocates of the first world economic structures argue that development can only take place if the third world governments introduced capitalist economic reforms in their countries.[21] In this vein, *Prof Hanke* argues that increased economic freedom such as respect for private property rights, low tariffs, non existence of price controls and limited state owned enterprises would increase the prosperity of third world countries, increase life expectancy and equitable income distribution.[22] According to him, "economic freedom and economic wealth are inextricably linked and all these signs point in the same direction; those who would like people to enjoy greater prosperity must work to assure greater economic liberty."[23] He argues further that capitalisation may take various forms such as providing small loans so that people can start a business or opening a developing nation's market in order to engage in global trade.[24] This argument is supported by *Prof Mandle* who argues that globalisation accounts for many former third world countries becoming centres of modern production.[25]

However, there are other scholars who oppose the capitalist way of development and argue that Western capitalism is ill suited for the third world nations because it destroys local institutions as it does not support traditional rural development. According to *Mehmet*, one of the critics, the development theories proffered by Western economists have created "the slums and urban poverty that are now the dismal realities of many third world cities".[26] This view rests on *Gereffi,*

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[21] Ibid
[22] Ibid
[23] Ibid
[24] Ibid
[25] Ibid
[26] Ibid

and *Hempel* who note that globalisation has perpetuated economic inequality in developing countries and observe that only businesses and workers with sufficient skills and resources benefit from an expanding global economy. For the third world countries, ecological impact of Western businesses in the developing countries is of great concern.[27] They condemn Western companies for causing significant environmental damage to developing nations through excessive logging, which increases the incidents of floods and landslides and pollution as a result of mass industrialisation.[28] They contend that developing nations should rely on economic and agricultural practices that protect the environment and reflect a country's indigenous values.[29]

Clearly, the debate on classification of countries as first, second, third or fourth world will continue to rage on for some time. However, the yardstick used will keep changing because some of the characteristics used in classifying third world countries, are no longer valid. Classifying countries' prosperity in terms of GDP per capita, for instance, is obsolete as countries that were once classified as third world a few years ago, have higher GDP per capita than the so called first world countries today. This is true of the Far East Asian countries whose economic growth rates have been consistently high over long periods of time.

In any case, Zambia embraced the global trade theory in its quest to develop economically and hence embarking on the development of zones as a way of achieving this objective. To appreciate the economic zone phenomenon, it was imperative to consider some of the theoretical bases to zone development. In this regard, *Aggarwal* postulates a number of theories. Among them, the following:

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[27] Ibid
[28] Ibid
[29] Ibid

(a) Neo-Classical Theory

This approach is also known as the orthodox theory. The theory places emphasis on free trade. It views economic zones as enclaves that offer open and more free polices in order to encourage and promote international trade.[30] It argues further that international trade results in a substantial welfare being gained particularly if free trade is not politically viable in the rest of the economy. The theory, however, does not elucidate on the welfare gains that result from zones. If employment, for instance, is part of the welfare gains advanced by the theorists then, there is evidence that, in fact, zones poorly remunerate employees.[31] The assumption of the theory is that liberalisation allows markets to set the right prices, hence promoting efficiency and based on the law of demand and supply increasing income which, in turn, leads to economic growth. Critics of the theory argue that economic zones are merely trade instruments which distort trade patterns and promote unfair competition between domestic and economic zone firms.[32] They argue, further, that economic zones are a drain on government revenue in that zone firms receive preferential treatment such as payment of reduced corporate tax and other incentives. Furthermore, they argue that if the rest of the economy is not liberalised, economic zones remain production enclaves with little, if any, economic contribution to the country.[33]

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[30] A Aggarwal, *Impact of Special Economic Zones on Employment, Poverty and Human Development*, Indian Council for Research on International Economic Relations, Working Paper No. 194, p1-5, www.Sicrier.org/page.asp? menuID=24F.sub catld=175 of subcatld=285,(Accessed 29/11/09)

[31] U Halim, *Special Economic Zones(SEZs): Untold Agonies from Experiences from Asian Countries,* www.archive.foodsov.org/resources/resources_000007

[32] A Aggarwal, *Impact of Special Economic Zones on Employment, Poverty and Human Development*, Indian Council for Research on International Economic Relations, Working Paper No. 194, p1-5, www.Sicrier.org/page.asp? menuID=24F.sub catld=175 of subcatld=285,(Accessed 29/11/09)

[33] Ibid

They view zones as being useful only if the government uses them as a vehicle for the entire economy-wide reforms.[34] In their view, the role of zones is and should be, transitory; facilitating the transition of an economy from import-substituting to free trade regime with minimal government intervention. According to *Madani*, economic zones "lose their significance as a country implements country-wide systemic trade, macroeconomic and exchange rate reforms."[35] He asserts that as a country implements country-wide systemic trade, macroeconomics and exchange rate reforms, the economic value of economic zones diminishes because as the reforms are implemented in the entire country, it becomes difficult to differentiate between an economic zone product and non-economic zone product as the two are treated equally.

In short, critics argue that zones should be a means to an end and not the end in themselves. Economic zones should be embarked on as a means to reforming the economy and not to be the sole drivers of economic development. Notably, however, even radical critics like *Madani* concede that zones contribute significantly to the economic development of the host country whether or not the country's economy is passing through an economic transitory period. It is argued that although free trade is important, it may not yield positive impacts on the welfare and/or economy of the country unless government plays an active role. As is discussed below, following the privatisation programme in Zambia, the government assumed the role of regulator

[34] Ibid
[35] D Madani, *A Review of the role and Impact of Export Processing Zones*, World Bank, Research Paper No. 2238, Washington DC,1999. www.site,12/12/10esources.worldbank.org/INTRANETTRADE/Resources/MadaniEPZ.pdf (Accessed 12/12/10)

only and this resulted in uncompetitive business tendencies by the private sector. Consequently a lot of the privatised businesses closed down thereby negating the welfare gains that theory expounds.

(b) Political Economy Theory

Like the neo-classical approach, political economy theory argues that the best strategy for all countries and in all situations is to liberalise the economy so that free trade with minimal state intervention guarantees economic growth.[36] In other words, the theory advocates that governments should adopt trade policies that allow traders to act or transact business without interference from it so that trading parties are permitted to gain mutually from trade in goods and services. In this way, the gains would be manifest either in the form of social welfare or economic growth.

The theory argues further that government intervention only promotes lobbying by interest groups for rent seeking. Rent seeking is a tendency by companies and other business enterprises with ability to use their resources to obtain economic gain without reciprocating any benefits back to society through wealth creation.[37] They insist that the main object of a zone policy is to generate rents to a few capitalists by

[36] Ibid
[37] Ibid

facilitating land acquisition and offering tax incentives at the expense of the rest of the population (rent seeking), which in turn, reduces the overall welfare.[38]

It is for this reason that theorists argue that what is important is to liberalise trade and economic growth will inevitably ensue and that if the government needs to intervene, the intervention must be to a bare minimum. *Khan* in responding to both arguments on this theory states that even assuming that free trade and economic growth argument were true, evidence exits, especially in industrialised countries where governments manipulated and maintained rents to create a capitalist class and after the creation of this class the same governments used these rents to encourage capitalist companies to invest in various economic sectors.[39]

In other words, for *Khan*, whether or not zones encourage rent seeking is immaterial. What is cardinal is how a government responds to rent seeking. A government can take advantage of rent seeking by creating conducive environment for the "capitalist" to invest his money in.

This theory seems to have support especially in Zambia's post privatisation era where market forces were freely allowed to dictate commerce in the country with minimal government intervention. As stated above, the results were disastrous as many

[38] An example is where a company lobbies government for loan subsides, grants or tariff protection which activities do not create a benefit for society but rather re-distributes resources from the tax payers to the special-interest groups

[39] Khan, *State Failure in Developing Countries in "Toward Pro-Poor Policies: Aid, Institution, and Globalisation* In Economic Impacts of SEZs: Theoretical Approaches and analysis of newly notified SEZs in India", 2010 New Delhi, p14, www.eprints.soas.ac.uk/3683/1/state:failure.pdf (Accessed 12/11/10)

privatised firms that could not compete against foreign goods, closed down and jobs that were anticipated to be created were not created. In fact, the few existing jobs were lost. The results of privatisation would, perhaps, have been different had the post privatisation era been conducted with appropriate government intervention.

(c) Heterodox Theory

This school of thought argues that domestic firms lack or have inadequate technical, marketing and managerial know-how because they rarely have access to international distribution channels.[40] In order to fill the gap, and unlike the neo-classical theorists, heterodox theorists advocate a mixture of state and market interactions, in which the government plays a significant role in economic investment, human capital formation, acquisition of technology and the promotion of policy and institutional reforms.[41]

In this regard, proponents argue that by offering an enabling investment climate through incentives such as efficient infrastructure, simplified regulatory systems, tax exemptions and strategic locations, economic zones play a significant role in attracting foreign direct investment which is usually accompanied by better technologies, improved managerial skills and other spill-over effects such as labour and managerial on-the-job training. In this vein, and according to *Milberg,* zones offer a unique opportunity for learning, improving and transforming raw materials

[40] Ibid
[41] Ibid

through the flow of new technology, knowledge and skills.[42] The essence of this theory is that there ought to be a balance between state and free trade and that economic zones provide the best platform for this balance.

Critics though admitting the importance of economic zones, argue that if the country's investment climate is improved significantly, zones become superfluous in the country's economic performance.[43] In this regard, economic zones are considered necessary during the initial stages of economic reforms of a country. To this extent this theory agrees with the argument by political economy theorists who consider zones as essential economic transitory tools. As discussed below, this theory seems to have guided the Chinese economic reforms that have seen rapid growth rates in the past three decades. While free trade was introduced and encouraged, the Chinese government played, and still plays, a significant role in the running of the economy.[44] For instance, the government still runs parastatal companies either singularly or as joint ventures between itself and foreign investors.

(d) The Global Value Chain Approach

The global value chain theory is an extension of the heterodox theory. It propagates that the globalisation process has brought about the emergence of what is known as 'global value chains'. This means that a firm must know where to produce a product

[42] Milberg, *Export Processing Zones, Industrial Upgrading and Economic Development: A Survey, SCEPA* Working Papers 2007-10, Schwartz Centre for Economic Policy Analysis, New School University, 2002, www.economicpolicy research.org/globalisation- and- trade. html11/11/10
[43] Ibid
[44] Ibid

at a relatively lower cost. In order to do this, a firm may either engage in off-shoring and /or off-shore outsourcing. Advocates argue that market forces alone will not ensure effective integration of domestic firms in these global value chains because competition is so intense that unless deliberate policies are introduced to foster a favourable investment climate, domestic firms will not be able to integrate within these networks.[45] By establishing zones, therefore, the host country's firms are facilitated into insertion into global value chains through both off-shoring and off-shore outsourcing.[46] This integration within the global value chains is an important way of strengthening the competitiveness of a developing country so that it forms and builds its own productive capacities. Entry into global value chains ensures access to global pool of new technologies, capital and market, and upgrading of firms-level capacities from learning through technology diffusion, and exposure to international best practice system of corporate governance.[47]

Consequently, by 'learning by exporting', domestic firms can target more sophisticated market segments such as designing, marketing and branding.[48] Thus, economic zones can be a potential tool for promotion and diversification of export activities. This is how the East Asian countries zones producers have upgraded from assembly of imported inputs to increased local production and sourcing, to design of products sold under the branded merchandise in internal and external markets.[49] In

[45] D Madani, *A Review of the role and Impact of Export Processing Zones*, World Bank, Research Paper No. 2238, Washington C,1999,www.site,12/12/10esources.worldbank.org/INTRANETTRADE/Resources/MadaniEPZ.pdf (Accessed 12/12/10)
[46] Ibid
[47] Ibid
[48] Ibid
[49] Ibid

all these countries economic zones were used as a tool to attract off-shore outsourcing and off-shoring activities. In short, economic zones promoted both domestic and foreign direct investment.

(e) Agglomeration Economies Theory

The agglomeration economies[50] theory is an extension of the heterodox and global value chains theories and focuses on reallocation of resources in such a way that promotes productivity and innovativeness and that economic zones are most suitable for that purpose. It argues that once economies are agglomerated, knowledge spill-overs, resource sharing and labour pooling will follow. In this vein, zones are viewed as clusters of outward oriented firms that governments promote in order to exploit the benefit arising from global value chains. It is these clusters that enhance productivity and spur innovation by bringing together new technology, information, specialised skills competing companies, academic institutions, financial, health and other institutions.[51] According to this theory, the success of economic zones depends on a set of four factors namely; firms structure, strategy and rivalry, demand conditions, factor conditions and supporting industries.[52] Advocates of this theory argue further that the more intense and developed the interaction of these factors are, the greater is the productivity effects of these clusters and that the more outward oriented they are,

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[50] In urban economics, term is used to describe the benefits that firms derive from locating near each other. It relate to economies of scale and network effects; www.economicshelp.org/dictionary/agglomeration-economics.html (Accessed, 14/01/11)

[51] J Y Kim et al, *Formation of Foreign Direct Investment Clustering- A New Path to Local Economic Development? The Case of Qingdao*, Regional Studies, 42(2), pp 265-280, 2008 www.ideas.repec.org/a/taf/regstd/v42g2008i2p265-280.html,9 (Accessed 10/01/11)

[52] Ibid

the greater the intensity of interaction among these factors. In other words, close proximity of foreign and domestic firms and the accompanying linkages, facilitate technology spill-overs and demonstration effects. Openness to the international markets imparts dynamism to clusters and enhances factor specialisation and upgrading and demand sophistication.

In this regard, *Kim* emphasises and observes that local producers learn greatly from global buyers about how to improve production processes, attain consistency and high quality of productivity and increase the rate of response.[53] He argues further that geographically concentrated foreign companies are better than dispersed foreign companies in transferring technology and managerial skills through training and spill-overs to domestic firms.[54] Firms in the cluster forge linkages with external actors and enhance their competitiveness.[55] Economic zones are tools to be used to insert the domestic economy into the global economy and to enhance productivity of resources through knowledge spill-overs, technology diffusion and demonstrative effects by exploiting agglomerations economies.[56] Economic zones not only reduce barriers to the flow of capital and trade and intensify global competition, but can also be used as drivers of global-city formation.

It is important to note that regardless of the theory one subscribes to, it is indisputable that economic zones are designed to avail preferential treatment to firms that are established

[53] Ibid
[54] Ibid
[55] Ibid
[56] Ibid

therein. This preferential treatment is aimed at enticing foreign direct investment into the host country as the cost of production is relatively lowered compared to the rest of the country or economy. This is because various incentives are granted exclusively to business enterprises producing priority goods or services.

3.3 ESTABLISHMENT AND DEVELOPMENT OF MULTI-FACILITY ECONOMIC ZONES IN ZAMBIA

In or about 2005, the government realised that although the macroeconomic and political stability Zambia was enjoying were important preconditions for economic growth and development, they were, in themselves, insufficient to attract substantial and desirable levels of both local and foreign investment.[57] In order to promote increased economic growth, the government sought to create an investment climate that would promote and increase foreign direct investment and international trade which were seen as engines of economic growth and development and as necessary tools for poverty reduction.[58]

In this regard, the government embarked on the MFEZs policy under the ToH initiative.[59] As discussed in the preceding chapters, the ToH was a strategic initiative aimed at increasing, consistently, the economic growth rate of a country. It was hoped that by offering privileged

[57] Zambia Development Agency Magazine, *The Impact of Direct Investment on the Zambian Economy*, ZDA, Lusaka, 2009, p1
[58] Ibid
[59] Ibid

terms, MFEZs would attract increased foreign investment and foreign exchange earnings, spur employment and boost the development of improved technologies and infrastructure.[60]

According to the Zambian Economist,[61] the main objective of the MFEZ policy in Zambia was to "catalyse industrial and economic development through increased activity in the manufacturing sector where value addition to the numerous natural and agricultural raw materials, hitherto exported in raw form, would be undertaken for purposes of enhancing both domestic and export oriented businesses."[62] In order to facilitate the establishment of enterprises of international standard, MFEZs were to have the necessary physical infrastructure put in place by the Government[63] and/or the private sector.[64] The Government was of the view that MFEZs were trade development tools that would promote rapid economic growth through the use of tax and other business incentives as bait for foreign investment and technology transfer.[65]

3.4 THE LEGAL AND REGULATORY FRAMEWORK FOR THE MULTI-FACILITY ECONOMIC ZONES

As stated above, the Government enacted the Zambia Development Agency Act, 2006 as the legal and regulatory framework for investing not only in the MFEZs but also in the rest of the

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[60] Speech by President Levy P Mwanawasa, SC at the Official Opening of the Fifth Session of the Ninth National Assembly, 2006 p34 : www.parliament.gov.zm, (Accessed 18/01/10)
[61] Zambian Economist Magazine, *Economic Impact of MFEZs*, www.zambian-economist.com, (Accessed 1/06/10)
[62] Ibid
[63] Zambia Development Agency (Lusaka South Multi-Facility Economic Zone)(Declaration) Order, Statutory Instrument No. 47 of 2010
[64] Zambia Development Agency (Chambishi Multi-Facility Economic Zone)(Declaration) Order, Statutory Instrument No. 16 of 2007
[65] Zambia, National Assembly (Debates,18 February,2009), Debate by *Felix Mutati* Minister of Commerce, Trade and Industry www.parliament.gov.zm/debates & proceedings, 16/07/10

country. The essence of the ZDA Act was "to create an environment that fostered economic development through the promotion and facilitation of both local and foreign investment in Zambia**.**

The ZDA Act sought to provide an attractive, efficient and effective strategy for private sector investment in Zambia so as to foster economic growth through international trade.[66] Increased international trade and competitiveness were viewed as key to the country's economic prosperity.[67] The ZDA Act aimed at creating conditions that would enable the country increase its trade capacity and ensure that Zambia's business enterprises competed favourably on the international market. Unlike the EPZ Act, the ZDA Act applied to all investors in all sectors of the economy located anywhere in the country. The only exception related to sectors and industries involved in the manufacture of military equipment, poisonous and toxic materials and currency and coins which required further approvals by other regulatory authorities.[68]

The ZDA Act defined a MFEZ as "any area or premises that had been declared a MFEZ."[69] Although this definition does not make clear what a MFEZ really was, in terms of Regulation 2 of the Multi-Facility Economic Zones (General) Regulations, 2006, a MFEZ referred to an area of land where multi-facility economic activities were carried out. Multi-facility economic activities were defined as commercial activities in connection with contracts, banking, patents, trademarks, designs, companies, partnerships, export and import of merchandise, affreightment, insurance, banking and agency. From the legal perspective, therefore, a MFEZ

[66] The Zambia Development Agency, Act No. 11 of 2006, preamble
[67] Zambia Development Agency Magazine, *Economic Impact of Direct Investment on the Zambian Economy*, supra, p1
[68] Ibid
[69] The Zambia Development Agency, Act No. 11 of 2006, s18

was an area or premises declared as such by the Minister responsible for Commerce, Trade and Industry by a statutory instrument, in which economic activities such as manufacturing and trade take place simultaneously**.**

From the forgoing, it is not far-fetched to argue that MFEZs fall within the ILO and global understanding of economic zones. That is to say, a MFEZ is a geographically delineated area with specially built physical infrastructure, where different or multiple economic activities take place simultaneously. It possesses or ought to possess special economic regulations that are different from the rest of the country and that are conducive to attracting foreign direct investment.

The MFEZ concept borrowed extensively from EPZs. For example, like under the EPZ Act, the ZDA Act empowered the Minister responsible for Commerce, Trade and Industry to declare by a statutory instrument, a particular area, building or premises to be an MFEZ.[70] Such an area would have to be provided with certain facilities necessary for effective and efficient operations of a MFEZ. The facilities to be provided included, *inter alia,* the following:

(i) cleared and zoned land;

(ii) reliable road and rail linkage;

(iii) uninterrupted water supply;

(iv) telecommunications infrastructure;

[70] The Zambia Development Agency, Act No. 11 of 2006, s18

(v) waste disposal system for both toxic and non toxic waste;

(vi) executive housing; and

(vii) medical, educational and recreational facilities.[71]

The ZDA Act also establishes a regulatory institution known as the Zambia Development Agency (hereinafter referred to as "the Agency") as a body corporate. The Agency was administered by a Board consisting of nine (9) officials from relevant government or quasi-government institutions and six (6) representatives from the private sector and civil society organisations as members. Although the composition of the Board was still skewed towards government, it was better in comparison to compositions of Boards created under previous pieces of legislation dealing with investment. It must be appreciated that there is a general perception that governments world-over, especially in developing countries, are associated with red tape and inertia. This discourages foreign investors from investing in such environments because governments tended to use their larger numbers on the Board to influence decisions to the detriment of investors' interests**.** This is more so because the Board, in the case of Zambia, was charged with, *inter alia*, the following responsibilities:

(i) advising the Minister on matters relating to … operations of MFEZs...;

(ii) developing MFEZs or facilitating the development of MFEZs by investors;

(iii)administering, controlling and regulating MFEZs;

[71] The Zambia Development Agency, Act No. 11 of 2006, s18(2)

(iv) monitoring and evaluating the activities, performance and development of enterprises operating in MFEZs and enforcing measures for business or activities carried out within a MFEZ so as to promote safety and efficiency; and

(v) promoting and marketing MFEZs among investors.[72]

Unlike the EPZ Act, however, which required the EPZA to carry out its functions in consultation with Customs and Excise Division of the Zambia Revenue Authority and other public authorities, the ZDA Act empowered the Minister to give directions to the Board from time to time and the Board was obliged to give effect to the directions, provided that the directions were consistent with the ZDA Act.[73] Notably, the Act was silent on who should determine the consistency or inconsistency of the Minister's directions to the Board. It would appear that whether the directions by the Minister were consistent or not lay in the sole discretion of the Minister.

With regard to trade and industry development, the Board was required to formulate strategies aimed at promoting Greenfield investments through joint ventures and partnerships between local and foreign investors.[74] With respect to joint ventures between foreign investors and the government, *Ndulo* suggests two possible ways in which such ventures could be achieved. The first being an arrangement where the government is issued with a certain percentage of all equity stock free of charge to itself, a method used in Botswana.[75] The second method involves "enunciating that a certain proportion of equity should be owned by the government

[72] The Zambia Development Agency, Act No. 11 of 2006, s5
[73] The Zambia Development Agency, Act No. 11 of 2006, s10(1) and (2)
[74] The Zambia Development Agency, Act No. 11 of 2006, s 12(1)(e)
[75] M Ndulo, Mining Rights in Zambia, Kenneth Kaunda Foundation, 1987, p195

and then inviting companies concerned to enter negotiations with a view to giving effect to this policy."[76] In this vein, it is worth noting that although the ZDA Act did provide for promotion of joint ventures between local and foreign business firms, there existed no legal framework to give effect to such joint ventures.

The Agency was further required to come up with strategies meant to develop the capacity of business enterprises so that Zambian business enterprises could trade competitively on the internationally.[77] The business community was expected to be involved in formulating such strategies and once formulated; the strategies were to be submitted to the Minister for approval.

On a positive note, the Board was also empowered to appoint a Director-General who was the chief executive officer and other staff of the Agency on terms and conditions determined by the Board itself.[78] This was unlike the situation in other pieces of legislation which empowered either the President of the Republic of Zambia or a Minister to appoint a chief executive officer. Further, the law provided for protection from compulsory acquisition of private investment unless the property was required for public purposes under an Act of Parliament and in which case the investor ought to be adequately compensated.

Any dispute arising from, or as a consequence of, the investment was to be settled in accordance with the Zambian Arbitration Act No. 19 of 2000.[79] Clearly, this was a departure

[76] Ibid
[77] The Zambia Development Agency, Act No. 11 of 2006, s12(1)(f)
[78] The Zambia Development Agency, Act No. 11 of 2006, s11
[79] The Zambia Development Agency, Act No. 11 of 2006, s21

from the provisions in the EPZ Act in which investment disputes were to be referred to, and determined by, the Revenue Appeals Tribunal. In comparison to the EPZ Act, the ZDA Act provided more extensive investment incentives to investors not only in MFEZs but also in the rest of the country. In terms of section 20 of the ZDA Act, a foreign investor was entitled to repatriate, in whole or in part, the following:

(i) dividends or after-tax income;

(ii) the principal and interest of any foreign loan;

(iii) management fees, royalties and other charges in respect of any agreement; and

(iv) the net proceeds of sale or liquidation of a business enterprise, provided such externalisation is in consonance with the relevant laws, rules and regulations for the time being in force in Zambia. The Act did not spell out what these relevant laws were. The investor was also required to investigate at any one time which laws were applicable before expatriating their money. One may argue that this defect in the law defeated the very essence of law. That is to say, certainty and predictability. However, that does not negate the fact that rules and regulations governing expatriation of moneys kept changing and any investor requiring to expatriate their money must satisfy the prevailing legal requirements.

Investors, whether local or foreign investing in MFEZs or in priority sectors or producing priority products approved by the Board were entitled to the following incentives:

(i) zero tax on profits made by business enterprises for a period of five years from the first year profits are made. For sixth to eighth year, only 50% of the profits were to be taxed while for ninth and tenth year, 75% of the profits are to be taxed;

(ii) zero percent tax on dividends for a period of five years from the year of first declaration of dividends. From sixth to eighth year, only 50% of the profits are to be taxed whereas for years nine and ten, 75% of profits are to be taxed;

(iii) zero percent import duty on raw materials, capital goods and machinery including trucks and specialised vehicles for five years;

(iv) deferment of Value Added Tax (VAT) on machinery and equipment such as trucks and specialised vehicles imported for investment.[80]

The above incentives were granted in addition to the general incentives applicable to all investors in the country. The difference, however, was that for one to enjoy the additional incentives, they ought to invest in a MFEZ a minimum of USD 500,000. There was no minimum amount required for one to invest anywhere else in the country. Further, developers of MFEZs were eligible to 0% withholding tax on payments of management fees, consultancy fees or interest to foreign contractors.[81] For VAT and Customs and Excise purposes, developers of MFEZs were further entitled to:

(i) exclusion of foreign suppliers to developers of the MFEZs, from the Reverse VAT charges;[82] and

(ii) exemption from customs duty on equipment, machinery and accessories and materials imported for development of MFEZs.[83]

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[80] The Zambia Development Agency, Act No. 11 of 2006, s54 and The Income Tax, Act No. 4 of 2008, s11(d)
[81] The Income Tax, Act No.4 of 2008, s11(d)
[82] The Value added Tax (Zero-Rating)(Amendment) Order, Statutory instrument No.3 of 2009, Second schedule Para (a)-(g)
[83] The Budget Speech by *Situmbeko Musokotwance,* Minister of Finance and National Planning, to the National Assembly, 2009, p23; www.eaz.org.zm/downloads/file/2009/zambiaBudget speech.pdf 28/01/11

Depending on the sector, there was also a variety of other general incentives available to investors regardless of whether or not the investors operated in the MFEZs. For instance, investors in agriculture were entitled 15% tax on income from farming activities and 100% allowance for expenditure on farm land such as stumping, land clearing and water conservation while those investing in the manufacturing sector were entitled to 10% initial allowance and 5% annual wear and tear on buildings and structures and 50% depreciation allowance for machinery.[84] Further, the government, in each year's national budget, provided varied tax incentives targeted at various sectors so as to attract new investments.[85] For example, under the 2009 national budget, the government increased the rate of company income tax for revenue earned from export of cotton lint without an export permit from Ministry of Commerce, Trade and Industry from 15% to 35%. This was a deliberate measure aimed at encouraging local enterprises to add value to the locally produced cotton lint.

The above incentives notwithstanding, the ZDA Act empowered the Minister responsible for finance to grant unspecified additional incentives for investment in an identified sector or product, provided the investment amount was not less USD10 million or the equivalent convertible currency so as to promote major investment.[86] Notably, the Minister responsible for finance initially had unfettered discretion to engage, on a case by case basis, such investors and grant them additional investment incentives.[87] In order to enjoy any of these incentives, the Board should issue a certificate of compliance with ZDA Act.[88]

[84] Ibid
[85] Ibid
[86] The Zambia Development Agency, Act No. 11 of 2006, s58
[87] The Zambia Development Agency (Amendment), Act No. 29 of 2011, repealed this provision
[88]The Zambia Development Agency, Act No. 11 of 2006, s60

It is important to reiterate that for any investor, particularly those in the MFEZs to enjoy all these tax incentives, they should have met the minimum financial investment threshold of USD500, 000 in the priority sector or product. According to the Ministry of Commerce, Trade and Industry, this minimum threshold was aimed at ensuring that excellent infrastructure of world class standard was constructed and maintained in the MFEZs. The Ministry's view was that if the threshold were very low, then all and sundry investors would find their way into MFEZs, a situation that would lower the standards expected of the cluster economic programming.[89] However, enterprises not meeting the minimum financial threshold could operate in a MFEZ but would not qualify for certain incentives provided under the ZDA Act.[90] In this regard, enterprises providing support services such as banking, insurance and service stations could operate in an MFEZ without necessarily accessing or enjoying incentives meant for investors in priority sectors or products who met the financial investment minimum threshold.[91]

As pointed out above, to further demonstrate serious commitment towards the new policy, the Government had, at the time of the study, identified and declared Lusaka South and Lusaka East in Lusaka Province, Chambishi in the Copperbelt Province and Lumwana in the North-Western Province as MFEZs while Roma in the Lusaka Province and Sub-Sahara Gemstone Industrial Park in the Copperbelt Province had been declared industrial parks.[92] Although the Declaration Orders for zones were issued in 2010, only the Chambishi and the Lumwana MFEZs had begun operations. According to the Declaration Orders for the Lusaka East

[89] Interview held with Ministry of Commerce, Trade and Industry officials on 18th November, 2010
[90] The Zambia Development Agency Magazine, Zambia: Africa's New Frontier for Investment and Profits, 2nd Edition, ZDA, Lusaka, 2009
[91] Ibid
[92] Ibid

MFEZ, the zone was 5.2 square kilometres and the licensee was the Zambia China Trade Cooperation Zone (ZCCZ) Limited which was required to provide infrastructure and facilities for:

(i) processing and manufacturing industries;

(ii) modern logistics;

(iii) real estate;

(iv) new-technology industries;

(v) complementary services; and

(vi) commerce and business.[93]

The Lusaka South MFEZ was 2,100 hectares in extent and the licensee was the Government of the Republic of Zambia in Partnership with Kulim Technology Industrial Corporation.[94] It is meant for, among others, the establishment of the following:

(i) research and development institutions;

(ii) high-tech industries;

(iii) commercial institutions;

(iv) agriculture and agro-based industries; and

(v) packaging and printing industries. [95]

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[93] The Zambia Development Agency (Lusaka South Multi-Facility Economic Zone)(Declaration) Order, Statutory Instrument, No.50 of 2010, Order 4

[94] Ibid

[95] Ibid

The Chambishi MFEZ was being developed by China Nonferrous Metal Mining (Group) Corporation. According to the ZDA, 18 business enterprises had already set up business enterprises in the Chambishi MFEZ with a total investment of USD228.5million creating approximately 1,800 job opportunities.[96] The Chambishi MFEZ is one of the first overseas economic zone in Africa that China has invested in.[97] It was created in 2007 and covers an area of approximately 41,000 hectares.[98] In terms of paragraph 3(2) of Order 3 of the Chambishi MFEZ (Declaration) Order, the Chambishi MFEZ was to have infrastructure and facilities suitable for the operation of copper processing industries, mechanical industries, light engineering industries, electrical industries, clothing industries, food industries and medical industries.[99]

The facilities provided, or to be provided, in the Chambishi MFEZ were as proposed by the developers themselves in their master plan.[100] The Chambishi MFEZ took non ferrous metal mining and smelting as a leading industry. It developed non ferrous metals processing and derivatives products of non ferrous metal industry to promote the development of light industry.[101]

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[96] Zambia, National Assembly (Debates 0f 16th July,2010); www.parliament.gov.zm/debates and proceedings, (Accessed 27/12/10)
[97] Zambia-China Economic and Trade Cooperation Zone, Zhejian Investment & Trade symposium; www.zjits.com/index.php/enjwtz.hwtz.html, 27/01/11
[98]Ibid
[99] Ibid
[100] China Nonferrous Metal Mining (Group) Limited,2007, *Master Plan for the Zambia – China Economic and Trade Cooperation Zone*, China association of Development, pp 44-46
[101] The Zambia Development Agency (Chambishi MFEZ)(Declaration) Order, Statutory Order No. 16 of 2007

According to the Minister, the Chambishi MFEZ was expected to attract at least 50 business enterprises by end of 2012 with an estimated investment of approximately USD900 million.[102] Physical infrastructure constructed included, but is not limited to, 18 square kilometres of zone roads, water and electricity supply.[103] The Government anticipated that the Chambishi MFEZ when fully developed and operational would create at least 6,000 jobs.[104] The Chambishi MFEZ was expected to be fully developed over a period of 25 years from 2007. The development was divided into 5 phases and each phase was expected to take about 5 years to develop.[105] Other than having copper smelting as an anchor industry, the Chambishi MFEZ would have supporting industries which include, *inter-alia,* an acid plant, chemical fertiliser plant, electric wire and cable plant, cement/brick plant, fire-proof material plant, oxygen plant, roof bolt plant and explosives plant.[106]

With regard to the *Lumwana* MFEZ, it was noted that international best practice required and emphasised that location of a zone was key to its success. However, the *Lumwana* MFEZ did not conform to international standards in that it was located neither in close proximity to an airport, a rail link or seaport. Moreover, the ZDA Act did not provide for appointment of any body as an authority to manage each MFEZ. Again, this was contrary to international practice which encouraged the appointment of an authority to be in charge of management of a specific economic zone.

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[102] Zambia, National Assembly (Debates of 16th July,2010); www.parliament.gov.zm/debtesandproceedings (Accessed 10/12/10)

[103] Zambia-China Economic and Trade Cooperation Zone, Zhejian Investment & Trade symposium; www.zjits.com/index.php/enjwtz.hwtz.html (Accessed 27/01/1)

[104] Zambia, National Assembly (Debates, 16th July,2010); www.parliament.gov.zm/debates and proceedings (Accessed 27/12/10)

[105] China Nonferrous Metal Mining (Group) Limited, Master Plan for the Zambia - China Economic and Trade Cooperation Zone, China association of Development, 2007, pp 44-46

[106] Ibid

In this regard, the heterodox theory coupled with its extensions (i.e. global value chains and agglomeration of economies theories) is best suited for Zambia. This is because once the clusters are agglomerated, economic zones foster linkages with local firms and also compete amongst themselves and learn from one another in an effective manner. This, in turn, enables local firms to improve on their capacities and innovativeness so that their products compete favourably on the international market to which they will be introduced through global value chains.

However, as the heterodox theorists argue, it is imperative that government plays a significant role in all this. The notion that "government has no business in business" is unsustainable. Government should find a way of intervening whenever conflicts amongst producers and buyers, for instance, arise to the detriment of the economy and the country. A good example is where the producers demand a particular price for their products and the buyers demand a different price, the government may intervene indirectly by offering a price that is beneficial to both interests. This is what market-state mix advocated by the heterodox scholars entails.

3.5 CONTRIBUTION OF ZONES TO ECONOMIC DEVELOPMENT IN SELECTED COUNTRIES

There was evidence world-over to conclude that there were enormous benefits that accrued to economies from economic zones, particularly in those countries where zones had been well planned and implemented. As demonstrated in Table 2 below, the Far East Asian Countries are a shining example in this regard.

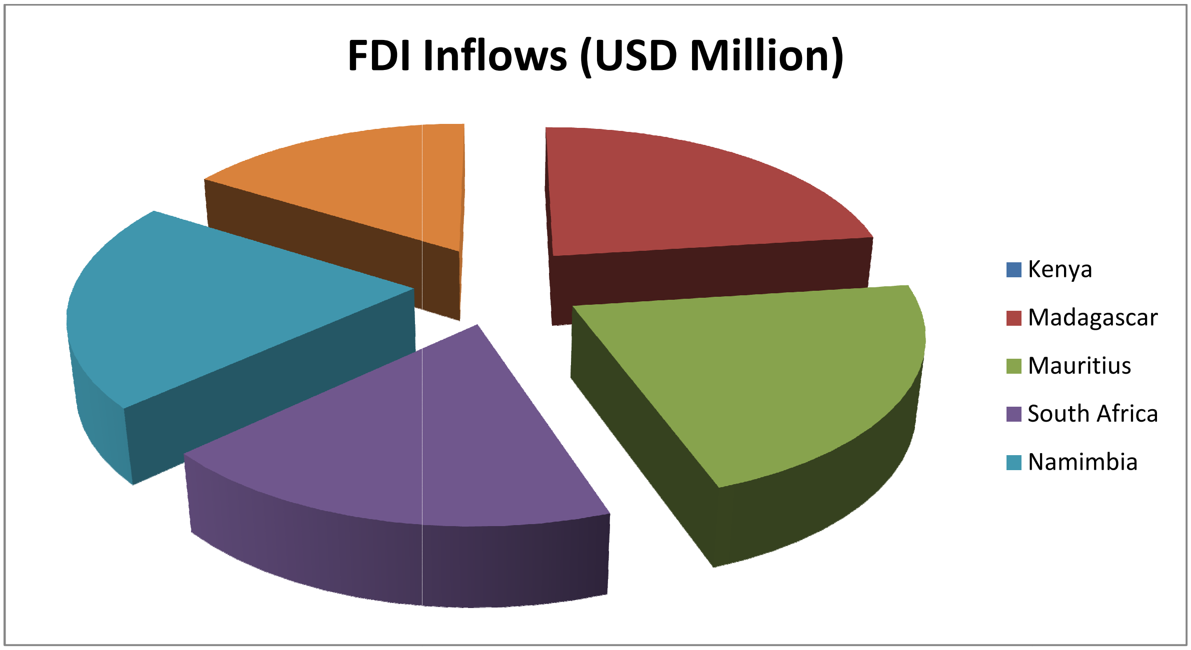
Table 2: Showing contribution of zones to economies of the Four Asian Tigers and other Far East Asian Countries as of 2007

Country	No. of zones	Total employment	Foreign Direct Investment (USD Million)	No. of Firms in Zones	Zone Exports (USD Million)	Zone exports as % of total exports
Singapore	42	-	6,400	7,000	165.9	-
Hong-Kong	-	336,000	29.66bn	3,845	101.5bn	-
Korea Rep. of	03	39,000	11.5bn	-	30.61bn	-
Taiwan	06	67,646	24.6bn	354	343	-
China	164	40,000,000	17.03bn	3,000	145.0bn	59.33
Malaysia	213	491,488	5.512bn	-	12.6bn	83
Indonesia	115	6,000,000	11.31bn	-	18.4bn	-
Philippines	78	1,128,197	1.270bn	-	32.03bn	60
Thailand	32	451,599	1.442bn	-	8.242bn	-
India	08	100,650	7.96bn	-	4.9bn	-
Sri Lanka	16	410,851	287	-	1,263	38
Bangladesh	08	3,438,394	1,035	-	11,716.98	75.6
Vietnam	18	950,000	1067	-	-	80

Source: Extracted from ILO database on Export Processing Zones (Revised), 2007

In East and Southern Africa, the scenario is the same. Those countries that incorporated economic zones in their economic structures earlier had had high static benefits such as increased FDIs accruing to them. Pie Chart 2 below better illustrates the position.

Pie Chart 2: Showing FDI Inflows in six Eastern and Southern African countries as of 2010



Source: Author constructed from statistics obtained from the World Investment Report, 2011

From the foregoing, the role of economic zones in the development process may be said to be very effective especially in the early stages of a country's drive to develop a strong export base. Economic zones have a "special appeal or marketability" in attracting export oriented foreign and domestic direct investment. To be successful, however, the zones must be well positioned in relation to international transport, be provided with reliable infrastructure and be able to offer a competitive incentive package. They must also have a good management team that has the resources and ability to mount a well targeted and sustained promotion campaign. Overtime, the relevance of zones should decline as conditions in the rest of the domestic economy improve as was the case in Ireland and as experience in other successful economic zones had shown.[107]

3.6 RELEVANCE OF MFEZs TO THE ZAMBIAN ECONOMY

In order to determine whether or not MFEZs were the way to go for Zambia's export-led industrialisation, it was important to reiterate some of the benefits that accrue from zones generally. Such benefits may be classified into two categories namely; static and dynamic.[108] Whereas static benefits relate to the benefits that have an immediate and tangible impact on the economy, dynamic benefits are those that take a long time, and mostly intangible, to impact the economy.[109] Dynamic benefits are a consequence of static benefits and they are difficult to measure. For example, benefits such as exports, employment and FDIs are static while knowledge and skills spill-over, demonstration effects and backward linkages are examples of dynamic benefits.

3.6.1 Static benefits

(a) Increase of Exports

There is empirical evidence to support the view that zones increase a country's foreign exchange earnings through the promotion of non-traditional exports (NTEs) especially by

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[107] P Sheane, *Strategic Plan for the Long Term Development of Existing Free Zones in Croatia: A Review of international Trends and development in Free and comparison with zones in Croatia*, Zagreb, CARDS Project, 2006; www.mingorp.hr.../02%20Comparative%20F2%20study.doc (Accessed 15/06/12)

[108] W Milberg et al, *Economic development and working conditions in export processing zones: A survey of trends*, ILO, Geneva, 2008

[109] Ibid

developing countries.[110] In this respect, *Cling* states that in Mauritius, the sugar industry accounted for more than 75% of the exports in 1990. He adds that NTEs from EPZs grew from a paltry 3% of the total exports in 1986 to 52.6% in 1994.[111] In Zambia, however, NTEs rose from 2.7% in 2008 to 24% in 2010.[112] It is argued that although the rate was relatively remarkable considering the period of 3 years compared to Mauritius's 8 years, the rate of export earnings would have been higher had economic zones been implemented much earlier, in the 1980s or early 1990s.

(b) Creation of employment opportunities

As already stated above, economic zones are established also for purposes of attracting MNCs set up business enterprises in a host country and thereby create jobs and generate income for citizens especially women who, according to the World Bank, accounted for at least 24% of the total employment as of 2008.[113] The creation of employment is particularly important in countries like Zambia with relatively high unemployment rates.[114]

It must be stated, however, that due to the nature of zones, the type of employment created is labour-intensive and require low level skills. It is thus, not uncommon to find more female workers than their male counterparts in zones. In this vein, the World Bank observes that although 60 - 70% of the workforce in zones world-wide was female prior to 1990, these

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[110] J P Cling & et al, *Export Processing Zones: A Threatened Instrument for Global Economy Insertion,* Paris, 2001
[111] Y W Rhee et al, *Export Catalysts in Low Income Countries,* Washington, 1989
[112] Annual Economic Report 2010
[113] World Bank Prem Notes No.11, Washington, 1998
[114] Unemployment rate stood at 14% as of 2006 according to the Central Statistical Office, www.zamstats.gov.zm (Accessed 1/10/2012)

rates, however, had reduced to about 40% as of the 2008.[115] It observes further that wages in zones generally tend to equal, and in some cases higher than, wages from similar jobs in enterprises operating outside zones.[116]

(c) Attraction of FDI

Yet another static benefit that accrues from zones relates to increased FDI. According to the United Nations Conference on Trade and Development (UNCTAD), in the Philippines, for example, FDIs in the eco-zones increased from 30% of the total national inflow in 1997 to more than 81% in 2000. As already alluded to earlier, China has enjoyed the biggest contribution of FDI into zones. In Zambia, FDIs rose from about 33% in 1990 to about 68% in 2010.[117] This increase, though remarkably high, took place over a period of 20 years.

It can be noted from the foregoing that all the countries in Southern Africa except Zambia that had incorporated zones in their economic structures prior to the year 2000 had recorded higher rates of FDIs. As of 2010, MFEZs in Zambia were less than 5 years old from inception. It follows, therefore, that of the 68% FDIs inflows in the country, very little was invested into MFEZs. This is supported by the ZDA which stated that the mining sector accounted for the largest share of FDIs.[118] It can be inferred from above that other countries received higher rates of FDIs partly because of the early introduction of zones in their economies.

[115] Ibid
[116] Ibid
[117] World Investment Report, 2011, p192
[118] ZDA Magazine, 2008

3.6.2 Dynamic benefits

As stated above, dynamic benefits flow from static benefits. They are long-term in nature and difficult to quantify or measure. A typical example of dynamic effects is the backward linkage whereby inputs are purchased from local firms. According to *Milberg,* dynamic benefits, in South Korea, rose from 13% in 1972 to at least 32% in 1974.[119]

It is evident that zones contribute immensely to economic advancement of a country. According to UNCTAD, Zambia's share in world exports declined from 0.038% in 1990 to 0.014% in 2003 while exports from NTEs rose from 8 to 38% respectively.[120] This is in spite of the fact that the economic zones concept had not taken root in the country. In order to maximise both static and dynamic benefits, Zambia must embrace economic zones concept with dispatch.

3.7 CONCLUSION

Various theories exist to explain why countries embark on the economic zones concept as a way of reforming economies. These theories include neo-classical, political economy, heterodox, global value chain and agglomeration economies theories. Each theory has its own advantages and disadvantages. The chapter further recommends that a combination of the heterodox, the global value chain and agglomeration theories as suitable basis for MFEZ establishment and development in Zambia. The chapter has also shown that zones contribute

[119] Ibid
[120] Ibid

significantly to economic development of a country as evidenced in the Four Asian Tigers and other Far East Asian countries such as China and Malaysia. The chapter concludes that the zones contribute significantly to economic development of a country and, therefore, are relevant to Zambia's industrialisation.

CHAPTER FOUR

4.0 LEARNING FROM OTHER JURISDICTIONS

4.1 INTRODUCTION

Having considered, in chapter three, the theoretical basis for economic zone development and the contributions they make to economic growth rate and development of a country, this chapter discusses the economic zones from an international perspective before focusing on the concept in both China and Malaysia as benchmark countries. This is important for comparison and learning purposes. China and Malaysia have been particularly chosen for specific reasons. On the one hand, as earlier stated above, China is important because the first ever economic zone to be known as a SEZ in the world was established and developed at Shenzhen in Guangdong Province in the early 1980s.[1] At the time of the research, the Shenzhen SEZ was the most developed among all SEZs in China.[2] Besides, the Chambishi and Lusaka Sub-Zone MFEZs were being developed by a Zambian registered company of Chinese origin called the Zambia-China Economic and Trade Zone (ZCCZ) Limited with support from China Non-ferrous Metal Mining (Group) Corporation.[3] On the other hand, Malaysia had moved from being a major supplier of raw materials to becoming a leading exporter of finished products in textiles, electrical and electronic goods, rubber and other products.[4] Having largely attained the criteria for New Industrialised Country status by 1990, Malaysia has since been aspiring to achieve the

[1] X Chen et al , The "Instant City" Coming of Age: China' Shenzhen Special Economic Zone in Thirty Years, Centre for Urban and Global Studies, Trinity College, 2009, p1, www.trincoll.edu/urban global/Cu GS/faculty/Rethinking (Accessed 5/09/10)
[2] V F S Sit, The Special Economic Zones of China: A New Type of Export Processing Zones?, supra
[3] Zambia, Statutory Instrument No.16 of 2010
[4] G Sivalingam, The Economic and Social Impact of Export Processing Zones: The Case of Malaysia, ILO Working Paper No. 16 of 2010

status of a "fully developed industrialised economy" by 2020.[5] If this aspiration were achieved, it would entail that by 2020, at least 80% of Malaysia exports would consist of manufactured goods.[6]

In addition, whilst Zambia's Gross Domestic Product (GDP) per capita at independence in 1964, was two times higher than that of Malaysia, in 2009 Malaysia's GDP per capita increased to USD 14,500 compared to Zambia's paltry USD1, 044.[7] Lastly, Zambia has substantially been replicating economic policies from the Republic of Malaysia and yet the difference in economic growth and development between the two countries is quite wide.

It was important, therefore, to discuss some of the factors that have led to successful implementation of economic zones in the benchmark countries. The chapter also discusses the economic history of the two countries before outlining the legal and institutional frameworks in relation to economic zones that both China and Malaysia had put in place. Where necessary, other factors influencing the success of the economic zones were discussed. The purpose of this chapter, once again, was to draw some lessons from these countries as well as from international experiences so as to determine whether or not MFEZs were being implemented in consonance with international standards to guarantee their success.

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[5] Vision 2020, Office of the Prime Minister of Malaysia, www.pmo.gov.my: (Accessed 5/10/10)

[6] Ibid

[7] Minister of Commerce, Trade and Industry Statement the National Assembly delivered on 18th February,2009; www.parliament.gov.zm/debates&proceedings,(Accessed 27/10/10)

4.2 ECONOMIC ZONES FROM AN INTERNATIONAL PERSPECTIVE

The economic zone concept has been in existence in various parts of the world for a long time. The United States of America, for instance, through the enactment of the Foreign Trade Zone Act, 1934, established the first zone at Staten Island in New York in 1937 while the second one was established in 1947 in New Orleans. In 1959 the Shannon Free Zone in Ireland was also established.[8]

According to *Sheane,* the period up to 1973 saw continuous economic expansion based on export growth and as a result of major development in technology, communications and international travel, the splitting of the production process between different locations and countries (off-shoring) became a viable proposition by many enterprises.[9] He asserts further that the original concept of free zones was consequently modified to suit off-shore processing.[10] From then on, most economic zones were located in close proximity to ports or transport intersections. Among the first countries to promote the new type of zone development were Hong Kong and Singapore.[11] These countries put in place the necessary policy environments, infrastructure and other structures to accommodate foreign export-oriented direct investment. Subsequently, other countries such as Taiwan, Korea, Malaysia, the Philippines, Mauritius and the Dominican Republic followed suit.[12]

[8] E O'Malley, *Free Trade Zones in Ireland and Four Asian Countries,* Trocaire Development Review, 1986, www.esri.ie/publications (Accessed 03/06/12)
[9] P Sheane, *Review of International Trends and Developments in Free Zones and Comparison with Zones in Croatia,* Zagreb, 2006, p15-21, www.delhrv.ec.europa.eu/.../101%20Review%f%20%FZ20%Development (Accessed 10/05/12)
[10] Ibid
[11] Ibid
[12] Ibid

The central theme in all these countries was the appreciation that freedom and absence of bureaucracy was the hallmark of economic zones. Controls were to be instituted only where it was absolutely necessary, for instance, to ensure that firms engaged only in activities they were licensed for. This was effected, normally, by way of attaching conditions to the investors' licence or permit which are provided in the zone legislation.[13] In any case, controls remained the sole responsibility of the zone authorities. From the international perspective, therefore, there are four cardinal aspects relating to economic zone establishment and development. These are legislation, location, management and specific objectives of economic zones.

(a) Zones Legislation

In almost all countries such as China, Russia, India, South Africa and Malaysia, where economic zones had been successful, the starting point had been the enactment of zones legislation.[14] The pieces of legislation were specifically designed for regulation of economic zones. They were also separate from the legislation that regulated investment in the rest of the economy.

In Russia, for instance, there existed the Federal Law on Special Economic Zones in the Russian Federation, 2005, which provided, among others, for the establishment and management of SEZs.[15] In addition, the piece of legislation provided for specific objectives for each type of SEZ that might be established.[16] Similarly, in the Republic of Ireland, the legislation on economic zones under which the Shannon Free Zone was established, was not only specific but also separate from the law on investment in the rest of the economy.[17] The scenario was the same in

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[13] Ibid

[14] See the Federal Law on Special Economic Zones in the Russian Federation, No.166 of 2005, India, Special Economic Zones Act, No.28 of 2005 and Malaysia, Free Zones Act, No.438 of 1990.

[15] Ibid

[16] Ibid

[17] P Sheane, *Review of International Trends and Developments in Free Zones and Comparison with Zones in Croatia,* Zagreb, 2006, p15-21, www.delhrv.ec.europa.eu/.../101%20Review%f%20%FZ20%Development

India and South Korea where distinct pieces of legislation on economic zones exist. In India, there is the Special Economic Zones Act, 2005 while in South Korea there was an Act on Designation and Management of Free Economic Zones Act, 2002.[18] These pieces of Legislation enabled respective governments to establish zones in designated places with a wide range of benefits and incentives aimed at enticing foreign investors to set their operations therein.

(b) Location of Zones

Sheane emphasises that location is key to the success of any economic zone.[19] He argues that good location, effective management and customer satisfaction are vital if economic zones were to succeed and that a good location was likely to attract prestigious MNCs to invest in an economic zone.[20] The Shannon Free Zone, for example, was located in a coastal area with severe unemployment and little prospect of development without special conditions being offered. The zone was then strictly controlled so that incentives were tested for effectiveness without major risks to the national economy.[21] Only if the trials succeeded would the programme be replicated in the rest of the economy.

In countries such as India, the United Arab Emirates and Mauritius, China and Malaysia location of economic zones was generally on coastal areas. With respect to China and Malaysia, the economic zones were located along coastal areas, taking advantage of easy accessibility to the international market. Accordingly, most, if not all, economic zones in these countries were

(Accessed 10/05/12)
[18] Ibid
[19] Ibid
[20] Ibid
[21] Ibid

located in close proximity to air and/or seaports. The reason for such location was to reduce transportation costs.

(c) Management of Economic Zones

Effective management of economic zones is of the essence if the concept is to succeed. Minimal, or at best absence of bureaucracy, rallies behind every successful zone.[22] In this respect, although the development of economic zones, at the international level, is left to governments, the private sector or partnership between private and public sector, the actual management of zones is left to the private sector or an appointed statutory authority that manages the zones with little bureaucracy, if any. In Croatia, for instance, the law on the free zones placed the responsibility of managing zones on zone operators designated by the government.[23] Approval of individual investors and tenants was delegated to zone managers who negotiated and signed the final agreement with the investors.[24] Zone operators were required to make annual returns on activities within their zones to government. There is a similar arrangement in Mauritius where the Mauritius Freeport Authority, a statutory body, was mandated to manage the zones.[25] In China and Malaysia have similar arrangements were put in place.[26]

(d) Specific Objectives of Economic Zones

Specific zones ought to serve specific purposes which are usually incorporated in the control mechanisms applying to individual investors. *Sheane* outlines some of the important objectives as being the attraction of FDI in Greenfield operations and not just the relocation of enterprises

[22] Ibid
[23] Ibid
[24] Ibid
[25] Ibid
[26] Ibid

from outside into zones, introduction of new technologies, increase of exports and generation of direct and permanent employment.[27] The Shannon Economic Zone was established for purposes of creating employment in that part of the Republic of Ireland.

In Zambia, there existed no specific objectives for each MFEZ, neither was legislation on economic zones separate from the law on investment in the rest of economy. Location of zones was at the discretion of the Minister of Finance while management was by a centrally located government institution which also was responsible for investment in the rest of the economy. Further, the location of some MFEZs was far away from entry and exit points. This was a departure from international expectations on zones.

Having considered economic zones from the international level, it is imperative at this stage, to focus on the economic zone concept in China, Malaysia and Zambia so as to establish the extent to which the countries complied with these international standards.

4.2.1 THE PEOPLES' REPUBLIC OF CHINA

4.2.2 BACKGROUND

China's economic history is quite long. For purposes of this study, however, concentration has been placed on the events between 1949 to-date. The economic strides of the Peoples' Republic of China (PRC) can be traced to period when the Communist Party assumed power. Between 1949 and 1952, the PRC government undertook measures aimed at restoring confidence in the

[27] Ibid

economy. For instance, transport and communication links were revived while the banking system was centralised under the Peoples' Bank of China. To reduce inflation, the government unified the monetary system and tightened credit and guaranteed the value of the national currency.[28] Most businesses were nationalised, leaving only about 17% in private hands although eventually they were all brought under government control.[29]

In agriculture, major land reforms saw the transfer of about 45% of arable land to at least 60% of families that previously had little or no land at all. By the end of 1952, price stability had been established and commerce and industry had been restored while the agriculture sector had regained its previous peak levels of production.

Having stabilised the economy, the Government introduced the First Five-Year Plan (FFYP) 1953-1957 which was aimed at increasing the rate of economic growth through industrial development.[30] During the duration of FFYP, key industries such as iron and steel manufacturing, coal mining, cement production and electricity generation increased to an annual average of 19% and the national income grew at a rate of 9% per annum whereas agriculture grew marginally at an annual average of 4%.[31]

However, before the end of the FFYP, the country experienced great imbalance between industrial and agricultural growth. There was also dissatisfaction with efficiency and lack of flexibility in the decision-making structures of government. The government realised that the

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[28] United States Department of State, Country Profile, www.state.gov/china/profile (Accessed 15/05/12)
[29] R Bin Wong, Chinese Economic History and Development: A Note on the Myers- Huang Exchange, Journal of Asian Studies, Vol. 51 No.3, 1992, pp600-611
[30] Ibid
[31] Ibid

highly centralised industry based Soviet Union model of economic development was inappropriate for China and consequently, in 1957, the FFYP was abandoned in favour of decentralised economic decision-making to provincial, county and local administration levels.[32] A new economic system known as the Great Leap Forward policy was subsequently introduced. The policy was intended to stir up, simultaneously, the entire country to produce a “great leap” in all sectors of the economy. Re-organisation of the agriculture was seen as an important point of departure for that purpose.

Unfortunately, the government lacked sufficient capital to invest heavily in both industrial and agricultural sectors at the same time. To circumvent this obstacle, the government created capital in the agricultural sector by building vast irrigation and water control works employing huge teams of farmers whose labour was not being fully utilised. Surplus rural labour was also employed to support the industrial sector by setting up small-scale low-technology “backyard” industrial projects in farm units producing machinery required for agricultural development and urban industries. This led to the formation of the peoples’ communes consisting of 20 to 30 advanced producers’ co-operatives of about 20,000 to 30,000 members each.[33] In spite of these measures, the Great Leap Forward policy produced disastrous results. The gross value of agricultural output fell by 14% and 13% in 1959 and 1960 respectively and slipped to 11% in 1961.[34] The ultimate result was a severe economic crisis. The cause of this crisis was mainly the

[32] Chung-Tong Wu , China’s Special Economic Zones: Five years – An Introduction, The Asian Journal of Public Administration Vol. 7 No.2, 1985, pp126-127
[33] United States Department of State, Country Profile, www.state.gov/china/profile (Accessed 15/05/12)
[34] Ibid

failure of the agriculture sector due to adverse weather conditions and improperly constructed water control projects and misallocations of resources.[35]

In 1961, the government decided to readjust its policies in order to refocus the country's attention to agriculture once again so as to meet the growing demands for food by the population. Economic support to agriculture took several forms such as reduced taxes on agricultural and industrial products. There were also substantial increases in production of chemical fertilizer and other types of agricultural machinery such as small electric pumps for irrigation. As a result of these readjustment and recovery measures, economic stability was once again restored. By 1965, agricultural output had not only grown at average annual rate of 9.6% but also outpaced the peak levels of the Great Leap Forward period.[36] Similarly, industrial output had also grown at an average annual rate of 10.6%, largely because plants that had operated below capacity after the economic collapse in 1961 had been rejuvenated.[37]

Motivated by these economic results, the government introduced yet another ambitious 20-year economic plan to run from 1976-1986 which called for higher rates of economic growth in industry, agriculture and construction. The plan required massive and expensive import of foreign technology. The essence of the new economic reforms was to make communism work better for China by substantially increasing the role of market forces in the economic system and reducing government central planning and direct control.[38] The whole process was, in the first

[35] S C Thomas, China's Economic Development from 1860 to the Present: The Roles of Sovereignty and Global Economy, Forum on Public Policy, 2006, pp23-30, www.forumonpublicpolicy.com/archieve07/thomas.pdf (Accessed 10/05/12)
[36] Ibid
[37] Ibid
[38] United States Department of State, Country Profile, www.state.gov/china/profile (Accessed 15/05/12)

instance, incremental in nature. New measures were introduced on an experimental basis and then popularised and disseminated nationally when, and if, they proved successful.

In trying to concretise the new reforms, the government introduced, what was known as 'contract responsibility' system of production. This was a system where an individual farmer delivered a set amount of produce to the collection centre at a given price and, in return, received a profit. It was targeted at poor rural units in mountainous or arid areas to increase their incomes. This arrangement encouraged farmers to reduce production costs and increase productivity[39]. On the strength of these initial successes, 'contract responsibility' system was extended to the entire country and the role of free markets for farm produce was further enhanced. With increased marketing possibilities and rising productivity, farm incomes rose rapidly.

As a way of stimulating agricultural production, the Government further established free farmers' markets in both urban and rural areas. This enabled families to operate as 'specialised households'. This meant that a specialised household would devote its efforts to producing a scarce commodity or to providing a service on a profit-making basis. As a result of these programmes, remarkable results in food production and other consumer goods were achieved[40]; thereby creating a new climate of dynamism and opportunity in the economy.

With regard to industry, the new policy innovations brought about autonomy in enterprise management. Enterprises were allowed to produce goods for sale at market prices as a way of

[39] S C Thomas, China's Economic Development from 1860 to the Present: The Roles of Sovereignty and Global Economy, supra
[40] Ibid

experimenting with the use of bonuses to reward higher productivity.[41] In the financial sector, the government tested fundamental changes by allowing a few state-owned enterprises to pay tax on their profits and retain the balance for reinvestment and distribution to workers as bonuses as opposed to the usual practice of remitting all their profits to the State. This brought about higher productivity and innovation in industries.[42] These reforms saw rapid economic recovery in many sectors. For instance, industrial output rose by 13% in 1980.[43] From 1979 onwards, China embarked on a vigorous economic reform system that has consistently resulted in high economic growth rates.

The Chinese government cautiously and gradually embarked upon one economic programme after another and closely monitored its performance before evaluating it and deciding whether or not to proceed with such a programme. The Government also encouraged the establishment of collectively owned and operated industrial and service enterprises. This helped in reducing unemployment especially, among the young people and at the same time helped to increase supplies of light industrial products. Foreign trade procedures were also greatly eased, allowing individual enterprises and administrative departments outside the Ministry of Foreign Trade to engage in direct negotiations with foreign firms.[44] A wide range of co-operation, trading and credit arrangements with foreign firms were legalised to enable the country enter the mainstream international trade.[45] These economic policy reforms produced tremendous results. For instance,

[41] Ibid
[42]Chung-Tong Wu , China's Special Economic Zones: Five years -An Introduction, supra
[43] Ibid
[44]Ibid
[45] Ibid

other than increasing family and individual incomes, food security, housing and other consumer goods, the reforms produced remarkable growth rates in all sectors.[46]

In addition, enterprise managers gradually gained greater control over their units, including the right to hire and fire.[47] By 1985, the practice of remitting tax on profits had been extended countrywide; thereby increasing the incentives for enterprises to maximise profits. The sources of investment funds also changed from non interest-bearing State loans that did not need to be repaid in any case, to interest-bearing bank loans.[48] The role of foreign trade under these economic reforms increased beyond its importance in any previous period. The combined value of imports and exports increased to 35% in 1986 from 15% in 1984.[49] Moreover, foreign investment was legalised and the most common foreign investments were joint ventures between foreign and local units even though by foreign investors was also allowed to operate without partnering with local entrepreneurs.

The most conspicuous manifestation of the new economic reforms, particularly in relation to foreign trade, was the opening up of four coastal areas to international trade in 1979 as industrial clusters where foreign investment could receive special treatment. These clusters were known as Special Economic Zones.

[46] Ibid
[47] L Sebastien, *China's Special Economic Zones: A presentation to Students in the School of Economy*, Universitas Amoiensis, 2011, pp1-2: www.scrib.com/com/44578294/the China_special_economic_zones, (Accessed 08/11/11)
[48] United States Department of State, Country Profile, www.state.gov/china/profile (Accessed 15/05/12)
[49] Ibid

4.2.3 THE CHINESE SPECIAL ECONOMIC ZONES

In 1978, the PRC Government embarked on the process of policy reforms which, basically, focused on the formulation and implementation of new economic policies that opened up the country to the international trade. These reforms are traceable to the leadership of *Deng Xiaoping* who envisaged a China transformed into a modern and powerful socialist nation through industrialisation, improvement of living standards, narrowing of income differences and production of modern military equipment.[50] *Deng Xiaoping* emerged as China's paramount leader shortly after the death of *Mao Zedong* in 1976. According to *Keyser, Xiaoping's* goal was to set China back on the course of economic development as the economy had performed badly during the final years of *Mao Zedong's* reign as China's leader. He states that *Xiaoping's* rallying cry was the "Four Modernisations" which entailed the development of industry, agriculture, defence and science and technology.[51] *Xiaoping's* philosophy was simple; "practice is a sole criterion of truth and by experimenting with alternative forms of production and entrepreneurial activity, China would find the best path for economic development."[52] This accounts for China's experiments with capitalist methods of production.

Clearly, this was a great departure from the previous leadership of *Mao Zedong* which had advocated socialist goals of income equalization and heightened political consciousness taking

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[50] Economic History of the Peoples' Republic of China, www.wikipedia.org/wiki/economic_history _of _the people%27s_Rep. of China, (Accessed 5/03/11), see also United States Department of State, Country Profile, www.state.gov/china/profile (Accessed 15/05/12)

[51] C H Keyser, *Three Chinese Leaders: Mao Zedong, Zhai Enlai and Deng Xiaoping*, Asia for Educators, Columbia University, 2009, pp3-4, www.afe.columbia.edu/special/china, (Accessed 22/12/11)

[52] Ibid

priority over material progress.[53] *Deng Xiaoping's* pragmatic approach is best summarised in the statement he made in favour of increased production:

> *If we can increase production, it doesn't matter whether operations are run privately…if a cat catches mice; it does not matter whether it is black or white …I am of the view that we should allow some regions, some enterprises, some workers and farmers who, because of hard work and good results achieved, to access better rewards and improve their livelihood…they will engender powerful demonstrative effects on their neighbours and lead people in other regions … to follow their example. In this way, the national economy will, wave-like, surge forward with all the people becoming well-off.*[54]

In essence *Deng Xiaoping* advocated for an economically developed China which encompassed participation of foreign private investment regardless of the country of origin. What was important, in his view, was the injection of foreign capital into the Chinese economy in order to improve the living standards of the people. In this regard, Professor *Stoltenberg* makes a pertinent observation that the Chinese authorities carefully researched a number of existing zones in other parts of the world before establishing their own.[55] He asserts further that the Chinese relied on experiences of zones in other countries and adapted the zones to suit their local environment.[56] With the knowledge gained, the Chinese Government delimitated special areas where, through exemptions of customs duty, preferential conditions and public facilities, foreign

[53] Ibid

[54] C.D Stoltenberg (1984), *China's Special Economic Zones: Their Development and Prospects*, Asian Survey Journal, Vol. 24 Issue No. 6, 1967, pp 637-654

[55] C.D Stoltenberg*, China's Special Economic Zones: Their Development and Prospects*, Asian Survey Journal, Vol. 24 Issue No. 6, 1984 pp 637-654

[56] Ibid

investors were attracted to set up factories whose finished products were mainly for export.[57] These special areas, as already pointed out above, were called Special Economic Zones. They were created to serve the following specific objectives:

(i) to act as bridges for introducing foreign capital, advanced technology and equipment and as classrooms for training personnel capable of mastering advanced technology;

(ii) to promote competition between regions and trades so as to ensure development of the national economy;

(iii) to absorb foreign exchange and to filter part of it, technology and equipment to other regions;

(iv) to serve as experimental units in economic structural reform and as schools for learning the law of value and regulation of production according to market demands; and

(v) to create employment especially for the many young people in need of jobs.[58]

It is important to observe that during the economic reforms, the Chinese government encouraged foreign private capital into the economy and, at the same time, played a significant role in the economy through establishment of joint ventures. This approach fits in well into the heterodox theory which advocates a mix of free market economy with state intervention. It also fits in well with international norms and standards for establishing and developing economic zones. For instance, the PRC Government set out specific objectives for zones, enacted specific legislation, appointed State authorities to manage the zones and took advantage its proximity to the sea to locate the economic zones.

[57]X Dixin *China's Special economic Zones*, Beijing Review, December 14, in Stoltenberg C D (1984), China's Special Economic Zones: Their Development and Prospects, Asian Survey Journal, Vol. b 24 Issue No. 6, 1984, pp 637-654

[58] Ibid

4.2.4 LEGAL AND INSTITUTIONAL FRAMEWORK FOR SPECIAL ECONOMIC ZONES IN CHINA

To facilitate the implementation of the new reforms, the Chinese government enacted various pieces of legislation to regulate activities in SEZs. These pieces of legislation included the following:

(i) Regulations on Special Economic Zones in Guangdong Province;

(ii) Regulations on Equity Joint Ventures;

(iii) Regulations on Income Tax; and

(iv) Regulations on Labour.

4.2.5 THE REGULATIONS ON SPECIAL ECONOMIC ZONES IN GUANGDONG PROVINCE

The Government promulgated the Regulations on Special Economic Zones in Guangdong Province, 1979, as a first step to realising the new economic vision. Under these Regulations, three coastal towns of Shenzhen, Zhuhai and Shantou were delineated and declared SEZs.[59] These towns were carefully and specifically chosen so as to not only attract foreign investment but also investment from Chinese citizens based overseas as well as 'compatriots' from Hong Kong and Taiwan to set up business enterprises either jointly with mainland China or solely on their own. One of the most important steps that the Chinese government took through these

[59] Resolution of the Standing Committee of the National People's Congress on Approving the Regulations on Special Economic Zones in Guangdong Province; Ministry of Commerce of the peoples' Republic of China, 1980 : www.english.mofcom.gov.cn/laws/chineselaw/text: (Accessed 20/10/11)

Regulations was to recognise and protect foreign property rights and interests which hitherto had not been given legal protection. This was particularly important because foreign investors needed to be certain that once their investments were set up, they would not unnecessarily be expropriated by the State.

Secondly, realising that beaucracy in the administration of SEZs might be a bottleneck to SEZ operations and in consonance with international practice, the Government, through the Regulations provided for the establishment of the Guangdong Provincial Committee and delegated to it the power to administer SEZs in the Province. This ensured that decisions concerning SEZ establishment and development were made promptly at the local level.

Subsequently, the Guangdong Provincial Committee appointed the China Merchants Steam Navigation Co, a Hong Kong registered enterprise, to invest in, and develop, Shenzhen town as an industrial zone.[60] Almost simultaneously, the Shenzhen Capital Construction Committee was formed. The Committee's principal aim was to plan infrastructural improvements and work out measures to utilise the capital, technology, equipment and raw materials from Hong Kong.[61] The Foreign Trade office in Zhuhai became the coordinator for investment in the zone. Specifically, the office was empowered to approve joint ventures and compensation trade agreements, arrange for factory sites, find labour and report, at regular intervals, to provincial and State authorities on the activities in the SEZ.[62] Again, international practices regarding management of zones were complied with in setting up the Shenzhen SEZ.

[60] Ibid
[61] Ibid
[62] Ibid

According to Article 4 of the Regulations on Special Economic Zones in Guangdong Province, the scope of businesses that were to operate in the SEZ were those that had a "positive" significance in international economic cooperation and technical exchange, including industry, agriculture, tourism, housing, construction, research and manufacturing involving high technology. In order to make investment in SEZs more attractive, the law placed the responsibility to provide high class facilities such as roads, water supply, drainage, road construction, communications and warehouse construction on the government. The aim of the government was to attract western investors to cross over from Hong Kong and Taiwan into mainland China by ensuring that the cost of doing business in mainland China was comparatively lower than in Hong Kong and Taiwan. This could only be done by way of offering special incentives to foreign investment within the SEZ towns.

It is important to understand that Hong Kong, once a British protectorate, was home to western multinational enterprises and hence the economic policies of Hong Kong had always been different from mainland China. Thus, the choice of Guangdong and Fujian provinces as pioneer areas for establishment of SEZs was a strategic one. Guangdong province, for example, is relatively close to Hong Kong home to Western multinationals. This emphasises the need for strategic location of zones if they to succeed.

Under the Regulations on Special Economic Zones in Guangdong Province, 1979, several other incentives were introduced, some of which were the following:

(i) expatriation of profits;

(ii) reduction or exemption from payment of income tax on reinvested profits in SEZs;

(iii) locally produced materials used in SEZs were procured at lower prices than the prices prevailing at the international market;

(iv) simplified entry and exit procedures;

(v) freedom to hire and fire employees according to business needs of the enterprises; and

(vi) types of wages and other labour related matters were different from those obtaining in the rest of the country and were clearly disclosed to employees on being contracted.[63]

4.2.6 THE REGULATIONS ON EQUITY JOINT VENTURES

In order to support the Regulation on Special Economic Zones in Guangdong Province, 1979, the Government also promulgated the law on Chinese equity joint ventures. Under this law, foreign business enterprises otherwise known as "foreign joint ventures" were allowed and encouraged to establish equity joint ventures with Chinese ventures within China on the principle of equity and mutual benefit.[64] This was deliberately done so that international economic cooperation and technological exchange between foreign enterprises and their Chinese counterparts was expanded. This was important to ensure that linkages with local entrepreneurs were created and sustained.

Under the foreign joint venture law, an enterprise was considered a joint venture if the proportion of the foreign venture equity in the enterprise had not less than 25% of the enterprise's registered

[63] The Regulations on Special Economic Zones in Guangdong Province, 1980, Articles 12-18
[64] The law of the Peoples' Republic of China on Chinese-Foreign Equity Joint Ventures, 1979, Article 1

share capital. It was a requirement that before a joint venture enterprise started its operations in a SEZ an appropriate government authority has to approve it.[65] The approval was necessary to ensure that technology and equipment contributed by a foreign joint venture as its investment was, in fact, advanced and not obsolete technology. The technology had also to be suitable for Chinese needs.

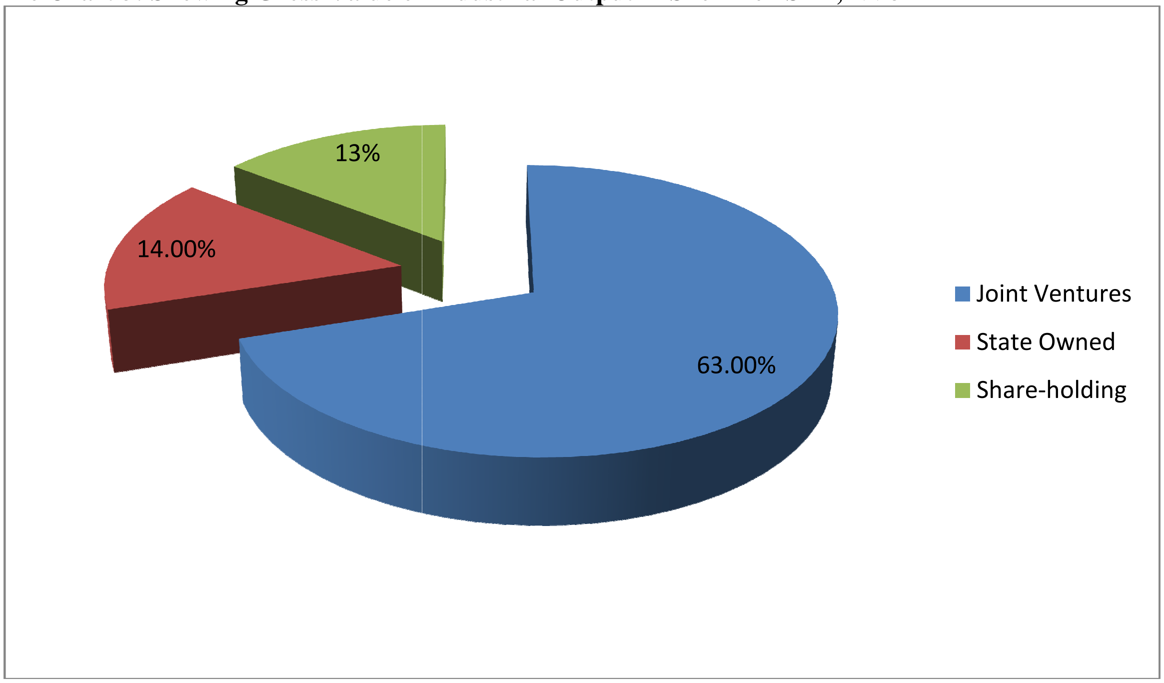
In addition, the law on joint venture provided for pre-emptive rights as among the joint venture equity partners. Thus, if one joint venture partner wished to sell or assign its capital, the other partners need to give their prior consent.[66] It was yet another requirement of the law that profits of the joint venture enterprise were shared equitably among the shareholders according to capital contributions. The joint venture was required to create a bonus and welfare fund for members of staff and a venture expansion fund whose expenses were deductable from the gross profit for income tax purposes. A joint venture was also allowed to procure its raw materials and semi-processed materials, fuels and other materials from both within China and at the world market as the enterprise thought fit. The joint venture enterprise was, however, encouraged to market its products outside China either directly or through associated agencies or China's foreign trade agencies.

It was clear from the foregoing that the Chinese joint ventures were intended to be of mutual benefit to the parties; including the members of staff. The law on joint ventures also ensured that the joint venture set aside funds for investment to guarantee expansion and thereby creating more

[65] Ibid, Article 3
[66] Ibid, Article 4

employment opportunities for Chinese nationals. The pie chart below shows the distribution of enterprises in the Chinese SEZs.

Pie Chart 3: Showing Gross Value of Industrial Output in Shenzhen SEZ, 1993



Source: Development & Society Journal, Vol. 28 No.1, June 1999

It is evident that joint ventures accounted for 63% of the Gross Value of Industrial Output (GVIO) while State Owned Enterprises accounted for 14% and shareholding companies 13%. As discussed above, and in accordance with the heterodox theory, China had been encouraging and promoting private sector involvement in the economy with a substantial involvement of the State. The government had been playing a significant role in the economy rather than leaving everything to market forces to determine.

It must be noted that in Zambia there was no specific legislation on joint ventures although the ZDA Act made mention, albeit in passing, on the promotion of joint ventures.

4.2.7 THE REGULATIONS ON TAX (TAXATION)

Another legislation promulgated by the PRC Government to enhance investment in zones was the Regulations on Tax. It is a well known fact that **t**axation plays an important role in the attraction of FDIs world-wide. In China, like in many other countries, a person's income attracts tax. Income tax is based on the source principle. That is to say, tax is payable by a person, or an enterprise, on the income earned from a source within China.

According to the Income Tax Regulations, enterprises with foreign investment and foreign enterprises which established a head office in any part of China paid tax on income derived from sources within China at the rate of 30%.[67] If, however, the enterprise was established in an economic zone, the enterprise was levied income tax at a reduced rate of 15%. Similarly, an enterprise engaged in a specified sector such as communications, energy, labour, wharf construction or other such projects was entitled to be levied 15% income tax provided it was established in the economic zone.

An enterprise with foreign investment engaged in the manufacturing sector scheduled to operate for a period of not less than ten years was entitled to be exempt from paying income tax in the first and second years of operation. In addition, the enterprise was allowed a 50% reduction in the third to fifth years of operation.[68] If an enterprise operated for a period of less than 10 years, it was liable to repay the Government the amount of income tax exempted or reduced.

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[67]The Income Tax Law of the Peoples' Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,1991, Article 5

[68]Ibid, Articles 8

A foreign enterprise which re-invested its share of profit derived from the enterprise by increasing its registered share capital or used the profits to establish another enterprise with foreign investment which would operate for a period of not less than 5 years, was entitled to be refunded 40% of the income tax already paid on the re-invested amount.[69] If the investor withdrew the investment before the expiry of five years, the enterprise or investor was liable to repay to government authorities the refunded tax. An enterprise with no permanent establishment in China but derived income therefrom was entitled to pay income tax at the rate of 20%.[70]

From the foregoing, it was apparent that the tax law did not only provide for reduced rate of income tax payable by enterprises in zones but also provided for mechanisms for early exit. This ensured that enterprises did not set themselves up merely to benefit from tax holidays and after the holidays were over, they relocated elsewhere as *Morisset* and *Perman* aptly warns countries wishing to incorporate economic zones in their economic structures. In Zambia, the tax incentives provided in the ZDA Act, were not dependent or tied to any length of period the investment remains in the MFEZs to enjoy the incentives. It can reasonably be assumed that the public fear on relocation of investors elsewhere was based on this gap in the law.

4.2.8 THE LABOUR REGULATIONS

This is yet another strategic step taken by the PRC Government to ensure that labour cost remained more attractive in economic zones than in the rest of the economy**.** Chinese labour

[69]Ibid, Article 10
[70] Ibid, Article 19

law allowed each SEZ enterprise to decide or determine its own labour plans. In the Xiamen SEZ, for example, labour matters were guided by the Regulations on Labour Management in Xiamen, 1984. Under these Regulations, a SEZ enterprise may determine the number of days to be granted to a female employee as maternity leave which in any case would not be less than 56 days.[71] The structure and scale of wages were also determined by the SEZ enterprise.

Further, the Regulations obliged SEZ enterprises to take out medical insurance for the welfare of workers with an insurance company designated for that purpose by the Xiamen City authorities. It must be noted, however, that in coming up with conditions of employment, each SEZ enterprise was guided by the Labour Law of the Peoples Republic of China. These labour regulations applied exclusively to economic zones.

Interestingly, within a period of five to six years following the introduction of the new reforms, there was a remarkable increase in foreign investment in SEZs. In short, the results of the new economic reforms were such a resounding success that in 1984 the Government scaled up the SEZ establishment and development programme to other areas such as Hainan, Dalian, Tianjin, Guangzhou and Shanghai.[72] Apparently, the policy of clusters based on greater flexibility, autonomy and market involvement was what accounted for higher rates of growth and economic development of China.

What was most striking about the Chinese SEZs was that in conformity with international standards, the authorities used SEZs not only as a way of experimenting the implementation of a

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[71] The Regulations on Labour Management in Xiamen SEZ,1984, Article 12

[72] China Trade Report "How much to Invest", in CD Stoltenberg (1984), China's Special Economic Zones: Their Development and Prospects, Asian Survey Journal, Vol. 24 Issue No. 6,1984, pp 637-654

new economic structure but also, and perhaps more importantly, as a tool for attracting foreign investors. During the last two decades, almost half of all FDIs in China had been in SEZs, with the Shenzhen SEZ taking a lion's share. According to the China Trade Report, of the USD 2, 357 million worth of foreign investment projects in 1984, USD 1, 500 million was directed into the Shenzhen SEZ.[73] As of 2007, Shenzhen was one of the largest and most successful SEZs in China.[74] Since its establishment as a SEZ, Shenzhen had developed at a phenomenal pace. For instance, from 1980 to 2006, the average annual growth rate of Gross Domestic Product (GDP) was 27% while the total GDP stood at USD 71.3 billion and per capita income was USD 8,619 surpassing the national average figure of about USD 2,000.[75] In short, the Shenzhen city was one of the richest in China.

Guo puts the success of the Shenzhen SEZ in a proper perspective when he states the industrial base of Shenzhen town has transformed from being a traditional fish industry to hi-tech; from small-scale and scattered operations to large scale and group-based enterprises; and from assembling and processing to independent manufacturing.[76] This assertion was borne out of the fact that in 2005, for instance, the telecommunications, computer and electronics sub-sectors accounted for about 60% of the total output of the Shenzhen SEZ such that a substantial number of firms had established their own brands with total sales of well over USD1.25 billion.[77] Brand names such as Huawei and Zhongxing, both large manufacturers of electronic and telecommunications equipment had become major suppliers worldwide. International enterprises

[73] China Trade Report (1984) *How much to Invest*, in Stoltenberg C D (1984), China's Special Economic Zones: Their Development and Prospects, Asian Survey Journal, Vol. 24 Issue No. 6, pp 637-654
[74] Ibid
[75] Ibid
[76] W Guo et al, *Special Economic Zones and Competitiveness: A Case Study of Shenzhen*, Pakistan Resident Mission, Policy Note, Series No.2, 2007, www.adb.org/prm/publication.asp (Accessed 18/06/11)
[77] Ibid

engaged in office automation in Shenzhen SEZ include Ricoh, Toshiba, Epson, Copier and Xerox.[78] It was estimated that at least 20% of the world's total output came from enterprises in the Shenzhen SEZ. Of the world's top 500 MNCs including Wal-Mart, Compaq, Intel, IBM and Siemens, 141 had invested in the Shenzhen SEZ as of 2007.[79]

4.2.9 OTHER FACTORS INFLUENCING THE SUCCESS OF SHENZHEN SPECIAL ECONOMIC ZONE

There were several other factors that underpinned the Shenzhen SEZ's success and competitiveness. *Guo* postulated some of them as follows:

(i) Government Policy framework

The Shenzhen SEZ enjoyed by far the most liberal economic policies in the entire country both in terms of attracting FDI and engaging in international trade. This was as a result of the Central Government's special policy framework for the Shenzhen SEZ which has provided an enabling environment that had enhanced the city's industrial competiveness. For example, the city was among the first to enjoy differential corporate tax rates for domestic and foreign investors. While foreign investors in the Shenzhen SEZ paid a nominal tax rate of 15% and an actual tax of 11%, domestic investors paid at the corresponding rates of 33% and 23%, respectively.[80] Although the preferential tax rate system was eliminated in 2007, it still applied to the hi-tech sector and small enterprises

[78] Ibid
[79] Ibid
[80] Ibid

in the city.[81] Due to this preferential treatment of foreign investors, the actual utilisation of FDI increased by at least 10 percent annually from 1980 to 2006 while the value of exports rose to USD 136.1 billion and imports amounted to USD 101.7 billion.[82] In short, the open policy economic environment had had a substantial influence on the Shenzhen SEZ's success.

(ii) Population

Being cosmopolitan, Shenzhen city had been home to migrants from within and outside China. Migrants accounted for at least 83% of the city's total population and the city's demographic profile favoured economic development as up to 96% of the population comprise citizens below the age of 59 years.[83] This had had a tremendous influence on the success of the city as the innovative spirit of the city stemmed, in part, from its vibrant and highly motivated migrant community.

(iii) Financial Environment

The Chinese government deliberately put in place an enabling financial environment that ensured that finances were available even for the relatively risky ventures. Shenzhen was the most active Chinese city as far as the availability of venture capital was concerned such that by the end of 2005, the total number of venture capital firms in the city accounted for one third of the total number in the whole of the country.[84] Besides, the

[81] Ibid
[82] Ibid
[83] Ibid
[84] Ibid

city hosted the Shenzhen Stock Exchange, the Small and Medium Sized Enterprise Guarantee Centre and other critical financial architecture.

(iv) Infrastructure

Physical infrastructure in the city was not only of international standard, but modern too. The city's harbour ranked fourth in the global container transportation business while its airport was third in the country accounting for 18.4 million passengers in 2006[85]. Roads, telecommunications and utilities were all of superior quality and contribute highly to industrial competiveness of Shenzhen.[86]

(v) Location

As stated above, Shenzhen is a coastal city bordering Hong Kong on the southern side. This location had been taken advantage of in that Shenzhen's desire to upgrade its industrial structure and competiveness had benefited greatly from its proximity to Hong Kong, a major international financial, information and services centre. A large share of investment to Shenzhen had come from Hong Kong, especially during the early years of the Shenzhen SEZ development.[87]

(vi) Government Efficiency

The Shenzhen *Shi* (Municipality), through a direct one-stop service for large enterprises provides administrative efficiency and runs in a transparent manner.[88] For instance, in

[85] Ibid
[86] Ibid
[87] Ibid
[88] Ibid

formulating a development plan for the city, the local authorities sought local opinion and encouraged the transparency and effectiveness of the government decision-making process. Business procedures were simplified and streamlined and the local government implements personal service aimed at ensuring that applications from firms for various categories of investment licences were processed and approved within a specified period of time.[89] This too, had contributed to the attractiveness of the Shenzhen SEZ as an investment destination for many MNCs.

Clearly, the Chinese authorities having studied operations of zones in other parts of the world, and as *Prof Stoltenberg* put it, proceeded cautiously with the implementation of their own version of zones making sure that international best practices were incorporated in the establishment of SEZs. Issues such as location of SEZs, legislation and management were comprehensively taken care of.

4.3. THE REPUBLIC OF MALAYSIA

4.3.1 BACKGROUND

Malaysia gained its independence from Britain in 1957. However, the country's industrialisation efforts date as far back as 1954 when the recommendations by the International Bank for Reconstruction and Development (IBRD) commonly known as the

[89] J H Drabble, Economic History of Malaysia, E.H.Net Encyclopaedia: www.eh.net/encyclopedi/article/drabble.malaysia, supra

World Bank on import substitution began to be implemented by the government.[90] The import substitution policy was aimed at building a range of secondary industries to meet a large portion of the domestic demand for goods and services.[91] In this regard, the government enacted the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. The Ordinance offered, *inter alia,* investment incentives in the form of tax holidays to enterprises granted pioneer status. The Ordinance also guaranteed foreign investors the freedom to repatriate profits and capital.[92] According to *Sivalingam,* the policy produced impressive results as a large number of pioneer firms, especially in the manufacturing sector, rose from 18 to 148 between 1959 and 1968 while the value of output from pioneer firms increased by more than MYR 884 million[93] over the same period.[94] That notwithstanding, the number of new jobs created as a result of this policy was quite disappointing. While the government had hoped that at least 15,000 jobs would be created per annum during the 10-year period, on average, a meagre 2,400 jobs for the entire period were created.[95]

The import substitution policy, unfortunately, began to lose impetus in the late 1960s as many investors in the pioneer industries, particularly the British, switched attention elsewhere.[96] Additionally, during the same period, inter-ethnic violence resulting from the discontent against non-Malay people, especially the Chinese, escalated. The Malay

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[90] Ibid
[91] Ibid
[92] G Sivalingam, *The Economic and Social Impact of Export Processing Zones: The Case of Malaysia*, ILO, Geneva, 1994, p4,
[93] Approx. USD 283million
[94] G Sivalingam ,*The Economic and Social Impact of Export Processing Zones: The Case of Malaysia*, ILO, Geneva, 1994, p4
[95] Ibid
[96] J H Drabble, *Economic History of Malaysia,* E.H.Net Encyclopaedia: www.eh.net/encyclopedi/article/drabble.malaysia, supra

people were unhappy that the economic benefits of the independent Malaysia were not trickling down to them, a situation that led to the riots in urban areas.[97] Subsequently, the government abandoned the capital-intensive import substitution strategy as it was not generating the levels of employment and exports necessary to maintain political stability. This led to a shift in policy from capital-intensive to labour-intensive and export-oriented industrialisation. The aim of the new policy was to achieve at least 10% growth in employment within a reasonably short period.[98] Thereafter, the government introduced and implemented another strategy called the "New Economic Policy" (NEP). The main aim of NEP was to restructure the Malaysian economy over a period of 20 years from 1970 so as to ensure that:

(i) corporate equity was redistributed among Malays, 30%, non-Malays, 40% and foreigners, 30%;

(ii) close links between race and economic status were eliminated and employment restructured so that the Malay peoples' share in each sector reflected accurately their proportion of the total population;

(iii) since at least 75% of the Malays earned below the official poverty line, poverty irrespective of race was to be reduced.[99]

The underlying principle of NEP was the achievement of economic growth. It was envisaged that as the economy grew, more jobs and investment would be created. Thus,

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[97] Ibid

[98] Government of Malaysia, in G Sivalingam (1994) The Economic and Social Impact of Export Processing Zones: The Case of Malaysia, ILO, Geneva, 1971

[99] Mid-Term Review, 2nd Malaysian Plan, 1973 p1, www.info.worldbank.org/etools/docs/reducingpoverty/case/25/fullcase/Malaysia%20Full%20Case.pdf, (Accessed 11/01/10)

emphasis was placed on export-oriented industrialisation as opposed to primary products. This would, in turn, not only ensure Malaysia's access to the global markets for its manufactured goods but also create economic benefits for its citizenry.[100]

4.2.8 ESTABLISHMENT OF FREE TRADE ZONES

Two years after the introduction of the NEP, yet another programme called the New Development Policy (NDP) was embarked upon. The main thrust of the NDP was to establish zones. In 1971, the government enacted the Free Trade Zones (FTZ) Act. The rationale of the new policy was to generate more jobs and increase exports of finished products. Subsequently, FTZs were set up in *Penang* state where production was carried on with the undertaking that the output would be exported. Firms that set up their businesses in FTZs received concessions such as duty-free import of raw materials and capital goods and paid relatively lower wages.[101] As a result, industries such as textiles, rubber, food products, chemicals, telecommunication equipment, electrical and electronic machinery, car assembly and iron and steel grew at a phenomenal rate.[102]

The NDP emphasised the provision of economic assistance to indigenous people with 'potential, commitment and a good track record' to participate actively in the economy.[103] The NDP was later incorporated into the Vision 2020, a long-term programme aimed at

[100] J H Drabble, *Economic History of Malaysia*, E.H.Net Encyclopaedia: www.eh.net/encyclopedi/article/drabble.malaysia, supra
[101] M S Denker, *Malaysia's Free Trade Zones and their Impact on Malaysian Economy*, 1994 www.sosylbi.selcuk.edu.tr/dergi/sagil-8/denker, 31/11/10
[102] Ibid
[103] Ibid

turning Malaysia into a fully industrialised country with a quadruple per capita income.[104] It was hoped that by 2020, Malaysia would have ascended the technological 'ladder' from low to high-tech type of industrial production with a corresponding increase in the intensity of capital investment and greater retention of value addition to raw materials by Malaysian manufacturers.[105]

4.2.9 LEGAL AND INSTITUTIONAL FRAMEWORK FOR FREE ZONES IN MALAYSIA

Like the PRC government and in accordance with international practice and standards, the government of Malaysia enacted specific legislation on economic zones which was different from the law on investment in the rest of the country. In this vein, the Free Zones Act, 1990 was enacted. Prior to that, the government enacted the Promotion of Investment Act, 1986.

4.2.10 THE PROMOTION OF INVESTMENT ACT

As above stated, in 1986, the Malaysian government enacted the Promotion of Investment Act (PIA) which provided for various investment incentives to different types of promoted products and sectors. Under the PIA, an enterprise granted pioneer status enjoyed different degrees of tax exemption depending on the type of goods produced.

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[104] Malaysia as a fully developed country, *Vision 2020*, Prime Minister's office, supra
[105] J H Drabble, *Economic History of Malaysia,* E.H.Net Encyclopaedia: www.eh.net/encyclopedi/article/drabble.malaysia, supra

For example, under section 1(b) of the Promotion of Investment Act, an enterprise investing in promoted products in a promoted area was entitled to tax exemption of up to 85% of the statutory income for 5 years. The balance of 15% was taxed at the prevailing corporate tax rate. Notably, this tax was applicable mostly to investment in the coastal areas so as to promote and develop the hotel and tourism industry. An enterprise that invested in high technology enjoyed 100% tax exemption of the statutory income for the first 5 years. To enjoy this incentive, however, an enterprise was to apply for, and be granted, pioneer status. The application was to be made within 6 months of the enterprise's establishment. Once granted, the pioneer certificate specified, among others, the date of production from which the exemption was effective. This capital allowance must be utilised during the pioneer period and could not be carried forward to the post pioneer period except for pioneer status enterprises engaged in research and development. Dividends paid out of tax-exempt income to shareholders were also exempt from tax.

Interestingly, the pioneer industries status law still applied in Malaysia at the time of the study. This demonstrates the consistency of the investment policy of the Government of Malaysia notwithstanding the fact that there had been successive changes of government.

The PIA further provided for an incentive known as Investment Tax Allowance (ITA). The ITA was an alternative to incentives granted to pioneer status enterprises and it was designed to cater for projects with large capital investment with long gestation periods such as factories, plant and machinery.[106] Eligible enterprises enjoyed up to 60% allowance in respect of qualifying capital expenditure incurred within 5 years from the

[106] The Promotion of Investment Act, No.327 of 1986, s2(a)

date the first capital expenditure was incurred. The allowance was meant to set off up 70 % of the statutory income in an assessment year. The balance of the statutory income was taxed at the prevailing corporate tax rate. Any allowance not utilised in a particular assessment year could be carried forward to the subsequent years until the whole amount had been fully utilised. If an enterprise was located in a promoted area, it was entitled to an ITA of 80% in respect of qualifying capital expenditure incurred within 5 years which could be used to set off up to 85% of the statutory income in that assessment year. Similarly, any allowance not utilised was carried forward until the whole amount was fully utilised.[107]

In 2002, the Government extended the ITA to enterprises investing in rearing of chickens and ducks in the Eastern corridor of the peninsular and other designated areas.[108] This was done in order to boost the export of chickens and chicken products especially to neighbouring countries. Under section 2 (c) of the PIA, enterprises investing in promoted high technology sectors but not granted pioneer status, were entitled to 60% ITA which could be used to exempt 100% of the statutory income in the assessment year and any allowance unutilised, is carried forward to the following year until it is fully used.

If, however, an enterprise invested in research and development activities, it was entitled to 100% allowance in respect of the qualifying capital expenditure incurred within 10 years from the date on which the first capital expenditure is incurred. The allowance was

[107] Ibid
[108] Malaysia Government, 2002 National Budget p1: www.mir.com.my/lb/budget2002/pmspeech.htm

meant to exempt up to 70% of the statutory income in the assessment year from tax and the unutilised allowance is carried forward.

Yet another incentive provided for under the PIA was the Industrial Adjustment Allowance (IAA). This type of allowance was applicable to selected enterprises in the manufacturing sector particularly wood based, textiles, machinery and engineering, stumping, tools and dyeing industries.[109] Such enterprises were eligible for an allowance of between 60% and 100% based on the industrial activities undertaken. The qualifying capital expenditure ought to be incurred within 5 years and could be used to exempt up to 100% of the adjusted income in the assessment year.

In terms of section 4 of the PIA, enterprises resident in Malaysia engaged in manufacturing, agriculture, hotel, tourism or other industrial or commercial activity in designated parts of the country enjoy an allowance called Infrastructure Allowance of 100% in respect of capital expenditure on infrastructure such as reconstruction, extension or improvement of permanent structures including bridge, jetty, port or road. This allowance was available to investors in zones as well as those in the rest of the country. What was clear was that the Government of Malaysia did not provide same incentives to all investors in the zones. Incentives were granted according to identified or prioritised goods and services in selected areas.

It was worth noting that enterprises engaged in the export of manufactured products and agricultural produce were eligible to double deduction on expenses incurred for the

[109] The Promotion of Investment Act, No.327 of 1986

promotion or marketing of exports. The eligible expenses included, among others, the overseas advertising, supply of free samples abroad, export market research, preparation of tenders for the supply of goods overseas, supply of technical information abroad, exhibits and/or participation required in trade or industrial exhibitions held locally or abroad approved by the Ministry of International Trade and Industry and participation in virtual trade and shows.[110]

According to sections 6 and 7 of the PIA, enterprises engaged in forest plantations or storage, treatment and disposal of toxic and hazardous waste were entitled to incentives either under the pioneer status or the Investment Tax Allowances. The PIA, furthermore, provided for incentives to enterprises investing or engaged in activities such as conservation of energy, utilisation of biomass as a new energy source, provision of cold chain facilities and services for food products and manufacturing. The tax exemption rates ranged from 60% to 85% depending on the economic sector the enterprise was engaged in.

4.2.11 THE FREE ZONES ACT, 1990

In addition to the Industrial Co-ordination Act, 1975 and the Promotion of Investment Act, 1986, the Government of Malaysia also enacted the Free Zones Act (FZA), 1990. The essence of FZA was to promote the economic life of the country using zones as a catalyst.[111] The FZA was specifically meant to regulate business activities in free zones

[110] The Promotion of Investment Act, No.327 of 1986, s 5(a)-(l)
[111] The Free zones , Act No. 438 of 1990, preamble

so declared by the minister responsible for finance. The FZA empowered the Minister of Finance, through notification in the government gazette, to declare an area to be a free commercial zone or a free industrial zone. The gazette notice defined the perimeter of the area so declared. Upon the declaration of an area as a free zone, the Minister of Finance then appointed a statutory body to be an authority empowered to provide, maintain and ensured that the free zone facilities are provided to guarantee the proper and efficient functioning of such a zone as may be required by the Minister. Thus, the government's involvement in the operations of a free zone was through the appointed authority. This ensured that important decisions are taken promptly as opposed to bureaucracy associated with typical government operations. This was in conformity with international best practice insofar as management of zones was concerned.

It was the responsibility of the appointed authority to provide adequate facilities for officers of customs whose duties required their presence within or at the perimeter of a free zone.[112] Further, the appointed authority was obliged to provide necessary and adequate enclosures meant to separate a free zone from the principal customs area for the protection of revenue and movement of persons, vessels and goods to and from a free zone. In addition, the appointed authority could allow any person to erect buildings and other structures within a free industrial zone provided the person met the set qualifications and to lease out such buildings and structures to any other person on terms and conditions prescribed by the appointed authority itself.

[112] The Free Zones , Act No.438 of 1990, s 13(3)

The FZA also provided for exemption of goods or services brought into, manufactured, or provided in the free zone from payment of customs and excise duties, sales or service tax. Goods produced in a free zone could be dealt with in any one of the following ways:

(i) removed from such a zone for export or sent into another zone whether in original packaging or otherwise;

(ii) be stored, sold, exhibited, broken up, repacked, assembled, distributed or otherwise manipulated or even destroyed; or

(iii) sent to any part of the principal customs area[113] with the approval of the appointed authority in consultation with the Director General of the Royal Malaysia Revenue Authority (RMRA).[114]

Notably, retail trade within a free industrial zone was prohibited unless the minister of finance, in his absolute discretion, conditionally authorised. It was important to understand that under the FZA, free zones were considered foreign territory for all intents and purposes. In this regard, goods brought into a free zone from any part of the principal customs area were deemed to be exports from Malaysia whereas goods sold or otherwise taken out of a free zone into any part of the principal customs area were deemed imports into Malaysia. Any person disregarding the provisions relating to disposal of goods manufactured in the free zone was liable, under the FZA, to graduated penalties depending on the frequency with which that person commits the same offence.

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[113] Defined in Section 2 as "any part of Malaysia but excluding a free zone…"

[114] The Free Zones , Act No.438 of 1990, s5

Under section 9, the fines ranged from 5,000 to 10,000 *Ringgit*[115] or a term of imprisonment of up to 2 years or to both.

Furthermore, the law provided that goods of any description that were to be used directly to manufacture other goods or goods manufactured in the principal customs area which were meant for export could be brought into a Free Industrial Zone whereas goods of any description may not be brought into a Free Commercial Zone without the permission of the Minister of Finance.[116] Thus, there was a difference in the treatment of goods brought into a Free Industrial Zone and those brought into a Free Commercial Zone. The rationale behind this difference was not readily apparent. Presumably, the reason was that whereas the Free Industrial Zones are meant for manufacturing purposes; a Free Commercial Zone was meant for trade purposes.

Notably, the FZA prohibited residence by a person in the Free Industrial Zone except with prior permission of the appointed authority.[117] Thus, for obvious reasons, Free Industrial Zones are not meant for residential purposes but for manufacturing while Free Commercial Zones could be used for residential purposes.

The appointed authority had power to exclude, remove from a Free Industrial Zone, or order the discontinuance of any activity or operations, if the appointed authority was of the view that the continuance of such activity or operations might be dangerous or

[115] Approximately USD 1,500 to 3,000
[116] The Free Zones , Act No.438 of 1990, ss 11-12
[117] The Free Zones , Act No.438 of 1990, s s15(1)

prejudicial to public interest, health or safety.[118] When the appointed authority had issued an order to remove or exclude particular goods from the Free Industrial Zone, the person so ordered ought to forthwith comply with the order if the activity complained of was dangerous or prejudicial to public safety notwithstanding the right to appeal to the Minister of Finance. If, however, the order related to the discontinuance of activities or operations, the order took no effect, if appealed against, until the matter had been determined in favour of the appointed authority. The decision of the Minister of Finance was final and not subject to review in any court of law.

The FZA empowered the courts to issue search warrants authorising customs officers to enter, break open, remove by force and possibly arrest, if necessary, whether by day or night if there was reasonable cause to believe that certain goods in respect of which an offence under customs and excise legislation or the FZA had been committed, were concealed in a shop, warehouse or in any building or place within a free zone.[119] However, a senior officer of customs[120] who believed that obtaining a search warrant would enable the suspected offender to remove the goods bearing on the case, may enter and search any building in the free zone and detain any person or goods therein without a search warrant.

Furthermore, in terms of Section 23A, a customs official was empowered by the FZA to access any recorded information or computerised data, and to inspect or examine its operation. The customs official could also order a person by whom, or on whose behalf

[118]The Free Zones , Act No.438 of 1990, s 16
[119]The Free Zones , Act No.438 of 1990, s21
[120]The Customs Act, Act No.235 of 1967, s2

he has reasonable cause to suspect the computer was being or had been used contrary to the provisions of the FZA, to provide the customs official with the necessary assistance. Sections 24 and 25 authorised a proper officer of customs to open any package and examine the goods therein which were destined to and from a free zone. The proper officer's authority extended to searching any vessel or aircraft just landed or before departure. Goods which were the subject of the offence alleged could be seized and, if necessary, forfeited to the State.

It was noted, however, that any officer of customs could also arrest without a warrant in a free zone any person found committing an offence under the customs and excise or related legislation. The FZA also provided for the protection of whistle blowers from criminal proceedings, and the names or address of an informer, or any details that might lead to his discovery were prohibited from disclosure. In addition, where an enterprise committed an offence under the FZA, each director or officer at the time of the offence was deemed to have committed the offence, unless the officer proves that the offence was committed without his consent or knowledge, and that he had exercised due diligence to prevent the commission of the offence.

4.2.12 THE INDUSTRIAL CO-ORDINATION ACT, 1975

The Industrial Co-ordination Act, 1975, was passed for purposes of co-coordinating and ensuring orderly development of manufacturing activities in the country and applied to the entire country, including zones. The Act established an Industrial Advisory Council whose main role was to advise the Minister responsible for industrial development on matters pertaining to manufacturing activities. It was a requirement under the Industrial Co-ordination Act that every manufacturing activity or enterprise be licensed. The licensing officer was empowered to refuse an application for a licence if the manufacturing activities were inconsistent with the national economic and social objectives.

The Industrial Advisory Council worked closely with other institutions such as the Malaysia Industrial Development Authority (MIDA), particularly with regard to zone establishment and development. In fact, before an area was declared a zone by the Minister of Finance, there was input from the Industrial Advisory Council and the MIDA regarding the location and other necessary infrastructure development in the zone. This was particularly important in that decisions concerning development, especially in zones, were not left to the discretion of one individual or one institution but based on broad consultations. This enhanced harmony and consensus on matters of economic development.

4.2.13 THE MALAYSIAN INDUSTRIAL DEVELOPMENT AUTHORITY (INCORPORATION) ACT, 1965

The principal objective of the Malaysia Industrial Development Authority (Incorporation) Act, 1965 was to provide for promotion and co-ordination of foreign investment in Malaysia. The Act established a corporate body known as the Malaysia Industrial

Development Authority (MIDA) to spearhead industrial development in the country particularly by foreign investors. MIDA was also charged with, *inter-alia,* the following functions:

(a) undertaking activities relating to promotion of industries and related services within or outside Malaysia;

(b) undertaking or causing to be undertaken research and planning on matters relating to industrial development;

(c) advising the government on the granting of manufacturing licences, incentives and other facilities relating to the promotion, development and co-ordination of industries; and

(d) assisting Malaysian companies in seeking technology and investment opportunities abroad.[121] In this vein, MIDA had opened offices in various parts of the world for purposes of promoting investment in Malaysia. For instance, MIDA had offices in the United States of America, Europe, Asia and Australia.[122]

It was worthy of note that although MIDA's objective was to promote investment in Malaysia, the authority was also charged with planning for industrial development, recommending policies to promote such development to the Minister of International Trade and Industry, providing consultancy services to companies operating in Malaysia and coordinating the exchange of information between organisations involved in industrial development.

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[121] Malaysia Industrial Development Act, No. 397 of 1965, s6

[122] MIDA worldwide network, www.mida.gov.my/env3/index.php?page: 10/11/11

From the foregoing, it can be argued that the Malaysian government based its zone development on the neo-classical theory that free trade is key to economic development. This is evident from the fact that since independence, the country had always encouraged and promoted free trade. The government , however, seemed to have taken critics of the neo-classical theory on board by ensuring that zones were not the sole drivers of economic growth, but rather a stepping stone in reforming the economic structure of the country. This was manifest in the numerous pieces of legislation enacted to ensure that the differences or distortions between zones and the rest of the economy were either eliminated or minimised in the long term.

Additionally, the country in conformity with international practice ensured that there existed specific legislation on zones which was separate from the law on investment in the rest of the economy. Management and location of zones were also provided for in the law. With regard to the MFEZs, there were gaps in the law.

4.2.9 CONCLUSION

This chapter has discussed the economic zone development from an international perspective. It has also briefly discussed the economic history of the benchmark countries. Further, the chapter has brought out some legal and institutional frameworks common in all zones, not only in the benchmark countries but also internationally, and which were absent in Zambia's MFEZs**.** In both China and Malaysia, the governments have consistently followed substantially the same economic vision regardless of the leadership in power at any one time. In short, there had been continuity of economic policy over a long period of time despite changes in political power**.**

In China, the law provided that each SEZ was delineated for a specific purpose. If the SEZ was established for industrial purposes then only industrial activities were allowed in that SEZ. In other words, there was no mix of activities in any particular SEZ. In Malaysia, zones are in two categories; namely industrial and commercial zones. Each category had its own rules regulating activities permitted in the zone. For instance, whereas people could reside in a commercial free zone, no person was allowed to reside in an industrial free zone. In Zambia, the law allowed residence as well trade to take place simultaneously in the MFEZs.

The second feature related to labour laws and labour-related matters. Whereas in China the law allowed each SEZ to formulate its own labour and wage-related regulations, in Malaysia, the labour laws applied across the Board. In other words, in Malaysia, insofar as labour-related laws were concerned, no distinction was made in application of the law between a free zone and a principal customs area. Both the Chinese and the Malaysian approaches to labour laws and labour matters have their own advantages and disadvantages. One advantage of the Chinese approach was that it promoted competitiveness among SEZs in terms of the cost of production (labour). The disadvantage was that it promoted discrimination among workers in the same country. Those in zones were subjected to different laws, in most cases poorer conditions than their counterparts in the rest of the country. In the Zambian case, the same law governing investment in the rest of the country was also applicable to investment in MFEZs.

Yet another feature worth noting in this chapter relates to the legal and institutional framework for zones in the benchmark countries. In both China and Malaysia, the major law regulating zone establishment and development was not only specific and separate from the rest of the economy but also not isolated. In other words, the law on zones was supported by other laws so as to ensure smooth operations in zones. Similarly, institutions responsible for zone development and management were deliberately decentralised and clothed with necessary power to make decisions at the local level to facilitate efficiency.

CHAPTER FIVE

5.0 ANALYSIS OF SELECTED PROVISIONS IN THE ZAMBIA DEVELOPMENT AGENCY ACT, 2006

5.1 INTRODUCTION

In the preceding chapter, international best practices and standards on establishing and developing economic zones have been discussed. Further, the zone development in the benchmark countries, namely China and Malaysia, has been critically examined and a conclusion drawn that both countries complied with international standards on zone establishment and development whereas MFEZs failed, in many respects, to comply with international best practices. In this chapter, selected provisions in the ZDA Act, 2006 are examined to determine their import and ramifications on investment in MFEZs especially local investors.

5.2 BACKGROUND

Following the enactment of the ZDA Act, local entrepreneurs argued that the Act disadvantaged them in many respects. They argued as stated above, for example, that the Act favoured foreign more than local investors especially in relation to investment incentives in the MFEZs. They contended that the bias towards foreign investors was manifest in the minimum financial threshold of USD500, 000 required for any business enterprise to invest in a MFEZ and enjoy additional incentives besides the general incentives applicable to all investors regardless of their location.[1] This amount of money was perceived to be too high for most local entrepreneurs to afford. Others commentators wondered whether the introduction of MFEZs was a "Zambian Shenzhen or just another Development Agreement."[2] The comments were made in the light of Development Agreements that the government had entered into with foreign investors regarding investment in the copper mines during the privatisation programme in which excessive incentives were granted to the new mine owners. Stakeholders questioned the incentives granted to investors in the MFEZs and wondered if MFEZs were 'value for the money' for the Zambian taxpayer. In their view, Zambian MFEZs meant zero direct revenue to the government, in addition to spending money on MFEZs unlike in other countries where such infrastructure was developed by the private sector.[3] *Prof John Lungu,* for instance, observes, with respect to privatisation, that "the impact of privatisation is that it places ownership of the copper mines in private hands, rather than being in the control of Government and in Zambia's case, because there were few, if any, Zambian companies with enough wealth to buy a copper mine, it placed ownership in the hands of foreign firms rather than Zambian nationals."[4] He asserts further that this makes it likely that profits from mining houses leave the country without having made any positive impact on the Zambian economy, and, rather than being re-invested in building up the national economy, profits are placed in banks or re-invested in companies outside the country.[5] Furthermore, he observes that "mining is the backbone of the Zambian economy, so the backbone is in foreign hands and Zambian nationals cannot participate in the ownership."[6] He

[1]The Zambia Development Agency, Act No.11 of 2006, s56 see also The Income Tax(Amendment) Act, Act No.4 of 2007, s 11(d)
[2] Zambian Economist Magazine, *Economic Impact of MFEZs*, www.zambian-economist.com, (Accessed 1/06/10)
[3] T Moody, *Policy Challenges of Zambian MFEZs,* www.zambianeconomist.com (Accessed 28/02/2011)
[4] J Lungu et al, *For Whom the Wind Falls?* Winners and Losers in the Privatisation of Zambia's Copper Mines, CCJPD,CSTNZ, Lusaka, 2006
[5] Ibid
[6] Ibid

concluded his observation by stating that the government should have put in place measures to allow Zambian private individuals to participate in the ownership of these mines.[7]

Prof. Lungu's observations are equally true also for the MFEZs particularly if the issue of partnership between local and foreign investors is not properly addressed. For example, like in the privatised mines, many expected benefits to the local economy from MFEZs may not materialise as the linkages (and other dynamic benefits) by foreign investors might be with fellow foreign suppliers leaving out local suppliers, who, in any case, are unable to compete on quality and pricing of goods and services with foreign suppliers.

In light of the above concerns, it was necessary to examine critically selected provisions of the ZDA Act to determine whether or not the law favoured foreign investors more than local entrepreneurs. For this purpose, only provisions that had a bearing on investment in MFEZs were selected. This was done for convenience as there were no specific provisions in the ZDA Act that exclusively and elaborately dealt with MFEZs. The selected provisions were grouped under the categories below:

(a) development of, and investment in, MFEZs;

(b) joint ventures; and

(c) entry and exit procedures.

[7] Ibid

5.6.2 DEVELOPMENT OF AND INVESTMENT IN MULTI-FACILITY ECONOMIC ZONES

One of the objects of the ZDA Act was to foster economic growth and development by promoting trade and investment in the country through a coordinated private sector led development strategy.[8] One way that government hoped to realise this objective was through development and promotion of investment in MFEZs by both local and foreign investors. At first glance, this provision appears innocent. One may argue that the provision applies equally to both local and foreign investors. It can be deciphered from this provision, however, that its ramifications are much wider than its intention. Firstly, it was important to understand that developing an MFEZ is an expensive venture considering the facilities that must accompany it. The cost of constructing 1 kilometre of a tarred road, for example, in Zambia, at the time of this research, was approximately K1.0 billion.[9] It, therefore, follows that only those investors with access to finance can afford to develop a MFEZ and most local investors do not have such finances. This explains why the development of MFEZs in Zambia was being undertaken almost exclusively by foreign investors.

It is also worth noting that once an MFEZ has been developed, the developer invites business firms to set up business enterprises within the MFEZ. It can reasonably be presumed from the foregoing that the developer will most likely invite more foreign investors to invest in the MFEZ than local investors. This is because, as *Milberg* rightly observes, local firms in developing

[8] The Zambia Development Agency (Amendment), Act No. 29 of 2011, preamble

[9] Approximately USD200,000, see also Lusaka Times, *GBM Challenged to name the roads he funded in Kasama,* www.lusakatimes.com (Accessed 25/07/11)

economies lack or have inadequate access to international distribution channels due to lack of or inadequate marketing and managerial know-how and need to be introduced to these channels for them to be competitive. By implication, therefore, if the developer invites more local than foreign investors to set up and operate business firms in the MFEZs, the returns on the developers investment would be slow as the local investors would need to gain access to international distribution channels to be able to produce international standard goods and be able to sell them on the international market.

Besides, it must be recalled that the law further provided that investors investing a minimum of USD500, 000 in a MFEZ or in priority sector or product were entitled to, in addition to the general incentives, other incentives the following incentives:

(i) zero tax on profits made by business enterprises for a period of five years from the first year profits were made. For sixth to eighth year, only 50% of the profits were to be taxed while for ninth and tenth year, 75% of the profits were to be taxed;

(ii) zero percent tax on dividends for a period of five years from the year of first declaration of dividends. From sixth to eighth year, only 50% of the profits were to be taxed whereas for years nine and ten, 75% of profits were to be taxed;

(iii) zero percent import duty rate on raw materials, capital goods and machinery including trucks and specialised vehicles for five years.[10]

Although an investor could invest in an MFEZ less than USD500, 000, as earlier alluded to, they would not be entitled to the additional tax incentives enjoyed by those who meet the minimum financial threshold. According to government's argument, these incentives applied to all

[10] The Income Tax (Amendment) Act, No.4 of 2007, s11(d)

investors regardless of their place of origin. In other words, it did not matter whether the investor was foreign or local, they were entitled to these incentives provided they met the minimum financial threshold. The law further entitled an investor investing a minimum of USD10 million in new assets to further incentives as might be specified by the Minister of Finance on a case by case basis. It did not matter whether the investment was located in a MFEZ or not. It follows, therefore, that investment of at least USD 10 million, entitled an investor to general incentives, additional incentives for meeting the minimum threshold of USD500,000, and other incentives far and above additional incentives as the Minister of Finance might specify.

From the foregoing, it is apparent that although it was difficult for local investors to invest in the MFEZs due to the high minimum financial required to trigger full incentives, the law did not, indirectly favour foreign investors more than local investors. The USD500, 000 minimum investment in the MFEZ was prohibitive to local investors who, in any case, had limited access to financial resources. Although the ZDA Act did not prohibit local investors to access either local or international finances for purposes of investing in the MFEZs, it is acknowledged, regarding SMEs, that they present a high risk to the lender because most of them have insufficient assets and suffer from low capitalisation. In addition, most of them maintain poor accounting records and lack other financial records making it difficult for financial institutions to assess their creditworthiness.[11] The only alternative for SMEs to enjoy the full extent of the incentives as their counterparts in MFEZs, was if they invested in priority sectors or products outside the MFEZs. In this way, they would only require to invest less than the USD 500,000.[12]

[11] UNCTAD, *Zambia Investment Policy Review*, Geneva, 2007
[12] See Second Schedule to the ZDA Act, 2006 as amended for Priority sectors/products

It is argued that the cost of production for such firms outside the MFEZs would be higher as they would not benefit from superior infrastructure enjoyed by their counterparts in MFEZs.

5.6.3 ESTABLISHMENT OF JOINT VENTURES

Another objective of the ZDA Act was to encourage establishment of joint ventures between local and foreign investors especially in Greenfield investments.[13] Unfortunately, this was how far the ZDA Act went in this respect. It was silent on what constituted a joint venture, for example, neither did it specify how much capital contribution each party would be required to contribute for a venture to qualify as such. It is argued that for joint ventures to be of mutual benefit to the parties, the parties themselves should negotiate on an equal footing. Where one party is weaker, the stronger one will have an upper hand in negotiating for itself better terms of the partnership. After all, it is said that "he who pays the piper determines the tune." It is for this reason that local investors cannot be expected to negotiate favourable terms on their own. Clearly, even though the provision on joint ventures may be well meant, it fell short of what was expected of legislation designed to regulate joint ventures and partnerships between foreign and local investors. It is submitted, therefore, that in its current form, the law is inadequate in encouraging and regulating joint ventures which could be of mutual benefit to the parties thereto.

5.6.4 ENTRY AND EXIT PROCEDURES IN MULTI-FACILITY ECONOMIC ZONES

The ZDA Act did not provide, in an elaborate manner, for the regulation of exit procedures by investors especially, foreign investors from the MFEZs. The ZDA Act merely provided that an

[13] Zambia Development Agency, Act No. 11 of 2006, preamble

investor who wished to develop a MFEZ or to operate a business enterprise in an MFEZ should submit an application to the Board and that a foreign investor, investing a minimum of USD250, 000 and employing at least 200 persons was entitled to bring into the country a maximum of 5 expatriate employees at managerial and technical levels regardless of the location of the investment.[14] In this regard, the Board was obliged to assist the foreign investor acquire the relevant residence and work permits.[15]

Under Section 20 of the ZDA Act, a foreign investor was entitled to externalise, among others, the net proceeds of sale or liquidation of a business enterprise. The import of this provision, in the absence of clearly laid down exit rules, is that an investor may enter an MFEZ simply to enjoy as many tax exemptions as possible and thereafter relocate elsewhere having externalised the proceeds of their liquidated enterprise. In any case, the law did not provide for the period within which a business enterprise should remain in the MFEZ to enjoy the exemption from payment of taxes as the Chinese SEZ laws did provide.

5.6.5 DEVELOPMENT OF MULTI-FACILITY ECONOMIC ZONES

An investor in a MFEZ could invest either as a developer of the zone or as a zone licensee. Whereas a developer required a licence to develop a MFEZ, a licensee required a permit to set up and operate a business enterprise in a MFEZ.[16] In this regard, the implementation of MFEZs could be considered from two perspectives:

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[14] Zambia Development Agency , Act No.11 of 2006, s68
[15] Ibid
[16] Zambia Development Agency, Act No.11 of 2006, s68

(a) An investor as a Developer of a Multi-Facility Economic Zone

At the time of the study, as already stated above, six MFEZs had been declared and were at different stages of development. Except for the Lusaka South MFEZ and the Sub-Sahara Gemstone Industrial Park which were being developed on private-public partnership basis between the Government Republic of Zambia and Kulim Technology Industrial Corporation of Malaysia and a consortium of local investors respectively, the rest of the MFEZs were being developed by foreign investors. In other words 2/3 or 66.7% of the MFEZs under development were being developed by foreign investors while 1/3 or 33.3% were being developed by government and/or the local private sector. Of the 33.3% non-foreign investment, only 1/6 or 16.7% accounted for MFEZs being developed wholly by local investors. This scenario is better illustrated in Table 3 and Pie chart 4 below.

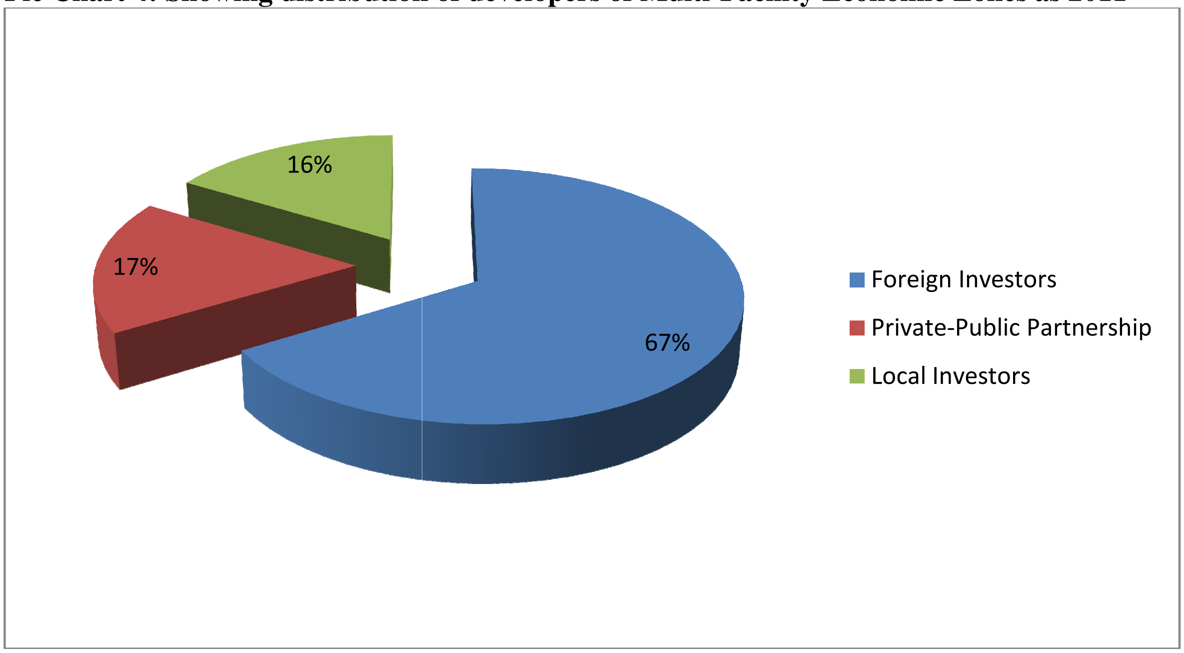
Table 3: Showing developers of Multi-Facility Economic Zones as of 2011

Name of MFEZ	Developer	Remarks
Chambishi	China Nonferrous Metal Mining Corporation Limited	Wholly foreign owned company
Lumwana	Lumwana Properties Development Company Limited	Wholly foreign owned company
Lusaka East	China Nonferrous Metal Mining Corporation Limited	Wholly foreign owned company
Lusaka South	Government of Zambia & Kulim Technology Industrial	Private-Public Partnership (PPP) arrangement

	Corporation of Malaysia	
Roma	CPD Properties (SA) Limited	Wholly foreign owned company
Sub-Sahara Gemstone	Sub-Sahara Gemstone Exchange Limited	Wholly locally owned company

Source: Author, constructed from information collected from the Zambia Development Agency

Pie Chart 4: Showing distribution of developers of Multi-Facility Economic Zones as 2011



Source: Author, constructed from statistics obtained from the Zambia Development Agency

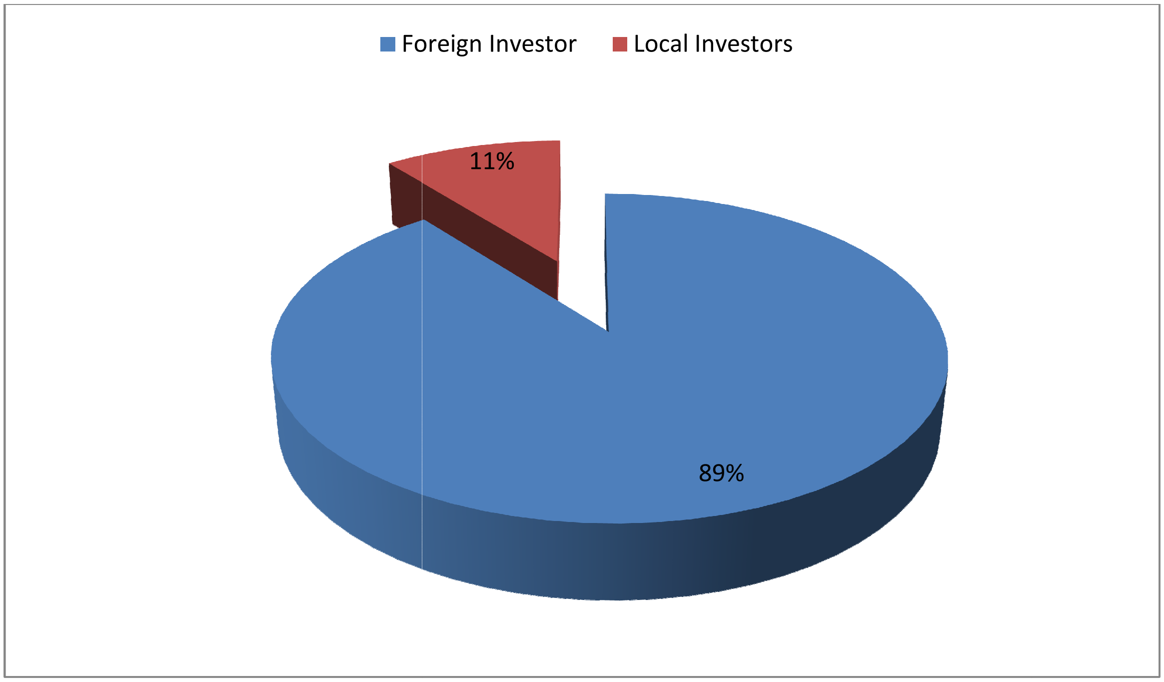
(b) Investor as an Operator in a Multi-Facility Economic Zone

According to ZDA, a total of 19 business enterprises had been established, and in some cases begun operations, in various MFEZs at the time of the study.[17] Of this number, 18 were in the Chambishi MFEZ while 1 was in the Lumwana MFEZ. Of the 18 enterprises in the Chambishi

[17] Interview with Zambia Development Agency officials on 27th January, 2012

MFEZ, only 2 or 11% was owned by local investors while 16 or 89% were operated and owned by foreign investors. In fact, all the enterprises operating in the Chambishi MFEZ were not only foreign but also Chinese owned. The only business enterprise set up in the Lumwana MFEZ, at the time, was in the hospitality service industry. The scenario is as depicted in pie chart 5 below.

Pie Chart 5: Showing distribution of business enterprises operating in MFEZs



Source: Author, constructed from statistics obtained from the Zambia Development Agency

From the foregoing, it is indisputable that the majority of investors either developing or operating in the MFEZs were foreign. This fortifies the assertions made earlier on, that foreign developers of MFEZs invite fellow foreigners to invest as operators in MFEZs for various but obvious reasons. It is argued that the lack of or inadequate finances by local entrepreneurs and the legal framework has resulted in mainly foreign investors developing and/or operating in the MFEZs. Unfortunately, the nature of zones is that they are used as bait to attract foreign investment. Local investor participation is by way of joint ventures. It must be noted, further, that although the Lusaka South, Lusaka East, Sub-Sahara Gemstone and Roma MFEZs were at different levels of development, not a single enterprise had begun operations at the time this study.

5.7 CONCLUSION

This chapter has analysed selected provisions in the ZDA Act, 2006 in order to determine whether indeed the law favours more one section of investors than another. The chapter has shown that although most MFEZs were being developed and/or operated by foreign investors, the law provided incentives to all investors in MFEZs and priority sectors/products on an equal footing. The difficult, however, had been the lack of finances by local investors to develop the MFEZs and the minimum financial threshold that was perceived beyond reach by local investors. Further, the chapter has brought to the fore some of the inadequacies in the ZDA Act such as lack of exit measures and non regulation of joint ventures.

CHAPTER SIX

6.0 SUMMARY, FINDINGS AND RECOMMENDATIONS

6.1 INTRODUCTION

In the preceding chapter, selected provisions of the ZDA Act, 2006, have been closely examined and a conclusion has been reached that incentives provided therein do more favour a foreign investor than a local entrepreneur. This chapter summarises the study before outlining and analysing the findings and making recommendations on the way forward for the country's industrialisation efforts.

6.2 SUMMARY

The main objective of this research was to assess the viability of MFEZs as industrial tools for Zambia's economic development. The research traced and examined various economic strategies employed by the Government Republic Zambia (GRZ) to develop the country economically. Further the study traced the genesis of economic zones in Zambia before examining the establishment and subsequent failure of the EPZ policy. The study also identified the theoretical bases as well the importance of economic zones as spring boards for economic growth and development and answered the question whether or not economic zones were important in the development of the country. The study further examined international standards and practices in economic zone establishment and determined the extent to which the international standards and practices applied to MFEZs. Finally, the research examined selected provisions of the ZDA Act, 2006, so to determine the biasness, if at all, of the incentives toward one type of investor and the findings are set out hereunder.

6.3 RESEARCH FINDINGS

6.3.1 INVESTMENT IN MULTI-FACILITY ECONOMIC ZONES

The study showed that investment in the MFEZs favoured a foreign more than a local investor. This is because although the ZDA Act consisted of investment incentives which were accessible to all investors be it in the MFEZs or the rest of the economy provided the investment was in the priority sectors the minimum financial threshold for investment in the MFEZ was way beyond reach of most of the local investors. As result almost all investors in the MFEZs, at the time of the research, were foreign. In fact, as pie charts 4 and 5 above show, 67% of the investors developing MFEZs were foreign while 89% of those that had set up or were about to set up business enterprises in MFEZs (zone operators) were also foreign. This situation does not depart from international standards as economic zones are essentially meant to attract foreign capital, local participation is mostly through partnerships with foreign investors.

6.3.2 ADEQUACY OF THE ZAMBIA DEVELOPMENT AGENCY ACT

Another finding of the research is that the ZDA Act was inadequate to ensure successful implementation of MFEZs in the country. Firstly, the Act, contrary to international norms, was not separate from the law regulating investment in the rest of the country. The immediate danger that this scenario poses was that the law on investment in MFEZs was clouded with many other provisions thereby failing to provide specific provisions necessary for effective regulation of economic zones**.** In particular, the ZDA Act did not provide for the following important aspects:

- creation and operations of joint ventures between local and foreign investors;
- exit procedures from MFEZs; and
- differential income tax rates between zone firms and those in the rest of the country.

6.3.3 CREATION AND OPERATIONS OF JOINT VENTURES

Although, the ZDA Act provided for the promotion of joint ventures between local and foreign investors, it did not elaborate on how these joint ventures should operate. Neither did the Act stipulate the rights and obligations of each party to a joint venture. It is submitted that whether the joint ventures operated in zones or not, they are important to the country's economy in that they promote mutual benefits to both the investor and the host country. They (Joint ventures) create various linkages between local and foreign enterprises thereby increasing local enterprises competitiveness internationally. It is these linkages that expose local firms to international competitiveness in the production and sale of high value products. This is because foreign investors especially MNCs already know what is required and where to produce it at a minimum cost through off-shoring and/or off-shore outsourcing. Thus, through joint ventures, local firms' capacities to compete on the international market are built, strengthened and maintained.

In addition, employees of joint ventures are exposed to new technology and learn new skills that enhance productivity especially where such employees are sent on attachment to plants abroad where headquarters of the joint venture firms are situated. It is submitted further that where joint ventures are formed between local and foreign enterprises, a substantial part of the profits made are reinvested in the economy as opposed to being repatriated from the host country. Besides, in a situation where a foreign joint venture partner decides to relocate or cease operations of the enterprise, the local partner is likely to look for another partner so that the operations of the investment do not cease. In this way, jobs for the local people and revenue to the treasury, through taxes, are assured.

In this regard, one of the bench mark countries, China, had a specific law on joint ventures between foreign and local Chinese companies. The Joint Venture Regulations, 1979, specified the minimum proportion of capital contribution a foreign enterprise needed to invest in the country including the SEZ firms in order to qualify as a joint venture enterprise. Zambia may draw lessons from China.

6.3.4 MULTI-FACILITY ECONOMIC ZONES EXIT PROCEDURES

The research also showed that although the ZDA Act provided for investment entry procedures into the MFEZs by investors, it did not provide for exit procedures at all. The danger that this flaw posed was that foreign investors might invest in MFEZs purely for purposes of enjoying tax incentives such as tax holidays. When the tax holidays came to an end, the investors might close down their plants and relocate to other countries where investment climate might be more attractive. This inevitably would result in loss of revenue to the country against which *Morisset* warns when he enunciates the dangers of providing 'unguarded' tax waivers and holidays to foreign investors.[1]

Morisset's warning is supported by *Perman* who points out that EPZ investments are by their nature precarious and that investors are likely to leave the country at a moment's notice if more favourable conditions for production are on offer elsewhere.[2] In other words, both *Morisset* and *Perman* are of the view that a government needs to be cautious in granting investment incentives such as tax exemptions to investors. It must be reiterated that granting 'unguarded' tax exemptions particularly to foreign investors may cause serious financial constraints for a country like Zambia because foreign investors, whenever it suits them, may relocate elsewhere having denied the treasury revenue through tax exemptions and reductions. This was what happened in the post privatisation period in Zambia during which period companies such as Dunlop, Colgate Palmolive and Chloride Zambia Limited relocated to other countries which had more favourable investment climate.[3] This situation resulted in mass unemployment and high poverty levels in the country in addition to loss of revenue to the treasury. It is, therefore, necessary that Zambia takes heed of this piece of advice and puts in place 'gate valve' measures as a way of tying the enjoyment of tax incentives, especially tax exemptions and reductions, to the length of stay of business enterprises in the MFEZ.

[1] J Morriset & K Andrews-Johnson, *The Effectiveness of Promotion Agencies at Attracting Foreign Direct Investment,* Foreign Investment Advisory Services of the International Finance Corporation & the World Bank, Washington DC, 2001, www.ifc.org/ifcext/fias.nsf/content/FIAS.occassional papers

[2] S Perman et al, *Behind the Brand Names: Working Conditions and Labour Rights in Export Processing Zones*, ICFTU, 2004,p4, www.icftu.org/www/PDF/EPZ REPORTS.PDF

[3] AFRODAD, *The Impact of Wrong Policy Advice on Zambia: a Case Study*, Lusaka, 2007, www.afrodad.org/downloads/zamia%20FTA.pdf (Accessed 14/11/11)

In this regard, there were good lessons that could be drawn from the Chinese SEZs where for instance, for an enterprise to enjoy the tax exemptions, the enterprise had to remain in the SEZ for a period of not less than ten years. If an enterprise sought to exit the SEZ before the end of that period, the tax exempted or reduced became immediately due and payable to the government. This not only ensured that only genuine investors invested in the zones but also that their investment remained in the SEZ for a relatively long time to the benefit of both the country and investor.

6.3.5 OTHER FINDINGS

6.3.5.1 POLICY CONSISTENCY

The study showed that private sector participation in the running of any country's economy was a prerequisite to economic development. The Asian Tigers and the BRICS states (i.e. Hong Kong, Taiwan, Singapore and South Korea and Brazil, Russia, India, China and South Africa respectively) were shining examples of countries that had, in the recent past, integrated private capital through private sector participation in the running of economies. The results were manifest and admirable.

Unlike the Asian Tigers, for example, Zambia tried to do away with private sector involvement in the running of the economy through the introduction of the Mulungushi and Matero Reforms but the results were devastating. Economic ills ensued which subsequently led to change of political power and government in 1991. Following the regime change, the new government had to embark on a new economic path that encouraged private sector participation while it facilitated business through regulation. Although the results had not been outstanding, the economic growth rates had been consistently rising especially in the last eight years or so. It is argued that if the economy has to continuously grow, it is important that the country pursues systemic economic reforms. This means that economic reforms should be wholesome in nature and not in piece meal. The reforms must address such aspects as infrastructure development, transportation, health care delivery system, educational and skills development, among other things. This is what is considered as a 'corporate strategy' to economic development which *Mwenda,* above, advocates. Economic zones are not by any means, and should not be regarded as, the sole solution to economic development. They are a means to reforming the economy and as observed by *Madani*, they become superfluous as the rest of the economy is developed. Economic zones can, however, be very effective in the early stages of the country's drive to develop a strong export base as they have a "special appeal and marketability" when it comes to attracting export oriented foreign (and domestic) direct investment. Overtime the relevance of economic zones declines as conditions in the rest of the domestic economy improves.

6.3.5.2 TAXATION

It is a well known fact that almost every government needs to impose taxes on individuals and corporate bodies in order to raise revenue to meet its obligations in providing the socio-economic services to its citizens. In most jurisdictions, including Zambia, taxes are based on the source principle. That is to say, income derived from a source within the country's jurisdiction is, subject to tax credits and exemptions, taxable.

However, one cannot deny the importance of taxation in attracting foreign investment not only to Zambia but also in most developing countries particularly where it is used in combination with other measures. To some extent, rates of income tax imposed both on individuals and corporate bodies play a significant role in attracting foreign investment. In Zambia, for instance, corporate bodies were required to pay corporate income tax at a rate of between 35 and 40% depending on the nature of business.[4] This study showed that business firms paid the same rate of the corporate income tax regardless of whether the firm was located in the MFEZ or not. In short, income tax law made no distinction between a MFEZ firm and a non-MFEZ. They all had to pay income tax at the same applicable rate; a situation that was contrary to both the spirit and the letter of the zone policy. The ILO, as discussed above, rightly describes them, economic zones are special business areas in which firms operating there enjoy special incentives such as reduced tax rates not applicable to other firms in the rest of the economy.

In view of the foregoing, Zambia needs to learn from China where, for instance, a company operating in the SEZ enjoyed and paid a reduced tax at the rate of 15% as opposed to 30% payable by a firm in the rest of the country. In addition, it is submitted that like any other incentive, tax should be part of the principal law and not left to one government institution or individual to determine through subsidiary legislation. In this way, certainty and predictability of tax incentives are enhanced as the law cannot easily be altered at whims of the political leadership. The procedure for the amendment of the principal law must be followed. Subsidiary legislation, on the other hand, can be altered at any time depending on who is in authority at a particular time and, sometimes, even for political expedience.

[4] Income Tax(Amendment), Act No.6 of 1999, s3

6.3.5.3 LOCATION OF MULTI-FACILITY ECONOMIC ZONES

Another important aspect of economic zones, from the international perspective, is their location. International best practices demand that proximity to international entry and exit points is essential for the success of zones. The study showed that not much research was conducted in Zambia before the MFEZ concept was introduced and MFEZs declared. This was evidenced in the way some of the MFEZs were located. The locations of two of the six MFEZs that had been declared at the time of the research did not seem to have taken proximity to international entry and exit points into consideration. The Lumwana MFEZ in the North-Western Province and Chambishi MFEZ in the Copperbelt Province, were in areas far flung from border entry and exit points especially airports or harbours. It must be appreciated that proximity of MFEZs to entry and exit point reduces transportation costs which, in turn, results in products being competitively priced on the international market. Under this arrangement, therefore, it meant that goods produced in MFEZs that were located in far flung areas especially in North-Western Province would have to be transported to exit points for sale on the international market. Clearly, transportation costs would add to the cost of doing business in such MFEZs. Being a landlocked country, the government should have taken advantage of the country's centrality to strategically locate the MFEZs as close to the entry and exit points of the country as possible. In both China and Malaysia and indeed internationally, most, if not all SEZs, were strategically located along the coastal line. This is important as it makes goods from SEZs comparatively cheaper.

In view of the above, it is recommended that a MFEZ should be established in Kazungula District in the Southern Province to target the export market in Angola, Botswana, Namibia and Zimbabwe which share a common border with Zambia. It is submitted further that another

MFEZ should be developed in Mpulungu on the shores of Lake Tanganyika to target the export market in the Democratic Republic of Congo and Great Lakes Region.

6.3.5.4 POLICY ON MULTI-FACILITY ECONOMIC ZONES

The research also showed that China, Malaysia and other Far East Asian countries had successful zones partly because of the way governments implemented zone policies. Not only did the countries ensure that international standards were compiled with but also that there was policy consistency. It is submitted that the success or failure of a policy depends on how it is formulated and implemented. As stated above, the formulation of the SEZ policy in China was consultative in nature and the implementation gradual and on an experimental basis. In this regard, a general policy on opening up investment to the outside world was, in the first instance, formulated. From this general policy an economic zone policy was drawn.

In view of the foregoing, it was noted that, Zambia did not have any investment policy document at all. The MFEZ concept was being spearheaded by the ZDA; a sole institution charged with a lot of other responsibilities in addition to administering MFEZs in the country. An argument is made, here, that a general policy on investment is necessary as it provides a well co-ordinated approach to development and ensures that a certain, predictable and secure investment climate exists in a country. These attributes are cardinal in attracting foreign direct investment. It can reasonably be argued that the lack of an investment policy document contributed to the inadequate foreign investment in Zambia as no clear government direction on investment ever existed.

However, it is also important to appreciate that having a written investment policy is not, *ipso facto,* sufficient in attracting foreign direct investment. The consistency with which the policy is implemented is of paramount significance. In this vein, it is submitted that although successive governments may have different ideologies, there ought to be a confluence of ideas and a shared vision of the economic development the nation ought to achieve within a set time-frame. This is what the Triangle of Hope initiative, discussed above under which the MFEZ concept was introduced in Zambia entails. The danger of policy inconsistency, especially in the wake of regime change has aptly been summed up by *Chibamba Kanyama* when he states that "Zambia will never experience significant economic gains if every government that comes into power starts to build the economy from the foundation by failing to incorporate programmes that may have yielded positive gains."[5] *Kanyama* could not have been more accurate than this in his observation considering the number of times that the country has shifted its economic policies every time there was a regime change.

The point to be emphasised is not that following a regime change, the new government should strictly follow the policies of the previous government. Rather, subsequent governments should, instead, improve on existing or inherited policies so as to strive to attain the shared economic destiny. What is important and required is an effective change of political power with continuity of economic policies. In this regard, both China and Malaysia have done very well in that they have been consistent in their quest for economic advancement and Zambia can draw lessons from these countries. In Malaysia, for instance, from the time the Pioneer Industries (Relief from Income Tax) Ordinance, 1965 was enacted, successive governments did not abandon the pioneer

[5]G Chanda, *Chibanda urges PF to adopt former Government's Positive Polices*, The Post, December, 13th 2011 (Accessed 3/01/12)

industries policy introduced by the preceding governments. It was interesting that the pioneer industries status is still law in Malaysia to-date whereas in Zambia a similar policy and law which were introduced much later, in 1968, were abandoned a few years after their introduction. Similarly, China has had substantially the same policy since the late 1970s. It is argued that China has been attracting huge amounts of foreign direct investment partly because of the country's consistent economic policy.

In this vein, it is important to appreciate that investors, especially foreign ones, take into account the consistency of the economic policy of the host country, among other things, as they decide whether or not to invest in a particular country. Inconsistency or frequent changes in the economic policy has the potential of 'scaring away' foreign investors. Moreover, the manner in which a policy is implemented is also essential. Whenever a new policy is introduced or implemented, it is imperative that caution is exercised. The need for the implementation programme to be gradual cannot be over emphasised. In China, for example, the introduction of SEZs was gradual and on an experimental basis. *Prof Stoltenberg* aptly puts it this way, "the Chinese having researched and studied existing zones around the world gradually implemented their own SEZs."[6] *Prof Stoltenberg's* comment was against the backdrop of the Chinese authorities who initially identified and declared only three SEZs in Guangdong Province, popularised them before extending them to other areas. In so doing, the Chinese authorities were able to evaluate the performance of the SEZ policy, make appropriate changes where, and when necessary, before declaring more areas as SEZs. The advantage of a gradual approach to policy implementation is obvious. The efficacy of the new reforms is tested. If the results are positive,

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[6] C D Stoltenberg, *China's Special Economic Zones: Their Development and Prospects*, Asian Survey Journal, Vol. 24 Issue No. 6, 1984, pp 637-654

then and only then, are the reforms popularised. Otherwise, the new policy is abandoned before huge costs are incurred. The fact that the Chinese studied the operations of economic zones in the world before setting up their own, accounts for the necessity of ensuring that international best practices are conformed to and taken into account when implementing the country's own zones.

6.3.5.5 PREDICTABILE INVESTMENT INCENTIVES

Yet another finding of the research was that investment incentives in Zambia were always 'hidden' from a potential investor until the investor invested in the country and, in some cases, after operations have actually begun. It is argued that an investor needs to know in advance, what they are entitled to should they decide to invest in a specific country. In other words, investment incentives should be predictable. This helps an investor to compare and contrast investment opportunities around the world before settling for the country where the returns are almost certain within a relatively short period of investment. The discretion to grant incentives to an investor should not reside in the Minister of Finance or indeed any government authority. Placing the discretion in the hands of an individual may discourage potential investors as they would not know whether or not upon investing in the MFEZ, government authorities will grant them attractive incentives or any at all. It is prudent, in this regard, that incentives should expressly be provided for in a statute.

It is, perhaps, for this reason that in both Malaysia and China, for example, an investor in a priority sector or area knows in advance what their entitlements shall be if they invested in a particular zone. Clearly, this removes any doubts the potential investor may have relating to the availability of incentives once they invested in the zone.

6.3.5.6 DEVELOPMENT AND MANAGEMENT OF MFEZS

The study found that, contrary to international practice, the administration of MFEZs placed in the ZDA, an institution already over-burdened with other responsibilities. It is important to recognise that the degree of bureaucracy involved in accessing services in the host country is a key determinant of FDI inflow. It is submitted that MNCs and TNCs are unlikely to be attracted to a country where there is red tape. Red tape breeds corruption and bribery which, in turn, raise the cost of doing business. One cause of bureaucracy is the centralisation of the decision making process. Under the ZDA Act, the ZDA was the sole legal and regulatory institution that determined what facilities were to be provided in a MFEZ. It is worth noting that the ZDA has its headquarters in Lusaka without any presence in the MFEZs themselves or other towns. Any issue, no matter how urgent, must be referred to Lusaka for a decision. Clearly, this negates the very essence of efficient operations in zones. This arrangement is prone to corruption and bribery because officials or investors may seek favours in order to quicken access to the services they need.

In this regard, Zambia may learn from China and Malaysia where, once an area was declared a zone, the government, in the case of Malaysia, appointed a government department or a statutory body to be the sole authority on the administration of that specific zone. Once appointed the government department or a statutory body established its presence in the zone. All decisions relating to incentives, infrastructure development, and other facilities to be made available in the zone, permits and all licences fell within the ambit of the appointed authority. This ensured that decisions were promptly taken as and when need arose. Time within which a decision was taken or a problem resolved was of essence in attracting foreign investors in zones. In China, on the other hand, the establishment and management of zones was the responsibility of the provincial and municipal authorities. This was intended to quicken decision making processes.

In addition, it is imperative to appreciate that the development of MFEZs is an expensive venture as high class services such as roads, housing, educational and health facilities including warehouses must be provided. The cost for tarring 1 kilometre of a road in Zambia, for instance, at the time of the study, was approximately USD200, 000.[7] In view of this, it is important for the law on MFEZs to provide, explicitly, who should develop a MFEZ in the country. This is particularly important because the rationale behind the development of zones is to reduce the cost of doing business by enterprises. In China, for example and as alluded to above, the responsibility of developing zones rests entirely on the government. This ensures that the cost of development of the MFEZs is not passed on to business enterprises. Similarly, in Malaysia, an appointed authority and, in some cases in partnership with the private sector, was responsible for the development of the zones and the provision of facilities in a particular zone under its jurisdiction.

In this regard, it is important, therefore, that the Government takes an active role in the development of MFEZs and preferably partner with the private sector. In this way, goods and

[7] R Sanyikosa, *Mongu-Kalabo Road: An Economic Analysis*, The Post, 6th March, 2011; www.postzambia.com/post-read_articles.php (Accessed 30/04/12)

services produced and provided in MFEZs will be competitively priced both on the local and international market.

6.4 RECOMMENDATIONS

To be successful, international best practices demand that zones must be well positioned in relation to international transport, provided with reliable infrastructure and be able to offer a competitive incentive package. Additionally, zones must have a good management team that has financial resources and ability to mount a well targeted and sustained promotion campaign.[8]

The prospects of the MFEZs policy contributing to Zambia's economic development are bright. However, there are some important issues that need to be paid attention to if positive results from MFEZs are to be attained. In this regard, the following recommendations are made:

6.4.1 ADEQUACY OF THE ZAMBIA DEVELOPMENT ACT, 2006

As observed above, the ZDA Act is not only inadequate but also places excessive responsibilities on the ZDA. In this respect, it is recommended that the regulation of MFEZs should be separated from the ZDA Act. This is not only the trend world-wide but it will also ensure that the operations of MFEZs are streamlined. In addition, the Government is urged to enact laws that will support the proposed law on the regulation of MFEZs. The supportive laws should

[8] P Sheane, *Review of International Trends and Developments in Free Zones and Comparison with Zones in Croatia,* Zagreb, 2006, p15-21, www.delhrv.ec.europa.eu/.../101%20Review%f%20%FZ20%Development (Accessed 10/05/12)

include, but not limited to, labour and labour-related regulations, creation and operations of joint venture investments and differential tax rates for MFEZs enterprises and enterprises in the rest of the country.

Further, the proposed legislation on MFEZs should explicitly provide for all incentives applicable to investors in MFEZs. These incentives should be contained in the principal law instead of subsidiary legislation. Besides, the incentives should not be secretive or a preserve of government authorities alone but they should be known well in advance by any interested party. This will ensure certainty in entitlements to potential investors.

Furthermore, the Government should consider bringing back the pioneer industries law and grant additional incentives to investors setting up pioneer industries. This may encourage those Small and Medium Enterprises that fail to invest in MFEZs to set up pioneer industries in the rest of the country, especially in economically depressed towns and rural areas and, perhaps, enjoy similar incentives.

In short, the ZDA Act is highly inadequate in regulating MFEZs. There is need, therefore, for new and separate piece of legislation to regulate MFEZs. Preferably the proposed piece of legislation could be known as the "Multi-Facility Economic Zones Act" or such other similar name.

6.4.2 INVESTMENT POLICY AND CONSISTENCY

The government should consider putting in place an investment policy so that there is a co-ordinated approach to investment in the country generally and particularly in the MFEZs. It is submitted that properly managed; MFEZs can contribute immensely to increasing Zambia's exports, thereby increasing foreign exchange earnings and other spill-over benefits such as job creation and poverty reduction. In this vein, it is recommended that the government should continue with the MFEZ concept and refine it, where necessary, so as to ensure that mutual benefits accrue to both investors and the country. Complete reversal of the concept may only spell economic doom for the country. At any rate, continuity with policy will stir up some degree of confidence by investors.

Further, it is recommended that the Government should not declare any more areas as MFEZs until results from the current six MFEZs prove to be positive. In this regard, the current MFEZs should serve as experimental zones before extending them to other areas. For this reason, the Government is urged to put in place mechanisms that will ensure periodical monitoring and evaluation of the MFEZ performance to determine whether or not the desired results are being attained.

6.4.3 ROLE OF THE ZAMBIA DEVELOPMENT AGENCY

The role of the ZDA needs to be redefined if the MFEZs are to succeed. The centralised nature of its operations is a bottleneck to efficient and effective management of MFEZs. It is recommended that the role of the ZDA should be restricted to monitoring and evaluating the performance of MFEZs as well as promoting and marketing MFEZs across the world. The ZDA should not be involved in the management of any MFEZ. In the same breath, the Government should also consider attaching ZDA personnel in Zambian foreign missions for purposes of marketing MFEZs.

It is further recommended that once an area is declared an MFEZ, a statutory authority should be appointed whose responsibility will, *inter alia*, to plan for the development and design of the facilities in the MFEZ and also be responsible for the day to day administration of the MFEZ. This will make MFEZs less bureaucratic; an attribute mostly associated with private sector operations.

6.4.5 LOCATION OF MULTI-FACILITY ECONOMIC ZONES

Due to the nature of MFEZs, it is recommended that the proposed legislation on MFEZs should provide for the creation of MFEZs in areas that are strategically located so as to take full advantage of the international markets at minimal cost. In this regard, border towns are mostly suitable for that purpose considering that Zambia is landlocked. Kazungula District in Southern Province and Mpulungu District on the shores of Lake Tanganyika in the Northern Province are particularly suitable for reasons stated above. This recommendation is made with a *caveat* that the current MFEZs produce positive results to warrant scaling them up.

6.4.6 SPECIFIC INCENTIVES FOR SPECIFIC MULTI-FACILITY ECONOMIC ZONES

Investment incentives should not be uniform for all MFEZs. It is recommended that the proposed legislation on MFEZs should empower the appointed authority to determine incentives applicable to a particular MFEZ. This, however, should be done within the framework provided by the principal law and in consultation with relevant stakeholders; but the incentives should not be less favourable than those contained in the principal legislation. This will not only enhance competition amongst MFEZs in attracting investment but also allow local conditions to be taken into account when offering incentives. In short, the proposed legislation should provide the minimum threshold for incentives that may be offered by individual zones.

6.4.7 ENCOURAGE JOINT VENTURES IN MULTI-FACILITY ECONOMIC ZONES

Joint ventures either between the private companies and government or between local entrepreneurs and foreign investors should be encouraged in MFEZs. In this regard, it is recommended that the government should enact specific law on joint ventures to regulate joint ventures in the MFEZs and also in the rest of the economy.

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