I recommend that Obligatory Essay prepared under my supervision by

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entitled

THE ROLE OF THE INVESTMENT CENTRE

AS A ONE-STOP OFFICE UNDER THE INVESTMENT ACT, 1993;

PROSPECTS AND CONSTRAINTS

be accepted for examination.

Date: 6th October, 1995

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THE ROLE OF INVESTMENT CENTRE
AS A ONE-STOP OFFICE
UNDER THE INVESTMENT ACT, 1993:

PROSPECTS AND CONSTRAINTS.

BY

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Being an obligatory essay submitted in partial fulfilment of the LL.B. Degree to the faculty of Law School of the University of Zambia.

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October, 1995
DEDICATION

This work is dedicated to the following:-

1. My husband George and my children for their understanding, patience and love;

2. My parents for their spiritual, financial support and encouragement which is a basis for the drive in me to continue learning;

3. My brothers and sisters for their love and support.
ACKNOWLEDGEMENTS

Special thanks go to my supervisor for his guidance and supervision. I commend him for his untiring effort in attending to my problems related to this essay.

I am also greatly indebted to all those who have helped by giving up their time to be interviewed and to bring about the completion of this essay.

"Knowledge is 'gold' they have invested in me,
A 'Capital' that can never be taken from me.
To them all, I am grateful!"

ROSE SAMAKAYI

UNIVERSITY OF ZAMBIA
OCTOBER, 1995
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Zambia, like any other less developed country, is desirous of fostering development. To do this it has to attract meaningful investment in the industrial, manufacturing and agricultural sectors. Increased investment, it is hoped, will improve the economy and thus the welfare of its people.

Lack of capital for investment has always been a deterrent to development efforts, hence the continuous insistence to invite direct investment. To attract investment Zambia has to create a legally hospitable climate by putting in place a legal framework in which to provide a number of undertakings and guarantees specifically designed to ensure the protection of property. It is precisely because of these factors that it becomes crucial to provide the administrative machinery that would promote investment. Hence the constitution of the Investment Centre to deal with the investor.

The main aim of the Investment Act No 39 of 1993 was to cut down on a cumberome system of procedures. This, it was felt, would promote and encourage investment which would in turn develop the economy. In order to achieve this, the Act hoped to harmonise all procedures and entrust them to one institution that would deal with the investor. Hence the creation of an Investment Centre as a one-stop office to which the investor has to present all his documents to obtain a resident permit, Land, exemption from or reduced tax, licence and the provision of services *inter alia* water, electricity and transport. The ultimate aim was to simplify procedures. The question, however, is whether the legislature empowered the centre to perform its functions in view of the other bodies or institutions conferred with similar powers or functions. The institutions in mind are those legally empowered in certain respects to perform functions allocated to the Centre. Those institutions insist upon holding on to their powers of *inter alia* approval, taxation, allocation of land services. There is thus need to examine the restraints the Centre faces in the execution of its functions and whether or not investors stop at the Centre.

Although various studies have been conducted on investment law in Zambia generally very little attention has been paid to the operation of the administrative Centre. In this light, this essay examines the provisions of the Act so as to present the Investment Centre in a legal perspective.
The essay hopes to examine primarily the objective of the Act in creating a one-stop centre as a way of simplifying procedures. It also attempts to analyse the various functions and incentives of the Centre as provided for in the Act and the defects necessitating any correction. It will also discuss how investors perceive the Investment Centre. Finally, the essay will suggest recommendations and reforms necessary to realise the Act’s prime objective of making the Centre an effective one-stop centre.

This study may not be comprehensive but it is hoped that it may be of some use to policy makers, legislators and of some help to other researchers in the field of Investment in Zambia.
CHAPTER I

HISTORICAL DEVELOPMENT OF INVESTMENT LAW

1. INTRODUCTION

This chapter examines the role of law on investment in Zambia. It combines policy and law. It sets out the legal frame work within which 'investment' has been provided for to date by tracing the historical development of investment policy and legislative measures which have endeavoured to facilitate the promotion of economic development. It also seeks to enlighten the need for both foreign and local investment in the light of Zambia's economic problems.

Investment is a very complex subject which is extensively written upon by many authors and as such this essay does not in any way purport to exhaust it as a topic. All that it does is to present a discussion which is meaningful in the light of the constitution of the investment centre as a one-stop facility.

The term 'investment' may have other meanings but for our purposes, 'investment' is defined under the current Investment Act to mean:

"contribution of capital, in cash or in kind, by an investor, to a new business enterprise, to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise from the state".\(^1\)

However, when one talks about Foreign Investment it means capital investment by a private corporation, an individual or by a foreign Government in a country other than it's own. Thus investment can take the form of either transfer of capital through purchase of stock or securities (which is called portofolio investment) or it may be direct. Direct investment means to establish a business firm in another country. This study is directed to the institution charged with the responsibility of assisting investors to bring in direct investment.

Foreign investment, it is agreed, brings development and modern technology. It can bestow a great deal of benefit to a host country where management skills and entrepreneurship are still in their tender stages and there cannot be thought of other ways of bringing about large scale manufacturing industry.\(^2\) It contributes indirectly
to the budgetary gap by contributing to tax revenue. It also provides, directly or indirectly, employment opportunities and decreases import costs. However, it is also argued that foreign investment if not controlled can kill local industries in their infancy. This is so because they introduce factors of production which lower the cost of production and produce a flow of cheaper goods than a local industry. It is also argued that while foreign investment can guarantee and improve foreign exchange earnings it has also a tendency of depleting those earnings depending upon profits retained and re-invested and remittances on the other hand. The cost of inducement in terms of tax relief and reduction on tariffs, it is argued, immediately deprived the country of the revenue which would have been realised and made use of by the Government.

Foreign investors are also blamed for stimulating inappropriate consumption patterns which are not conducive to economic development by production of luxurious products which the majority can hardly afford. It is also alleged that foreign investors avoid local taxation by means of transfer pricing by, for example, inflating prices paid to its affiliates in other countries.

However, the socialist-nationalist view foreign investment as the principal cause of poverty in developing countries. This is because it causes the syndrome of dependence on developed countries.

It is accepted that investment plays a fundamental role in the economic development of a country. Whether or not foreign investment is good for Zambia’s economic development is subject to debate outside the scope of this essay. However, the advantages of foreign investment, *prima facie*, outweigh the need for foreign investment. In Africa "almost every where… the potential role of foreign investment in the economy is acknowledged in national development plans and economic policy statements". If, Adam Smith and David Ricardo or any other advocate of 'Market system' and 'free' enterprise were alive today they would approve the way most developing countries have chosen to achieve economic development. They have chosen to invite, encourage and attract foreign investors while at the same time being aware of economic drawbacks brought about by such investment. The whole investment measures actually centre on maximising advantages derived or to be derived from such investment. Therefore, it is certain from the attempts within the legal framework to attract investment, that Zambia cherishes foreign investment.
2. POLICY ON INVESTMENT

From the colonial days to date the Governments of the day have adopted economic policies that were designed to favour the foreign investor. Naturally, the state’s policy before was to control and regulate investment. This position has changed in view of the policy on liberalisation of the economy. Thus investment law in Zambia shows an elaborate pattern of rules which were meant to encourage investment, promote and afford protection of investment. The state realises that development cannot be achieved unless both foreign and local investment is procured and, investors are assured of making profits in a competitive but fair investment enviroment. The present Governments policy of liberalisation of the economy implies that 'free trade' should prevail. The law on its own, however, is not in all cases an efficient regulator to be relied on to promote investment. This is so especially where the law empowers different institutions under separate enactment to deal with the investor. The Government, therefore, saw it fit in 1991 to create a mechanism that idealistically was intended to simplify procedures. It was through such a mechanism that policy on investment would be realised. Thus harmonisation and unification of all procedures under the umbrella of one institution was one of the basic objectives of the Investment Act, 1993. In lessening the procedures that the investor has to go through before he could invest in Zambia, the Investment Centre was created as a one-stop facility to which the investor could present all his documents. However, we contend that the Centre is not functioning as intended. The Centre is supposed to ensure that holders of investment certificates secure all licences and approvals required to establish an enterprise. This can only be done by co-ordinating with other Government departments, local authorities or any other relevant body. These institutions are vested with powers of approval, allocation of land, issuing of licences and residential permits, provision of water and electricity services and taxation under relevant statutes. However, those institutions vested with similar functions do not wish to give up their statutory powers. The result is that the Centre is a body stripped of its powers and investors are still subjected to bureaucratic procedures that obtain in other institutions. Unless those powers are consolidated under one institution by amending or modifying the law on investment, the Centre will fail to promote investment.
2.1 COLONIAL POLICY

The history of investment began with the British South African company. The company invested in mining. This was the first investment which originally barely benefitted Zambia (then Northern Rhodesia). This is because "originally the company had considered itself entitled to ownership of all mineral rights in Northern Rhodesia which, in its turn, the company formed out to operating concessionaries". The company's shareholders were then not interested to re-invest the company's profit in any other ventures in Zambia as evidenced by a statement to shareholders by Lord Robin, the then Chairman of the British South African Company when he said:

*We shall continue to seek profitable outlets, but have resisted and will continue to resist suggestions that it would benefit the country or its people to invest in failures and squander capital for propaganda purposes*. 9

During the time the country was under colonial rule there were no legal measures to protect investment. There was, however, an agreement between the company and the British Government in 1950 in which the company agreed to relinquish its rights by 1986 in return for a promise to ensure 'so far as is possible to do so' that the new Zambian Government would be bound to observe the agreement. However, in a tripartite agreement, shortly before independence, between the company, the United Kingdom and Zambia, it was agreed that mineral rights would vest in the president on an ex gratia basis. The company was to receive £2 million from Britain and £2 million from Zambia with a provision that what Zambia paid would be free from taxation. 10 However, Zambia did not feel bound by the 1950 agreement. Thus it is not always true to say that "the assumption that the new subject of international law takes the rules of international customary law existing at the time as it finds them" 11 should always apply.

The policy of the Federal Government 12 welcomed and encouraged investment. Some of the attractions included non-imposition of restrictions on repatriation of capital. However, benefits from such investment were quite insignificant. 13

Because the only industry left in place was mining, Zambia as a developing country, still needs foreign investment.
2.2 UNIP POLICY AFTER INDEPENDENCE

The UNIP manifesto opted for an economy in which the Government and private sector participated with the Government as a major participant. It stated that 'a conducive climate for capital shall be created so that both public and private sector shall support each other'. The question that immediately arises is whether Zambia was justified in placing a policy which favoured foreign investment. The answer would be that Zambia's foreign policy had in the past been justified on account of her economic under development.

3. THE NEED FOR INVESTMENT

The source of investment is limited and competition and terms of trade differ. However, developed countries still prefer bilateral agreements on reciprocal terms under the most favoured nation Clause. Reciprocal in terms of promotion and protection of foreign investors. Zambia has entered in such agreements with Sweden, India, Egypt and the United States of America, with the United States of America specifically demanding protection for its investors. However, even if local investment was in abundance, foreign investment is still needed to introduce modern technology in the country. Therefore the only way open to Zambia is to introduce investment either by promotion and protection of foreign investment or securing investment by bilateral or multilateral agreement designed to secure stable and predictable flow of investment to avert economic under development.

Various factors may have contributed to economic under-development in Zambia but two major economic factors are those related to comparative advantage in world trade and Zambia's economic problems. Conceivably Zambia's economic problems and, therefore, the need to rejuvenate the economy is one of the factors for the need to drive foreign capital to Zambia. This is so because even if there were no problems there would still be need for foreign investment on the ground of comparative advantage. For example, the United States, despite its level of development still needs outside investment.

3.1 THE THEORY OF COMPARATIVE ADVANTAGE

According to Seidman, "capitalist theory explained less developed country's poverty by the relative lack of natural resources, trained manpower, modern technology and capital". Zambia like any other developing country had no well
articulated theory for development. The theory of 'comparative advantage' at the international plane is generally perceived to be the cause for Zambia's poverty.

The theory of comparative advantage, as developed by David Ricardo, demands that a country promotes the commodity in which the factors of production (such as wealth, labour and technology) gives it the best advantage for an increased production at a lower cost and, to be able to trade the same product at international level at an advantage. Comparative advantage refers to the trade advantage(s) one of the two countries would enjoy in relation to the other. For instance, some countries have resources, particular climatic condition or certain soils, and, that a country that had not only absolute advantage but also special skills for massive production to meet demands as well as a reputation for quality and the ability to enter into international trade had comparative advantage over another. Thus a country's choice of production for trade is determined, restricted and limited according to its advantages over others. However, those advantages will accrue only when it is able to manufacture products that are in demand more cheaply and at less the cost of the other producer. The advocates of this theory argue that if followed to the letter, comparative advantage is supposed to have the effect of promoting efficient production, efficient allocation or distribution of resources and specialisation at the international scale which, in turn, creates employment and increases consumption patterns. In actual fact politics are part of the world trade and such trade is usually reduced and restricted.

*International market also restricts the range of industries that could be introduced in underdeveloped countries especially the small and impoverished ones*

The developed countries have gained comparative advantage also because they command a large market. For example, "the United States with a free market larger than Western Europe's twenty or so markets combined, has a great advantage" The British also supported the theory of comparative advantage. They had supplies of raw materials coming from its colonies in abundance, high skills in manufacturing coal, steel and large savings or capital with which to deploy their resources in the most efficient manner. The interests of their investors and the British Government did coincide in that they were to secure higher profits from its exports in exchange for cheaper food and raw materials.

Comparative advantage promotes a "Laisser faire" mode of trade. This type of trade allows for trade without restrictions by laying the necessary infrastructure both legal and economic at a national level. Thus the theory of international trade
was linked to free trade and protectionism in support of free trade because what was required was free competition on the basis of comparative advantage. However, this type of trade has its consequences, even though advocates for discouragement of production by countries which do not possess comparative advantage say such production not only does it reduce supply but it also impoverishes the world. Seidman commented thus:

"By urging a minimal role for state action, classical "Laissez-faire" theory permits the markets' Invisible Hand to dictate the economy's shape. Even that theory holds, however, that a market will do that only if competition exists. In no LDC did competition exist in any sector in which a foreign private investor might sink capital. (If competition did exist, no need for foreign investment would arise)." \(^{25}\)

In practice the theory of comparative advantage has its limitations. This is so because the neglect of industries which do not have comparative advantage means loss of employment for workers in those industries affected and as such unemployment in the country as a whole. Furthermore, the theory can only work when it produces mutual trade for other goods that are not produced. Zambia, in this regard, has very little to offer in terms of mutual trade even though it has an absolute advantage in copper mining and a potential absolute advantage in Agriculture which has remained virtually unexploited. The situation in Zambia's case is that the raw minerals are sold cheaply while consumables are imported at inflated prices. For this reason Zambia experiences a deficiency in the balance of trade. It is a "common contention that over the years the terms of trade have improved for developed as against under developed countries". \(^{26}\)

A balance of trade arises where a country's exports to another country totals its imports from that other country. And, if the exports exceed imports a country is said to have a favourable balance of trade. It can be seen that even if Zambia had no economic ills it would still need investment and technology available only in developed countries. For it is by specialisation on the production of commodities in which a country has comparative advantage; by producing at the least cost and by engaging in international trade that imports directly or indirectly get enough foreign exchange to pay for them. Thus the terms of trade are favourable when prices of exports are higher than imports. This in turn boosts foreign exchange reserves and, this is what Zambia needs to avoid a deficit in the balance of payments. Thus it is comparative advantage and not absolute advantage that is important. In such a case Zambia should continue producing raw materials like copper while the developed world refined and sold the final product the price for which is beyond the control of Zambia. Thus the "advantages which developed countries have in producing
particular commodities (over less developed countries like Zambia) are sometimes so great that it is acknowledged by the world to be in vain to struggle with them… whether the advantages which one country has over another, be natural or acquired, is in this respect of no consequence". 27

While it is acceptable that comparative advantage is a major source of poverty, it it would not be enough to equate Zambia’s under development only with problems of trade at the international level without regard to its economic problems which flow from this same theory.

3.2 ECONOMIC PROBLEMS JUSTIFYING NEED FOR FOREIGN INVESTMENT

To appreciate why Zambia needed foreign investment it is also essential to consider the country’s economic development.

Zambia inherited a healthy economy. The country was among the wealthiest in Africa. Sir, Evelyn Hone, Governor of Northern Rhodesia remarked that: -

"Very few… African Governments have achieved self Government and entered independence with so many factors in their favour as Northern Rhodesia. A healthy and growing economy, a public purse with something in it, the good will of European and Asian population and the tremendous amount of energy which African people themselves can supply for constructive works are at it's disposal if the new Government can give a lead". 28

To date, thirty-one years after independence, Zambia is economically poor and still a developing country. While the country inherited a rich economy at independence the economy was dependent mainly on copper mining industry and a negligible industrial sector. The agricultural sector was barely exploited. During the few years after independence mining was a source of great wealth while manufacturing industries that were set up depended on imported raw materials and other inputs. In the agricultural sector reliance was placed on a few expatriate commercial farmers. By 1970 to 1975 copper prices on the world market declined and the increase in oil prices that followed was a great set back to Zambia's economic programme. Meanwhile post-independent Zambia saw improved access to health facilities and an increase in population. 29 While Zambia’s exports accounted for 90-95% of her export earnings, 30 it imported all her consumer goods 31 so that with the decline of the only foreign exchange earner the country experienced increased deficiency in the balance of payments. Both prices of copper exports and imports of consumer goods were determined by developed countries. Thus it would be
appreciated that unfair terms of trade at the international level contributed towards economic difficulties. Hence Zambia’s call to investors justifies the legal measures put in place.

4. LEGAL MEASURES AFTER INDEPENDENCE

There are various enactments on investment in Zambia’s history to date. However, the main concern of this essay is the analysis of direct investment laws relating to the promotion of local and foreign investment aimed at maximising utilisation of investment potential in the country. It is important, however, that prior to the analysis of the current law on investment, to trace the development of post-independence laws meant to promote investment in Zambia.

4.1 THE PIONEER INDUSTRIES (RELIEF FROM INCOME TAX) ACT 1965

The first investment Act was the Pioneer Industries (Relief From Income Tax) Act No.55 of 1965\(^2\) passed in 1966. As its title suggested it aimed at providing relief from income tax to companies designated "pioneer industries". This objective of the Act was to:

"encourage the establishment in Zambia of a new industrial and commercial enterprises by providing tax relief".\(^3\)

The Act under section 13 empowered the minister to declare that a company is a pioneer company. A pioneer company was defined in the Act as a company managed on commercial basis and suitable for development of the country. The status of 'Pioneer' company entitled it under section 12 (1) of the Act to be granted a two years tax relief with further relief of another year upon proof of £25,000 capital expenditure and up to three years if capital expenditure was £50,000. Thus the Act hoped to help a 'pioneer industry' to gain efficiency. However, the provisions of this Act were subject to abuse because they gave too much power to the Minister of Commerce and Industry and Minister of Finance. The provisions, however, failed to induce any meaningful investment at all. Only 8 out 30 applications were granted pioneer status within 4 years of its coming into operation and in no case did pioneer status affect the outcome.\(^4\)

A number of other factors like nationalisation of industries also played a hand in the failure to secure foreign investment. The "policy of Nationalisation" started with the Mulungushi Economic Reforms of 1968.\(^5\) These reforms extended state
participation in the economy. The aim was to phase out non-Zambian and provide Zambian entrepreneurship. Then the Matero Economic Reforms 1969 which was followed by the Mines and Minerals Act made provision for the state to acquire 51% shares in any mining venture. Thus the state made itself a key player in the economic development of this country. This had its disadvantages in that the State was forced firstly to subsidise non-economic companies. Secondly, the state also sought shares in the financial sector, that is, from banks, insurance companies and Building Society. During this period of economic reforms "the emphasis shifted sharply from the rights of owners of private property to their social duties towards the community.... Experiments ranged from moderate programmes or nationalisation of key industries and land reforms.... Even Governments which were emphatic in their protests against illegal interference with the property rights of their nationals abroad, exercised their sovereign right of taxation with growing enthusiasm in order to finance the expansion of their own state machineries. All this contributed to the failure to woe investors inspite of additional incentives in the income tax.

4.2 THE INDUSTRIAL DEVELOPMENT ACT, 1977

In a bid to attract investors, another Act was passed in 1977. This was the Industrial Development Act No 8 of 1977. This Act repealed the 1965 Act. The 1977 Act was liberally drafted and it meant to offer more incentives to foreign investors. The preamble summarised the main objective:

"Act was to provide for the licensing and control of manufacturing enterprises, to provide incentives for investment, to regulate the making of contracts relating to transfer of foreign technology and expertise to enterprises operating in Zambia and to provide for matters connected with or incidental to the foregoing".

Part 11V of the Act provided incentives to "priority industries". The criteria used for classification as "priority industry" was: firstly, the maximum utilisation of Local raw materials and production of intermediate goods for use by other industries; secondly, the ability to create and offer substantial opportunities for permanent employment to Zambians; and, lastly, the diversification of industry's structure and use of domestic technology that develop the rural areas. A priority enterprise was entitled to get incentives such as preferential treatment with respect to purchases, grant of import licences, rebates on customs duty, relief from sales tax, selective employment tax and income tax at the discretion of the minister. The Act also provided immunity from nationalisation of foreign owned property. There was also no taxation for expenditure on research and provision of training facilities for Zambians.
Although in terms of incentives the Act was an improvement on the 1965 Act, it also failed to induce foreign investors.

"Attractive incentives provided by the Industrial Development Act did not, however, entice foreign investors. Only 12 out of 269 Manufacturing Licences issued to the private sector by Ministry of Commerce in 1979 were new enterprises but no manufacturing licence was issued to any foreign investor." 43

Even the then President of Zambia, Dr. Kenneth Kaunda, perceived the failure and saw the need for a new code on investment when he launched the Economic Crusade 1985.44

4.3 THE INVESTMENT ACT, 1986

The Investment Act No. 5 of 1986 firstly sought to redefine the machinery used for co-ordinating investment in Zambia and, secondly to revise the procedure that existed for the grant of incentives, registration of Manufacturing enterprises and, for making of contracts for the transfer of technology and expertise. Part IV of the Act provided incentives. Under part IV an investor was not required to make separate application for an investment permit or licence. An investment permit authorised the holder to start business under certain terms and conditions within a three year period. It also entitled him to certain incentives. After commencement of business the investor was issued with a licence upon notifying the Minister,45. The incentives were as in the 1977 Act. Part V, under section 23 provided for a retention of certain percentage on foreign exchange earnings and utilisation of such by an exporter of non-traditional products or services. In addition the non-traditional exporter had a preferential tax rate. This Act defined a foreign investor to include a Zambian who invested a sum of money valued in excess of US$35,000. As such the Zambian investor was entitled to all privileges and benefits accorded to the foreign investor.

The Act also provided two administrative organs who comprised the administrative machinery. These were the Investment Council and the Investment Co-ordinating Committee. The Investment Council was established to supervise the implementation of the Act and the Investment Co-ordinating Committee in its performance of its functions and to foster investment in the country. The council comprised of the Prime Minister and Ministers of Commerce and Industry, Finance, National Planning, Mines, Tourism, Energy, Co-operatives, Agriculture and three ministers appointed by the President. This was basically a healthy political body for policy decisions and not for implementation. The second body was the Investment
Co-ordinating Committee which had a Director and representatives from almost the same Government ministries.\textsuperscript{46} However, these institutions, formed to deal with investors, failed to induce meaningful foreign investment. Unfortunately only those investors already dominating the economy were the only ones anxious to make use of the provisions of the Act.\textsuperscript{47} The failure of the 1986 Act to woe investors was redressed by fundamental changes in the law.

4.4 **THE INVESTMENT ACT, 1991**

The investment Act No. 19 of 1991 repealed the 1986 Act. The 1991 Act constituted an Investment Centre in addition to providing procedures for making, processing and assessing application for investment licences, investment incentives and guarantees against acquisition or re-introduction of adverse investment legislation. It is said to be a replica of Ghana’s Investment Code 1985.\textsuperscript{48}

The concept of the Investment Centre was the most outstanding innovation ever introduced in the field of investment promotion and **this is the basis** of this study. The Centre was fundamentally different from the institutions provided in the previous statutes where a more traditional approach was followed. Section 4(1) established the Investment Centre which was different as compared to a Council of Ministers led by the Prime Minister under Section 3 of the Investment Act 1986 and the Minister of Commerce and Industry under Section 3 of the 1977 Act.

The Investment Centre registers all manufacturers.\textsuperscript{49} As a one-stop facility it had power to ensure that holders of investment licences secure all licences and approvals required to establish an investment. Unlike in the past the investor would complete all documents necessary to establish an enterprise at the Centre. The Centre should make the necessary application to respective Government department on behalf of the investor. The functions of the Centre are performed by the Director-General.\textsuperscript{50}
The Act also established a Board for the Centre with a representation from the Government, that is Ministries of Finance, Planning, Commerce, Industry, Agriculture, Transport, Tourism, and Legal Affairs; a representative from the Bank of Zambia; the Director-General of the Centre; three representatives from Zambia Confederation of Chambers of Commerce and Industry, the Commercial Farmers Bureau and Zambia Association of Manufacturers; and three reputable businessmen appointed by the Minister. Instead of an all powerful political body we had technocrats appointed to the Board. Under the Act the Board was responsible for the general control of functions and business of the Centre. The new Act has allocated the powers of determination of investment status and granting incentives to the Board. This was meant to allay any suspicion an individualised institution may invoke.

An application for investment certificate is made to the Board. The investor was only required to give information required by statute. If it complied with the law or among others, the Investment Act and was in the interest of Zambia, the investor was issued with an investment certificate within 30 days. Under the 1986 Act the period was longer as the investor was required to get an investment permit first after registering the Company under the Companies Act. He got an investment certificate after he had started operating and had notified the Board in writing.

The 1991 Act also contains a procedure for an arbitration by an independent arbitrator other than the same Board which made the decision. Apart from the procedure laid down for application and arbitration, the Act, in traditional theory, laid down incentives intended to meet investor’s expectations to make profit. For example, it provided for access to foreign exchange and tax break in the early stages as an enterprise. Besides fiscal concessions that would make initiating business enterprise very attractive guarantees were also provided. Guarantees play a significant role to woe investors. No matter how attractive incentives are investors may still feel uncertain to invest unless they are assured that the laws will not deprive them of their property unjustly or if it did happen that they will be adequately compensated. Thus, Part V of the Act provides for protection from acquisition and settlement of disputes: Transfer of funds and guarantee against adverse investment legislation.

The 1991 Act was passed on the eve of change of Government from a One Party State that had obtained from 1972 to October, 1991. With the coming to power of the Movement for Multi-party Democracy (MMD) came change of policy and the
enactment of the Investment Act 1993. The successes and failures and functions of the centre will be discussed in detail as the 1993 Act is analysed in the next chapter.

It becomes necessary, however, to firstly assess how this Act is presupposed to promote investment in Zambia. The next chapter, therefore, will confine itself to an analysis of the Act in this context.
Footnotes to Chapter I

1. 5.2 Investment Act No 39 of 1993.


7. Ibid S.5 (2) (d).


11. Ibid P.9


15. Article 1. The General Agreement on Tariffs and Trade (The GATT)


19. Ibid.

20. Coal is found in the U.S., Great Britain and Germany. Iron in U.S., France, Sweden and Russia, while copper is found in U.S., and Chile; J.L. Hanson, Ibid.

21. Rubber grows well in Malaya and East Indies, Jute in Ganges delta, Coffee in Brazil and cocoa in West Brazil; and Lemons in Italy; Hanson, Ibid.

22. Seymoure E. Harris, International and Interregional Economics, (Kakakushya Co. Ltd., Tokyo) P.61

23. S.E. Harris, Ibid.

24. Harris, Ibid.


28. Address to the Rhodesian National Affairs Association in Salisbury, Southern Rhodesia on 3rd April, 1964 reported in Northern Rhodesia; New Nation (Lusaka, Zambia Information Services, 1965) P.3.


32. CAP. 666.


41. *Ibid* S.17.

42. *Ibid* S.20.


50. *Ibid* S.4 (3).

51. *Ibid* S.6 (2).

52. *Ibid* S.6 (1).

53. *Ibid* S.17 (1), (2) & (3).

54. CAP 480 of the Laws of Zambia.

<table>
<thead>
<tr>
<th>Year</th>
<th>Balance Attributed to the Company as Profits</th>
<th>Retained in Business</th>
<th>Balance Distributed as Dividends</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>K 9,384 (£ 4,692)</td>
<td>K 5,142 (£ 2,571)</td>
<td>K 4,242 (£ 2,121)</td>
</tr>
<tr>
<td>1961</td>
<td>K 6,610 (£ 3,305)</td>
<td>K 3,514 (£ 1,757)</td>
<td>K 3,196 (£ 1,598)</td>
</tr>
<tr>
<td>1962</td>
<td>K 11,242 (£ 5,624)</td>
<td>K 2,626 (£ 1,313)</td>
<td>K 8,622 (£ 4,311)</td>
</tr>
<tr>
<td>1963</td>
<td>K 11,858 (£ 5,929)</td>
<td>K 2,310 (£ 1,155)</td>
<td>K 9,548 (£ 4,774)</td>
</tr>
<tr>
<td>1964</td>
<td>K 11,798 (£ 5,899)</td>
<td>K 2,334 (£ 1,167)</td>
<td>K 9,464 (£ 4,732)</td>
</tr>
<tr>
<td>1965</td>
<td>K 17,366 (£ 8,683)</td>
<td>K 3,582 (£ 1,926)</td>
<td>K 13,514 (£ 6,757)</td>
</tr>
<tr>
<td>1966</td>
<td>K 20,464 (£ 10,232)</td>
<td>K 3,852 (£ 1,566)</td>
<td>K 13,514 (£ 7,666)</td>
</tr>
<tr>
<td>1967</td>
<td>K 20,668 (£ 10,334)</td>
<td>K 5,312 (£ 2,656)</td>
<td>K 15,356 (£ 7,678)</td>
</tr>
</tbody>
</table>

Figures are in K 000's and £ 000's

Source: Zambia Economic Revolution, Address by President Kaunda at Mulungushi, 19th April, 1968, p. iv.

This showed potential exploitation inconsistent with Government development requirements.
CHAPTER II

AN ASSESSMENT OF THE INVESTMENT ACT 1993 AS A LEGAL FRAMEWORK FOR PROMOTING AND ATTRACTING INVESTMENT

In chapter one, we noted that the Investment Act 1991 came into being on the eve of change from one party to multiparty politics. The change to plural politics ushered in a new Government of the Movement for Multiparty Democracy (MMD). The MMD Government policy is to liberalise the economy, minimise and eventually phase out state participation and replace it with a private and liberalised economy. One of the Legal Instruments which the government found necessary to review was the Investment Act No.19 of 1991. It was replaced by the Investment Act 1993.

1. THE INVESTMENT ACT 1993

1.1 OBJECTIVE AND GENERAL NATURE OF THE ACT

The new Act of 1993 meant to provide for a comprehensive legal framework within which investment will take place in line with the liberalisation policy of the present government. The Act provides for incentives, investment guarantees and sets out the machinery for promotion of both local and foreign investment. Local investment is important because it is upon local industry that the Kwacha gets its value and foreign investment is vital as it is supposed to supply the requisite capital for development, research and technology.

The objects of the current investment law is to effect government policy of cutting down on the procedures that the investor has to pass through in order to invest in Zambia. An "investor" is a person juridical, whether a citizen or not. Thus as a practical piece of legislation, the Act seeks to inter alia encourage exports of non-traditional products, revise the procedures for granting incentives and re-define the machinery for co-ordinating and encouraging foreign and local investment. This eventually would "introduce simplicity and efficiency, to provide additional guarantees, streamline and simplify procedures and to broaden the sectors of the economy to include mining". The Act also seeks to protect the investor. Protection of the investor emanates from the desire of the investor to be assured of protection of his investment from expropriation.
(a) INCENTIVES

The Act provides for incentives in form of rebates under Part IV. These incentives are similar to those provided under the Income Tax Act.\(^3\) They are reproduced under the Investment Act, 1993 for promotional purposes. Incentives are subdivided into areas invariably related to economic objectives. There are general and special incentives. The Act provides that the award of investment certificates and incentives "shall apply to any investor investing in a business enterprise under the Act".\(^4\) Accordingly, all investors awarded an investment certificate qualify for general incentives under Part IV\(^5\) and special incentive under Part V. However, the Act qualifies as to which enterprise will qualify for what incentives.

(b) CATEGORIES OF ENTERPRISES WHICH BENEFIT

For an enterprise to benefit it must be a farming income earner,\(^6\) an exporter of non-traditional products,\(^7\) an investor of an enterprise located in a rural area\(^8\) or a small scale or village enterprise.\(^9\) Apart from general incentives there are also special incentives under Part V of the Act. Special incentives are only given to investors who intend to create industries to export non-traditional products like flowers, vegetables coffee and emeralds; who invest in agricultural industry; who would produce commodities for agro-related products or those who engage in excess of twenty-five percent of the gross annual earnings of the business unit. An investor who employs local raw materials as an import substitution industry or those who locate their industries in rural areas also benefit.\(^10\) Immediately following the liberalisation of economy, there was an influx of South-African farmers. However, the trend has slowed down.\(^11\) In addition, an investor who qualifies for special incentives is entitled to tax rebate for all machinery and equipment required to start business, rehabilitate or expand the enterprise.

There is an insistence to maintain incentives to investors. The overriding motive behind this insistence on such requirements in this and the previous investment legislation is to stimulate increased exports of non-traditional products, to develop rural enterprise so as to distribute national wealth to the rural population as well. These good intentions are however restrictive and have so far proved a disincentive to investment. Consider, for instance, the requirements of "non-traditional exports" "rural enterprise" or a "manufacturing" enterprise. These terms are discriminatory of service enterprises which set up their business in an urban area but which brings in recent advanced technology and earns foreign exchange. An investor intending to
produce for the domestic sector, except products for use in agriculture, is clearly procluded from enjoying the incentives because he meets none of those requirements or he is not considered to be a "manufacturing" enterprise. By this, the Act assumes that the country should import goods or services that could otherwise be produced locally or that investors would not be interested in investing in ventures which do not attract incentives. The twenty-five percent foreign exchange requirement may force enterprises to produce or provide services for export only at the expense of supplying the local market in order to earn the incentive provided. Also, in the event of an enterprise opting to export most of its products, the government is powerless to restrict or forbid exportation of products. While the governments intention may be to generate foreign exchange for balance of payments difficulties, the fact that Zambia is forced to import goods that would otherwise be produced locally means that foreign reserves would be depleted further. In addition, the requirement of utilisation of substantive raw materials even though it serves to save foreign exchange is terribly restrictive as it acts as a disincentive from the point of view of the investor.

Apart from the award of incentives being discriminatory, Zambia's rural infrastructure in terms of good roads, railways, business building, electricity, housing and medical services is poor. The result is that the majority of investors would prefer to invest in urban or peri-urban areas where they have access to a variety of facilities, services and a market able to absorb its products. A market in this sense is the availability of people in employment who can afford to purchase their products. Setting up an industry in rural areas is, therefore, not only costly but carries a high probability of loss making. It is therefore, vital for government to firstly invest in infrastructures in the rural areas and then the basic foundations, having been laid up, would entice investors to set up rural enterprises.

A good example of a case where incentives provided under the Act have not been applied is ZAMNET. ZAMNET is a Zambian owned company with the University of Zambia as a major shareholder and four individuals. The company came into operation on 13th May, 1994. It provides an information service to many other companies and individuals. The service it provides is linked to a computer network in 125 countries linked to over a 100 million users. The facilities they provide include worldwide electronic mail (E mail) which is more convenient and much cheaper than using a fascimile. One can get access to the "Information Super Highway". Through it, you can "visit" the worlds libraries and obtain up to date information on anything including finance, health, travel, and latest news. Almost all its customers pay in foreign currency. As a foreign exchange earner it is a vital
industry as it is contributing to Zambia’s economic well being. However, no service or assistance has been given to it by the Centre. The company had to go through the usual procedures to get incorporated at a fee of K200,000.00, and this was after several visits to the Ministry of Commerce, Trade and Industry. Because of that, it could only operate by permission of the Ministry of Transport and Communications.\textsuperscript{14} While the company got its investment certificate after two weeks which was within the stated period,\textsuperscript{15} it does not enjoy most of the incentives provided for under Part IV. It cannot be granted special incentives under Part V because it has no branches in the rural areas. The Company was graded as a service sector. The service sector is not covered in the 1993 Act so that the only incentive due to it is a guarantee against nationalisation which is of course important for foreign nationals and not for Zambians. Being a Zambian company any change of government does not take away its right to property as the company will enjoy the guarantee under the constitution and the state will be restricted from tempering with the rights of the Company.

Here is a Zambian Industry which needed to be encouraged but the Act would rather give incentives to established companies like Zambia Consolidated Copper Mines (ZCCM), which has branches or mines located in rural areas and yet the boosting of local investment is neglected even though the Act’s aim is to seek both foreign and local investment.\textsuperscript{16}

*Considering that the Centre does not assist investors to get other services, the discrimination is highly felt through the administration of the Act. All companies irrespective of whether or not they have incentives pay a fee of K50,000.00 and US$500 after approval. A guarantee is what they have already as of right*.\textsuperscript{17}

2. \textbf{THE NATURE AND SCOPE OF INCENTIVES}

General incentives are presumably available to any holder of an investment certificate. Income from farming and non-traditional products shall be taxed at the rate of 15\% while income from rural enterprise is taxed a rate less of the chargeable tax. An investor is also entitled to capital allowances\textsuperscript{18} and deductions or gains or profits.\textsuperscript{19}

3. \textbf{THE ADMINISTRATIVE MACHINERY FOR INVESTMENT}

The Act establishes two administrative organs charged with the promotion and facilitation of investment. These are the Investment Board and the Investment Centre. After 1991 Act a new management was established. The Centre consists of the
Director - an Irish man, a board secretary and staff in Promotions department, Projects department, Client's services and usual administrative staff.\textsuperscript{20}

3.1 THE INVESTMENT BOARD

The Investment Board has legal personality, it is a corporate body with perpetual succession. As such, it can sue and be sued subject to limitations that such a creature of law can perform.\textsuperscript{21} The Board is responsible for the affairs of the Centre, for implementation of investment policies, formulation of promotion strategies, establishment of investment guidelines for the Centre and issue of investment certificates.

Falling under the Investment Board is a sub-committee called Projects Committee which actual issues investment certificates. When the Projects Committee is sitting to consider applications for investment certificates, there are present as observers liaison officers from other institutions like Customs, Lands, Immigration departments and so on. When granting incentives there is no discrimination as to who are local or foreign investors. Once the investment certificate is issued, an investor can proceed to apply for other services and documents required to enable him set up business institutions. Liaison with the appropriate office is granted only where an investor requests for the Centre's assistance to do so. Available also are promotion officers whose duty is to explain the functions of the centre and advise clients. However, in practice the Investment Centre does not carry out the provisions of the Act.

3.2 THE INVESTMENT CENTRE

The Act reconstitutes the Investment Centre\textsuperscript{22} as "one stop... facility" to investors\textsuperscript{23} although it does not define the phrase "one-stop facility". The Investment Guidelines however say "the Centre... will continue to operate as a one stop facility for providing assistance and guidance to investors and to ensure that all formalities and permissions for setting up business in the country are completed in the shortest possible time".\textsuperscript{24} The centre lists as one of its functions to \textit{inter alia} "provide one-stop facility for investors."\textsuperscript{25} The concept of one-stop facility denotes that the investor will no longer be subjected to cumbersome procedures obtaining in other ministries, departments or institutions before the grant of the investment certificate. The concept means that the investors' first and vital contact with other institutions is the Investment Centre.\textsuperscript{26} The Act lists the Centre's functions as: \textsuperscript{27}
(a) to promote investment in Zambia.
(b) to monitor and enforce compliance with terms and conditions of the investment certificates.
(c) to assist in securing from any Ministry, government department, local authority, or other relevant body any permission, exemption, authorisation, licence, bonded status, land and any other thing for the purpose of establishing or operating a business.
(d) to keep records of all technology transfer agreements.
(e) to provide consultancy services to investors.
(f) to collect and disseminate relevant information.
(g) to identify areas needing investment by research.
(h) to implement decisions of the Board.

4. PROCEDURE FOR APPLICATION FOR INVESTMENT CERTIFICATE

The investor is to apply to the Director General for an investment certificate using a form as set out in the third schedule of the Act. The Director-General will submit it to the Board for consideration. The Board upon consideration and on being satisfied that the application meets the requirements of the law and the nature of business is not illegal, will issue an investment certificate within six weeks of receipt of the application. The decision of the Board has to be relayed to the investor within 14 days from the time the decision is made. This is an extension of the period of 30 days in the 1991 Act. It also enhances the period within which the Board needs to inform the applicant from 7 days to 14 days. In case of rejection, the investor can appeal to the Minister first and may have recourse to the High Court on further appeal from the Minister’s decision.

The grant of an investment certificate does not signify the end of established procedures as envisaged by the Act.\(^\text{28}\) contrary to what the Act intended, prior to the grant of investment certificate and incentives, the enterprise is supposed to be incorporated. This is in line with the form for application for investment certificate which requires that a business be incorporated or registered. In addition, the Centre does not accept applications without the certificate of incorporation being attached.\(^\text{29}\) The Centre also required information other than that required by the law.

\(^{28}\)The Centre required more information than stated in the Act. It wanted information on shareholding, nominal share capital issued and paid for, who the shareholders were, the names of directors and their nationalities, and proposals as to how the company intended to carry out its activities in five years and so on.\(^{29}\)
Furthermore, the enterprise may have to obtain a manufacturing licence from the Ministry of Commerce, Trade and Industry before it starts to operate. It may have to register with the Zambia Revenue Authority for tax purposes; Customs and Immigration and other relevant bodies.

The Act provides basic structure of legal relationship between the investor and Zambia as an investment receiving state. However, the investment Act does not embody all the laws dealing with or related to investment. As a basic legal framework, the Act only provides a starting point for all matters of investment in Zambia.

5. **TAXATION**

The dilemma caused by taxation is that investors are taxed in any way that appears best for Zambia. There is a danger of substitution effect. Substitution effect is where tax acts as a disincentive and discourages new or additional direct investments. Because of their profit motivated approach, investors may indulge in transfer pricing. On the other hand, tax holidays as given to investors for the first year\(^1\) or for the first five years\(^2\) of investment are intended to be an incentive to invest in Zambia. Thereafter, the dividends are taxed at ten per cent. However, such tax holidays have regressive effect on a less developed country as money taken out means a gift to the capital exporting country's internal revenue service. This is called capital flight from under developed countries to developed countries. Common incentives provided for under section 32(1) of the 1991 Investment Act accounted for very wide tax holidays to investors. However, the current Investment Act sought to redress flight by reduced tax schedules.\(^3\)

The principal legislation on taxation is the Income Tax Act of 1966.\(^4\) Tax under this Act falls on income from source.\(^5\) The rationale is that income derived from a particular geographical location is taxed by the particular country occupying that area at source. Taxation at source is administratively advantageous than to follow income after it had left the country. However, in case of income of a company it can be taxed at source or at a registered place. If that registered place is in another country, it raises the issue of double taxation. In order to emeroriate the incidence of double taxation governments enter into double taxation agreements. Under the Income Tax Act, the president is empowered to enter into double taxation agreements to avoid taxation of a foreign investor both in his state of residence and in state of investment.\(^6\) By virtue of such agreements Income tax paid in a foreign
country is allowed as a tax credit against income generated from Zambia. Zambia has double Taxation Agreements with Britain, Northern Ireland, Denmark, France, Holland, Norway, Sweden, Switzerland, United State of America, Kenya, South Africa, Tanzania and Uganda. An investor resident in those countries mentioned above will not be excessively taxed, and he would be allowed to externalise his dividends.

6. **EXTERNALISATION OF FUNDS**

The Exchange control Act used to regulate amounts of foreign currency that an investor was allowed to externalise. This ensured that control was maintained over all foreign exchange transactions. The Bank of Zambia is the Institution entrusted with administration of the Act. This institution, like Ministry of Lands, departments of Immigration, Customs and Excise, is empowered to deal with the investor. Thus, it made the provision of the Investment Act 1993 under Section 36 subject to the Central Bank and the whole essence of a one-stop centre becomes an illusion. In Kenya, the provision guaranteed security of transfer of profits. Since the abolishing of the Exchange Control Act the situation is different. There is uncontrolled externalisation of funds.

7. **POLICY MEASURES UNDERTAKEN**

The policy of the current government is liberalisation of the economy. President Chiluba said,

> "The restoration of individual rights and respect of human rights are the greater part of today's democratic agenda together with new economic policies that will enhance private investment. Local and foreign liberalised system of production that should see Africa transform itself from the present misery that characteried most of the continent to a fair human decent level of standard of living."

During 1994 there were a number of policy measures undertaken by the Government. The Exchange Control Act was abolished because it was no longer necessary in a liberalised economy. In line with the current Investment Act, tax on non-traditional exports was reduced to 15%. To promote investment, a competition and Fair Trading Act was introduced. The government also intends to amend the Small Scale Industrial Development Act to foster instititutional and organisational frame work of the organisation. In the 1995 Budget, the tax on all vehicles meant for passenger transport were suspended to enable investors import buses and provide a transport service in view of the liquidation of United Bus Company of Zambia bus service
which used to cater for the whole country and which left nothing in its place as there were fewer or no other competing passenger transport service companies, especially to the remote rural areas.

8. **EFFECTIVENESS OF THE LEGAL FRAMEWORK IN FACILITATING THE FLOW OF INVESTMENT**

The Investment Centre has a major mandate of promoting and facilitating investment in the country. However, the Centre’s Board Secretary stated that inspite of the incentives provided "only those investors already dominating the economy were anxious to make use of the provisions of the Act".\(^{42}\) The Centre issued 302 Investment Certificates worth US$151 million. Out of these, 29 percent were for agriculture while 34 percent were for manufacturing.\(^{43}\) Otherwise it was minerals that accounted for a greater part of export earnings inspite of Government policy to promote non-traditional Exports (NTEs). The Zambian Privatisation programme was in place by November, 1994 and state owned companies were sold under the Zambia Privatisation Act.\(^{44}\) The centre should, therefore, be more active in performing its duties apart from the few promotional tours and prospectuses.

A number of promotional activities have been carried out in South Africa, Italy and Sweden from which the centre expected to raise K150 million in fee revenue. Thus, over the past two years 678 investment pledges were received and these were worth US$450 million. However, such operations are hindered by inadequate funding. The Centre is funded by Government, UN agencies and other donors. As such the capital expenditure and recruitment of additional staff has been reduced.

On the other hand, the Registrar of Companies registered over 2,167 Limited liability companies from January to November, 1994. Out of these only 18 were foreign companies.

8.1 **OTHER DEVELOPMENTS**

True to its committed policy the Government continued to pursue policy measures intended not only to enhance the growth, but also the development of the private sector under the concept of market driven economy.
Privatisation was streamlined to an increased pace and there was an encouragement to the Zambian people to participate and 14 state owned companies were privatised. In addition, the Lusaka Stock Exchange (LuSE) started operating in February, 1994. Early in 1995 there were public floatations of companies like Chilanga Cement (PLC). The stock exchange is expected to play an important role in the development of the country’s capital market. There has also been an upsurge in the Small Scale Industrial Sector with businessmen investing in construction and other business activities.

9. IMPACT OF THE LEGAL FRAMEWORK ON INVESTMENT AND THE ECONOMY

There appears to be a tendency to grant tax holidays and other fiscal incentives which do not benefit the country. Rather, tax holidays become a gift to the company and an increase in the revenue of the Internal Revenue Service of the investor’s home country. The problem is how to offer incentives that would attract investment without worrying about the country’s finances. As such, tax rebates has an effect on the country’s balance of payments. However, it is contended that even in the absence of such grants of incentives, investors would still invest if they are able to yield higher and quicker profit returns on their investment. Thus in terms of investment incentives offered under the Act the absence of a ready market, new technology as well as capital, makes Zambia offer little for world trade. Inspite of that, Zambians are not discouraged from enticing investors with what is available. Zambia has vast land and water resources available at comparatively cheaper rates than those offered in developed countries. Investment in factories, manufacturing and other industrial investment will generate employment and ultimately provide the necessary market.

With the liberalisation of the economy and withdrawal of state participation, the role of the Investment Centre becomes vital. In view of the changes, the economy should have improved, however, the economy grew worse. Many factories, in their infancy and some of the established companies had to fold up. The competition, brought about by the influx of foreign goods on the market, has left Zambia virtually dependent on imported goods only. Every where you go, shops and industries are stocked with foreign goods. The question is, what would happen when
the country can no longer import as there is not sufficient production to balance payment for goods from the export earnings. The position has not changed since 1974. As put by Seidman:

"The position whereby the bulk of the country's consumer goods were imported has remained substantially unchanged apart from a few import substitution measures."

The situation as it is now needs to be re-addressed in order to have technology transfer effected. The government must come up with areas that must be exclusively for Zambian investors only as for example, the farming industry. In Botswana, cattle rearing is exclusively left to the Tswanas only.

Thus the issue of investment is not properly addressed by the Centre as it is presently only restricting itself to registering and issuing investment certificates to investors and promotion by prospectuses only. This is not enough.

"The problem lies deep within the system itself and has its basis in the ambiguities and lack of direction in development goals and the (legal) structural contradictions this has caused."

A number of questions may still be posed, for instance, what problems the Centre faces in its role as a one-stop facility and whether or not the provisions of the Act promote investment when most of what is promised is discovered to be a fraud. Perhaps the next chapter will try to assess the applicability of the one stop centre.
Footnotes for Chapter II

3. CAP 668.
5. Interview with Ms. A.C. Mwenya, Board Secretary, Investment Centre, on 1st June, 1995 at Investment Center, Ndeke House, Lusaka.
8. Ibid S.21
9. Ibid S.29
10. Ibid S.30A
11. Interview with M/s Mwenya Op cit.
13. Times of Zambia, Monday 8th May, 1995 P.
16. Interview with Dr. K.M. Hansungule, Board Secretary ZAMNET, UNZA, Lusaka on 10th May, 1995.
17. Ibid.
18. S.22 Op Cit.,; See Table II at page 33
22. Ibid.,; S.4.
23. Ibid; S. 5(1).
27. S.5 (2) (a)-(l). Op Cit.
29. On the day of interview with M/s Mwenya the writer had the occasion to witness an investor turned away by an official of the Centre because he did not submit the application together with his application for Investment Certificate.
33. See Table II on page 33.
34. CAP 668.
38. Schedule to CAP 668.
43. See Table III on page 34.
44. See Table IV on page 35
45. MMD Manifesto P.4.
46. See Table IV on page 35
48. R.B. Seidman, an Explanation of the Distorted Growth of Import Substitution Industry; the Zambia Case" presented to the conference on Natural Resources and Natural Welfare July 3-9 197, Lusaka.
# Table II

**Capital Allowance** (Based on cost unless otherwise stated)

<table>
<thead>
<tr>
<th>Assets</th>
<th>Investment Allowance</th>
<th>Initial Allowance</th>
<th>Wear &amp; Tear Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>-</td>
<td>10%</td>
<td>5%</td>
</tr>
<tr>
<td>Commercial Buildings</td>
<td>-</td>
<td>-</td>
<td>2%</td>
</tr>
<tr>
<td>Plant, Machinery &amp; Equipment</td>
<td>-</td>
<td>-</td>
<td>50% (2)</td>
</tr>
<tr>
<td>Farm Implements</td>
<td>20%</td>
<td>-</td>
<td>100% (3)</td>
</tr>
<tr>
<td>Farm Works</td>
<td>-</td>
<td>100%</td>
<td>100% (4)</td>
</tr>
</tbody>
</table>

Notes:  
(1) Buildings for manufacturing, mining or hotels.  
(2) For manufacturing or tourism only.  
(3) Permanent farm improvements not within (7).  
(4) Stumping, clearing, soil erosion prevention, boreholes, wells, aerial and geographical surveys, and conservation.

TABLE III

CERTIFICATES ISSUED BY INVESTMENT CENTRE  
(JAN. - SEPT. 1994)

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>LICENCE WITH GENERAL &amp; SPECIAL INCENTIVES</th>
<th>LICENCE WITH GENERAL INCENTIVES ONLY</th>
<th>CERTIFICATE INVESTMENT VALUE IN US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRICULTURE</td>
<td>87</td>
<td>-</td>
<td>50,796,164</td>
</tr>
<tr>
<td>MANUFACTURE</td>
<td>76</td>
<td>26</td>
<td>57,908,759</td>
</tr>
<tr>
<td>TOURISM</td>
<td>29</td>
<td>4</td>
<td>5,882,366</td>
</tr>
<tr>
<td>TRANSPORT</td>
<td>2</td>
<td>25</td>
<td>9,771,148</td>
</tr>
<tr>
<td>MINING</td>
<td>13</td>
<td>-</td>
<td>17,777,201</td>
</tr>
<tr>
<td>CONSTRUCTION</td>
<td>2</td>
<td>3</td>
<td>2,039,585</td>
</tr>
<tr>
<td>CONSULTANCY</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>FISHING</td>
<td>2</td>
<td>-</td>
<td>708,994</td>
</tr>
<tr>
<td>ENGINEERING</td>
<td>-</td>
<td>4</td>
<td>362,930</td>
</tr>
<tr>
<td>HEALTH</td>
<td>1</td>
<td>4</td>
<td>2,565,896</td>
</tr>
<tr>
<td>SERVICES</td>
<td>5</td>
<td>19</td>
<td>3,237,259</td>
</tr>
<tr>
<td>TOTAL</td>
<td>217</td>
<td>85</td>
<td>151,050,302</td>
</tr>
</tbody>
</table>

Source: Table 3.31 Economic Report 1994 P100.
**TABLE IV**

**STATUS OF PRIVATISATION AS OF NOVEMBER, 1994**

<table>
<thead>
<tr>
<th></th>
<th>Tranche 1</th>
<th>Tranche 2</th>
<th>Tranche 3</th>
<th>Tranche 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal transfer has occurred</td>
<td>8</td>
<td>3</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Sales agreements signed</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Negotiations completed</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Under negotiations</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>To be handed back to former owners</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Privatisation stalled by liquidation</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Privatisation by dilution</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Milling Companies offered to previous owners who will be given refusal rights</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Privatisation strategy being defined</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>To be offered either by competitive bid or negotiation with pre-emptive right holders</td>
<td>6</td>
<td>12</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Offered</td>
<td>0</td>
<td>3</td>
<td>30</td>
<td>33</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td>31</td>
<td>30</td>
<td>81</td>
</tr>
</tbody>
</table>

Source: Table 3.32 Economic Report P.101.
CHAPTER III

PROBLEMS OF APPLICATION OF THE CONCEPT OF ONE-STOP FACILITY

The Centre was not constituted as a one-stop office merely to register investors, implement decisions of the body or promote investment. The functions are enumerated in Chapter II under Section 5(2). The Centre was supposed to assist an investor is securing from the relevant institution permission, exemption, authorisation, licence, bonded status and land in order to establish or operate a business. According to the Board Secretary, the Centre does provide assistance only if requested to do so. It is unfortunate that the Centre should be requested when in fact this is one of its duties. The Centre is supposed to inform and advise investors as to what it is legally allowed to do. Certainly this cannot be attributed to shortage of manpower as a smaller body can equally be effective if its members and staff act their role properly. We may take, for instance, the case of Village Industry Service (hereinafter referred to simply as V.I.S.).

1. ASSISTANCE GIVEN TO THE VILLAGE INDUSTRY/SMALL SCALE ENTERPRENEUR

The Village Industry Service was created to promote small scale industries. Its management comprise the Chairman, Director, Assistant Director and head of Projects department, Training department, Accounts, Personnel and administration and a middle management at provincial level manning branches at Chipata, Mongu, Livingstone, Mansa, Kasama, Solwezi and Lusaka.

According to Mrs B. Kani, there are basically two categories of small scale enterprise investors. The first type has the know-how or some capital and the second do not have business knowledge. Therefore, the first thing will be to explain which types of projects they support. The investor then is asked as to where he resides and how he will manage the proposed business. Thereafter, a simplified form is given to him on which there is very little but vital information designed to provide a follow-up. Should the entrepreneur elect to become a member, he pays a nominal fee of K1,000 and registration fee of K4,000. If he requires funding, the VIS assist him to get funding upon the assessment of the viability of the proposed project. Unlike the Investment Centre, the VIS monitors the performance of the investor, after a grace period, to see if he has established himself. Assistance given to the investor includes
helping him to construct a shelter, to get equipment on loan which is on similar lines as a higher purchase. Those who do not have collateral are also assisted because the aim is to promote economic development among the under privileged. Those who do not have land from where to operate are housed at Chinika Industrial Estate at a rent. Other Industrial Estates are located at Livingston, Chipata, Mansa and Kasama. Rentals and loan repayments are to be derived from the projects' earnings. The Chinika estate is like a nursery or incubator so that by the time the investor is established he is free to move out. If the entrepreneur is not licensed, VIS gives him a letter which he takes to the Ministry of Commerce for a licence or to the Ministry of Lands for Land. They also advise the investor as to the registration of a business name. If the clients do not have the know how required for smooth business operation, VIS prefers to train them in entrepreneurship. Should the investor need further skills he is advised as to which institution provides training for the particular skill. It is, however, very doubtful as to whether the Centre provides consultancy services or assists the investor to get a certificate of incorporation. The result is that, in the case of VIS, approximately 95 entrepreneurs had been assisted in establishing various projects and a total of K40 million paid out in loans. It may be asked whether the staff are any better than those at the Investment Centre.

The staff is trained locally and workshops are also conducted to update staff knowledge and to review strategies on how best to promote investment. In the performance of its work, the VIS depends on the United Nations Development Programme, the International Labour Organisation and grants or loans from Government. Does VIS not have problems? The only problem according to Mrs Kani is that of Language barrier. Some clients are not educated, especially when calculating interest and when economic forces impede realisation of profits, they do not understand why they should pay back loans.

2. **INVESTORS POINT OF VIEW: AN EXAMPLE OF ZAMNET**

Investors are disappointed with the Centre's performance and apparent inadequacy of the Act to promote local investment by providing, for incentives to a wider sector to include, for instance, services. Dr Hansungule said, "we feel strongly that those of us in the service sector are discriminated against even though we are contributing more. We are the first company of this kind in the Sub-Saharan Africa to provide this service. The World Bank supports us and promises to aid us. However, despite providing this service for the first time the Government has failed to give us incentives. We have to import a lot of machinery for which most
companies enjoy rebates. We also employ workers and we intend to employ more. This type of discrimination should change to a principle of providing incentives for all."

The Centre's performance of its duties is highly wanting as Dr. Hansungule went on to say:

"We did not stop at Ndeke House but at several other institutions. The Centre did not care that one has problems of getting land, incorporation, work permit for expatriates and so on. The officials did not even ask as to whether you had problems and this is not included in the application form that the Centre would assist one to obtain other vital things to start a business. Yet, it is their duty under the law. All we are asking for is the implementation of the Law by the Investment Centre." "8

From this it can be deduced that investors expect to invest in a country where there is continuity and respect for law in terms of compliance. As Meyer aptly said,

"When deciding upon investment it is of utmost importance for an investor that the rules, even if they are restrictive, be respected and maintained over a long period of time. Frequent basic changes in legislation and regulation cause mistrust and a deterrent for a new investor." "9

3. PROBLEMS OF CO-ORDINATION

Under Section 5(2) (c) of the Act the Centre is supposed to maintain liaison with other institutions. The liaison officers are, according to Ms Mwenya, "10 only observers in the Projects Committee meetings held to issue investment certificates. We may take the allocation of land, for instance, to highlight the role of liaison officers.

3.1 PROCEDURE FOR ACQUIRING LAND FOR INVESTMENT PURPOSES

According to the Act, "11 it is the responsibility of the Centre to "assist the investor identify land for investment and shall assist the investor in applying to responsible authorities for the land in accordance with established procedures"

The procedures for application for land are found in the Land (Conversion of Titles) Act No. 20 of 1975. "12 Land in Zambia is valueless and as such it cannot be transferred unless there are exhaustive improvements. This acts as a disincentive to investment.
"The effect on present owner of vast land is to discourage any transfer of such land because there is no economic incentive. If this situation is not altered, there will be immense difficulties resulting from the scramble that free land is likely to invite."13

In 1985 an amendment to Section 13 of the Land (Conversion of Titles) Act by an insertion of a new section which stated that, "No land in Zambia shall as from the 1st April, 1985 be granted, alienated, transferred or leased to a non-Zambian" This had a great effect on investment just as nationalisation had. As aptly put by Mr Hyman Earl Johnson I's experience:

"Between 1967 and 1971 I had acquired the necessary real estate that would enable me to launch myself on a most satisfying and successful career."14

He had planned to establish factories on an extension of Farm No. 2344, Lusaka which was to employ and train Zambians but he "was prevented from carrying out any development on it. It was taken by the authorities without compensation".15 Farm No. 1461 Lusaka West on which he had intended to cultivate sugarcane was also compulsorily taken without compensation and granted to another individual. He thought that compulsory acquisition of land should only be made when it is necessary for development of infrastructure like roads, bridge or railway lines and only when the owner refused to co-operate. In such a case there should be reasonable, adequate and immediate compensation made.16

There is also a proviso to the section 13A which provide that the amendment shall not be interpreted so as to deprive a right previously acquired. The right or interest of an investor who registered under the Act prior to the amendment, was protected except that a non-Zambian was restricted. He could not sell, alienate, transfer or lease nor be granted any more land without state consent. To mitigate these harsh conditions Section 13A of the Act No 15 of 1985 provided that a non-Zambian will be exempted on condition that:

(a) he was an approved investor;
(b) it was a non charitable organisation;
(c) the lease did not exceed 5 years;
(d) he had inherited the interest or right under succession or by the due process of Law, and
(e) the President's consent in writing had been obtained.
However, in order to be an approved investor you needed to be incorporated under the Companies Act,\textsuperscript{17} had been registered under the business names Act\textsuperscript{18} and had an Investment Certificate under the Investment Act of 1993. Clearly these provisions had in mind an already existing business. It demanded that an investment status be accorded to the investor first before consideration was given of his application. The Investment Centre’s duty then was to see that the investor was issued with a Certificate of Title to the land.\textsuperscript{19} In this case, the observer status of the liaison officer at the projects meetings will not be enough liaison or co-ordination.

Perhaps it would be wholly inadequate to blame the Investment Centre for its inability to assist the investor to acquire land. While the Investment Act empowers the Investment Centre to assist the investor to get land, the power of allocation of Land is the preserve of the President or rather the Commissioner of Lands and the Councils. Their powers are derivative from their respective Acts. As such the Investment Act cannot deprive them of their powers. Infact the Investment Act states that:

"This Act shall be cumulative and in addition to, and not in derogation from, any other written law."\textsuperscript{20}

The result is that the Centre cannot assume all its functions without trampling on legal functions of other institutions. Thus the Centre does not assist investors to obtain water, electricity, transport and communication services;\textsuperscript{21} neither does it help to acquire licences, permits, registrations and authorisations required.\textsuperscript{22} Really, the Centre will only be able to achieve its functions after the relevant amendments had been put in place.\textsuperscript{23} To this extent one may conclude, therefore, that the mechanism of the Centre being a one-stop facility has not been achieved.

3.2. GUARANTEES AND FOREIGN INVESTMENT.

Part VII of the investment Act 1993 provides for guarantees and safeguards against nationalisation. If nationalisation or compulsory acquisition occurred there must be prompt compensation of the property at the market value and in a currency in which the investment was originally made.\textsuperscript{24} However, foreign investors are not satisfied with protection of investment under municipal law since such laws are subject to Parliament’s wishes. Developed countries, therefore, have ignored Municipal Codes and elected to draw their own terms not on a standard form provided but rather on bilateral agreements. It is in this respect that Zambia has entered into bilateral agreements on investment.\textsuperscript{25}
These bilateral agreements are rather protectionist. They normally define the obligations of the state and the enterprise and their rights. They are reciprocal and are not subject to the Investment Act. Hence they are out of the ambit of the Investment Centre’s control. Such agreements infact do away with the requirements of investment certificates. Because of this, it is difficult to regulate such investors. These agreements raise special legal problems, for instance the question of applicable law. Any dispute from such an agreement will only be subjected to arbitration by the International Centre for the Settlement of Disputes under the World Trade Organisation (WTO). Thus, while the various enactments have been put in place attractive incentives, the foreign investors seem to care only about the security of their investment. Dr Gunther Jaenicke had this to say:

"While the host state is primarily interested in subjecting investments to its national legal system because it wishes to retain the fullest legislative freedom in the pursuance of its national economic policies, the foreign investor is primarily interested in excluding the application of the law of the host state because the host state may use its sovereign Legislative power to change the legal environment to the detriment of his investment."^26

Though such agreements are an attraction to foreign investors they are obviously not in the best interests of development efforts of Zambia. From this we can deduce that foreign investors are more concerned with the prevailing ideology and economic conditions.

4. **THE REQUIRED CONDUCIVE CLIMATE**

An investor will readily invest in a jurisdiction where the investment created is conducive to industrial growth and profit generating. Zambia has moved from socialist ideology with the state taking a predominant part in economic matters to a more liberalised economy with the promotion of private participation rather than state participation.

4.1 **SIMPLICITY OF PROCEDURES**

Bureacracy is one of the elements which does not favour Investment climate. The constitution of the Centre as the only stop to which investors should come was to free the procedures of bureaucracy and thus encourage and welcome investment. Herman S. Meyer had this advice to investment receipients:

"For free enterprise it is a basic condition that the host country encourages the private Sector and welcomes not only national but also foreign investment."^27
Perhaps one of the most important criticisms by investors is the delay in processing of other documents relevant to investment. Delays are encountered in relation to establishment and incorporation of the company. Delays are met in trying to secure land or other services. Delays are met in getting tax rebates on imports. These delays would have been alleviated had the Centre been functioning as it should, like, for instance, the VIS by assisting investors to get licences, authorisations and so on which is really within its functions. As such, even if the Centre granted investment certificates within the stipulated time, it still fails to simplify all the procedures.

A useful approach would be to see that the investors get the required approvals and licences to start business. This in fact is part of promoting investment. Once the business becomes operational, there should be assistance or availability of training to impart the right skills and provide consultancy. Thus, the underlying motivation should be to promote investment and not to hinder it.

"The principal outrage the reformed legislation is attempting to collapse through the introduction of the Centre is excessive bureaucracy. It is felt eximatic to institute reforms in the structure in order to reduce *duplicit*y, collapse overlapping and red tape, cut on time spent to secure various investment compliances and generally, strengthen administration by providing a single structure that will harmonise, collaborate the various functions scattered in several statutes affecting an activity."
Footnotes for Chapter III

1. Interview with Mrs. B.C. Kani, Regional Manageress, Lusaka, Village Industry Service on 29th August, 1995.

2. S. 5(2)(6) Investment Act 1993 requires the Investment Centre to monitor the performance of enterprise approved by it.


5. Interview with Dr. K.M. Hansungule, Board Secretary ZAMNET, UNZA Lusaka on 10th May, 1995.

6. Ibid.

7. The building at which the Investment Centre is housed.


10. Interview with M/s. A.C. Mwenya, Board Secretary Investment Centre, Ndeke House Lusaka, on 1st June, 1995.


12. CAP 289.

13. E.E. Miti, Investment promotion in Zambia and Brief Salient Feature of the Land (Conversion of Titles) Act No 20 of 1995 and (Amendment No.2) of Act No. 15 of the 1985 Act and the Investment Act No. 5 of 1986, a paper presented to a seminar at Lusaka in 1989 P.7.


15. Ibid.

16. Ibid at P3.

17. CAP. 686 now under the Companies Act 1994.

18. CAP. 687.


22. Ibid S.34.


CHAPTER IV

SUMMARY AND RECOMMENDATIONS

1. SUMMARY

The study was more concerned with the legal framework and the problem of application of the one-stop mechanism where the laws that affect the investor are vested in different legal entities. It also discussed some of the main economic problems that confront Zambia. The essay has also considered in considerable detail the efforts that Zambia has made to attract foreign investors with reference to the institutional structures charged with such function.

In the early years the administration of investment legislation tended to be entrusted to the Ministries of Finance or Commerce and Industry. Later, it was discovered that the existing civil service machinery was unsuitable to the new tasks of expanding the economy. Therefore a separate statutory body was required for this particular task. Hence the establishment of a body corporate called Investment Centre whose main functions are to promote and encourage investment; to provide a one-stop service; to act as an administrative machinery for institutional co-ordination and to evaluate and approve investment certificates. The status of the Investment agency changed from an Investment Council headed by the Prime Minister to a statutory body.

We have considered the development of the investment laws and the bodies charged with promoting, regulating and attracting investment. While the laws displayed very attractive incentives and investment guarantees, the attempts to put in place suitable legal framework within which to woo investment has not produced the desired fruits. It is not a matter of ensuring that negative facts such as discriminatory legislation are removed but rather whether political stability produces the desired economic fertility required for profitable investment.

In all fairness Zambia has made considerable efforts to attract investors. First, it was the Pioneer Industries (Relief From Income Tax) Act 1965, then the Industrial Development Act 1977, the Investment Acts 1986, 1991 and finally the Investment Act, 1993. A close scrutiny of these five Acts reveals that with each Investment Act the incentives became more liberal. However, the law by itself has failed to induce any meaningful investment within the context visualised. This has been attributed to
the legal and institutional incapacity of the Investment Centre to deal with the investor. Perhaps the fault lies with the legislature's inability to amend or repeal relevant existing laws in order to give effect to the power of the Investment Centre in the Investment Act, 1993.

Against Zambia's endeavours to promote investment are micro economic factors like the low domestic savings and low Foreign Exchange earnings. This is reflected by the lack of industries producing capital goods to give Zambia a share in the International Trade on a comparative advantage basis. That is why a protocol for the exportation of 12,000 tonnes of sugar worth $7 million (called sugar protocol) to the European Union (EU) was really a sweet break through.\(^1\) The lack of goods for export and trade at International level has persisted despite the change from the policy of observing foreign economic participation to that of actually seeking it and eventually leading to a more liberalised economy with the investor as an individual dominating player under privatisation.

After the 1993 Act, it would seem that the task of inviting foreign and local investment ended there. The agency created to promote Zambia's investment capabilities does not effectively carry out legislator's wishes. It takes the concept of "one-stop facility" to be merely a listed function. There is very little promotion effected within and outside Zambia. Investors pass through the one-stop window unaware of the facilities the law offers. Coordination cannot be maintained by observer liaison officers because they merely observe.

Accordingly, although, it may not be too early to gauge the successes of the Act, unless and until all the necessary amendments are made and the machinery (Investment Centre) sharpened and given teeth to bite, the whole concept has become a farce.

2. RECOMMENDATIONS

Although "in real life, it is not always possible to find the ideal environment"\(^2\) and no investment code can embody all the law which have something to do with matters of investment, any comprehensive investment Act will contain certain sufficient information for investors, prospective or established. The provision of essential information on taxation, acquiring of land, residential or work permits and so on in the Act minimises the inconvenience and expense which investors could meet in an attempt to get all the relevant information. In this respect the Polish Act is
more comprehensive. It provides for most vital features of foreign investment. It provides for the establishment of a company, corporate taxation and fees, and employment. It also provides for treatment of foreign companies ownership, guarantees of private property and incentives, and so on.³

As an instrument governing Investment in Zambia the Investment Act lacks certain essential information for potential investors.

The Act should have included a provision dividing the areas of economic activity in which either all the investors or Zambians only or joint ventures are permitted. The Act should, therefore, define areas into which investment may be channelled and leave exclusive Zones like Agriculture to Zambians.

Incentives are enjoyed on a discriminatory basis under stringent provisions relating to foreign exchange earnings, being a manufacturing or tourism enterprise or if an enterprise is export promotion oriented. Apparently, service industries are excluded. These discriminatory and restrictive provisions should be amended so that incentives will apply to all investors. Further, such requirements like those given to enterprises who earn foreign exchange should be reduced from 25% to 20%. It would also appear to be advisable that the special incentives should be given on merit; and, thus discard the practice now of granting special incentives on discriminatory basis, to exporters of non traditional products, producers of agricultural products for export, tourism industry, import substitution industries or enterprises located in rural areas only.

Incentives given to attract foreign investment in rural areas may remain in letter only unless the government initiates development process in the rural areas.

"Only government has capacity, the resources, and the responsibility to bring about agricultural development through the enactment of legislation which will provide proper legal framework"⁴

Apart from the legal framework, the Government will need to make conditions in rural areas attractive by, for instance, building roads, railways and guarantee the market in such areas. The right infrastructure, therefore, should be the first priority. Thus, policy has always been closely related to political and investment climate.

The Act should also give additional incentives to any enterprise that brings in new technology in specified areas including rare enterprises like the service sector.
The economic significance if such a provision is made very attractive cannot be over-emphasized.

The Centre needs to be bestowed with exclusive rights to administer the provisions of the Investment Act. There is also room for co-ordination between the Centre, the Government investment policy and development plans, and investment legislation.

When parliament confers a power or function on an institution or department, in the absence of its removal through the same mechanism which conferred the power, that body or institution be it the Commissioner of Lands, the Bank of Zambia, Ministry of Commerce, Ministry of Finance, Customs or Immigration would still hang on to it’s powers since such powers are legally endowed on it. Therefore, it is necessary that parliament amend all the relevant statutes dealing with investment and thus bring into effect the powers conferred on the Centre. Only then can the Centre be able to function as a one-stop window.

The competence of how the Centre functions is also depended on the calibre of staff and the training provided. If the VIS could function well without direct legal powers as those conferred on the Investment Centre, there does not seem to be any reason for the Centre failing to carry out its functions.

Apart from a few points that have been raised in the preceding chapters, it is sound judgment that Zambian law of Investment is reasonably attractive. Legally, commendable efforts have been made to attract investment. It is now up to the Investment Centre to function as it should and thus curb on the cumbersome procedures that the investor is usually subjected to.

The legal framework for investment has been analysed in respect of direct investment. The examination of the various enactments and the administrative structures designated since independence to date points to the need to harmonise and unify the laws on investment under one body. Once this is done the Centre will be empowered to carry out its work as provided for by the Investment Act. There must, however, be adequate training of staff who man the Centre and the Centre itself should observe the provisions of the Act to the letter and act in accordance with those provisions rather than choose what it can and cannot do. Investors’ complaints need to be attended to. Thus as rightly put by Yotam M. Chiwaura;
"the most important element of a good legal order is that it must be endorsed by those affected by it"\textsuperscript{5}

Hence the need to centralize all aspects of administration of investments under one umbrella.
Footnotes For Chapter IV


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(e) UNPUBLISHED MATERIALS


