

duty, internal indirect tax or raw materials, electric power, export duties on finished products, operation conditions--such as guarantees of stability in legal, economic and financial matters, as well as with respect to financial transfers and the marketing of products, guarantees of entry and movement of workers, freedom of employment and freedom to select supplies and persons rendering services; guarantees concerning conditions for the use of water, electricity and other resources necessary for operations and conditions for transporting products to the place of shipment; and guarantees on the allocation of foreign exchange, the supply of raw materials and protective measures relating to the finished product and the reservation of government and armed forces contracts to beneficiary enterprises.

EXTERNALISATION OF PROFITS AND CAPITAL

This is one of the controversial areas of foreign investment. During the early period of independence, almost all African countries placed no restrictions on repatriation of capital and profits by foreign investors. The argument of foreign investors, especially companies, is that the shareholders are outside the recipient state and naturally profits that are declared as dividends have to be externalised. This is a valid argument on the face of it but the fact is

that most, if not all, foreign private investors have not played a fair game; they have taken advantage of the existing orthodox company law, which leaves declaration of dividends to the judgment of the businessmen. Thus dividends are declared without due regard to the financial needs of the host country, as already discussed in Chapter V. 40

And yet if some of the profits were reinvested instead of declaring them as dividends, the expansion of existing industrial enterprises could be achieved. Uncontrolled externalisation of capital and profits contributes to serious problems of shortage of foreign exchange and balance of payments deficits for developing countries. This issue was forcefully argued by Ambassador Orlando Letelier of Chile when asked whether the Government of Salvador Allende was frightening foreign capital away from Chile: "In general terms, we have been exporting capital not importing it . . .; between 1950 and 1967, \$450 million flowed into Chile as direct investments; now deduct depreciations for such investments during that period, which the companies took back out of the country, the net figure would be only \$257 million. In the same period, the outflow of profits and dividends just on investments was \$1.056 billion, about four times the net investment." ⁴¹ The United States direct investment in Africa in 1967 totaled US \$73 million excluding South Africa and Libya while the sum it remitted from the continent in the same year was 65% more than the net

investment. ⁴² In Libya the United States direct investment in 1967 was US \$50 million, while net earnings in the same year was put at \$292 million. ⁴³ In other words, for every one dollar invested, United States enterprises obtained slightly more than 5 dollars.

It is therefore inevitable that restrictions have to be imposed on externalisation of profits and capital-- hence almost all African countries have imposed foreign exchange regulations; only Gabon, ⁴⁴ Chad ⁴⁵ and Dahomey ⁴⁶ have not yet put restrictions on remittance of profits apart from procedural requirements and the availability of foreign exchange.

NATIONALISATION

Many african countries have stated their position on nationalisation in their constitutions, investment laws or official economic policy statements. Where nationalisation is provided for, a legal guarantee for fair and just compensation is also given. Official statements to the effect that no nationalisation will take place, or, if it does, which enterprises would be affected and what compensation will be paid have been made, for instance, by Nigeria, ⁴⁷ Kenya ⁴⁸ and Zambia. ⁴⁹

International law recognises the right of a sovereign state to nationalise or expropriate foreign owned property in the public interest. ⁵⁰ Indeed this is what it should

be; the host country should not guarantee that it will live by foreign investment in perpetuity. There should be a time of emancipation, a period when the host country attains economic 'majority' and bids farewell to the foreign investor. Of course by that time the investor has already taken what is due to him, including fair and just compensation.

ARBITRATION

There may be disputes between the host state and the foreign investor in relation to the implementation or interpretation of the investment laws; most of the African investment laws provide for a machinery of arbitration. The Ghana Capital Investment Act ⁵¹ provides that a dispute relating to nationalisation shall first be referred to an arbitrator appointed by mutual consent. Upon failure of this machinery, the matter shall be referred to the International Bank for Reconstruction and Development.

Investment laws of French-speaking African countries contain similar provisions: there are three arbitrators, one appointed by each party. The third, in Chad, ⁵² is appointed, in case of disagreement between the parties, by an authority named in the approved status agreement; in Dahomey ⁵³ by agreement or may be from the judiciary of the investor's country; ⁵⁴ and in Niger, by agreement or by its

Supreme Court. The Niger Code further provides that where enterprises are considered as foreign with regard to the application of regulations on the carrying out of professional activities in Niger by foreigners, such enterprises may secure at the time of the conclusion of the contract of establishment, permission to bring disputes of a judicial nature before the International Center for the Settlement of Investment Disputes.

Some investment laws, notably those of Lesotho, Kenya and Algeria are silent on the question of arbitration; perhaps the approved investor would have to seek recourse to the applicable domestic laws in the investor's agreement or contract with the host government.

THE PROPOSED INDUSTRIAL DEVELOPMENT ACT

Zambia's investment law is not codified, there is no investment code as such; the potential investor has to refer to various applicable acts, regulations and presidential pronouncements. ⁵⁵ This year, the Zambian government has committed itself to produce an investment code and it appears that the government has been under pressure for a long time to provide for a comprehensive investment statute as evidenced by the presidential address to Parliament last January: ". . . The UNIP manifesto for 1974-1984 clearly spells out the role of private entrepreneurs in the develop-

ment of the Zambian economy. We have been urged time and time again to produce an investment code. We will complete the code this year. . . ." ⁵⁶ It is proposed to briefly discuss the provisions of the draft bill.

'PRIORITY ENTERPRISE'

The draft bill lists conditions under which an enterprise will be granted approved or special status, i.e.,

'Priority Enterprise.' ⁵⁷ These conditions are:

- (i) Maximum utilisation of domestic raw materials.
- (ii) Production of intermediate goods which are used by other industries.
- (iii) Diversification of its industrial structure.
- (iv) Creation of substantial opportunities for permanent employment.
- (v) Upgrading of domestic industrial skills or fostering the development of domestic technology.
- (vi) Promoting industrial growth in rural areas.

It is evident that the bill is a product of the government's economic objective of diversifying the economy. Copper is the backbone of the Zambian economy but fluctuations of the price have led the government to shift emphasis on mining to manufacturing and agriculture. The Minister constitutes the Screening Board; ⁵⁸ he will decide as to which enterprise qualifies for priority status.

INCENTIVES

Once priority status is granted on the enterprise,⁵⁹ it will enjoy the following incentives:

- (i) Preferential treatment with respect to the granting and processing of import licenses.
- (ii) Preferential treatment with respect to government purchasing.
- (iii) Rebates on customs duty payable on capital equipment, raw materials, and other intermediate goods.
- (iv) Relief from sales tax in respect of capital equipment and raw materials.
- (v) Relief from selective employment tax for a period prescribed by the Minister.
- (vi) Relief from income tax, again for a period to be determined by the Minister.

These incentives will apply to all enterprises which are granted priority status. In addition, however, provision is made for granting of incentives to the following enterprises:⁶⁰

- (i) Exporting enterprises.
- (ii) Trading enterprises.
- (iii) Rural enterprises.
- (iv) Enterprises which utilise foreign exchange.
- (v) Research and development enterprises.

EXPORTING ENTERPRISES

The following incentives will be granted to enterprises which satisfy the Minister that they export a substantial

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amount of their products:

- (a) Relief from any tax or customs duty payable on the importation of machinery intended for use in manufacture of such products.
- (b) Relief from income tax for a period to be determined by the Minister.
- (c) Favourable adjustment to export tariff rates.
- (d) Relief from import tariff in respect of raw materials.
- (e) Preferential treatment with respect to granting and processing of import licenses.

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TRAINING ENTERPRISES

The bill provides that enterprises which provide training facilities or incurs training expenses for Zambian citizens shall be entitled to write-off against income tax any such expenses or expenses incurred in the provision of such facilities. Privilege will be given with respect to the granting of employment permits to expatriate instructors hired for training Zambians.

RURAL ENTERPRISES

The bill defines a 'rural enterprise' as one which is "located in a rural area." ⁶³ Such an enterprise will enjoy the following incentives:

- (a) Loan facilities from Rucom Industries Limited.
- (b) Eligibility to purchase or apply for the rental of any factory constructed by Rucom in rural areas.

- (c) The use of Rucom's marketing and extension services.
- (d) The use of Rucom's advisory services in project feasibility studies, accountancy, technology, marketing, and choice of projects.

FOREIGN INVESTMENT ENTERPRISES

Enterprises which utilise investment provided from outside Zambia or which employ a significant amount of foreign capital within Zambia will enjoy the following incentives:

- (a) A right to remit the value of such capital or such investment, as a minimum in accordance with the foreign exchange regulations in force at the material time.
- (b) An election to remit any accrued profit during the twelve-month period immediately following the end of the financial year, subject to foreign exchange regulations in force at the material time.
- (c) Any remittable profit which is re-invested in Zambia shall be credited to any amount which may be remitted on cessation of business.
- (d) Immunity from sequestration or confiscation except by decision of a competent court of law.
- (e) Immunity from nationalisation or compulsory acquisition unless the highest considerations of public interest so required and the following conditions will apply:
 - (i) The enterprise will be evaluated within six months.
 - (ii) Full compensation will be paid within five years.

- (iii) Compensation shall be made in the currency or currencies in which the foreign investment was brought into Zambia and shall be free of any tax, or foreign exchange regulations.
- (iv) Any dispute concerning the assessment or value of compensation shall be referred to a committee of arbitration consisting of one member representing the investor, another member representing the government and a Chairman to be appointed by these two members.
- (v) Valuation and assessment of compensation and arbitration expenses shall be borne by the government.

It is important to note that amendments may result from the debate on the bill by the National Assembly. I submitted the following comments:

NATIONALISATION

In the absence of treaty obligation, international law recognises the right of a sovereign state to nationalise or expropriate foreign owned property within its territory in the public interest. ^{65a} Section 23(e) of the proposed act is therefore a restatement of an existing rule of customary international law. This right has been well-established for a long time both in positive law and legal theory but the emphasis was originally on the sanctity of property and the rights of property owners. As President Kaunda put it: "As humanists we are dedicated to upholding the protection of fundamental rights and the freedom of the individual. Foreign investment must contribute to the development of

the host state whilst the investor gets a fair return on his investment. It follows therefore that when this objective is realised, the investment has to cease, hence NATIONALISATION: the host state reaches a stage of emancipation. And by parity of reasoning, it is the host state which must determine whether it has reached a stage where foreign investment should cease; thus it lies in the host state's subjective determination whether the expropriation is in the public interest." ^{65b}

COMPENSATION

The only question that remains to be answered is whether the exercise of the right to nationalise involves the payment of adequate compensation. There are two divergent schools of thought: "In the absence of treaty obligation freely undertaken by a State, international law does not prescribe the payment of compensation for the taking of foreign private property." ⁶⁶ The taking of an alien's private property must generally be accompanied ⁶⁷ by payment of adequate, prompt, and effective compensation. Zambia basically subscribes to the second school of thought as evidenced by President Kaunda's speeches on economic reforms, and Art. 18(1) of the constitution makes payment of compensation mandatory in cases of compulsory acquisition of property. Accordingly, s. 23(e)

(ii) of the proposed act provides for payment of full compensation in cases of nationalisation of industries created by foreign private investment. The section, however, uses the term 'full compensation' instead of the traditional term 'adequate compensation.' It is submitted, however, that the two terms are synonymous. The question then is, does full or adequate compensation include intangible assets and prospective profits of the nationalised enterprise, popularly known as 'goodwill'? It is crucial for the proposed act to answer these questions because Zambia's attitude has been against payment of compensation for goodwill, and President Kaunda has clearly stated that this is the government's position: "I shall leave it to INDECO to negotiate values and terms of payment but I want to make it clear that what they will pay is a fair value represented by the book value. There is no such thing as business goodwill or paying for future profits as far as I am concerned."

Instead of using the traditional word 'prompt' s. 23 (e)(ii) of the proposed act provides for a specified number of years within which full compensation must be paid-- five years. Although this is a commendable departure from the traditional rule, the stipulation of a fixed period of payment must be criticised. A developing country which is committed and in a hurry to attain public owner-

ship of the means of production may lack capital to pay compensation; does it therefore mean that nationalisation will not take place simply because full compensation cannot be paid in five years. It is submitted that the section in question must be amended so as to provide that full compensation will be paid 'within a reasonable time.' This will allow for flexibility--depending on the monetary size of the nationalised industry. It should also be provided that 'full compensation' will be treated as a loan to be paid out of the profits of the nationalised industry.

ARBITRATION

Article 18(3)(c) of the constitution provides that "An Act of Parliament such as is referred to in clause (1) shall, inter alia, provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly." And clause (4) of the same Article provides that "No Compensation determined by the National Assembly in terms of any such law as is referred to in clauses (1) and (3) shall be called in question in any court on the grounds that such compensation is not adequate." The proposed Industrial Development Act on the other hand provides that "any dispute concerning the assessment or value of compensation shall be referred to a committee of arbitration consisting of one member repre-

senting the investor, another member representing the government and a chairman to be appointed by the said members." It is submitted that this section is in direct conflict with Article 18(3)(c) and (4) of the constitution, a mandatory constitutional provision. And there is no reason why the government should bear all the expenses of arbitration; ⁶⁸ it should be amended to provide that expenses for arbitration will be borne by both the government and the investor in equal amount and by either party alone if that party's case is frivolous and vexatious. This amendment is necessary to avoid exaggerating of compensation--a practice prevalent among investors.

COMPENSATION AND FOREIGN EXCHANGE REGULATIONS

Admittedly, foreign exchange restrictions are a major obstacle to foreign enterprises because they cannot freely remit moneys due their shareholders. However, the basic aim of exchange control is to protect a country's balance of payments position and this is crucial in developing countries for various reasons: these countries depend on primary products for export which therefore are their chief foreign exchange earners. But the prices of primary commodities are not only controlled by importing countries but are also extremely unstable. Developing countries have 'crash

programmes' for industrialisation which put great strains on their balance of payments: they have to buy capital equipment for establishment of new industries and new materials necessary for their operation. They cannot therefore be expected to completely eliminate all foreign exchange restrictions or guarantee that none will be imposed in future. The solution must be a compromise, i.e., remittance of any moneys by foreign investors should depend on the economic well-being of the host country as reflected in the foreign exchange regulations. Accordingly s. 23(a) of the propose act provides that the right to remit "the value of such capital or such investment . . . shall be exercised in accordance with the Law relating to exchange control at the time of application for remittance." But surprisingly, the compensation is not subject to any tax or exchange control restriction; why? Will this be the position in all cases? Even when the country is experiencing violent fluctuations of copper prices? It is submitted that this provision is ill advised and therefore should be amended to the effect that compensation should also be subject to foreign exchange regulations. And certainly there is no convincing reason why it (compensation) should not be subject to taxation.

RESEARCH AND DEVELOPMENT ENTERPRISES⁶⁹

These enterprises will enjoy tax exemptions on any expenditure in respect of research and development conducted by such enterprise or on behalf of such enterprise by a recognised research institution.

WITHDRAWAL OF INCENTIVES

The bill gives the Minister power to withdraw any incentive if in his opinion the enterprise no longer qualifies for any such incentive.⁷⁰

In conclusion, there is no doubt that developing countries are genuinely interested in attracting foreign investment judging from the comprehensive nature of their investment laws and the incentives which these laws provide. What is in doubt is whether the incentives remove the obstacles to private foreign investment. But it must also be borne in mind that what has been discussed are basically legal incentives and as Fatouros⁷¹ points out, obstacles to private foreign investment are diverse--economic, legal, social and psychological; they follow no order of importance; they have an accumulative effect and therefore removal of a number of obstacles of a particular nature may or may not improve the rate of flow of private capital.

FOOTNOTES

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2. G.A. Resolution 1318 (XIII) Dec. 12, 1958; E.C.O.S.C. Resolution 762 (XXIX) April 21, 1960.
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5. PAUL ALPERT, *Economic Development, Objectives and Methods*. N.Y. Free Press of Glencoe (1963).
6. Industrial Development (Income Tax Relief) Act 1958, S. 3(b).
7. S. 7(1)(c).
8. Investment Proclamation No. 242 of 1966, *Negarit Gazeta*, 26th year, No. 2, Art. 3(1).
9. Art. 3.
10. Niger Investment Code, Law No. 68-24/PRN of 31 July 1968, Art. 5.
11. Gabon Investment Laws, Art. 14.
12. Burundi Investment Code, Art. 6 1964.
13. Chad Investment Code, Art. 13.
14. Art. 7.
15. Art. 45.
16. A.M. Akiumi, *Investment Laws of Africa*, E/CN.14/BUD 12, p. 201.

17. Ibid.
18. Tanzanian Foreign Investment (Protection) Act. No. 40 of 1963, s. 3(2).
19. Kenya Rules of Procedure for granting a "certificate of Approved Enterprise," 4 I.L.M. No. 2 (1965).
20. S. 6.
21. Law of 4 May 1964, Art. 10.
22. Ordinance No. 21-67. Amending Law No. 55/61 of 4 December 1961, Art. 15.
23. Opt. cit. Art. 8.1.
24. Liberian Investment Code, 1966, S. 3(2).
25. Art. 24.
26. Sections 9-11.
27. Art. 2.
28. See Akiumi, opt. cit., p. 211
29. Ibid, p. 212.
30. Art. 11.
31. S. 23.
32. See Akiumi, opt. cit. p. 198.
33. S. 8.
34. Akiumi, opt. cit. p. 199
35. Decree No. 156/PR.
36. Act. No. 172 of 19 April, 1963.
37. Government of Foreign Capital, Ministry of Commerce, Industry and Supply, p. 3.

38. Law No. 8 of 1958.
39. Akiumi, opt. cit. 198.
40. Also see KENNETH KAUNDA, *Zambia Towards Complete Independence*, p. (ii). Address to UNIP National Council at Matero Hall, August 11, 1969. Govt. Printer, Lusaka.
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45. Chad Investment Code, Art. 3.
46. Dahomey Investment Code, Art. 2.
47. DELUPIS, DOIMIDI INGRID, *Finance and Protection of Investments in Developing Countries*, p. 28. Gower Press (1973).
48. See Akiumi, opt. cit. p. 208.
49. Kenneth Kaunda, Speech at the National Council of UNIP at Mulungushi, 19th April 1968, reproduced in *After Mulungushi*, at p. 213.
50. HACKWORTH, G.H., *Digest of International Law*, Vol. III. Washington, D.C., U.S. Govt. Print. (1940-44).
51. See Akiumi, opt. cit. p. 213.
52. Chad Investment Code, Art. 45.

53. Dahomey Investment Code, Art. 39.
54. Art. 25.
55. The UNIP Manifesto, "Watershed," etc.
56. President Kaunda's Address to Parliament, 7th January, 1977, p. 7.
57. S. 17.
58. S. 18.
59. S. 19.
60. SS. 20-24.
61. S. 20.
62. S. 21.
63. S. 22.
64. S. 23.
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PART III

Legal Security for Private Foreign Investment

CHAPTER VIII
PROTECTION OF PRIVATE FOREIGN INVESTMENT
BY DEVELOPING COUNTRIES

There is no doubt that investment laws of developing countries are attractive enough to lure private foreign investors. However, nothing should obscure the fact that however attractive these laws may be the flow of foreign capital will remain unsatisfactory if investors feel insecure. The investor has to be made reasonably certain of the future as well; he must be made to believe that there is little or no possibility of the creation of an unfavourable legal situation, at a later date, which will be detrimental to his investment.

Most emergent states have given private investors assurances of security of their investments in the form of government policy statements, statutes, and constitutional provisions. The question is of what value are these provisions to the investor? How permanent are they so that an investor may rely upon them as protection for his investment?

GOVERNMENT POLICY STATEMENTS

"Our Government has no plans whatsoever to take over industries in the private sector. Where the government has taken over private industry, it has done so either because, as in the case of the acquisition of the gold mines,

the owners had indicated their intention of closing them down, or as in other cases, because the owners themselves had made propositions to the government";¹ this assurance was given to private investors in Ghana by the late President Nkrumah.

The Guinean President made a similar assurance, "Those who are ready to invest in the Republic of Guinea and who wish to participate in the economic development of our country must be able to count on political and social stability and to benefit from guarantees protecting their capital from all arbitrary acts and ensuring fair interests."² Liberia has categorically stated that no expropriation of existing industries is envisaged.³ As Nwogugu⁴ states, in countries with stable government, policy statements may be accepted as reassuring and intended to be an expression of good faith. But just a few years after independence, emergencies, coups d'etat and secession spread in Africa like wild fire; hardly any of the new nations has escaped some kind of violent emergency.⁵ Legally, such statements are mere public statements devoid of any binding effect. Thus, they are of no real value to an investor.

LEGISLATIVE PROVISIONS

Although most of the investment laws make no distinction between private and public investment, they are basically

intended to attract and protect private foreign investment. The Tanzania Foreign Investments (Protection) Act,⁶ 1963, the Uganda Foreign Investment (Protection) Act,⁷ 1964, and the Kenya Foreign Investment (Protection) Act,⁸ 1965 are clearly designed to apply to foreign investors only. The long title of the Tanzanian Act, for instance, reads, "An Act to give protection to certain approved Foreign Investments and for matters incidental thereto." What then is the legal value of these legislative instruments to the investor? As long as investment laws remain in their original form, they certainly provide considerable protection to foreign investors. As a matter of fact, apart from the special procedures laid down to be followed before a decision is taken to withdraw the privileged status and the incentives that are granted together with the special status, these laws provide for arbitration in relation to the implementation or interpretation of the laws. However, investment laws like any other statutes can be amended or repealed even to the detriment of the investor; it is an attribute of sovereignty for the state to make, amend and repeal its own laws. What is most worrying is the ease with which the investment laws can be amended or repealed; no special procedure is provided for, a simple majority⁹ vote is sufficient.

PROPERTY PROTECTION UNDER CONSTITUTIONS

The idea of written constitutions has enhanced property protection in emergent states especially in the Commonwealth countries where comprehensive bills of rights have been included. As Professor Nwabueze states, "Of Britain's legacies to the Commonwealth perhaps the most valuable is the libertarian tradition of the common law and its system of justice . . ." the common law has a zealous concern for private rights. . . ." ¹⁰ A good example is the following provision in the Indian Constitution (Fourth Amendment) Act, 1965:

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired. . . ." ¹¹

The Constitution of the Federal Republic of Nigeria, 1963, which became a blueprint for Commonwealth countries provided that, "No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that:-

- (a) requires the payment of adequate compensation thereof; and
- (b) gives to any person claiming such compensation a right of access, for the determination of his in-

terest in the property and the amount of compensation to the High Court having jurisdiction, in that part of Nigeria."¹²

The Zambian Second Republic Constitution contains a similar provision, "save as herein after provided, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of an Act of Parliament which provides for payment of compensation for the property or interest or right to be taken possession of or acquired."¹³

Such an Act of Parliament, ". . . shall, inter alia -

- (a) specify the principles on which the compensation is to be determined;
- (b) provide that compensation shall be paid in money; and
- (c) provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly."¹⁴

It is further provided that "No compensation determined by the National Assembly in terms of any such law as is referred to in (1) and (3) shall be called in question in any court on the grounds that such compensation is not adequate."¹⁵ Thus the Zambian Constitution completely ousts the jurisdiction of the courts where Parliament deter-

mines compensation. In his able analysis of the value of constitutional guarantees, Nwogugu¹⁶ argues that where constitutional provisions are not enforceable by the local courts, they merely indicate the willingness of the state concerned to protect private property. It may further be argued that the National Assembly is not really a suitable institution to determine investment disputes.

Constitutional guarantees are also exposed to amendment or repeal. Even in cases where they have been entrenched, amendment or repeal has been made with ease owing to overwhelming majorities possessed by nationalist governments at independence and later the introduction of One Party State reduced constitutional guarantees into almost ordinary legislation with respect to the amendment procedure.¹⁷ In some countries, in Tanzania, for instance, constitutional guarantees no longer exist due to the abolition of the Bill of Rights.

Perhaps the value of constitutional guarantees is that their amendment or repeal attracts public opinion and international reaction and this in itself acts as a check on the host state. As Cowen put it, 'No knowledgeable person has ever suggested that constitutional safeguards provide in themselves complete and indefensible security. But they do make the way of the transgressor, of the tyrant, more difficult. They are, so to speak, the outer bulwarks of defence.'

In conclusion, it is evident that African investment laws, though attractive, tend to be deficient with respect to providing legal security to private foreign investors. This deficiency, however, has been compensated by the accession of most African countries to the Convention on the Settlement of Investment Disputes.

FOOTNOTES

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3. Ibid.
4. NWOGUGU, E.I. The Legal Problems of Foreign Investment in Developing Countries, p. 55, Manchester Un. Press (1965).
5. B.O. NWABUEZE Constitutionalism in Emergent States, Fairleigh Dickinson Un. Press, Rutherford, N.J. (1973).
6. Akiumi, Investment Laws of Africa, E/CN.14/BUD/12, at p. 207.
7. Ibid.
8. Ibid.
9. Art. 88, Constitution of Zambia.
10. Nwabueze, opt. cit. p. 39.
11. New Art. 31(1) of the Indian Constitution.
12. Law No. 20. of 1963, Chap. III, S. 31(1).
13. Art. 18(1).
14. Art. 18(3)(c).
15. Art. 18(4).
16. Nwogugu, opt. cit. p. 65.
17. See Art. 80 of the Zambian Constitution.
18. COWEN, D.V. The Foundation of Freedom, p. 119, Cape Town; N.Y.; Oxford Un. Press (1961).

CHAPTER IXSETTLEMENT OF INVESTMENT DISPUTES

It has been seen in Chapter VII that apart from the special procedures which must be followed before approved status can be withdrawn, a number of investment laws provide for arbitration in relation to the implementation and interpretation of the laws themselves and subsidiary contracts or agreements. Although this machinery has become popular among host countries it has serious limitations: in the first place, each party, the investor and the state, appoints its own arbitrator and obviously either party will choose a person who is sympathetic to his cause.¹ Then there is the question of the chairman, normally he is chosen by the two arbitrators; the chances of agreeing on one man are very slim. It has therefore become necessary to find an impartial machinery of settlement of investment disputes.

Most emergent states, particularly African countries, have ratified the Convention on the Settlement of Investment Disputes between States and Nationals of other States.² Ghana,³ Niger,⁴ and Tunisia have even made provision, in their investment codes to refer investment disputes to the Centre established under the convention. Such provisions are important for attracting foreign investment as they give a feeling to an investor that in the event of a

dispute, fair play all around will prevail.

THE ICSID AND THE CONVENTION

The International Centre for Settlement of Investment Disputes (ICSID) was created by the Convention on the Settlement of Disputes between States and Nationals of other States. The Convention was a product of the World Bank; it was opened for signatory approval by World Bank members on 19th March, 1966 at which time ICSID became operative.

The Convention was designed to encourage private foreign investment in developing countries by reducing the risk and uncertainty. The Convention established the ICSID as a facility offering an impartial forum for arbitration and, or conciliation of investment disputes that may occur between a contracting state government and a foreign investor from another contracting state, i.e., country, company agreements. The Convention became one of the 'revolutionary' international instruments because it brought the claim of an object of international law--a natural or an artificial person, on the international plane. Admittedly, there were instruments before the Convention which provided for the jurisdictional capability of the private investor but these were only drafts or projects. It must be mentioned that because of the provision of jurisdictional competence of

the individual, Latin American countries have refused to sign the Convention; their argument being that it is against the 'Calvo Doctrine,' a concept in international law that concerns a stipulation in a contract between an alien and a government for protection in any legal issue arising from the contract and requiring him to exhaust local remedies. The non-accession of Latin American countries is considered to be the most serious limitations on the Convention as this is a high risk area.⁶

JUSTIFICATION OF THE PRIVATE INVESTOR'S RIGHT OF JURISDICTIONAL ACCESS

Basically three arguments have led to acceptance of this novel idea:

- (i) That it would be wrong in essentially commercial matters to leave an investor to the mercy of his own government, to decide whether or not to espouse his claim, which decision might be made upon purely political grounds.
- (ii) That many disputes do not involve rules of international law at all but may turn merely on the interpretation or application of the arrangements between the host state and the investor; hence it would be logically wrong to apply to these disputes the traditional view that in a controversy over

questions of international law individuals should have no recourse to an international tribunal.

- (iii) That there would be advantages to host states in recognising such jurisdiction because private investors would be encouraged to invest capital in a country which, as a mark of its good faith, indicated its readiness to arbitrate otherwise than on a government-to-government basis, and its willingness to deprive itself of the advantage that the foreign investor's state might in particular cases decline to espouse that investor's claim.

THE MACHINERY

The ICSID has full international legal personality and legal capacity with the usual privileges and immunities of international organisations.⁷ But the ICSID is not an organ of arbitration or conciliation; it simply provides a facility for the operation and functioning of the arbitral tribunals and conciliation commissions to be constituted in accordance with the provisions of the Convention.⁸

The Secretary General of the Centre is the legal representative and he performs the vital role of screening; if he finds "on the basis of the information contained in the request" that the dispute is manifestly outside the

jurisdiction of the Centre, he may refuse registration; there and then the institution of proceedings is barred; otherwise it is mandatory for him to register.⁹

The Convention provides for security of tenure; the term of office of a panel member is a renewable period of six years and it is open to a person to serve on both panels.¹⁰

JURISDICTION

"The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a contracting state (or any constituent subdivisions or agency of a contracting state designated to the Centre by that state) and a national of another contracting state, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally."¹¹

This term is used to denote "the limits within which the provisions of the Convention will apply and the facilities of the Centre will be available for conciliation and arbitration proceedings."

LEGAL DISPUTE

In order for a dispute to be legal, "it must concern the existence or scope of a legal right or obligation, or

the nature or extent of the reparation to be made for breach of a legal obligation."¹² It is said that disputes arising out of impairment of the property of investors are outside the scope of the Convention unless they involve conflicts of legal rights.

INVESTMENT

The convention does not define this term. It has, however, been defined as including "any furnishing of economic resources for use outside the territory of the State of nationality of the private foreign investor, whether by way of grant, loan, contract, guarantee, or purchase of an equity or a controlling interest."¹³ It is immaterial that the investment be for public or private purposes in the host state.

NATIONALS

It is only private investors who are nationals of a contracting state who are entitled to have access to the machinery of the Convention.¹⁴ Nationals may be natural or artificial legal entities provided, in the case of a natural person, he must have the nationality of the contracting state on the date the consent was given by the parties to submit the dispute to ICSID.

With regard to artificial persons the position is flexible, not only is jurisdictional access conferred upon juridical persons who had the nationality of a contracting state other than the investment receiving state on the date of consent to submit the dispute to settlement, but also a juridical person, who on that date possessed the nationality of the investment-receiving state--is eligible if that state agreed to treat the juridical person as a national of another contracting state because of foreign control.¹⁵

CONSENT IN WRITING

The jurisdiction of the Centre is essentially consensual: over and above the above conditions, there must be consent in writing. This is because only arbitration and conciliation are provided. However, consent need not be given at any particular time prior to the lodgement of request for arbitration or conciliation. And an investment promotion legislation unilaterally offering to submit disputes to the ICSID, and the private investor might, by accepting the offer in writing, meet the requirement of joint consent--thus a single instrument of consent is not the sole means of manifesting consent.¹⁶

ARBITRATION AND CONCILIATION PROCEEDINGS

(a) Proceedings are initiated by means of a request formally addressed to the Secretary General,¹⁷ and it is only after registration of the request that a Conciliation Commission or an Arbitral Tribunal is constituted.

(b) The parties are normally to agree upon the number of members and the method of their appointment, but if they are unable so to agree, the Commissioner or the Tribunal, as the case may be, is to consist of three members, one appointed by each party, and the third, to be President,¹⁸ appointed by agreement of the parties.

(c) In order to avoid delay, if the Commission or the Tribunal is not constituted within 90 days after notice of registration of the request sent by the Secretary General, or within such further period as the parties may agree upon, the Chairman of the Administrative Council may appoint the member or members not yet appointed. In the case of an Arbitral Tribunal, the members so appointed by the Chairman are not to be nationals of the investment-receiving State or of the state of nationality of the private investor.¹⁹

(d) Conciliation Commissions and Arbitral Tribunals²⁰ are both to be judges of their own competence.

(e) Except in the case of appointments by the Chairman of the Administrative Council (see above) members of Commissions or of Tribunals may be appointed from outside the

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panels.

(f) In the case of an Arbitral Tribunal, the majority of the members are to be nationals of states other than the investment-receiving state and the state of nationality of the private investor, provided that the parties may agree otherwise.

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(g) Consistently with the consensual character of arbitration and conciliation proceedings, the parties may agree upon the rules of procedure to apply in those proceedings, but in the absence of any such agreement the Conciliation Rules and the Arbitration Rules adopted by the Administrative Council are to be followed: where these rules or the rules agreed upon by the parties do not cover the precise question of procedure which has arisen, the Commission or the Tribunal, as the case may be, is to decide the question.

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The matter of the law to be followed and applied by an Arbitral Tribunal requires separate consideration. This is dealt with in Article 42. Primarily, the Tribunal is to decide a dispute in accordance with the rules of law agreed upon by the parties, but if there is no such agreement, the Tribunal is to apply the law of the investment-receiving country, including its rules on the conflict of laws which may necessitate the choice of a foreign legal system, and such rules or international law as may be applicable.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

The effect of an award by the Arbitral Tribunal is that it is binding upon the parties, each party being under a duty to abide by and comply with its terms, and that it is not subject to any appeal or to any other remedy except those provided for in the Convention.²⁴

The remedies provided for in the Convention are:

- (a) Revision upon the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered the fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of the fact was not due to negligence.²⁵
- (b) Annulment on the grounds that the Tribunal was not properly constituted, or manifestly exceeded its powers, or that there was corruption on the part of a member of the Tribunal, or that there was a serious departure from a fundamental rule of procedure or that the award failed to state the reasons on which it was based.²⁶
- (c) A request to the Tribunal to decide any question which it had omitted to decide in the award and to rectify any clerical, arithmetical, or similar error in the award.²⁷

- (d) A request for an interpretation of the award in the event of any dispute between the parties as to its meaning or scope.

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Of particular interest are the provisions of Article 54 for the enforcement of an award. Each contracting state is to recognise the award as binding and, subject to the doctrine of immunity of foreign states, to enforce the pecuniary obligations imposed by the award as if it were a final judgment of a court in that state. A contracting state with a federal constitution may enforce the award in or through its federal courts and may provide that the courts are to treat the award as if it were a final judgment of the courts of a constituent state. However, the execution of the award is to be governed by *lex fori*, that is to say, the laws governing the execution of judgments in force in the state in which it is sought to execute the award. In all probability, legislation will be necessary in some countries to give effect to these provisions of Article 54, and certainly would be desirable in the interests of certainty if a judgment in terms of foreign currency is to be enforced by execution for a sum expressed in the local currency of the country of enforcement. Article 54 was formulated in this general manner because of the differences between the continental and common law countries in the matter of the laws and procedure of execution of judgments, even as between the common law countries

there are such differences to be taken into account.

In conclusion, the particular importance of the Convention is the provision of jurisdictional capability to an individual on the international plane. And the accession of most of the African countries to the Convention shows a genuine desire by these countries to attract private foreign investment even where the revolutionary changes in international law benefit private investors.

FOOTNOTES

1. For instance, the Chad Investment Code, Art. 45.
2. Ghana Capital Investment Decree, 1973, S. 11.
3. Niger Investment Code Art. 25.
4. Tunisia Investment Code, 1969, Law 69 - 35, Art. 20.
5. Like the Abs-Shawcross Draft convention on Investment Abroad. 9 J. of P.L. (1960).
6. The ICSID, shorter Articles J.W.T.L. p. 65; J.G. Starke, Q.C. The Convention of 1965 on the Settlement of Investment Disputes, Institute of Advanced Studies, Canberra.
7. Arts. 18-24.
8. Ibid.
9. Arts. 28-36.
10. Arts. 12-16.
11. Arts. 25-27.
12. Starke, opt. cit.
13. Art. 25(1).
14. Art. 25(2)(b).
15. Ibid.
16. Art. 25.
17. Arts. 28 and 36.
18. Arts. 29-31; 37-40.
19. Art. 38.
20. Arts. 32(1) and 41(1).
21. Arts. 31 and 40.

22. Art. 39.
23. Arts. 33 and 44.
24. Art. 53(1).
25. Art. 51.
26. Art. 52.
27. Art. 49.
28. Art. 50.

CONCLUSION

The focus of this dissertation is on the use of a developing country's legal system to attract private foreign investment. It is therefore not concerned about the argument of the economists as to whether or not capital is the prime factor in the economic development of a nation. It is assumed that capital is necessary and vital for economic development and indeed there is no serious argument about this fact even among economists.¹ It has been shown in historical perspective in Chapter Two, for instance, that today's developed countries, with perhaps the exception of England, used foreign capital to develop.² Further, it has been shown that unlike these countries, the capital that was 'invested' in the colonies was used to exploit the natural resources of these territories for the benefit of the colonising power.³ We have also seen how other factors were responsible for the large investments in some colonies: racial kinship, religious and political sympathies - hence the new world, North American, Australia, New Zealand, etc. were turned into 'new England' while other colonies lagged behind.

The post independence period in the new nations will go down in history as an era of the struggle for economic independence. It is not a rejection of foreign investment but an attempt at correcting the economic policies of the

colonial governments which almost completely excluded the indigenous people from the economic life of their country. No free nation on earth has tolerated economic domination of its economy by foreigners and developing countries are simply following the path of history. In Chapter Four, it has been argued that aid is one of the types of foreign capital that needs critical review by the new nations because more often than not the objectives of the donor countries are far from the economic development of the recipient country. Geo-politics and military objectives are generally the main interests of the donor. Even where the economic factor plays an important role, the recipient country may simply be used as a market for the exports of the donor. Politically, the recipient may virtually become a satellite state; its sovereignty, the most jealously guarded attribute of independence in the new nations is thereby undermined. The consequence of this may be disastrous to political stability and nationhood as even irresponsible opposition elements may exploit the opportunity for their selfish ends.

It has been argued therefore that foreign private investment is the type of capital that developing countries should attract. Admittedly it has in the past and it is still being used by unscrupulous investors to exploit young and inexperienced countries and indeed this is one of the

problems that this work has attempted to find solutions for.

Private capital is scarce and there are tremendous obstacles against it particularly in the new nations. In Chapter Five we concluded that at least the legal obstacles of which this dissertation is concerned, are not insurmountable. A critical analysis of the investment codes shows that reform is the main task. Take, for instance, the screening boards: an automatic appeal is necessary as a safeguard against the boards' wide discretion which sometimes has led to inefficient and corrupt decisions. Employment of locals is not and should not be regarded as a serious obstacle. It is a legitimate demand of a host state except where qualified local personnel is lacking. This calls for training of local people by foreign enterprises, a 'duty' that some of these enterprises have unfortunately paid lip service to,⁴ hence some countries have imposed selective employment tax⁵ as a penalty for non-compliance. Expatriate labour is costly to the host state as it has to make provision for repatriation of earnings--a drain on the scarce foreign exchange. This leads us to the thorny issue of repatriation of capital, profits and dividends. The right to repatriate must certainly be provided to foreign enterprises as almost all their shareholders reside abroad. All investment codes indeed make provision for repatriation but the problem is to find a fair and equitable formula in view of the scarce foreign exchange in developing countries.

The solution appears to be flexibility in foreign exchange regulations. The host state should not enforce the regulations in such a way that foreign investors reasonably feel that they are being unduly restricted to repatriate their fair return out of the investment. The bottom line is mutual confidence and trust, a relationship which may or may not be created by legal means. In addition the host state could create further incentives for shareholders to re-invest their dividends in other sectors of the economy.

Nationalisation per se is now acceptable to most investors; what is in issue is the valuation of compensation. ⁶ Almost all young nations, particularly African States, have not only recognised the obligation to pay compensation, under international law, for nationalised property but have in practice paid fair and equitable compensation. ⁷ As we saw in Chapter Six, the rules of international law in this area are not only in a state of fluidity but chaotic. Recognising the importance of capital to their development, the new nations have hitherto rejected the claim by the socialist bloc for unobstructed nationalisation and the denial of a duty to pay compensation. ⁸ However, the fact remains that there are no binding and predictable rules. Stability of expectations is extremely crucial in investment decision-making process; therefore, in a spirit of compromise, capital exporting nations should abandon their extreme position of demanding "adequate, prompt and effective"

compensation to pave the way for the development of binding rules. After all it is the new and developing countries on one hand, and the capital exporting nations on the other, that have a big stake since there is virtually no private foreign investment from socialist countries. Taxation is not an obstacle to foreign investment in the new nations; it is an incentive because taxes are low. As a matter of fact due to archaic tax laws and ineffective and sometimes corrupt tax collectors, developing countries lose a substantial amount of tax revenue.⁹

In Chapter Seven, we saw that investment codes may not only be comprehensive but extremely generous in terms of the incentives that they provide. Indeed concern has been expressed that in an attempt to attract the scarce capital, developing countries may be engaged in a competition with one another which unscrupulous investors might exploit.¹⁰ There is therefore need to harmonise investment codes perhaps along the lines of the Andean Pact. The Basic Investment Code under UDEAC is a good beginning and it is hoped that other countries will follow suit. And this is one area where the Secretariat or a special study group of the Organisation of African Unity could play an important role by drafting a model uniform investment code.

In conclusion, in Chapters Eight and Nine, we emphasize the point that once investment has been attracted, it must be protected. Security of investment is as important as incentives to attract it especially in the young nations that are experiencing political turbulence and social change. Government guarantees and other safeguards, be they in the form of presidential statements, statutes or constitutions may change to the investor's detriment each time a government falls. What is needed therefore is an impartial arbitrator outside not only the host state but also the investor's country.

The International Centre for Settlement of Investment Disputes, I.C.S.I.D., and the accession of almost all the developing countries outside Latin America, to the Convention which establishes the Centre is therefore a very important development. It is hoped that the Centre will win the trust and confidence of these countries and the investors.

F O O T N O T E S

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(New Haven, Yale Un. Press; Milford, London; Oxford
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3. Seidman, Law and Stagnation in Africa, Vol. 3
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4. Zambia is a good example; see BURAWOY, M. THE
COLOUR OF CLASS ON THE COPPER MINES, *Zambian Papers*,
No. 7, University of Zambia Institute for African
Studies; Manchester University Press (1972). Also see
The Progress of Zambianisation, Report of the Zambiani-
sation Committee (1972).
5. See for instance Zambia's Selective Employment tax _____
_____ NC.
6. FRIEDMANN AND BEGUN, JOINT INTERNATIONAL BUSINESS IN
DEVELOPING COUNTRIES (1971).
7. Aleksandrovskaiie L. and Matsenko I. Experiences and
Problems of Nationalisation in African Countries,
Mirovaia ekonomika; mezhdunarodnye Otnosheniia, 1975,
no. 7 pp. 48-59 (Russian, translated by Arlo Schultz).

8. See Schwebel, The Story of the U.N.'s Declaration on Permanent Sovereignty over Natural Resources, 49 A.B.A.J. 463.
9. TAYLOR, M. ed. TAXATION FOR AFRICAN ECONOMIC DEVELOPMENT, at p. 159. London (1970).
10. Akiumi, A Plea for the Harmonisation of African Investment Laws, Vol. 19 Nos. 1 and 2 J.A.L. 134 (1975).

ANNEXES

SELECTED INVESTMENT LAWS OF THE REPUBLIC OF ZAMBIA

For further reference, see Investment Laws of the World, compiled and classified by the International Centre for Settlement of Investment Disputes, Oceana Publications, Inc./ Dobbs Ferry, New York.

CONSTITUTION

50:1-2.1

TITLE 50

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PART 1. CONSTITUTION

CHAPTER 1. BASIC DATA

Section 50:1-1.1 Reference.

Supplement to the Republic of Zambia Government Gazette dated August 25, 1973; Act No. 27 of 1973.*

Section 50:1-1.2 Dates: Enactment.

Enacted August 25, 1973.*

CHAPTER 2. PRIVATE PROPERTY

Section 50:1-2.1 Guarantees against Nationalization or Expropriation; Guarantee of Compensation in Event of Nationalization or Expropriation.

(a) Save as hereinafter provided, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of an Act of Parliament which provides for payment of compensation for the property or interest or right to be taken possession of or acquired.

(b) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (a) of this Section to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right there-over:

- (1) in satisfaction of any tax, rate or due;
- (2) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;

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- (3) in execution of judgments or orders of courts;
- (4) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
- (5) as an incident of a contract (including a lease, tenancy, mortgage, charge, pledge or bill of sale) or of a title deed to land;
- (6) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (7) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (8) for the purpose of
 - (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
 - (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
 - (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
 - (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;
- (9) in consequence of any law relating to the limitation of actions;
- (10) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;
- (11) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (12) in terms of any law relating to trusts or settlements;
- (13) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (14) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (15) for the purpose of or in connection with the prospecting for or exploitation of minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;

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(16) in pursuance of provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;

(17) by way of the taking of a sample for the purposes of any law;

(18) by way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class thereof;

(19) where the property consists of an animal, upon its being found trespassing or straying;

(20) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereof;

(i) of work for the purpose of the conservation of natural resources of any description; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out;

(21) where the property consists of any licence or permit;

(22) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;

(23) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;

(24) where the property is any mineral, mineral oil or natural gases or of any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, oil or natural gases:

(i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or

(ii) in terms of any law vesting any such property or rights in the President;

(25) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interests in or rights over land, or any other interests or rights, enjoyed by Chiefs

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and persons claiming through or under them shall apply with substantial uniformity throughout Zambia:

(26) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;

(27) in terms of any law relating to

(i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose, or apparent purpose, of defeating the ends of justice;

(ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealings or transactions in gold, currencies or securities.

(c) An Act of Parliament such as is referred to in subsection (a) of this Section shall, *inter alia*:

(1) provide that compensation shall be paid in money;

(2) specify the principles on which the compensation is to be determined; and

(3) provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly.

(d) No compensation determined by the National Assembly in terms of any such law as is referred to in subsections (a) and (c) of this Section shall be called in question in any court on the grounds that such compensation is not adequate.

STATUTES

50:2A-2.1

PART 2. STATUTES

PART 2A

PIONEER INDUSTRIES
(RELIEF FROM INCOME TAX) ACT

CHAPTER 1. BASIC DATA

Section 50:2A-1.1 Reference.

- (a) Chapter 666 of the Laws of Zambia.*
- (b) Law No. 55 of 1965 as amended by Law No. 32 of 1967.*

Section 50:2A-1.2 Name; Purpose; Promotion; References to Other
Legal Instruments.

(a) An Act to encourage the establishment and development in Zambia of new industrial and commercial enterprises by way of relief from income tax.

(b) This Act may be cited as the Pioneer Industries (Relief from Income Tax) Act, and shall be read as one with the Income Tax Act¹ (hereinafter referred to as the Taxes Act).

CHAPTER 2. DEFINITIONS

Section 50:2A-2.1 Accounting Period; Company; Construction Day;
Factory; New Trade or Business; Old Trade or
Business; Pioneer Certificate; Pioneer Company;
Pioneer Enterprise; Pioneer Factory; Pioneer In-
dustry; Pioneer Product; Production Day; Relevant
Pioneer Product; Tax Relief Period.

In this Act, unless the context otherwise requires -

¹ Chapter 668 of the Laws of Zambia.

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(a) "accounting period" means a period for which accounts have been made up in accordance with Section 2A-6.3, subsection (c), of this Title;

(b) "company" means any company incorporated or registered under any law in force in Zambia or elsewhere;

(c) "construction day", in relation to a factory, means the date specified in any application under Section 2A-3.1 of this Title as being the day on or before which it is intended to commence to construct the factory to which the application relates, or, in any case where the factory is in existence before the date of such application, such day as may be specified as the construction day by the Minister, as confirmed, varied or amended by a pioneer certificate;

(d) "factory" means a factory, mill, workshop, or other similar premises, building or works used for the housing of machinery, plant or apparatus of any description for the manufacture of any product or the generation of power used for the purpose of such manufacture, and includes all buildings and structures within the same curtilage as the factory and used:

(1) for the storage of any raw materials, fuel or stores necessary for the manufacture of such product;

(2) for the storage of any such product prior to the sale thereof;

(3) for the proper administration of the trade or business carried on in such factory, and the manufacture of such product and the sale thereof; or

(4) as canteens, rest rooms, recreation rooms, lavatories, baths and wash rooms for workers employed in such trade or business;

(e) "new trade or business" means the trade or business of a pioneer company deemed under the provisions of Section 2A-6.3 of this Title to have been set up and commenced on the day following the end of its tax relief period;

(f) "old trade or business" means the trade or business of a pioneer company relating to a pioneer enterprise of the company carried on by it in its tax relief period in accordance with the provisions of Section 2A-6.3 of this Title, and which either ceases within or is deemed, under those provisions, to cease at the end of that period;

(g) "pioneer certificate" means a certificate given under Section 2A-3.1 of this Title certifying, *inter alia*, a company to be a pioneer company, or any such certificate as amended under Section 2A-3.2 or 2A-7.2 of this Title;

(h) "pioneer company" means a company certified by any pioneer certificate to be a pioneer company;

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50:2A-3.1

(i) "pioneer enterprise" in relation to a pioneer company, means the manufacture at its pioneer factory, or at any other factory in Zambia constructed by such company subsequent to the construction of its pioneer factory, of its relevant pioneer product and the sale of such product;

(j) "pioneer factory" means a factory certified by any pioneer certificate to be a pioneer factory;

(k) "pioneer industry" means an industry declared by any order made under Section 2A 7.1 of this Title to be a pioneer industry;

(l) "pioneer product" means any product declared by any order made under Section 2A 7.1 of this Title to be a pioneer product;

(m) "production day", in relation to a pioneer factory, means the day specified in accordance with the provisions of Section 2A 3.1, subsection (b)(4), of this Title as confirmed, varied or amended by a pioneer certificate;

(n) "relevant pioneer product", in relation to any pioneer company, means the pioneer product or products specified in its pioneer certificate;

(o) "tax relief period", in relation to a pioneer company, means the period ascertained in accordance with the provisions of Section 2A 5.1, subsection (a), of this Title and any extension of that period made under that Section.

CHAPTER 3. APPLICATION

Section 50:2A-3.1 Application Procedure: To Whom: Forfeiture of Deposits: Type of Investment or Benefit for Which Required: Pioneer Certificate: Content of Application: Supporting Evidence: Approval Procedure: By Whom. Criteria Applicable for Approval. Form of Approval (Certificate to Investor).

(a) Any company, or any persons proposing to register a company, being desirous of establishing or participating in a pioneer industry for the purpose of producing any pioneer product or products and intending that a factory be constructed, or, where the factory is already in existence, be occupied, in Zambia for such purpose, may make an application in writing to the Minister for a pioneer certificate, or for a pioneer certificate to be given when the proposed company has been registered, certifying:

(1) the company to be a pioneer company in relation to such industry and product or products; and

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(2) the factory, when constructed or occupied by the company, to be a pioneer factory for the purpose of developing or establishing such industry and of the production of such product or products.

(b) In any application under subsection (a) of this Section the applicant shall:

(1) give particulars of the pioneer industry and of the pioneer product or products intended to be produced by the company or proposed company in such factory;

(2) estimate the rate of production by such factory of such products, in terms of marketable quantities, which he expects such factory will be producing on production day;

(3) except in the case of an existing factory -

(i) give particulars of the estimated size, cost of construction and production capacity of the factory;

(ii) specify the locality in which it is proposed to construct such factory;

(iii) specify the date on which he expects that construction of the proposed factory will commence;

(4) specify the date on which the factory will commence to produce in marketable quantities the pioneer product or products intended to be produced therein.

(c) Every such application shall be accompanied by a deposit of one hundred kwacha which shall be returned to the applicant unless the Minister, after giving due notice to such applicant of his intention to declare such deposit forfeit on the ground that the application is frivolous, and after considering any objection thereto by such person, declares such deposit forfeit, and in that event such deposit shall be forfeited to the general revenues of the Republic.

(d) Upon receipt of an application submitted under this Section the Minister may call for any further particulars from the applicant which he may consider necessary, and if after consultation with the Minister responsible for finance, the Minister is satisfied that it is expedient in the public interest so to do and in particular having regard:

(1) to the number of pioneer companies already established or about to be established for the production of the product or products mentioned in such application;

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(2) to the production or expected production of such pioneer companies; and

(3)

(i) where the application is by a company, to the persons who are directors of the company and the description of persons who are members of the company, or

(ii) where the application is by persons proposing to register a company in connection with that application, the persons who are proposed to be directors of the company and the description of persons to whom the share capital or any part thereof is proposed to be offered for subscription.

he may give a pioneer certificate in terms of the application, subject to such variations thereof as he may think fit and to such conditions as he may specify therein, or decide not to give any such certificate:

Provided that where any such application is made by persons proposing to register a company in connection with that application, and in consequence thereof the Minister decides to give a pioneer certificate under this Section following the registration of such company, his decision may be expressed to be subject to such conditions relating to any of the matters mentioned in subsection (b)(3)(ii) of this Section as he may specify, and the Minister shall give notice in writing of such decision and of any such conditions to those persons and, if the company is registered within three months of the date of such notice and the Minister is satisfied that such conditions, if any, have been or will be complied with, such certificate shall be given accordingly.

Section 50:2A-3.2 Application Procedure; To Whom; Type of Investment or Benefit for Which Required; Procedure for Review.

(a) At any time during its tax relief period a pioneer company may make an application in writing to the Minister to amend its pioneer certificate by adding an additional pioneer product to the pioneer product or products specified in such certificate.

(b) Such application shall specify the additional pioneer product and the reasons for the application.

(c) The provisions of Section 2A-3.1, subsection (d), of this Title, except subsection (d)(3) and the proviso to that subsection, shall apply, *mutatis mutandis*, to any application under this Section.

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Section 50:2A-3.3 Application Procedure; To Whom; Type of Investment or Benefit for Which Required; Pioneer Certificate; Rights Reserved to Government; Right to Make Benefits Operate Retroactively; References to Other Legal Instruments.

(1) Where the Minister is of the opinion that, to prevent hardship in the case of any company, an order or pioneer certificate made or given under Section 2A 3.1 or 2A 7.1 of this Title or any amendment of such certificate under Section 2A 3.2 of this Title should be operative from a date earlier than the commencement of this Act, such order, certificate or amendment may provide that it shall be operative from a retrospective date not being earlier than the 1st April, 1963.

(b) Where between the 1st April, 1963, and the commencement of this Act a company has commenced to construct a factory, whether or not that factory has commenced production, the company may make an application under Section 2A 3.1 of this Title:

Provided that such application under Section 2A 3.1 of this Title shall be so adapted or modified to meet the circumstances relating to such application as may be necessary and as may be required by the Minister.

(c) Subject to subsection (d) of this Section and to the provisions of this Act relating to the cancellation of pioneer certificates, where, by virtue of this Section such a certificate is to be operative from a retrospective date, then any act or thing which has been done or which has happened, for the purposes of the Taxes Act, since that date which would not have been done or happened if that certificate had been in force at that date, shall, whenever necessary for the purposes of this Act and the Taxes Act, be treated as not having been done or not having happened.

(d) Nothing in this Act:

(1) shall affect any liability to tax incurred under the Taxes Act by a pioneer company prior to the commencement of this Act; or

(2) shall entitle any pioneer company to be repaid any tax paid by it under the Taxes Act prior to the commencement of this Act.

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CHAPTER 4. APPROVAL.

Section 50:2A-4.1 Approval Procedure: Form of Approval: Official Publication.

The contents of any application made or of any certificate given under Sections 2A-3.1, 2A-3.2, 2A-3.3, 2A-6.1, 2A-6.2, 2A-7.1, 2A-7.2 and 2A-8.1 of this Title with respect to a pioneer company shall not, except at the instance of such company, be published in the *Gazette* or in any other manner;

Provided that the Minister shall cause to be published in the *Gazette* the name of any company:

- (a) to whom a pioneer certificate has been given; or
- (b) whose pioneer certificate has been cancelled.

CHAPTER 5. INCENTIVES, BENEFITS AND GUARANTEES.

Section 50:2A-5.1 Tax Relief: Exemption, Duration: Definitions: Fixed Capital Expenditure: Application: To Whom: Type of Investment or Benefit for Which Required (Obtaining a Direction), Content of Application: Approval: By Whom. Criteria Applicable for Approval.

(a) The tax relief period of a pioneer company shall commence:

(1) on production day; or

(2) in the case of a pioneer company whose pioneer enterprise commenced prior to the commencement of this Act, on such date, not being earlier than the 1st April, 1963, as the Minister may authorise;

and shall, subject to the provisions of Section 2A-7.2 of this Title, continue for two years, and thereafter for such further period or periods as may be allowed by an extension of the tax relief period under this Section.

(b) Where the Minister is satisfied that a pioneer company has incurred, by the end of its tax relief period as ascertained under subsection (a) of this Section, fixed capital expenditure of not less than:

(1) fifty thousand kwacha, the Minister shall make a direction extending its tax relief period by one year; or

(2) one hundred thousand kwacha, the Minister shall make a direction extending its tax relief period by three years.

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(c) Where the tax relief period of a pioneer company has been extended by one year under subsection (b)(1) of this Section, and the Minister is satisfied that the pioneer company has incurred, by the end of that one year, fixed capital expenditure of not less than one hundred thousand kwacha, the Minister shall make a second direction further extending its tax relief period by two years from the end of the one year.

(d) For the purposes of this Section, in relation to a pioneer company, "fixed capital expenditure" means capital expenditure incurred by the pioneer company on its pioneer factory, and on any plant, machinery or other apparatus used in Zambia in connection with and for the purposes of its pioneer factory or its pioneer enterprise.

(e) For the purpose of obtaining a direction under this Section:

(1) a pioneer company shall make an application in writing to the Minister not later than one month after the date on which its tax relief period ends or within such further period as the Minister may allow; and

(2) such application shall contain particulars of the fixed capital expenditure incurred by the applicant including, where necessary, particulars of such capital expenditure as the applicant is desirous that the Minister shall include in the amount of its fixed capital expenditure.

(f) Upon receipt of any such application, the Minister may call for any further particulars, or such proof of the correctness of the information given in such application, as he may consider necessary, and shall either make the direction for which application has been made, if satisfied in accordance with the provisions of subsection (b) or (c) of this Section or, if not so satisfied, shall cause a notice of refusal to make such direction to be sent to the applicant.

CHAPTER 6. OBLIGATIONS OF INVESTOR

Section 50:2A-6.1 Operational: To Proceed with Investment; Other: To Submit Reports.

Within two weeks after its construction day, or within such further time as, on a request in writing by a pioneer company, the Minister may allow, a pioneer company shall deliver to the Minister a statement to the effect that the construction of the proposed factory was commenced on or before its construction day, or where construction has not commenced on its construction day, the reasons therefor.

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Section 50:2A-6.2 To Submit Reports; Approval; By Whom; Form of Approval (Production Certificate); Definitions; Estimate.

(a) Within two weeks after its production day, or within such further time as, on a request in writing by a pioneer company, the Minister may allow, a pioneer company shall deliver to the Minister a statement showing:

(1) the marketable quantities of the relevant pioneer product or products produced by its pioneer factory prior to its production day;

(2) the rate of production of its pioneer factory, in terms of marketable quantities of such products, on its production day; and

(3) where the results shown by such statement fall short of the estimate, made in accordance with Section 2A-3.1, subsection (b)(2), of this Title in connection with such factory, the reasons therefor.

(b) The Minister may call for such further particulars, or proof, with regard to the statement delivered under subsection (a) of this Section as he may consider necessary and, subject thereto, shall, if satisfied with such statement by reason of the fact that:

(1) the results shown by such statement equal or exceed the estimate, referred to in subsection (a)(3) of this Section; or

(2) although such results fall short of such estimate they are reasonable having regard to any explanations therefor given by such company, to the efforts which it has made, and any difficulties it may have encountered;

issue a production certificate to such company that its pioneer factory is producing the relevant pioneer product or products in marketable quantities.

(c) For the purposes of this Section, any reference to an "estimate" shall, where such estimate has been varied in the pioneer certificate of such company, be to the estimate as so varied.

Section 50:2A-6.3 Financial; To Conform to Specific Accounting Procedures; References to Other Legal Instruments.

If the trade or business of a pioneer company is carried on by it before and after the end of its tax relief period, then for the purposes of the Taxes Act and this Act:

(a) that trade or business shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company;

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(b) in respect of that trade or business, the pioneer company shall be deemed to have set up and commenced a new trade or business on the day following the end of its tax relief period;

(c) the pioneer company shall make up accounts of its old trade or business for a period not exceeding one year commencing at the date when such trade or business of the company commences, for successive periods of one year thereafter, and for the period not exceeding one year ending at the date when its tax relief period ends; and

(d) in making up the first accounts of its new trade or business, the pioneer company shall take as the opening figures for those accounts the closing figures in respect of its assets and liabilities as shown on its last accounts in respect of its tax relief period, and its next accounts of its new trade or business shall be made up by reference to the closing figures in such first accounts, and any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its new trade or business.

Section 50:2A-6.4 Trading Prior to End of Tax Relief Period.

Prior to the expiration of its tax relief period, a pioneer company shall not, without the consent of the Minister, who may impose such conditions as he thinks fit, carry on any trade or business other than a trade or business the whole of the profits of which are derived from its pioneer enterprise.

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:2A-7.1 Declaration of Pioneer Industry and Product; Right to Amend.

(a) Where it is represented to the Minister that:

(1) any industry is not being carried on in Zambia on a commercial scale suitable to the economic requirements or development of Zambia or at all; and

(2) there are

(i) favourable prospects of further development of the industry;

or

(ii) insufficient facilities in Zambia to enable the industry to be carried on on a commercial scale suitable to the economic requirements or development of Zambia; and

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(3) it is expedient in the public interest to encourage the development or establishment of the industry in Zambia by the making of an order declaring the industry to be a pioneer industry and any product or products of such industry to be a pioneer product or products:

the Minister may, upon receipt of any such representation, call for any further particulars which he may consider necessary:

Provided that such representation by a person shall be accompanied by a deposit of one hundred kwacha which shall be returned to the person making the deposit unless the Minister, after giving due notice to such person of his intention to declare such deposit forfeit on the ground that the representation is frivolous, and after considering any objection thereto by such person, declares such deposit forfeit and in that event such deposit shall be forfeited to the general revenues of the Republic.

(b) The Minister shall consider such representation, and, if he is satisfied that it is expedient so to do, shall cause to be published in the *Gazette*, a notice containing:

(1) a declaration that it is considered expedient in the public interest to make, and that it is proposed to make, an order declaring such industry and such product or products as are specified in such order, to be a pioneer industry and product or products:

(2) the form of the proposed order, which may contain such conditions and restrictions as the Minister may think fit to impose; and

(3) a provision for any person who may object to the making of the proposed order to give notice in writing of his objection, and of the grounds upon which he relies in support thereof, to the Minister on or before such day, not being less than thirty days from the date of publication of the notice, as may be specified in such notice.

(c) The Minister shall consider any objection which has been received under subsection (b)(3) of this Section and may, if he considers it necessary, call for further particulars of the grounds of any such objection from any person who has given due notice of such objection. The Minister shall then, after such consideration, either:

(1) make a statutory order, whether in the form contained in the notice published under subsection (b) of this Section or varied as he may think fit, and containing such conditions and restrictions as he may think fit to impose; or

(2) decide not to make any order.

and thereupon the provisions of this Act shall have effect as if the day so substituted was the construction day or the production day, as the case may be, in relation to such pioneer company.

(d) Where the Minister is satisfied that a pioneer company:

- (1) has contravened any provision of this Act; or
- (2) has failed to adhere to or comply with the terms and conditions of its pioneer certificate;

and that having regard to all the circumstances of the case it is expedient so to do, he may cancel the pioneer certificate.

(e) Where any pioneer certificate is cancelled under this Section, such cancellation shall provide that it shall be operative either:

- (1) from the date when the certificate first became operative, if the Minister thinks fit, in which event the provisions of Sections 2A-3.3, subsection (c), 2A-5.1, 2A-6.3, 2A-6.4, 2A-7.3 and Chapter 11 of this Title shall be deemed never to have had effect in relation to the pioneer company to which such certificate relates;

Provided that where the provisions of Section 2A-3.3, subsection (c), of this Title had effect prior to the date of such cancellation, any time running under the provisions of the Taxes Act, at the date when that subsection first had effect in relation to such company, shall be deemed to have commenced to run from the date of such cancellation; or

- (2) from such date after the date when the certificate first became operative, whether before or after the date of such cancellation as the Minister thinks fit, and for the purposes of Sections 2A-5.1, 2A-6.3, 2A-6.4, 2A-7.3 and Chapter 11 of this Title the tax relief period of such company shall be treated as having ended on the date from which the cancellation is declared to be operative;

Provided that where the tax relief period of a pioneer company is to be so treated as having ended on such date and no accounts of its old trade or business have been made up to that date, the figures in the first accounts of such company made up after that date, for the purpose of preparing the last accounts of the old trade or business and the first accounts of the new trade or business of such company, shall be apportioned for the purposes of Sections 2A-5.1, 2A-6.3, 2A-6.4, 2A-7.3 and Chapter 11 of this Title by reference to the number of days up to and including that date, and the number of days after that date, respectively, unless the Commissioner, having regard to any special circumstances, otherwise directs.

50:2A-7.3**ZAMBIA****Section 50:2A-7.3 Power to Direct; Right to Amend; References to Other Legal Instruments.**

(a) For the purpose of the Taxes Act and this Act, the Commissioner may direct that:

(1) any sums payable to a pioneer company in any accounting period which, but for the provisions of this Act, might reasonably and properly have been expected to have been payable, in the normal course of business, after the end of that period shall be treated as not having been payable in that period but as having been payable on such date, after that period, as the Commissioner thinks fit, and where such date is after the end of the tax relief period of the pioneer company, as having been so payable, on that date, as a sum payable in respect of its new trade or business; and

(2) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for the provisions of this Act, might reasonably and properly have been expected to have been incurred, in the normal course of business, during its tax relief period shall be treated as not having been incurred within that year but as having been incurred for the purposes of its old trade or business, and on such date, during its tax relief period, as the Commissioner thinks fit.

(b) Where a direction has been made under this Section with respect to a pioneer company and thereafter the length of the tax relief period of the pioneer company is varied, under any of the provisions of this Act, the Commissioner may amend such direction accordingly.

CHAPTER 8. IMPLEMENTATION AND ENFORCEMENT**Section 50:2A-8.1 Issuance of Regulations.**

The Minister may from time to time prescribe such forms as he thinks fit to be used under Sections 2A-3.1, 2A-3.2, 2A-3.3, 2A-4.1, 2A-6.1, 2A-6.2, 2A-7.1 and 2A-7.2 of this Title.

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CHAPTER 9. SANCTIONS

[NO PROVISION]

CHAPTER 10. SETTLEMENT OF DISPUTES

[NO PROVISION]

CHAPTER 11. TAX PROVISIONS

Section 50:2A-11.1 Calculation of Taxable Income: Special Allowances and Procedures (Capital Allowances): References to Other Legal Instruments.

(a) The income of a pioneer company in respect of its old trade or business, falling to be ascertained in accordance with the provisions of the Taxes Act, for any accounting period, shall be so ascertained, after making any necessary adjustments in consequence of a direction under Section 2A-7.3 of this Title, without any deductions which might otherwise fall to be made under any of the provisions contained in Parts I to V of the Fifth Schedule of the Taxes Act.

(b) Notwithstanding the provisions of subsection (a) of this Section, where an asset is used for the purposes of the new trade or business of a pioneer company, any capital expenditure incurred by the pioneer company in respect of such asset before the end of its tax relief period shall, for the purposes of Parts I to V of the Fifth Schedule of the Taxes Act, be deemed to have been incurred on the day following the end of its tax relief period.

Section 50:2A-11.2 Calculation of Taxable Income: Returns of Income: References to Other Legal Instruments.

So much of the provisions of Part V of the Taxes Act as are applicable in the case of a company, shall apply in all respects as if the income of a pioneer company in respect of its old trade or business was chargeable to tax.

Section 50:2A-11.3 Calculation of Taxable Income: Computation of Income: References to Other Legal Instruments.

(a) The income or loss for each accounting period of the pioneer company in respect of its old trade or business shall be computed in accordance with the provisions of the Taxes Act and the foregoing provisions of this Act.

(b) For each such accounting period the Commissioner shall issue to the pioneer company a statement showing the amount of such income or loss

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for that accounting period and the provisions of Part XI of the Taxes Act relating to objections and appeals, and of any regulations made thereunder, shall apply, *mutatis mutandis*, as if such statement were a notice of assessment in relation to such provisions.

Section 50:2A-11.4 Calculation of Taxable Income: Exemptions; References to Other Legal Instruments.

Subject to the provisions of Section 2A-11.5, subsection (f), of this Title, including the effect of a cancellation as therein mentioned, any statement issued under Section 2A-11.3 of this Title shall stand good as an assessment stands good under section one hundred and six of the Taxes Act and the amount of income shown by the statement shall be exempt from tax under the Taxes Act.

Provided that the Commissioner may, in his absolute discretion, and before the final determination of any objection or appeal against the statement, declare that the whole or a specified part of the amount of such income is not in dispute and such undisputed amount of income shall be exempt from tax under the Taxes Act, pending the final determination of the objection or appeal.

Section 50:2A-11.5 Calculation of Taxable Income: Exemptions (Certain Dividends Exempted from Income Tax); References to Other Legal Instruments.

(a) As soon as any amount of income of a pioneer company has become exempt under Section 2A-11.4 of this Title, that amount shall be credited to an account to be kept by the pioneer company for the purposes of this Section and any loss shown by the statement shall be debited to that account.

(b) Where such account is in credit at the date on which any dividends are paid by the pioneer company out of income which has become exempt, an amount equal to such dividends, or to such credit, whichever is the less, shall be debited to such account.

(c) So much of the amount of any dividends so debited to such account as are received by a shareholder in the pioneer company shall, if the Commissioner is satisfied with the entries in such account, be exempt from tax under the Taxes Act in the hands of that shareholder.

(d) Any dividends debited to such account shall be treated as having been distributed to the shareholders, or any particular class of shareholders, of the pioneer company in the same proportions as those shareholders were entitled to payment of the dividends giving rise to the debit.

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(e) The pioneer company shall deliver to the Commissioner such account, made up to a date specified by him, whenever called upon so to do by notice in writing sent by him to its registered office, until such time as he is satisfied that there is no further need for maintaining such account.

(f) Notwithstanding the foregoing provisions of Section 2A 11.4 of this Title and this Section, where it appears to the Commissioner that any amount of exempted income of a pioneer company, or any dividend exempted in the hands of a shareholder, ought not to have been exempted by reason of:

(1) a direction under Section 2A 7.3 of this Title having been made with respect to a pioneer company, after any income of such company has been exempted under the provisions of Section 2A 11.4 of this Title; or

(2) the cancellation of a pioneer certificate:

the Commissioner may, at any time within six years of the date of any such direction or cancellation, make such additional assessments upon the pioneer company or any shareholder as may appear to be necessary in order to counteract any benefit obtained from any such amount which ought not to have been exempted or direct such company to debit its account, kept in accordance with subsection (a) of this Section, with such amount as the circumstances require, and the provisions of Part XI of the Taxes Act relating to objections and appeals, and of any regulations made thereunder, shall apply *mutatis mutandis*, as if such direction were a notice of assessment given under such provisions.

Section 50:2A-11.6 Calculation of Taxable Income: Special Allowances and Procedures (Carry Forward of Loss): References to Other Legal Instruments.

(a) Where a pioneer company has, for the whole of its tax relief period, incurred a loss in respect of its old trade or business, the amount of such loss shall be treated as if it had been incurred by that company in its new trade or business and in the charge year in which that new trade or business is deemed to have commenced under the provisions of this Act, and the provisions of section thirty-two and subsection (2) of section ninety-six of the Taxes Act shall apply accordingly in computing the taxable income of the pioneer company for any charge year.

(b) For the purposes of this Section:

(1) the amount of any loss incurred in any accounting period of the old trade or business of a pioneer company shall be computed in like manner as any income falls to be computed under Section 2A 11.3 of this Title:

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(2) the amount of the loss sustained by a pioneer company for the whole of its tax relief period shall be the amount by which the total of all losses computed for all accounting periods under subsections (b)(1) of this Section exceeds the total of the income for all such accounting periods in which a loss was not so incurred.

CHAPTER 12. REFERENCES TO OTHER LEGAL INSTRUMENTS

Section 50:2A-12.1 Income Tax Act.

See Sections 2A-1.2, 2A-3.3, 2A-6.3, 2A-7.2, 2A-7.3 and 2A-11.1 through 2A-11.6 of this Title.*

REGULATIONS

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PART 3. REGULATIONS

PART 3A

THE PIONEER INDUSTRIES
(DECLARATION) (NO. 1) ORDER

CHAPTER 1. BASIC DATA

Section 50:3A-1.1 Reference.

Statutory Instrument 423 of 1966.*

Section 50:3A-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 1) Order.

Section 50:3A-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3A-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule² is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule³ are hereby declared to be pioneer products.

¹ Appendix II to Part 3A of this Title

² See Appendix I to Part 3A of this Title

³ See Appendix I to Part 3A of this Title

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APPENDIX I - PART 3A

FIRST SCHEDULE
(Section 3A-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Radio, wireless and electrical sound reproducing and recording apparatus, television, electrical and electronic products. Manufacturing Industry	Wireless products. Receivers. Radio gramophones. Electrical record players. Radio transceivers. Radio and television cabinets. Car radios.

REGULATIONS

APPENDIX II - PART 3A

SECOND SCHEDULE
(Section 3A-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI-2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3B-7.1

PART 3B

THE PIONEER INDUSTRIES
(DECLARATION) (NO. 2) ORDER

CHAPTER 1. BASIC DATA

Section 50:3B-1.1 Reference.

Statutory Instrument 424 of 1966.*

Section 50:3B-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 2) Order.

Section 50:3B-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3B-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule² is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule³ are hereby declared to be pioneer products.

¹ Appendix II to Part 3B of this Title.

² See Appendix I to Part 3B of this Title.

³ See Appendix I to Part 3B of this Title.

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APPENDIX 1 - PART 3B

FIRST SCHEDULE
(Section 3B-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Wire Rope Manufacturing Industry.	Haulage rope. Overhead earth cable

REGULATIONS

APPENDIX II - PART 3B

SECOND SCHEDULE
(Section 3B-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3C-7.1

PART 3C

THE PIONEER INDUSTRIES
(DECLARATION) (No. 3) ORDER

CHAPTER 1. BASIC DATA

Section 50:3C-1.1 Reference.

Statutory Instrument 425 of 1966.*

Section 50:3C-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 3) Order.

Section 50:3C-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.⁷

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3C-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule⁸ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule⁹ are hereby declared to be pioneer products.

⁷ Appendix II to Part 3C of this Title

⁸ See Appendix I to Part 3C of this Title.

⁹ See Appendix I to Part 3C of this Title

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APPENDIX I - PART 3C

FIRST SCHEDULE
(Section 3C-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Cigarette and Tobacco Manufacturing Industry	Cigarettes Smoking tobacco

REGULATIONS

APPENDIX II - PART 3C

SECOND SCHEDULE
(Section 3C-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3D-7.1

PART 3D
THE PIONEER INDUSTRIES (DECLARATION)
(NO. 4) ORDER

CHAPTER 1. BASIC DATA

Section 50:3D-1.1 Reference.

Statutory Instrument 426 of 1966.*

Section 50:3D-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 4) Order.

Section 50:3D-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹⁰

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3D-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule¹¹ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule¹² are hereby declared to be pioneer products.

¹⁰ Appendix II to Part 3D of this Title

¹¹ See Appendix I to Part 3D of this Title

¹² See Appendix I to Part 3D of this Title.

ZAMBIA

APPENDIX I - PART 3D

FIRST SCHEDULE
(Section 3D-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Soaps and Detergents Manufacturing Industry	Hard soaps - filled, pure, caustic. Toilet soaps. Heavy duty detergents - washing powders

REGULATIONS

APPENDIX II - PART 3D

SECOND SCHEDULE
(Section 3D-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3E-7.1

PART 3E
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 5) ORDER

CHAPTER 1. BASIC DATA

Section 50:3E-1.1 Reference.

Statutory Instrument 427 of 1966.*

Section 50:3E-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 5) Order.

Section 50:3E-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹³

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3E-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule¹⁴ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule¹⁵ are hereby declared to be pioneer products.

¹³ Appendix II to Part 3E of this Title.

¹⁴ See Appendix I to Part 3E of this Title.

¹⁵ See Appendix I to Part 3E of this Title.

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APPENDIX I - PART 3E

FIRST SCHEDULE
(Section 3E-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Footwear Manufacturing Industry.	(a) Footwear of artificial (P.V.C.) compounds, men's sandals, ladies' sandals, children's sandals, ladies' flatties, ladies' trotteur, girls' flatties, men's laced-up, boys' laced-up. (b) Men's leather footwear with rubber soles, men's laced-up; (c) Men's and ladies' rubber sandals

REGULATIONS

APPENDIX II - PART 3E

SECOND SCHEDULE
(Section 3E-1.3. of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3A-7.1

PART 3F
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 6) ORDER

CHAPTER 1. BASIC DATA

Section 50:3F-1.1 Reference.

Statutory Instrument 428 of 1966.*

Section 50:3F-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 6) Order.

Section 50:3F-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹⁶

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3A-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule¹⁷ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule¹⁸ are hereby declared to be pioneer products.

¹⁶ Appendix II to Part 3F of this Title

¹⁷ See Appendix I to Part 3F of this Title

¹⁸ See Appendix I to Part 3F of this Title

ZAMBIA

APPENDIX I - PART 3F

FIRST SCHEDULE
(Section 3F-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Match Manufacturing Industry	Safety matches.

REGULATIONS

APPENDIX II - PART 3F

SECOND SCHEDULE

(Section 3A-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted a company producing such pioneer products.

NOTE It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3G-7.1

PART 3G

THE PIONEER INDUSTRIES
(DECLARATION) (NO. 7) ORDER

CHAPTER 1. BASIC DATA

Section 50:3G-1.1 Reference.

Statutory Instrument 429 of 1966.*

Section 50:3G-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 7) Order.

Section 50:3G-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.¹⁹

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3G-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule²⁰ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule²¹ are hereby declared to be pioneer products.

¹⁹ Appendix II to Part 3G of this Title.

²⁰ See Appendix I to Part 3G of this Title.

²¹ See Appendix I to Part 3G of this Title.

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APPENDIX I - PART 3G

FIRST SCHEDULE
(Section 3G-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Fishing Net Manufacturing Industry	Nylon fishing nets Polyethylene braided ropes Nylon twines

REGULATIONS

APPENDIX II - PART 3G

SECOND SCHEDULE
(Section 3G-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII/P/2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3H-7.1

PART 3H
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 8) ORDER

CHAPTER 1. BASIC DATA

Section 50:3H-1.1 Reference.

Statutory Instrument 430 of 1966.*

Section 50:3H-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 8) Order.

Section 50:3H-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.²²

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3H-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule²³ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule²⁴ are hereby declared to be pioneer products.

²² Appendix II to Part 3H of this Title

²³ See Appendix I to Part 3H of this Title.

²⁴ See Appendix I to Part 3H of this Title.

APPENDIX I - PART 3H

FIRST SCHEDULE
(Section 3H-7.1 of this Title)

Column 1	Column 2
Electrical Batteries Manufacturing Industry	Lead acid batteries. Lead oxide Antimonial pig lead Traction battery cells. Stationary cells.

REGULATIONS

APPENDIX II - PART 3H

SECOND SCHEDULE
(Section 3H-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

PART 31
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 9) ORDER

CHAPTER 1. BASIC DATA

Section 50:31-1.1 Reference.

Statutory Instrument 249 of 1968.*

Section 50:31-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 9) Order.

Section 50:31-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.²⁵

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:31-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule²⁶ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule²⁷ are hereby declared to be pioneer products.

²⁵ Appendix II to Part 31 of this Title

²⁶ See Appendix I to Part 31 of this Title.

²⁷ See Appendix I to Part 31 of this Title

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APPENDIX I - PART 3I

FIRST SCHEDULE
(Section 3I-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Rubber Products Manufacturing Industry.	Tyres Tubes Flaps

REGULATIONS

APPENDIX II - PART 3I

SECOND SCHEDULE
(Section 3I-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products. Such qualifications will be included in the pioneer certificate.

NOTE It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI-2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3J-7.1

PART 3J-
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 10) ORDER

CHAPTER 1. BASIC DATA

Section 50:3J-1.1 Reference.

Statutory Instrument 352 of 1968.*

Section 50:3J-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 10) Order.

Section 50:3J-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.²⁸

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3J-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule²⁹ is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule³⁰ are hereby declared to be pioneer products.

²⁸ Appendix II to Part 3J of this Title

²⁹ See Appendix I to Part 3J of this Title

³⁰ See Appendix I to Part 3J of this Title

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APPENDIX I - PART 3J

FIRST SCHEDULE
(Section 3J-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Textile Manufacturing Industry.	Dyed drills, mercerised. Dyed drills, mercerised, carded. Dyed drills, mercerised, combed. Denims. Dyed or bleached poplins, combed. Dyed sail cloth. Fancy prints. African prints.

REGULATIONS

APPENDIX II - PART 3J

SECOND SCHEDULE
(Section 3J-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE - It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI 2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.

REGULATIONS

50:3K-7.1

PART 3K
THE PIONEER INDUSTRIES
(DECLARATION) (NO. 11) ORDER

CHAPTER 1. BASIC DATA

Section 50:3K-1.1 Reference.

¹Statutory Instrument 423 of 1966.

Section 50:3K-1.2 Name.

This Order may be cited as the Pioneer Industries (Declaration) (No. 11) Order.

Section 50:3K-1.3 Transitional and Saving Clauses.

This Order is subject to the conditions and restrictions set out in the Second Schedule.²¹

CHAPTER 7. RIGHTS RESERVED TO GOVERNMENT

Section 50:3K-7.1 Declaration of Pioneer Industry.

The industry listed in column 1 of the First Schedule³² is hereby declared to be a pioneer industry and the products listed opposite thereto in column 2 of the said Schedule³³ are hereby declared to be pioneer products.

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³¹ Appendix II to Part 3K of this Title

³² See Appendix I to Part 3K of this Title

³³ See Appendix I to Part 3K of this Title.

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APPENDIX I - PART 3K

FIRST SCHEDULE
(Section 3K-7.1 of this Title)

<i>Column 1</i>	<i>Column 2</i>
Metal Fabricating Industry.	Copper and other metals

REGULATIONS

APPENDIX II - PART 3K

SECOND SCHEDULE
(Section 3K-1.3 of this Title)

CONDITIONS AND RESTRICTIONS

The definitions of products in the First Schedule are subject to such further qualifications as may be required for technical purposes in the event of a pioneer certificate being granted to a company producing such pioneer products.

NOTE: It should be noted that pioneer status will not automatically be granted to companies producing or proposing to produce the pioneer products listed in the First Schedule and that companies must make applications for pioneer status in the form laid down in MII PI-2, which can be obtained from the Ministry of Trade and Industry, P.O. Box 1968, Lusaka. Any award of pioneer status to a company will be based on the information included in the application.