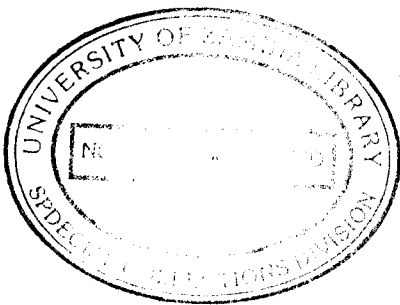


**A COMPARATIVE ANALYSIS OF THE ZAMBIA DEVELOPMENT
AGENCY ACT AND THE REPEALED INVESTMENT ACT OF 1993**

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MARINA KAMANZI

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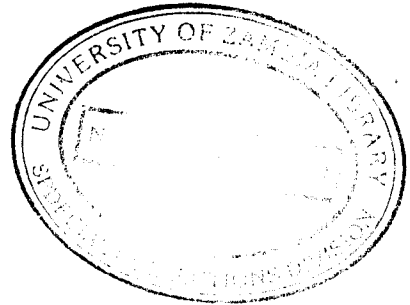
University of Zambia

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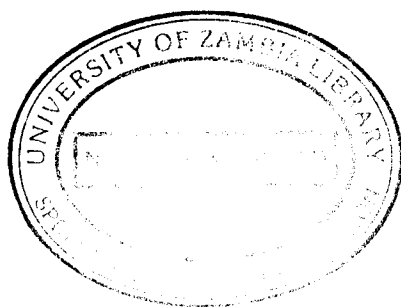


A dissertation submitted to the University of Zambia Law Faculty in partial fulfillment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

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DECLARATION

I, **MARINA KAMANZI (COMPUTER NUMBER: 27003451)** hereby declare that the contents of this directed research are entirely based on my own findings and it has not previously been submitted for a degree at the University of Zambia or any other University. All other works referred to in this essay have been duly acknowledged. I bear absolute responsibility for all errors, defects or any omissions herein.



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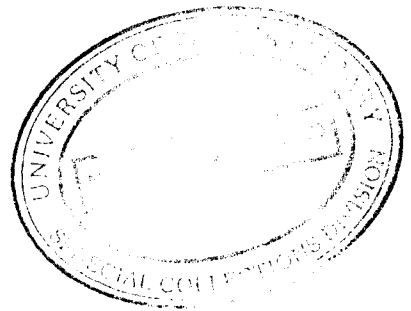
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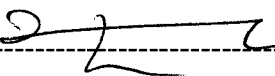
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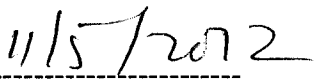
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Mr. G. LYEMPE



Date

DEDICATION

To my parents Esther and Antoine and my husband Jonathan for your sacrifices, belief and all the support you have given me making it possible for me to pursue my LLB. To my brothers Thierry and Patrick, thank you for everything.

ACKNOWLEDGEMENTS

The conclusion of this work is the pinnacle of what has been an exigent and somewhat satisfying expedition, as it were, in the school of law. Thank you to Mr. Greenwell Lyempe my supervisor for his guidance during the preparation of this paper. He has a liberal yet intelligent and exceptional way of bringing the best out of his students.

Special appreciation and mention goes to my loving family who has been reliable, supportive and understanding beyond measure. This one is for us. Thank you so much. My husband Jonathan for helping me to dot the I's and cross the T's. *gratias vobis ago!* I further wish to express my profound gratitude to my colleagues, Billiard Mwendalubi, Pamela Ngulube, Benedict Mulumba, and Layeni Phiri. What I have learnt from their friendship through the good and the bad is invaluable. Friends, together we can move mountains.

I am particularly indebted to Milton Mulenga and Patient Mukuka, my desk mates of two years. Thank you for the support and friendship. Let's finish what we started! Special thanks go to Sibajene Mukunkombwe, Robert Buzz Banda and the entire Zambia Development Agency research department for all the help you rendered to me and all the information you gave me.

It is humanly impossible to acknowledge by name everyone who has assisted me through my university education in general and in the preparation of this paper in particular. Therefore, to all those not mentioned by name, but who supported me in one way or the other, I extend my cordial gratefulness.

ABSTRACT

Zambia has many attributes to attract foreign direct investment (FDI). Recent export trends mainly spearheaded by FDI demonstrating its great potential have contributed modestly to the much-needed diversification of the economic base and exports. However going by the assessment of its resource potential, Zambia is under-performing and should do better in attracting FDI. The foregoing has largely been blamed on the lack of a comprehensive legal framework. It is against this background that this treatise aims at painstakingly comparatively analysing the ZDA Act and the Repealed Investment of 1993 so as to establish whether the criticism levelled against the repealed law have since been addressed in the ZDA Act. In so doing Chapter one introduces the study and sets out the methodology which was employed. Much of the work was desktop work reviewing legislations and written literature on the subject matter with a few field work such as interviews and questioners. Chapter two delves into the repealed Investment Acts of 1993 in particular considering its brief back ground, the salient features, and for a deeper insight of the issues being grappled with; the weaknesses of the 1993 Acts are outlined. The following Chapter focuses on the Zambia Development Agency Act No 11 of 2006 taking into account of what ZDA is and its cardinal salient features. More also the Chapter considers the efficacy of the various statutory instruments passed pursuant to section 18 of the ZDA Act. namely; the Roma Industrial Park, the Lusaka South Multi-Facility Economic Zone, the sub-Sahara gemstone exchange industrial park and lumwana multi-facility economic zone. Additionally For a deeper insight of the issues being tackled, in the fourth chapter a comparative analysis of the ZDA Act of 200 6 and the repealed Investment Act of 1993 is undertaken highlighting the fact the existing investment law in Zambia is not adequate to deal with the problems faced in promoting both local and foreign direct investment. The last chapter sums up the findings highlighting several recommendations on how to improve our investment legal framework. These include sensitisation of the public on the functions of the Agency, decentralisation of the agency to provincial headquarters, the Act must stress more on the quality and relevance of investment unlike emphasise on the amount of investment, and independences of the Agency.

Table of Statutes

- The Pioneer Industries (Relief from income tax) Act no 55 of 1965 of the Laws of Zambia
- The Industrial Development Act no 18 of 1977 of the Laws of Zambia
- The Investment Act of 1989 of the Laws of Zambia
- The Investment Act of 1991 of the Laws of Zambia
- The Investment Act of 1993 Cap 385 of the Laws of Zambia
- Zambia Development Agency Act no 11 of 2006 of the Laws of Zambia

Glossary of Acronym

COMESA.....	Common Market for Eastern and Southern Africa
EBZ.....	Export Board of Zambia
FDI.....	Foreign Direct Investment
ICSID.....	International Centre for the Settlement of Investment Disputes
JICA.....	Japanese International Cooperation Agency
KTPC.....	Kulim Hi-Tech Park
LWSC.....	Lusaka Water and Sewerage Company
MFEZ.....	Multi-Facility Economic Zones
MMD.....	Movement for Multi-Party Democracy
SADC.....	Southern Africa Development Community
SEDB.....	Small Enterprises Development Board
UNCTAD.....	United Nations Conference on Trade and Development
VAT.....	Value Added Tax
WTO.....	World Trade Organisation
ZAMTEL.....	Zambia Telecommunication Authority
ZDA.....	Zambia Development Agency
ZCCZ.....	Zambia-China Cooperation Zone
ZESCO.....	Zambia Electricity Supply Corporations
ZEPZA.....	Zambia Export Processing Zones Authority
ZIC.....	Zambia Investment Centre
ZPA.....	Zambia Privatization Agency

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CHAPTER ONE

General Introduction

1.0 Introduction

Zambia has many attributes to attract Foreign Direct Investment (FDI) which has come to serve as an engine of economic growth for most developing nations. It is a mining economy with decades of experience in mining-related activities. Recent export trends mainly spearheaded by FDI also demonstrate the great potential and scope that exist in Zambia for deepening investment in non-traditional export sectors such as vegetables, flowers, ores, slag and ash, sugar and sugar confectionary, dairy products, bird's eggs, natural honey, edible products, copper wire and electricity¹. The prospects for investment in higher value added activities in mining, services and agriculture are also immense.

More also with the opening up of the Zambian economy in 1990s, FDI inflows has increased considerably reaching \$364 million in 2004 and \$ 1.0414 billion in 2010². This can largely be explained by the implementation of an ambitious privatisation programme, investments in copper and cobalt extraction, Greenfield Investments in the agricultural sector, in particular horticulture and floriculture production, and tourism³.

Another explanation to this is that in 2006 the Zambia Development Agency hereinafter referred as ZDA was established as a one-stop agency by merging five organisations namely; Zambia

¹ Kenneth Kaoma: *Contemporary issues in Corporate and Investment Law*.(Washington: Penn Press, 2000): 54

² Richard Chakaba: *Is the Zambia Development Agency Act an effective Instrument of development through a one stop shop facility*, 4th year obligatory Essay, (UNZA, 2008): 1

³ Chakaba.3

Privatisation Agency (ZPA), Zambia Investment Centre (ZIC), Export Board of Zambia (EBZ), Zambia Export Processing Zones Authority (ZEPZA) and Small Enterprises Development Board (SEDB). ZDA is responsible for fostering economic growth and development in Zambia through promoting trade and investment and has the challenge to develop an internationally competitive Zambian economy through innovations that promotes high skills, productive investment, and increased trade. Further ZDA provides investment facilitation, market development, business development and support services for micro small and medium enterprises. ZDA has an outstanding organisation structure with five divisions and these include investment promotion and privatisation, research planning and policy, micro and small market development, corporate services, and office of the director general⁴.

The recent FDI inflows have contributed modestly to the much-needed diversification of the economic base and exports. However going by the assessment of its resource potential, Zambia is under-performing and should have done better in attracting FDI. The foregoing has largely been blamed on the lack of a comprehensive legal framework. The challenge Zambia faces is to increase and sustain FDI inflows beyond recent levels, and to reap greater benefits from FDI for diversification, industrialization and development. To overcome this, a comprehensive legal framework must be present. It is against this background that this treatise aims at painstakingly comparatively analysing the ZDA Act and the Repealed Investment of 1993 so as to establish whether the criticism levelled against the repealed law has since been addressed in the ZDA Act.

⁴Investment in Zambia [http:// www.zda.org.zm](http://www.zda.org.zm) visited on 12th January, 2012.

1.1. Statement of Problem.

As aforementioned, Foreign Direct Investment provides a major source of capital which brings with it up to date technology in general and in particular benefits a country's economy as a whole by creating an environment for the transfer of general knowledge and of specific technologies in production and distribution, industrial upgrading, employment well as work experience. Since the opening up of Zambian market for equal share in business, Foreign Direct Investment and indeed Local Investment have increased in number. Recently, Chinese investors have been identified to be the leading investors in Zambia. In order to attract foreign investment not only does a country need to be endowed with abundant natural resources but also it is of the essence to provide incentives by protecting investors from political risks such as expropriations⁵ and transfer risks such as currency control and inconvertibility of funds.

Despite Zambia being endowed with abundant natural resources which since 1991 have attracted an increasing considerable number of Foreign Direct Investors, recent records and comments by investment experts and indeed United Nations Organisations such as UNCTAD, expresses the fact that this increase is not as expected given the abundant natural resources Zambia is endowed with. This has been blamed on the lack of a comprehensive legal framework. This discourse therefore, aims at comparatively analysing the ZDA Act and the repealed Investment Act of 1993. Further the research will consider whether the current legal framework is effectual so as to bring about developments that will help Zambia achieve its Vision 2030.

1.2 Objective of the Study

The general objective of this study is to compare the ZDA Act and the repealed Investment Act of 1993. The repealed Investment Act was highly criticised of its ineffectiveness, therefore this

⁵ like the situation obtaining at the moment where the PF lead Government has nationalise ZAMTEL

study aims at examining whether such criticism have been addressed in the current Zambia Development Agency Act.

1.3 Specific Objectives

1. To consider the weaknesses of the Investment Act of 1993.
2. To consider the current investment legal framework, the policy behind the enactment of the ZDA Act.
3. To consider the functions of the Zambia Development Agency
4. To consider the efficacy of the various Statutory Instruments passed pursuant to section 18 of the ZDA Act namely; the Roma Industrial Park, the Lusaka South Multi-Facility Economic Zone, the Sub-Sahara Gemstone Exchange Industrial Park and Lumwana Multi-Facility Economic Zone.
5. To draw a conclusion on the efficacy of the Current Investment Legal Frame Work and recommendations there to.

1.4 Rationale and Justification

This research is justified on the basis that it is fundamental to comparatively analyse the repealed law and the current law in any field so as to understand where our legal framework is coming from and where it is heading to. More also this treatise is justified on the basis that, with the increased need to promote foreign direct investment and an investor friendly milieu in the country, it is necessary that the legal frame work prevailing over the issues of investment be constantly and adequately analysed from time to time. This is imperative because the treatise will evaluate the efficacy of various statutory instruments passed pursuant to section 18 of the ZDA

Act namely; the Roma Industrial Park, the Lusaka South Multi-Facility Economic Zone, the Sub-Sahara Gemstone Exchange Industrial Park and Lumwana Multi-Facility Economic Zone, so as to see how relevant and applicability the law is in this era.

1.5 Research Question

1. What is the background of the investment legal framework in Zambia since independence?
2. What were the cardinal salient features of the repealed Investment Act of 1993?
3. What were the major weaknesses of the previous Investment Act of 1993?
4. What other laws regulated investment in Zambia?
5. What was the policy behind the enactment of the Zambia Development Agency Act no 11 of 2006
6. What is ZDA? What are its functions?
7. What are some of the salient provisions of the ZDA Act with specific reference to both local and FDI?
8. What are the major weaknesses of the ZDA Act?
9. Is the ZDA Act adequate to take investment in Zambia to higher heights? If not what are the recommendations the?

1.6 Methodology

This section sets out the research methods and procedures used in this study.

1.6.1 Methodology and Synopsis of Research

This research was carried out by way of reviewing relevant pieces of Investment legislation since independence in 1964. This piece of legislation includes; the Pioneer Industries (Relief from

income tax) Act no 55 of 1965, Industrial Development Act no 18 of 1977, Investment Act of 1989, Investment Act of 1991, Investment Act of 1993, and the ZDA Act of 2006. Further the research was mainly done by reviewing published and unpublished works. Additionally interviews with relevant officials at Zambia Development Agency was carried out and questioners were sent to nearby multi -facility economic Zones. Other information is from authors of books, journals and scholarly articles who have thoroughly analysed the issues pertaining to investment laws in Zambia. Parliamentary Debts on the subject matter were also referred to, and internet was attended to with a view of disseminating current information. Much of the work was desktop work with very little field work.

1.6.2 Document Analysis

Documents are usually considered as important source of information since they are most likely to echo a dependable situation which transpired in the past⁶. In this study various documents were highly relied on as document analysis puts forward suggestions on momentous presumptions which link vital insights into the public policy process, whose recommendations lay concrete on the way for future policy Actions. This study centre on comparatively analysing the repealed Investment Act of 1993 and the current ZDA Act of 2006. To achieve this, much work was done through a review of scholarly articles on the subject matter and interviews/ meetings with relevant government officials at the Zambia Development Agency.

1.6.3 Analysis of the Responses from Questioners and Interviews

Questioners were sent to managers and senior staff in the Research and MFEZ departments at Zambia Development Agency and at Lusaka East MFEZ, Lusaka South MFEZ, and Roma Industrial Park. No much information was obtained from the questioners as most of the officers

⁶ Catherine Dawson. Practical Research Methods: (New Delhi, UBS Publisher's Distributors 2002), 44-45

were either out in the field or were too busy with their desk work. As a result, follow up interviews were done though officials preferred to e mail me documents which would help me in my research.

It was noted from the interviews and questioners that the current ZDA Act is a land mark Act first of its kind since independence in 1964. Various salient provisions were set out such as the Zambia Development Agency provision, dispute settlement section and the wide ranging incentives. Others include the mandatory investment threshold and restrictive screening procedure for all the foreign investment and most important of the provision recognizing MFEZ. Furthermore, with regards to MFEZ, it was noted that MFEZ are a unique feature of the current Investment Legal Framework unlike the repealed Legal Framework. Furthermore it was noted that any investor whether foreign or local qualifies to develop multi facility economic zone or industrial park or operating an existing multi facility economic zone upon demonstrating that the investment he is undertaking relates to MFEZ priority sector. A number of other observations were that the MFEZ have a wide ranging incentives and that the government has made it a priority to support the creation and management of MFEZ. To add on, since 2006, 6 locations have been declared for MFEZ/Industrial Park development namely; Chambeshi, Lusaka East (Lusaka Sub Zone), Roma Industrial Park, Lusaka South, Sub-Sahara Gemstone Exchange Industrial Park and Lumwana.

One participant noted that the Zambia Development Agency Board is tilted towards government with a majority of government representative thus defeating the government's proclamation of a private sector led economic development agenda. He further noted that the Act is not clear on

how individuals will be appointed to the board and it has become of great concern that the 16 members of the board are than necessary. To add on he pointed out that the threshold to qualify for access to incentives is 500,000 USA dollars or equivalent in convertible currency technically excludes kwacha investment because kwacha is not convertible. Furthermore the Agency has done little to educate the citizens on its functions and incentives. To many Zambians, investment is a myth and only attributed to foreign nationals.

1.7 Conclusion

This Chapter looked at the problem statement, general objectives of the study and its significance. Further this Chapter has also looked at the rationale and justification of this discourse and research questions have also been outlined. A synopsis of the research methodology and analysed the responses from questionnaires and interviews was also looked. The Chapter has also illuminated on the various natural resources Zambia is endowed with and further has expounded the cardinal role FDI plays in the development progression of each given country.

The following Chapter will discuss the Investment of 1993 while Chapter 3 will look the Zambia Development Agency Act no 11 of 2006. Further Chapter 4 will comparatively analyse the two pieces of legislation setting out whether the current Investment Legal Framework is good enough to enable Zambia meet its Vision 2030 with the help of Investment.

CHAPTER TWO

Literature Review: The Investment Act of 1993

2.0 Introduction

This Chapter thrashes out the brief background of the enactment of the Investment Act of 1993. Further the Chapter will outline its salient features. Additionally the Chapter will also briefly consider other laws which established the five now obsolete bodies which also dealt with investment in Zambia. These bodies include, the Zambia Investment Centre, Zambia Privation Agency, Export Processing Zones Authority, and Small Enterprises Development Board. Thereafter the different challenges which this Act faced will be outlined.

2.1 Background

When Zambia gained independence in 1964, it took over a vibrant rich economy in capital with little or no infrastructure, manufacturing industries and skilled labour. To this effect the UNIP government lead by President Kenneth Kaunda embarked on developmental programs to improve the various sectors of the economy. For these developmental programmes to succeed laws were enacted to give them effect¹. The first Act to be enacted in relation to investment was the Pioneer Industries (Relief from income tax) Act² which as enacted to afford relief from income tax for companies that was designed as pioneer industries. This Act was designed to promote the establishment of new industrial and commercial enterprises in the country. In 1977

¹Kennedy Kaunda, " Legality Journal; the Washington Consensus: A Critical Discussion of its Benefits to Zambia in Attracting Foreign Direct Investment", University of Zambia Law Association; (2005) :13

² Pioneer Industries (Relief from income tax) Act no 55 of 1965 of the laws of Zambia

the Pioneer Industries Act was repealed and replaced by the Industrial Development Act³. This Act was aimed at providing for the licensing and controlling of manufacturing enterprises and to provide for matters incidental or connected there to such as technology transfer. Despite having good objectives, Act no 18 of 1977 failed to attract investment and consequently was repealed by the Investment Act of 1989⁴. The striking features of this Act were that it basically revised the law relating to the granting of incentives and provided for the establishment of the Investment Council and the Investment Coordinating Committee. In Section 4 of the Act, the Investment Council was tasked with the formulation and approval of national policies that were designed to develop and foster investment in Zambia⁵.

In 1991 when the Movement of Multi Party Democracy (MMD) assumed power, the Investment Act of 1989 was repealed and replaced by the Investment Act of 1991. The enactment of this Act was in response to the promises the MMD had made to the people of Zambia in its manifesto. The Investment Act of 1991 reworked the law relating to investment and established the Zambia Investment Centre designed as a one stop facility for the promotion, coordination, regulation and monitoring of investments⁶. One remarkable feature of this Act is that it provided for tax holidays and duty free importation of capital equipments and vehicles. In 1993 the 1991 Investment Act was repealed and replaced by the Investment Act of 1993 hereinafter referred to as the 1993 Act⁷.

³ Industrial Development Act no 18 of 1977 of the laws of Zambia

⁴ Investment Act of 1989, Act no 5 of 1989 of the laws of Zambia

⁵ Rogers Chongwe. *Review of Kenneth Kaoma Mwenda, Zambia's Stock Exchange and Privatisation Programme: Corporate Finance law in Emerging Markets*. H-SAfrica. H-Net Review. (July 2000) :7

⁶ Sashi Nchito *A Critical Analysis of the Investment Act and the Zambia Investment Centre* 4th year Obligatory Essay, (UNZA, 2001): 20

⁷ Investment Act no 15 of 1993 of the laws of Zambia

2.2 Salient Features of the Act

The Investment Act of 1993 which came into force on 8th September 1993 was the principle Investment legislation in Zambia. This Act had utmost six remarkable feature and these include, its objectives, definition of an investor, the Investment Centre and Board, procedure for investment, incentives and investment guarantees. These salient features will be discussed in details below.

2.3 Objectives of the Act

The objective of the 1993 Act as was set out in the preamble was to revise the law relating to investment in Zambia so as to provide a comprehensive legal framework for investment in Zambia. Further the Act was to continue the Zambia Investment Center constituted under the repealed 1991 Act as a one-stop facility to ease the burdens of investors. This act was to be applicable to both local and foreign investors⁸.

2.4. Definition of an Investor

The word investor was defined in section two of the 1993 Act to mean any person, natural or juridical, whether a Zambian citizen or not, investing in Zambia. In her obligatory essay entitled a critical analysis of the Investment Act and the Investment Centre Sashi Nchito noted that the definition of an investor was all embracing and encompassed both local and foreign investors on one hand and individuals and corporate entities on the other⁹.

2.5 The Investment Centre and Board.

Part two of the 1993 Act provided for the establishment of the Zambia Investment Centre (ZIC), a body corporate which was the competent authority to facilitate for and promote investment as provided for under section 6¹⁰. As aforementioned ZIC was firstly constituted under the repealed

⁸Investment Act 1993, preamble

⁹ Nchito.24

¹⁰ Investment Act 1993,

1991 Investment Act and the 1993 Act simply provided for the continued existence of it. The functions of ZIC included promotion and coordination of government policies on, and facilitating investment in Zambia so as to provide a one-stop facility¹¹. Other functions of the centre included the following; Promotion of Investment in Zambia;¹² monitor performance of enterprises approved by it and enforced compliance with the terms and conditions of investment certificates approved under Act¹³; establish and maintain institutional liaison arrangements¹⁴ and assist in securing from any Ministry, government department, local authority or other relevant body any permission, exemption, authorisation, licence, bonded status, land and any other thing required for the purpose of establishing or operating a business enterprise¹⁵.

Additionally the Center was mandated to keep records of all technology transfer agreements relating to investments under this Act¹⁶; provide consultancy services to investors¹⁷; collect and disseminate information on relevant laws and regulations, and technical matters, including applicable standards, specifications and quality control procedures¹⁸; and undertake economic and sector studies, including market surveys, with a view to identifying investment opportunities¹⁹. More also the Centre was tasked with the registration of investors²⁰; and implementation of decisions made by the Board²¹

¹¹ Investment Act of 1993 Section 5

¹² Investment Act of 1993 Section 5 subsection (2) (a)

¹³ Investment Act of 1993 Section 5 subsection (2) (b)

¹⁴ Investment Act of 1993 Section 5 subsection (2) (c)

¹⁵ Investment Act of 1993 Section 5 subsection (2) (d)

¹⁶ Investment Act of 1993 Section 5 subsection (2) (e)

¹⁷ Investment Act of 1993 Section 5 subsection (2) (f)

¹⁸ Investment Act of 1993 Section 5 subsection (2) (g)

¹⁹ Investment Act of 1993 Section 5 subsection (2) (h)

²⁰ Investment Act of 1993 Section 5 subsection (2) (i)

²¹ Investment Act of 1993 Section 5 subsection (2) (j)

The Investment Centre operated under the auspices of the Investment Board which was a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name and with power to all such acts and things as a corporate body²². The board was tasked with the formulation and implementation of investment policies; establish guidelines for the centre and issuance of investment certificates.

2.6 Procedure for Investment

The procedure for investment was outlined in part three of the 1993 Act. In particular section 8 provided that; any person investing in a business enterprise may apply for an Investment Certificate²³. The application for an Investment Certificate was to be made to the Director-General accompanied by a non-refundable fee determined by the Board²⁴. On receipt of the application for Investment Certificate, the Director-General was mandated to submit the application to the Board for its consideration²⁵. When the application satisfied all the requirements, the Board was within six weeks of receipt of an application for an Investment Certificate mandated to issue an Investment Certificate, with general or special incentives²⁶. Further the applicant aggrieved by the decision of the board was allowed to appeal to the minister then to High Court²⁷.

Once the Investment Certificate was issued, it entitled the holder to make all the necessary arrangements for the commencement of the business enterprise described therein. The certificate contained terms and conditions of the certificate and any general or special incentives given; and

²² Investment Act of 1993 section 6

²³ Investment Act of 1993 section 8

²⁴ Investment Act of 1993 Section 9

²⁵ Investment Act of 1993 Section 17

²⁶ Investment Act of 1993 Section 19

²⁷ Investment Act of 1993 Section 21

was valid for a period of 12 months from the date of issuance subject to an application for variation and extension.²⁸

If the holder of the certificate decided not to continue with the project, he could surrender the certificate to the Board on an agreement²⁹. The Board had the power to cancel or suspend any certificate where the certificate was obtained by fraud, deliberate or through negligent submission of false information, contravenes the Act, and failed to carry out venture for which the certificate was issued³⁰. Before taking any action in any of the circumstances above, the Board was mandated to notify the investor of its intention and the investor was also mandated to show cause why such an action must not be taken³¹. In circumstances where the investor took remedial measures, the certificate was not to be cancelled or suspended³². The effect of cancellation of a certificate was that all the rights and benefits flowing there under were totally extinguished while the effect of suspension was that during the duration of suspension, the certificate holder ceased to enjoy the rights and benefits conferred under the Act³³.

2.7General Incentives

The Investment Act of 1993 as amended on 1st April 1996 offered a wide range of incentives in the form of tax allowances, exemptions & concessions for companies, which include; an investor was taxed 15% on income received from farming³⁴, an investor was taxed 15% on income which originates from export of non-traditional products³⁵, income tax from rural enterprise was for the

²⁸ Investment Act of 1993Section 10 and 11

²⁹ Investment Act of 1993Section 12

³⁰ Investment Act of 1993Section 13

³¹ Investment Act of 1993Section 13

³² Investment Act of 1993Section 14

³³ Investment Act of 1993section 15

³⁴Investment Act of 1993section 19

³⁵ Investment Act of 1993section 20

first time in 5 years reduced by an amount that is equal to 1/7 of the amount chargeable³⁶, buildings for Manufacturing, Mining and Hotels enjoyed initial allowance of 10% and an annual 5% wear & tear Allowance of the cost³⁷ and Machinery for Farming, Tourism and Manufacturing qualify for wear & tear allowance of 50% per annum for the first two years³⁸.

Furthermore, capital expenditure on farm improvements enjoyed a 20% per year write off for the first 5 years³⁹, while Capital Expenditure on the growing of tea, coffee, or banana plants, citrus fruits or other similar plants or trees was entitled to a development allowance of 10% up to the 1st year of production⁴⁰. Also an investor was entitled to a farm improvement allowance of 100% for expenditure on farm land⁴¹. Additionally dividends from farming were exempted from tax for first 5 years⁴². In ascertaining income tax an investor was entitled to deductions for any payments made for technical education of employees relating to business enterprise and on any expenditure on research relating to that business enterprise⁴³.

Other incentives provided for were that, there was Customs Duty Exemption on machinery and equipment for mining and agriculture⁴⁴, Duty Free Imports of organic and inorganic chemicals, rubber, steel and plastics; most other inputs at 5%⁴⁵, Farm Works Allowance 100% write off on stumping, clearing, prevention of soil erosion, boreholes, wells, water conservation and aerial or geographical surveys⁴⁶, Customs Duty on Intermediate Goods 15% and on Finished Goods

³⁶ Investment Act of 1993 section 22 (1) (a)

³⁷ Investment Act of 1993 section 22 (1) (b)

³⁸ Investment Act of 1993 section 22 (1) (c)

³⁹ Investment Act of 1993 section 22 (2)

⁴⁰ Investment Act of 1993 section 23

⁴¹ Investment Act of 1993 section 25

⁴² Investment Act of 1993 section 24

⁴³ Investment Act of 1993 section 29

⁴⁴ Investment Act of 1993 section 30

⁴⁵ Investment Act of 1993 section 26

⁴⁶ Investment Act of 1993 section 28

25%⁴⁷, and specific sector-related fiscal incentives and duty/tax concessions packaged for the Mining, Manufacturing, Agriculture, Tourism and Energy sectors⁴⁸.

Some incentives relating to investments were also provided on the Lusaka Stock Exchange (LuSE) and these include; Corporate Tax reduced to 33% compared to normal 35%, Foreign Ownership - No restrictions on ownership levels, Shareholder Levels - No restrictions on shareholder levels and no Capital Gains Tax⁴⁹.

2.8. Specific Incentives.

Specific incentives were provided for in part 6 of the Investment Act however the 1996 Amendment Act removed them⁵⁰.

2.9. Investment Guarantees

Part 8 of the Investment Act of 1993 as amended by Act no 5 of 1996 dealt with Investment Guarantees. It was guaranteed under the Act that no property of any description shall be compulsorily acquired and no interest in or right over property of any description of an investor shall be compulsorily acquired, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation in respect thereof⁵¹. This part of the Act conferred on a foreign investor who had registered foreign capital

⁴⁷ Investment Act of 1993 section 27

⁴⁸ Investment Act of 1993Section 27

⁴⁹ Investment Climate in Zambia, provide by Zambia Development Agency;
<http://zamcom.smetoolkit.org/zambia/en> (accessed on may 5 2012)

⁵⁰ Investment Amendment Act no 5 of 1996 of the laws of Zambia

⁵¹ Investment Act of 1993Section 31

with the Bank of Zambia the right to transfer out of Zambia such capital in foreign currency and after payment of relevant taxes⁵².

2.10. The Laws Establishing the Now Five Obsolete Bodies

2.10.1 The Zambia Privation Agency Act

With the introduction of free market economy in 1991, the MMD government passed the Zambia Privation Agency Act in 1992. Section 3 of the said Act provided for the creation of Zambia Privation Agency which was empowered to prepare State Companies for privatisation⁵³. It was the only recognised Agency given power to sell state owned companies under the law. It is imperative to note that the Zambia Privatisation Agency had an advocacy role to play, particularly in maintaining good investor relations and providing a supportive environment. The privatization process opened up Zambia to foreign investment and attracted multi-national corporations from all over the world⁵⁴.

2.10.2 The Export Processing Zone Act number 7 of 2001

The Export Processing Zone Act was enacted in 2001 to create various processing zones with special incentives to attract foreign investors. This Act was further aimed at attracting fresh investment into the country as well as encouraging existing enterprises to expand exports. The incentives under this Act were similar in many ways to those that existed under the Investment Act of 1993⁵⁵.

⁵² Investment Act of 1993 section 36

⁵³ Privatisation Act 1992 section 6

⁵⁴ Directory Publishers Zambia: A Review of Commerce, Industry and Tourism, (May 2000) : 13

⁵⁵ Zambia Privations Agency progress report from (4th July 1992 to 31st December 1993):5

2.10.3 Export Development Act No 29 of 1999

The Export Development Act was enacted to establish the Export Board of Zambia, define its powers; and to provide for matters connected with or incidental to the forgoing⁵⁶. The Export Board of Zambia used to promote non-traditional export (NTEs) through programmes such as identifying opportunities in favourable markets, undertaking demand and supply surveys, coordinate trade fairs, and trade missions, in order to identify new buyers and markets⁵⁷.

2.10.4 Small Enterprises Development Act no. 29 of 1996.

The Small Enterprise Development Act enacted in 1996 provided for the establishment of the Small Enterprise Development Board as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name⁵⁸. It further defined its functions and established the Micro and Small Enterprise Development Fund. The Act went on to provide for the Development of the macro and small enterprises and provided for their registration⁵⁹.

2.11 Overall weakness of the Investment Act

The *raison d'être* behind the enactment of the Investment Act of 1993 was to provide a comprehensive legal framework for investment in the country. This is evidenced by the speech given by the then Minister of Commerce Honourable Hambayi.

He stated that the “Bill was before the House to seek, Revision of the law relating to investment in Zambia so as to provide a comprehensive legal framework for investment in the country; repeal the Investment Act 1991. The revision of the 1991 Act is intended to be a step further to improving the overall environment for encouraging both local and foreign investment. The Investment Bill, 1993, compared

⁵⁶ Export Development Act No 29 of 1999, section 4.

⁵⁷ An Investment Guide for Zambia (April 2011) [http:// www.zda.org.zm](http://www.zda.org.zm) (Accessed on 26th January, 2012).

⁵⁸ Small Enterprises Development Act no 29 of 1996 section 3

⁵⁹ Small Enterprises Development Act no. 29 of 1996 section 5,7,8

to the Investment Act. 1991 represents a restructured and simplified legal framework which enhances and eases the administration of the various provisions. The bill is important in two respects: firstly, the Government Policy is to diversify the economy and make it less dependent on the mining industry which currently contributes more than 25 per cent to GDP and over 90 per cent of foreign exchange comings for the country. Secondly, Sir, the market for investment in the region is very competitive. In addition to favourable financial and monetary incentives, offered by our competitors in the region, some of the countries have superior infrastructure and other services compared to those obtaining in Zambia. It is therefore important that Zambia provides a legal framework like the Bill under consideration spelling out government policies and giving details of investment incentives offered to all categories of investors⁶⁰”.

However it was noted that there were a number of issues that the Act did not address adequately.

The major deficiency of the Act was that there was no National Investment Policy laid down to provide guidelines for the role of investment in an economy and the nature of investment that the Act sank to attract⁶¹. Another major problem which was experienced was with regards to the Immigration Department, where ZIC would grant an investment licence, but the Immigration Department would reject the investor’s application for self-employment permit.⁶²

Further it was observed that the 1993 Act did not state the objectives of investment. This made it not easy for the ZIC to scrutinise the investors coming into the country. Additionally the 1993 Act did not make registration with the Investment Centre compulsory. Consequently this made it very difficult to keep an eye on Foreign Direct Investment inflows and to legalize Investment⁶³.

Another deficiency was that the 1993 Act did not clearly spell out what type of investment was reserved for local investors. The reservation of certain types of investment to local people was identified to have helped in the improvement of local production and efficiency hence providing

⁶⁰ honourable Minister of Commerce and Trade Mr Hambayi national Assembly debts on the investment bill: 25th February 1993 [http:// www.parliament.gov.zm](http://www.parliament.gov.zm) (accessed on march 15, 2012)

⁶¹ Corporate Tax Incentives for FDI: A guide for Economies in Transitions published by ZDA: (2010) : 6

⁶² Nchito,20

⁶³ Nchito,22

a livelihood for local people in other jurisdictions such as Botswana⁶⁴. Notable also is the fact that the Act did not provide incentives for local investors which made it very difficult for them to compete with their foreign counterpart. As much as attraction of FDI is of great focus to most investment laws, such laws much at all time thrive to improve economic conditions for the local people so as to alleviate poverty⁶⁵.

Worth mentioning at this point is the fact that the Investment Act of 1993 did not provide for tax holidays and tax exemptions which the repealed Investment Act of 1991 provided for. The lack of these incentives did render Zambia to be a less favourable host country in the region⁶⁶.

A step further, as earlier mentioned the Act did establish ZIC to operate as a one stop facility however, it did not provide for inter institutional coordination. On the other hand other jurisdictions such as Mozambique established an Investment Promotion Agency which provided for inter institutional coordination. This helped a lot in the manner the Promotional Agency handled its work and dealt with other relevant government departments. The lacks of this statutory provision of inter institutional coordination made ZIC to face various problems in providing services to investors⁶⁷.

Another shortcoming of the 1993 Act was that it did not provide for minimum investment amounts. The rationale for providing minimum investment amounts is to encourage quality

⁶⁴ David Ailola Investment Policy and Law in Zambia LLM Degree Thesis (UNZA 1983): 6

⁶⁵ The Minister of Commerce, Trade and Industry (Mr. D. Patel) Daily Parliamentary Debates for the 5th session of the 9th Assembly Tuesday, 14th march 2006, [http:// www.parliament.gov.zm](http://www.parliament.gov.zm) (accessed on march 15, 2012).

⁶⁶ Investment Climate in Zambia, provide by Zambia Development Agency; <http://zamcom.smetoolkit.org/zambia/en> (accessed on may 5 2012)

⁶⁷ Edward Sampa The Zambia Development Agency Act: Its Relevance and Applicability in Promoting Foreign Direct Investment in Zambia 4th year Obligatory Essay, (UNZA 2008): 20

investment and to ensure that all investors will contribute to the economic growth and development of the host nation which is the key benefit of FDI⁶⁸.

Yet another shortcoming of the Investment Act of 1993 was with regard to the protection against expropriation of resources. The case in point is exemplified by section 36 which provides for the transfer of funds which stated that;

“Notwithstanding the provisions of any other written law relating to externalisation of funds, a foreign investor who has registered foreign capital with the Bank of Zambia shall be entitled, in respect of a business enterprise to which the Investment Certificate relates, to transfer out of Zambia in foreign currency and after payment of the relevant taxes⁶⁹”.

This was not sufficient if the capital was to be arrested. What the 1993 Act needed to do was to specify a period after which capital could be transferred, whether speculative or not⁷⁰.

Lastly, the Investment Act of 1993 did not have any provisions for dispute resolution procedures. This caused a lot of uncertainties as investors want to be sure that they are protected by the law and that they have an identified means of dispute resolution⁷¹. It must be noted that although Zambia is a member of the International Centre for the Settlement of Investment Disputes and has domesticated the Convention on Settlement of Disputes under CAP 42 of the Laws of Zambia⁷², application of the Convention was dependent on the consent of the parties to the dispute. The 1993 Act did not provide the foreign investors with a choice of procedures as regards settlement of disputes.

⁶⁸ Corporate Tax Incentives for FDI: A guide for Economies in Transitions (Published by ZDA): 8

⁶⁹ Investment Act of 1993

⁷⁰ Kaunda. 39

⁷¹ Sampa. 18

⁷² Investment Dispute Convention Act

2.12. Conclusion

This Chapter has discussed the brief background of the enactment of Investment Act of 1993. The chapter has further outlined the various salient features of the Act such as its objectives, definition of an investor, the Investment Centre and Board, procedure for investment, general incentives, and investment guarantees. The Chapter has also discussed in brief other statutes which dealt with investment at that period. These statutes included; Export Development Act, Zambia Privation Agency Act, Export Processing Zones Act, and Small Enterprises Development Act. Further the Chapter has as well given a synopsis of the overall weakness of the 1993 Act. The following Chapter will discuss the Zambia Development Agency Act.

CHAPTER THREE

The Zambia Development Agency Act No 11 of 2006

3.0 Introduction

This Chapter focuses on the Zambia Development Agency Act No 11 of 2006. The Chapter will go in details taking into account of the policy behind the enactment of the ZDA Act. Further the Chapter will look at its cardinal salient features. More also the efficacy of the various Statutory Instruments passed pursuant to section 18 of the ZDA Act namely; the Roma Industrial Park, the Lusaka South Multi-Facility Economic Zone, the Sub-Sahara Gemstone Exchange Industrial Park and Lumwana Multi-Facility Economic Zone will be considered. The Chapter will conclude by looking at the overall weakness of the Zambia Development Agency Act.

3.1 The Policy behind the Enactment of Act no 11 of 2006

As seen from the previous Chapter the Investment Act of 1993 had a number of short comings. The Zambia Development Agency Act hereinafter referred to ZDA Act was enacted to deal with such weakness. This is evidenced in the Report of the Committee on Economic Affairs and Labour on the Zambia Development Agency Bill as follows;

“The main focus of the Zambia Development Agency Bill is to foster economic growth and development by promoting trade and investment in Zambia through an efficient effective and coordinated private sector led economic development strategy. Further, to establish the Zambia Development Agency as a one stop facility which ensures, among other matters, client focus, dialogue with the private sector and create confidence in public sector support for business; to provide for the functions and powers of the Agency; to attract and facilitate inward and after care investment. Additionally the ZDA Act is to facilitate support to micro and small business enterprises; to promote exports and globalisation; to streamline bureaucratic procedures and requirements faced by investors; and to facilitate industrial

infrastructure development and local services. More also, to promote Greenfield investments through joint ventures and partnerships between local and foreign investors; and to promote and encourage education and skills training so as to increase productivity in business enterprises. Lastly the Act is to encourage measures to increase Zambia's capacity to trade enable business to participate in a competitive global environment; and to ensure that the private sector takes advantage of and benefits from international and regional trade agreements¹.

3.2 Salient Features of the ZDA Act

As already alluded to above the Act was enacted to facilitate a one stop shop when it comes to investment matters. To achieve this, the Act has a number of salient provisions as discussed below.

3.3 Economic Objectives

The economic objectives of the ZDA Act include, harnessing existing skills, knowledge and expertise, encourage investment inflows, and insure that targeted investment and trade related services are achieved within Zambia in order to create wealth, jobs, and enhance economic development. Furthermore another economic objective of the ZDA Act include development of an internationally competitive Zambian economy through innovations that promote high skills, productivity, investment and increased trade all based on a partnership between the government and the private sector².

3.4 The Zambia Development Agency (administrative machinery)

Part two of the ZDA Act establishes the Zambia Development Agency hereinafter referred to as the Agency. The Agency is a body corporate with perpetual succession and a common seal,

¹ Report of the Committee on Economic Affairs and Labour on the Zambia Development Agency Bill, National Assembly of Zambia, Daily Parliamentary Debates, Tuesday 14th of march 2006; www.parliament.gov.zm (accessed on April 25 2012)

² Sampa .20

capable of suing and being sued in its corporate name³. The Agency among other things has a myriad of functions. Firstly it gives advice to the Minister on matters relating to industry, industry development and productivity, investments, exports of goods and services, operations of multi-facility economic zones and matters relating to micro and small scale business enterprises⁴. Secondly, on the request of the government the Agency studies market access offers received from trading partners under COMESA, WTO OR SADC and advice the government on opportunities and challenges generated by those offers⁵.

Further the Agency makes detailed impact analysis on select sectors of economy such as textiles, agriculture, mining, tourism, education, skill training, communication, transport, infrastructure development, automobiles, information technology, chemicals, steel and engineering goods, through a multi-disciplinary team⁶. To add on, the Agency is tasked with developing entrepreneurship skills and a business culture in citizens of Zambia, promote and facilitate the development of micro and small business enterprises, formulate investment promotion strategies and promote and coordinate Government policies on, and facilitate, investment in Zambia⁷.

More also the Agency assists in securing from any State institution any permission, exemption, authorization, licence, bonded status, land and any other things required for the purposes of establishing or operating a business enterprise⁸. Remarkable of them all is that the Agency plans, manages, and control the privatisation of State owned enterprises and oversee all aspects of the

³ Zambia Development Agency Act no11 of 2006 section 4

⁴ Zambia Development Agency Act no11 of 2006 section 5 subsection (2) (a)

⁵ Zambia Development Agency Act no11 of 2006 section 5 subsection(2) (b)

⁶ Zambia Development Agency Act no11 of 2006 section 5 subsection (2) (c)

⁷ Zambia Development Agency Act no11 of 2006 section 5 subsection (2) (e)

⁸ Zambia Development Agency Act no11 of 2006 section 5 subsections (2) (g), (h), (i)

implementation of the privatisation programme and monitor progress of the privatisation programme in Zambia. It also monitors post privatisation activities to ensure compliance with any agreement entered into for the privatisation of any state owned enterprise⁹. The Agency also monitors and evaluates the activities, performance and development of enterprises operating in multi-facility economic zones and prescribes and enforces measures, for the business or activity carried out within a multi-facility zone so as to promote the safety and efficiency of its operations¹⁰.

3.5. Entry and Post Entry Treatment of Investors

The ZDA Act introduces a mandatory investment threshold and restrictive screening procedure for all the foreign investment. The Act makes a formal distinction between domestic and foreign investors¹¹. It requires both to apply to the newly established Agency for an investment certificate by stating that a person who wishes to either develop premises as a multi-facility economic zone, export prescribed goods and services, invest in any business enterprise, should apply to ZDA Board for a license, permit or certificate of registration¹². The circumstances under which the investment certificate is issued to a foreign investor are so restrictive such that the foreign investor needs to have a certain minimum amount of money¹³.

⁹ Zambia Development Agency Act no11 of 2006 section 5 subsection (2) (n)

¹⁰ Zambia Development Agency Act no11 of 2006 section 5 Subsection (2) (q)

¹¹ Zambia Development Agency Act no11 of 2006 section 2

¹² Zambia Development Agency Act no11 of 2006 section 68

¹³ Sampa. 44

3.6 Investment Promotions and Guarantees

The ZDA Act through the Board undertakes various investment promotions and guarantees. In order to promote private investment the Board shall among other things; take measures and actions which help to create and maintain a predictable and secure investment climate¹⁴. Further the Board shall encourage foreign investment, including the formation of strategic alliances with Zambian business enterprises. More also the ZDA Board Facilitate partnerships and joint ventures by encouraging co-financing, encourages sector investment so as to promote foreign investment and support capacity building strategies for national investors¹⁵. Additionally the Board is mandated to give development services to investors so as to assist in creating a responsive environment and information base to guide and encourage the flow of capacity¹⁶ and further endeavouring to conclude investment promotion and protection agreement with prospective investors¹⁷. More to the point, investor's property is guaranteed not to be compulsorily acquired except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation for such acquisition¹⁸.

3.7 Incentives

Another important feature of the ZDA Act is the provisions for incentives. These incentives are obtained through the grant of an investment certificate, licence, or permit of registration by the Zambia Development Agency¹⁹. However these incentives are valid for a period of five years

¹⁴ Zambia Development Agency Act no 11 of 2006 section 17 subsection (a)

¹⁵ Zambia Development Agency Act no 11 of 2006 section 17 subsection (b) (c) (d)

¹⁶ Zambia Development Agency Act no 11 of 2006 section 17 subsection (e)

¹⁷ Zambia Development Agency Act no 11 of 2006 section subsection (i) (j)

¹⁸ Zambia Development Agency Act no 11 of 2006 section 19

¹⁹ Zambia Development Agency Act no 11 of 2006 section 59.

from the grant of the licence, permit or certificate²⁰. These incentives include; incentives specified under the Income Tax Act or Customs and Excise Act where an investor invests not less than five hundred thousand United States Dollars or the equivalent in convertible currency in a priority sector or product²¹. Further Machinery or equipment acquired by a business enterprise conducting operations in a priority sector or in respect of priority products or a rural enterprise are exempted from customs duties as specified by or under the Customs and Excise Act²². Additionally and where a double taxation agreement exists between Zambia and another country, foreign tax payable by an investor to the other country in respect of any foreign income shall be as determined under that agreement.²³

3.8 Dispute Settlement

A very well drafted piece of legislation always has a provision which centres on dispute resolution. As Ndulo has noted, whenever one encounters a piece of legislation or a contractual document, there is the possibility of disagreements or disputes arising from its interpretation, application or implementation²⁴. The ZDA act does have a dispute settlement provision which largely refers to the Arbitration Act²⁵. At this point it is imperative to note that the 1993 Investment Act repealed by the ZDA Act did not have a dispute settlement provision.

²⁰ Zambia Development Agency Act no11 of 2006 section 55

²¹ Zambia Development Agency Act no11 of 2006 section 56

²² Zambia Development Agency Act no11 of 2006 section 57

²³ Zambia Development Agency Act no11 of 2006 section Section 61

²⁴ Muna Ndulo Foreign Investment Zambia Law Journal, Volume 112; (1980) 4

²⁵ Zambia Development Agency Act no11 of 2006 section Section 21

3.9 Multi-facility Economic Zone

Section 18 of the ZDA Act authorises the Minister on the recommendation of the Board after consultation with the Minister responsible for finance and with the approval of Cabinet, by statutory instrument declare an area, premises or building to be a multi- facility economic zone. The government sanctioned the establishment of Multi-Facility Economic Zones (MFEZs) in Zambia in 2006 with the objective of catalysing industrial and economic development in the manufacturing sector for the purpose of enhancing domestic and export oriented business²⁶. This is a very unique feature of the current Investment Legal Framework unlike the repealed Legal Framework.

3.10 What is a Multi-Facility Economic Zone?

A Multi-Facility Economic Zone hereinafter referred to as MFEZ is defined an area or premises declared as a multi-facility economic zone in which industrial and commercial activities take place²⁷. The meaning of Multi-facility Economic Zone is also applicable to an Industrial Park. An Industrial Park is a smaller version of an MFEZ with the land area of at least 15 acres. Zones or Parks are developed by the Government or licensed private sector²⁸. The zones or parks provide superior industrial and business infrastructure including but not limited to ready-made factory buildings, serviced landscaping, garbage disposal, street cleaning, illuminated perimeter fence, a fully fledged municipality and 24 hours security²⁹. The types of MFEZ include; production MFEZ where production and manufacturing activities will take place and Export

²⁶Sampa. 34

²⁷ Zambia Development Agency Act Section 2

²⁸ Banda. 1

²⁹ Banda. 2

Trade MFEZ which will ideally be located in the border areas with neighbouring countries. These will house enterprises conducting export commercial activities³⁰.

3.11 Purposes of MFEZ

Multi-facility Economic Zones have been identified to have a myriad of purpose which includes; attracting FDI in the country, acting as an avenue for value addition, providing conduit for technology transfer, and making Zambian exports more competitive in the regional and international foreign markets³¹. Further, to create employment opportunities for Zambians and thus contribute poverty reduction increase the skill of labour, provide opportunities for joint ventures with companies, and provide options for value addition in locally produced raw materials³². Additionally MFEZ help in the Creation of new industries to strengthen the economy, as well as provide markets for local industries for raw materials or sub components and increase exports thereby contributing to increased export earnings³³.

3.12 Main Conditions of MFEZ

There are mainly 3 conditions of MFEZ and these are; firstly, an investor may require to provide and maintain in a multi facility economic zone or industrial park, standard infrastructure, ready-made standard factory buildings and related infrastructure, warehouse, telecommunication, water and sewerage net works, uninterrupted power supply source, internal roads, and waste water treatment and such other facilities as are required for the effective and efficient operations of the

³⁰ Banda. 2

³¹ Banda. 4

³² Banda 5

³³ Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

multi-facility economic zone or industrial park³⁴. Secondly a business enterprise may, in accordance with the conditions attached to its licence, produce for export or local market, any of the goods or services specified in the license³⁵. And lastly an investor shall not within a multi facility economic zone or industrial park, carry on any activity not authorised by the licence or permit³⁶.

3.13 Location of MFEZ

An investor is free to identify and suggest any location in the country where it is deemed economical for such development. Areas where MFEZ/Industrial Parks have been declared include Lusaka, Ndola, Chambeshi and Lumwana in Solwezi. Other sites under consideration include Livingstone, Kabwe and Kasumbalesa in Chililabombwe³⁷.

3.14 Qualification Criteria to locate in MFEZ / Industrial Park

Any investor whether foreign or local qualifies to develop a Multi Facility Economic Zone or an Industrial Park or operating an existing Multi Facility Economic Zone upon demonstrating that the investment he is undertaking relates to MFEZ priority sector³⁸ and will provide the following benefits; level of local and FDI of US\$ 500,000 and above, attraction of local and FDI, quality and amount of local employment creation, extent of skills development and transfer to local entrepreneurs and communities, extent to which the project will lead to expansion of local production, and level of utilization of local raw materials and intermediate goods³⁹.

³⁴ Banda.3

³⁵ Banda.3

³⁶ Banda. 3

³⁷ Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

³⁸ Banda.3

³⁹ Banda 8

More also the investor must guarantee the introduction and transfer of technology, the production of new products, and the extent to which the project will lead to the diversification of the economy⁴⁰. Furthermore the investor must clearly demonstrate the impact the proposed investment is likely to have on the environment and where necessary, the measures proposed to deal with an adverse environmental consequence in accordance with the Environmental Protection and Pollution Control Act, and the extent to which the project will lead to the diversification of the economy⁴¹,

3.15 MFEZ Incentives

The MFEZ have the most favourable incentives which have made them o attract a considerable amount of investors in the country. To this effect companies undertaking Zambia Development Agency identified MFEZ Priority sectors will be granted the following incentives;

Zero tax on profits made by companies in the Priority Sector for a period of five years from the first year profits are made. For years 6 to 8 only 50 percent of profits will be taxed and for years 9 and 10, 75 percent of profits will be taxed⁴². Furthermore, zero percent tax rate on dividends of companies operating under the MFEZ / Priority Sector for a period of five years from the year of first declaration of dividends. From year 6 to 8, only 50 percent of profits will be taxed and for years 9 and 10, 75 percent of profits will be taxed⁴³. Additionally MFEZ grant a zero percent import duty on raw materials, capital goods, machinery including trucks and specialised vehicles for five years for all Priority Sectors⁴⁴, deferment of VAT on machinery and equipment including trucks and specialised vehicles imported for investment in the MFEZ / Priority

⁴⁰ Banda 8

⁴¹ Ibid 8

⁴² Ibid 8

⁴³ Ibid .8

⁴⁴ Ibid .8

Sector⁴⁵, and remove Withholding Tax on management fees, consultancy fees, interest repayments and foreign contractors⁴⁶.

In addition to the tax incentives mentioned above, provided under the ZDA Act, the following incentives shall apply to developers of, and investors in the MFEZs and industrial parks;

- Zero rate suppliers to developers of MFEZs and industrial parks⁴⁷.
- Exempt foreign suppliers to the MFEZs and industrial parks from reverse VAT Charge⁴⁸.
- Exempt from Customs and Excise Duty, materials, equipment, machinery and accessories imported for the development of the MFEZs and Industrial parks⁴⁹.

In 2009 during the National Budget the following incentives for MFEZ development were announced. The removal of withholding tax on management fees, consultancy fees, and interest repayment to foreign contractors, zero rates for VAT supplied to developers of MFEZ, exempt foreign supplies to MFEZ from reversed VAT charge, and exempt equipment and machinery imported for development of MFEZ from customs duty⁵⁰. This measure is intended to enhance the expansion of the industrial base of the country and increase the competitive stance of Zambian firms in the region.

⁴⁵Banda. 8

⁴⁶Ibid 8

⁴⁷Ibid 8

⁴⁸Ibid. 8

⁴⁹ Ibid. 8

⁵⁰Speech given by the minister of finance when presenting the budget before parliament in 2009,<http://www.parliament.gov.zm> (accessed on march 15, 2012)

3.16 Status of MFEZ Development in Zambia

The government has since 2006 declared 6 locations for MFEZ/Industrial Park development namely; Chambeshi, Lusaka East (Lusaka Sub Zone), Roma Industrial Park, Lusaka South, Sub-Sahara Gemstone Exchange Industrial Park and Lumwana.

3.17 Chambeshi MFEZ

The Zambia-China Cooperation Zone is an MFEZ with a total area is 4100 hectares located in Chambeshi in the Copperbelt Province of Zambia. It was the first MFEZ to be declared through Statutory Instrument No. 16 of 2007. This MFEZ is currently been established by China Nonferrous Metal Mining Group with the support of both the Governments of Zambia and China⁵¹. Already several enterprise mainly Chinese businesses have been established in the area, including a copper smelter providing more than 3500 local jobs which are expected to increase as enterprises locate in the zone. By the year 2015, the Chambeshi MFEZ is poised to accommodate fifty to sixty zone enterprises with an output volume exceeding US\$ 1.5 billion of which more than US\$ 600 million will be exported while employing more than 6,000 locals⁵².

3.18. Lusaka East MFEZ

The Lusaka East MFEZ is situated 2 kilometres adjacent to the Kenneth Kaunda International Airport. It is an extension of the Chambeshi MFEZ on the Copperbelt and was declared through Statutory Instrument No 50 of 2010. It covers an area of 5.7 square kilometres and is being developed by the developers of Chambeshi, ZCCZ. The Lusaka East MFEZ final master plan indicates that the sub zone will specialise in logistical activities such as warehousing, show

⁵¹ Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

⁵² Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

rooms, conference centres, hotels, value addition activities, light manufacturing activities, bonded warehouses and hospitality facilities⁵³.

3.19. Lusaka South MFEZ

The Lusaka South MFEZ (LS MFEZ) is different from others because it is being promoted by the Government of the Republic of Zambia through its Ministry of Commerce, Trade and Industry in partnership with the private sector for its development. It was declared by SI No 47 of 2010 and it has a total of 2100 hectares piece of land located in the southern part of Lusaka. The master plan of LS MFEZ was developed by JICA and the Malaysian Kulim Hi-Tech Park (KTPC) with the assistance of Zambian Local Expert Team comprising of members from the relevant planning and construction authorities⁵⁴.

This MFEZ is to be the model on which upcoming MFEZ developments will be based on and is therefore expected to have infrastructure of world class standard. A master plan proposes a phased development approach and phase one of the construction works has commenced where access roads to the site are being constructed⁵⁵. A special purpose vehicle will be incorporated in which private sector is expected to participate under a Private Public Partnership (PPP) framework in developing, marketing and managing the LS-MFEZ. The special vehicle to be known as Lusaka South MFEZ Development Corporation Limited will engage service providers such as LWSC/ZESCO/ZAMTEL/ Mobile phone and internet providers in servicing the area with the utility services⁵⁶. The zone will accommodate fifty to sixty zone enterprises with an output

⁵³ Banda.8

⁵⁴ Ibid 9

⁵⁵ Ibid 9

⁵⁶ Ibid 9

volume exceeding US\$1.5 billion of which more than US\$ 600 million would be exported while employing more than 6,000 local people⁵⁷.

3.20. Lumwana MFEZ

The Lumwana MFEZ was declared through SI No. 51 of 2010 and will be developed by Lumwana Property Development Company with an investment outlay amounting to US\$ 1.2 billion. The zone is expected to create 13,000 employment opportunities. This MFEZ is a 350 sq km area which focuses on light and heavy industries. Some notable activities that the MFEZ will house include; agro processing, horticulture, fisheries, hotel accommodation, among others⁵⁸. The developers of this MFEZ have commenced construction works in the MFEZ area.

3.21. Sub Sahara Gemstone Exchange Industrial Park

The Sub Sahara Gemstone Exchange Industrial Park located on 130 hectares in Ndola is being developed by Phoenix Materials a wholly Zambian owned company. It was declared through SI No. 49 of 2010 and aims at creating a streamlined export procedure that would assist the buyers, sellers and producers of routine transactions⁵⁹. This would inevitably make gemstone mining in Zambia a sustainable venture to bring wealth to the national as a whole. Other light industries including logistical centres have been attracted to the park which will also house enterprises in the service industry⁶⁰.

⁵⁷ Banda. 10

⁵⁸ Zambia Development Agency, Zambia: Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

⁵⁹ Banda. 10

⁶⁰ Zambia Development Agency, Zambia's Africa's new Frontier for Investment and Profits, www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

3.22. Roma Industrial Park

Roma Industrial Park was declared through SI No.48 of 2010 and is being developed by CPC Properties Limited which is a private enterprise⁶¹. The Industrial Park is located along Zambezi Road in the Roma area of Lusaka and will be developed at the cost of US\$ 54 million. The developers have since commenced the development of the park with fencing having been accomplished covering the entire 130 hectares⁶². It is expected to create 4000 job opportunities. Notable enterprises will include light industries, housing estates and shopping malls. The park will also include an Incubation Center for SME development. A total of US\$ 48.6 million investments are expected to be undertaken in the Roma Industrial Park over the next 3 years, and employ 4,000 people⁶³.

3.23. Weaknesses of the Act

Despite the enactment of this Act having been a landmark decision which had been awaited for long, it suffices to note that there are numerous shortfalls and lacunas in the provisions of the Act. These shortfalls and lacunas are said to encumber the effectiveness of the implementation of the ZDA Act. The first shortfall is the fact that, the Bill was rushed through Parliament with inadequate stakeholders' involvement. To exemplify this, is the fact that the parliamentary committee on the ZDA bill made certain observations and recommended changes which were not considered⁶⁴.

⁶¹ FAQ Roma Park, <http://romapark.co.zm> (accessed on march 7 2012)

⁶² Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits, www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

⁶³ Zambia Development Agency, Zambia, Africa's new Frontier for Investment and Profits www.zambia.or.jp/docs/Investor%20guide-%20Zambia (accessed on march 13 2012)

⁶⁴ Richard Chakaba. Is the Zambia Development Agency Act an effective Instrument of development through a one stop shop facility, 4th year obligatory Essay, (UNZA, 2008): 34

Secondly, the Zambia Development Agency Board is tilted towards government with a majority of government representative thus defeating the government's proclamation of a private sector led economic development agenda. It has been observed that the foregoing has caused a lot of problems especially in awarding investment certificate and the running of the Agency as a whole⁶⁵. A private tilted Board will bring in a more business atmosphere in guiding management⁶⁶. Further, the ZDA Act is not clear on how individuals will be appointed to the board and it has become of great concern that the 16 members of the Board are than necessary⁶⁷.

Notable as a weakness is section 6 (2) which is an evidence to the fact that the Act confers excess powers on the government particularly to the Minister. More also stakeholders are of the view that ZDA is not a body corporate as such as stated in the Act, instead it is just one of the departments in the Commerce Ministry⁶⁸. Additionally it has been argued that the creation of ZDA is more appropriate as a facilitator, and not an implementer of programs⁶⁹. The staff at ZDA should merely facilitate the implementation of programmes by respective and capable agencies either in the private sector, Government and indeed international agencies. Should ZDA try to do it all, this would hamper and not promote exports⁷⁰.

Another shortfall of the ZDA Act is the fact that the threshold to qualify for access to incentives is 500,000 USA dollars or equivalent in convertible currency. This technically excludes kwacha investment because kwacha is not convertible. That is to say that the kwacha cannot be used on

⁶⁵ Interview with Sibajene k. Munkombwe Senior Research Officer at Zambia Development Agency on March 13 2012

⁶⁶ Daily parliamentary Debates. Tuesday, 14/03/2006 www.parliament.gov.zm (accessed on April 25 2012)

⁶⁷ Banda. 8

⁶⁸ Chakaba.36

⁶⁹ Sampa.44

⁷⁰ Banda. 14

the international market for purposes of foreign exchange. This shows that the incentives earned after achieving the threshold are only applicable to foreign medium-sized and large enterprises, with no support for enterprises owned by Zambian citizens⁷¹. This is based on the fact that part V of the Act does not qualify them for incentives due to the threshold. This has seen the civil society urging the government to provide incentives in the 2008 national budget whereby Zambians that want to invest in production sectors could be exempted from paying duty on imported equipment for example⁷². More also the requirement for 250,000 USA dollars and 200 employees for an enterprise to qualify for self-employment permit and expatriate personnel are almost impossible to attain⁷³.

It is also important to note as a shortfall the fact that the second schedule of the Act which lists priority sectors and products which qualify for incentives leaves out imperative sectors such as those already recognised in the 6th National Development Plan and Vision 2030, such as agriculture, Gemstone industry, and tourism⁷⁴. Notable as a weakness of the Act, is section 5 (t) which provides for the promotion of transfer of appropriate technology is not adequate and precise. The previous Act in section 4 was very precise on matters relating to transfer of technology⁷⁵.

To add on in analysing the ZDA Act, it was observed that the Act does not clearly define what export promotion is. This means that someone may have to interpret the actual meaning which in

⁷¹ Banda.14

⁷² Banda.14

⁷³ Banda.14

⁷⁴ Banda.6

⁷⁵ Interview with Mr. Mudenda Lecturer in the School of Law at the University of Zambia on May 3 2012

effect dilutes the role of the Agency in exporting promotion consequently affecting exports⁷⁶. Another weakness of the Act is that the export promotion machinery is tilted in favour of the big exporters. Furthermore the Agency has done little to educate the citizens on its functions and incentives. To many Zambians, investment is a myth and only attributed to foreign nationals. This kind of mentality has largely deterred investment in most parts of the country especially rural areas.

3.24. Conclusion

This chapter has looked at the Zambia Development Agency Act as a legal framework for attracting and promoting FDI in Zambia. It brought out the nature and imperative salient provisions of the Act especially the Multi-Facility Economic Zones which is a very unique feature of the current legal framework. The chapter has also looked at the dispute clause and the administrative structure of the Act. Furthermore this chapter has also given a synopsis of the weakness of the Zambia Development Agency Act

⁷⁶ Sampa 47

CHAPTER FOUR

A Comparative Analysis of the ZDA Act No 11 of 2006 and the Repealed Investment Act of 1993

4.0 Introduction

This chapter centres on comparatively analysing the Zambia Development Agency Act No 11 of 2006 and the repealed Investment Act of 1993. The chapter will go in details highlighting whether the existing Investment Legal Framework is adequate to deal with the problems faced in promoting both local and Foreign Direct Investment. The analysis will be made based of the salient features of the ZDA Act and the Repealed Investment Act of 1993 hereinafter referred to as the 1993 Act.

4.1 Objectives

The main aim of the repealed Investment Act of 1993 was to provide a comprehensive legal framework for investment in Zambia. On the other hand the Zambia Development Agency Act has various objectives and these include; the Zambia Development Agency Act is to foster economic growth and development by promoting trade and investment in Zambia through an efficient effective and coordinated private sector led economic development strategy. Further, to establish the Zambia Development Agency as a one stop facility which ensures, among other matters, client focus, dialogue with the private sector and create confidence in public sector support for business; to provide for the functions and powers of the Agency; to attract and facilitate inward and after care investment. Additionally the Act is to facilitate support to micro

and small business enterprises; to promote exports and globalisation; to streamline bureaucratic procedures and requirements faced by investors; and to facilitate industrial infrastructure development and local services. More also, to promote Greenfield investments through joint ventures and partnerships between local and foreign investors; and to promote and encourage education and skills training so as to increase productivity in business enterprises. Lastly the Act is to encourage measures to increase Zambia's capacity to trade enable business to participate in a competitive global environment; to ensure that the private sector takes advantage of and benefits from international and regional trade agreements. Notable is that the provision for Transfer of Technology contained in the 1993 Act was adequate and precise unlike the one contained in the current Act which requires the promotion of the transfer of appropriate technology. The problem which this section introduces is who determines appropriate technology? From this it is very evident that the ZDA Act has a lot of objectives which are over reaching while the 1993 Act did not.

4.2 Administrative Machinery

To achieve its objective part II of the 1993 Act provided for the establishment of the Zambia Investment Centre (ZIC), a body corporate which was the competent authority to facilitate for and promote investment as provided for under section 6¹. The functions of ZIC as discussed in Chapter two segment 2.9 included promotion and coordination of government policies, and facilitating investment in Zambia so as to provide a one-stop facility².

¹ Investment Act 1993 section 4

² Investment Act 1993 Section 5

Other functions of the centre included the following; promote investment in Zambia;³ monitor performance of enterprises approved by it and enforced compliance with the terms and conditions of investment certificates approved under Act⁴; establish and maintain institutional liaison arrangements⁵, assist in securing from any Ministry, government department, local authority or other relevant body any permission, exemption, authorisation, licence, bonded status, land and any other thing required for the purpose of establishing or operating a business enterprise⁶; and keeping records of all technology transfer agreements relating to investments under this Act⁷. More also provide consultancy services to investors⁸; collect and disseminate information on relevant laws and regulations, and technical matters, including applicable standards, specifications and quality control procedures⁹, undertake economic and sector studies, including market surveys, with a view to identifying investment opportunities¹⁰; register investors¹¹; implement decisions made by the Board¹²; and exercise all functions and powers and perform all duties which under or by virtue of this Act or any other written law are, or may be, vested or delegated to it¹³.

The Investment Centre operated under the auspices of the Investment Board which was a Body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name and with power to all such acts and things as a corporate body¹⁴. The Board was

³ Investment Act 1993 Section 5 (2) a

⁴ Investment Act 1993 Section 5 (2) b

⁵ Investment Act 1993 Section 5 (2) c

⁶ Investment Act 1993 Section 5 (2) d

⁷ Investment Act 1993 Section 5 (2) e

⁸ Investment Act 1993 Section 5 (2) f

⁹ Investment Act 1993 Section 5 (2) g

¹⁰ Investment Act 1993 Section 5 (2) h

¹¹ Investment Act 1993 Section 5 (2) i

¹² Investment Act 1993 Section 5 (2) j

¹³ Investment Act 1993 Section 5 (2) k

¹⁴ Investment Act 1993 section 6

tasked with the formulation and implementation of investment policies; establish guidelines for the centre and issuance of investment certificates.

Similarly for the ZDA Act to achieve its objectives part two of the Act establishes the Zambia Development Agency hereinafter the Agency. The Agency is a Body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name¹⁵. The Agency among other things has a myriad of functions. Firstly it gives advice to the Minister on matters relating to industry, industry development and productivity, investments, exports of goods and services, operations of multi-facility economic zones and matters relating to micro and small scale business enterprises¹⁶. Secondly on the request of the government the Agency studies market access offers received from trading partners under COMESA, WTO OR SADC and advice the government on opportunities and challenges generated by those offers¹⁷. Further the Agency makes detailed impact analysis on select sectors of economy such as textiles, agriculture, mining, tourism, education, skill training, communication, transport, infrastructure development, automobiles, information technology, chemicals, steel and engineering goods, through a multi-disciplinary team¹⁸.

To add on, the Agency is tasked with developing entrepreneurship skills and a business culture in citizens of Zambia, promote and facilitate the development of micro and small business enterprises, formulate investment promotion strategies and promote and coordinate Government

¹⁵Investment Act 1993 Section 6

¹⁶ Zambia Development Agency Act no11 of 2006 section 4

¹⁷ Zambia Development Agency Act no11 of 2006 section 5

¹⁸ Zambia Development Agency Act no11 of 2006 section 5

policies on, and facilitate, investment in Zambia¹⁹. More also the Agency assists in securing from any State institution any permission, exemption, authorization, licence, bonded status, land and any other things required for the purposes of establishing or operating a business enterprise²⁰.

Remarkable of them all is that the Agency plans, manages, and control the privatisation of State owned enterprises and oversee all aspects of the implementation of the privatisation programme and monitor progress of the privatisation programme in Zambia. It also monitors post privatisation activities to ensure compliance with any agreement entered into for the privatisation of any state owned enterprise²¹. The functions of ZDA are far reaching and it has taken over all the functions which were previously undertaken by different institutions namely the Zambia Investment Centre, Zambia Privation Agency, Export Processing Zones Authority, and Small Enterprises Development Board. This has made the Agency a one stop shop facility making it easy and expedient for investors to go about their investment issues.

In the analysis of the above it can be said that the functions of the 2 administrative machineries are almost the same.

4.3 Entry and Post Entry Treatment of Investors

While the 1993 Act only provided for the manner of obtaining an investment certificate without any other solemn requirement, the ZDA Act introduces a mandatory investment threshold and restrictive screening procedure for all the foreign investment. The Act goes further to make a

¹⁹ Zambia Development Agency Act no 11 of 2006 section 5 subsection (2) (a)

²⁰ Zambia Development Agency Act no 11 of 2006 section 5 subsection (2) (b)

²¹ Zambia Development Agency Act no 11 of 2006 section 5 subsection (2) (d)

formal distinction between domestic and foreign investors²². It requires both to apply to the newly established ZDA for an investment certificate by stating that a person who wishes to either develop premises as a multi-facility economic zone, export prescribed goods and services, invest in any business enterprise, should apply to ZDA Board for a license, permit or certificate of registration²³. The circumstances under which the investment certificate is issued to a foreign investor are so restrictive such that the foreign investor needs to have a certain minimum amount of money²⁴. This has enabled the country to have a good quality of investors investing in the country.

4.4 Investment Promotions and Guarantees

Both the 1993 Act and the ZDA Act provide a wide ranging investment promotion guarantees and incentives. However the ZDA Act goes further to provide for tax holidays in certain instances.

4.5 Dispute Settlement

As afore mentioned a very well drafted piece of legislation always has a provision which centres on dispute resolution. As Ndulo has noted, whenever one encounters a piece of legislation or a contractual document, there is the possibility of disagreements or disputes arising from its interpretation, application or implementation²⁵. Despite Zambia being a member of the International Centre for the Settlement of Investment Disputes and has domesticated the Convention on Settlement of Disputes under CAP 42 of the laws of Zambia²⁶ the 1993 Act did not have any provisions for dispute resolutions procedures. This caused a lot of uncertainties as investors were not sure that they were protected by the law and that they had an identified means

²² Zambia Development Agency Act no 11 of 2006 section 2

²³ Zambia Development Agency Act no 11 of 2006 section 68

²⁴ Sampa.44

²⁵ Ndulo.4

²⁶ The Investment Dispute Convention Act

of dispute resolution²⁷. On the other hand, the ZDA act does have a dispute settlement provision which largely refers to the Arbitration Act²⁸.

4.6 Multi-facility Economic Zone

Multi-Facility Economic Zones have been identified as the conspicuous important feature of the ZDA Act. It is cardinal to note that in the 1993 Act there was no provision for Multi-Facility Economic Zones. As mentioned in chapter 3 segment 3.9, the government sanctioned the establishment of Multi-Facility Economic Zones (MFEZs) in Zambia in 2006 with the objective of catalysing industrial and economic development in the manufacturing sector for the purpose of enhancing both domestic and export oriented business²⁹. This is achieved through various incentives afforded to investors investing in these zones. Presently six multi-facility economic zones have been created with one being wholly owned by Zambia citizens.

4.7 Present Investment in Zambia

Since the enactment of the ZDA Act in 2006 there has been an increase in the inflows of FDI in the country. In the year 2000 the total Foreign Direct Investment was 1122 million USA dollars; in 2001 it was 72 million dollars FDI while in 2002 the total amount of FDI was 298 million USA dollars. Further in 2003 the total FDI was 347 million USA dollars while in 2004 the total income from FDI only amounted to 364 million USA dollars. Additionally in 2005 total FDI income amounted to 357 million USA dollars. In 2006 just after the enactment of the ZDA Act the amount of FDI income doubled to 612 million USA dollars and even increasing further to 1322 million USA dollars in 2007. In the year 2008 and 2009 the world experienced an economic meltdown which also affected Zambia, therefore in these years the amount of FDI

²⁷Sampa.18

²⁸ Zambia Development Agency Act no11 of 2006 Section 21

²⁹ Sampa.34

income decreased to 939 million USA dollars and 694 million USA dollars respectively. This economic meltdown only lasted for two year and in 2010 the amount of FDI income reached an unprecedented amount of 1729 million USA dollars³⁰.

From these figures it is evident that after the enactment of the ZDA Act in 2006 the investment inflows in Zambia increased dramatically by 51%. This has been attributed to the landmark provisions of the current investment framework. It is important to note that the drop in FDI inflows in 2008 and 2009 was due to global economic crisis which was experiences worldwide. Currently the Zambia Development Agency has not yet come up with the total investment sum for the year 2011; however they have predicted that the amounts are bound to increase especially after the experienced Asian FDI inflows³¹. With all these it is still felt that the current investment framework is not adequate to enable effective and efficient FDI inflows in the country which will help Zambia meet its economic endeavours as set out in the vision 2030.

4.8 Conclusion

This chapter has illustrated that there is a difference in the repealed Act and the current Act. These differences are demonstrated by the dispute settlement provision, the manner in which investors are treated on entry and after entry in the country as well as the Multi-Facility Economic Zones. The Chapter has also given a synopsis of the statistics of the FDI income prior and after the enactment of the ZDA Act in 2006. Most importantly of all the chapter has concluded that the current ZDA Act is not adequate to enable effective and efficient FDI inflows in the country which will help Zambia meet its economic endeavours as set out in the Vision 2030

³¹ Interview with Sibajene k. Munkombwe Senior Research Officer at Zambia Development Agency.

CHAPTER FIVE

General Conclusions and Recommendation

5.0 Introduction

Having come to the end of the road in this journey which discusses a comparative analysis of the Zambia Development Agency Act and the repealed Investment Act of 1993, it is imperative at this point to take stock of the discourse in the preceding chapters with a view firstly to explicate findings.

5.1 Findings

The extensive objectives of the study (1) to (3) as set out in Chapter one are now returned as follows;

1. In Chapter two the Investment Act of 1993 was discussed taking into consideration its brief ground, its salient features and other laws which regulated investment at that time. Further the chapter went into details giving a synopsis of the overall weakness which the Act had.
2. In chapter 3 the current investment legal framework was considered as well as the policy behind the enactment of the Zambia Development Act. more also the Chapter considered the functions of the Zambia Development Agency the efficacy of the various Statutory Instruments passed pursuant to section 18 of the Zambia Development Agency Act namely; the Roma Industrial Park, the Lusaka South Multi-Facility Economic Zone, the Sub-Sahara Gemstone Exchange Industrial Park and Lumwana Multi-Facility Economic Zone.

3. In Chapter four, has illustrated that the current Zambia Development Agency Act has improved on the previous Act hence managing to attract an increasing number of both local and Foreign Investors in the country. Furthermore in this Chapter it was conclusion that the Current Investment Legal Frame Work is not adequate to enable effective and efficient FDI inflows in the country which will help Zambia meet its economic endeavours as set out in the Vision 2030.

5.2. Recommendations

As aforementioned, despite the Zambia Development Agency Act being landmark investment legislation in Zambia since independence it has its own shortfall. In this segment of the discourse the writer will recommend the best solutions to the short falls of the Zambia Development Agency Act and possible steps to be taken so as to ensure Zambia achieve its economic endeavours as set out in the Vision 2030.

Procedure to Approve Licenses

The first recommendation is that the function of the Agency with regards to approvals and licensing must be detailed and legalised through the amendment of the Act so as to enable transparency in such dealing.

Sensitisation of the General Public

Secondly the Agency must take necessary steps to educate the public on its functions so that all stakeholders are well versed with government policy so as to appreciate and appropriately respond to legislation.

Decentralisation of the Agency

Another recommendation related to the above is that the Agency which is only located in Lusaka must be established in all Provincial Headquarters of the country. This will further the sensitisation of many citizens around the country.

Technology Transfer Provision

It is a fact that Technology Transfer is the recent common way of doing business especially in developed countries. Therefore it is important that our Investment Legal frame work must have a comprehensive section adequately addressing matters relating to Technology Transfer.

Quality and not Amount of Investment

Furthermore the Act should stress more on the quality and relevance of investment unlike emphasising on the amount of investment. This will enable the country to receive quality and relevant investors thus accommodating local investors enabling them to participate in the development of the country.

Independence of the Agency

Further steps must be taken to enable the Agency to work independently. Currently, from the composition of Board it can be concluded that the Agency is simply one of the departments in the Ministry of Commerce and Trade.

Officers of the Agency

The Zambia Development Agency should recruit professional and qualified people to handle the intricate problems of developing and coordinating the Agency. Notable is also the fact that the number of the board members must be reduced as 16 is perceived as a very big number and must comprise of more persons from the private sector. This is so to enable the private sector to be the driving force of the Agency.

Sectors Covered by the Act

Lastly, steps must be taken to enable the Act to cater for indigenous entrepreneurs and Informal sector.

5.3. Conclusion

In a nutshell it is of the essence to note that FDI is very important in the development of any given economy especially third world countries. It is thus necessary for Zambia to ensure that it has a legal framework which promotes investment. This has been reflected in the current landmark investment legal framework which is a one stop facility with diverse investment promotions, guarantees, and incentives. One important feature in promotion of economic growth and development is the creation of multi-facility economic zones in which local and foreign investors are given equal incentives. It has been shown that since 2006 when the ZDA Act was enacted there has been a drastic increase in the inflows of investors in the country. However for Zambia to achieve its target as a Prosperous Middle Income Country as visualised in the Vision 2030 a more precise and adequate legal framework is required. This legal framework can be achieved by putting into consideration the above mentioned recommendation.

Sectors Covered by the Act

Lastly, steps must be taken to enable the Act to cater for indigenous entrepreneurs and Informal sector.

5.3. Conclusion

In a nutshell it is of the essence to note that FDI is very important in the development of any given economy especially third world countries. It is thus necessary for Zambia to ensure that it has a legal framework which promotes investment. This has been reflected in the current landmark investment legal framework which is a one stop facility with diverse investment promotions, guarantees, and incentives. One important feature in promotion of economic growth and development is the creation of multi-facility economic zones in which local and foreign investors are given equal incentives. It has been shown that since 2006 when the ZDA Act was enacted there has been a drastic increase in the inflows of investors in the country. However for Zambia to achieve its target as a Prosperous Middle Income Country as visualised in the Vision 2030 a more precise and adequate legal framework is required. This legal framework can be achieved by putting into consideration the above mentioned recommendation.

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