



**OBLIGATORY ESSAY**

**ON**

**THE LEGAL EFFECTIVENESS OF THE EXPORT PROCESSING  
ZONES ACT (NUMBER 7 OF 2001) AS A MEANS OF ATTRACTING  
FOREIGN DIRECT INVESTMENTS INTO ZAMBIA**

**BY**

**VICTOR CHIBULO MUSABULA**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF  
THE UNIVERSITY OF ZAMBIA IN FULFILMENT OF THE  
REQUIREMENT OF THE AWARD OF THE DEGREE OF  
BACHELORS OF LAW (LLB)**

**THE UNIVERSITY OF ZAMBIA  
SCHOOL OF LAW  
P.O BOX 32379  
LUSAKA**

**NOVEMBER 2004**

**I RECOMMEND THAT THE OBLIGATORY ESSAY WRITTEN UNDER MY SUPERVISION**

**BY**

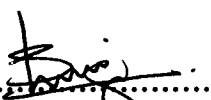
**VICTOR CHIBULO MUSABULA**

**ENTITLED**

**“THE LEGAL EFFECTIVENESS OF THE EXPORT PROCESSING ZONES ACT (NUMBER 7 OF 2001) AS A MEANS OF ATTRACTING FOREIGN DIRECT INVESTMENT”**

**BE ACCEPTED FOR EXAMINATION.**

**I HAVE PERSONALLY CHECKED IT CAREFULLY AND I AM SATISFIED THAT IT FULFILLS THE REQUIREMENTS RELATING TO THE FORMAT LAID DOWN IN THE REGULATIONS GOVERNING OBLIGATORY ESSAYS.**

SIGNED.....  
S. LUNGU  
(SUPERVISOR)

DATE.....10/12/2004.....

## Abstract

The World over with the demise of the cold war there has been a reversion to a liberal approach in the running of the economy entailing less direct involvement by the government in commerce. This has been done by adhering to principles mostly propagated by the World Bank and the International Monetary Fund which included; an intensive privatization of previously state run enterprises, removal of exchange control regulations, a shift from import substitution methods towards export oriented economy as well as structural adjustment program. Thus the economy is expected to be private sector driven with government providing a favorable atmosphere for the private sector to operate. It is expected that the private sector will bring competition into the individual economies and make it responsive to the needs of the international economy.

However the liberalization of the economy and the privatization of most former state run enterprises, has instead resulted in massive job losses and it has been hoped that the jobs that have been lost during the process of privatization and liberalization of the economy will be regained as the new owners of the formerly government run enterprises will bring in new capital and other investors will come into the country and ensure that the jobs lost are soon regained. The task of attracting foreign direct investment is not an easy one as countries have to compete with each other leading to investors being the sole beneficiaries of the competition as standards are lowered in their favor.

In a bid to attract the private sector, most countries have come up with investment codes, which outline the rights that the investor will enjoy in relation to the government. Most codes grant incentives to investors depending on the level of their investment. In Zambia the **Investments Act** can be said to be an example of an investments code in the quest to attract foreign direct investment. The **Act, which has not yielded the much-desired results**, has led to stakeholders

calling for a re-examination of the Act. The government has more recently passed the **Export Processing Zones Act** number 7 of 2001, which equally aims at attracting fresh investment into the country as well as encouraging existing enterprises to expand by providing incentives for those involved in exports. The incentives under the **Export Processing Zones Act** are similar in many respects to those that existed under the **Investments Act** prior to its amendment in 1996 via Act number 5 of that year.

The idea of establishing export processing zones has found support the world over among various governments. This paper will analyze the **Export Processing Zones Act** number 7 of 2001 to gauge its efficacy in attracting foreign direct investment into Zambia as well as examining in brief the safeguards that have been placed against any negative impact that may result from full implementation of the program.

## ACKNOWLEDGEMENTS

I have been able to see far because I have been able to ride on the backs of giants before me and in a work of this magnitude, I obtained numerous ideas and encouragement from several people without whom the task of writing this paper would have been difficult. However I remain responsible for any shortcomings within this text. Several persons have influenced me at particular stages of my life and years of academic pursuit. Those I have managed to acknowledge in this work by no means represent the entirety of persons deserving mention. It is only appropriate that special thanks be given most importantly to my Heavenly Father Jehovah, who has always treated me better than I deserve. Thanks for being with me and for forgiving me and lifting me up every time I fall and for granting me the gift of life.

My acknowledgment would be incomplete without mention of Trevor Hamwajala who not only brought university education into sight but counselled me on the right course to take. Trevor you have been more than a brother to me and your material and moral support has always been valuable. Most importantly thank you for the Computer, which enabled me to type my work at a logical speed. God bless you my dear friend.

Many thanks to Mr. S. Lungu of the University of Zambia, for the cheerful and excellent supervisory manner with which he supervised my entire work and encouraged me throughout the study. Sorry for all the disruptions you encountered during your Board meetings as I kept phoning you to consult. Thank you for responding in a calm manner to the disruptions.

I am grateful to Mr. F. Mudenda of the University of Zambia and Mr. C. Sichande, for reading through the first draft of this essay and giving me advice. I acknowledge the support rendered by Ms. Chipso Mbundire who has been a dear friend and a pillar through this educational escapade. Thank you for spending time reading, retyping the material and making the necessary corrections even though at short notice as you equally had exams to prepare for. God bless you dear.

I cherish the inspiration that I have drawn from my newly found family at Corpus Globe Advocates, especially the Managing Partner Mr. Elias Chipimo, for introducing me to the legal fraternity in a very professional manner and allowing me to take a break from work to finish this study. I acknowledge the rather informal manner in which I used the office facilities for this study. Thanks to Charles Mkokweza and Victoria Dean for helping me through the topic selection process. May God bless you.

I wish to thank my family within the body of Christ that assembles at Go Center. I thank my spiritual guides, Pastor Reutter and Pastor Jolomi for their prayers and inspirational teachings, which propelled me to seek to do better and align myself to the image of Christ my savior through all the years of my studies.

I am thankful to all the people who agreed to be interviewed at times at short notice namely: Mr. Nyalugwe, Ms Margaret Chimanse. Thanks also go to the Staff at the National Assembly Library especially Ms. Chama Mfula, the staff at the Zambia Privatization Agency and Ministry of Commerce and Industry foreign trade Department.

Lastly I wish to thank all my friends past and present, for encouraging me through all the period of my studies. It has not been easy to endure the many untimely closures of the University and the battering by the Police. Praise God this stage is over.

## **Dedication**

This work is dedicated to my Parents, Mr. and Mrs. Musabula and my sisters Harriet, Hope and my only brother Brian as well as my Late Auntie, Joyce.

I would like to thank you sincerely for the words and deeds of encouragements which have been a source of motivation during the period of my studies. I know it has not been trouble-free for you to pull every little monetary resource you had to enable me acquire university education. I can never repay you for all that you have done but can only thank you.

Above all, I thank you Dad and Mum for giving me the latitude to decide for myself the career path to take and still remaining supportive. To my sisters and brother I urge you to work hard in your academics and remain focused in life.

## ABBREVIATIONS

BSA	- BRITISH SOUTH AFRICAN COMPANY
EBZ	- EXPORT BOARD OF ZAMBIA
EPZ	- EXPORT PROCESSING ZONES ACT
FDI	- FOREIGN DIRECT INVESTMENT
FNDP	- FIRST NATIONAL DEVELOPMENT PLAN
ICSID	- INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES
IMF	- INTERNATIONAL MONETRAY FUND
INDECO	- INDUSTRIAL DEVELOPMENT CORPORATION
ONDP	- OFFICE OF THE NATIONAL COMMISION FOR DEVELOPMENT PLANING
SNDP	- SECOND NATIONAL DEVELOPMENT PLAN
WEPZA	- WORLD EXPORT PROCESSING ZONES ASSOCIATION
ZEPZA	- ZAMBIA EXPORT PROCESSING ZONES AUTHORITY
ZIC	- ZAMBIA INVESTMENT CENTRE
ZPA	- ZAMBIA PRIVATISATION AGENCY



TABLE OF CONTENTS

TABLE OF CONTENTS

<i>Title</i>	<i>i</i>
<i>Approval</i>	<i>ii</i>
<i>Abstract</i>	<i>iii</i>
<i>Acknowledgment</i>	<i>v</i>
<i>Dedication</i>	<i>vi</i>
<i>List of abbreviations</i>	<i>vii</i>

CHAPTERS

<b>INTRODUCTION</b> .....	<b>1</b>
<b>POST-INDEPENDENCE LEGISLATION GOVERNING INVESTMENT IN ZAMBIA</b> .....	<b>10</b>
(I) INTRODUCTION .....	10
(II) LEGISLATIVE ATTEMPTS AT PROMOTING FOREIGN DIRECT INVESTMENT IN ZAMBIA DURING THE FIRST AND SECOND REPUBLICS .....	11
(III) FURTHER ATTEMPTS DURING THE THIRD REPUBLIC AT ATTRACTING FOREIGN DIRECT INVESTMENT INTO ZAMBIA .....	16
<b>THE EXPORT PROCESSING ZONES ACT, NUMBER 7 OF 2001</b> .....	<b>20</b>
(I) INTRODUCTION .....	20
(II) A CURSORY VIEW OF EXPORT PROCESSING ZONES DEVELOPMENT IN ZAMBIA .....	22
(III) THE EXPORT PROCESSING ZONES ACT .....	23
(IV) FUNDS OF THE AUTHORITY.....	26
(V) ISSUANCE OF EPZ LICENCES .....	26
(VI) INCENTIVES UNDER THE EPZ ACT .....	29
(VII) LABOUR CONDITIONS UNDER ZAMBIA'S EPZ ACT .....	30
<b>THE ROLE OF FISCAL AND NON-FISCAL INCENTIVES IN ATTRACTING FOREIGN DIRECT INVESTMENT</b> .....	<b>32</b>
(I) INTRODUCTION .....	32
(II) INCENTIVES UNDER THE EPZ ACT AIMED AT ATTRACTING FDI .....	34
(III) FAILURE OF INCENTIVES IN ATTRACTING FDI.....	37
<b>OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION</b> .....	<b>43</b>
(I) SUMMARY .....	43
(II) OBSERVATIONS AND RECOMMENDATIONS .....	44
(III) CONCLUSION .....	48
<b>BIBLIOGRAPHY</b> .....	<b>53</b>

---

## INTRODUCTION

*The conventional wisdom is that foreign direct investment will cure the ills of Africa. This is the mantra of the IMF, World Bank and generally the Western World. The reality is different....Africa is at the bottom of the list of international investment destinations. Africa, north of South Africa and south of the Sahara is a very fragmented continent, individual markets are minute by world standards and is still the Dark continent as far as international boardrooms are concerned. It is still a continent of famines...instability and unpredictability, of short spurs of energy and expressions of good intentions, followed by long periods of inaction and stagnation....*

Andrew Sardanis,

Zambia has, from the time that the territory was carved out at the dawn of the twentieth century through the ambitions of John Cecil Rhodes, strived to encourage foreign direct investment as a means of enhancing social and economic development in the country. Various experiments have been undertaken by the government of the day to encourage foreign investment in the country. Foreign investment can take the form of either portfolio investment or direct investment. Portfolio investment covers such things as the purchase of shares on the stock exchange and thus involves the transfer of capital. Foreign direct investment has been defined by Makola as "international interest in which a resident in one country obtains lasting interest in an enterprise resident in another. It is a situation where a foreign country creates a subsidiary to provide goods and services."<sup>1</sup> Accordingly foreign direct investment involves the acquisition of other auxiliary benefits such as technology, managerial expertise, and creates competition within the country as well as the creation of links with the outside institutions such as banks capital markets and a market for the products.<sup>2</sup> Foreign direct investment is thus the primary means by which private capital, technology, personnel and access to brand names and marketing advantages are transferred from the developed countries to developing countries.

However, as Sardanis has said, the African business environment does present many hindrances to many investors who are concerned with the security of their investment. Due to the

---

<sup>1</sup> Mosina Makola, *The Attraction of Foreign Direct Investment by The African countries*, at page 1

<sup>2</sup> A. Martin(1972),*Minding Their Own Business- Zambia's Struggle Against Western Control*, London: Hutchinson And Company Limited at page 30

---

unpredictability and instability that tends to prevail on the continent caused by inconsistency in implementing government policies pertaining to investment or the lack of it, many investors dare not step foot on African soil. A gaze at Zambia's brief history shows that investors have faced many challenges due to changes in government policy. For instance, faced with the fact that the bulk of the companies at independence were in the hands of foreign nationals or corporations, who seemed not interested in the development of the country, President Kaunda embarked on a vigorous Zambianisation process with his famous Mulungushi reforms on 19 April 1968. The reforms among other things brought about restrictions in the retail trade by restricting the sector to Zambian businessmen except in big towns.<sup>3</sup> The road services were restricted to companies with at least 75% Zambian shareholding or Zambian partnerships as well as individual Zambians. This saw the acquisition of 51% stake by government of the major privately operated firms. Consequently a number of foreign entrepreneurs as well as companies left the face of the Zambian soil.

The change in policy prompting nationalisation appears to have been brought about by the realization that the country was vulnerable to foreign nationals who were in control of the economy as well as the likely changes in global demand of the country's sole export product. The experiences of the early 1970s must have brought this realisation home with an all-time low in the price of copper on the London Metal Exchange. The various National Development Plans that followed reflected the rethinking that was taking place within government. The First National Development Plan (FNDP) of 1967 laid out mechanisms by which the country was going to diversify the economy from copper mining to agriculture. The plan also aimed at establishing a broad social economic infrastructure as the basis for further development. The FNDP can be said to have been the first FDI plan of post independent Zambia. The plan contained eight objectives such as diversification of the economy, growth employment sector, incomes and price reductions of inherited differentials between the urban areas and the rural areas as well as an extensive Zambianisation process.<sup>4</sup>The Second National

---

<sup>3</sup> President Kaunda's Address at the Mulungushi on 19<sup>th</sup> April 1968, Zambia's Economic Revolution Reported by Zambia Information Services, Lusaka: ZIS, at page 27

<sup>4</sup>G.R.Z *First National Development Plan 1966-70*, Lusaka : Office of the National Commission for Development Planning

---

Development Plan (SNDP) of 1972 to 1976 took the baton of diversification further by laying down policy guidelines such as the improvement of living standards in the rural areas such as job creation in the rural areas to avoid the rural-urban drift. The nation was called upon to achieve self-reliance in food production and reduce on imports. Such efforts did not, however, yield much fruit. Zambia's major commodity, copper at the time yielded a colossal amount of revenue for the government such that at the height of the prosperity era, copper raked in over 95% of the country's export earnings.<sup>5</sup>

Despite the massive take-over of most enterprises by the Zambian government, the country was unable to get itself out of the heavy dependence on a single commodity as its major export commodity. It was thus realized that the country needed to do more than merely meeting its domestic needs. The country needed to be an exporter of various commodities if it was to thrive in the modern world. Thus attempts at encouraging foreign direct investment in other fields began to once again take center stage. In 1977 the Government enacted the **Industrial Development Act** number 18 of 1977 which is recognizably the first actual piece of legislation dealing with FDI in that the other legislation till that time dealt with the issue indirectly. The Act performed a dual role, that is, on one hand it sought to re-enforce the nation's desire to be self reliant and reduce dependence on foreign equipment and material as well as technology whilst on the other hand it provided a means of restoring confidence in investors which had been lost by the spirit of the Mulungushi which saw the nationalization of most private enterprises by the government.<sup>6</sup> Section 3 of the Act provided incentives to industries whose projects utilized domestic materials or were embarking on massive expansion which would result in permanent employment opportunity for the people and improved the range of domestic skills. The incentives included tax holidays to pioneer industries and preferential treatment from government with respect to government procurements as well as rebates on customs duty payable on capital goods and intermediate goods. Besides the Industrial Development Act, the government enacted the **Pioneer Industries (Relief from Income Tax) Act** which offered a number

---

<sup>5</sup> Ministry of Finance Report to Parliament in 1967

<sup>6</sup> E.F Ssempebwa "Law in the context of Underdevelopment: A Comment on the Industrial Development Act" in the Zambia Law Journal volume 7-9. Lusaka: Unza Printer, at page 88

---

of incentives to private investors such as five year tax holiday to selected new industries, both local and foreign; capital allowances on plant and machinery, covering such areas as relief toward machinery acquisition and wear and tear.<sup>7</sup> Despite such attempts, the economy was driven by the huge state enterprise that had been created from government's acquisition of equity shares in most enterprises.

In the light of the foregoing, it can be observed that the idea of using legislation as bait for investors is not novel in this country. The government of the Republic of Zambia in 1991 embarked on a clear policy of growth and development as the driving factors premised on a liberal economy with the private sector taking the driving seat. It thus embarked on a massive privatization process of the state run enterprises with the aim of attracting more foreign direct investment through such liberal policies. However to be able to attract investors especially foreign investors requires a clear set of deals which go to constitute the overall investment climate of the country. The country has to dispel the fears that Sardanis has noted are prevalent in Africa. This essay however focuses on the role played by legislation in creating an ideal investment climate. The foreign investors seem to be comfortable with an environment that has a clear legal framework with supportive legislation of the private sector. The efforts marked by the various National Development Plans may be said to have failed to provide the needed environment in that many investors looked at such programs as mere policy guidelines and not binding legislation which would grant them recourse to legal action in case of breach.

The law is a necessary confidence-building pillar that investors always look to.<sup>8</sup> Some scholars have said that the first step governments have to take in creating a regime for foreign direct investment is to liberalize specific legislation governing investment in the country. Though it must be acknowledged that legislation is only a portion of what is required to attract foreign direct investment for besides it a country requires free movement of goods, and services, tax policy, privatization,

---

<sup>7</sup> Act number 55 of 1965

<sup>8</sup> Seminar Presentation, *Investment Policy In Zambia- Performance and Perceptions* at page 30

---

political and economic stability, market size and resource availability be it natural or human. However this paper is concerned with the legal aspect. In the past most governments placed severe restriction on foreign direct investment such as;

- determination of which sectors were open for investment;
- restriction on the value of investments compulsory joint ventures with local firms;
- controls on repatriation of profits;
- export requirements;
- Import restrictions;
- local content requirements;<sup>9</sup>

The government especially since 1991 has enacted enabling legislation such as the **Investments Act** number 39 of 1993. The Act aims at *inter alia* providing a one-stop shop for any investor. The investment center which is created under the Act grants licences, which provide a number of incentives to any qualified investor. The High Court rules have also been amended with the passage of Statutory Instrument number 11 of 1997 by introducing alternative dispute resolution methods such as mediation and amendment of the **Arbitration Act**. The Government has introduced a commercial registry with a clearly streamlined procedure for dealing with commercial matters. The changes have been put in place to ensure a more speedy process of adjudication of commercial matters. The Investment Act has however been criticized by many interested parties as not measuring up to their expectations and have called for its comprehensive amendment. This may perhaps show that is not just a question of having legislation but having legislation that meets the aspirations of the business community if the country is to ever attract foreign direct investment. Statistics show that there has not been any meaningful investment in the country since the Act was put in place.

More recently, the government has enacted the **Export Processing Zones Act**, number 7 of 2001 (herein, the EPZs Act) with the aim of promoting economic development and human resource development, as well as promoting the transfer of technology and investment on environment as well

---

<sup>9</sup> Briefing Paper, Cuts Center for Competition, *Investment and Economic Regulation*, paper number 3/2003 at page 2

---

as employment creation.<sup>10</sup> An Export Processing Zone (EPZ) has been defined by the United Nations Industrial Development Organization (UNIDO) as follows:

A relatively small geographically separated area within a country, the purpose of which is to attract export oriented industries, by offering them especially favourable investment and trade conditions as compared with the remainder of the host country. In particular, the EPZs provide for the importation of goods to be used in the production of exports on bonded duty free basis.

The **Export Processing Zones Act** provides incentives for investors involved in exports in the following sectors; agriculture, agro-processing and manufacturing. According to Heron, EPZs have been used to attract foreign investment into many countries. EPZs have worked wonders for the now famous Asian tigers (Korea, Taiwan) and Mauritius among others. Mauritius is now deemed to be a major exporter of apparel to the United States of America and Europe. The Caribbean export processing region has equally become an important export platform for United States of America manufacturing firms seeking to reduce costs and offset foreign competition by outsourcing the most labour intensive aspects of the production process to local assembly factories located in export processing zones.<sup>11</sup>

Zambia does face a challenge in implementing the EPZs program in that many other developing countries have also implemented similar policies by creating export processing zones. As Heron has noted "it may make sense for a single EPZ economy to adopt investor friendly policies, such as tax holidays and duty free entitlements, the effectiveness of such measures are immediately eroded once neighboring EPZ chose to implement similar policies."<sup>12</sup> According to the International Labour Organization (ILO), there were over 20 countries in Africa alone as at mid 1995 that either

---

<sup>10</sup> Zambezi Times on Line. <http://business.zambezitimes.com>

<sup>11</sup> Tony Heron, (2002) *Export Processing Zones and Policy competition for Foreign Direct Investment: The Offshore Caribbean Development Model*. Sheffield: University of Sheffield

<sup>12</sup> Ibid at page 9

---

had or intend to set up EPZs.<sup>13</sup> Such a situation leads to the race to the bottom as each country tries to out do the other by lowering labour standards

It is for the foregoing reasons that it is imperative to study the legal effectiveness of Zambia's legal regime embodied in the Export Processing Zones Act in attracting foreign direct investment in view of the increased competition. Economists have on the other hand grappled with the cost benefit analysis of establishing export-processing zones and the turnover in terms of foreign direct investment that is attracted into the country. For instance, Zimbabwe launched its EPZs bid at a cost of over twenty five billion Zimbabwean dollars in constructing industrial parks.<sup>14</sup> However, the cost benefit analysis of the program is beyond the scope of this paper.

Besides the foregoing, Zambia is a member of the world multilateral trading system under the World Trade Organization (WTO) and the regional economic groupings such as the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) whose aims *inter alia* includes trade liberalization. The provisions of the EPZ from experience have shown that they fly into the teeth of such organizations objectives. For instance the WTO had given developing countries that had implemented such policies up to 2002 to align their policies in accordance with the multilateral trade regime.

The sociological school of thought in jurisprudence argues that purpose should guide the law. This entails that any piece of legislation that is enacted ought to serve its purpose in society. The establishment of export processing zones is not a new trend. According to some scholars export processing zones can be traced as far back as the Roman Empire, which set up free trade zones along commercial routes which were used to store duty free goods before exporting them. The free towns of the middle ages and the duty free ports of the British Empire namely Singapore, Gibraltar, Hong Kong also continued the tradition. The modern trend of export processing zones is traced to Ireland around Shannon airport in about 1960. The airport was threatened by the advent of the new

---

<sup>13</sup> International Labour Organisation, Bureau for Multinational Enterprise Activities. [www.trasnationale.org/pays/epz.htm](http://www.trasnationale.org/pays/epz.htm)

<sup>14</sup> Jeffrey Gogo In The Herald- Zimbabwe News Online. [www.herald.co.zw/Index.php?Id=2671](http://www.herald.co.zw/Index.php?Id=2671)



---

transatlantic jet and thus the airport was turned into a duty free production zone for goods with high value added.<sup>15</sup> Thus, Zambia has the advantage of having a god view point of the situation as it must have been able to observe how the other countries have faired. To begin with, from their inception, EPZs have not been free of critics especially with regard to labour conditions in most EPZ. In the race to the bottom most countries make their labour laws inapplicable in EPZ. This has led to deplorable working conditions in EPZ. Thus this study is relevant, as it will examine how the workers rights have been protected under the EPZ Act in Zambia.

This study consists of five chapters. The first chapter has been an introductory chapter, which identified the questions that are to be investigated as well as the aims and objective of the study and method of research.

The second chapter traces the historical development in Zambia, of the country's attempt at attracting FDI. This will be done by examining previous and current pieces of legislation that were enacted since 1964 in an attempt to attract foreign direct investment. The focus here will be on the period from the time that the nation got its independence to the date of enactment of the Export Processing Zones Act. The essay will highlight some of the attempts that have been made previously to attract foreign direct investment and the success and failures of the undertakings in the named legislation.

The third chapter will examine what export processing zones are in general and the various principles governing their operation and then go on to analyse the **Export Processing Zones Act** of 2001.

The fourth chapter will focus on the various incentives that have been granted to investors who obtain EPZ licences under the **Export Processing Zones Act** and examine their likely effect in attracting foreign investment.

The fifth chapter carries the observations, recommendations and conclusion. The broad conclusion reached is that the **Export Processing Zones Act** or an export processing zones

---

<sup>15</sup> ICFTU, Behind the Wire.

---

program does not of itself remedy Zambia's quest in attracting foreign direct investment in the sagacity that they remedy the economic environment. Secondly, little safeguards if any have been put in place against repercussions resulting from the EPZ program on the local industry. Thirdly, the incentives under the Act have been granted before with little or no success at all. Government has tended to subsequently amend the legislation and remove the incentives. This was the case with the **Investment Act** of 1993, which was amended by Act number 5 of 1996 to remove the incentives under it and leaving only the general ones, which an investor may obtain under the **Income Tax Act** thereby defeating the essence of obtaining a licence.

---

## POST-INDEPENDENCE LEGISLATION GOVERNING INVESTMENT IN ZAMBIA

### (i) *Introduction*

Attempts at attracting foreign direct investment in Zambia are as old as the country itself. From the period of the British South African Company rule in 1889 to date, many pieces of legislation have been enacted to promote foreign direct investments into the country. Through all the three respective Republics, attempts have continued to be taken by the various Presidents as evidenced in the numerous trips made abroad so as to attract foreign investors into the country. The government has needed foreign investors to enhance development. The government during the second Republic in a bid to achieve economic development at an enhanced speed decided to nationalize most existing enterprises as the private sector was viewed as dragging its feet and did not have the interest of the nation. President Kaunda bemoaned the slow pace of the Zambianisation process especially by the mining companies, which had also failed to expand their operations as he felt that they paid 80% of their profits as dividends instead of using it for further expansion.<sup>16</sup> This resulted in the government decisions to get involved in business by acquiring 51% shares in most companies. The result was that the largest maze of parastatals emerged. For instance, the Industrial Development Corporation (Indeco) after the full implementation of the Mulungushi reforms which stipulated government's decisions to get involved in business accumulated a total of 108 million Kwacha in assets representing a hundred fold increase from its position prior to the reforms. This made Indeco the largest enterprise outside the mining houses.<sup>17</sup> The Matero reforms brought the mining houses under government control as it acquired 51% shares in Anglo American Corporation and the Roan Selection Trust's holding of Zambian mines.

However, the period of the 1990s saw a reversion to liberal economic policies with less government involvement except the provision of an enabling environment. The enabling environment entails *inter alia* political stability and an effective legal regime. Thus, the Government in 1992 decided to

---

<sup>16</sup> Andrew Sardanis, (2003) *Africa: Another Side of the Coin*. New York: I.B Tauris Publications at page 230

privatize the state run enterprises as most were viewed as being a heavy burden on the nation's resources. Despite the massive nationalization process of the 1970s, however, the government tried to provide investors with confidence in the economy by introducing fiscal incentives embedded in pieces of legislation so as to safeguard their investments against future nationalization processes. However, little was achieved. Thus, the quest to attract foreign investors has continued as can be evidenced from the statement by Mr. Mwanawasa when he became President of the Republic, that he was going to grant tax rebates to foreign investors who set up their businesses in rural areas as well as tax and duty reductions to firms which agree to develop Zambia's raw materials.<sup>18</sup> This Chapter of the essay focuses on legislation enacted after independence in 1964 by the government in a bid to promote investment, it concludes by way of introducing the **Export Processing Zones Act** number 7 of 2001.

***(ii) Legislative Attempts at Promoting Foreign Direct Investment in Zambia during the First and Second Republics***

At independence, the economy of the country was relatively healthy as the country enjoyed the proceeds from the mines in terms of mineral royalty, which were bequeathed by the British South African Company (BSA) to the new Zambian government, and the copper prices were relatively high on the world market. Several factors may have however played a part in speeding up the pace at which the government not only got involved in the running of existing business in the nation but also set up its own enterprises. For instance, the Universal Declaration of Independence in Southern Rhodesia (Zimbabwe) brought a sense of urgency in the need to develop the local industry as well the mass exodus of most Europeans from the country upon its gaining independence coupled with the perceived lack of interest in the welfare of the Zambian people by the existing companies.

---

<sup>17</sup> Ibid at page 222

<sup>18</sup> The Post Newspaper Tuesday January 22 2002

According to Ailola, prior to independence, the support for foreign direct investment had mostly been a policy matter without any legal support.<sup>19</sup> In 1964 the government published the White Paper on Industrial Development, which was finally adopted by October of the same year. The paper outlined the need for government to get involved in the development of the industry in Zambia. The government established the Office of National Development and Planning (ONDP), which was placed under the Office of the Vice President with the aim of fostering the said development. The government decided to use the INDECO as a vehicle to spearhead most industrial development programs that had been on paper for some time as well as a vehicle for making loans to investors and giving advice to potential investors. Indeco had been established in 1960 as a company owned by the Northern Rhodesian Government but in 1964 the company was converted into a private company. The Ministry of Commerce and Industry and the Minister exercised supervisory powers over its operations. The new government had been promising the public that they were going to enact legislation to promote investments. But this was to take over a decade before the enabling legislation could be enacted. The country's total domestic exports comprised copper at 91%. The country embarked on a diversification and on import substitution approach so as to ease the external disequilibrium by reducing the deficit in trade and payment balance.<sup>20</sup>

The earliest piece of legislation that aimed at promoting investment into Zambia was the **Pioneer Industries (Relief from Income Tax) Act**, number 5 of 1965. The Act was passed to promote investment as well as promote government's policy of import substitution. The Act granted tax holidays to pioneer industries. Under section 3 of the Act, the Minister of Commerce and Industry could confer pioneer status on an industry if satisfied that there were favourable prospects for the further development of the industry or that there were insufficient facilities in Zambia to enable the industry to perform on a profitable commercial basis and the Minister was however of the view that the industry was of public relevance. Depending on the extent of the capital the holiday could be enjoyed up to a period of six

---

<sup>19</sup> David Akapelwa Ailola, *Foreign Investment: The Law and Policy in Zambia*, Lusaka: University of Zambia, (Masters Thesis) Unpublished at page 35

years. The capital expenditure incurred during the period of the holiday could be claimed as a deduction after the holiday. This extended the effective holiday period.<sup>21</sup>

Besides the **Pioneer Industries (Relief from Income Tax) Act**, several other pieces of legislation were enacted to spearhead development. For instance, the **Tariff Protection Customs and Excise Act** was passed and provided for duty free entry or entry at low rates of duty for raw materials on capital equipment for industrial purposes<sup>22</sup> The Act also provided some anti dumping provisions, which ensured protection of the local industry by nonresident firms. Through the amendments to the Act, new and emerging industries were selected by the Tariff Advisory Board to be protected by way of tariffs.

In 1969 the government amended the taxation dealing with the mines as it introduced the **Mineral Tax Act** replacing the royalty and export tax that was previously charged on minerals mined. The mining houses had complained that the formula used disadvantaged them thus their inability to contribute to the Zambian economy. Consequently they demanded that the basis of the royalty be based on profit and not the fixed rate per ton, which was 13.5%. According to Sardanis, however, the complaint was unjustified as the mining houses had been paying the same royalties to the BSA but were simply unhappy to pay the same to the Zambian government. The reason is that the British South African Company had shares in the mining houses and thus the royalties circulated back to the mining companies.<sup>23</sup> The government in a bid to respond auspiciously to the needs of the mining houses enacted the **Mineral Tax Act**. Under the **Mineral Tax Act**, in section 7, the mineral right holder was granted the right to be refunded mineral tax with respect of any prescribed period if the average income was less than 12% of the average equity in that period.

The Mulungushi and Matero reforms, which after their implementation saw the government acquiring 51% of the major enterprises operating at the time, caused instability in the economy as

<sup>20</sup> Republic of Zambia, Ministry of Finance, Economic Report 1965 presented to Parliament, Lusaka: Government Printers

<sup>21</sup> E.F Ssempebwa, *Law in the Context of Underdevelopment: A Comment on the Industrial Development Act*, In Zambia Law Journal Volume 7-9. Lusaka: Unza Printer

investor confidence was eroded. Thus to allay fears of any further nationalization of companies or any loss that may arise from such process, the government in 1970 enacted the **Investment Disputes Conventions Act** whose effect was to make Zambia a member of the International Centre for the settlement of Investment Disputes (ICSID). The Act was meant to ensure that the take over bids proceeded in accordance with internationally recognized principles. However this piece of legislation was not of any full effect, as Zambia did not become a member of the International Centre for Settlement of Investment Disputes as the government viewed the Centre as a capitalist's tool to decide in favour of the investors.<sup>24</sup>

However the major legal basis in support of foreign direct investment during the period can be traced to the **Industrial Development Act**. The period of the 1970s brought a lot of economic hardship to the country. The prices of copper had gone down on the world market. The price of fuel on the other hand had gone up and thus the country needed foreign capital in order to revamp the economy which was in dire need of such investments coupled with the huge spending spree which the government had undertaken to educate the masses and building of other infrastructure. This was the basis upon which the government enacted the **Industrial Development Act** so as to provide foreign investors with the much-needed environment in which to operate. The Act may also be said to have been an attempt to patch up the strained confidence due to the spirit of the Mulungushi and Matero reforms. The Act provided incentives to industries that or projects, which maximized the utilization of domestic raw materials and produced goods of intermediate use by other industries as well as promoted the diversification of its industrial structure. In order for the industries to benefit from the incentives also had to provide opportunity for permanent employment of Zambians as well as ensure the improvement of domestic industrial skills.

---

<sup>22</sup> Ministry of Commerce, Annual Report of Ministry of Commerce and Industry 1964, at page 7

<sup>23</sup> Andrew Sardanis at page 230,

<sup>24</sup> David Akapelwa Ailola, *Foreign Investment: the Law and Policy in Zambia*. Lusaka: University of Zambia ( Unpublished) Masters Degree Thesis at page 55

Among the incentives that the Act provided were preferential treatment with respect to government purchases, as well as in terms of granting of and processing of import licenses. The Act further granted rebates on customs duty payable on capital equipment, raw materials and intermediate goods. Qualifying industries were also granted relief from sales tax on raw materials and intermediate goods and as well as equipment. Besides the foregoing, the Act granted relief from selective Employment Tax for such period as the Minister determined. The Act was however repealed and replaced by the **Investments Act** number 5 of 1986, which was equally repealed and replaced in 1991, by the **Investment Act** number 39 of 1993.<sup>25</sup>

The **Investments Act** of 1986 was a response to the shortcomings of the **Industrial Development Act**. The **Industrial Development Act** failed to achieve its aim of attracting foreign direct investment in the industrial sector as it was said to have failed to address the concerns of the investors. The Act's shortcomings are reflected in the Minister of Finance's address to Parliament during the second reading of the **Investment Act** of 1986. The Minister noted that the **Industrial Development Act** in its provision had left too much discretion with government, a situation that left the investor without any meaningful guarantee as the environment was still uncertain and arbitrary in the light of the nationalization campaign. Under the **Industrial Development Act** the investor was required to make the investment first before he could apply for the incentives under the Act without any guarantee that they would be given the incentives upon application. Another shortcoming of the Act was that there were too many ministries involved in the consultative process before the investor could be granted the incentives. This made the process lengthy. Most important of all however, was the fact that there was no guarantee to the investor of the continued existence of the incentives under the Act once they were granted.<sup>26</sup>

<sup>25</sup> Mwenya Kaela, (2000) *An Overview of the Legal Framework for Investment in Zambia*. Lusaka: University of Zambia School of Law Final year Student Project. (Unpublished)

<sup>26</sup> Minister of Finance in Daily Parliamentary Debates 1986 March 12



Besides the foregoing, the Act failed to enhance development due to its restricted area of application as it catered for the manufacturing sector leaving out the agriculture, tourism and service sectors.<sup>27</sup> Thus the **Investment Act** was meant to be supportive of the **Industrial development Act** as it would address the latter's inadequacies.<sup>28</sup> Consequently it is against this background that the Investment Act of 1986 was enacted to remedy the complaints arising from the decade long **Industrial Development Act**.

*(iii) Further attempts during the Third Republic at attracting Foreign Direct Investment into Zambia*

With the reversion to a multiparty system of governance, in 1991, the government of the Republic in 1992 reverted to a more liberal approach as it sought to reduce government's involvement in the running of business. The government thus enacted laws that were tailored towards a free market economy, which was also in line with the International Monetary Fund's debt relief conditions. Thus the government enacted such legislation as the **Privatization Act**, the **Investments Act** and the **Securities Act**.

The **Privatization Act** Chapter 386 of the 1995 edition of the Laws of Zambia provides for the mechanisms by which the government is to privatize and commercialise the state owned enterprises and to dispose of its holding in most companies so as to let them be managed by the private sector who hopefully would also have the capacity to inject fresh investment in the companies.

The objective of the Act is to scale down governments direct initiative in economic activities and corresponding administrative roles. This will also entail a reduced budgetary cost arising from subsidization of unprofitable companies. The government wished to let the private sector become the driving force of commercial and business activity whilst helping to provide an enabling environment for

---

<sup>27</sup> Daily Parliamentary debates 12 February 1986

<sup>28</sup> Daily Parliamentary Debates 12 February 1986

business to thrive and help develop the economy. Consequently in accordance with the Act, as at 30 June 2004, a total of two hundred and fifty-nine companies had been privatized.<sup>29</sup>

The **Investments Act** number 39 of 1993 was as earlier stated an amendment of the 1991 Act. This was also amended and became Chapter 385 of the Laws of Zambia. The government sought to provide a one stop shop for the investor by establishing the Zambia Investment Centre (ZIC).<sup>30</sup> ZIC aims at coordinating investment policies in Zambia by consolidating the application, screening and approval processes as well as monitoring the performance of enterprises which have been granted investments licences. Besides the mentioned aims the centre keeps record of all technology transfer agreements of investor licence holders as well as provide consultancy on relevant laws affecting investments. Under part four of the Act, various incentives are granted to investors such as reduced tax on income received for instance income from farming is taxed at 15% per annum. The investor is also exempt from income tax on dividends from farming for a period of five years.<sup>31</sup> The Act under section 21 provides investors whose enterprises are based in rural areas a reduced tax for the first five years, which will also be reduced amounting to one seventh of that tax which would otherwise be chargeable on such income.

The Act under section 30 provides for a relaxation of the immigration law by allowing investors who invest over two hundred and fifty thousand United States dollars and employs a minimum of ten people shall be entitled to a self employment permit or a resident permit as well as to obtain up to five work permits for expatriate staff. The centre also assists the investors in obtaining the work permits that they require. The Centre also assists investors in identifying suitable land for their investment as well as in obtaining electricity and water coupled with transport and communication services. The investor is also

---

<sup>29</sup> Zambia Privatization Agency " Status Report" as At 30 June 2004

<sup>30</sup> Section 4 of the Investments Act

<sup>31</sup> Ibid section 26

entitled to transfer out of Zambia in foreign currency upon payment of any obligations that may be outstanding.<sup>32</sup>

The **Securities Act**, chapter 354 of the 1995 edition of the laws of Zambia, primarily applies to indirect investment in Zambia. The Act sets the legal framework for capital securities market in Zambia. The Act establishes the Securities and Exchange Commission (SEC) which is a body corporate with regulatory and supervisory authority over the conduct of securities business. SEC acts as a regulator and for the licensing of participants in the securities market. The Act has seen the setting up of the Lusaka Stock Exchange and several companies have their securities traded on the market. Thus companies are able to raise capital from the public for their expansion. The Act provides incentives to investors such as non-payment of property transfer tax for selling of shares on the stock exchange. All dealings under the stock exchange do not attract value added tax. However because the focus of the paper is foreign direct investment we will not dive further into looking at this Act.

The government has also made advances in the judicial system especially with the rate of delivery of justice by introducing the commercial registry and judges who are vested in dealing with commercial matters. The **High Court Act** has been amended by the introduction of mediation as an alternative means of resolving disputes among the parties. This process is party driven and much faster than the traditional litigation process. The **Arbitration Act** of 1933 has also been amended by the enactment of the **Arbitration Act** number 19 of 2000. The legislative changes have been made in an attempt to create a favourable atmosphere for the smooth conduct of business in the country by the private sector.

Despite the numerous incentives that the government has provided under the various legislation since independence, very little has been achieved. For instance, under the Investment Act, since 1993 the Zambia Investment Centre has registered 2000 investment projects with a total pledge of two billion

---

<sup>32</sup> *ibid* section 32 to 36

five hundred million dollars. However, the actual investment was one billion six million dollars. This however excluded investments into the mining sector.<sup>33</sup> As Mwenda citing Lowenferd, notes that fiscal incentives are not enough of themselves to attract foreign direct investment. Martin in a Study of the Zambian economy observed, “that non of the industries that were granted pioneer status under Zambia’s **Pioneer Industries (Relief from Income Tax) Act** of 1969 got attracted by fiscal incentives”.<sup>34</sup>

The government has recently enacted the **Export Processing Zone Act**, number 7 of 2001 and it is hoped that the enactment of such legislation will achieve what has prior failed to be achieved. The Act provides several fiscal incentives to investors in agriculture, agro-processing and manufacturing sectors. The manufacturing sector has suffered from the prevalence of cheap imports from within the region and beyond especially due to its narrow base as it is mainly confined to agricultural products such as tobacco, cotton and fresh flowers. Efforts in the past to assist the industry have not born fruit. For instance, the manufacturing under bond initiative under which manufactures imported duty free raw materials under bond and were allowed to use the raw material to manufacture goods for exports. Manufactures were charged duty on the proportion of the raw materials that were used to produce goods for the local market. Another similar program was the duty draw back scheme under which manufacturers could claim back duty paid on the raw material that were used in the production of goods for export.<sup>35</sup> However, the efforts did not yield results as they only covered constraints relating to duty.

The EPZ Act is of interest in that the fruits of the previous similar legal provisions have not been realised. Thus it is imperative to examine how the government intends to achieve its objective of increased foreign direct investment into the country through the EPZ program. The following chapter consequently focuses on export processing zones and examines the legal machinery governing their operation under the **Export Processing Zones Act**

<sup>33</sup> Chama Nsabika, “Privatized mines Have not Registered with the Investment Center” in The Post Newspaper Monday January 7 2001.

<sup>34</sup> A Martin, *Minding their Own Business*, London: Penguin Books, 1975 at page 65

<sup>35</sup> Report of the Committee on Economic Development and Labour, (Lusaka: National Assembly) 2003.

---

## THE EXPORT PROCESSING ZONES ACT, NUMBER 7 OF 2001

### (i) *Introduction*

*It is the intention of government to work with the private sector to attain efficiencies of scale just as we expect the private sector to make full use of the strategic positions and linkages outside the country to identify areas we enjoy comparative advantage to be exploited for national benefit. Globalisation demands that we establish areas of specialisation to enable us export. Our interaction with global business has to be fully focused if we are to stand a chance of survival. There is grave danger that Zambia may become an importing nation unless we develop a capacity to produce for export.*  
*President Frederick Chiluba*<sup>36</sup>

The government has encouraged the private sector to export in the past through the creation of the export Board of Zambia, which is a statutory body, created under the Export Development Act. More recently the government has enacted the Export Processing Zones Act, which aims at enhancing the capacity of the private sector to export. An Export Processing Zone (EPZs) may be defined as “industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being re-exported.”<sup>37</sup> The United Nations Development Organisation (UNIDO) as aforementioned has however defined EPZs as;

*relatively small, geographically separated areas within a country, the purpose of which is to attract export oriented industries, by offering them especially favourable investment and trade conditions as compared with the remainder of the host country. In particular, the EPZs provide for the importation of goods to be used in the production of exports on a bonded duty free basis.*<sup>38</sup>

EPZs exist in different forms; some are operated as fenced in zones others as single factories located anywhere in the country but are awarded the EPZ status whilst others are located in industrial parks. EPZs may also be free trade zones, bonded warehouses, free ports and customs zones.<sup>39</sup> The

---

<sup>36</sup> Presidential Speech During the Opening of Parliament

<sup>37</sup> Supra note 4 at page 1

<sup>38</sup> P. Dicken, *Global Shift: Transforming the World Economy* ( London: Sage, 1998), page 130

<sup>39</sup> International Labour Organisation “Export Processing Zones”. <http://www.ilo.org/public/english/dialogue/sector/themes/epz.htm> at page 1

EPZ concept in China for instance, has about seven different types of zones ranging from entire cities and high technology zones.<sup>40</sup>

Under section 2 of the **Export Processing Zones Act**, an export processing zone has been defined as “any area or premises in Zambia, declared under section 14 to be an export processing zone.” What is worth noting is that EPZs are regions where certain economic activities are promoted by means of a set policy that does not apply to the rest of the country and the end purpose is to foster foreign direct investment into the country. EPZ attract foreign direct investment (FDI) because the cost of production is lower for companies located in the zones, which results in higher profits from their operation. This is because there are various incentives granted to companies, which locate to the designated zones such as duty free status; tax holidays; tax exemption or reduction; simplified administrative procedures and fewer regulations; improved infrastructure and facilities as well as advantageous geographical location. The host country hopes to benefit through job creation, improved capability of foreign exchange earnings, trade expansion, and transfer of advanced technologies and resulting productivity gains.<sup>41</sup>

The use of EPZs has been observed to enhance the development of manufactured exports among developing countries. The best known examples according to Steve Radelet have been the East Asian countries in which the income grew by between four fold (in South East Asia) and seven fold in the four tigers on the back of labour intensive manufactured exports. Outside of Asia, Mauritius, Ireland and Tunisia have been noted to achieve both rapid manufactured exports and rapid economic growth over sustained periods due to sustained reliance on an EPZ program.

The legal framework for the EPZ program has been almost similar in many jurisdictions that have employed the program. Despite the similarities, some programs have been a success whilst others have been a disaster. This Chapter will analyse the legal framework governing the EPZ program in Zambia. The chapter proceeds by briefly looking at the historical known account of export processing zones

---

<sup>40</sup>Supra note 3 at page 2

programs and finally goes on to analyse provisions of the Export Processing Zones Act, number 7 of 2001 and lastly briefly looks at labour condition in EPZs.

(ii) *A cursory view of Export processing zones development in Zambia*

EPZs have grown considerably in size and number the world over in the last three decades or so, but the model is not new. History reveals that the Roman Empire had free trade zones established along key commercial routes. These areas were used for storing duty free goods before re-exporting them. The free towns of the Middle Ages and the duty free ports of the British Empire continued the tradition.<sup>42</sup> According to the International Labour Organisation (ILO) the modern recognized EPZ program was set up in Spain in 1929.<sup>43</sup> The period of the 1960s and 1970s saw the proliferation of EPZ programs by countries in Asia, Latin America, Caribbean and much less in Africa. As stated by Jauch, there are now between two hundred and eight hundred and fifty EPZs employing between four million and twenty seven million people.<sup>44</sup> In Africa alone EPZ programs have been implemented in well over twelve countries while in some countries such as South Africa, there is a semblance of the EPZ program being implemented through the back door as there is no precise statute establishing the program.

The history in Zambia regarding the establishment of the EPZ program dates as far back as 1997 when the International Development Ireland, Dublin prepared a report entitled "*Report on Export Processing Zone Development in Zambia-Recommended Principles, Policies and Future Directions.*" The report and other studies resulted into the establishment of the EPZ program. The export processing zones (EPZ) program in Zambia however, only got underway in 2001 with the enactment of the **Export Processing Zones Act**, number 7 of 2001 (the "Act") which only became operational in 2003."<sup>45</sup> The Act has nine parts covering a total of forty-two sections.

<sup>41</sup> Wei Ge, *The Dynamics of Export Processing zones*, at page 2

<sup>42</sup> International Confederation of Free Trade Unions

<sup>43</sup> Herbert Jauch, (2002) *Export Processing Zones and the Quest for Sustainable Development: A Southern Africa Perspective*. [http://www.larri.com.na/publications/EPZ\\_article2002.htm](http://www.larri.com.na/publications/EPZ_article2002.htm) at page 2

<sup>44</sup> *Ibid* at page 102

<sup>45</sup> Zambia Export Processing Zones Authority Information for Prospective EPZ investors

According to the Public Investment Programme for 2001 and 2003, the establishment of the EPZ project is estimated at a total cost of 24.6 billion Kwacha. Part of the cost of the project is intended to go towards the setting up of infrastructure for producers of export products as well as establishment of the Zambia Export Processing Zone Authority (ZEPZA). The Zambian model involves the establishment of industrial parks or industrial estates and stand-alone facilities. The justification for allocating such a colossal sum of money into the establishment of EPZs in Zambia is because EPZs are expected to "provide free trade status to industries in the zones in order to stimulate growth in the manufacturing sector and increase export earnings."<sup>46</sup> It is further hoped that EPZs will "contribute to economic growth through increased foreign direct investment, employment opportunity, foreign exchange and backward linkages within the domestic economy."<sup>47</sup> The establishment of EPZs is meant to be a break away from an inward looking growth path. EPZs facilitate international flows of trade, capital and technology and hasten the pace of economic development and structural transformation.<sup>48</sup>

### **(iii) *The Export Processing Zones Act***

Attracting foreign direct investment is like marketing any new product; it requires a concerted effort and an extensive marketing strategy. The investors need to be furnished with information upon which they can act. Most investors are attracted by what they gather from the media about a certain country. Thus investment promotion agencies play a vital role in attracting investors. Most of the EPZ programs are administered by export processing zones authorities, which are mostly, bodies corporate having perpetual succession and a common seal. The authorities are responsible for the advancement of an export led growth by encouraging and promoting foreign investment in the zones. The bulk of the legislation examined also provides for the existence of an executive board, which is entrusted with the responsibility of determining the general direction of the authority. The boards mostly consist of the

<sup>46</sup> Ministry of Finance and National Planning, *Public Investment Program 2001-2003 Volume 2. Project Profile* (Lusaka: Government Printers) February 2002. at page 153

<sup>47</sup> *Supra* note 16 at page 153

<sup>48</sup> Wei Ge, *The Dynamics of Export Processing Zones*, number 144 of 1999 UNCTAD Discussion Paper, Geneva Switzerland at page 1



Minister in charge of industries, commerce, and finance, a representative from the local chamber of commerce and industry association, representatives from among the EPZ developers and EPZ businesses.

The EPZ program in Zambia is administered by the Export Processing Zones Authority (ZEPZA) which is established in part two of the Act under section 3 of the Act. The ZEPZA is a body corporate with perpetual succession and with a common seal capable of being sued and suing in its own name. This legislative provision ensures the continued existence of the ZEPZA. A Managing Director who is appointed by the Board heads ZEPZA. The Managing Director according to section 9 is to be responsible for management of the affairs of the ZEPZA in accordance with the policies and directions of the Board. The Director has the authority to execute any agreement or contract, which binds the Authority.<sup>49</sup> However the Act does not specify any qualifications that a person must meet for him to hold the position of Director. ZEPZA has the mandate of promoting export oriented investment within designated zones or stand alone zones. According to section 6 of the Act, the Authority has the mandate to perform the following duties:

- (a) develop export processing zones
- (b) to facilitate the development of export processing zones by developers and investors;
- (c) to consider and determine applications for licences under the Act and to issue licences;
- (d) to assist applicants for licences under the Act by providing services for obtaining other relevant licences, permits and facilities;
- (e) to administer, control and regulate EPZ and to ensure compliance with *the* Act and other relevant laws relevant to the activities of the EPZ;
- (f) to monitor and evaluate the activities, performance and development of enterprises in EPZs;
- (g) to promote and market EPZ among investors; and to advise the Minister on matters relating to investment in, or the operation of EPZ.

In many ways ZEPZA resembles the Zambia Investment Centre due to the role that the authority performs that of being a one stop shop for the investor. By assisting the investor with obtaining the necessary licences and clearance, ZEPZA cuts out the huddle of having to deal with too many authorities and curtails the corruption that is inherent in many government departments. According to research

conducted by the author a majority of enterprises in the private sector is dissatisfied with the set up of a one-stop shop. They favour a first stop shop to a one stop. A first stop shop is proposed instead which should encompass all organs involved in investment promotion such as the Zambia Investments Centre (ZIC), the Export Board of Zambia (EBZ), the Zambia Privatisation Agency (ZPA), the Zambia National Tourist Board (ZNTB) and the Zambia Export Processing Zones Authority (ZEPZA). It is hoped that such an arrangement will quicken the application and approval process. These sentiments were also raised during the private sector development forum held in Livingstone in August 2004 at which the President of the Republic was present. Such a setup will also help to reduce the cost of funding to such institutions.

Section 7 of the Act establishes the Export Processing Zones Board. The board has authority to *inter alia* appoint the managing director of the Authority as well as appoint other personnel of the Authority. According to section 7, the Board is to comprise the following;

- (i) Permanent Secretary of the Ministry of commerce Trade and Industry;
- (ii) Permanent Secretary of the Ministry responsible for finance;
- (iii) Permanent Secretary of the Ministry responsible for labour;
- (iv) the Director General of the Investments Centre;
- (v) Permanent Secretary for the ministry responsible for lands;
- (vi) Commissioner-General of the Zambia Revenue Authority;
- (vii) the Executive Director of the Export Board of Zambia established under the Export Development Board;
- (viii) the Director General of the Zambia Investment Centre
- (ix) the chief Executive Officer of the National Science and Technology Council;
- (x) A representative of the Zambia Export Growers Association of Zambia;
- (xi) A representative of the Zambia Bankers Association; and
- (xii) One other person from the private sector

The Export Processing Zones Authority Board is the governing body of the authority with power to ensure its proper management and ensuring that it performs according to the provisions of the Act.<sup>50</sup> The Minister responsible for trade and industry appoints the Board members. Each member of the board is to serve for a period of three years upon being appointed. The tenure of office can however be extended for a further period of three years. The Act is however silent as to whether each member is only entitled to

<sup>49</sup> Section 5 of the Act.

serve for two terms only. This creates uncertainty in view of the fact that the Act stipulates that members of the board shall comprise Permanent Secretaries as *ex-officios* in the named Ministries who may serve in those positions for a longer duration. Furthermore, the fact that the Minister who is a politician is the one to make the appointments compromises on the professionalism of the Authority as persons loyal to the ruling party may be appointed instead of professional persons.

It may further be noted that of the twelve members of the board, eight are senior public servants. This shows also that the private sector is being sidelined even though there is talk of the private sector being the driving force for development of the economy.

**(iv) *Funds of the Authority***

Part three of the Act deals with financial matters relating to the Authority. According to section ten of the Act, ZEPZA is to draw its funds from the money appropriated by Parliament for the purpose of the ZEPZA, fees and other charges paid to the ZEPZA, grants or donations from any source in Zambia. ZEPZA can also obtain money from outside the country with the approval of the Minister in order for the authority to discharge its functions. The Authority can also raise its own funds from loans or other means from any source subject to the approval of the Minister. ZEPZA may invest its funds, which it does not require for its immediate use.

The accounts of the Authority are to be audited annually by independent Auditors appointed by the Board. The board is to submit to the Minister a report concerning the activities of the Authority during the financial year. The report of the board is to include the audited balance sheet, audited statement of income and expenditure. The Minister is to lay the report before the National Assembly upon receipt.

**(v) *Issuance of EPZ Licences***

Part five of the Act deals with granting of licences. ZEPZA is empowered under section 17 of the Act to process applications by applicants for the issuance of an export processing zone licence. Under the

---

<sup>50</sup> Section 7(4) of the EPZ Act

---

**Export Processing Zones Act**, in section 14, the Minister of Trade and Industry is required to consult with the Minister responsible for Finance upon recommendation of the Board that a licence be granted to an applicant. The Minister can however only declare an area as an EPZ with the approval of Cabinet. This appears to be a weakness within the Act in that requiring Cabinet's approval prior to issuance of a licence may prove to rather delay the process beyond the required thirty day period as Cabinet has a lot of other things to consider. Furthermore, the requirement for consultation with the Minister only lengthens the process especially that a permanent secretary from the same Ministry serves on the Board.

An application is required to be accompanied by an application fee of one million, three hundred and seventy-five thousand Kwacha, as well as a certified copy of the articles of association, a certified copy of the certificate of incorporation and share capital and the latest copy of annual returns if the company has been in operation for more than one year, projected financial statements as well as a detailed business plan.

On the other hand if the applicant intends to be an EPZ developer, they are required to show a plan of the proposed facilities drawn to scale showing the full extent of the area to be developed as an export development zone as well as any servitude or building restrictions and the proposed or existing layout of the facilities.<sup>51</sup> As with application for an EPZ licence, the Authority is required to approve or refuse to approve the application for a permit within a period of thirty days from the date of submission of the application.<sup>52</sup>

The applicant can set up operations in an existing EPZ or in a stand-alone and thus serve as both an EPZ developer and an EPZ enterprise. Upon approval of the application the licence holder is required to pay an annual fee of six million five hundred thousand kwacha. The ZEPZA is required to refuse or grant a licence to an applicant within thirty days of the applicant making the application and communicate such approval or refusal. In making its decision the Authority is to be guided by the

---

<sup>51</sup> Zambia Export Processing Zones Authority , Procedures and Guidelines for the Establishment of EPZ or Licence Acquisition

promotion of economic development of the country and the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources. The Authority will also consider the extent of the projects impact on the environment and any intended measures to deal with the consequences that will arise from the project. The Authority will also consider the possibility of technology transfer that will emanate from the project. Such discretion under the Act is deliberately meant to avail the Authority with a degree of discretion and flexibility essential for sound administration of the program. However with discretion comes uncertainty and arbitrariness.

A licence for an EPZ shall be valid for a period of ten years from the date of issue and during which period the licensed investor or developer shall implement the proposed investment.<sup>53</sup> The licence holder is entitled to have the licence renewed before its expiry for a period not exceeding five years. Where the investor is unable to implement the investment, he is required to inform the ZEPZA within thirty days of the failure to invest in accordance with application. The ZEPZA has the authority to suspend, or revoke a licence or permit where the licensed investor is guilty of fraud or negligence or misrepresentation or any false or misleading statement. The licence may also be withdrawn due to the investor assigning the licence to another person without the approval of the ZEPZA or failure without reasonable explanation to implement the approved activity. The licence holder is entitled to be heard before the licence is withheld. ZEPZA is to notify the investor of its intention to revoke or suspend the licence.<sup>54</sup> If the investor is dissatisfied with the reasoning of ZEPZA he can apply to the **Revenue Appeals Tribunal** established under the **Revenue Appeals Tribunal Act, 1998**. The Act in section 29(1) stipulates that all appeals are to be directed to the **Revenue Appeals Tribunal**. The reference of grievances to the Tribunal serves on the time and costs associated with litigation as well as guarantees expert attention to the matter. The Tribunal proceedings are less rule structured and less formal thus giving the parties flexibility. Moreover the matter is private and hence confidentiality is maintained for the parties. In this respect the **Export**

---

<sup>52</sup> Section 17(2) of the EPZ Act

**Processing Zones Act** has gone a step further in facilitating investor confidence unlike the Investments Act under section 17(7) and 11, which provides that appeals are to be made to the Minister with further appeals laying to the High Court. Such a procedure is not very effective as the Minister is an interested party representing the government. As already stated the litigation process is lengthy and costly.

**(vi) Incentives under the EPZ act**

Investment incentives take a variety of forms. "There are positive financial incentives that developed countries generally offer such payment for each job created, access to cheap finance, loan guarantees and subsidised utilities."<sup>55</sup> It has been noted that the most prevalent forms of incentives that are given to investors are tax breaks. Under part eight of the Act, there are various incentives that are provided to investors and developers who are granted EPZ licence. The incentives under the **Export Processing Zones Act** are invariably the same as those provided in other jurisdictions that have implemented the EPZ program. For instance, under the Bangladesh program the fiscal incentives include tax holiday for ten years followed by reduced rate for the next five years, duty free import and export as well as relief from double taxation, exemption from dividend tax, expatriates exempted from income tax for three years, accelerated depreciation on machinery or plant allowed. Similar provisions can be found under the Nigerian program, which provides among other things up to 100% foreign ownership of the enterprise, sale of up to 25% of production in domestic market, unrestricted remittance of profits and dividends earned by foreign investors in EPZs. However under the Zambian setup, EPZ licence holders are only allowed to sale up to 20% of their products within the country.<sup>56</sup> This provision has received a lot of criticism from the interviewed manufactures as they deem the requirement as unreasonable. it has been suggested that there should have been varying threshold depending on the capacity of the company. For instance, in Bangladesh, the government has placed three different thresholds such as

<sup>53</sup> Section 21 of the EPZ Act.

<sup>54</sup> Section 28, of the Act.

<sup>55</sup>Briefing Paper, , *Investment Policies that Really Attract FDI* ,Cuts Center for Competition, Investment and Economic Regulation, number 3/2003

<sup>56</sup> Section 16(2) of the Act

those industries exporting 100%, companies exporting 70% and above but below 100% and other companies exporting less than 70% of their manufactured products.<sup>57</sup>

Besides the aforementioned fiscal incentives, there are jurisdictions that provide investors with incentives by lowering or removing labour and environmental regulations. The Zambian program under section 36 of the EPZ Act, grants a developer or an investor exemption from-

- (a) corporate tax;
- (b) withholding tax on dividends and tax on interest or royalties;
- (c) capital gains tax;
- (d) duty on imported raw materials, plant and machinery immediately and capital goods and services;
- (e) import value added tax; and
- (f) excise duty.

Investors are required to fully comply with the licence requirements if they are to enjoy the incentives under the Act. The Authority has the power to withdraw any licence issued for breach of condition or to modify the conditions relating to the where there are changes to the particulars contained in the application furnished by the investor at the time of the application. It may however be noted that capital gains tax does not exist in Zambia at the moment and one wonders as to why the same appears as an incentive under the section. Thus the section may need to be amended so as to reflect the correct position in the country. In its place it is suggested that waiver Property Transfer Tax be included as an incentive to investors.<sup>58</sup>

**(vii) *Labour conditions in Zambia's EPZ Act***

Experience from other countries that have implemented the EPZ program indicates that conditions of service in EPZs are usually rock bottom. In a March 1996 report, the International Confederation of Free Trade Unions concludes, "Anti-union repression is an integral part of the export processing zone concept. Potential investors see the absence of trade unions as a major advantage of

<sup>57</sup> [www.ior.net.com/newior.net/banqlaprofile12.ht](http://www.ior.net.com/newior.net/banqlaprofile12.ht)

<sup>58</sup> Report of the Committee on Economic Affairs and Labour, Presented to Parliament on 30 June 2003.

the zones and their preference for women workers is a deliberate part of their anti-union policy<sup>59</sup>The question of the labour conditions in the EPZs has not been covered under the **Zambian Export Processing Zones Act**. As important as tax holidays and basic infrastructure may be in attracting foreign investors, in practice one of the chief attractions of EPZ is a cheap controlled work force. Honourable Liato raised such concerns during the debate on EPZ in Parliament. Honourable Liato averred that in his experience as a unionist from other countries that had implemented the EPZ program the conditions of service were poor. The Minister of Commerce in replay state that aggrieved workers will have recourse to the Ministry of Labour and Social Services.<sup>60</sup>

However it is the authors view that the Act should have gone ahead to stipulate what labour conditions the government expects of the investor in relation to labour. Some countries such as the Philippines stipulate what they expect of the investor and provide incentives for investors who undertake to train local labour by developing skilled labour and for managerial positions. For instance in section 42 of the Special Economic Zones Act, it is provided that a deduction equivalent to one half of the value of training expenses incurred can be deducted form any tax that may be due to the government by a company operating in an economic zone. Such a policy is essential in that one of the purposes for setting up EPZs is to encourage the transfer of technology and labour is indispensable to the process. Consequently it has been noted that there have been calls to from the private sector to reduce some of the labour law requirements regarding payment for redundancy and retirement package to less than three months for each year served.

<sup>59</sup> Robert Weissman, *Waiting to Export Africa Embraces Export Processing Zones*, in *Multinational Monitor* July/August 1996 volume 17. numbers 7 & 8 at p2

<sup>60</sup> Parliamentary Debates for 30 October 2002.



---

## THE ROLE OF FISCAL AND NON-FISCAL INCENTIVES IN ATTRACTING FOREIGN DIRECT INVESTMENT

### (i) *Introduction*

The quest for foreign direct investment (FDI) is at the heart of every government throughout the world. Accordingly, countries in times of increased mass exodus of companies from their territories have been known to enact pieces of legislation aimed at ensuring that they retain investors within their territories. For instance, in 1968 the government of the United States of America by Executive Order number 11387 founded on section 5(b) of the 1917 **Trading with the Enemy Act** regulated foreign direct investment by Americans. The Order provided that persons with investments abroad amounting to 10% or more of the equity in a business venture were prohibited from making any further investment without the authorisation of the office of the foreign direct investment.<sup>61</sup> However such efforts by the “exporting countries” are only met with increased incentives to investors by other territories to attract such foreign investors. As already stated in the first Chapter, foreign direct investment has been defined as the acquisition of an ongoing interest in an enterprise operating in a country other than the investor's home country. The investment can take two forms: either as greenfield investment wherein the foreign investor establishes a new venture in the host country and secondly by the acquisition of an existing firm in the host country through such process as privatisation.<sup>62</sup>

The factors that may lead to the acquisition of an interest in another country are varied. There are various theories concerning factors that lead to FDI. The renowned theories include the capital arbitrage theory, the intangible assets theory, the internalisation and the industrial organisation theory. All these theories endeavour to explain the factors that attract investors to another country from different points of view. For instance, according to the capital arbitrage theory, the reasons for FDI are due to the different rate of return on capital between countries and thus investors move from countries with low

---

<sup>61</sup> Yale Law Journal (2002)

<sup>62</sup> Kolala Faith, South African Retail Firms in Zambia, paper presented the policy development unit, 19 May 2000

rates of return to ones where there is high rate of return. According to the intangible assets theory however, FDI is propelled by market imperfections and investors move so as to ensure continued competitive advantage over other firms in the same industry. The internalisation theory, states that FDI is fostered by the need by investors to bring together the ownership and control of the same activities linked together by market. The industrial organisation theory on the other hand explains the occurrence of FDI on the premise that imperfection in industrial technology and thus foreign investors move to take advantage of such imperfection.<sup>63</sup>

Despite the fact that FDI is highly sought after by most governments the majority of governments are equally very sceptical of foreign investments due to possible political interference by foreign countries from where the company originates or by the company itself. The African continent is clad with examples of how foreign governments have interfered in the internal affairs of the host country by using investors originating from their countries. For instance, when the unilateral declaration for independence was made in Zimbabwe, the British government urged all companies with a British connection to withdraw from the country.<sup>64</sup>As Kamuwanga notes, “foreign investment is a paradox as it reflects the conflict between the need for economic development and economic self-determination. Foreign investments bring in the threat of political involvement of foreign nationals and the control of the economic destiny of the country leading to its decapitalisation.”<sup>65</sup> The other fear among governments emanates from the possibility of problems arising from balance of payments due to problems of foreign exchange availability.

The previous chapter examined the Export Processing Zones Act which as already said was enacted with a view of promoting an export oriented investment within designated zones or stand alone zones. This chapter examines the effectiveness of fiscal and non-fiscal incentives in attracting foreign direct investment.

<sup>63</sup> Kolala Faith, South African Firms in Zambia, 19 May 2000.

<sup>64</sup> Andrew Sardanis, *Africa: Another Side of the Coin* (New York: I.B. Tauris and company) 2003 at page 173

<sup>65</sup> Mwangala Kamuwanga, *Negotiating Investment contracts: Investment Law in the context of Development* (Lusaka: Multimedia Publications, 1995) at page 6

---

(ii) ***Incentives under the EPZ Act aimed at attracting FDI***

The **Export Processing Zones Act** may be said to be a further supplement to the **Export Development Act** which equally aims at enhancing economic development by increasing the country's capacity to export by providing technical know-how and specialised assistance on export opportunities as well as formulating policies relating to attracting FDI into the export sector.<sup>66</sup> Despite the dangers that come with FDI, FDI is needed in every country as it is a source of fresh capital and leads to employment creation, as well as an engine for attracting new technology into a country. FDI also brings into the host country the transfer of production techniques, or managerial skills which least developed countries such as Zambia need if they are to compete on the global scale. By attracting the right kind of technology which is labour intensive, countries can reduce the unemployment levels. There are various modes of technology transfer, as Mwenda indicates, "technology transfer may entail conventional trade of capital goods, conventional trade of patents and licences and the establishment of firms abroad."<sup>67</sup> The EPZ program is designed to attract the establishment of local production plants of goods for foreign companies as opposed to mere licensing of technology to local firms in Zambia.

In order to attract FDI, depending on the dominating theory perceived by the policy makers as the determinant factor in attracting FDI, various incentive have tended to be used to attract the FDI. The EPZ program appears to have been driven by the market imperfections theory whereby investors move to countries that will guarantee their continued competitive advantage over their competitors by offering low labour costs and less regulatory control in terms of environmental standards. In this regard the EPZ Act contains various incentives that are to be granted to investors who qualify to be granted EPZ licences. There are various reasons that have been advanced for granting such numerous incentives to investors. Some justify the incentives on the premise that they help protect infant industries or that the spill over effects of investments such as the diffusion of new knowledge, upgrading of skills of the

---

<sup>66</sup> Section 14 of the Export Development Act, Chapter 418 of the Laws of Zambia

<sup>67</sup> Kenneth Kaoma Mwenda, *Contemporary Issues in Corporate Finance and Investment Law*, Washington: Penn Press 2000

workforce are desired for the nation.<sup>68</sup> The incentives take a variety of form. "There are positive financial incentives that developed countries generally offer such as payment for each job created, access to cheap finance, loan guarantees and subsidised utilities."<sup>69</sup>

The eligible activities which can benefit from the incentives under the **Export Processing Zones Act** are those involved in agro-processing, manufacturing and agriculture. According to section 21 of the **Export Processing Zones Act**, a licence holder is to enjoy the incentives for a period of ten years. The licence is however renewable for a period not exceeding five years. The tax incentives granted to licence holders are to be found in Part VIII of the Act. The investor is exempt from paying the following taxes:

- (a) corporate tax;
- (b) withholding tax on dividends and tax on interest or royalties;
- (c) capital gains tax;
- (d) duty on imported raw materials, plant and machinery immediately and capital goods and services;
- (e) import value added tax; and
- (f) excise duty.

Besides being exempt from paying the aforementioned taxes, investors are entitled to a refund on value added tax paid on goods and services purchased from a customs territory. However with respect to motor vehicles, the Minister may prescribe that the exemption shall not extend to a given range of motor vehicles. It must however be said that the incentives granted under the **Export Processing Zones Act** are not very different from those offered in other countries where EPZ programs have been implemented. Among the notable countries in Africa that have similar incentives are, Kenya, Egypt, Cameroon, Morocco, Zimbabwe, Tunisia, Mozambique, Ivory Coast, Ghana, Senegal, Namibia and Mauritius.

Incentives have been employed by many countries to specifically attract certain type of technology into the country. For instance, countries such as Malaysia and Singapore have introduced

<sup>68</sup> Ibid at page 14

<sup>69</sup> CUTS Centre for Competition, Investment and Economic Regulation Briefing Paper Investment Policies that Really Attract FDI, number 3/2003

---

specific incentives in their EPZ programs as well as provisions governing other investment laws aiming at attracting investment into research and development.<sup>70</sup> This has been achieved by allowing tax exempt technology development funds and tax credit for expenditure on research. The incentives have been able to produce fruit as investors have been drawn to these countries taking advantage of the incentives.

The use of EPZ programs has fostered development for many countries which were backward three decades ago. According to the World Export Processing Zones Association (WEPZA), the effective implementation of the EPZ program has produced results for most developing countries besides Malaysia and Singapore. The organization notes Puerto Rico which has implemented a successful EPZ program since 1951 resulting in its manufacturing industry achieving over twenty billion United States dollars of Gross Domestic Products (GDP) per year surpassing all other sectors that do not enjoy the EPZ benefits.<sup>71</sup> The Caribbean countries have also greatly benefited from their EPZ program as they have become a favourable platform for the United States manufacturing firms seeking to reduce their cost of production and offset foreign competition by outsourcing the most labour intensive areas of their production process to local assembly factories.<sup>72</sup>

Besides the fiscal incentives under the EPZ programs, countries also enter into double taxation agreements with the aim of providing a better climate for investors. Double taxation agreements are aimed at providing a more conducive environment for investors by avoiding the same income being taxed twice in different countries as between the host country for the investor and the country of origin. Zambia as a case in point has signed such agreements with several countries which include Botswana, Canada, Denmark, Finland, France, Germany, India, Ireland, Italy, Japan, Kenya, Netherlands, Norway, Romania, South Africa, Sweden, Switzerland, Tanzania, Uganda, United Kingdom and the United States of

---

<sup>70</sup> United Nations Conference on Trade and Development, ASIT Advisory Studies No. 16, Tax Incentives and Foreign Direct Investment ( New York: 2000)

<sup>71</sup> Richard L. Bollin, *Why Export Processing Zones Are Necessary*, (Arizona: USA) number 1 ver. 1.02 at page 1.

<sup>72</sup> Tony Heron, *Export Processing Zones and Policy Competition for Foreign Direct Investment: the Offshore Caribbean Development Model*( Sheffield: Sheffield University ) at page 1

America. Thus investors are guaranteed that the income generated from Zambia will also not be taxed in their home countries and can be encouraged to invest in Zambia.

**(iii) *Failure of incentives under EPZ programs to attract FDI***

The debate however as to the contribution of export processing zones to national economic development has been raging and appears will continue to rage on for years to come. It has been argued that the incentives granted to investors are at the expense of the national economy. Thus the attraction of investment through the provision of incentives is a gamble between the government and the investor as both have to accept risks. The government hopes that whatever it has offered in terms of infrastructure and favourable policy will yield fruit and the investor hoping that the incentives prevailing will not be taken away once he has entered the territory. The governments grant incentives in order to promote sectors of the industry or activities considered as essential for development, the investor on the one hand is worried about the security of his investment and the duration within which he will reap from what he has sown.

There are various theories in the world that endeavour to state the role that fiscal incentives play in attracting FDI. As earlier stated, it is not clear whether indeed fiscal incentives are the major foreign investments determinant.<sup>73</sup> Mwenda citing a study undertaken by the World Bank says that the study showed that generally fiscal incentives cannot be regarded as major determinants of foreign investment. African governments and Zambia in particular have made several attempts aimed at attracting FDI but despite the numerous attempts that African governments have undertaken to attract FDI into their countries very little has been achieved. This assertion can be supported by a study undertaken by Asiedu, who observed that Africa's share of FDI remains meagre and continues to decline over time. For instance, in 1970 Africa's share was 19% but the figure dropped to 9% in the 1980s and about 3% in the 1990s.<sup>74</sup> The reduction in foreign direct investment can be seen in reduced Gross Domestic Product (GDP) for regions such as Sub-Saharan Africa as figures for 2002 indicate that Sub-Saharan Africa's

<sup>73</sup> Kenneth Kaoma Mwenda, *Contemporary Issues in Corporate Finance and Investment Law* (Washington: Penn Press) 2000 at page 12

GDP was 3.0% compared to 3.3% in 2001. "Foreign direct investment seems to have become a lesson of lions and sparrows. A few countries get most of the investment inflows."<sup>75</sup>The decline is despite the legislative and political changes that have been undertaken over the years.

In Zambia for example, especially since 1991, the government has employed liberal economic policies. The government has liberalised trade, removed foreign exchange restrictions, instituted public service reforms, and introduced cost sharing mechanism for most social services such as health and education. The enactment of the **Privatisation Act**, the **Investment Act** as well as the **Arbitration Act** represents attempts by the government to provide the required environment for investors.

Many studies conducted have shown that Zambia ranks among the top five countries in Africa that provides better guarantees to investors. The country also has the lowest cost of setting up a new enterprise on the continent as it has the least procedures for entry.<sup>76</sup> But for the efforts made, Zambia has remained one of the least sought after countries in terms of FDI. According to a number of sources, fiscal incentives designed to attract foreign direct investment to export oriented industries tend to play a relatively minor role in the location decisions of trans-national corporations, when compared to other advantages such as market size and growth potential, production cost, skill levels and political stability.<sup>77</sup> It must be stated here that investors appear to be concerned primarily with the political and economic stability of the country as a prime consideration for the location of their investment. Though here it must be acknowledged that there maybe an exception as relates to areas where natural resources such as oil and gold for instance are present. This may be the case for countries such as Namibia, Congo D.R and Nigeria.

<sup>74</sup> Elizabeth Asiedu, *Foreign Direct Investment in Africa: The Role of Government Policy, Governance and Political Instability* ( Kansas: Department of Economics, University of Kansas) 2003 at page 4

<sup>75</sup> Guy Pfeffermann, *The Globalist*, ( Thursday, October 31, 2002) [www.thegloblist.com](http://www.thegloblist.com) at page 1

<sup>76</sup> Jacques Morisset and Olivier Lumenga Neso, *Administrative Barriers to Foreign Direct Investment in Developing Countries*( Washington: Foreign Investment Advisory Services) May 2002 at page 11

<sup>77</sup> Tony Heron, *Export Processing Zones and Policy Competition for Foreign Direct Investment: The Offshore Caribbean Development Model*, ( Sheffield: Sheffield University ) 2002

According to a study prepared for Teck Cominco Limited regarding the political risk assessment of Zambia, the study noted that the major risks that an investor faces in Zambia are high corruption levels in the country and an unhealthy and unskilled labour force.<sup>78</sup> Another factor identified was limited external linkage within Zambia as well as changing economic policies leading to delays in the processing and approval of investment related projects.<sup>79</sup> Other than these findings it has been noted that Zambia's geographical position is not favourable. Zambia is a landlocked country which makes Zambia a very high cost area as imports and exports have to be transported over long distances. The geographical location of the country is important in two ways: the location of the exporting country in relation to its markets and the location of the export platform within the country. However some countries such as Mauritius have shown that proximity is not a major obstacle.

According to Radelet, even though export platforms such as the enactment of the EPZ Act can help exporters overcome many distortions in the domestic economy, they can not compensate for substantial macroeconomic imbalances and distortions such as overvalued exchange rate. Such imbalances can not be dealt with by granting exporters tax breaks and improved infrastructure. For instance, the Dominican Republic has had fairly well functioning EPZs for many years but an overvalued exchange rate and high minimum wages combined to undermine the export competitiveness of the country.<sup>80</sup>

For these reasons institutions such as the World Bank, view EPZs and the incentives they grant as the third best option for a country to take in a bid to attract foreign direct investment. Radelet also notes that many other countries despite having export processing zones have failed to achieve meaningful success. He points out that countries such as the Dominican Republic, Kenya, Senegal and Columbia, have failed to achieve the desired success.<sup>81</sup>

<sup>78</sup> Perceval Pradelle, Political Regime Risk Assessment and Mitigation, in Political Risk Assessment Report for Report the Republic of Zambia, [www.africa.czweb.org/ZAMBIAPRAO1](http://www.africa.czweb.org/ZAMBIAPRAO1) at page 2

<sup>79</sup> Josh Crumb, Political Risk Assessment Report for the Republic of Zambia. [www.africa.czweb.org/ZAMBIAPRAO1](http://www.africa.czweb.org/ZAMBIAPRAO1)

<sup>80</sup> Steve Radelet, *Manufactured Exports, Export Platforms and Economic Growth*, (Harvard Institute for International Development, November 1999)

<sup>81</sup> Steve Radelet, *Manufactured Exports, Export Platforms and Economic Growth*, (Harvard Institute for International Development) November 1999



Thus the World Bank considers the promotion of nation wide liberalisation over specific EPZs to be the goal and that governments should concentrate on broader trade policy reforms involving a shift towards outward oriented development and thirdly that private development of EPZ should be encouraged rather than public development.<sup>82</sup> Furthermore per Bissaiaac, EPZs should be an option of last resort in the effort to improve allocative efficiency in previously highly regulated and protected economies. One expert has observed, "there is *little* evidence that African nations are aware of the special circumstances which made it possible for the Asian tigers (Taiwan, South Korea, Hong Kong and Singapore, with Malaysia and Thailand now poised to join the pack) to succeed."<sup>83</sup> According to Weissman, it appears that there is even little appreciation of the fact that EPZ have failed to spark off any meaningful growth in Latin America, the Caribbean as well as in some Asian countries such as Philippines and Sri Lanka despite the soaring incentives.<sup>84</sup> .

Some analysts have stated that investors are attracted not primarily by the fiscal incentives but by the presence of cheap labour to invest in EPZs. Most of the investors attracted are those in labour intensive industries especially garments. Notably the investors are Asian investors on the run from escalating wages in their home countries. Such factors have resulted in a lot of strife between the trade union and the EPZ investors over the conditions prevailing in EPZs. Some members of Parliament have raised similar concerns over safeguards that government has put in place to safeguard the workers in Zambia against exploitation.<sup>85</sup> It is for this reason that the world over there are numerous discussions taking place in the union circles over the conditions that are prevailing in the EPZs.

However despite the many success stories behind the implementation of EPZ programs, there are many other disastrous stories to be told. Nyalungwe (a private sector analyst) stated during interview that "*EPZ programs must be looked at as the icing on the cake, the program is only as effective as the overall*

<sup>82</sup> Claude Bassaic, Maximization the Development Impact of EPZs: A Comparative Perspective in the African Context of Needed Accelerated Growth a Presentation at the Johannesburg EPZ Symposium October 15-16 2003, Arizona: WEPZA Secretariat

<sup>83</sup> Robert Weissman, *Waiting to Export Africa Embraces Export Processing Zones*, in the *Multinational Monitor* July/ August 1996. Volume 17 numbers 7 and 8 at page 1. \* note, words in italics my emphasis.

<sup>84</sup> Supra note 23 at page 1

*private sector development program.*" The effective operation of the EPZ is also dependent on the prevailing world economic policies. Thus all the icing is easily lost the moment that other countries implement similar policies. Such a situation results in the now famous race to the bottom as each EPZ tries to out bid the other by offering increasingly generous incentives to prospective investors. According to Heron, citing the case for the Dominican Republic, the provision of the tax holidays for investors in its EPZs has resulted in a situation where over forty percent of the country's total exports provide no fiscal income for the country.<sup>86</sup> Some analysts have further stated that the amount of money spent on establishing EPZs could be better used in other sectors, as the implementation of the EPZ program does not achieve any meaningful goals. For instance, the Kenyan government has spent over five hundred and fourteen million United States Dollars (approximately, twenty five billion Kwacha) in establishing the EPZ program. The program has resulted in only the creation of two thousand new jobs.<sup>87</sup> It has been pointed out that for countries that have succeeded such as Mauritius one needs to examine other factors such as world economic practices at the time that the EPZ program was being implemented. It has been observed that at the time that Mauritius was implementing the EPZ program in the 1970s other nations were looking inward than outward. According to Kanyenze, Mauritius has a strong cultural tie with Hong Kong, which made it suitable to attract investors from there. Most investors in Hong Kong were also nervous about staying in Hong Kong once the territory reverted to Chinese control in 1997. They thus decided to leave for countries such as Mauritius. Moreover most foreign investors used Mauritius as a platform from which trade rules could be manipulated. For instance the label "Made in Mauritius" was used to circumvent the textile quotas established by the Multi-Fiber Agreement.<sup>88</sup> But with the ending of the Agreement by January 2005, there has been a flight of investors from Mauritius.

---

<sup>85</sup> Daily Parliamentary Debates 30 October 2002

<sup>86</sup> Supra note 17, at page 10

<sup>87</sup> Jauchi, at page 102

<sup>88</sup> Robert Weissman, *Waiting To Export Africa Embraces Export Processing Zones in the Multinational Monitor*, July/August 1996 volume 17 Numbers 7&8, at page 3

---

Besides fiscal incentives, there are other non-fiscal measures that are used in attracting FDI to a country. Many scholars have thus given their varied dose of what is needed to attract FDI as opposed to merely granting incentives under EPZ programs. For instance, Makola lists the following as factors that attract foreign direct investment into a country:

1. a favourable environment with low stable rates and effective competition policies
2. low transaction and business costs for labour and trade regulations, entry and exit rules, location and environment regulation
3. subcontract services to local firms
4. support quality assurance and technical extension to small and medium enterprises
5. human capital with diverse modern skills
6. low cost infrastructure such as efficient communication system and transportation links
7. merger and acquisition
8. open policies in export activities-free trade and free foreign exchange regimes to maximise economies of scale.

From the above list it can be noted that fiscal incentives play a minor part in investor decision. For it has been shown that most investors are concerned about the political and economic stability in most countries in addition to the availability of skilled manpower as well as the population size of the continent as a whole than pieces of legislation providing various incentives which are bound to be changed with the change in government. Whilst the market size problem has been overcome through the creation of regional economic groupings such as COMESA (Common Market for Eastern and Southern Africa), the other factors still need to be addressed.

It is the author's view that there is more that needs to be done by African governments than merely enacting piecemeal pieces of legislation in order to attract foreign direct investment. Instead a complete overhaul of the entire legislation should be undertaken to ensure that a conducive environment is created for investors whilst at the same time ensuring that the country benefits from established investment

---

## OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION

(i) **Summary**

The focus of this essay has been to analyse how the EPZ program can be used in Zambia as a means of attracting foreign direct investment. It has been noted in the preceding chapters how successive governments have attempted to attract foreign direct investment (FDI) from the time that the country became independent by enacting various pieces of legislation. The first chapter was an introductory chapter which identified the questions that have been investigated as well as the aims and objective of the study and method of research.

The second chapter examined various pieces of legislation in Zambia that were enacted in an attempt to attract foreign direct investment. The focus here was the period from the time that the nation got its independence to the date of enactment of the **Export Processing Zones Act**. The chapter showed that need for foreign investment was prompted by the decline in copper prices on the London Metal Exchange Market, which was the major export product. The declining prices in copper led to reduced inflows of foreign exchange into the country resulting in increased hardships in the nation as there were shortages of essential commodities and shortages of raw materials in the manufacturing industry. Thus the impetus to diversify the economy was enhanced.

The government enacted various pieces of legislation to attract FDI. The most prominent ones being the **Industrial Development Act**, the **Pioneer Industries (Relief from Income Tax) Act**, the **Investment Act** (1986) and (1991). The essay highlighted some of the successes and failures of the named legislation.

The third chapter analysed the **Export Processing Zones Act** by examining the essential sections as well as highlighting the shortcomings from some sections of the Act. For instance, it was noted that the Act in its present form needs to be amended as regards the composition of the Board so as to involve the private sector if the idea of having a private sector driven economy is to be realised. The

chapter also briefly examined the apprehension raised regarding the labour conditions that are likely to prevail in EPZ due to the likelihood of disregarding the labour laws if the current calls for reduced obligations on redundancy payments and retirement packages are to be adhered to.

The fourth chapter focused on the value of incentives in determining the location of investments by foreign nationals. This analysis was prompted by the fact that the incentives that have been granted under the EPZ Act to investors who obtain the licence either as developers or investors have been applied in other countries. Some countries have attained success whilst others have not yielded fruit. For instance, the program achieved success in Mauritius when the program was implemented whilst Kenya and Ghana among others have suffered loss.

The fifth chapter contains observations and recommendations and conclusion. The broad conclusion reached is that the EPZ program does not by itself provide the needed environment to attract FDI into Zambia. Secondly that there has been little safeguards put in place against repercussions resulting from the **Export Processing Zones Act** on the local industry. Thirdly that incentives granted under the **Export Processing Zones Act** have been given before with little or no success at all.

Despite the enthusiasm expressed by the private sector over the possibilities for increased export capacity that comes with a properly implemented EPZ program, the EPZ program in its current format does not match their aspirations. Government has shown that it is likely to withdraw most of the incentives under the Act due to fears of revenue loss as evidenced by the suspension of licences, which were issued.

**(ii) Observations and Recommendations**

The EPZ program has been introduced against a background wherein the macro-economic environment has failed to stimulate the desired outward supply response required to accelerate non-traditional export growth.<sup>89</sup> Statistics indicate that some sectors of the economy have remained static over

<sup>89</sup> Ministry of Finance and National Development, National Economic Report( 2000)

---

the years. For instance, the manufacturing sector has remained static at 3% since 1998 and that out of 55000 jobs in the sector in 1995, a total of 11400 had been lost by the year 2000.<sup>90</sup> Various reasons have been advanced for the decline in this sector ranging from the crisis in the world economy as triggered by the Asian crisis to high production cost leading to the relocation of some industries. The EPZ program as already said aims at attracting firms involved in agriculture, agro-processing and manufacturing by removing the constraints that have made Zambian products uncompetitive on the international level. After evaluating the use of Export Processing Zones in other countries and the failures and achievements that have been attained as well as examining the main provisions of the Act coupled with research among the private sector in the targeted beneficiary sectors, the following observations and recommendations were made:

- (a) The government has sound intentions on the need to expand the export base of the country by offering various incentives to investors under the EPZ Act. However for the program to be effective the government needs to iron-out the contentious issues with stakeholders in the Act. Research undertaken indicates that the government did not consult the private sector over its intentions to implement the EPZ program in Zambia. Currently the government has suspended the issuance of EPZ licences to applicants as it intends to evaluate the revenue loss implications arising from the full implementation of the program. Such developments do not bear well on the image of the country in the eyes of investors. More especially that ten companies had been initially granted licences before the licence issuance was suspended. Investors have complained in the past that the continued changes in both the policies of the government and the law does not give them the confidence as to their continued enjoyment of the favourable conditions that attracted their initial investment.

---

<sup>90</sup> Ministry of Finance and National Development, National Economic Report( 2000)

---

The suspension of the licence issuance process is a very unfortunate development, as one would expect that the normal trend in the legislative process is that firstly the government comes up with a policy upon which a thorough study of the implications of implementing the policy would have been done. Legislation should only be passed upon being satisfied that the policy objective will be met and that the desires of the targeted beneficiaries will be achieved without any adverse effects. Such a situation reminds one of the predominant situations in many countries wherein legal reforms are incomplete and thus not able to convince investors to develop activities that are not based on natural resource exploitation. It must be appreciated that image building for a country takes time especially when the state has a long tradition of policy intervention and the legal reforms remain merely symbolic as has been the case in Zambia.

- (b) Research conducted by the author indicated that a majority of the persons interviewed did not know of the existence of the program so as to take advantage of it when the licence issuance begins. Thus there is need for ZEPZA to advertise its programme widely if the programme is to be effective. Under the EPZ program it is envisaged that the government will procure land and put up infrastructure that is to form industrial parks. During debate in Parliament, the Minister of Commerce and Industry indicated that the government did not have the money to put up the required infrastructure. This development may hamper the effective development of the EPZ program. It has been noted that countries such as Lesotho attracted more FDI when equated with their sheer economy (GDP) due to the presence of infrastructure, which reduces the cost of setting up an industry for a new company as compared to other countries. According to statistics presented by Pfeffermann, Lesotho was rated number one among all transition and developing countries by attracting FDI to the tune of 21.8% of its GDP whilst Zambia in the same ranking stood at number twenty-three by attracting FDI to the tune of 5.9% of its GDP.<sup>91</sup> Thus

---

<sup>91</sup> Guy Pfeffermann, *Sizing up Foreign Direct Investment, Part II: Lions and Sparrows*, in the *Globalist*, thursday, October 31, 2001. [www.theglobalist.com/DBWEB/printStoryID.aspx](http://www.theglobalist.com/DBWEB/printStoryID.aspx)

government must seriously consider putting up the necessary infrastructure to lessen the cost of establishing an industry.

- (c) Another aspect that will affect the implementation of the EPZ program in Zambia is the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). The Agreement came into effect on 1 January 1995 and builds on Article 16 of the General Agreement on Tariff and Trade. The Agreement provides that subsidies that are specific in nature and are given to industries that affect trade are prohibited. Members of the WTO who are affected by such goods are entitled to initiate countervailing measures against such goods.

A measure is a subsidy if the government foregoes the revenues due to it from the industry.<sup>92</sup> Thus an EPZ is a subsidy in the sense that the tax holiday granted to investors entails the government foregoing the revenues due to it. Secondly the EPZ program flies in the teeth of the Agreement in that it is also specific as the qualification for an investor to qualify for the incentives is that he must export a specific percentage of his goods. According to Haywood, countries should thus focus on policies that are not subsidies which may include providing good education and skills development to the people provide, adequate infrastructure, political stability, efficiency of service among the government agencies, as well as clear customs procedure.<sup>93</sup> From the way that the EPZ program was initiated in Zambia, and from the phraseology of the statute, there appears that little or no concern was taken in ensuring that the policy was implemented without violating any such agreements as the ASCM, this may result in the program being suspended just about the time that Zambia is about to begin to reap from its investment in the program.

- (d) Zambia is a member of several regional and international bodies such as the WTO, COMESA (Common Market for Eastern and Southern Africa), SADC (Southern Africa Development

<sup>92</sup> Robert C. Haywood, Economic Processing Zone Incentives and the WTO Agreement on Subsidies and Countervailing Measures ( Arizona: WEPZA Secretariat, [www.wepza.org/article6.html](http://www.wepza.org/article6.html)) at page 3



---

Community). The aim of these organisations *inter alia* is to increase the flow of investment to the region by providing investors with a much larger market than a single country can provide through the promotion of free trade among member states. To achieve this, countries have to remove trade barriers that impinge on free trade. Zambia pays a large amount to maintain its membership in these organisations. However it has been observed that EPZ programs do not work to foster the essence for which regional economic integration bodies are set up. Countries disregard the rules of the Agreements they have entered into in order to attract investors. For instance, due to the EPZ program Namibia in a bid to attract a particular investor Ramatex of Malaysia, granted the company lofty incentives beyond those provided under the EPZ program to other investors so as to out-manoeuvre South Africa and Mauritius.<sup>94</sup> Thus countries begin to compete with each other in the "race to the bottom" as they lower the requirements that corporations have to adhere to such as maintenance of environmental standards, restriction on the employment of foreigners and minimum conditions of service for the workers as per law required. Consequently, the only winner is the foreign investor and the country of origin at the expense of the host country. Under such circumstances, one wonders why countries continue to pay membership to regional bodies whose principles they are not willing to abide by.

**(iii) Conclusion**

This essay has looked at the EPZ program and its capacity to be the spring board for the attraction of FDI into the country. It is acknowledged that the program has worked wonders for countries in Asia as well as Mauritius and Tunisia in Africa. However the fact that the Zambian government studied the operation of EPZ in Mauritius and Kenya and modelled the Zambian program on these two countries does not guarantee success for the Zambian program. The government seems to have missed the point as to how these countries may have succeeded with their programs. Our observations are that these

---

<sup>93</sup> Haywood, at page 4

---

countries have succeeded due to strong private sector involvement in their program. According to Nyalugwe,<sup>95</sup> one of the key persons on the Mauritian negotiation team to the WTO has been the Chairperson of the Mauritian Chamber of Commerce and Industry. Such a situation reflects how close the relationship is between the government and the private sector. The case in Zambia is that the private sector has not been fully involved in most initiatives by the government and has thus not participated in them as most do not favour their interests. Such a view of the relationship between the private sector and the government can be noted from the composition of ZEPZA Board. The Board has twelve members comprising four Permanent Secretaries, and four other Directors of government agencies and only four others represent the private sector. From this it may be noted that the private sector is outnumbered. Thus there is need to reverse this disparity by increasing the number of persons from the private sector if the program is to achieve the desired objectives.

Secondly the EPZ program currently under section 16 requires that the threshold for a company to participate is that it must export at least 80% of its products. This threshold has been said to be high among the private sector. For instance, Unity Garment of Ndola is the first company to export yarn to the United States under the American Growth and Opportunity Act (AGOA). The company can only export up to 30% of its products. Thus under the EPZ program Unity Garment would not qualify for the EPZ status. Most persons in the private sector are of the view that the government should instead introduce different categories of investors with differing thresholds and differing incentives depending on the export capacity of the company. One Member of Parliament equally raised this concern during debate in Parliament and the Minister for Commerce responded that government feared that doing so would entail a lot of companies qualifying and there would be revenue loss to government.<sup>96</sup> It is our considered view that a

---

<sup>94</sup> Herbert Jauch, *Export Processing Zones and the Quest for Sustainable Development: A Southern African Perspective*, [www.larri.com.na/publications/EPZ](http://www.larri.com.na/publications/EPZ) at page 6

<sup>95</sup> INTERVIEW with Chibembe Nyalugwe a Private Sector Development Specialist with the Zambia Trade and Investment Enhancement (ZAMTIE) a project under the USAID in Lusaka.

<sup>96</sup> Daily Parliamentary Debates 30 October 2002

---

much better approach is to have different thresholds as this appears to have achieved success in use in countries such as Bangladesh.

The Zambian EPZ program needs to be expanded such that industries in the service sector also benefit from the program. Currently the EPZ Act provides that only companies involved in agriculture, agro-processing and manufacturing may participate. It has been noted that other countries that have implemented the EPZ program have included the service sector as part of the beneficiaries of the EPZ incentives. Thus banks should for instance be involved in the program so that they can provide loans and services outside the current legal framework. Currently under section 31(a) of the EPZ Act, services emanating from any part of Zambia to an EPZ area are deemed as exported to the zone and as such will attract all taxes that are due. Such a scenario will raise the cost of production in the EPZ and make them unattractive.

As already said, the EPZ program must be viewed in terms of the whole national policy for attracting investment. If the country is to achieve the desired goals it must streamline the process of licence acquisition and renewal for all companies entirely. For instance, the Sun International Hotel has complained that they need over 42 licences to operate and they have to renew 21 of their operating licences on an annual basis. There is need to establish an all encompassing agency to provide advise to investors, process the applications for licences, market the country and supervise those who acquire licences to ensure compliance with the legal regime. At the moment one notes some duplication of work among the varied agencies. For example, between the Export Board of Zambia and the Export Processing Zones Authority as well as the Investment Centre. All these agencies have the same objective to achieve. Merging the bodies will entail efficiency and reduce costs incurred by such agencies for their operations.

The **Export Processing Zones Act** requires that ZEPZA communicate to the applicant whether their application has been successful within thirty days. The Act does not stipulate however what will

happen in the event that such communication is not made. This needs to be re-examined. It is herein suggested that if the applicant does not receive a response within the stipulated period, the licence should be deemed to have been granted. This is the position as regards obtaining state consent to assign in land and property matters. The approval process also needs to be re-examined, as the requirement that Cabinet approve the application will result in delays as Cabinet has many other issues to review. It is herein suggested that the process should begin and end with ZEPZA.

The other aspect that requires re-examination is the judicial system of the country. The judiciary needs to be restructured and made more efficient and responsive to the changing economic environment. According to Nalepa, "Zambian courts are relatively inexperienced in commercial litigation and with an existing backlog of hearing... obtaining a ruling could take quite some time."<sup>97</sup> There have however been some commendable efforts in bringing the judiciary in line with efficient judicial practice. The government has introduced alternative dispute resolution by introducing mediation as part of the dispute resolution process. The **Arbitration Act** of 1933 has also been replaced with a new one modelled under the Washington Convention and New York Convention, which provide for enforcement of foreign arbitral awards. The government has also introduced a commercial registry with a streamlined court process coupled by judges knowledgeable in commercial matters to handle such matters. It is hoped that such changes will help the court system to be responsive to the commercial needs of the investors.

In summation, the EPZ program is a very good program, which if properly implemented will result in increased foreign direct investment into the country. However this essay has shown that EPZ do not guarantee success for every country that has implemented the program. The development of the program also needs to be looked at from the overall world economic environment. Some programs such as that of Mauritius thrived due to the time in which the programs were implemented. The EPZ program

---

<sup>97</sup> Tony Nalepa, Business Environment Risk Assessment and Mitigation, in Political Risk Assessment Report for the Republic of Zambia prepared for Teck Cominco Limited, June 20, 2002. [www.africa.czweb.org/ZAMBIAPRAO1](http://www.africa.czweb.org/ZAMBIAPRAO1)

---

is merely an icing on the cake and if success is to be achieved the government needs to create an environment conducive for all enterprises in the country not merely those located in zones.

The Zambian government must ensure that it does not cast doubt into the minds of the investors by changing policies regarding investment very often this can be achieved by ensuring that before any policy is enacted into law the stakeholders should participate and ensure that their perceptions are also covered in the law. This will curtail the amendments that proceed shortly after enactment, as has been the case with the Investment Act. If this can be done even the suspension of licence issuance would not have arisen under EPZ program. In the mean time the personnel at ZEPZA are drawing salaries and yet there is no work being done.

The government should have initially set up the required infrastructure for the program. At the time of the research it was indicated that the government is yet to secure land to be used as industrial parks. The establishment of the infrastructure would have been a plus in attracting FDI, as it would lower the cost of establishing a company in the country. Due to the problems highlighted, the author is of the view that the EPZ program will not achieve the desired goals.

**BIBLIOGRAPHY****Books**

Dolph, Warren Zink(1973) The Political Risks for Multinationals Enterprises in Developing Countries" With a Case Study of Peru, New York: Praeger Publishers

Kamuwanga, Mwangala,(1995),Negotiating Investment contracts: Investment Law in the context of Development , Lusaka: Multimedia Publications

Mwenda, Kenneth, Kaoma (2000) Contemporary Issues in Corporate Finance and Investment Law, Washington: Penn Press

Sardanis, Andrew (2003) Africa: Another Side of the Coin, New York: I.BTauris Publications

**Thesis**

Ailola, David Akapelwa (1983) Foreign Investment: The Law and Policy in Zambia, Lusaka: University of Zambia, (Masters Thesis) Unpublished

Kaela, Mwenya (2000) An Overview of the Legal Framework for Investment in Zambia. Lusaka: University of Zambia School of Law Final year Student Project. (Unpublished)

Mwikisa, P.W (1978), Foreign Private Investment in Zambia and the Industrial Development 1977. Lusaka: University of Zambia (unpublished obligatory essay)

Watea, Sydney (1983), A legal Framework of Foreign Investment in Zambia, Lusaka: University of Zambia (unpublished obligatory Essay)

**Articles**

Asiedu, Elizabeth (2003) Foreign Direct Investment in Africa: The Role of Government Policy, Governance and Political Instability, Kansas: Department of Economics, University of Kansas

Bassaic, Claude(2003) Maximization the Development Impact of EPZs: A Comparative Perspective in the African Context of Needed Accelerated Growth a Presentation at the Johannesburg EPZ Symposium October 15-16 2003, Arizona: WEPZA Secretariat

Bollin, Richard L. Why Export Processing Zones Are Necessary, Arizona: USA) number 1 ver. 1.02

Briefing Paper, Investment Policies that Really Attract FDI, Cuts Center for Competition, Investment and Economic Regulation, number 3/2003

Crumb, Josh Political Risk Assessment Report for the Republic of Zambia.  
[www.africa.czweb.org/ZAMBIAPRAO1](http://www.africa.czweb.org/ZAMBIAPRAO1)

Dicken, P. (1998) Global Shift: Transforming the World Economy, London: Sage Publishers

*Bibliography*

- Faith, Kolala (2000) South African Retail Firms in Zambia, Paper presented the policy development unit of the University of Cape Town 19 May 2000
- Ge, Wei (1999) The Dynamics of Export Processing Zones, number 144 of 1999 UNCTAD Discussion Paper, Geneva Switzerland
- Gogo, Jeffry In The Herald- Zimbabwe News online. [www.herald.co.zw/Index.php?](http://www.herald.co.zw/Index.php?)
- Haywood, Robert C. (2001) Economic Processing Zone Incentives and the WTO Agreement on Subsidies and Countervailing Measures Arizona: WEPZA Secretariat, [www.wepza.org/article6.html](http://www.wepza.org/article6.html)
- Heron, Tony (2002) Export Processing Zones and Policy competition for Foreign Direct Investment: The Offshore Caribbean Development Model. Sheffield: University of Sheffield
- International Confederation of Free Trade Unions International Labour Organisation, Behind the Wire. "Export Processing Zones". <http://www.ilo.org/public/english/dialogue/sector/themes/epz.htm>
- International Labour Organisation, Bureau for Multinational Enterprise Activities. [www.trasnationale.org/pays/epz.htm](http://www.trasnationale.org/pays/epz.htm)
- Jauch, Herbert (2002) Export Processing Zones and the Quest for Sustainable Development: A Southern Africa Perspective. [http://www.larri.com.na/publications/EPZ\\_artcile2002.htm](http://www.larri.com.na/publications/EPZ_artcile2002.htm)
- Makola, Mosina The Attraction of Foreign Direct Investment by The African countries.
- Morisset, Jacques and Neso, Olivier Lumenga (2002). Administrative Barriers to Foreign Direct Investment in Developing Countries, Washington: Foreign Investment Advisory Services
- Nalepa, Tony (2002) Business Environment Risk Assessment and Mitigation, in Political Risk Assessment Report for the Republic of Zambia, prepared for Teck Cominco Limited, June 20, 2002. [www.africa.czweb.org/AMBIAPRAO1](http://www.africa.czweb.org/AMBIAPRAO1)
- Ocran, T.M (1980) The Legal Framework of Foreign Investment in Africa, In the Zambia Law Journal volume 12. Lusaka: UNZA Press
- Pfeffermann, Guy Sizing up Foreign Direct Investment, Part II: Lions and Sparrows, in the Globalist, thursday, October 31, 2001. [www.theglobalist.com/DBWEB/printStoryID.aspx](http://www.theglobalist.com/DBWEB/printStoryID.aspx)
- Pradelle, Perceval Political Regime Risk Assessment and Mitigation, in Political Risk Assessment Report for Report the Republic of Zambia, [www.africa.czweb.org/ZAMBIAPRAO1](http://www.africa.czweb.org/ZAMBIAPRAO1)
- Nsabika, Chama, "Privatized mines Have not Registered with the Investment Center" in The Post Newspaper Monday January 7 2001.
- Radelet, Steve (1999) Manufactured Exports, Export Platforms and Economic Growth, Harvard Institute for International Development, November 1999

*Bibliography*

Ssempebwa, E.F " Law in the context of Underdevelopment: A Comment on the Industrial Development Act" In the Zambia Law Journal volume 7-9. Lusaka: Unza Printer,

United Nations Conference on Trade and Development, ASIT Advisory Studies No. 16, Tax Incentives and Foreign Direct Investment ( New York: 2000)

Weissman, Robert, Waiting to Export Africa Embraces Export Processing Zones. In Multinational Monitor July/August 1996 volume 17. Numbers 7 & 8

Zambezi Times on Line. [http: //business. zambezitimes.com](http://business.zambezitimes.com)

**Parliamentary Debates and Government Publications**

Daily Parliamentary Debates 12 February 1986

Minister of Finance in Daily Parliamentary Debates 1986 March 12

Ministry of Commerce, Annual Report of Ministry of Commerce and Industry 1964,

Ministry of Finance and National Development, National Economic Report (2000)

Ministry of Finance and National Planning, *Public Investment Program 2001-2003 Volume 2. Project Profile* (Lusaka: Government Printers) February 2002.

Ministry of Finance Report to Parliament in 1967

Parliamentary Debates for 30 October 2002.

Presidential Speech during the Opening of Parliament on 21 January 2000

Report of the Committee on Economic Affairs and Labour, Presented to Parliament on 30 June 2003.

Republic of Zambia, Ministry of Finance, and Economics Report 1965 presented to Parliament, Lusaka: Government Printers

Zambia Export Processing Zones Authority, Procedures and Guidelines for the Establishment of EPZ or Licence Acquisition

Zambia Export Processing Zones Authority Information for Prospective EPZ investors

Zambia Privatization Agency "Status Report" as At 30 June 2004