

GOVERNMENT OF ZAMBIA

ACT

No. 19 of 1991

Date of Assent : 8th August, 1991

An Act to revise the law relating to investment in Zambia and in particular to constitute the Investment Centre; to establish the Investment Board; to define the functions of the Centre and Board; to revise the provisions relating to the procedures for dealing with applications for investment licences; to provide for investment guarantees; to repeal the Investment Act, 1986, and to provide for matters connected with or incidental to the foregoing.

[6th September, 1991

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Investment Act, 1991. Short title
2. Nothing in this Act shall apply to— Application
 - (a) a business enterprise which does not employ any wage earner or salaried person;
 - (b) a "Contractor" as defined in the Petroleum (Exploration and Production) Act, 1985; Act No. 13 of 1985
 - (c) a person carrying on a mining activity relating to copper, lead, zinc, or cobalt in accordance with the Mines and Minerals Act. Cap. 329
3. In this Act, unless the context otherwise requires— Interpretation

"Board" means the Investment Board for the Centre established under section five.

"business enterprise" includes any undertaking carrying on business in the field of manufacturing, mining and processing of gemstones, agriculture, transport, tourism and other like services;

- “ Centre ” means the Investment Centre constituted under section *four*;
- “ Chairman ” means the person appointed Chairman of the Board under section *six*.
- “ investment ” means contribution of capital, in cash or in kind, by an investor to a new business enterprise, to the expansion or rehabilitation of an existing enterprise or to the purchase of an existing enterprise from the State;
- “ investor ” means any person investing in Zambia in accordance with the provisions of this Act;
- “ manufacturing ” means transforming on a commercial scale, of raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products, but does not include mining;
- “ member ” means a member of the Board;
- “ non-traditional products ” means products other than copper, lead, zinc or cobalt;
- “ rural area ” means any area in Zambia other than Kabwe Urban District, Kafue Township, Livingstone District, Lusaka Urban District, and the Copperbelt Province excluding therefrom Ndola Rural District.

PART III

INVESTMENT CENTRE AND BOARD

Constitution
and
functions of
Investment
Centre

4. (1) There is hereby constituted the Investment Centre for the promotion, co-ordination, regulation and monitoring of investments and rendering, as a one-stop facility, support and services to investors in Zambia.

(2) Notwithstanding the generality of subsection (1) the functions of the Centre shall be to—

- (a) assess and process applications made by persons intending to invest in Zambia;
- (b) liaise with Ministries, Government departments, local authorities or other bodies in order to assist an investor with timely compliance with any formalities and to help secure any permission, authorisation, licence, land and other things required for the purpose of the business enterprise;
- (c) issue Investment Licences;
- (f) keep records of all technology transfer agreements relating to investments under this Act;

- (e) monitor the performance of enterprises approved by it and enforce compliance with the terms and conditions of the investments approved under this Act;
- (f) ensure that holders of investment licences secure all licences and approvals required to enable any investment licence issued by the Centre to have full effect;
- (g) register manufacturers and issue certificates.
- (h) exercise all functions and powers and perform all duties which under or by virtue of this Act or any other written laws are or may be vested or delegated to it; and
- (i) do all such things as are necessary or incidental or conducive to the functions specified in this Act.

(3) The functions of the Centre relating to paragraphs (a) to (g) of subsection (2) shall be exercised by the Director-General.

5. There is hereby established the Investment Board for the Centre which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

Establishment of Board

6. (1) Subject to the provisions of this Act, the Board shall be responsible for the discharge of the functions and business of the Centre and shall be charged with the general control of the superintendence of the property and policy of the Centre in such manner as appears to the Board to be in the best interest of the Centre.

Functions and composition of Board

(2) The Board shall consist of —

- (a) a representative from each of the Ministries responsible for—
 - (i) finance;
 - (ii) planning;
 - (iii) commerce;
 - (iv) industry;
 - (v) agriculture;
 - (vi) transport;
 - (viii) tourism;
 - (viii) Legal Affairs.
- (b) a representative of the Bank of Zambia;
- (c) the Director-General of the Centre; and
- (d) three persons representing the Zambia Confederation of Chambers of Commerce and Industry, the Commercial Farmers Bureau and the Zambia Association of Manufacturers;
- (e) three reputable businessmen appointed by the Minister.

(3) The members referred to in paragraphs (a), (b), and (d) shall be nominated by their respective organisations and shall be appointed by the Minister.

(4) The Chairman and the Vice-Chairman shall be elected by the Board from amongst its members other than the Director-General.

**Tenure of
office and
vacancy**

7. (1) The members referred to in section six other than the Director-General shall hold office for a period of three years from the date of appointment and may be re-appointed upon the expiration of that term.

(2) A member referred to in paragraph (b), (c) and (d) of subsection (1) of section six may resign upon giving one month's notice in writing to the organisation which nominated him and to the Minister and may be removed by the Minister at any time.

(3) The office of a member referred to in subsection (1) shall become vacant--

- (a) upon his death;
- (b) if he is absent without reasonable excuse from three consecutive meetings of the Board of which he has had notice;
- (c) if he is lawfully detained or his freedom of movement is restricted, for a period exceeding six months;
- (d) on ceasing to be a representative of the organisation which nominated him; or
- (e) if he is an undischarged bankrupt.

**Seal of
Board**

8. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The Board may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(5) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved.

9. A member shall be paid such remuneration or allowances as the Board may, with the approval of the Minister, determine.

Remuneration and allowances

10. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

Proceedings of Board

(2) The Board shall meet for the transaction of business at least once every two months at such places and at such times as the Chairman may decide.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairman and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Nine members shall form a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board—

(a) the Chairman; or

(b) in the absence of the Chairman, the Vice-Chairman; or

(c) in the absence of the Chairman and Vice-Chairman such member as the members present may elect for the purpose of the meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(8) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

11. (1) The Board may, for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it thinks fit.

Committees of Board

(2) The Board may appoint as members of a committee established under subsection (1) persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board any committee established under subsection (1) may regulate its own procedure.

**Disclosure
of interest**

12. (1) If any person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter that person or his spouse is directly or indirectly interested in a private capacity, he shall as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of or vote on, any question touching such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

**Immunity
of members**

13. No action or other proceedings shall lie or be instituted against any member or member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.]

**Director-
General**

14. (1) The Board shall appoint on such terms and conditions as it may determine, a Director-General who shall be the chief executive officer of the Board, and shall be responsible for the administration of the Centre and the implementation of the decisions of the Board.

(2) The Director-General may, subject to the approval of the Board, establish such organisational structures for the Centre as he may consider necessary for the discharge of the functions of the Centre.]

**Secretary
and other
staff**

15. (1) There shall be a secretary to the Board who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Board under the general supervision of the Director-General.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

16. (1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his duties under this Act.

Prohibition
of
publication
or disclosure
of
information

unauthorised
persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding twelve months, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand kwacha or to imprisonment for a term not exceeding twelve months or to both.

PART III

PROCEDURES FOR INVESTMENT

17. (1) Any person may apply to invest in Zambia in accordance with the conditions of an investment licence issued under this part.

Application
for
investment
licence

(2) An application for an investment licence shall be made in writing to the Director-General and shall be accompanied by the prescribed fee.

(3) An application for an investment licence shall contain the following information:

- (a) the name and address of the proposed business enterprise, its legal form, the names, addresses and nationalities of its directors, shareholders, or partners indicating the number of shares held by each one in the enterprise;
- (b) the nature of the proposed activity and the location where such activity is to be carried out;
- (c) the proposed capital structure, amount of the investment, number of persons to be employed and the projected sales revenue over five ensuing years;
- (d) the qualifications, know-how, experience and other relevant particulars of the applicant and his employees to carry out the business activity;
- (e) the incentives for which the applicant expects to qualify;
- (f) information on technology transfer agreements entered into or to be entered into; and

(g) such other information relating to the validity of the project or other matters as the applicant considers relevant to the application.

(4) If an applicant for an investment licence does not provide the information required under subsection (3), or if clarification is necessary on any point, the applicant may be called upon to provide such information, clarification or other particulars to the Director-General as are necessary to complete such application.

Processing
of
applications

18. (1) The Director-General shall on receipt of an application investigate and consider the application and shall within thirty days of such receipt grant or refuse the application.

(2) The Director-General shall grant an application and issue an investment licence in respect thereof if he is satisfied that—

- (a) the application is in accordance with the provisions of this Act;
- (b) the activity planned to be undertaken by the business enterprise is not unlawful; and
- (c) the activity concerned is in the interests of Zambia generally.

(3) In considering an application submitted under this Part, the Director-General may make such consultations as are necessary and relevant to that application.

(4) Where the Director-General rejects an application for an investment licence he shall within seven days of such decision inform the applicant in writing of this decision and the reasons for the rejection.

Investment
licence

19. (1) An investment licence issued under section *eighteen* shall—

- (a) authorise the holder thereof to make all necessary arrangements for the commencement of the business enterprise described therein;
- (b) contain terms and conditions of the licence and incentives, if any; and
- (c) have unlimited period of validity, subject to it being utilised within twelve months from the date of issue.

(2) The Director-General shall, within one month from the date of issuance of the investment licence, obtain for the holder of the investment licence, any permission, authorisation, licence and other registration required for the purpose of operating the business enterprise to which the investment licence relates.

20. The terms and conditions of every investment licence shall include an undertaking by the investor to maintain proper financial and accounting records and to permit the Director-General or any duly appointed agent access to such information on the operations of the business enterprise as the Minister may by statutory instrument prescribe.

Terms and conditions of investment licence

21. The holder of an investment licence shall, as soon as he commences operations of a business enterprise to which the licence relates, notify the Director-General in writing of the date of commencement of business; and the Board shall forthwith verify such commencement of operations.

Notification of commencement business

22. (1) The holder of an investment licence may at any time during the validity of the licence, apply to the Director-General for variation of the terms and conditions of the licence, the incentives granted thereunder or any matter relating to the licence.

Variation of investment licence

(2) The Director-General shall consider the application referred to in subsection (1) and may after negotiations if any, grant or refuse such application.

23. (1) Where the holder of an investment licence is unable to commence operations within twelve months from the date of issue, he may, at least sixty days before the expiry of his licence, apply to the Director-General for an extension of that period, giving reasons thereof; and the Director-General shall, if satisfied with the reasons, extend the validity for such period as he may consider reasonable.

Extension and surrender of licence

(2) Where the holder of an investment licence decides not to continue with any project to which the licence relates, he shall so notify the Director-General in writing and shall agree with the Director-General the terms and conditions of the surrender of the licence with particular reference to anything done or any benefit obtained under the licence.

(3) Where the period of twelve months from the date of issue of an investment licence has expired without the holder of the licence commencing business operations and no application for its extension has been made in accordance with subsection (2) the licence shall lapse and shall subject to section *twenty-six* be cancelled and the holder of the licence shall cease to be entitled to any benefits obtainable under the licence.

24. (1) An investment licence shall not be transferable without the prior approval of the Director-General and such approval shall not be unreasonably withheld.

Transfer of investment licence

(2) Every application for approval to transfer an investment licence shall be made to the Director-General in such manner as the Minister may prescribe and the Director-General may

approve the application on such terms and conditions as he may determine.

**Amendment
of licence**

25. The Director-General may amend an investment licence issued under section *eighteen*—

- (a) where he is satisfied that some other person has succeeded to the interest in the enterprise of the holder of the investment licence, by substituting for the name of the holder the name of the successor;
- (b) where the name of the enterprise is altered, by substituting the name so altered;
- (c) with the written consent of the holder, by varying the relevant foreign currency, if any;
- (d) by extending the period during which the investment is to be made;
- (e) by varying the amount of the investments;
- (f) where the investment consists of the acquisition of shares or stock of an enterprise, by varying the number or amount and the description thereof; or
- (g) with the written consent of the holder in such other manner as may be necessary or desirable.

**Suspension
or
cancellation
of
investment
licence**

26. (1) The Director-General shall suspend or cancel any investment licence if the holder of the licence—

- (a) obtained such licence on the basis of fraud, deliberate or negligent submission of false or misleading facts or statements;
- (b) transferred or otherwise assigned the licence without the prior approval of the Board in contravention of section *twenty-four*;
- (c) fails without reasonable cause to establish the enterprise within the time stipulated in the licence or any extension thereof; or
- (d) fails without reasonable cause to comply with the terms and conditions of the licence, or the provisions of the Act.

(2) The Director-General shall, before suspending or cancelling an investment licence in accordance with subsection (1), give written notice of his intention to suspend or cancel the licence and the grounds thereof to the holder of an investment licence and require the holder of the licence to show cause within a period of not less than thirty days why the licence should not be suspended or cancelled.

(3) The Director-General shall not suspend or cancel an investment licence under this section if the holder of the licence takes remedial measures to the satisfaction of the Director-General within the period of thirty days referred to in subsection (2).

(4) If the holder of an investment licence notified under subsection (2) fails to show cause to the satisfaction of the Director-General or does not make remedial measures to the satisfaction of the Director-General within the time specified in that subsection, the Director-General shall suspend or cancel the licence.

(5) Where an investment licence is suspended, the holder of the licence shall cease to be entitled to the rights and benefits conferred under this Act for the period of the suspension.

(6) Where an investment licence is cancelled the holder of the licence shall cease to be entitled to the benefits conferred under this Act with effect from the date of such cancellation and shall return the licence to the Director-General.

(7) Any person who is aggrieved by any decision taken by the Director-General under this section may appeal to the Board and thereafter may submit the matter to arbitration procedures set out in section *thirty-seven*.

27. The Secretary shall register and maintain proper records of—

- (a) applications for investment licences;
- (b) enterprises in respect of which investment licences have been issued, the levels of investments and whether the licences were in respect of a new enterprise or the rehabilitation or expansion of existing enterprises;
- (c) variations, amendments, suspensions or cancellations of licences;
- (d) particulars of transfer of technology agreements or contracts; and
- (e) other particulars relating to investment licences as may be necessary or desirable.

Register of applications and investment licences

28. (1) Subject to the provisions of this Act, no person shall manufacture any product, whether intended for sale in or outside Zambia, unless he has been registered in accordance with this Part.

Registration of manufacturers

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding one hundred thousand kwacha.

29. (1) An investor who applies for an investment licence under this part in respect of a manufacturing enterprise shall not be required to make a separate application under this Part if, in an application under this Part, he provides the relevant information relating to the registration of that manufacturing enterprise as required by this Part.

Registration of holders of investment licences

(2) The Director-General shall cause to be registered every manufacturing enterprise which is the subject of an investment permit under the Investment Act, 1986, and shall cause a certificate of registration to be issued to such enterprise.

Act No. 5 of 1985

30. (1) An application for registration as manufacturer shall be made to the Director-General in the prescribed form and shall—

- (a) describe the product or products which the enterprise intends to manufacture;
- (b) describe the place or places where manufacturing is to be carried on; and
- (c) provide such other information as may, from time to time, be prescribed.

(2) If an application under subsection (1) does not provide the information required, or if clarification is necessary on any point, the applicant may be called upon to provide such information, clarification or other particulars as are necessary to complete such application.

(3) Within six weeks of the receipt of a completed application under subsection (1), the Director-General shall consider the application and shall, if he finds that—

- (a) the application is in accordance with the provisions of this Act; or
- (b) the activity planned to be undertaken by the manufacturing enterprise is not unlawful or contrary to the interests of Zambia;

cause the manufacturing enterprise to be registered and shall cause a certificate of registration to be issued.

(4) An applicant under subsection (1) who has not received the decision of the Director-General within two months of applying or who is aggrieved by any decision of the Director-General made in exercise of his powers under this section, may appeal to the Board and may thereafter appeal to the High Court.

(5) The Director-General shall maintain a register of all manufacturing enterprises in respect of which a certificate of registration has been issued under this Part, and shall record in such register such details relating to each manufacturer and the products manufactured as the Director-General may, from time to time, determine.

PART IV

INVESTMENT INCENTIVES

31. (1) The investment incentives provided in this Part apply to any investor who holds an investment licence issued under section *eighteen* and whose enterprise—

- (a) is an exporter of ~~non~~-traditional products or services which result in net foreign exchange earnings;

- (b) produces products for use locally in agriculture and the production of agricultural commodities or other agro related products for export;
- (c) is engaged in tourist activities resulting in foreign exchange earnings in excess of twenty-five per centum of the gross annual earnings of the business unit;
- (d) is an import-substitution industry with a significant proportion of local raw material usage which results in net foreign exchange savings;
- (e) is located in a rural area.

(2) If a business enterprise which was operating on the date of coming into force of this Act brings into operation, after that date, a new sub-unit which meets any of the criteria set out in subsection (1) then such sub-unit shall qualify for incentives under this Part if separate accounts are maintained for a reliable segregation of its activities from those other units of the main enterprise.

32. (1) An investor who qualifies for incentives under section *thirty-one* shall be entitled to—

Common
incentives

- (a) exemption from customs duties and sales tax on all machinery, equipment and parts required for the establishment, rehabilitation or expansion of an enterprise for use exclusively in that enterprise;
- (b) exemption from tax on dividends for a period of seven years from the date of commencement of business;
- (c) exemption from the payment of tax on income for companies for a period of three years from the date of commencement of business and thereafter exemption from the payment of such tax for the following two years at the rate of seventy-five per cent;
- (d) exemption from the payment of selective employment tax for a period of seven years;
- (e) retention of seventy per cent of its gross foreign currency earnings for the first three years and—
 - (i) sixty per cent of such earnings for the following two years;
 - (ii) fifty per cent of such earnings for the remaining period of validity of the investment licence:

Provided that the earnings retained under this paragraph shall be for use in acquiring the inputs referred to in subsection (1) of section *thirty-one* and for overseas remittances in respect of debt servicing, profits, dividend payments and settlement of external obligations of the business.

(2) In addition to the incentives described in subsection (1) the Director-General shall, on request and on behalf of a holder

of an investment licence who qualifies for incentives under section *thirty-one*, apply to the appropriate authority and obtain the necessary hectarage of land required for the operations of the enterprise to which the licence relates on such terms and conditions as that authority may determine.

Additional
incentives
for certain
exports

33. An enterprise which qualifies for incentives under paragraph (a) of subsection (1) of section *thirty-one* shall, in addition to the incentives specified in section *thirty-two*, be entitled to benefit from the Export Revolving Fund established by the Bank of Zambia to provide foreign exchange to finance the import content of any confirmed export order:

Provided that the enterprise shall only be entitled to foreign exchange from the export Revolving Fund under this subsection for the import content which does not exceed sixty per cent of the value of the product to be exported.

Additional
incentives
for
agricultural
enterprises

34. An enterprise which qualifies for incentives under paragraph (b) of subsection (1) of section *thirty-one* shall in addition to the incentives specified in section *thirty-two* be entitled to the following incentives:—

- (a) access to foreign exchange in proportions and according to such conditions as may be determined by the Board in consultation with the Bank of Zambia for the producers of maize, wheat, barley, soya beans, livestock, fishery, and any other agricultural product which may be prescribed in consultation with the ministry responsible for agriculture;
- (b) in the case of foreign investment in agriculture, externalisation of 12.5 per cent of the annual after tax profit attributable to the foreign investment;
- (c) in the case of growers of specialised crops prescribed in consultation with the ministry responsible for agriculture, a deduction from income of ten per cent of the gross investment incurred in local currency during the material year as development income.

Additional
incentives
for tourist
enterprises

35. An enterprise which qualifies for incentives under paragraph (c) of subsection (1) of section *thirty-one* shall, in addition to the incentives specified in section *thirty-two* be entitled to the following incentives—

- (a) priority in the allotment of land by relevant authorities for the construction of hotels, chalets, camps and other related facilities;
- (b) priority in the provisions of water power, transportation and communication services and facilities required for the activities of such enterprise at such rates as that accorded to Government enterprises.

36. An enterprise which qualifies for incentives under paragraph (d) of subsection (1) of section *thirty-one* shall in addition to the incentives specified in section *thirty-two* have access to any revolving fund which may be established by the Government for research and development.

Additional incentives for import substitution industries

37. A small scale enterprise or a village enterprise registered under the Small Industries Development Act, 1981, shall be entitled to the following incentives:

Incentives for small scale and village enterprises Act No. 18 of 1981

- (a) exemptions from payment of tax on income for—
 - (i) the first three years of operations for an enterprise operating in an urban area;
 - (ii) the first five years of operations for an enterprise in a rural area;
- (b) exemption from customs duties and sales tax payable on imported equipment to be used in the enterprise;
- (c) operation of a manufacturing enterprise for the first five years without a manufacturing certificate required for such an enterprise under any law;
- (d) for an enterprise with an investment in plant and machinery of less than five hundred thousand kwacha, exemption from the payment of licensing fees required for such an enterprise under any law; and
- (e) exemption from the payment of rates on factory premises for the first five years.

38. The incentives provided for under this Act shall be cumulative and in addition to and not in derogation from any other incentives provided for under any other written law.

Incentives not derogation from any other written law

39. (1) The Minister may by statutory instrument designate any area in Zambia to be—

- (a) an economic development zone; or
- (b) an export free zone.

Economic development or export free zone

(2) Where an area has been designated as an economic development zone or an export free zone both under subsection (1), any investment made in such area shall be accorded such incentives on such terms and conditions as the Minister may prescribe which incentives shall not be less favourable than those conferred to the holders of investment licence under the Act.

PART V INVESTMENT GUARANTEES

40. (1) No property of any description shall be compulsorily acquired, and no interest in or right over property of any description of an investor shall be compulsorily acquired except under an Act of Parliament relating to the compulsory

Protection from acquisition and settlement of disputes

acquisition of the specific property which provides for payment of compensation in respect thereof: any compensation payable under the provision of this section shall be made promptly at the market value and shall be fully transferable at the ruling exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies, and other duties except where those are due.

(2) Where any dispute arises between an investor and the Board or the Government or any agency of the Government all efforts shall be made through mutual discussions to reach an amicable settlement within ninety days from the date of the disputes.

(3) Where any dispute between an investor and the Board, or the Government or any agency of the Government is not settled amicably as described under subsection (2) the dispute may be referred to an arbitration board to be constituted in accordance with subsection (4) or to the High Court.

(4) An arbitration board referred to in subsection (3) shall comprise—

- (a) one person appointed by the investor;
- (b) one person appointed by the Board or the Government; and
- (c) one person appointed by the two parties to the dispute.

(5) The arbitration board established under subsection (4) shall make its decision within one month from the date of receipt of dispute.

(6) Where the arbitration board established under subsection (4) fails to settle the dispute within the period specified in subsection (5) the dispute may be referred to—

- (a) the International Centre for the Settlement of Investment Disputes;
- (b) the United Nations Commission on International Trade Law; or
- (c) any other international machinery for the settlement of investment disputes agreed to by the parties to the dispute.

41. Notwithstanding the provisions of the Exchange Control Act, or any other written law relating to externalisation of funds, the holder of an investment licence shall be entitled in respect of an enterprise to which the licence relates to transfer out of Zambia in foreign currency and after payment of the relevant taxes—

- (a) dividends or net profits of up to seventy-five per cent of the annual after tax profit attributable to paid up foreign capital;
- (b) the principal and interest of any foreign loan specified in the investment licence with the approval of the Bank of Zambia;

- (c) fees, royalties and charges approved by the Bank of Zambia in respect of any agreement;
- (d) the net proceeds of sale or liquidation of the enterprise attributable to foreign investment or retained earnings; or
- (e) any proceeds arising from an arbitration award as a result of proceedings under this Act.

42. From the commencement of this Act, where any law is made which is such that the benefits conferred under this Act would be less favourable, the Board shall adjust such benefits correspondingly.

Guarantee
against
adverse
investment
legislation

PART VI

FINANCIAL AND OTHER PROVISIONS

43. The funds of the Board shall consist of such moneys as may—

Funds of
Board

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) be paid to the Board by way of grants or donations; and
- (c) vest in or accrue to the Board.

(2) The Board may—

- (a) accept money by way of grants or donations from any source in Zambia;
- (b) raise money by way of loans or otherwise from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such moneys as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, seminars, consultancy services, and other services provided by the Board.

(3) There shall be paid from the funds of the Board—

- (a) the salaries, allowances and loans of the staff of the Board;
- (b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Board when engaged on business of the Board at such rates as the Board may, with the approval of the Minister, determine; and
- (c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

- Financial year** 44. The financial year of the Board shall be the period of twelve months ending on 31st December, in each year.
- Accounts** 45. (1) The Board shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Board shall be audited annually by independent auditors appointed by the Board with the approval of the Minister.
- (3) The Auditors' fees shall be paid by the Board.
- Annual report** 46. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Board shall submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall include information on the financial affairs of the Board and there shall be appended to the report—
- (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly.
- Transitional provisions** 47. An investor who, immediately prior to the commencement of this Act holds—
- (a) a valid investment licence or permit, or certificate of incentives or manufacturing licence under the Investment Act, 1986; or
 - (b) any other valid certificate or licence issued under any other written law with respect of an enterprise recognised by the Board;
- shall give written notice to that effect to the Board within six months after the commencement of this Act with a certified copy of the licence, permit or certificate as the case may be and the rights and benefits accruing to the holder of such licence, permit or certificate of incentives shall continue in accordance with the provisions of that Act.
- Investment to rehabilitate an enterprise** 48. (1) A holder of an investment licence may invest in an enterprise for rehabilitation or expansion of the enterprise and shall by notice to the Board apply to have his investment licence amended.
- (2) Where on an application under subsection (1) the Board is satisfied with the amount of investment for the rehabilitation or expansion of the enterprise, it shall amend the investment licence accordingly.

(3) Except where an investment licence has been amended to include the rehabilitation of an enterprise under this section, the holder of an investment licence shall not be entitled to any incentives or other benefits under this Act for the rehabilitation or expansion of that enterprise.

49. (1) Any person who:

- (a) deliberately submits false or misleading facts or statements to obtain an investment licence or benefit under this Act; or
- (b) applies any benefit conferred by or under this Act for a purpose other than those for which the benefit was conferred;

Offences and penalties

shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding one hundred thousand kwacha.

50. In consultation with the Board, the Minister may by statutory instrument, prescribe—

Regulations

- (a) anything which by this Act is required or permitted to be prescribed;
- (b) any forms for the purposes of the Act;
- (c) any fees payable in respect of any service provided by the Centre through the Board;
- (d) designated areas for the purposes of this Act;
- (e) for the collection of industrial data subject to the relevant laws on industrial property rights;
- (f) such other matters as are necessary or conducive to the better carrying out of the purposes of this Act.

51. (1) Subject to subsection (2) the Investment Act, 1986 is hereby repealed.

Repeal of Act No. 5 of 1986

(2) Notwithstanding the repeal of the Investment Act, 1986—

- (a) any agreement executed under that Act shall continue in force as if made under this Act;
- (b) any applications pending before the Investment Coordinating Committee under that Act shall be deemed to have been made to the Board under this Act;
- (c) Any registration done, any other right or benefits accruing, or any liabilities suffered, under that Act shall continue in accordance with this Act;
- (d) any regulations made or directions given under this Act shall unless contrary to this Act continue in force until revoked as if made or given under this Act.

