

LEGAL ALERT

THE ZAMBIA DEVELOPMENT AGENCY ACT NO.17 OF 2022 AND THE INVESTMENT TRADE AND BUSINESS DEVELOPMENT ACT NO. 18 OF 2022

INVESTMENT



Introduction

On 13 January 2023, the Minister of Commerce, Trade and Industry; Honourable Chipoka Mulenga (the “**Minister**”) duly issued the Investment Trade and Business Development Act (Commencement) Order, S.I. No.3 of 2023 which brought into effect the Investment Trade and Business Development Act No. 18 of 2022 (the “**ITBD Act**”).

The Minister equally issued the Zambia Development Agency Act (Commencement) Order, S.I. No.2 of 2023 which brought into effect the Zambia Development Agency Act No.17 of 2022 (the “**ZDA Act**”). The ZDA Act repeals and replaces the Zambia Development Act No. 11 of 2006 (the “**Repealed Act**”).

This article highlights some of the key changes or provisions introduced in the ZDA Act and the ITBD Act.

The Zambia Development Agency Act No.17 of 2022

The ZDA Act has realigned its focus away from investment to the functions and operations of the Zambia Development Agency (the “**ZDA**”). The provisions that directly relate to trade, investments and incentives as were in the Repealed Act have since been moved to the ITBD Act.

Though the functions of the ZDA have been re-defined, they have largely remained the same with the over-arching function of furthering the economic development of Zambia through the promotion and facilitation of investment, domestic and

foreign trade, competitiveness in business development and the privatisation of state-owned enterprises. Some of the functions of the ZDA are to:

- issue licences, permits or certificate of registration under the ITBD Act;
 - assist in securing permission, an exemption, an authorisation, a licence, bonded status, land and any other thing required from a State institution for the purposes of establishing or operating a business;
 - facilitate and promote the development of special economic zones;
 - promote and facilitate partnerships, joint ventures, business linkages, access to capital and other strategic alliances including the transfer of appropriate technology and skills relating to industry development and productivity;
 - maintain regular, productive and effective dialogue and cooperation with the public and private sector; and
 - provide business development services to a business.
- There equally has been some change in the composition of the ZDA Board which now consists of the following part time members:
- a representative from the Ministry responsible for commerce and industry as well as finance;
 - a representative of the Attorney-General;

- a representative of the Zambia Institute of Chartered Accountants;
- a person nominated from the most representative private sector association;
- a representative of a civil society organisation involved in trade and investment; and
- two persons with experience and knowledge in trade and investment.

Board members hold office for a term of three years and may be reappointed for a further and final term of three years.

Worth noting as well is that an action or other proceedings shall not lie or be instituted against a member of the Board, a member of a committee of the Board or a member of staff of the ZDA, for or in respect of any act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under the Act. What this entails is that unlike in the Repealed Act which conferred no immunity on Board or members of staff, no legal action may be commenced against the above stated officers for as long as an act is done in good faith in the exercise of any powers, functions or duties conferred under the ZDA Act.

The Investment Trade and Business Development Act No. 18 of 2022

The ITBD Act has been established to foster economic growth and development by promoting trade, business development and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy. The ITBD Act is administered by the ZDA and applies

to an investor investing in a sector or an industry or any region of Zambia.

While most of the provisions in the ITBD Act are those which were already contained in the Repealed Act, we set out below some of the salient provisions in the Act:

Investment Protection and Promotion Agreements

The Act empowers the Minister, subject to the approval of the Attorney-General, to enter into an investment protection and promotion agreement on behalf of the Government with another Government. The Act further empowers the ZDA, subject to the approval of the Minister and the Attorney-General, to enter into an investment protection and promotion agreement on behalf of Government with an investor.

Incentives for exporters of products and services

An exporter of locally produced goods and services may be eligible for incentives as the Minister of Finance may, on recommendation of the Minister, prescribe by statutory instrument.

Investment Incentives

A business cannot access incentives unless it holds a licence, permit or certificate issued under the Act. A person may apply to the ZDA for a licence, permit or certificate of registration, where that person intends to undertake the following:

- develop any premises as a special economic zone;
- operate a business in a special economic zone;
- invest in any business in a priority sector as prescribed;

- register a business; or
- operate a business in a rural area.

Registered businesses, investing in a priority sector, are eligible for incentives as may be prescribed by the Minister of Finance, on the recommendation of the Minister. Worth noting however is that a registered business ceases to enjoy such incentives on the transfer of that business' ownership to another business during the validity period of the incentive.

A licence, permit or certificate of registration is valid for a period of five years and can be renewed for further five-year terms.

An investor is eligible for incentives under the ITBD Act if that investor invests in a:

- special economic zone; or
 - business operating in a priority sector (as declared by the Minister) or rural area.
- An investor shall be eligible for an incentive under this Act if that investor is:
- a local investor investing a minimum of USD 50,000.00 or equivalent in convertible currency;
 - a citizen owned company investing a minimum of USD 100,000.00 or equivalent in convertible currency;
 - a citizen empowerment company investing a minimum of USD 150,000.00 or equivalent in convertible currency;
 - a citizen influenced company investing a minimum of USD 500,00.00 or equivalent in convertible currency; or
 - investing USD 1,000,000.00 or equivalent in convertible currency.



Worth noting is that the Minister of Finance will only grant tax incentives to an investor under the Income Tax Act or the Customs and Excise Act, on the recommendation of the ZDA following its determination from the investor's pledge and skills transfer to citizens that the investor shall create employment for citizens as pledged. Therefore, tax incentives shall only be effected by the Minister of Finance after the ZDA certifies that an investor has complied fully with the ITBDA and any condition prescribed.

Equally worth noting is that where an investor fails to comply with a term or condition of a licence, permit or certificate of registration or any provision of the ITBD Act, the Commissioner-General (the "**Commissioner-General**") of the Zambia Revenue Authority shall, on recommendation of the ZDA, suspend or withdraw the tax incentive granted to the investor for that year, on terms and conditions that the Commissioner-General may specify.

Also, an investor whose tax incentives are withdrawn is required to remit the taxes due under the Income Tax Act or Customs and Excise Act, for the charge year in which the incentive is accessed or accrued.

Submission of information by investor

An investor is mandated to produce, on the request of an authorised officer, books, records, documents and other information required by the authorised officer. The ZDA is mandated to keep such information confidential. Should an investor fail or refuse to give or provide the information requested for, the ZDA shall recommend to the Minister of Finance that a fiscal incentive granted to the investor be suspended

or withdrawn for that year on terms and conditions that the Minister of Finance may specify.

Submission of annual returns

An investor is mandated to submit annual returns accompanied by annual financial statements audited by a local auditing firm to the ZDA in the prescribed manner and form. An investor who fails to comply with the foregoing commits an offence and is liable, on conviction, to a fine not exceeding ZMW 30,000 (approximately USD 1,729.18) or imprisonment for a term not exceeding twelve months, or to both. The same penalty applies to an investor who intentionally and wilfully submits misleading information to the ZDA.

Savings and transitional provisions

A licence, permit or certificate of registration issued under the Repealed Act shall continue to be valid until expiry, revocation or surrender.

An application for a licence, permit or certificate of registration pending under the Repealed Act, shall be issued in accordance with the ITBD Act.

Conclusion

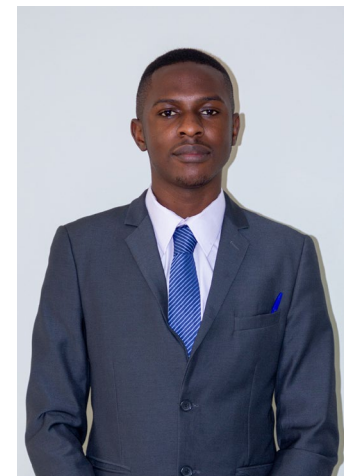
The introduction of these two new pieces of legislation is set to change the investment environment in Zambia, fostering a new dawn for investment into the country.

The effectiveness of these two pieces of legislation is yet to be seen but the two Acts are intended to extend the ability of investments to really impact Zambia's economic development.

We hope you found this alert useful. Please contact our Corporate Advisory Partner and Lawyer, Jacqueline Jhala at JJhala@corpus.co.zm and Dalitso Ng'ona at DNg'ona@corpus.co.zm respectively, if you have any questions relating to the ZDA and ITBD Act..



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