REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

INVESTMENT, TRADE AND BUSINESS DEVELOPMENT BILL, N.A.B. NO. 20 OF 2022

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE CONSIDERATION OF THE INVESTMENT, TRADE AND BUSINESS DEVELOPMENT BILL, N.A.B. NO. 20 OF 2022, FOR THE SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of: Mr Mutotwe Kafwaya, MP, (Chairperson); Ms Sibeso K Sefulo, MP, (Vice Chairperson); Mr Binwell Mpundu, MP; Mr Ronald K Chitotela, MP; Mr Gift S Sialubalo, MP; Mr Davies Chisopa, MP; Mr David Mabumba, MP; Mr Eliot Kamondo, MP; and Mr Mubika Mubika, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
P O Box 31299
LUSAKA

Madam

The Committee has the honour to present its Report on the Investment, Trade and Business Development Bill, N.A.B. No. 20 of 2022 referred to it by the House on Thursday, 15th September, 2022.

2.0 FUNCTIONS OF THE COMMITTEE

In accordance with Standing Order number 198 (j) of the National Assembly of Zambia Standing Orders, 2021 the Committee is mandated to scrutinise Bills referred to it by the House

3.0 MEETINGS OF THE COMMITTEE

The Committee held ten meetings to consider the Investment, Trade and Business Development Bill, N.A.B. No. 20 of 2022.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders and examined in detail all submissions presented to it. The list of witnesses who submitted comments and appeared before the Committee is at Appendix II of this Report.

5.0 BACKGROUND

The *Zambia Development Agency Act, No. 11 of 2006*, governed issues relating to trade, investment and business development. The Act provided for, among others, fostering economic growth, by promoting business development and investment in Zambia. However, it was noted that there were gaps and weaknesses within the law that needed to be addressed. Further, the Government was of the view that there were insufficient mechanisms to strengthen the implementation of the policy framework on trade, investment and business development that was needed to foster economic growth going forward.

It was against this background that Cabinet approved the introduction of the Investment, Trade and Business Development Bill, to among others, foster economic growth and development by promoting trade, business development and investment in the Zambia.

6.0 OBJECTS OF THE BILL

The objects of this Bill were toð

a) foster economic growth and development by promoting trade, business development and investment in the Republic through an efficient, effective and coordinated private sector led economic development strategy;
b) promote economic diversification through the growth of exports;
c) promote, facilitate, protect and monitor domestic and foreign direct investment;
d) promote investment through joint ventures and partnerships between local and foreign investors;
e) facilitate the development of industrial infrastructure and commercial services;
f) promote research on matters related to industrial development;
g) facilitate the protection of infant industries; and
h) provide for matters connected with, and incidental to, the foregoing.

7.0 PROVISIONS OF THE BILL

Part I: Clauses 1 to 5 - Preliminary Provisions

This part provided for the short title, which was essentially the name of the Act and when the Act shall come into operation. The part also provided for the interpretation of terms used in the Bill. This part also mandated the Zambia Development Agency (ZDA) to be in charge of the governance of and adherence to the provisions of the Act. It prohibited investment in industries such as those engaged in the manufacturing of arms and ammunition..

Part II: Clauses 6 to 10 - Investment Promotion and Guarantees

This part provided for the declaration of special economic zones and mandated the Minister to issue a statutory instrument laying out the special conditions that would apply to those zones. This part also provided for the categories of money that an investor could send out of the country.

Part III: Clauses 11 to 13 - Trade and Industrial Development

Under this part, the Zambia Development Agency (ZDA) was mandated to recommend development plans for various issues, such as developing the capacity of businesses to trade competitively in international markets. ZDA also had the responsibility to disseminate market information to the African Continental Free Trade Area community, following Zambiaǿs ratification of the continental free trade agreement in 2021 and carry out market research and participate in international and regional conferences, in order to ensure Zambiaǿs participation in trade agreements and to secure the interests of the country as regards any such agreements.

Part IV: Clauses 14 to 17 - Business Development

This part provided for the means of promoting the growth of business, including facilitating access to financing opportunities and also provided that incentives would only be offered to businesses which held a licence, permits or certificate.

Part V: Clauses 18 to 29 - Licence, Permit and Certificate or Registration

This part set out the criteria for applying for a licence, permit or certificate of registration. Under this part, the waiting period for approval or rejection of an application had been increased from fourteen (14) days, to thirty (30) days. It had also reduced the validity period for an investment licence from ten to five years.

Part VI: Clauses 30 to 36 - Investment Incentives

This part provided for, *inter alia,* the category of investors who would be eligible to receive incentives. Under this part different categories of investors would be offered incentives, if they invested in special economic zones or in a business that operated in a priority sector or rural area.

Part VII: Clauses 37 to 43 - Trade and Investment Development Fund

This part provided for the establishment of a Development Fund.

Part VIII: Clauses 44 to 51 - General Provisions

This part provided for the grievance procedure that an aggrieved party could follow. Where a party was aggrieved by a decision of the Agency, the appeal against such decision would be made to the Minister within fourteen (14) days. Where it is the decision of the Minister that has caused a grievance, the aggrieved party shall appeal to the High Court, within thirty (30) days of the decision.

8.0 SUMMARY OF SUBMISSIONS BY STAKEHOLDERS

All the stakeholders who made submissions to the Committee welcomed the Investment, Trade and Business Development Bill and pointed out that it would address some of the shortcomings of the *Zambia Development Agency Act,* especially with regard to fostering domestic-led investment.

The Committee was informed that investment, trade and business development, were essential to a countryȇs attainment of economic growth. For economic development, the growth in the economy would translate into job and wealth creation among its citizens, which in turn would result in improving the living standards of the citizen and reducing the incidence of poverty.

Since the privatisation of State-Owned Enterprises (SOEs) in the early 1990s under the International Monetary Fund and World Bankȇs Structural Adjustment Programme, Zambiaȇs industrial base had remained narrow even after the enactment of the *Zambia Development Agency Act, No. 11 of* 2006. Stakeholders submitted that the main limitation of the Act, had been its focus on the promotion of foreign direct investment, neglecting domestic-led investment. Therefore, as the country took on membership in several trading groups, it did not take advantage of the increased market outlets due, mainly to the countryȇs limited industrial base.

Stakeholders submitted that the private sector had over the years continued to request the Government to create a more favourable business environment for the sector to significantly grow and enhance its contribution to the countryȇs development agenda. the *Zambia Development Agency Act, No. 11 of* 2006, had not led to significant growth of the general industrial development. In particular, the small and medium-scale industries had been omitted in the promotion of industrial development.

Stakeholders welcomed the proposal in the Bill for declaration of certain areas as economic zones and noted that this would lead to more investment being directed into these established economic zones. The special economic zones would enhance Zambiaȇs export competitiveness and industrialisation drive, in the face of the Africa Continental Free Trade Agreement (AfCFTA). The Committee was informed that for the country to get benefits from the economic zones, other factors that influenced investment and needed attention included efficient, equitable and predictable tax administration, ease of doing business, the strength of governance institutions and transport infrastructure. In addition, it would be critical to ensure that incentives in the zones were only granted to investors that intended to remain in Zambia for the long term and whose overall disposition with respect to economic development and wider environmental, social and governance ethos, aligned with those of the Government.

9.0 CONCERNS RAISED BY STAKEHOLDERS

While welcoming the enactment of the proposed piece of legislation, the stakeholders raised the concerns set out below.

The Committee was informed that the Investment, Trade and Business Development Bill, as presented, had not adequately addressed the challenges that the domestic or local investors faced.

Clause 6 - Investment Protection and Promotion Agreement

The Committee was informed that the provisions under clause 6(1) and (2), focussed on investment protection, as opposed to investment promotion and lamented that this perpetuated the shortcomings of the *Zambia Development Agency Act,* of neglecting investment promotion. Stakeholders recommended that the Bill should have clearly provided for investment promotion focusing on domestic investment, supplemented by foreign investment.

Clause 10 - Externalisation of Funds

Stakeholders submitted that clause 10 of the Bill did not prescribe any limitations on the amount of money that could be externalised by an entity within a particular period. They stated that the externalisation of funds often had adverse effects on the balance of payments in a republic. Therefore, they proposed the limitations on the amount of money being externalised could be done via introduction of a single discretionary allowance to accommodate individuals to move up to K1 million (equivalent) offshore, so as to aid in the stabilisation of the currency.

Stakeholders also pointed out that the externalisation of funds would require close monitoring by the Zambia Development Agency (ZDA) and other relevant institutions such as Zambia Revenue Authority, commercial banks and the Central Bank, in order to ensure that relevant taxes and other obligations were met before funds were externalised.

Other stakeholders were of the view that while this provision was one way of attracting investors, it would be desirable to provide some additional incentives to investors who did not externalise these profits as a better balance from the extreme measures of controls on expropriation of the said profits, among others.

Clause 11 -Trade and Industrial Development Strategies

Clause 11(1) (b) of the Bill proposed to develop guidelines for financing economic development programmes, including franchising. Stakeholders noted that economic development had a broad meaning, with some outcomes not falling within the mandate of the ZDA and therefore, recommended that economic development should be replaced with industrial development to reflect the mandate of the Agency.

Clause 11(2) (a) of the Bill provided that the ZDA would facilitate and protect infant industries, while clause 11(2) (h) provided that the Agency would move towards large and more unified markets in the form of free trade areas, common customs areas or single markets. Stakeholders were of the view that it was impossible to protect infant industries while the market was being consolidated. Unification of markets required the removal of barriers to trade, which in essence, were the safeguards of infant industry protection. They proposed that infant industry protection should be prioritised by invoking all necessary trade protection instruments to nurture and protect local firms to a level where they would be able to compete favourably with peer industries before moving towards large and more unified markets.

Clause 11(2)(g) of the Bill proposed to reduce and, in the long term, eradicate poverty in line with the objectives of sustainable development. Stakeholders expressed concern that this provision was beyond the mandate of the ZDA. They pointed out that poverty reduction and the attainment of sustainable development, were objectives of national development planning. ZDAøs role in attaining these national development goals was the promotion of investment and industrial growth that should lead to job and wealth creation. Therefore, there was need for the clause to be realigned to reflect the ZDA mandate.

Clause 12 - Trade and Business Development Measures

Clause 12(1)(b)(i) of the Bill proposed to catalyse and leverage flows of private savings, both domestic and foreign, into the financing of businesses in accordance with Government policies aimed at developing a modern financial sector, including strengthening capital markets, financial institutions and sustainable microfinance operations. Stakeholders observed that it was not clear how the ZDA would implement this provision because the Agency would have no direct influence on the flow of private savings. They proposed that the clause should be revised to capture what was within the ZDA mandate.

Clause 12(5) of the Bill proposed that market research and participation in international and regional conferences and meetings would be undertaken under the direction of the Minister. Stakeholders were of the view that activities under clause 12(5) were routine operations of ZDA, which could not be under the direct supervision of the Minister, but should instead be the mandate of the Board.

Clause 21: Period of Validity of and Renewal for Licence, Permit or Certificate of Registration

Some of the stakeholders observed that this provision had reduced the period of validity of and renewal for licence, permit or certificate of registration, from ten to five years, which in their view was contrary to the desire of the Government to reduce the cost of doing business. On one hand, the Government was talking about reducing the cost of doing business as an incentive to Foreign Direct Investment, while on the other, it was increasing the cost by reducing the period of validly of licences. They went further to contend that one of the challenges that had hampered the growth of investment in Zambia was the weak monitoring and evaluation by the Zambia Development Agency, arising from various constraints, key among them, limited funding and human resource. In this regard the stakeholders recommended that Committee recommended that the validity period be reverted to ten years and the monitoring capacity for ZDA be enhanced.

Minister's Response

In noting the submission, the Minister of Commerce Trade and Industry, in his engagement with the Committee, contended that this measure was intended to strengthen compliance in the monitoring and evaluation of business activities as renewal will be subject to holder demonstrating their adherence to the business or project plan submitted to the Agency at the point of obtaining the licence, permit or certificate of registration. He cited instances where investors enjoyed incentives for ten years, without delivering on their pledges. He added that monitoring and evaluation was a routine responsibility of the Agency and need not be provided for in the bill.

Clause 35 - Incentives Structure

Clause 35 of the Bill provided that the Minister responsible for finance would, on the recommendation of the Director-General, grant an investor relief or exemption from any tax or duty to which the investor was eligible. Stakeholders observed that the provision gave discretion to the, the Agency and the Director-General, all representing one function, to grant incentives. They proposed that all incentives should be consolidated in a schedule that reflected the countryôs national planning and budgeting documents such as the industrial and trade policies and the national budget.

Clause 36 - Certifications of Compliance for Relief or Exemption

Clause 36 of the Bill provided that subject to the *Income Tax Act*, *Chapter 323 of the Laws of Zambia,* where a double taxation agreement existed between the Zambia and another country, foreign tax payable by an investor to the other country relating to any foreign income would be as determined under that agreement. Stakeholders informed the Committee that the management of double taxation agreements was under review by respective world bodies such as the Organisation for Economic Co-operation and Development. Therefore, there was need for this provision to reflect that review.

Clause 37 -Establishment of Trade and Investment Development Fund

Clause 37 provided for the establishment of a trade and investment development fund. Stakeholders observed that there were already, a number of Government-owned Funds such as those disbursed by the Development Bank of Zambia (DBZ) and the Citizens Economic Empowerment Commission (CEEC). Giving this mandate to ZDA meant duplication of Government efforts and could ultimately lead to an increase in costs for the Government. In this regard, stakeholders recommended that the Agency should work with DBZ and CEEC as fund managers for its trade and investment development programmes.

Minister's Response

In his response, the Minister, while noting the submission from stakeholders, indicated that whereas the CEEC Funding was exclusive to citizens, the Fund under the ZDA would facilitate partnerships between foreign and local investors and would, therefore, go beyond the scope of the CEEC Fund. He added that according to clause 39(3), the Fund will be managed by a Fund Manager, appointed by the Board, to manage and administer the Fund for the purposes specified under clause 38. The Minister argued that the Fund was expected to lead to increased domestic production, improved trade competitiveness, as well as expanded markets for Zambian products

10.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Following the interaction with stakeholders, the Committee observes that for many years there have been continued calls from different sectors of society for a more robust and comprehensive legal framework to guide investment in the country. The Committee is cognisant that the *Zambia Development Agency Act, No. 11 of 2006* had a number of shortcomings and did not have sufficient provisions to foster the growth of investment, especially from citizens.

In this regard, the Committee supports the enactment of the Investment, Trade and Business Development Bill, N.A.B. No. 20 of 2022 into law and is hopeful that it will provide a clear framework for the promotion of investment, trade and business development in Zambia. The Bill has numerous progressive provisions that will positively contribute to Zambiaŏs efforts to restore macroeconomic stability and sustained economic growth.

While supporting the Bill, the Committee makes its observations and recommendations as set out below.

i. Clause 6 - Investment Protection and Promotion Agreement

The Committee observes that the focus of the provisions under 6 (1) and (2), seem to be investment protection, instead of investment promotion, which perpetuates the shortcomings of the current *Zambia Development Agency Act* of neglecting investment promotion.

The Committee, therefore, recommends that the Bill should be revised to clearly provide for investment promotion, focusing on domestic investment, supplemented by foreign investment.

ii. Clause 10 - Externalisation of Funds

The Committee notes that clause 10 provides authorisation for investors to transfer out of the Republic, after payment of taxes and liabilities; dividends; principal and interest of any foreign loan; management fees; royalties and other charges in respect of any agreement and net proceeds of sale or liquidation of business or any other liabilities. The Committee observes that while this provision is one way of attracting investors, it has the potential to destabilise the balance of payments.

In this vein, the Committee strongly recommends that that in order to avoid reverting to extreme measures of controls on expropriation of the said profits, among others, by capping how much can be externalised. The Committee further recommends that the Bill should provide additional incentives to investors who do not externalise these profits.

iii. *Clause 11 -Trade and Industrial Development Strategies*

The Committee observes that clause 11(1) (b) of the Bill, proposes to develop guidelines for financing economic development programmes, including franchising, which have a broader meaning, with some outcomes not falling within the mandate of the ZDA.
The Committee, therefore, recommends that economic development should be replaced with industrial development to appropriately reflect the mandate of the Agency.

Further, the Committee observes that clause 11(2) (a), provides for the ZDA to facilitate and protect infant industries, while clause 11(2) (h) provides that the Agency will move towards large and more unified markets in the form of free trade areas, common customs areas or single markets. The Committee opines that it is practically impossible to protect infant industries, while at the same time consolidating the market, which requires the removal of barriers to trade and which, in essence, are the safeguards of infant industry protection.

In this regard, the Committee recommends that infant industry protection should be prioritised by invoking all necessary trade protection instruments to nurture and protect local firms to a level where they are able to compete favourably with peer industries, before moving towards large and more unified markets.

iv. *Clause 21: Period of Validity of and Renewal for Licence, Permit or Certificate of Registration*

The Committee observes that this provision reduces the period of validity of and renewal for licence, permit or certificate of registration, from ten to five years, which in its view is contrary to the desire of the Government to reduce the cost of doing business. On one hand, the Government is talking about reducing the cost of doing business as an incentive to Foreign Direct Investment, on the other, it is increasing the cost by making the period of validly of licences shorter.

The Committee further observes that one of the challenges that has hampered the growth of investment in Zambia is the weak monitoring and evaluation programmes administered by the ZDA, due to various constraints, key among them, limited funding and human resource. As a result, the Agency has a limited picture of the actualisation of pledged investments.

In this regard the Committee recommends that the validity period be reverted to ten years and the monitoring capacity for ZDA be enhanced.

v. *Clause 35 - Incentives Structure*

The Committee observes that clause 35 gives the Minister responsible for finance, on the recommendation of the Director-General, to grant an investor, who has complied with the terms and conditions of the certificate, licence or any provision of the Act, relief or exemption from any tax or duty to which the investor is eligible. The Committee is of the view that this gives unfettered discretion to the Minister, the Agency and the Director-General to grant incentives and is a recipe for abuse of authority.

In this vein, the Committee recommends that all incentives and the criteria for qualifying for them, should be consolidated in a schedule that reflects the countryôs national planning and budgeting documents, such as the industrial and trade policies and the national budget.

vi. Clause 36 - Certifications of Compliance for Relief or Exemption

The Committee notes that clause 36 provides that subject to the *Income Tax Act*, where a double taxation agreement exists between Zambia and another country, foreign tax payable by an investor to the other country, relating to any foreign income, will be as determined under that agreement.

The Committee observes that the management of double taxation is subject to international agreements. Therefore, the Committee recommends that for purposes of compliance to international protocols, this provision should consider the existing taxation agreements.

vii. Clause 37 - Establishment of Trade and Investment Development Fund

The Committee observes that clause 37 provides for the establishment of a Trade and Investment Development Fund, while there are, already, a number of Government-owned funds, such as those managed by the DBZ and the CEEC.

While appreciating the submissions of some of the stakeholders who contended that while CEEC deals with investors with the local market as their target and the Agency Fund will deal with investors with an international outlook, the Committee opines that this a duplication of Government efforts which ultimately may lead to an increase in costs for the Government. This is particularly, so because the Bill does not provide guidelines or a threshold at which investors would graduate from CEEC to the ZDA Agency funding.

In this vein, the Committee recommends that instead of creating another Fund, the Bill should provide that the Agency should work with DBZ and CEEC as fund managers for its trade and investment development programmes.

11.0 CONCLUSION

The Investment, Trade and Business Development Bill, N.A.B. 20 of 2022 once enacted, will address the weaknesses and gaps identified in the Zambia Development Agency Act. Investors will be more accountable for their activities and the Agency will ensure that investment activities benefit local communities in particular, and the Republic at large. The Bill is, therefore, progressive and should be supported.

The Committee expresses gratitude to all the stakeholders for their oral and written submissions on the Bill. The Committee also thanks the Office of Speaker and Clerk of the National Assembly for the guidance and services rendered to it during the consideration of the Bill.

We have the honour to be, Madam, the Committee on National Economy, Trade and Labour Matters, mandated to scrutinise the Investment, Trade and Business Development Bill, N.A.B. 20 of 2022.

Mr Mutotwe Kafwaya, MP	October, 2022
CHAIRPERSON	**LUSAKA**

Appendix I: List of National Assembly Officials

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mrs Doreen N C Mukwanka, Deputy Principal Clerk of Committees (FC)
Mr Charles Chishimba, Senior Committee Clerk (FC)
Mrs Grace Chikwenya, Administrative Assistant
Mr Morgan Chikome, Committee Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Sean Kantumoya, Parliamentary Messenger
Mr Stanford Mwiinde, Intern

Appendix II: List of Witnesses

Ministry of Justice
Ministry of Small and Medium Enterprise Development
Ministry of Finance and National Planning
Minister of Commerce, Trade and Industry
Ministry of Commerce, Trade and Industry ï Permanent Secretary
Law Association of Zambia
Citizens Economic Empowerment Commission
Bankers Association of Zambia
Industrial Development Corporation
University of Zambia
Zambia Development Agency
Zambia Environmental Management Agency
Centre for Trade Policy and Development
Zambia Association of Manufacturers
National Economic Advisory Council
Development Bank of Zambia
Common Market for Eastern and Southern Africa
Bank of Zambia
Zambia Institute for Policy Analysis and Research
Zambia Chamber of Commerce and Industry
Zambia Revenue Authority
Zambia Institute of Chartered Accounts