



**SUBMISSION ON THE ZAMBIA DEVELOPMENT AGENCY BILL, N.A.B NO.
19 OF 2022 AND THE INVESTMENT, TRADE AND BUSINESS
DEVELOPMENT BILL N.A.B NO 20 OF 2022**

Submitted to the Committee on National Economy, Trade and Labour matters

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1. Introduction

This memorandum was prepared by the Zambia Institute for Policy Analysis and Research (ZIPAR), in response to a request made by the Committee on National Economy, Trade and Labour Matters of the National Assembly of Zambia on 20th September 2022. The request was for ZIPAR to prepare and submit a memorandum commenting on the Zambia Development Agency Bill, No. 19 of 2022 and the Investment, Trade and Business Development Bill N.A.B No. 20 of 2022. In line with the Committee's request, this memorandum presents ZIPAR's analytical views on the aforementioned.

The memorandum is structured as follows: the first section provides a background, and this is followed by our analytical comments on the two Bills. The last section provides a conclusion.

2. Background

This is a Bill to continue the existence of the Zambia Development Agency (ZDA) and redefine its functions; reconstitute the board of the Agency and provide for its functions. It further seeks to repeal and replace the ZDA Act, 2006 and provide for matters connected with, or incidental to, the foregoing. On the other hand, the Investment, Trade and Business Development Bill seeks to 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. It further seeks to promote economic diversification through the growth of exports and to promote, facilitate, protect and monitor domestic and foreign direct investment, promote investment through joint ventures and partnerships between local and foreign investors. It also seeks to facilitate the development of industrial infrastructure and commercial services, promote research on matters related to industrial development and facilitating the protection of infant industries and to provide for matters connected with and incidental to the foregoing.

3. Key observations

It goes without saying that the performance of Zambia's business sector with respect to exports, investment and the general business development environment has been poor in recent years. This is despite the creation of the ZDA in 2006 which was created with a multifaceted mandate of promoting and facilitating trade, investment and enterprise development in the country. The Agency is also responsible for building and enhancing the country's investment profile for increased capital inflows, capital formation, employment creation and growth of the Micro, Small and Micro Enterprise

(MSME) Sector. The performance of the Agency has been mixed, with the country still dependent on copper exports with slow progress made in diversifying the country's export base. In terms of Investment promotion and business development, the jury is still out as investment inflows have fluctuated over the years owing to policy inconsistency among others. It is therefore necessary for the Government to revise the ZDA Act to redress some of the losses of yesteryears.

The ZDA Bill is also timely and critical as it legally identifies the ZDA as a body discharged with trade and investment promotion. In the current globalised economy, there is need to have an identified entity that functions to promote trade and whose leadership is well documented within the law. For instance, the provision of roles of the entity and the Board instills the confidence in investors that their investment will be well protected by professionals that have strategic oversight on this institution. However, caution should be taken to ensure that the Agency functions in a professional manner and that qualified people are appointed to lead the institution. We also note that the ZDA Bill provides for privatisation of State-Owned Enterprises as one of the functions of the Agency. However, in the specific provisions of the Act, we note the absence of provisions to undertake this function.

One of the notable changes in the ZDA Bill is the removal of the mandate to support the growth of the MSME sector from the ZDA. This is logical especially that the Ministry of MSME Development was created about a year ago to support the MSME sector. The mandate to support MSMEs will likely fall under a different institution going forward.

The Investment, Trade and Business Development Bill recognises the important role of the private sector in fostering economic growth through trade and investment. It recognises the importance of consultation among stakeholders such as the private sector and this can be seen through suggested consultations with Government in formulation of business associations that represent private sector interests. This is commendable because with the growth in the MSME sector, some associations that are currently available may not represent the growth dynamics and constraints faced by the new age MSMEs. As such new associations that maybe formed would be more likely to also speak to the interests of those groups (especially newly created MSMEs) that are left out. In the same vein, consultation in forming new associations may also prevent replication of these bodies and perhaps realign current associations to the interests of the businesses that should be captured. We have made the following detailed observations regarding the Investment, Trade and Business Development Bill.

- **Weak justification for Incentives**

Through investment incentives, the Government incurs revenue losses. However, there is no concrete mechanism through which the Government is compensated for this loss. We are of the view that the law should have had provisions that compel investors (both foreign and local) to demonstrate their impact on revenue from trade related activities, among others. It would have been necessary to have explicit provisions in the act that require investors to provide clear illustration of their expected revenue impacts. Further, the Act should outrightly compel investors to demonstrate how their projects will achieve quality jobs, technology transfer and increased production capacity to qualify for incentives. In its current state, the Act is quite vague, and an investor only needs to be in a priority sector, rural area or Special Economic Zone to qualify for incentives. In an ideal scenario, investment incentives should be performance based.

- **Weak monitoring and evaluation mechanisms**

One of the challenges that has hampered the growth of investments in Zambia relates to the weak monitoring and evaluation programmes administered by the ZDA. Due to various constraints, key among them limited funding and human resource, monitoring activities are not prioritised. As a result, the Agency has a limited picture of the actualization of pledged investments. It is against this background that the Act should have explicitly had provisions for monitoring and evaluating investments. What is currently stated in the Act is ambiguous and can lead to a continuation of the challenges that have existed in the past.

- **Externalisation of funds**

The Investment, Trade and Business Development Bill 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. While this provision is one way of attracting investors, we are of the view that some additional incentives can be provided to investors who do not externalize these profits. This would be a better balance from the extreme measures of controls on expropriation of the said profits, among others. The externalisation of profits among others contributes to Balance of Payment instability. Therefore, providing incentives to firms that do not externalize their profits could go a long way in curing such a problem.

- **Investment Incentives**

It is highly commendable that the Investment, Trade and Business Development Bill provides for investment incentive thresholds that take into consideration local investors, citizen owned companies, citizen empowerment companies and citizen influenced companies. The different classes of investors have varying thresholds for investment. However, we note that for local investors, the investment thresholds are quoted in United States Dollars. Given some of the exchange rate instabilities that Zambia has experienced in the past, this could be problematic for local investors as a depreciation could necessitate a huge outlay of the equivalent amount in Kwacha. This risk should have been considered so that there is a fixed investment amount in local currency.

- **Trade and Investment Development Fund**

The Bill establishes the Trade and Investment Development Fund, a highly commendable inclusion given the financing constraints that business firms face in expansion of business activities, investment and trade. However, this fund is being created in the wake of the Zambia Export Development Fund (ZEDEF) which has been in existence for years and managed by the Zambia Development Agency. The performance of this fund has been poor with little or no impact on the export trends in the country. The fund has been wrought with administrative challenges, non-performing loans and poor repayment culture among others. We therefore suggest that implementation of this fund should be preceded by thorough review of the ZEDEF which is a perfect case study of how such a fund can be implemented in Zambia. Specifically, the pitfalls experienced under ZEDEF should be avoided in implementing the Trade and Investment Development Fund.

- **Special Economic Zones**

The Bill clearly spells out the importance of Special Economic Zones and this is important for the Zambia's industrialisation. However, there is need to unveil a criteria for what qualifies specific areas to be identified as special economic zones. There is also need to define, in Zambia's context, what these zones should be and procedures for ensuring that they are operational even after being launched. Issues of technical capacity and functional systems to manage these zones should already be dealt with to ensure that we don't just have special economic zones without the intended results. Further, a Special Economic Zones fund should have been established to provide funding for public Zones as is the case in other countries. We are also of the view that the Zones should be established on the basis of anchor industries in respective provinces.

- **International Trade**

The Investment, Trade and Business Development Bill speaks to trade promotion which is imperative in the current open economy. So far, Zambia is even more open to trade. However, MSMEs are largely precluded from international trade. Issues of market access remain a challenge and should be addressed. For instance, information asymmetry (sometimes propelled by language barriers where everything is communicated in English) on how to get Zambian products on international markets should be dealt with to enhance the share of Zambia's exports into regional trade and other markets. Capacity building on how to deliver quality products to markets and information connecting Zambian products to these markets should be made available to MSMEs. There should also be inclusive training that captures the business community in rural areas where training and information sharing should also be delivered in local languages. This is more important in getting MSMEs motivated to produce more and incentivises others to become more formal.

- **Licensing of Businesses**

Licensing of businesses is good for formal identification of businesses. However, the process of getting licenses and permits should be monitored for inefficiencies and unnecessary delays that may act as impediments to productivity of the business community. The whole system of acquiring business permits should be made more transparent and corrupt free to ensure that there's more compliance of businesses, allowing them to smoothly operate and supply their goods and services in time.

4. Conclusion

The ZDA Bill as well as the Investment, Trade and Business Development Bill are progressive undertakings in the continued efforts to grow Zambia's economy. That notwithstanding, the implementation process for the ZDA Bill will be cardinal especially relating to the appointment of members of the Board which has been a thorny issue in the recent past. With respect to the Investment, Trade and Business Development Bill we have noted gaps with respect to monitoring and evaluation frameworks for investment, linking incentives to expropriation of profits, the Trade and Investment Funds, Special Economic Zones, International Trade and licensing of companies.