

# INVESTMENT LAWS OF **ACP** COUNTRIES





Commission of the European Communities  
Directorate-General Development  
Directorate Operations

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# INVESTMENT LAWS OF ACP COUNTRIES

Situation as at 1 March 1979

## Volume II

Netherlands Antilles	Malawi
Bahamas	Nigeria
Barbados	Papua New Guinea
Botswana	Samoa
Gambia	Sierra Leone
Ghana	Somalia
Grenada	Sao Tome and Principe
Guinea Bissau	Sudan
Guyana	Surinam
Mauritius	Tanzania
Jamaica	Tonga
Kenya	Trinidad and Tobago
Lesotho	Uganda
Liberia	Zambia

Cataloguing data can be found at the end of this volume.

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## FOREWORD

With this publication the Commission of the European Communities presents the 4th edition of a collection of Investment Laws in the African, Caribbean and Pacific Countries (ACP), signatories of the Lomé Convention.

The previous editions (1966/1971/1974) contained the investment laws of the African Countries and Madagascar, signatories of the two successive Conventions, Yaoundé I (1963) and - also including Mauritius - Yaoundé II (1969), as well as the Central African Customs and Economic Union (UDEAC).

With the Lomé Convention (1975) covering a total of 52 states, it became necessary to split up this collection. For practical reasons, two volumes are therefore now being issued : Volume I, covering the French-speaking States (issued in August 1978), and Volume II, covering mainly the English-speaking States.

While almost all the French-speaking ACP countries have specific investment legislation or codes, this is only to a certain degree the case in the English-speaking ACP countries, whose policy in the field is often to be found in a number of regulations, spread over a vast set of laws. Where available, a number of relevant laws have thus been reproduced, e.g. tax laws or investment and development laws, which refer to foreign investments, etc.. Accordingly, omissions cannot be excluded, but it is the editor's hope that the next edition will fill such lacunae.

The present documentation is put at the disposal of all those who are interested in the industrialization of the ACP countries. It is hoped that this collection will be useful to industrial and financial operators, who envisage an activity in these countries and thus will contribute to the expansion of industrial cooperation between the European Community and ACP States.

The Commission takes the opportunity to thank the Governments of ACP States and the EEC Delegations in these states for their most valuable contribution to the compilation of the information contained in this volume.

Brussels, March 1979.



## S U M M A R Y

FOREWORD

SUMMARY

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NEDERLANDSE ANTILLEN

ORDINANCE OF THE CENTRAL GOVERNMENT of November 26, 1953  
containing provisions with respect to granting tax exemptions  
for the establishment of industries and hotel construction.

IN THE NAME OF THE QUEEN !

THE GOVERNOR OF THE NETHERLANDS ANTILLES

Having considered that for broadening the economic basis of the Netherlands West Indies it is desirable to encourage the establishment of new industries and the construction and operation of hotels and other facilities for fostering tourism,

After having heard the advisory Council, in joint consultation with the Legislature, has enacted the following ordinance of the Central Government : -

CHAPTER I

General Provisions

Article 1.

(1) For the purpose of this ordinance,

"enterprise" shall mean :

- a) an enterprise of which it can be expected that it will contribute toward broadening the economic basis of the Netherlands Antilles and the establishment of which involves an investment of at least fls. 100,000 in the island territories of Aruba or Curacao or of at least fls. 50.000 in any of the other island territories and whose purpose it is to conduct a (branch of) industry which did not exist in the NA on January 1, 1948 nor is derived from an industry which existed in the NA on January 1, 1948.

The minimum amounts mentioned can be deviated from, if in the business to be established in the island territories of Aruba and Curacao work will be regularly provided to a minimum of 10, or on one of the other islands to a minimum of 5, Netherlanders born in the Netherlands Antilles and with this the total number of job opportunities in the Netherlands Antilles will undergo an identical expansion (amended by Off. Gaz. 1966, N° 39 effective February 25, 1966);

- b) an enterprise for the operation of hotels and other facilities for accommodation and recreation which aims to foster tourism in the NA and whose construction and initial equipment will involve an investment of at least fls. 500,000 in the island territories of Aruba or Curacao or of at least fls. 50,000 in any of the other island territories.
- (2) Construction and initial equipment as referred to in the preceding paragraph, sub (b), include expansions, improvements and/or renewals.
  - (3) The amounts referred to in this article must be spent within two years after the date of the resolution referred to in Article 5.

In special cases deviations can be made from the stipulation contained in the preceding sentence.

- (4) When applying article 14 A, the prohibition for the therein mentioned enterprises is effective, irrespective of the capital therein invested or to be invested and the number of employees for whom work is provided. (Section 4 added by Off. Gaz. 1958, N° 53 effective May 18, 1958).
- (5) By resolution of the Central Government an enterprise of another nature than the enterprise meant in point (a) or (b) of Section (1), but which for the balance satisfies the conditions therein set, be equated with a business in the sense of Section (1). (Section 5 added by Off. Gaz. 1967, N° 124 effective January 1, 1967).

## Article 2.

- (1) On the basis of this ordinance and with due observance of the provisions thereof exemption shall be granted from :
  - a) the import duties on materials and goods for the construction and initial equipment of the business premises designated for operating a business ;
  - b) the ground tax on the business premises ;
  - c) the occupancy tax on account of utilization of the business premises ;
  - d) the profit tax on profits obtained from a business ;
  - e) the income tax on proceeds from a business and

proceeds from distribution of profits (dividend payments).

- (2) It is, moreover, possible by resolution of the Central Government and after consultation with the Bestuurscollege (Administrative Council) of the island territory involved, to grant full or partial exemption from import duties levied from the *therein* to be mentioned raw materials and semi-manufactured products for the benefit of the enterprise, which has been earmarked as an enterprise in the sense of the present ordinance of the Central Government, insofar as that enterprise does process or work up such raw materials and semi-manufactured products. Conditions can be attached to such exemption and the exemption is granted for a period not exceeding ten years counting from the date of the resolution of the Central Government.
- (3) As to the exemption meant in the preceding section, the stipulations contained in Article 8 are correspondingly applicable.

(Sections 2 and 3 added by Off. Gaz. 1966 N° 39 effective February 25, 1966).

### Article 3.

(amended by Off. Gaz. 1975-20 eff. Jan. 1, 1976)

- (1) Exemption from tax is granted for a time span of not less than five and not more than eleven years.
- (2) In the resolution referred to in article 5, and in deviation from the stipulations contained in the present ordinance, it can be stipulated that :
  - a) the exemption shall be restricted to the percentages therein expressed ;
  - b) the exemption shall not encompass one or more of the taxes mentioned in art. 2 ;
  - c) the duration of the exemption, with due observance of the stipulations in the first section of the present article, shall be different for the various taxes.

Article 4.

- (1) The Governor shall declare, in consultation with the Administrative Council of the island territory where the interested party wishes to establish the enterprise referred to in the petition, whether that enterprise should be classified as a business in the sense of this ordinance.
- (2) The request therefore must be submitted in writing and addressed to the Governor by or on behalf of the interested party.

Article 5.

The declaration referred to in the preceding article shall be effected by resolution of the Central Government.

Article 6.

- (1) In consultation with the Administrative Council and after having heard the interested party, the resolution referred to in the preceding article can be revoked if it appears that :
  - a) incorrect data have been supplied by or on behalf of the interested party which influenced the origination of the resolution ;
  - b) acts have been committed by or on behalf of the interested party which are in conflict with the provisions of this ordinance ;
  - c) the business has been stopped or the nature therefore has changed to such an extent that it no longer satisfies the definition of Article 1.
- (2) If revocation takes place on the basis of the provisions of sub (a), the declaration referred to in Article 4 shall be regarded as never having been issued.

Article 7.

- (1) If an enterprise, with respect to which a declaration has been issued that it must be considered as a business in the sense of this ordinance, is taken over and continued by another person or concern than the interested party referred to in the relative resolution shall be amended accordingly at the

request of the first-applying party.

- (2) For the application of this ordinance, the subsequent rightful claimant shall take the place of the previous rightful claimant.

## CHAPTER II

### Exemption from Import Duties

#### Article 8.

- (1) Materials and goods as referred to in Article 2, sub (1), shall be exempt from import duties if they are declared upon importation and a statement is given regarding the purpose for which the goods will be used, as well as of the date and number of the resolution referred to in Article 5.
- (2) The import declaration must be made out in duplicate.

#### Article 9.

- (1) The interested party is obligated to give the Inspector of Import and Excise duties or the officials designated by him free access to the buildings and premises of the enterprise whenever they so desire, to allow them to inspect the materials and goods present therein or thereat, to give information thereon and to follow the instructions given him.
- (2) The provisions of the General Tariff Act concerning access to the buildings and premises shall also be applicable (to the buildings and premises referred to in this ordinance).

## CHAPTER III

### Exemption from Ground Tax

#### Article 10.

No ground tax shall be levied on real estate which constitutes part of an enterprise for a period of ten years after the taxability started.

CHAPTER IV

Exemption from Occupancy Tax

Article 11.

No occupancy tax shall be levied on account of utilizing premises (property and land) constituting part of an enterprise for the year of initial utilization and the ten subsequent calendar years.

CHAPTER V

Exemption from Income and Profit Tax

Article 12.

- (1) The net proceeds which a taxpayer, as referred to in Article 1 of the Ordinance on Income Tax 1943 has derived from a business operated by him covering the year of initial utilization of the business facilities and the ten following calendar years are exempt from income tax insofar as they exceed an amount of fls. 10.000 for business operated in Aruba and Curacao, and an amount of fls. 5.000 for a business operated on one of the other islands.

The above referred to net proceeds are calculated on the basis of the Ordinance on Income Tax 1943.

- (2) In deviation from the provisions in Article 15 of the Ordinance on Income Tax, losses resulting from (the operation of) a business and not yet deducted at the end of the exempted period may be offset against the profits for the following five years.
- (3) In deviation from the provisions in Article 3 of the Ordinance on Income Tax, losses resulting from a business as referred to in Article 1 may not be deducted from the other profits as referred to in Article 3.
- (4) Otherwise, the stipulations of the Ordinance on the Income Tax 1943 shall apply fully to taxpayers and to the above mentioned proceeds. The tax exempt proceeds are entirely left out of consideration for the determination of the amount of deduction for children and the amount of the tax.

Article 13.

- (1) The profits of a corporation as referred to in

Article 1 of the Ordinance on the Profit Tax 1940 made in a business during the book year in which the business facilities were put in operation and during the ten following book years shall be exempt from profit tax. The above referred to profits are calculated on the basis of the Ordinance on the Profit Tax 1940.

- (2) So far as no deviations therefrom have been stipulated in the provisions of this Ordinance, the provisions of the Ordinance on the Profit Tax 1940 shall fully apply to corporations and to the tax exempt profit.

#### CHAPTER VI

##### Exemption from Income Tax on Profit Distributions.

#### Article 14.

The dividends and other profit distributions to shareholders and holders of other certificates which entitle them to a share in the profit and in respect of which it is proven, in the island territory of Aruba to the satisfaction of the Inspector of Taxes in Aruba, and in the other island territories to the satisfaction of the Inspector of Taxes in Curacao, that they originate entirely from businesses, that is from the profits which are exempt from profit tax, shall be exempt from income tax on the basis of the Ordinance on Income Tax 1943 provided they are distributed within two years after the expiration of the book year in which the profits were made. They (these dividends and profit distributions) are completely left out of consideration when calculating the amount of deduction for children and the amount of the tax.

#### CHAPTER VI-A

##### On Measures to Ensure the Viability of New Industries.

#### Article 14 A.

- (1) By means of a resolution of the Central Government containing general enactments, which must contain the reasons for it, it is possible to prohibit for



a specific period of time establishment of an enterprise having as its objective the production, processing or adapting of goods.

- (2) Such prohibition can be promulgated solely when the following conditions have been satisfied :
- a) that the establishment of a first enterprise, as is meant in the present ordinance of the Central Government having as its objective the production, processing or adapting of such goods, is being prepared ;
  - b) that hitherto such goods are not being produced, processed, or adapted in the Netherlands Antilles ;
  - c) that in connection with the endeavors to attract new industries a prohibition to exercise such enterprise is in the general interest ;
  - d) that the founding of a first enterprise as referred to in point (a) calls for an investment of at least fls. 250,000 in the island territories of Aruba and Curacao, or at least fls. 100,000 in one of the other island territories.
- (3) The kind of goods and if necessary the method of production, processing or adapting shall be described in the resolution of the Central Government.
- (NOTE : The underlined portion was amended by the Ordinance of the Central Government, Official Gaz. Year 1971, Serial N° 15).
- (4) The duration of time during which the prohibition shall be in effect, is set at a maximum of 10 years, counting from the date on which the first enterprise shall have commenced the work of producing, processing or adapting the goods.
- (5) The duration of time meant in the fourth point, for which prohibition shall be in effect, can be set at a maximum of twenty-five years if the goods produced, processed or adapted in that first enterprise can in full or for an important part be utilized as raw material for other enterprises in the Netherlands Antilles, and if the establishment and operation of such an enterprise because of its providing job opportunities on an ample scale is of especial importance for the economic development of the Netherlands Antilles.

- (6) The prohibition can be revoked by a resolution of the Central Government, enacted after hearing the management of the first enterprise, if in the exclusive judgement of the Governor : -
- a) the first enterprise does not commence the work of producing, processing or adapting of goods within two years after promulgation of the prohibition ;
  - b) the first enterprise cannot satisfy the requirements of local use and is not willing or not in a position to expand its enterprise to such extent, that it will be able within a reasonable time to satisfy it ;
  - c) the first enterprise no longer is engaged in the work described in the prohibition.

(Art. 14 A added by Off. Gaz. 1958, N° 53 effective May 18, 1958).

#### CHAPTER VII

#### Final Provisions

##### Article 15.

- (1) The Governor can also declare with respect to an enterprise which started its business operations before the date of effect of this Ordinance, but after January 1, 1948, and which further satisfies the definitions stipulated in article 1 under (a) or (b), that it is to be considered as a business in the sense of this Ordinance.
- (2) In cases where the first section of this Article is applicable, no restitution of import duties already paid shall be granted and no revision of the assessments definitely and irrevocably established on the date of the Resolution referred to in Article 5 shall take place, while the stipulations in Article 3 shall not be applicable to the relative business.

##### Article 16.

It shall be prohibited for anyone to give further publicity to anything that has become evident or that has been reported to him in his office or position during the execution of this Ordinance or in connection

therewith concerning anyone's business or activities, than what is necessary for the application of this Ordinance or for the levying and collection of any taxes in the Netherlands Antilles.

Article 17.

- (1) Anyone who purposely violates the secrecy prescribed in Article 16 shall be punished with a maximum imprisonment of six months or a maximum fine of six hundred guilders.
- (2) Anyone to whose fault violation of the secrecy must be ascribed shall be punished with a maximum imprisonment of three months or a maximum fine of three hundred guilders.
- (3) No prosecution shall be instituted unless the complaint is filed by the person in respect of whom the secrecy has been violated.

Article 17 A.

- (1) Anyone who established in the Netherlands Antilles an enterprise, of which the establishment has been prohibited on the strength of article 14 A, shall be punished with a term in prison not exceeding six months.
- (2) An enterprise that has been established in contravention of such prohibition, can be closed down by order of the Minister of Economic Development, if necessary by calling in police assistance, after having heard the management or the manager thereof, or after they have been properly summoned.
- (3) Should the facts made punishable by the present ordinance of the Central Government be committed by or by order of a corporation, then criminal prosecution shall be instituted against and penalty inflicted upon the managers and/or directors, and in the absence or default of these individuals, against the representative of that corporation in the Netherlands Antilles.
- (4) The stipulations contained in the preceding section shall be correspondingly applicable with respect to corporations, that function as managers or representatives of another corporation.
- (5) No criminal prosecution shall be instituted against, nor shall any penalty be inflicted upon managers

and/or directors outside whose fault the fact was committed.

(Article 17 A added by Off. Gaz. 1958, N° 53 effective May 18, 1958).

Article 18.

The facts which are punishable according to this Ordinance are considered as criminal acts.

Article 19.

This Ordinance shall be referred to as "Ordinance of the Central Government for the Promotion of Industrial Establishment and Hotel Construction" with addition of the year of the Official Gazette in which it is published.

Article 20.

The present Ordinance of the Central Government takes effect on the date following that of its promulgations.

Done in Willemstad, November 26, 1953

STRUYCKEN

Released : December 14, 1953

The Member of the Government Council for Economic Affairs & Welfare Matters,

F. KARNER

The Member of the Government Council for Finances,

PLANTZ

The Member of the Government Council for General Affairs,

M. F. DA COSTA GOMEZ

THE BAHAMAS

AN ACT TO ENCOURAGE THE ESTABLISHMENT AND DEVELOPMENT OF  
INDUSTRIES AND FOR MATTERS CONNECTED THEREWITH.

(Assented to 2nd July, 1970)

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of the Commonwealth of the Bahama Islands, and by the authority of the same, as follows : -

1. This Act may be cited as The Industries Encouragement Act, 1970, and shall come into operation on a date to be appointed by the Minister by notice published in the Gazette.
2. (1) In this Act, unless the context otherwise requires -
  - "approved manufacturer" or "manufacturer" means a person approved by the Minister under section 4 ;
  - "approved product" means a product of manufacture approved by the Minister under section 3 ;
  - "Comptroller" means Comptroller of Customs ;
  - "customs duty" means -
    - a) any duties of customs levied by or under The Tariff Act or any enactment passed in amendment thereof or substitution therefor ;
    - b) any 'ad valorem' duties imposed by or under The Emergency Tax Act or any enactment passed in amendment thereof or substitution therefor ;
    - c) any tax payable in respect of any export entry or import entry under The Stamp Act or any enactment passed in amendment thereof or substitution therefor ;
    - d) any other duties or taxes now or hereafter by law imposed upon or payable in respect of goods imported into the Bahama Islands ;
  - "date of production" means the date specified in an order under section 4 pursuant to paragraph (a) of subsection (2) of that section ;
  - "factory premises" means the premises specified in an order under section 4 pursuant to paragraph

(b) of subsection (2) of that section ;

"Minister" means the Minister responsible for Industrial Development ;

"product of manufacture" means any commodity assembled, prepared or created through some form of processing ;

"raw material" includes primary and intermediate products, containers and packaging supplies and fuels and lubricants, but does not include gasoline ;

"relevant" means -

- a) in relation to "approved product", the approved product in relation to which the manufacturer in question has been declared an approved manufacturer under section 4 ;
- b) in relation to "date of production" or "factory premises", respectively the date or premises specified, in an order relating to a manufacturer under the said section 4, pursuant to subsection (2) thereof ;

"scheduled article" means an article mentioned or referred to in the First Schedule ;

"stamp tax" means the tax payable in respect of any export entry or import entry under The Stamp Act or any enactment passed in amendment thereof or substitution therefor.

(2) In this Act, unless the contrary intention appears, references to a section are references to a section thereof, and references in a subsection to a section are references to a subsection of that section.

(3) Any reference in this Act to importing anything into any place shall be construed as including taking that thing out of bond in that place.

3. Subject to the provisions of section 6, the Minister may by order declare that a product of manufacture shall be an approved product for the purposes of this Act if he is satisfied that such a declaration is in the public interest and that the manufacture of such product -

- a) is or will be of benefit to the Bahama Islands ;  
and

- b) does not, or will not, entail any, or any substantial, detriment to the said Islands,

both economic and social considerations being taken into account.

- 4. (1) Subject to the provisions of section 6, the Minister may by order declare that any person who is manufacturing, or proposes to manufacture, an approved product shall be an approved manufacturer for the purposes of this Act in relation to that product, if he is satisfied that such a declaration is in the public interest and that that person is or will be able successfully to manufacture the approved product :

Provided that the Minister shall not declare any person to be an approved manufacturer as aforesaid if such person -

- a) is licensed, registered or otherwise howsoever approved for the purpose of any of the enactments specified in the Second Schedule ; or
  - b) is a Licensee of the Port Authority within the meaning given to that word in paragraph (e) of sub-clause (1) of clause 2 of the agreement made between the Government of the Bahama Islands and the Port Authority pursuant to The Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, unless such Licensee undertakes to the satisfaction of the Minister not to demand or exercise, in respect of the manufacture by such Licensee of the relevant approved product during such time as he is an approved manufacturer under this Act, any privilege, right or exemption available to him under the terms of that agreement.
- (2) In every order made under subsection (1) there shall be specified -
    - a) a date as the date on which production is deemed to begin for the purposes of this Act ; and
    - b) the factory premises in respect of which the benefits in relation to customs duty mentioned in paragraph (b) of subsection (1) of section 8 and the benefits in relation to real property tax mentioned at paragraph (c) of subsection (1) of section 12 may be enjoyed.



- (3) On the application of an approved manufacturer, the Minister may, in his discretion and upon such conditions as he may think fit, amend an order made under this section in respect of the factory premises specified in the order if he is satisfied that it is necessary in order to promote the manufacture of the approved product by the approved manufacturer that the factory premises so specified should be varied, and any amending order made under this subsection shall specify the factory premises as so varied in respect of which the benefits mentioned at paragraph (b) of subsection (2) may be enjoyed after the amending order has been made.
5. Every application for the approval of a product or of a manufacturer under this Act shall be addressed to the Minister in such form, and shall contain such particulars, as may be prescribed.
6. (1) Before any order is made under section 3 or 4 the Minister shall cause notice of the fact that he is about to consider whether a product should be declared an approved product or a person should be declared an approved manufacturer for the purposes of this Act to be given, at the expense of the applicant, in not fewer than three issues of -
- a) the Gazette ; and
  - b) one newspaper published and circulating in the Bahama Islands,
- at intervals of not less than one week.
- (2) Every notice published as required by subsection (1) shall specify -
- a) as respects a proposal to make an order under section 3 -
    - (i) the product proposed for approval ; and
    - (ii) the raw materials used or to be used in the manufacture of such product ; and
  - b) as respects a proposal to make an order under section 4, the present or proposed location of the relevant factory premises ; and
  - c) such other particulars of the product for which or, as the case may be, the person for whom approval is proposed as the Minister may consider

necessary in order that any interested person may object in writing to the product or person being so approved.

- (3) Every such notice as aforesaid shall also state a date on or before which any objection shall be made by any interested person, so, however, that such date shall not be earlier than the seventh day after the date on which the notice is last published.
  - (4) Every objection in writing received by the Minister on or before the date stated in the notice (or such later date as the Minister may in his discretion allow) shall be considered by the Minister before any order is made under section 3 or 4.
  - (5) This section shall not apply in relation to an amending order made under subsection (3) of section 4.
7. (1) Where any approved manufacturer fails or neglects to commence to manufacture a relevant approved product on or before the relevant date of production in quantities considered by the Minister to be marketable quantities, the Minister may by notice in writing require such manufacturer, within thirty days after receipt of such notice, to establish to the satisfaction of the Minister that -
- a) the failure or neglect to commence to manufacture that approved product in marketable quantities as aforesaid was due to some cause beyond the control of the manufacturer ; and
  - b) there is a reasonable prospect of the manufacturer commencing to manufacture the approved product in marketable quantities within such time as the Minister may consider to be reasonable,
- and if the manufacturer fails to satisfy the Minister accordingly the Minister, if he considers it expedient so to do, may, by order, terminate the approval of that manufacturer in relation to that product either by amending or by revoking, as the case may require, the order under section 4 by which the manufacturer became an approved manufacturer in relation to that approved product.
- (2) Where the Minister is satisfied that any representations made to him by or on behalf of a person in connection with the application of that person to be declared an approved manufacturer in relation to an approved product were false in any material

particular or were made with intent to deceive or were otherwise not made in good faith, and that such representations substantially influenced the decision to declare that person an approved manufacturer in relation to that product the Minister may, by notice in writing, require that person, within thirty days after receipt of such notice, to show cause to the satisfaction of the Minister why the order under section 4 by which such person became an approved manufacturer in relation to that product should not be revoked or amended so as to terminate the approval of that person in relation to that product ; and, if that person fails to show cause accordingly, the Minister may, if he considers it expedient so to do, by order revoke or amend accordingly the order under section 4 by which that person became an approved manufacturer in relation to that product.

- (3) Upon the coming into force of an order made pursuant to subsection (1) or (2) -
- a) the manufacturer to whom the order relates shall, as respects the approved product to which the order relates, cease to be an approved manufacturer for the purposes of this Act, but without prejudice to the continued operation of section 9 and subsections (1) and (4) of section 11 ; and
  - b) without prejudice to the continued operation of subsections (2), (3) and (5) of the said section 11, the relevant factory premises shall, as respects that product, cease to be factory premises for the purposes of this Act.
8. (1) Every approved manufacturer manufacturing an approved product shall, for so long as he remains as approved manufacturer, be entitled to import into the Bahama Islands without payment of customs duty -
- a) any machinery or raw material not being a protected raw material necessary for the manufacture of such product, if such machinery or raw material is imported for the purpose of manufacture by the approved manufacturer of such product ;
  - b) any scheduled article, if such article is imported for the purpose of constructing, altering, re-constructing or extending the relevant factory premises :

Provided that no article shall be imported free of customs duty under this paragraph if such article is intended for the purpose of -

- (i) effecting repairs to the factory premises ;  
or
  - (ii) effecting repairs to, or, unless the Minister otherwise directs in any particular case, replacing, any apparatus, machinery, appliance or equipment contained in the factory premises.
- (2) On any question whether any machinery or raw material is imported for the purpose mentioned in paragraph (a) of subsection (1) or whether any scheduled article is imported or intended for any purpose mentioned in paragraph (b) thereof, the decision of the Minister shall be conclusive.
- (3) In paragraph (a) of subsection (1) of this section the expression "protected raw material" means any raw material declared by the Minister by order to be a protected raw material.
9. Every approved manufacturer who imports into the Bahama Islands any machinery, raw materials or scheduled articles with the benefit of any exemption from customs duty under section 8 shall -
- a) upon being required so to do by the Comptroller, cause such machinery raw materials or articles to be marked with such marks and in such manner as may be required by the Comptroller ;
  - b) upon being required so to do by the Minister or the Comptroller, keep such machinery, raw materials or articles, and also such records of the production and disposition by the approved manufacturer of the relevant approved product, in such form and containing such particulars, as may be required by the Minister or the Comptroller; and
  - c) upon demand made for the purpose, permit the Minister or the Comptroller, or any person authorised by the Minister or the Comptroller, at all reasonable times to inspect such records and to have access to any factory, warehouse, store-room or other premises under the control of the approved manufacturer for the purpose of examining such machinery, raw materials or articles or to satisfy himself of the accuracy of the particulars contained in such records.

10. (1) Every approved manufacturer who imports into the Bahama Islands any machinery, raw materials or scheduled articles with the benefit of any exemption from customs duty under section 8 shall, upon being required so to do by the Comptroller, enter into a bond in such form as may be directed by the Comptroller with two sureties -

a) in the case of raw materials, in double the amount of any customs duty which, but for the provisions of this Act, would be payable on the importation of the total annual amount of raw materials reasonably estimated by that approved manufacturer as being required to be imported by him for the production of the approved product ; and

b) in the case of machinery or any scheduled article, in double the amount of any customs duty which, but for the provisions of this Act, would be payable on the importation of such machinery or article,

to the effect that such raw materials, machinery or scheduled articles shall not be used or applied otherwise than for the purpose specified in such bond ; and if any raw materials, machinery or scheduled articles are used or applied in breach of any such bond they shall be forfeited and may be seized and proceeded against in the same manner as goods liable to forfeiture under the Customs Regulations Act or any enactment passed in amendment thereof or substitution therefor, without prejudice to the right of the Comptroller to recover as liquidated damages the penalty fixed by the bond or to the taking of proceedings under subsection (4) of section 11 :

Provided that where the full amount of customs duty which would have been payable on any machinery, raw material or article but for the provisions of this Act (or such part of that amount as the Comptroller considers reasonable in the circumstances of the case) is paid to and accepted by the Comptroller in the case of any proposed sale, gift or other disposition thereof, then, in every such case the Comptroller shall by memorandum endorsed on the bond cancel the same in so far as the bond relates to such machinery, raw material or article.

11. (1) No machinery or raw material imported into the Bahama Islands with the benefit of any exemption

from customs duty under section 8 shall be used for purposes other than the manufacture of an approved product by an approved manufacturer or sold, given away or otherwise disposed of within the said Islands, and no scheduled article so imported shall be sold, given away or otherwise disposed of as aforesaid, except -

- a) in the case of an assignment of the relevant factory premises, to the assignee of such factory premises ; or
  - b) upon the approved manufacturer by whom such machinery, raw material or article was imported paying, or giving security to the satisfaction of the Comptroller for the payment of, an amount equivalent to the amount of customs duty which, but for the provisions of this Act, would have been payable upon the importation of such machinery, raw material or article ; or
  - c) after the expiration of five years from the date of the importation into the said Islands of such machinery, raw material or article.
- (2) Subject to the provision of subsection (3), no factory premises constructed, altered, reconstructed or extended with the use of any scheduled article in respect of which benefits under paragraph (b) of subsection 8 have been obtained (whether or not such factory premises have ceased to be used for the manufacture of an approved product by an approved manufacturer) shall, without the prior approval in writing of the Minister, be used, at any time within ten years after the relevant date of production for any purpose other than that of the manufacture of an approved product by an approved manufacturer.
- (3) Subsection (2) shall not apply in relation to any factory premises if -
- a) the said premises have ceased to be used for the manufacture of an approved product by an approved manufacturer ; and
  - b) an amount equal to the amount of the customs duty which, but for the provisions of this Act, would have been payable upon the importation into the Bahama Islands of the scheduled articles in question has been paid.

(4) If any approved manufacturer -

- a) uses, sells, gives away or otherwise disposes of any machinery or raw material ; or
- b) sells, gives away or otherwise disposes of any scheduled article,

imported as mentioned in subsection (1) otherwise than as allowed by that subsection, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three times the value of the machinery, raw material or scheduled article in respect of which the offence was committed.

(5) If any person uses, or permits another person to use, any factory premises in contravention of subsection (2), he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding three hundred dollars and, in default of payment, to imprisonment for a term not exceeding six months, and in the case of a continuing offence to a further fine of one hundred and fifty dollars in respect of each day during which the offence continues.

12. (1) Every approved manufacturer shall be entitled to the following relief from taxes for the statutory period, that is to say -

- a) from any export tax in respect of any relevant approved product manufactured by the approved manufacturer ;
- b) from any income tax in respect of any profits or gains earned by the approved manufacturer from the manufacture of the relevant approved product ;
- c) from any real property tax in respect of the relevant factory premises.

(2) In this section -

"export tax" means the tax payable by any person under any enactment for the time being in force relating to the taxation of exports ;

"income tax" means the tax payable by any person under any enactment for the time being in force relating to income tax ;

"real property tax" means real property tax chargeable under The Real Property Tax Act, 1969, or any

enactment passed in amendment thereof or substitution therefor ;

"statutory period" means -

- a) in relation to any approved manufacturer in respect of whom the relevant date of production is a date anterior to the 1st day of January, 1976, the period commencing on the relevant date of production and ending on the 31st day of December, 1989 ;
  - b) in relation to any other approved manufacturer, the period of fifteen years commencing on the relevant date of production.
13. Any approved manufacturer who fails without reasonable excuse to comply with any requirement lawfully made by any person in the exercise of any power conferred upon such person by section 9 or 10 shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
  14. Where any offence under this Act or any regulation made thereunder committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
  15. The Minister may make regulations for prescribing anything required by this Act to be prescribed and generally for any other matter or thing in respect of which he may consider it expedient to make regulations for the purpose of carrying this Act into effect.
  16. (1) Subject to subsection (2), The Industries Encouragement Act is hereby repealed.  
  
(2) Subject to subsection (3), the said repeal shall not affect the validity of any order made under section 3 of the said Industries Encouragement Act which was in force immediately before the commencement of this Act, but every such order shall continue in force, and the provisions of that Act shall continue in force in relation to every such order, as if this Act has not been passed.



- (3) Where any manufacturer, as defined in section 2 of the said Industries Encouragement Act, owning a factory registered by virtue of such an order as is mentioned in subsection (2) of this section, makes application for the purpose, the Minister may by order under this section revoke such first-mentioned order and cancel the operation of that Act in relation thereto.
- (4) Any manufacturer on whose application an order has been made under subsection (3) may apply to be declared to be an approved manufacturer by an order under section 4 of this Act, and the Minister may, subject to the provisions of that section and section 6, approve the application, but in such case the order under the said section 4 shall make such supplementary provisions as to the Minister may appear necessary or expedient for the purpose of reducing, in relation to such manufacturer, the benefits available under this Act to an approved manufacturer ; and thereupon the provisions of this Act shall have effect in relation to such manufacturer accordingly.

FIRST SCHEDULE

(Section 2)

Scheduled Articles

All building materials, tools, plant, equipment, pipes, pumps, conveyor belts or other materials or appliances necessary for and used in construction and alteration of factory premises, but not including, in New Providence, any equipment used in the manufacture of wooden door frames, moulding, cement tiles or cement blocks.

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SECOND SCHEDULE

(Section 4)

1. The Agricultural Manufactories Act ..... Ch. 26
2. The Spirits and Beer Manufacture Act ..... Ch. 292
3. The Hotels Encouragement Act ..... Ch. 304
4. The Cement Industry (Encouragement and Control) Act ..... Ch. 305
5. The Owens-Illinois of the Bahamas Limited (Sugar Agreement) Act 1966 ..... N° 26 of 1966

BARBADOS

An Act to make provision for the exemption from income tax in a whole or in part of international business companies which are not trading locally.

(22nd December, 1977)

1. (1) This Act may be cited as the International Business Companies (Exemption from Income Tax) Act.
  - (2) This Act shall be read and construed as one with the Income Tax Act.
2. (1) For the purposes of this Act, the expression -
  - "Commissioner" means the Commissioner of Inland Revenue ;
  - "exempted company" means an international business company resident in Barbados that -
    - a) does not carry on trade in the buying or selling of goods or services in or originating in Barbados ;
    - b) carries on trade in the selling of services which, if originating in Barbados, are for, or on account of, persons resident outside Barbados or outside any other country that is a party to the Treaty ;
  - "goods" includes commodities, products and securities ;
  - "international business company" means a body corporate, engaged in trade, whether incorporated under the law of Barbados or not, in the case of which all of the following conditions are fulfilled -
    - a) more than one-tenth of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital would not be receivable (directly or indirectly) by or for the benefit of individuals resident in Barbados ;
    - b) more than one-tenth of the assets which, on a liquidation thereof, would be available for distribution after the payment

of creditors would not be receivable (directly or indirectly) by or for the benefit of individuals resident in Barbados ;

c) more than one-tenth -

(i) of the interest payable on its loans and loan capital, if any, and

(ii) of the dividends payable on its preference share capital, if any ; and

(iii) of the dividends payable on its share capital, if any, not being preference share capital,

is not receivable (directly or indirectly) by or for the benefit of individuals resident in Barbados ;

d) the body corporate elects that no credit shall be allowed against income tax by reason of taxes paid to a country other than Barbados in respect of income, profits or gains received by the body corporate in the form of dividends or otherwise ;

"investment company" means a body corporate, whether incorporated under the law of Barbados or not, engaged exclusively in the business of buying, selling, holding or managing securities ;

"securities" means any deposits evidenced by an instrument in writing, shares, stock, bonds, notes (other than promissory notes issued by individuals), debentures, debenture stock, units under a unit trust scheme and any other securities prescribed by the Minister responsible for Finance for the purpose of this Act ;

"trade" means every trade, business, manufacture, adventure or concern in the nature of trade or business.

"Treaty" has the meaning assigned to it by section 2 of the Caribbean Community Act, 1974.

- (2) A shareholder of an international business company shall not be deemed for the purposes of this Act to be a person resident in Barbados by reason only of the fact that he visits Barbados from time to time for the purpose of supervising the operation of that company.
  - (3) For the purposes of the definition "exempted company" services do not include "banking business" as defined in section 2 of the Banking Act.
  - (4) An international business company shall be deemed for the purposes of this Act to be resident in Barbados where it is incorporated under the laws of Barbados or where its business is managed and controlled in Barbados.
  - (5) For the purposes of subsection (4) an international business company shall be deemed to be managed and controlled in Barbados where it holds its annual general meetings and the majority of its other meetings of directors and shareholders in Barbados.
3. (1) The profits or gains of an international business company which is not an investment company shall be exempt from income tax if during the income year it was an exempted company.
    - (2) In lieu of tax at the rate specified in Section 43 of the Income Tax Act there shall be levied and paid upon the profits or gains of an international business company which is an investment company if during the income year it was an exempted company, income tax at the following rates -
      - 2 ½ % on all profits and gains up to \$10,000,000 ;
      - 2 % on all profits and gains on amounts exceeding \$10,000,000 but not exceeding \$20,000,000 ;
      - 1 ½ % on all amounts exceeding \$20,000,000 but not exceeding \$30,000,000 ; and
      - 1 % on all amounts exceeding \$30,000,000.
  4. (1) Any dividend paid or deemed to be paid by one international business company to another international business company or to a person not resident in Barbados out of profits or gains to

which section 3 (1) or (2) applies is exempt from income tax.

- (2) Subject to the Income Tax Act, income tax at the appropriate rate specified in that Act shall be levied and paid upon any dividend paid by any international business company to a person (other than an international business company) resident in Barbados and the company paying the dividend shall be entitled to deduct income tax therefrom at the rate of forty cents on every dollars thereof.
  - (3) An international business company making deduction of income tax pursuant to subsection (2) shall be deemed to be collecting tax on behalf of the Commissioner and shall pay to the Commissioner, or to such person as he may direct, the amounts so deducted.
  - (4) Save as otherwise provided in this Act, the provisions of the law relating to income tax shall apply to dividends paid by an international business company to any person (other than an international business company) resident in Barbados.
- 4A. (1) No tax or duty shall be levied upon an international business company, its shareholders or transferees by reason of transfer of all or any part of its securities or other assets except assets consisting of real property or tangible personal property situate or held in Barbados) to another international business company or to a non-resident person.
- (2) Where a non-resident person or an international business company transfers shares held by that person or that company to another non-resident person or to another international business company the transfer is exempt from the payment thereon of any tax or duty.
5. The Minister responsible for Finance may make regulations for the following purposes -
- a) providing for the returns to be submitted and the information to be furnished for the purpose of claiming exemption under this Act;
  - b) prescribing any matters required by this Act to be prescribed ;

- c) generally for giving effect to the purposes of this Act.
6. Except so far as this Act may operate to exempt an international business company from liability to income tax under the law relating to income tax, all the provisions of that law which are applicable to a company shall apply to an international business company.



REPUBLIC OF BOTSWANA

AN ACT TO ENCOURAGE AND CONTROL THE ORDERLY PROMOTION AND DEVELOPMENT OF INDUSTRY IN BOTSWANA.

(Date of Commencement : 22nd March, 1968)

1. This Act may be cited as the Industrial Development Act.

2. (1) In this Act unless the context otherwise requires -

"application" means an application for a licence in accordance with section 4 to manufacture any product at any place in Botswana, and includes an application to manufacture a different or additional product and an application to manufacture at a different or additional place ;

"licence" means a licence to manufacture issued under this Act ;

"manufacture" means to subject physical matter to any process which materially changes it in substance, character or appearance, and includes the assembly of parts ;

"product" means any article, thing or substance produced by any manufacturing enterprise to which this Act applies, but shall exclude any immovable structure.

(2) This Act shall apply to any manufacturing enterprise which -

a) employs, in the aggregate, anywhere in Botswana, ten or more persons, including managers, directors or sales, clerical or other staff ; or

b) irrespective of the number of persons employed therein, uses any engines, motors, or other appliances providing energy derived from steam, water, wind, electricity, the combustion of fuel or any other source, of not less than twenty five horse-power in aggregate.

(3) Notwithstanding the provisions of subsection (2) the provisions of this Act shall not apply to -

a) the Botswana Meat Commission ;

b) any manufacturing enterprise for milling maize licensed under the provisions of the Control of Maize Milling Act ;

- c) any manufacturing enterprise licensed in terms of the provisions of any regulations made under the Dairies and Dairy Produce Act ;
  - d) any co-operative society registered under the provisions of the Co-operative Societies Act ;
  - e) any manufacturing enterprise whose premises are licensed in terms of any regulations made under the provisions of the Hides and Skins Export Act.
- (4) Notwithstanding subsection (2) and subsection (3) the Minister may, by notice published in the Gazette -
- a) declare any specified manufacturing enterprise or any description of manufacturing enterprise to be subject to this Act ; or
  - b) exempt any specified manufacturing enterprise or any description of manufacturing enterprise from the provisions of this Act .
3. (1) Subject to the provisions of this Act, no person shall manufacture for sale any product at any place in Botswana unless he is in possession of a licence to manufacture such product at such place, issued by the Minister under this Act.
- (2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and shall be liable to a fine of R200 and to imprisonment for one year, and in the case of a continuing offence shall be liable to a further fine of R200 and to imprisonment for one year in respect of each day on which the offence continues.
4. An application for a licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.
5. (1) Where a person is, immediately prior to 22nd March, 1968, manufacturing any product at any place in Botswana he shall be permitted a period of grace of three months from such date in which to apply for a licence, and no application fee shall be payable in respect of such application.

- (2) Upon receipt of an application under subsection (1) the Minister shall issue to the applicant a licence to manufacture that same product at that same place.
6. In the case of an application not coming within the terms of section 5, the Minister shall cause such application to be advertised in such manner as may be prescribed.
7. An advertised application may indicate that the applicant desires protection by the granting of a licence to manufacture a particular product, to the exclusion either generally or in respect of any part of Botswana of other manufacturers of that product.
8.
  - (1) Any person wishing to make representations concerning an application published in accordance with section 6 shall do so in writing to the Minister within such period as may be prescribed and shall forward a copy of such representations to the applicant.
  - (2) Any representations made under subsection (1) must be relevant and related to any matter referred to in section 10 (2).
  - (3) The Minister may require the person making representations to give evidence in person and may invite any person to submit verbal or written evidence relating to any matter referred to in section 10 (2).
9.
  - (1) Subject to the provisions of the proviso to section 12 (1), the Minister may appoint a person or persons to conduct an inquiry into any application and any representations made in respect thereto, and to submit a report to him.
  - (2) An inquiry under this section shall be conducted in the prescribed manner.
  - (3) Where the Minister considers it desirable he may require two or more applications to be inquired into conjointly.
10.
  - (1) After considering an application, and any representations or any report made in respect thereof, the Minister shall decide whether the application should be granted or refused, or should be granted in part and refused in part, and shall so inform the applicant in writing.

- (2) The grounds on which the Minister may refuse to grant a licence, either absolutely or in part, shall be one or other of the following -
- a) that the capital, technical skill or raw materials available are, in the opinion of the Minister, inadequate to secure the successful establishment and operation of the particular enterprise in which the applicant proposes to engage and that the failure of the applicant's enterprise would be likely to prejudice the successful development of the industry concerned ;
  - b) that the place at which the applicant proposes to establish a manufacturing establishment is not a suitable situation for the industry concerned ;
  - c) that a licence for the manufacture of the product which the applicant proposes to manufacture has been granted to someone else in respect of the same part of Botswana and such other person has been given protection under section 12 in relation to that product ;
  - d) that the granting of such a licence would not, in the opinion of the Minister, be in the best interests of the economy or public weal of Botswana or of the particular industry concerned.
- (3) Before deciding to grant a licence, the Minister shall also be satisfied that the applicant has interests in land, buildings and machinery, or has entered into agreements or negotiations to acquire such interests, which are sufficient to ensure that the manufacture of the product concerned will commence without undue delay.
- (4) Any person aggrieved by the refusal of the Minister to grant a licence, whether in whole or in part, may appeal to the President within such time, and in such manner, and upon payment of such fees, as may be prescribed and the President may give such direction in the matter as he may think fit.
11. (1) Where the Minister decides to grant a licence he may, upon payment of the prescribed fee, issue to the applicant a licence to manufacture the product specified in the licence at such place as shall also be specified in the licence.

(2) Where the application is from a person already in possession of a licence, but is for a licence to manufacture a different or additional product, or for a licence to manufacture the same product at a different or additional place, the Minister may, upon payment of the prescribed fee, issue a new licence, or may amend the existing licence accordingly.

12. (1) Where the applicant has asked for protection in accordance with section 7 and the Minister has decided to grant a licence under section 11, the President may, if he is satisfied that it is in the public interest and in the interests of the efficient development of the industry concerned, grant protection by making an order, published in the Gazette, excluding all other manufacture of the products in respect of which protection was requested, or one or some of such products, either in Botswana generally or in any specified part of Botswana :

Provided that where any person made representations concerning the application in accordance with section 8 which were adverse to the application, protection shall not be granted under the provisions of this section unless an inquiry has first been conducted under the provisions of section 9.

(2) Protection may be granted in accordance with subsection (1) -

a) for a specified period of time ; or

b) until the fulfilment of any condition or the happening of any event,

and may be granted absolutely or conditionally, so, however, that no protection shall be granted which shall endure for a period in excess of four years :

Provided that protection may, at the President's discretion, upon application, be renewed for such further period as the President may determine, so, however, that further protection shall not be granted which shall endure for a period in excess of four years.

(3) Where the President has granted protection under this section the Minister shall not, during the period of such protection, issue any other licence which conflicts with such protection.

13. Where a person to whom a licence has been issued under this Act has, in the opinion of the President -
- a) failed within a reasonable time to commence to manufacture the product in respect of which the licence was issued ;
  - b) ceased to manufacture the product in respect of which the licence was issued ; or
  - c) failed to comply with any condition imposed under the provisions of section 12 (2),

the President after giving such person an opportunity to be heard may by order published in the Gazette cancel the licence from such date as he may decide, or amend the licence in such manner as he deems fit, or if protection has been attached to the licence in pursuance of section 12 remove or amend such protection.

14. (1) No licence shall be transferred from one person to another without the prior approval of the Minister,
- (2) An application for the transfer of a licence from one person to another person shall be made to the Minister in such manner and in such form as may be prescribed.
- (3) The Minister may, in his discretion, grant or refuse the application and may, if the application is granted, amend the licence concerned, or, where protection has been attached to the licence, he may remove such protection :

Provided that a transfer shall not be permitted in the case of a licence which has been issued to a person who, at the time of the proposed transfer, has not commenced active production.

15. Unless earlier cancelled under section 13 or section 18, a licence issued under this Act shall be valid in the first place for the current calendar year only, but shall be renewable from year to year upon payment of the prescribed fee.
16. The issue of a licence to any person under this Act shall not be deemed in any way to relieve the licensee from compliance with any other written law relating to the activity for which the licence was issued.
17. The Minister may make regulations generally for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the

foregoing, he may make regulations -

- a) prescribing anything required to be prescribed under this Act ;
  - b) in respect of any matter for which he is required to make regulations under this Act ;
  - c) regulating the procedure at an inquiry ordered under section 9 ;
  - d) classifying products for the purpose of the issue of licences.
18. (1) Any person who knowingly makes a false statement in any application or in connexion with any matter in respect of which he is required to give information under this Act shall be guilty of an offence, and shall be liable to a fine of R 100 and to imprisonment for three months, and where a licence has been issued in connexion with such false statement the court on convicting for an offence under this subsection may, at the request of the prosecution, forthwith cancel such licence.
- (2) Any person who contravenes any provision of this Act for which no other penalty is prescribed, shall be guilty of an offence and shall be liable to a fine of R 100 and to imprisonment for three months.



INDUSTRIAL DEVELOPMENT REGULATIONS

(Under section 17)

(22nd March, 1968)

ARRANGEMENT OF REGULATIONS

REGULATIONS

1. Citation
2. Interpretation
3. Applications for a licence
4. Advertisement of application
5. Time within which objections are to be lodged
6. Inquiry under the Act
7. Appeal to President
8. Licences to manufacture
9. Licences to manufacture additional product or to manufacture at an additional place
10. Application for transfer of licence
11. Fee for renewal of licence

Schedule : Forms

1. These Regulations may be cited as the Industrial Development Regulations.
2. In these Regulations, unless the context otherwise requires -
  - "applicant" means an applicant for a licence ;
  - "Form" means form prescribed in the Schedule ;
  - "inquiry" means an inquiry under section 9 of the Act.
3. (1) An application for a licence to manufacture shall be submitted in triplicate in Form 1 and shall, subject to the provisions of section 5 (1) of the Act, be accompanied by a fee of R 10,00.  
  
(2) Where the applicant desires protection under the Act, Form 1 shall be accompanied by Form 2.
4. An application for a licence which is required to be published under the provisions of section 6 of the Act shall be published at the expense of the applicant in two separate issues of the Gazette and of a newspaper circulating in the district in which manufacture is to be carried on.
5. Any person wishing to make representations concerning an application published in accordance with section 6 of the Act and regulation 4 shall do so within a period of fourteen days of the last publication of the application.
6. (1) An applicant shall be entitled to fourteen days' notice of an inquiry under the provisions of section 9 of the Act.  
  
(2) At the inquiry the applicant and any objector shall be entitled to appear either in person or through his attorney and shall be entitled to make such representations and lead such evidence as may be relevant to the inquiry.  
  
(3) An applicant shall be entitled to receive a copy of any documentary evidence which may be produced in evidence at the inquiry.  
  
(4) In the event of any evidence being adduced at the inquiry which is prejudicial to the applicant the applicant shall be appraised of the substance thereof and given an opportunity of making representations thereon.

- (5) The person or persons holding an inquiry may examine any person wishing to render evidence on oath.
  - (6) The Minister may appoint a secretary to attend the inquiry to record its proceedings, to keep the papers, minute the testimony of witnesses and generally perform such duties connected with such inquiry as he may require.
  - (7) Subject to the provisions of this regulation the person or persons conducting an inquiry may regulate the procedure at such inquiry.
7. (1) A person appealing to the President under the provisions of section 10 (4) of the Act shall lodge notice of appeal within 28 days of his being notified of the refusal of the Minister to grant a licence, whether in whole or in part, with the Permanent Secretary, Office of the President.
- (2) A notice of appeal shall be accompanied by a fee of R 20,00 and shall set out concisely the grounds of the appeal.
8. A licence under the provisions of section 11 (1) of the Act shall be in Form 3, and shall be issued upon the payment of a fee of R 50,00.
9. (1) An application by a licence holder under section 11 (2) of the Act to manufacture a different or additional product or products or to manufacture the same product at a different or additional place shall be submitted in triplicate in Form 4.
- (2) The fee prescribed for the purposes of section 11 (2) shall be R 20,00.
10. An application for the transfer of a licence under the provisions of section 14 (2) of the Act shall be made by the holder of the licence in triplicate and shall be in Form 5.
11. The fee prescribed for the renewal of a licence under section 15 of the Act shall be R 50,00.

SCHEDULE

REPUBLIC OF BOTSWANA

INDUSTRIAL DEVELOPMENT ACT (CAP. 43:01)

APPLICATION FOR A LICENCE

(Section 4)

To : The Minister of Commerce and Industry,  
Private Bag 4,  
GABORONE.

Name of Applicant .....

Postal Address .....

Proposed location of manufacturing establishment(s) -

Plot Number ..... Town .....

District .....

List of Products it is proposed to manufacture .....

.....

Estimated number of persons employed or to be employed .

.....

Estimated horse power of engines, motors or other  
appliances providing energy derived from steam, water,  
wind, electricity, the combustion of fuel or from any  
other source .....

Signature of Applicant or of  
his Duly Authorized Represen-  
tative. (In the case of a  
Company, the capacity in which  
the signatory signs should be  
stated e.g. "Director",  
"Secretary", etc.)

INFORMATION REQUIRED IN SUPPORT OF APPLICATION

(To be completed by all applicants)

1. Full name and nationality of the applicant or applicants, or, in the case of a Company, the full names and nationalities of the directors thereof -
2. Has any person mentioned in paragraph 1 -
  - a) been convicted either within or outside Botswana of any serious criminal offence or any offence of which dishonesty is an element ?  
  
If so, give details -
  - b) been sequestrated or declared bankrupt either within or outside Botswana ?  
  
If so, give details -
3. What relevant business experience has the applicant ?
4. Name under which the applicant is operating or proposes to operate in Botswana -
5. Date of commencement of manufacturing operations in Botswana, or, if manufacturing has not commenced, the estimated date thereof -
6. What land and/or buildings do you own or lease in Botswana ?  
  
Give details -
7. If you have not yet acquired business premises in Botswana state what step have been taken to acquire premises ?  
  
If you have applied for State land has a provisional acceptance been granted to you in respect of the land pending the outcome of the application ?
8. Number of persons presently employed, in the case of existing manufacturer, or who will be employed when full scale manufacturing commences -

	Citizens of Botswana	Others	Total
Managerial			
Other skilled			
Unskilled			
Total			

9. If you are an existing manufacturer state the total amount paid by you as salaries and wages, both in cash or in kind, during the previous financial year. If you have not yet commenced manufacturing state the estimated annual amount you will pay as salaries and wages, both in cash or in kind, when you have commenced full scale manufacturing -

Paid to citizens of Botswana            R .....

Paid to others                                R .....

Total salaries and wages                R .....

10. What are your plans for training citizens of Botswana ?

11. Consumption of materials during the previous financial year in the case of existing manufacturers or, in the case of applicants who have not yet commenced manufacturing, the estimated annual consumption of materials when you have commenced full scale manufacturing operations -

	Unit	Quantity	Produced in Botswana ROOO	Imported ROOO	Total ROOO
Agriculture (specify) (including forest products)					
1. ....					
2. ....					
3. ....					
4. ....					
5. ....					
6. ....					
Other unspecified					
Total					
Other non- agricultural materials					
1. ....					
2. ....					
3. ....					
4. ....					
5. ....					
Other unspecified					
Total					
TOTAL VALUE OF RAW MATERIALS					

Manufactured or semi-manufactured goods	Unit	Quantity	Produced in Botswana R000	Imported R000	Total R000
1. ....					
2. ....					
3. ....					
4. ....					
5. ....					
Other unspecified					
Total					



12. Annual consumption of industrial materials and services during the previous financial year in the case of existing manufactures or, in the case of applicants who have not yet commenced manufacturing, the estimated annual consumption of materials when you have commenced full scale manufacturing operations -

	Unit	Quantity	Produced in Botswana	Imported	Total
1. Electricity	000 KWH	.....	.....	.....	.....
2. Water	000 litres	.....	.....	.....	.....
3. Gas	cu/ metre	.....	.....	.....	.....
4. Fuels- solid	tonnes	.....	.....	.....	.....
liquid	000 litres	.....	.....	.....	.....
5. Transport	tonne/ kilo- mètres	.....	.....	.....	.....
6. Other goods and service	-	-	.....	.....	.....
TOTAL VALUE INDUSTRIAL MATERIALS					

13. Annual sales during the previous financial year in the case of existing manufacturers or, in the case of applicants who have not yet commenced manufacturing, the estimated annual consumption of materials when you have commenced full scale manufacturing operations -

Product (Specify)	Selling price per Unit	Quantity	Sold in Botswana R000	Exported R000	Total R000	Sales
1. ....	.....	.....	.....	.....	.....	.....
2. ....	.....	.....	.....	.....	.....	.....
3. ....	.....	.....	.....	.....	.....	.....
4. ....	.....	.....	.....	.....	.....	.....
5. ....	.....	.....	.....	.....	.....	.....
Other un-specified						

TOTAL SALES -

14. Plant capacity or estimated plant capacity R .....

NOTE : Plant capacity is the total sales revenue which would be received if the machinery and equipment it is proposed to install were working at maximum output and all the output could be sold at the selling prices listed in 13.

15. Value of capacity employed or to be employed. (In the case of an existing manufacturer the value at the end of the last financial year, in the case of applicants who have not yet commenced manufacturing, at the time when full scale manufacturing operations are commenced) :

(a) Fixed Assets :	Unit	Quantity	Value R00
Land ...	hectares .....	.....	.....
Building :			
Industrial ...	sq.metres .....	.....	.....
Residential ...	sq.metres .....	.....	.....
Plant and Machinery ...	.....	.....	.....
Vehicles ...	No. ....	.....	.....
Other ...	- .....	.....	.....
<b>TOTAL VALUE OF FIXED ASSETS</b>			

(b) Working capital (To be completed by existing manufacturers only)

		Value R000
Stocks of materials and work in progress	...	.....
Stocks of finished goods	...	.....
Amount owing from debtors	...	.....
Cash and other liquid assets	...	.....
Gross working capital	...	.....
Deduct amount owing to creditors	...	.....
Net working capital	...	.....

(c) Total capital employed (a) + (b)

---

16. Sources of funds to cover 15 (c) :

---

		Value R000
Applicant's own resources	...	.....
Private investors in Botswana	...	.....
Private investors outside Botswana	...	.....
Bank advances	...	.....
Suppliers' credit - in Botswana	...	.....
outside Botswana	...	.....
(Botswana Development Corporation) N.D.B.	...	.....
Others (specify)		_____
Total funds available (= 15 (c) :	...	.....

17. Is it proposed to make application for rebates of duty on imported materials ?

REPUBLIC OF BOTSWANA

INDUSTRIAL DEVELOPMENT ACT  
(Cap 43:01)

APPLICATION FOR PROTECTION

(Regulation 3 (2) of the Industrial Development Regulations)

This Form is to be submitted, together with Form N° 1, by applicants seeking protection under the Act.

To : The Minister of Commerce and Industry,  
Private Bag 4,  
GABORONE.

Name of Applicant : .....

Products in respect of  
which protection is  
sought .....

.....  
.....

Nature of protection sought .....

.....

Reasons for seeking protection .....

.....

.....  
Signature of Applicant  
or of his Duly Autho-  
rized Representative.  
(In the case of a Com-  
pany, the capacity in  
which the signatory  
signs should be stated  
e.g. "Director",  
"Secretary", etc.)

INDUSTRIAL DEVELOPMENT ACT  
(Cap 43:01)

INDUSTRIAL LICENCE  
(Section 11)

Industrial Licence N° ..... issued at .....  
under the provisions of the Industrial Development Act and  
the Regulations thereunder.

..... (name of manufacturing firm) of ....

.....

is hereby licensed to manufacture the following products .

.....

.....

at .....

This licence expires on the ..... unless renewed  
under section 15 of the Act.

.....  
Minister of Commerce,  
and Industry

Date : .....

REPUBLIC OF BOTSWANA

INDUSTRIAL DEVELOPMENT ACT

(Cap 43:01)

APPLICATION TO MANUFACTURE A NEW OR  
ADDITIONAL PRODUCT OR TO MANUFACTURE  
AT A NEW OR ADDITIONAL PLACE

To : The Minister of Commerce and Industry,  
Private Bag 4,  
GABORONE.

Application is hereby made to manufacture the following  
products .....

.....

.....

at .....

I am the holder of industrial licence N° .....

issued on the .....

I do/do not(\*) manufacture the products listed above at  
the place specified in the abovementioned licence. The  
place at which I wish to manufacture the products listed  
above is/is not(\*) the place specified in the above-  
mentioned licence.

The reasons for the application are -

.....  
Signature of Applicant  
or of his Duly Autho-  
rized Representative.  
(In the case of a Com-  
pany, the capacity in  
which the signatory sign  
signs should be stated  
e.g. "Director",  
"Secretary", etc.)

(\*) Delete whichever is  
inapplicable

REPUBLIC OF BOTSWANA

INDUSTRIAL DEVELOPMENT ACT  
(Cap 43:01)

APPLICATION FOR TRANSFER OF  
A LICENCE UNDER  
SECTION 14 (2)

To : The Minister of Commerce and Industry,  
Private Bag 4,  
GABORONE.

Application is hereby made for the transfer from .....  
to .....  
of industrial licence N° .....  
issued on .....

1. Full name and nationality of the transferee or, in the  
case of a company, the full names and nationalities of  
the directors thereof :

.....  
.....  
.....

2. Has any person mentioned in paragraph 1 -

a) been convicted either within or outside Botswana of  
any serious criminal offence or any offence of which  
dishonesty is an element ;

If so, give details .....  
.....  
.....



b) been sequestrated or declared bankrupt either within or outside Botswana ;

If so, give details .....

.....

.....

3. What relevant business experience has the transferee ?

.....

4. Name under which the transferee is operating or proposes to operate in Botswana : .....

.....

Signature of applicant or his  
authorized representative  
(the licence holder) .....

Signature of transferee or his  
duly authorized representative .....

Note : In the case of a company, the capacity in which the signatory signs should be stated, e.g. "Director", Secretary", etc.

INDUSTRIAL DEVELOPMENT  
(LIQUOR) PROTECTION ORDER

(Under section 12)

(21st March, 1969)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation

2. Protection of Botswana Liquor Manufacturers (Proprietary) Limited

3. Conditions of protection

1. This Order may be cited as the Industrial Development (Liquors) Protection Order.

2. Protection is granted to Botswana Liquor Manufacturers (Proprietary) Limited by the exclusion in the whole of Botswana for a period of three years from the date of publication of this Order of all manufacture, other than manufacture by the said Company, of brandies, gin, vodka, ouzo, cane spirit and the liqueurs called brandy liqueur, peppermint, maraschino, vanderhum and triple sec.

3. The protection hereby granted is granted on condition -

a) that the said Company supply in the first year of its operations at least 10 per cent in quantity of the aggregate domestic demand for potable spirits of the type specified in paragraph 2, in the second year of its operations 15 per cent thereof, and in the third year of its operation 25 per cent ; and

b) that the said Company in the course of each of the first three years of its operations provide to the satisfaction of the Minister, evidence that Botswana are being trained to occupy positions of responsibility in the Company.

INDUSTRIAL DEVELOPMENT  
(PAINTS, VARNISHES, ENAMELS  
AND DISTEMPERS)

PROTECTION ORDER

(9th May, 1969)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation

2. Protection of Botswana Paint Manufacturers (Proprietary) Limited

1. This Order may be cited as the Industrial Development (Paints, Varnishes, Enamels and Distempers) Protection Order, 1969.

2. Protection is granted to Botswana Paint Manufacturers (Proprietary) Limited by the exclusion in the whole of Botswana for a period of one year from the date of publication of this Order of all manufacture, other than manufacture by the said Company, of the following :

Paints :	Aluminium, oil base, paste, stoep, roof or road marking ;
Emulsion Paints :	Synthetic resin or oil base including polyvinylproprionate, polyvinylacetate, polyacrylates, homopolymers or cop-olymus enamel, gloss, eggshell or flat finish ;
Varnishes :	Oil, resin or synthetic resin base, coloured or clear, gloss or matt ;
Enamels :	Oil varnish, synthetic resin or emulsion base, high gloss eggshell or matt finish ;
Distempers :	Oil or synthetic resin bound, powder or paste, lime washes.

INDUSTRIAL DEVELOPMENT  
(EXEMPTION) NOTICE

(21st April, 1972)

The manufacturing enterprise listed in the Schedule hereto is exempt from the provisions of the Act.

SCHEDULE

The manufacture of bread, cakes, pies, pastries and other bakery products.

REPUBLIC OF THE GAMBIA

AN ACT to revise and up-date the law relating to development industries in order to make better provision for the encouragement of enterprises contributing to the economic development of The Gambia for relief from the payment of income tax, import duty and purchase tax by such enterprises and for various matters connected therewith and relating thereto.

ENACTED by the Parliament of the Gambia.

1. THIS ACT may be cited as the Development Act, 1973.
2. In this Act except where the context otherwise requires -

"company" means any company incorporated or registered under any law in force in The Gambia and any company which, although incorporated or registered outside The Gambia, carries on business or has an office or place of Business herein ;

"construction date" means the date when the construction, alteration or extension to any place of business of a development project is to begin, in any case where such construction, alteration or extension has been carried out prior to the date of application for a development certificate such date as may be specified by the Minister as the construction date ;

"development certificate" means a certificate granted under section 5 of this Act ;

"development project" means a project specified as such under section 3 of this Act ;

"development product" means the product, activity or service of a development project as specified in the development certificate ;

"factory scale" means such scale as the Minister deems to be factory scale for the purpose of this Act ;

"limitation" means,

(a) in respect of relief claimed under the provisions of Part III of this Act, the total value of articles and materials imported into The Gambia, or purchased in The Gambia, in excess of which relief from customs duty shall not be granted ;  
or

(b) In respect of relief claimed under the provisions of Part IV of this Act, that part of the income of the Development project which during the tax holiday period shall be exempt from income tax ;

"Minister" means the Minister responsible for the administration of this Act ;

"person" includes a company or body of persons ;

"place of business" means any premises occupied by a development project together with any buildings, structures, stores or other ancillary erections, plant, machinery and apparatus solely used in connection with the development project on such premises and as approved by the Minister in that behalf ;

"production date" means the date specified by the Minister as such in the development certificate ;

"tax holiday period" means in respect of any development project the period, not exceeding ten years from the production date, during which the income of the development project shall be wholly or partially relieved from income tax ;

"value" means the value of any article or material determined in accordance with the provisions of section 12 of the Customs Tariff Act.

## PART II

### DEVELOPMENT PROJECTS

#### AND DEVELOPMENT CERTIFICATES

3. (1) Any project concerned with the provision on a factory scale of any of the development products specified in the First Schedule to this Act shall be a development project :

Provided that in the case of any new undertaking the project shall not be a development project unless it is established in a location approved by the Minister and so specified in the development certificate.

- (2) The Minister may by Order published in the Gazette add any item to or delete any item from the First Schedule to this Act if he is satisfied it is in the interests of the Gambia so to do :

Provided that before making such Order the Minister shall have regard to the following considerations -

- a) the effect which the order, if made, would have on existing industries ;
- b) whether the new development project would utilize raw materials and skills available in the Gambia ;
- c) whether any existing capacity in The Gambia is sufficient to meet the foreseeable demand for the new development product ;
- d) the element of risk involved in establishing the new development project ; and
- e) objections, if any, from interested parties ;

and shall cause notice of the fact that he is considering making such Order to be notified in the Gazette.

- (3) An Order made under the provisions of subsection (2) of this section in respect of any product or activity or service being made, carried on or provided, as the case may be, in The Gambia at the date of such Order may contain limitations to the relief to be granted in respect of such development product as the Minister may think fit.
- (4) No order made under subsection (2) of this section shall affect the operation of any development certificate.
4. (1) Any person desiring to engage in a development project and to obtain any of the benefits conferred by this Act may apply in writing to the Minister for a development certificate.
- (2) An application made under this section shall be in such form as the Minister may decide and shall -



- a) give particulars of the development product or products in respect of which the application is made ; such particulars shall include the proposed scale of operation, the source of material inputs, the quantities of such inputs annually required at the proposed scale of operation, and an estimate of the local and export markets for the development product or products ;
- b) provide an estimate, in respect of the proposed place of business to be constructed, of -
  - (i) the area of land required ;
  - (ii) the floor areas of the buildings ;
  - (iii) the cost of construction of each building ;
  - (iv) the cost of any ancillary structure ; and
  - (v) the cost of site improvements :

Provided that where an existing building is to be altered or extended for the purpose of carrying on a development project it shall be sufficient to give an estimate of the cost of alteration or extension ;

- c) provide a list of the plant, machinery and apparatus to be employed in the development project, and an estimate of the cost of each item ;
- d) specify the location of the proposed place of business ;
- e) specify the date on which the site was acquired, or, if not yet acquired, an estimate of the date on which the applicant will obtain possession ;
- f) provide an estimate of the construction date ;
- g) provide an estimate of the date on which trading in a development product will commence ;
- h) specify the number of Gambians to be employed, the category of their employment, and, if expatriates are to be employed, their number and the reason for their employment ; and
- i) provide a detailed forecast of the cash flow of

the development project for the first three years of operation.

5. (1) The Minister shall if he is satisfied that it is in the interest of development in The Gambia, and that the applicant -
- a) is adequately financed ;
  - b) has adequate trained personnel in his employ or is able to obtain the services of such personnel ;
  - c) has access to the necessary technical information ;
  - d) is able to obtain adequate raw materials ; and
  - e) possesses or will possess the necessary place of business ;

shall cause the fact that he is about to consider the granting of a development certificate under section 6 of this Act to be notified in the Gazette.

- (2) The Notification referred to in subsection (1) of this section, and the Order referred to in section 3 of this Act shall contain such particulars of the development product or products concerned as the Minister may think necessary in order that any person interested in the development project concerned may object to the proposed Order or certificate, as the case may be.
- (3) The Notification referred to in subsection (1) of this section, and the Order referred to in section 3 of this Act, shall state a period, not being less than thirty days, within which any objection to the proposed order or certificate, as the case may be, shall be made.
- (4) Every objection to the proposed granting of a development certificate received by the Minister within the time stated in the Notification or within such extended time as the Minister may allow shall be notified to the original applicant for a development certificate and such objection together with any further representations submitted by the original applicant shall be considered by the Minister before any development certificate is granted.

- (5) Subsections (1) to (4), inclusive, of this section shall apply mutatis mutandis in any case of an application to amend a development certificate under the provisions of subsection (2) of section 7 of this Act.
  - (6) Every objection to any Order proposed to be made under section 3 of this Act received by the Minister within the time stated in the Notification of the said Order or within such extended time as the Minister may allow shall be considered by the Minister and after such consideration the Minister shall advise the objection whether or not he intends to make the Order.
6. (1) The Minister after consideration of the objections, if any made in accordance with the provisions of subsection (4) of section 5 of this Act may, in his discretion, grant or refuse to grant a development certificate to the applicant, and if the Minister decides to grant a development certificate he may impose such limitations and conditions as he considers fit, including, in the case of an applicant other than a company, the condition that the applicant shall, by such date as the Minister may specify, incorporate or register a company for the purpose of engaging in the development project concerned, and shall cause such conditions and limitations to be ascribed upon the development certificate.
- (2) If the Minister decides to grant a development certificate he may also grant such investment guarantees as he considers it in the national interest so to do, including, but not limited to, guarantees relating to such matters as fiscal stability, repatriation of capital and transfer of dividends. Such guarantees may be given for such periods as the Minister considers fit and such periods shall not be limited in time by any provisions of this Act.
  - (3) A development certificate shall take effect from such date as may be specified in the certificate which may be a date before the date of application made in accordance with the provisions of subsection (1) of section 4 of this Act, and shall cease to have effect, unless otherwise terminated under the provisions of section 10 of this Act, on the day following the date of expiration of the tax holiday period or such later date as the Minister may direct in accordance with the provisions of section 15 of this Act.

(4) In every development certificate the Minister shall specify -

- a) the effective date ;
- b) the construction date :

Provided that the specification of the construction date shall not operate to prevent the holder of a development certificate commencing construction, alteration or extension, as the case may be, of the place of business prior to the specified date ;

- c) the production date which shall be the date on which the Minister deems trading in the development product will commence such date shall be not later than eighteen months after the construction date unless as provided hereinunder :

Provided always that the Minister may amend the production date hereinbefore specified to the date on which the holder of the development certificate opened a trading account in respect of the development product, or to the date on which the development product became available in marketable quantity, or to a date more than eighteen months later than the construction date upon being satisfied that an application made under subsection (1) of section 7 of this Act is fair and reasonable, or because he deems it in the public interest so to do ;

- d) the development product or products and the scale of operation ;
- e) the location of the place of business of the development project ;
- f) the tax holiday period ;
- g) the limitations on the amount of relief to be granted in respect of customs duty and income tax ; and
- h) all conditions imposed in accordance with the provisions of subsection (1) of this section ;
- i) all concessions and guarantees granted in accordance with the provisions of subsection (2) of this section.

7. (1) At any time after the effective date of his development certificate but before the construction date or the production date, as the case may be, inscribed upon his certificate the holder may make application in writing to the Minister for the construction date or the production date to be deferred ; such application shall contain the reasons for requesting deferment :

Provided that -

- a) where the Minister, in his discretion agreed to a deferment of the construction date he may permit a corresponding deferment of the production date, and such date or dates shall be endorsed upon the development certificate ; and
  - b) nothing in this subsection, unless the Minister otherwise directs, shall operate to extend the tax holiday period beyond the expiration date determined hereinbefore.
- (2) a) At any time after the effective date of his development certificate but before the expiration of his tax holiday period a person may make application in writing to the Minister to amend his development certificate by adding an additional development product to the development products specified in such certificate ;
- b) Such application shall specify the additional development product and the reason for the application ;
  - c) If the Minister is satisfied that the provisions of section 3 of this Act are satisfied in relation to such development product and it is expedient in the interests of development in The Gambia so to do, he may amend the development certificate granted by specifying the proposed development product as an additional development product therein with effect from a date which shall not be earlier than the production date specified in the certificate and upon such conditions to be endorsed upon the certificate as he may think fit :

Provided that no amendment to any development certificate under this subsection shall operate to extend the tax holiday period of the applicant.

8. The Minister shall cause to be published in the Gazette -
  - a) the name of any person to whom a development certificate or an amendment under subsection (2) of section 7 of this Act has been granted ;
  - b) the development product or products in respect of which such certificate has been granted or amended;
  - c) the location of the place of business of the development project ; and
  - d) the name of any person whose development certificate has been cancelled, and the development product or products concerned.
9. The holder of a development certificate shall provide the Minister with -
  - a) the date on which he obtained possession of the site of his place of business ;
  - b) the date on which construction, alteration or extension, as the case may be, of his place of business commenced ;
  - c) the date on which the development product became available in marketable quantity, or the date on which trading in the development product commenced, whichever is the earlier ; and
  - d) all other information on the progress of the development project as the Minister may, from time to time, require.
10. (1) Where in the opinion of the Minister a person fails -
  - a) to commence the construction, alteration or extension, as the case may be, of the place of business of the development project by the construction date specified in his development certificate ; or
  - b) to progress with the construction, alteration or extension, as the case may be, of the place of

business, or with the installation of the machinery, plant and equipment therein, at such rate as to be consistent with any obligation connected with the production date ; or

- c) to provide the development product in marketable quantity on or before the production date :

the Minister shall by notice in writing require such person, within thirty days of the service of such notice, to remedy such failure.

- (2) Where a person fails to comply with a notice served under subsection (1) of this section the Minister may cancel his development certificate :

Provided that where such person is able to satisfy the Minister that his failure to provide the development product in marketable quantity by the production date has been due to causes beyond his control no action shall be taken to cancel his development certificate.

- (3) Where the Minister is so requested in writing by any holder of a development certificate, or is satisfied that the holder of a development certificate has contravened any of the provisions of this Act or any condition of limitation contained in a development certificate granted to such holder or in any consent granted under subsection (1) of section 23 of this Act and that, having regard to all the circumstances of the case, it is expedient so to do, he may cancel such development certificate.

- 11. Where any development certificate is cancelled under section 10 of this Act such development certificate shall be deemed never to have applied to the person to which it was granted, and such person shall, notwithstanding anything contained in the Income Tax Act or Customs Act, be liable -

- a) to pay to the Comptroller of Customs and Excise -

- (i) all sums which, but for the provisions of section 12 of this Act, would have been payable as customs duty ; and

- (ii) all sums refunded to him by the Comptroller under the authority of this Act ; and

- (iii) all sums which, but for the provisions of section 15 of this Act, would have been payable as customs duty on material imported under the said section ;
- b) to pay to the Commissioner of Income Tax all sums which, but for the provisions of this Act conferring relief from income tax on development projects, he would have been liable to pay :

Provided that -

- (i) where any cancellation under section 10 of this Act is made otherwise than at the request of the person concerned the Minister may specify as the date from which such cancellation is to take effect such date after the effective date of the development certificate, whether before or after the date of such cancellation as the Minister shall think fit, and in such case the liability of such person to the Commissioner of Income Tax under this subsection shall be adjusted accordingly ;
- (ii) where such cancellation is made at the request of the person concerned the Minister shall specify as the date from which the cancellation shall take effect a date not earlier than the date on which such request is made ;
- (iii) if in the opinion of the Minister the liability of any person arising under this section for the payment in full of any such sums or any such tax would cause undue hardship or if for any other reason the Minister deems it expedient so to do the Minister may remit the whole or any part of such liability.

### PART III

#### CUSTOMS DUTY

12. (1) Every person shall upon issue to him of a development certificate and subject to such conditions and limitations as may be imposed by such certificate,



be entitled at any time between the effective date of the certificate and the production date to import into The Gambia free of customs duty, or to purchase in Gambia subject to refund of customs duty as provided in subsection (2) of this section, any of the articles and material specified in the Second Schedule of this Act :

Provided that -

- a) in the case of building materials the person shall satisfy the Comptroller of Customs and Excise that such materials are or were required for the construction, alteration or extension, as the case may be, of the place of business of the development project concerned, and that the total value of such materials in respect of which relief from customs duty has been allowed and is being claimed does not exceed the limitation imposed in the development certificate ; and
  - b) in the case of all articles and materials listed in the Second Schedule of this Act except building materials the person shall satisfy the Comptroller that the articles and materials on which relief from customs duty is claimed are the articles and materials listed in his development certificate, or, if not so listed the total value of the articles and materials in respect of which relief from customs duty has been allowed and is being claimed does not exceed the limitation imposed in the development certificate.
- (2) Every person who satisfies the Comptroller of Customs and Excise -
- a) that any article or material which if imported by him would have been exempt from import duty under the provisions of subsection (1) of this section has been purchased by him in The Gambia and that customs duty was paid upon the importation of such article or material ; and
  - b) as to the amount of the customs duty so paid ;
- shall subject to section 16 (c) of the Customs Tariff Act be entitled to be refunded by the Comptroller ninety per cent of the customs duty so paid :

Provided that -

- a) where the person satisfies the Comptroller that he is unable to ascertain the amount of customs duty paid, he shall be entitled to be paid by the Comptroller such sum by way of refund as is in the opinion of the Comptroller reasonable ; and
- b) no refund shall be made under this subsection when the amount of customs duty so paid, or the sum which the Comptroller assesses as a reasonable sum to be paid by way of refund, as the case may be, is less than one hundred and twenty-five dalasis (D125).

(3) The Minister may -

- a) by Order published in the Gazette amend or replace the Second Schedule to this Act ; and
- b) on application in writing from the holder of a development certificate, in his discretion and subject to such limitation as the Minister may think fit, permit the holder to import into The Gambia free of customs duty, or to purchase in The Gambia subject to refund of customs duty as provided in subsection (2) of this section, articles and materials listed in the Second Schedule of this Act at any time between the production date and the date of expiration of his tax holiday period :

Provided that -

- a) such permission as is referred to in subsection (3) of this section shall not be granted to import articles and materials that cannot reasonably be expected to be landed in The Gambia before the date of expiration of the tax holiday period of the development project concerned ; and
- b) no benefit already enjoyed by a person by virtue of possessing a development certificate shall be affected by the operation of this subsection.

13. (1) Every person who is granted relief under the provisions of section 12 of this Act shall -

- a) keep a record of all articles and materials in respect of which relief from customs duty has been allowed ; such record shall show -
- (i) the date on which each article or material was landed in The Gambia, or, if purchased in the Gambia, the date of purchase of the article or material by such person ; and
  - (ii) the value of each article or material imported into or purchased in The Gambia ; and
  - (iii) the total value of all such articles and materials up to and including the date of submission of such record ;
  - (iv) submit such record to the Comptroller of Customs and Excise at every time relief from customs duty is claimed and at such other times as the Comptroller may require ; and
  - (v) keep such other records and submit such returns at such times as may be determined by the Comptroller in such form and containing such particulars as may be required by the Comptroller of the articles and materials imported or purchased by him ; and
- b) cause such articles and materials to be marked with such mark and in such manner as may be required by the Comptroller ; and
- c) permit the Comptroller or any person authorised by him at all reasonable times to inspect such records and to have access to any premises under the control of such person for the purpose of examining any such articles and materials which the Comptroller may believe to be therein and of satisfying himself of the accuracy or the particulars in relation to such articles and materials contained in such records.
- (2) Any person who contravenes any of the provisions of this section or any requirement of the Comptroller of Customs and Excise made under this section shall be guilty of an offence and on conviction therefore

shall be liable to a fine not exceeding two thousand five hundred dalasis (D 2,500).

14. (1) No article or material in respect of which any relief has been granted under the provisions of section 12 of this Act shall be sold, given away or otherwise disposed of except -
- a) in the case of an assignment of the development project for the purpose of which such article or material was acquired, to the assignee of such project ; or
  - b) upon the holder of the development certificate paying to the Comptroller of Customs and Excise an amount equivalent to the relief granted, or such lesser amount as the Comptroller shall consider reasonable ; or
  - c) subject to the provisions of section 24 of this Act, after the expiry of five years from the date of acquisition of such article or material.
- (2) Any person who contravenes the provisions of this section shall be guilty of an offence and on conviction therefore shall be liable to a fine, and the article or material concerned shall be forfeited to Government :

Provided that such fine shall be not less than five hundred dalasis (D 500).

15. (1) The Minister may direct that customs duty on any raw or semi-processed material required for the provision of the development product may be reduced by a specific amount or waived altogether from such date and for such period as the Minister may specify : -

Provided that -

- a) such raw or semi-processed materials is imported by the holder of the development certificate concerned ; and
- b) such period as is specified by the Minister shall not extend beyond ten years from the production date ; and

- c) nothing in this section shall operate to prevent the Minister specifying that such materials shall be exempt from customs duty, or attract duty at a reduced rate, for a prescribed period and at the end of such period or periods a different rate of duty shall be applied and so on ; subject to the final rate of duty not exceeding the full rate of duty on such materials at that time.
- (2) The provisions of section 13 and 14 of this Act shall apply mutatis mutandis in respect of any importation made under the provisions of this section.

PART IV

INCOME TAX

16. Subject to the provisions of this Act, a holder of a development certificate shall be entitled to relief from income tax during his tax holiday period equal to the tax chargeable on the income in respect of his development project, or to such lesser relief as may be provided for in any order made under the provisions of subsection (2) of section 3 of this Act, or in his development certificate.

"Income" for the purposes of this section shall be the chargeable income of the development project for each year of assessment falling within or after the tax holiday period, as computed under the provisions of the Income Tax Act (Cap. 96).

17. Notwithstanding any other provisions of this Act in the case of persons other than companies -
- a) the relief from income tax to be given in any year of assessment under the provisions of section 16 of this Act shall not exceed the amount which otherwise have been payable by such person on the first five thousand dalasis of the profits arising out of the development project ; and
- b) the rate of such relief shall not exceed the rate of income tax on companies in force in such year of assessment.

18. (1) If the trade or business of a development project is carried on by it before or after its tax holiday period, then subject to the provisions of section 19 of this Act and the purpose of section 17 of the Income Tax Act -
- a) that trade or business shall be deemed to have permanently ceased immediately prior to the tax holiday period or at the end of the tax holiday period of the development project, as the case may be ;
  - b) in respect of that trade or business, the development project shall be deemed to have engaged in a new trade or business on the day following the beginning and end of its tax holiday period.
19. (1) After the expiration of his tax holiday period the holder of the development certificate may, for the purpose of assessment of income tax, carry forward and set off any net loss incurred during his tax holiday period against chargeable income, if any, in respect of next succeeding six years of assessment.
- (2) For the purposes of subsection (1), the term "net loss" means the amount by which the total of losses incurred during the tax holiday period exceeds the total of any profits made during that period as computed under the provisions of the Income Tax Act.
  - (3) The holder of a development certificate may also for the purposes of assessment of income tax, carry forward and set off any loss incurred during the six assessment years prior to the commencement of the tax holiday period against the chargeable income, if any, of the next succeeding six years of assessment after the expiration of the tax holiday period in accordance with section 19 (2) of the Income Tax Act (Cap. 96) ignoring altogether the intervening tax holiday period and if six succeeding years of assessment after the expiry of the tax holiday period had immediately followed the last of the six assessment years prior to the commencement of the tax holiday period.

20. For the purposes of the Income Tax Act and this Act, the Commissioner of Income Tax may direct that -
- a) any sums payable to a development project in any accounting period which, but for the provisions of this Act, might reasonably and properly have been expected to have been payable, in the normal course of business, before or after that period shall be treated as not having been payable in that period but as having been payable on such date, before or after that period, as the Commissioner of Income Tax thinks fit and, where such date is before or after the tax holiday period of the development project, as having been so payable, on that date, as a sum payable in respect of its old or its new trade or business as the case may be ; and
  - b) any expense incurred by a development project before or after the end of its tax holiday period which, but for the provisions of this Act, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax holiday period shall be treated as not having been incurred before or after the end of its tax holiday period but as having been incurred on such date, during its tax holiday period as the Commissioner thinks fit.
21. Where it appears to the Commissioner of Income Tax that any amount of income of a development project arising during its tax holiday period ought not to have been exempted from income tax by reason of a direction under section 20 of this Act having been made or by reason of the cancellation of the development certificate of such project the Commissioner may at any time within six years thereafter make such additional assessments upon the development project as may appear to be necessary to counteract any benefit from such amount which ought not to have been exempted and the provisions of the Income Tax Act relating to objections and appeals, and of any rules made thereunder, shall apply mutatis mutandis as if such directions were a notice of assessment given under such provisions.
- 22 (1) A company to which a development certificate has been granted shall place in a separate account all profits or gains which have been relieved of income tax in accordance with the provisions of this Act and, if

it intends to pay a dividend to its shareholders out of such profits or gains, such dividends shall be paid out of such account.

(2) A shareholder to whom a dividend is paid pursuant to subsection (1) of this section shall be relieved from income tax in respect thereof if he is -

a) a resident in The Gambia ; or

b) if not so resident, is not liable to income tax in respect of such dividend in the country in which he is resident :

Provided that the relief from income tax created by this subsection shall not exceed, as regards the rate of the tax from which the shareholder is relieved, the rate of tax which would, but for the provisions of this Part of this Act, have been paid by the company on the profits or gains out of which the dividend is paid.

(3) Where a shareholder to whom a dividend is paid pursuant to subsection (1) of this section is not resident in The Gambia and is liable to income tax in respect of such dividend in the country in which he is resident, he shall be relieved from so much of the income tax in respect of that dividend as the Commissioner of Income Tax is satisfied exceeds his liability in respect of such dividend in the country in which he is resident :

Provided that the relief from income tax created by this subsection shall not exceed, as regards the rate of tax from which the shareholder is relieved, the rate of tax which would, but for the provisions of this Part of this Act, have been paid by the company on the profits or gains out of which the dividend is paid.

#### PART V

#### MISCELLANEOUS

23. (1) No person to whom a development certificate has been issued shall, without the prior written consent of the Minister, during his tax holiday period and



within six years of the date of expiration of his tax holiday period -

- a) transfer the development project to any other person ; or
- b) amalgamate, combine or merge the development project with any business or trade through its liquidation or otherwise :

Provided that -

- (i) the Minister, in his discretion, may grant or withhold permission, may impose such conditions as he thinks fit ;
  - (ii) any application for permission under this subsection shall be accompanied by a statement, certified by the Commissioner of Income Tax, of the tax losses of the development project concerned in the year of assessment immediately prior to the date of such application.
- (2) No place of business of a development project shall, without the prior approval of the Minister and subject to such conditions as the Minister may impose, be used during the tax holiday period of the project concerned for any other purpose than the provision of the development product or products in respect of which the development certificate was granted.
  - (3) Any person contravening the provisions of subsection (1) of this section or using, or permitting or allowing any other person to use any place of business in contravention of the provisions of subsection (2) of this section shall be guilty of an offence and on conviction therefor shall be liable to a fine.
24. The provisions of Part XIV of the Income Tax Act shall apply to any false return delivered or any false account kept or prepared with reference to any of the benefits created by Part IV of this Act as if such false statement or representation had been made or such false accounts had been kept or prepared with reference to income tax on profits or gains chargeable under the Income Tax Act.

25. The Minister may make regulations prescribing forms to be used under this Act and for any other matter in respect of which it may be expedient to make regulations for the better carrying of this Act into effect.
26. The Development Act (Cap. 47) is hereby repealed.

FIRST SCHEDULE

PART 1

DEVELOPMENT PRODUCTS

1. Fruit preserves and preparations.
2. Beer and potable spirits.
3. Cigarettes.
4. Paint, polishes and varnishes.
5. Wood pulp, straw pulp.
6. Boxes and containers of paper, paperboard and plastic material.
7. Moulded or extruded plastic products.
8. Soap.
9. Detergents.
10. Fertilizers.
11. Cement.
12. Wire fencing, barbed wire.
13. Nails, staples, screws and similar products.
14. Builders' hardware.
15. Metal windows and fittings thereof.
16. Mirrors.
17. Venetian blinds.
18. Spring mattresses.
19. Electric batteries.
20. Dried and smoked fish.
21. Ice Cream.
22. Perfumery and cosmetics.

23. Pharmaceutical goods, disinfectants.
24. Boots and shoes.
25. Fancy leather goods.
26. Garments, hosiery.
27. Sacks.
28. Metal buckets and domestic utensils.
29. Metal tools and implements.
30. Safes and strong boxes.
31. Agricultural implements.
32. Bricks, roof tiles, floor tiles.
33. Furniture (wooden, metal or plastic).
34. Toys, sports goods.
35. Musical instruments.
36. Carbonated soft drinks and cordials.

The relief to be granted under the provisions of the Act to any person engaged in the manufacture of any products under item 36 shall be limited to relief from customs duty and purchase tax as provided in Part III of the Act.

37. Candles.
38. Trunks, suitcases, bags and other travel goods.
39. Umbrellas and parasols.
40. Dehydrated vegetables and starch.
41. Confectionery products.

PART II

DEVELOPMENT ACTIVITIES

Freezing of fish for export.

Canning of fish, meat, fruit and vegetables.

Processing of hides and skins.

Collection, processing and packing of salt.

Foundry.

Galvanising of metal goods.

Retreading of tyres.

Grinding of optical glass.

Assembly of : -

Radio and television sets.

Domestic and electrical equipment.

Office machinery.

Sun-ray heating systems.

Time recorders, precision instruments.

Bicycles.

Read motor vehicles.

Printing and bookbinding (but not issue and distribution of news papers).

Distilling, blending and bottling of potable spirits.

The relief to be granted under the provisions of the Act to any person engaged in the distilling, blending and bottling of potable spirits shall be limited to relief from customs duty as provided in Part III of the Act.

Bottling of refined groundnut oil.

Cultivation and processing of agricultural crops (excepting oilseeds) on a commercial scale mainly for export.

Sewing or manufacturing of fur hats and fur coats for export.

The establishment of hotels.

SECOND SCHEDULE

All building materials, tools, plant, machinery, pipes, pumps, conveyor belts or other appliances and materials necessary for and used in the construction, alteration, reconstruction or extension of any mine, plantation or factory specified in a development certificate granted under section 6 of this Act or for equipping such mine, plantation or factory or any extension thereof.

PASSED in the House of Representatives this Twentysixth day of

June, in the year of Our Lord One thousand nine hundred and Seventy-three.

S.A.R. N'JIE  
Clerk of the House  
of Representatives

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the House of Representatives, and found by me to be a true and correct copy of the said Bill.

S.A.R. N'JIE  
Clerk of the House  
of Representatives



REPUBLIC OF GHANA

IN PURSUANCE OF THE NATIONAL REDEMPTION COUNCIL  
(ESTABLISHMENT) PROCLAMATION, 1972 THIS DECREE IS HEREBY  
MADE :

1. (1) There is hereby established for the purposes of this Decree a body corporate to be known as the Capital Investments Board, in this Decree referred to as "the Board".
  - (2) The Board shall have perpetual succession and a common seal and may sue and be sued in its own name.
  - (3) The Board shall have power, for the discharge of any of its functions, to acquire and to hold any movable and immovable property, to dispose of such property and to enter into any contract or other transaction.
2. (1) The Board shall consist of -
  - a) the Executive Chairman appointed under section 3 of this Decree ;
  - b) the Deputy Governor of the Bank of Ghana ;
  - c) the official head of the Budget Division of the Ministry of Finance and Economic Planning or his representative ;
  - d) the official head of the Ministry of Industries or his representative ;
  - e) three other members appointed by the Council on the advice of the Commissioner.
- (2) The members appointed under paragraph (e) of subsection (1) of this section shall hold office on such terms and conditions including the payment of remuneration or allowance as the Council shall determine.
- (3) A member appointed under paragraph (e) of subsection (1) of this section may resign his office by giving one month's notice in writing addressed to the Council through the Commissioner, but he may at any time be removed from office by the Council if in the opinion of the Council it is in the best interest of the Board to do so.

3. (1) The Executive Chairman shall be appointed by the Council under such terms and conditions including the payment of such remuneration and allowance as the Council shall determine.
- (2) Subject to such general directives as may be given by the Board the Executive Chairman shall be responsible for the day-to-day administration of the Board.
4. The Board may, subject to such terms and conditions as it may determine, appoint such staff as it may consider necessary for the efficient discharge of its functions under this Decree and there shall be paid to such staff such remuneration and allowance as the Board may, in consultation with the Commissioner determine.
5. (1) The functions of the Board shall be -
  - a) to initiate and organize activities such as conferences and seminars for the stimulation of investments and to provide for the creation of certain conditions such as industrial estates and industrial processing free zones required therefor ;
  - b) to grant approval which may entitle investments to any or all of the benefits specified under this Decree ;
  - c) to maintain liaison between investors and Government departments, agencies and other authorities concerned, to give and disseminate information about investments in Ghana ;
  - d) to obtain licences, approvals, quotas, reductions, exemptions, or any other facility or dispensation necessary for the establishment or expansion of any approved project ; and
  - e) to do all acts as are incidental or conducive to the attainment of the purposes of this Decree.
- (2) For the purposes of this section, the Commissioner may, on the advice of the Board, give directions in writing to any Government department, agency or other Government authority and any such department, agency or authority shall comply with any directions so given.

- (3) The approval granted under this section shall be in the form of an agreement entered into by the Board and the person concerned, not being inconsistent with the provisions of this Decree, setting out the conditions of the approval and the benefits conferred by the agreement :

Provided that no such agreement shall be entered into by the Board unless a copy of the draft agreement has been sent to the Commissioner, who shall within fourteen days of the receipt thereof indicate his approval or disapproval in writing of the draft agreement.

- (4) Unless the Commissioner indicates his disapproval of the draft agreement within the said period the Board may, at the expiration of the fourteen days, enter into agreement with the person concerned under the provisions of subsection (3) of this section.
6. Unless otherwise provided by this Decree or regulations made thereunder the Board shall determine its own procedure for the conduct of its business.

## PART II

### CRITERIA FOR INVESTMENTS

7. Approval for investments under this Decree may be granted for the purposes of contributing to -
- a) the development of the productive capacity of the national economy through the efficient utilization of its resources and economic potential ;
  - b) the full and efficient utilization and expansion of the productive capacity of existing enterprises ;
  - c) the efficient saving on imports, the increase of exports and the improvement of services which will assist the strengthening of the balance of payments position of the country ;
  - d) the encouragement of a fair country-wide distribution of investments having in mind the need to develop the rural areas and to avoid undue concentration of investments in the urban areas ;
  - e) a high level of employment and the impartation of technical skills to persons who are citizens of Ghana.

PART III

OBLIGATIONS OF INVESTORS

8. (1) Any person who has invested, or intends to invest, in any sector of the national economy and wishing to enjoy any benefits conferred by this Decree shall submit to the Board the particulars of a project containing a detailed description of the enterprise carried on or intended to be carried on.
- (2) The particulars required under subsection (1) of this section shall, where applicable, include a detailed description of,
- a) the investment and financial plan showing the amount of investment in external and Ghana currencies ;
  - b) a production scheme indicating the annual volume and value of the production ;
  - c) a services scheme, indicating the creation of services and the volume and value of the services intended to be rendered ;
  - d) an import and export scheme indicating the anticipated volume of imports and exports ;
  - e) local inputs indicating the anticipated volume of raw materials to be used ;
  - f) an employment scheme showing a programme of training for persons who are citizens of Ghana to acquire the requisite skills in the particular enterprise ;
  - g) the industry to be established and the product to be produced ;
  - h) the locality in which it is proposed to carry on such industry ;
  - i) the day on or before which it is expected to make the services available or to commence production in marketable quantities of the products specified ; and

- j) such other information as the Board may from time to time require.
9. Any person to whom an approval has been granted under this Decree shall,
- a) during the continuance in force of the agreement made under subsection (3) of section 5 of this Decree, institute arrangements for the training of persons who are citizens of Ghana in administrative, technical, managerial and other skills, with a view to securing the benefit of their knowledge and experience in the conduct of the project concerned ; and
  - b) provide adequate facilities for the benefit and enjoyment of employees.
10. Any person to whom approval has been granted under this Decree shall furnish the Board, on demand, with any information, document or any other evidence relating to the implementation and operation of the approved project, the fulfilment of the conditions of the approval, the conditions of any permit and the determination of the extent of any benefits thereunder.

#### PART IV

##### PROTECTION OF INVESTMENTS

11. (1) Subject to the provisions of this section, no project approved under this Decree shall be subject to expropriation by the Government.
- (2) Where, however, in exceptional circumstances an approved project is taken over in the public interest, the Government shall pay adequate compensation for the takeover.
- (3) Where there is a dispute as to the amount of compensation payable under this section the matter shall be referred to an arbitrator appointed by the parties and failing such appointment to arbitration under the auspices of the International Centre for Settlement of Investment Disputes in accordance with the Convention on the Settlement of Investment Disputes between States and National of other States ; provided that the investor is a

national of a contracting state within the meaning of the Convention.

- (4) For the purposes of subsection (3) of this section any application for the approval of investment under this Decree shall state that the investor shall consent to the jurisdiction of the International Centre for Settlement of Investment Disputes and an approval of the application by the Board shall constitute consent of the Government or an agency thereof to submit to the jurisdiction of the Centre.

12. Notwithstanding the provisions of any other enactment,

a) there shall be no restriction,

(i) on the remittance of capital, including appreciation, to the country of origin of an investment approved under this Decree, in the event of a sale or the liquidation of the approved project ;

(ii) on the transfer of profits to the country of origin of the investment after the payment of any tax due in respect of the investment ;

(iii) on the transfer of payments in respect of principal, interest and other financial charges where a loan has been granted to a project by a non-resident for the purposes of an approved project in accordance with the approved conditions of the loan ;

b) reasonable facilities shall be provided by the Commissioner to expatriate personnel employed or engaged in a approved project under this Decree for making remittances abroad in respect of the maintenance of their families and other contractual obligations such as insurance premiums and contributions to provident and pension funds :

Provided that the Commissioner may, in order to safeguard the external payments position, impose temporary restrictions.

PART V

INCENTIVES FOR INVESTORS

13. Notwithstanding the provisions of any other enactment, the Board may, in order to stimulate investment in labour-intensive industries, grant to a company approved under this Decree, during the continuance in force of an agreement executed under subsection (3) of section 5 of this Decree, and subject to the other provisions of this Decree, an employment tax credit for a period not exceeding ten years from such date as the Board may determine.
14. Notwithstanding the provisions of any other enactment, the Board may, in exceptional cases, where the technology for a particular industry is necessarily capital-intensive, grant income tax holiday to the company concerned for a period not exceeding five years from such date as the Board may determine.
15. Notwithstanding the provisions of any other enactment, the Board may, in respect of buildings, plant, machinery, structures, roads, furniture, fixtures and fittings used for the purposes of an approved project, grant capital allowances at rates additional to the rates provided under the Income Tax Decree, 1966 (N.L.C.D. 78).
16. In determining the chargeable income of a person who has incurred a capital expenditure on scientific research for the purposes of the development or advancement of an approved project, there shall be deducted from that income, if the Board so decides, every year for four years, beginning with the year in which he incurred the said expenditure, an amount equal to twenty-five per centum or such expenditure :

Provided that no deductions shall be made under this section for an expenditure invested in property in respect of which capital allowances are granted under the Income Tax Decree, 1966 (N.L.C.D. 78).

17. Where any person is subject to double taxation the Commissioner may enter into an agreement with the authorities of the country of which that person is a national for the purpose of minimising the tax payable by that person outside Ghana.
18. (1) An approved project may be granted any or all of the following benefits, namely,



- a) exemption up to one hundred per centum from import and customs duties under the Customs and Excise Decree, 1972 (N.R.C.D. 114) and purchase tax under the Purchase Tax Act, 1961 (Act 67), for imported goods that are essential for the implementation and operation of the project and which cannot within a reasonable period be produced in sufficient quantities in Ghana ; and in any such case the exempted goods shall not be sold unless the corresponding duties are previously paid ;
- b) exemption up to one hundred per centum from export or excise duties under the Customs and Excise Decree, 1972 (N.R.C.D. 114) and sales tax under the Sales Tax Act, 1965 (Act 257), on goods produced by the approved project :

Provided that the goods exempted from export or excise duties are cleared through Customs.

- (2) An exemption granted under subsection (1) of this section shall be for a period not exceeding ten years.
- (3) An exemption under this section shall only be granted after a guarantee has been given to the satisfaction of the Comptroller of Customs and Excise that the exempted goods shall be used for the purposes of the approved project.

#### Deferment of Payment of Fees

- 19. Where the registration of a company having a share capital or an increase of the capital of such a company is included in an approved project, the Board may so inform the Registrar of Companies ; and upon that being done, the payment of the registration fees and stamp duty on capital payable under the Companies Code, 1963 (Act 179) or of such part of those fees as is payable on the capital amount included in the approved project, shall be deferred for such period not exceeding five years from the date of the registration as the Board may fix.
- 20. Where an application for the approval of a project has been submitted to the Board, and it is stated in the particulars of the project that for the purposes of the implementation thereof an application will be submitted for the registration of,

- a) a company having a share capital, or
- b) an increase in the capital of such a company,

and in the opinion of the Board, the registration should take place before the Board decides on the approval, then upon the recommendation of the Board, the payment of the registration fees and stamp duty payable on capital under the Companies Code, 1963 (Act 179) or of such part of such fees or duty as is payable on the capital amount in respect of which the recommendation is given, shall be deferred for six months from the day of the registration or for such longer period, not exceeding twelve months from the day of the registration, as the Board may fix ; but if the project is meanwhile approved, the provisions of section 19 of this Decree shall apply.

#### Exemption from Property Taxes and Rates

21. Where a warehouse, factory or workshop has been constructed or acquired for the purposes of an approved project or improvements made thereto and the completion of the construction thereof or the acquisition or improvement took place after the commencement of this Decree and the warehouse, factory or workshop is used directly for the purposes of the approved project, the approved project may be exempted by the Board, for a period not exceeding five years from the date of completion of the construction or improvement or from the date of commencement of the acquisition, whichever is the later event, from the payment of such property rates as are levied under the Local Administration Act, 1971 (Act 359).
22. A person who, being under a legal duty to obtain a licence for the construction of a building, has not obtained it or having obtained it, has not fulfilled any of the conditions thereof shall not enjoy exemption under the provisions of this Decree unless the Commissioner or any other authority empowered in that behalf by the Government certifies in writing that there was reasonable cause for not obtaining the licence or the non-fulfilment of the condition.

#### Discretion in Granting Incentives

23. Subject to such conditions as the Board may impose in respect of an approved project it may in exercise of its functions under this Decree grant any of the benefits specified in this Part of this Decree in varying amounts and over varying periods of time up to but not exceeding

the limits prescribed under that Part in respect of such benefits.

24. Benefits specified in this Part of this Decree shall be granted in such a manner as will not create privileges in the competitive position of similar investments nor tend to the establishment of monopolies.

#### PART VI

##### SPECIFIED INCENTIVES FOR PARTICULAR INVESTMENTS

25. Notwithstanding the provisions of section 8 of this Decree and subject to the prior approval of the Commissioner, the Board may, where it considers it desirable to encourage a certain kind of economic activity grant certain specified benefits under this Decree to any person who engages in such specified economic activity as the Board may from time to time determine :

Provided that such benefits shall be enjoyed under an agreement made in accordance with the provisions of subsection (3) of section 5 of this Decree.

#### PART VII

##### MISCELLANEOUS

26. A project, part of which is an approved project and part of which is not an approved project, whether the unapproved part was established before the grant of the approval or thereafter but outside the scope of the approved project, shall be entitled to the benefits conferred by this Decree in respect of the approved part only.
27. Any investment not approved for the purposes of this Decree or in respect of which no application has been made to the Board under section 8 of this Decree may be allowed to repatriate capital, interest and other financial charges subject to the provisions of the Exchange Control Act, 1961 (Act 71).
28. The Board may suspend or cancel an approval if any of the provisions of this Decree or of the regulations made thereunder, or if any of the conditions of the approval, is not complied with and upon its doing so, the Board may decide that all or any of the fees, taxes,

duties and other charges in respect of which benefits were granted shall be paid at such times as it may prescribe.

(2) Where the Board is satisfied that an approval has been obtained on the basis of false or knowingly misleading statements, it shall cancel its approval with effect from the day on which it was granted, and all the fees, taxes, duties and other charges specified in subsection (1) of this section shall thereupon be paid upon the expiration of thirty days from the date of the notice of cancellation or such longer period as the Board may prescribe.

29. The Commissioner may, by legislative instrument, and after consultation with the Board, make regulations for anything that may be prescribed under this Decree, and generally for giving effect to the provisions of this Decree.
30. The provisions of this Decree shall be in addition to and not in derogation of anything contained in any other enactment and where there is a conflict between this and any other enactment the provisions of this Decree shall prevail.
31. In this Decree unless the context otherwise requires,
- "approval" means approval granted by the Board under Section 5 of this Decree ;
- "approved" means approved by the Board ;
- "benefits" include facilities and exemptions conferred on approved projects by the Board under this Decree ;
- "Board" means the Capital Investments Board established under section 1 of this Decree ;
- "company" means a company registered under the Companies Code, 1963 (Act 179) ;
- "Commissioner" means the Commissioner responsible for Finance and Economic Planning ;
- "Council" means the National Redemption Council ;
- "International Centre for Settlement of Investment Disputes" means the international organisation created by the Convention on the Settlement of

Investment Disputes between States and Nationals of other States ;

"project" means an industry, undertaking or business or property or an enlargement of any such industry, undertaking or business or property, any investment or loan ; or any part of any such industry, undertaking or business, property, investment or loan.

32. (1) The Capital Investments Act, 1963 (Act 172) and the Capital Investments (Amendment) Act, 1965 (Act 267) are hereby repealed.
- (2) Notwithstanding the repeal of the enactments specified in subsection (1) of this section any agreement executed under those enactments and in force immediately before the commencement of this Decree shall continue in force as if made under this Decree.

Made this day of 9th January, 1973.

Colonel I. K. ACHEAMPONG  
Chairman of the National Redemption Council

Date of Gazette notification : 10th January, 1973



GRENADA

AN Act to give effect to the Agreement on harmonisation of  
fiscal incentives to industry.

(11th July, 1975)

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Grenada, and by the authority of the same as follows : -

1) This Act may be cited as the

FISCAL INCENTIVES ACT, 1974

2) In this Act -

"approved enterprise" means an enterprise declared by Order of the Minister under section 6 for the purpose of conferring a benefit under this Act ;

"approved product" means a product declared by Order of the Minister under section 5 for manufacture by an approved enterprise ;

"benefit" means any relief granted to an approved enterprise under this Act ;

"Common Market" means until May 1st 1974, all States referred to in Schedule I and thereafter such of those States that are parties to the Treaty establishing the Caribbean Common Market ;

"construction day" means the day specified in an Order made pursuant to section 6 (1) ;

"enclave enterprise" means an enterprise producing exclusively for export to countries outside the Common Market ;

"enterprise" means a company incorporated under the Laws of Grenada and engaged or about to engage in an industry ;

"Group 1 Enterprise" means an enterprise in respect of which the local value added is at least fifty per centum of the amount realised from the sales of an approved product ;

"Group II Enterprise" means an enterprise in respect of which the local value added is at least twenty-five per centum but less than fifty per centum of the amount realised from the



sales of an approved product ;

"Group III Enterprise" means an enterprise in respect of which the local value added is at least ten per centum but less than twenty-five per centum of the amount realised from the sales of an approved product ;

"highly capital intensive industry" means an industry the capital investment in which is not less than twenty-five million dollars, Eastern Caribbean Currency ;

"industry" means a manufacturing or processing industry, including deep sea fishing and shrimping where they form part of an integrated processing operation, but does not include agriculture and tourism ;

"local value added" means the amount (expressed as a percentage of the total sales of an approved product by which the amount realised for the sales of an approved product over a continuous period of twelve months, exceeds the aggregate amount of the following : -

- (i) the value of imported raw materials, content of components and parts thereof, fuels and services ;
- (ii) wages, salaries or both paid during the twelve month period to persons who are not nationals of a Member State ;
- (iii) profits distributed or remitted directly or indirectly to persons (including companies) who are not resident in a Member State ;
- (iv) interest, management charges and other income payments or any of them accruing directly or indirectly to persons (including companies) who are not resident in a Member State, other than a branch or agency of a bank not resident in a Member State ;
- (v) depreciation on the imports of plant, machinery and equipment, or any of them ;

"Member State" means a State listed in Schedule I ;

"Minister" means the member of the Cabinet to whom responsibility for industry is assigned ;

"National" means a person who is a citizen of a Member State and a person whose connection

with a Member State entitles him to be regarded as belonging to, or being a native or resident of the Member State for the purposes of the laws relating to immigration for the time being in force ;

"production day" means the day on which an approved enterprise commences production of an approved product ;

"sale" means the proceeds of sale ex-factory of an approved product exclusive of the cost of distribution.

- 3) (1) The local value added shall be weighted by the wages or salaries paid to nationals of a Member State expressed as a percentage of the total sales of the approved product and calculated in accordance with the undermentioned formula -

$$\frac{V (100 + W)}{100}$$

- (2) For the purposes of subsection (1), "V" represents the local value added expressed as a percentage of the total sales of the approved product, and "W" represents the wages and salaries paid to nationals of a Member State and expressed as a percentage of the total sales of the approved product.
- 4) (1) In determining the value of the content of a component produced by a Member State for the purposes of paragraph (i) of section 2, no account shall be taken of any element in the cost of that component, except the value of the imported raw material content.
- (2) For the purposes of paragraphs (iii) and (iv) of section 2, a company shall be deemed not to be resident in a Member State if it is controlled directly or indirectly by a person (including a company) who is not resident in a Member State (hereinafter referred to as a "non-resident").
- (3) A non-resident shall be deemed to have control of a company if he owns or is entitled to purchase the greater part of the ordinary and paid up share capital (not including shares which carry no voting rights) of the company.
- 5) The Minister may by Order published in the Gazette declare a product for manufacture by an approved enterprise to be an approved product.

- 6) (1) The Minister on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in Grenada to manufacture an approved product, or, in the case of an enterprise that, at the commencement of this Act, is manufacturing a product declared to be an approved product by Order under section 5, may if he is satisfied that it is in the public interest so to do by Order published in the Gazette declare that enterprise to be an approved enterprise with effect from the date specified in the Order.
- (2) In determining whether an Order should be made under subsection (1), the Minister shall take into account -
  - a) the number of enterprises already manufacturing or about to manufacture an approved product ;
  - b) the output or anticipated output of the enterprise.
- (3) An Order made under subsection (1) -
  - a) shall specify the construction day, production day or both such days ;
  - b) may declare that in its application it shall be restricted to a part of a factory, or to a particular grade, quality, description, type or classification of product ;
  - c) may impose continuing obligations on the approved enterprise ;
  - d) may confer certain benefits on the approved enterprise ;
  - e) may provide for its revocation in any case of breach of or non-compliance with its requirements.
- (4) An application under subsection (1) shall be submitted in writing through the Minister and shall specify -
  - a) the locality or proposed locality of the factory in which the enterprise is manufacturing or intends to manufacture the approved product ;
  - b) the construction day which shall not be later than twelve months after the date of

the granting of the application, except that where a factory is already in existence, the application shall contain all information that may enable the Minister to specify a construction day ;

- c) the production day which shall not be later than eighteen months from the construction day, except that where the production of an approved product has already commenced, the application shall contain all information that may enable the Minister to specify a production day ;
  - d) the approved product already being manufactured ; or intended to be manufactured ;
  - e) all information, supported by documentary evidence, relevant to the determination of the local value added.
- 7) (1) The Minister, if he is satisfied that any plant, equipment, machinery, spare parts, raw materials or components thereof are not available from Member States at comparable prices and qualities and in adequate quantities for export, may issue a licence to an approved enterprise to import that article or any of them from an area outside the Common Market.
- (2) On receipt of a licence issued pursuant to subsection (1), an approved enterprise may import plant, equipment, machinery, spare parts, raw materials or components thereof free from customs duty from an area outside the Common Market for the period of relief specified in section 12 or in subsection (3) or (4) or section 18, if the Comptroller of Customs and Excise is satisfied that the plant, equipment, machinery, spare parts, raw materials or components thereof are or were required -
- a) for constructing, altering, reconstructing or extending the approved enterprise ; or
  - b) for equipping an enterprise for the purpose of manufacturing an approved product.
- (3) Where, subsequent to the issue of a licence under subsection (1), there is a change in the circumstances contemplated by that subsection, the Minister shall -
- a) revoke the licence ; or

- b) alter the licence so as to exclude any of the articles in respect of which the change exists.
- (4) The provisions of this section shall not apply to an enclave enterprise.
- 8) (1) An approved enterprise which -
- a) imports into Grenada from an area outside the Common Market ; or
  - b) purchases within the Common Market, any article in respect of which it has been granted exemption from Customs duty by virtue of subsection (2) of section 7 shall -
    - (i) keep a record of the articles so imported or purchased in such form as containing such particulars as may be required by the Comptroller of Customs and Excise ;
    - (ii) cause the article to be marked with such mark and in such manner as may be required by the Comptroller of Customs and Excise ; and
    - (iii) permit the Comptroller of Customs and Excise or any person authorised by him at all reasonable times, to inspect such record and to have access to any factory or warehouse under its control for the purpose of examining any such article which the Comptroller of Customs and Excise has reason to believe to be therein and of satisfying himself of the accuracy of the particulars contained in the record.
- (2) An approved enterprise which contravenes any of the provisions of this section is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.
- 9) (1) An article purchased by an approved enterprise free of customs duty under the provisions of subsection 2) of section 7 shall not be sold, given away or otherwise disposed of by such enterprise except -
- a) to the transferee, in case of a transfer of the ownership of a factory belonging to the enterprise ; or
  - b) where the approved enterprise pays or gives

- security to the satisfaction of the Comptroller of Customs and Excise for the payment of an amount equivalent to the amount of customs duty which, but for the provisions of subsection (2) of section (7) would have been payable on importation of that article into Grenada, where the article was so imported by the enterprise ;
- c) after the expiration of five years from the date of the purchase of the articles.
- (2) An approved enterprise which contravenes any of the provisions of this section, is guilty of an offence and liable on summary conviction to a penalty equal to the value of the article, the disposal of which contravenes such provisions.
- 10) (1) An approved enterprise may be granted a benefit under this Act, if it is classified under one of the following categories -
- a) Group I Enterprise  
Group II Enterprise  
Group III Enterprise ;
- b) enclave enterprise.
- (2) Prior to the classification of an approved enterprise as a Group I, Group II or Group III Enterprise, the local value added as computed in accordance with section 3 shall be estimated.
- 11) Where an approved enterprise is engaged in a highly capital intensive industry, the Minister may by Order published in the Gazette grant it any benefit for a period not exceeding that for which a benefit may be granted to an enclave enterprise in accordance with Schedule III.
- 12) (1) The Minister may grant to an approved enterprise complete or partial exemption from the payment of income tax on the profits arising from the sale of an approved product from the production day for a period not exceeding the period specified in Schedule II (hereinafter referred to as "the tax holiday period").
- (2) Where the expiration of the tax holiday period does not coincide with the end of the accounting period of an approved enterprise, the income for the accounting period during which the last day of the tax holiday period falls shall be apportioned between the parts of the accounting periods which respectively precede and follow the end of

the tax holiday period ; the income thus apportioned to the part of the accounting period which precedes the end of the tax holiday period shall be exempt from income tax.

- 13) In computing the profits of an approved enterprise for the purpose of exemption from income tax under subsection (1) of section 12 allowance shall be made for any depreciation in value resulting from any wear and tear which would, but for the exemption, be claimable in that year.
- 14) (1) During the tax holiday period the assets of an approved enterprise shall be depreciated by such amounts as are normally allowed under the Income Tax Ordinance for wear and tear.  
  
(2) An allowance may be made not exceeding twenty per centum of the capital expenditure incurred by the enterprise on plant, machinery and equipment after the expiration of the tax holiday period.
- 15) (1) Any loss incurred by an approved enterprise during the tax holiday period may be set-off in accordance with the provisions of subsection (2) of this section.  
  
(2) Notwithstanding the provisions of section 15 of the Income Tax Ordinance or any other similar provision in the laws of Grenada on the expiration of the tax holiday period, the net losses incurred during that period, may be carried forward for the purpose of setoff in computing the profits of an approved enterprise for the five year period following the tax holiday period.  
  
(3) Where the Order declaring an enterprise an approved enterprise is revoked by virtue of subsection (3) of section 17, such an enterprise shall, for the purpose of carrying forward net losses incurred prior to the revocation of the Order, be deemed to be an approved enterprise.  
  
(4) For the purposes of this section "net losses" means the excess of all losses over all profits made during the tax holiday period.
- 16) (1) Relief from income tax on the export-profits of an enterprise accruing from export of the approved product manufactured by it may be granted in accordance with this section only.  
  
(2) Relief shall not be granted under this section -

- a) during the period the enterprise enjoys relief granted under sections 7 and 12 ;
- b) to an enterprise engaged in a traditionally exportoriented industry in respect of a product of that industry traditionally exported by Grenada ;
- c) in respect of export to a Member State : -

Provided that -

- (i) relief may be granted for a period not exceeding five years next after the expiration of the tax holiday period in case of exports to Guyana, Jamaica and Trinidad and Tobago ;
  - (ii) relief may be granted during the period of five years from 1st July, 1973 in respect of export to Guyana, Jamaica, Trinidad and Tobago by an enterprise to which no relief has been granted under sections 7 and 12.
- (3) Relief shall be granted by way of tax credits only.
  - (4) Relief shall be granted if the export profits amount to ten per centum or more of the entire profit of the enterprise accruing from approved product and in accordance with the formula laid down in the Table below.
  - (5) Relief granted shall not exceed the percentage (being percentage of the whole of the tax liability on the entire export-profits) specified in the Table below opposite the percentage of export-profits from the sale of the approved product.

T A B L E

<u>Amount of export profits expressed as a percentage of the entire profits from the sale of the approved product</u>	<u>Maxim percentage of tax relief</u>
10 % or more but less than 21 %	... 25 %
21 % or more but less than 41 %	... 35 %
41 % or more but less than 61 %	... 45 %
61 % or more	... 50 %



- (6) The following formula shall be used to export-profits for the purpose of this section -

$$\frac{E \times P}{S}$$

- where : "E" represents the proceeds from export sales of the approved product for the year ;
- and "P" represents the profits made by the enterprise from all sales of the approved product for the year ;
- and "S" represents the proceeds of all sales for the year.

- 17) (1) Where an approved enterprise fails or neglects -

- a) to commence construction of a factory on the construction day ; or
- b) to commence manufacture at the factory of an approved product in marketable quantities, on or before the production day,

the Minister may issue a notice in writing requiring it within thirty day of the date of such notice either -

- (i) to commence construction of the factory or the manufacture of the approved product in marketable quantities as the case may be ;  
or
- (ii) to prove to the satisfaction of the Minister that the failure or neglect is attributable to a cause beyond its control and that there is reasonable prospect of its commencing construction of the factory or manufacturing the approved product in marketable quantities as the case may be, within such time as the Minister considers reasonable.
- (2) Where an approved enterprise satisfies the requirements of subparagraph (ii) the Minister shall, by Order published in the Gazette, substitute for the construction day or production day as the case may be, another specified day and thereupon the provisions of this Act shall take effect as if the day specified in the Order was the construction day or the production day as the case may be, specified in the Order made under section 6.

- (3) The Minister may, having regard to all the circumstances of the case, if he thinks it expedient so to do, by Order published in the Gazette revoke an Order made pursuant to section 6, where an approved enterprise -
    - a) contravenes any of the provisions of this Act or the regulations made thereunder ; or
    - b) fails to comply with the requirements of a notice issued pursuant to section 17 (1) (b).
  - (4) Subject to the provisions of subsection (3) of section 15, upon revocation of an Order made under section 6, the provisions of sections 7 and 12 shall be deemed never to have applied to the enterprise and the enterprise shall, notwithstanding anything contained in the Customs Ordinance or the Income Tax Ordinance, pay to the Comptroller of Customs and Excise and the Comptroller of Inland Revenue any sums which, but for the provisions of subsection (2) of section 7, and of section 12 would have been payable as customs duty or income tax.
  - (5) Notwithstanding the provisions of subsection (4) the Minister, if he thinks that the payment of any sums would cause undue hardship, or if for any other reason he deems it expedient so to do, may remit the whole or part of any sums to the enterprise.
  - (6) All sums payable under this section may be recovered summarily as a civil debt.
- 18) (1) Subject to the provisions of subsection (3) no factory, belonging to an enterprise, which is being used or is intended to be used for the manufacture of an approved product shall, within ten years of the date of the publication of the order declaring it an approved enterprise, without the prior approval of the Minister, be used for purposes other than the manufacture of an approved product.
- (2) An enterprise which contravenes the provisions of subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars in respect of each day during which the offence continues after conviction thereof.

(3) The provisions of this section shall not apply to an enterprise which ceases to be an approved enterprise and in respect of which all sums payable to the Comptroller of Customs and Excise and the Comptroller of Inland Revenue under the provisions of subsection (2) of section 7 and of section 12 have been paid.

19) (1) The Minister shall -

- a) at the expiration of three years from the production day ; and
- b) thereafter at intervals of two years, until the cessation of all benefits under this Act, appraise the performance of an approved enterprise for the purpose of determining whether any change in its classification is necessary.

(2) Where, on an appraisal pursuant to subsection (1), an approved enterprise -

- a) fails to maintain its classification or cannot be reclassified to any of the other Groups listed in Schedule II, that enterprise shall, with effect from the date of the notice of the decision of the Minister under subsection (5), be no longer treated as an approved enterprise for the purposes of subsection (2) of section 7 and of section 12 .
- b) maintains its classification or is reclassified to any of the other Groups listed in Schedule II, that enterprise shall continue as an approved enterprise and the provisions of paragraph (b) of subsection (1) shall continue to apply.

(3) Where as the result of the re-classification of an approved enterprise to a lower Group, the tax holiday period exceeds the maximum period allowable in that lower Group, the Minister shall, by Order published in the Gazette reduce the period to coincide with the maximum period allowable in the lower Group to which the approved enterprise has been re-classified.

(4) Where an approved enterprise is re-classified to a higher Group, the Minister may, by Order published in the Gazette, increase the tax holiday period to coincide with the maximum period allowable in the Group in which the approved enterprise has been re-classified.

- (5) The Minister, shall within a reasonable time after an appraisal pursuant to subsection (1), serve notice of his decision on the approved enterprise.
  - (6) The provisions of this section shall not apply to a highly capital intensive industry.
- 20) (1) Dividends or other distributions out of profits, or gains accruing to an approved enterprise as a result of the manufacture of an approved product during the tax holiday (hereinafter referred to as "the dividends"), shall not be subject to any limitation as to the time within which the dividends are payable.
- (2) Subject to subsection (3) the dividends when paid to shareholders or their nominees (including a company) shall be exempt from the payment of income tax.
- (3) Where a shareholder is not resident in a Member State, the exemption referred to in subsection (2) shall apply to so much of the tax as exceeds the tax liability of the shareholder in his country of residence.
- 21) Interest, in whatever form, on loan capital and any other monies borrowed by an approved enterprise, whether in the form of overdraft, debenture or otherwise when paid to the recipient, shall not be exempt from the payment of income tax.
- 22) (1) The Minister may by Notice published in the Gazette, transfer the status of an approved enterprise to another enterprise where -
- a) an approved enterprise merges with or is taken over by another enterprise, or forms part of a company's reconstruction ; or
  - b) in his opinion it is equitable or in the public interest so to do.
- (2) Prior to the issue of a Notice pursuant to subsection (1), the Minister may require the enterprise to which the status of an approved enterprise is to be transferred, to comply with such conditions and to give such undertakings and assurances and in such form as he may consider desirable having regard to the public interest.
- (3) On the issue of a Notice pursuant to subsection (1), all the rights, privileges, benefits, immunities,

duties and obligations conferred or imposed by or under this Act on the former enterprise may be transferred to the latter enterprise.

- 23) (1) Where an approved enterprise changes its corporate name, that enterprise shall within fourteen days of the date of such change, inform the Minister in writing of its new corporate name.
- (2) On receipt of such information the Minister may, by Notice published in the Gazette, direct that any orders, licences or documents issued to or in respect of that enterprise under or pursuant to the provisions of this Act and enumerated in the Notice, be altered to indicate the new corporate name.
- 24) (1) Subject to the provisions of this section, after the commencement of this Act no manufacturing order shall be made or approved under any of the Acts or Ordinance listed in Schedule III.
- (2) Where, prior to the commencement of this Act, an application for pioneer status was made under any of the Acts or Ordinances listed in Schedule III, the provisions of that Act or Ordinance shall continue to apply to that application.
- 25) (1) The Minister may make such regulations as he thinks necessary or expedient for giving effect to the provisions of this Act.
- (2) Regulations made under subsection (1) shall, within thirty days of the making thereof, be subject to negative resolution of Parliament.
- 26) (1) The Minister may give retrospective effect to a regulation if he is satisfied that it is equitable for such regulation to have retrospective effect in order to confer a benefit on, or to remove a disability from an approved enterprise.
- (2) A regulation to which subsection (1) applies shall be subject to affirmative resolution of Parliament.
- 27) The following Ordinances are hereby repealed :
  - (1) Development Incentives Ordinance, 1964 ;
  - (2) Development Incentives (Amendment) Ordinance, 1965 ;
  - (3) Development Incentives (Extension of Time) Ordinance, 1966.

SCHEDULE I

MEMBER STATES

- a) Antigua  
Barbados  
Belize  
Dominica  
Grenada  
Guyana  
Jamaica  
Montserrat  
St. Kitts/Nevis/Anguilla  
St. Lucia  
St. Vincent  
Trinidad and Tobago
- b) any other state of the Caribbean region that becomes a member of the Common Market.

SCHEDULE II

TAX HOLIDAY PERIODS

<u>Classification of approved Enterprise</u>	<u>Tax Holiday Period</u>
<u>Group</u>	<u>Years</u>
Group I Enterprise	... 15
Group II Enterprise	... 12
Group III Enterprise	... 10
Enclave Enterprise	... 15

SCHEDULE III

ACTS AND ORDINANCES

Development Incentives Ordinance, 1964.  
Development Incentives (Amendment) Ordinance, 1965.  
Development Incentives (Extension of Time) Ordinance, 1966.

Passed in the House of Representatives this 29th day of March, 1974.

CURTIS V. STRACHAN  
Clerk of the House of Representatives

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Passed in the Senate this 30th day of March, 1974.

CURTIS V. STRACHAN  
Clerk of the Senate





REPUBLICA DA GUINE (BISSAU)

(Translation)

GUINEA-BISSAU

STATE COMMISSARIAT FOR  
ECONOMIC DEVELOPMENT AND PLANNING

Communication

Until such time as a law is published on investment in the Republic of Guinea-Bissau, any private, state or mixed-economy enterprise wishing to establish itself on the territory of this country must submit its application for permission to do so, together with the following particulars, to the responsible Commissariat with a copy for the State Commissariat for Economic Development and Planning.

PARTICULARS

I. LEGAL INFORMATION

1. Name of the enterprise
2. Registered office or headquarters
3. Legal form of enterprise :
  - 3.1 Private enterprise:
    - 3.1.1 Share capital
    - 3.1.2 Capital contributed in the form of partnership shares
  - 3.2 Mixed-economy company:
    - 3.2.1 Share capital
    - 3.2.2 Capital contributed in other forms
4. Capital of the company:
  - 4.1 If it is a company limited by shares, what is the nature of the shares: registered shares or bearer shares
  - 4.2 Amounts already paid up
  - 4.3 Amount agreed to be subscribed
  - 4.4 Dates fixed for payment of the capital subscribed but not yet paid up

5. Governing bodies:

5.1 Composition

5.2 Number of members in each body

6. Statutes

6.1 The company's statutes are to be attached if they already exist.

II. TECHNICAL INFORMATION

1. Equipment:

1.1 Nature of the equipment to be acquired; documents supplied by the manufacturer or supplier must be attached

1.2 Delivery terms :

1.2.1 Cost

1.2.2 Delivery dates

1.2.3 In case of instalment payments, state the dates

1.3 Time needed to assemble equipment

2. Manpower:

2.1 Number of jobs to be created initially and projections for the first 5 years of the company's activities

2.2 Support and technical assistance to be given from abroad

2.3 Training programme for Guinean employees

2.4 Career structure for the various categories of staff

2.5 Pay scales to be operated

3. Contribution by Guinean industry:

3.1 Breakdown of products

3.2 Value of the various products

4. Manufacturing process:

4.1 Raw materials used

4.2 Ancillary materials

III. FINANCIAL INFORMATION

1. Financing plan:
  - 1.1 Purchase of equipment
  - 1.2 Other expenses incurred in setting up the enterprise
  - 1.3 Technical assistance
2. Financing terms
3. Minimum period before the capital invested may be re-exported
4. Investment in the country
5. Short and medium-term financing, including sources

IV. INFORMATION ON THE MARKET

1. Study on demand for the products
2. Output required to satisfy this demand
3. Output for the foreign market
4. Selling price of the products

V. FORECAST BALANCE SHEET AND OPERATING ACCOUNTS

1. Estimates for the first five years
2. Movement of the working capital over the same period
3. Cash flow :
  - 3.1 Gross
  - 3.2 Net

State Commissariat for Economic Development and Planning  
Bissau, 24 January 1977 .

Dr. Vasco Cabral, Commissioner.

CO-OPERATIVE REPUBLIC OF GUYANA

AN ACT to make provisions for the establishment and functions of the Co-operative Finance Administration and Co-operative Financial Institutions under its jurisdiction.

Enacted by the Parliament of Guyana : -

PART I

PRELIMINARY

1. This Act may be cited as the Co-operative Financial Institutions Act 1976 and shall come into operation on such date as the Minister may appoint by order.
2. In this Act, unless the context otherwise requires -
  - "the Administration" means the Co-operative Finance Administration established by section 3 ;
  - "financial institution" means a co-operative financial institution established under section 15 ;
  - "Minister" means the Minister responsible for finance.

PART II

CO-OPERATIVE FINANCE ADMINISTRATION

3. (1) There is hereby established a body corporate to be known as the Co-operative Finance Administration consisting of the Minister as Chairman and not more than eight other persons appointed by him by instrument in writing from amongst persons appearing to him to be qualified as having experience of, and shown, capacity in, such matters which he considers will be beneficial in the functioning of the Administration and, without prejudice to the generality of the foregoing, in particular, in matters relating to administration, agriculture, banking, commerce, co-operative societies, finance, housing, industry, insurance or trade.
- (2) A member of the Administration (other than a public officer, or a person employed by a public corporation or other body corporate in which the Government has the controlling interest) appointed by the Minister

may at any time resign his office by writing under his hand addressed to the Minister.

- (3) The membership of the Administration as first constituted and every change thereof shall be notified in the Gazette.
  - (4) The seal of the Administration shall be kept in the custody of the Chairman or the Deputy Chairman or the Secretary of the Administration and shall be authenticated by the signature of the Chairman, or the Deputy Chairman, and the Secretary.
  - (5) Every document purporting to be an instrument duly executed under the seal of the Administration shall be received in evidence and deemed, without further proof, to be so executed unless the contrary is proved.
  - (6) All documents, other than those required by law to be under seal, made by, and all decisions of, the Administration may be signified under the hand of the Chairman, or the Deputy Chairman, or the Secretary of the Administration.
4. (1) It shall be the function of the Administration to exercise supervision and control over the financial institutions established under section 15.
- (2) Without prejudice to the generality of subsection (1), the function of the Administration shall, in particular, include -
- a) advising financial institutions on matters relating to their activities, operations and policies ;
  - b) co-ordinating the activities, operations and policies of financial institutions ;
  - c) holding the shares (if any) of the State or the Government in any financial institution, anything in any other law to the contrary notwithstanding ;
  - d) giving a financial institution directions of a general or special character as to the policy to be followed by the financial institution, including matters relating to the employment of persons by a financial institution, their conditions of service and the deployment of staff in the financial

institution and the financial institution shall give effect to every such direction.

5. (1) The Administration shall meet at least once in every period of three months and at such other times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such place and time and on such days as the Administration may determine.
  - (2) The Chairman of the Administration may at any time summon a special meeting of the Administration and shall summon a special meeting within seven days of a requisition for that purpose addressed to him by any four members of the Administration.
  - (3) Five members of the Administration shall constitute a quorum.
  - (4) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairman or the Deputy Chairman or other member presiding at the meeting, as the case may be, as soon as practicable thereafter at a subsequent meeting.
6. The Administration may appoint a committee of the Administration to examine and report to it on any matter arising out of or connected with any of its functions and any such committee may include persons who are not members of the Administration.
  7. Subject to this Act, the Administration may delegate to any member or committee of the Administration the power and authority to carry out on its behalf such functions as the Administration may determine.
  8. (1) Subject to subsection (2), no action, suit, prosecution or other proceedings shall be brought or instituted personally against a member of the Administration in respect of any act done bona fide in pursuance of the execution or intended execution of his duties.
  - (2) Where a member of the Administration is exempt from liability by reason only of subsection (1), the Administration is liable to the extent that it would be if the member was a servant or agent of the Administration, so, however, that if in any case the Administration is not liable for any of the above-mentioned acts, then subsection (1) does not operate to exempt such member as therein stated.



9. The Administration may employ at such remuneration and on such terms and conditions (including the payment of pensions, gratuities or other like benefits by reference to the service of its officers and employees) as it thinks fit, a Secretary and such other officers and employees as it deems necessary for the purpose of carrying out the functions of the Administration :

Provided that if the office of Secretary is vacant or if the Secretary is for any reason unable to perform the functions of his office, the Minister may assign a public officer in the Ministry to carry out the functions of the office of Secretary.

10. The Administration shall pay to each member thereof (other than the Minister) in respect of his office as such, such, if any, remuneration and allowances as the Minister may determine, and to the Deputy Chairman in respect of his office as such, such, if any, remuneration and allowances (in addition to any remuneration or allowances payable to him as a member) as may be so determined.
11. (1) The funds and resources of the Administration shall consist of -
  - a) such sums as may be provided by or under an appropriation law ;
  - b) such sums as may be paid to the Administration pursuant to section 12 ;
  - c) such sums as may be allocated from time to time to the Administration from loan funds ;
  - d) moneys earned or arising from any property or investments of the Administration ;
  - e) all other sums or property which may in any manner become payable to, or vested in, the Administration in respect of any matter incidental to its functions.
- (2) For the purposes of this section, the expression "loan funds" means such sums as may be made available, from time to time, by the Government by way of a loan.

12. For the purpose of meeting expenditure incurred in exercising its functions under this Act, the Administration may make levies on the funds and resources of financial institutions in such amounts as the Administration may determine and the levies so made shall be paid by the financial institutions.
13. Moneys standing at the credit of the Administration may, from time to time, be invested in such securities as may be determined by the Administration and it may, from time to time, sell all or any of such securities as it thinks expedient to do so.
14. (1) The Administration shall keep accounts of its transactions to the satisfaction of the Minister and the accounts shall be audited annually by an auditor appointed by the Minister.  
  
(2) The members, officers and other employees of the Administration shall grant to the auditor appointed under subsection (1) access to all books, documents, cash and securities of the Administration and shall give to him on request all such information as may be within their knowledge in relation to the operation of the Administration.

### PART III

#### ESTABLISHMENT AND MANAGEMENT OF CO-OPERATIVE FINANCIAL INSTITUTIONS

15. (1) The Minister may, by order which shall be subject to negative resolution of the National Assembly, establish a co-operative financial institution, or reconstitute any of the institutions mentioned in section 61 (1) by establishing it as a co-operative financial institution, with such name and functions as shall be specified in the order and consisting of such number of directors as the Minister may determine.  
  
(2) A co-operative financial institution established under this section shall be a body corporate and the liability of the members of a financial institution is limited.

- (3) a) Subject to paragraph (b), the Directors of a financial institution shall be appointed by the Minister by instrument in writing from amongst persons appearing to him to be qualified in like manner as is specified in section 3 in relation to members of the Administration.
- b) The Minister may, by the order establishing a co-operative financial institution under this section, or by a subsequent order made under this subsection, make provision for the election of the directors of a financial institution, or any number of them, by the shareholders of the financial institution, and by such other categories of persons as may be specified in the order being persons having such interest in the financial institution as may be so specified.
- (4) Any director of a financial institution, (other than a public officer or a person employed by a public corporation or other body corporate in which the Government has the controlling interest) may at any time resign his office by instrument in writing addressed to the chairman thereof, and upon the date, of the receipt by the chairman of such instrument such member shall cease to be a director of the financial institution.
- (5) The names of the directors of a financial institution when it is first established and any change in the directors shall be published in the Gazette.
- (6) A financial institution shall have its principal place of business in Georgetown or at such other place within Guyana as it may decide.
- (7) A financial institution may establish branches in any place within or outside Guyana as it considers necessary.
- (8) A financial institution may appoint agents or correspondents within or outside Guyana.
- (9) The seal of a financial institution shall be authenticated by the signature of the Chairman, or the Deputy Chairman, or the General Manager, and the Secretary of the financial institution, or in such other manner as may be authorised by resolution of

the financial institution, and every document purporting to be an instrument duly executed under the seal of a financial institution shall be received in evidence and deemed, without further proof, to be so executed unless the contrary is proved.

(10) All documents, other than those required by law to be under seal, made by, and all decisions of, the financial institution may be signified under the hand of the Chairman, or Deputy Chairman, or the General Manager, or the Secretary, of the financial institution.

(11) Upon the coming into operation of an order under this section establishing a financial institution the provisions of this Act shall apply to the financial institution so established :

Provided that the Minister may by the order establishing the financial institution or by a subsequent order made under this section -

a) exclude the application of any provision of this Act in relation to the financial institution ;

b) make special provision in relation to the financial institution in respect of any particular matter ;

c) modify any provision of this Act in its application to the financial institution.

(12) An order made under this section establishing a financial institution shall prescribe the functions of the financial institution and, without prejudice to section 61, may contain such other provisions as will enable the financial institution to carry out its functions under this Act and, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law, the order may contain provisions relating to the vesting of property (including property of the State), the transfer of assets and liabilities monetary arrangements and the preservation of rights and liabilities subsisting immediately before the coming into force of the order ; where immovable property vests in a financial institution by virtue of an order made under this section the order shall be treated for all purposes as if it were a transport or other document effecting the conveyance of immovable property and the Regis-

trar of Deeds shall make such annotations on the records as may be necessary.

16. (1) It shall be the function of a financial institution to stimulate, facilitate and undertake the functions for which it is established.
- (2) A financial institution shall have power for the purpose of the exercise of its functions under this Act -
  - a) to carry on all activities the carrying on whereof appears to it to be requisite, advantageous or convenient for or in connection with the exercise of its functions ; and
  - b) to do anything and to enter into any transaction which in its opinion is calculated to facilitate the proper discharge of its functions or is incidental or conducive thereto.
17. A financial institution shall pay to each of its directors in respect of his office as such, such if any, remuneration and allowances as the Administration may determine, and to the Chairman and Deputy Chairman, in respect of his office as such, such, if any, remuneration and allowances (in addition to any remuneration or allowances to which he may be entitled in respect of his office as a director) as may be so determined.
18. (1) A financial institution shall meet at least once in every month and at such other times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the financial institution may determine.
- (2) The Chairman may at any time call a special meeting of the financial institution and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any three directors of the financial institution.
- (3) One-half of the number of directors shall constitute a quorum.
- (4) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairman, or the Deputy Chairman, or other member

elected to preside at the meeting, as the case may be, as soon as practicable thereafter at a subsequent meeting.

- (5) A financial institution may co-opt any one or more persons to attend any particular meeting of the institution at which it is dealing with a particular matter, for the purpose of assisting or advising the institution, but no such person shall be entitled to vote thereat.
19. (1) A financial institution may appoint a committee of the financial institution to examine and report to it on any matter whatsoever arising out of or connected with any of its functions.
    - (2) Any such committee shall consist of at least two directors of the financial institution together with such other persons, whether directors of the financial institution or not whose assistance or advice the financial institution may desire.
    - (3) Where persons, not being directors of the financial institution, are members of a committee appointed under this section, or where any person is co-opted under the provisions of subsection (5) of section 18, the financial institution may determine the remuneration and allowances of such persons, and such sums shall properly be payable out of the funds and resources of the financial institution.
    - (4) The financial institution may reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the financial institution may think fit.
  20. Subject to this Act, a financial institution may delegate to any director or committee of the financial institution the power to carry out on its behalf such functions as the financial institution may determine.
  21. (1) The staff of a financial institution shall consist of a General Manager, a Secretary and such other officers and other employees as may be requisite for the proper carrying out of the functions of the financial institution.
    - (2) The General Manager of a financial institution shall be appointed by the Administration on such terms and

conditions (including the payment of pension, gratuity, or other like benefits by reference to his service) as the Administration thinks fit and the remuneration of the General Manager shall be paid by the financial institution out of its funds and resources.

- (3) With the approval of the Administration, a financial institution may employ at such remuneration and on such terms and conditions (including the payment of pensions, gratuities, or other like benefits by reference to their service) as it thinks fit a Secretary and such other officers and other employees as may be requisite for the proper carrying out of the functions of the financial institution.
  - (4) The General Manager of a financial institution shall, subject to the general policy decisions of the Administration and of the directors of the financial institution, be responsible for the administration of the business of the financial institution and answerable therefor to the Administration and the directors.
22. (1) The officers and other employees of a financial institution shall owe their duty entirely to the financial institution and shall not engage in any other paid employment or professional or business activity, except as permitted under subsection (2).
- (2) Any officer and other employee of a financial institution may, with the approval of the Minister -
    - a) serve on any committee or commission appointed by the Government to inquire into any matter affecting banking, or into any economic or financial matters relating to Guyana ;
    - b) serve on any international institution of which Guyana is a member ;
    - c) serve on the Board of any company, corporation or other body in which the Government or the financial institution holds stock or shares or otherwise participates ;
    - d) serve on any other institution.

- (3) If any officer or other employee of a financial institution contravenes the provisions of subsection (1) his appointment shall be liable to be terminated by the person who appointed him.
23. (1) Except for the purpose of the exercise of his functions or when lawfully required to do so by any court or under the provisions of any law, a director or an officer or other employee of a financial institution, shall not disclose to any person any information which he has acquired in the exercise of his functions.
- (2) Any director, officer or other employee of a financial institution who contravenes the provisions of subsection (1) shall be liable on summary conviction to a fine of five hundred dollars and to imprisonment for a term of six months.
24. (1) A financial institution may, with the approval of the Administration, make rules not inconsistent with this Act -
- a) governing the proceedings of the financial institution and the manner and transaction of its business ;
  - b) prescribing the circumstances in which directors of the financial institution may receive travelling and subsistence allowances and fixing the rates of such allowances ;
  - c) imposing fees in such cases as may be determined by the financial institution ;
  - d) generally for the exercise of its functions.
- (2) Notwithstanding anything contained in section 21 of the Interpretation and General Clauses Act, it shall not be necessary for any such rules to be published in the Gazette.
25. (1) Subject to the provisions of subsection (2), no action, suit, prosecution or other proceedings shall be instituted personally against any director of a financial institution in respect of any act done bona fide in pursuance of the execution or intended execution of his functions under this Act.



(2) Where any director of a financial institution is exempt from liability by reason only of the provisions of subsection (1) the financial institution shall be liable to the extent that it would be if the said director were a servant or agent of the financial institution, so however, that if in any case a financial institution is not liable for any of the abovementioned acts, then the provisions of subsection (1) shall not operate to exempt any such member as therein stated.

26. (1) Subject to this section, it shall be the duty of a director of a financial institution who is in any way, whether directly or indirectly, interested in an application to a financial institution for a loan or in a body corporate or unincorporate in receipt of such a loan, or in a contract or proposed contract or in any arrangement or proposed arrangement with the financial institution, to declare the nature of his interest at a meeting of the financial institution.

(2) In the case of such application or proposed contract or arrangement the declaration required by this section to be made by a director of a financial institution shall be made at the meeting of the financial institution at which the question of granting or refusing the application or entering into the contract or arrangement is first taken into consideration, or if such director was not at the date of that meeting interested in the application or proposed contract or arrangement at the next meeting of the financial institution held after he became so interested and in a case where such director acquires an interest in any body corporate or unincorporate in respect of a loan from a financial institution or becomes interested in a contract or arrangement with the financial institution after it is made, the said declaration shall be made at the first meeting of the financial institution held after such director acquires such interest or becomes so interested.

(3) For the purposes of this section, a general notice given to the other directors of a financial institution by a director that he is also a member of a specified body corporate or unincorporate and is to be regarded as interested in any application for a loan from the financial institution or in any

contract or arrangement which may, after the date of the notice, be made by or with the body corporate or unincorporate, shall be deemed to be a sufficient declaration of interest in relation to any application or contract or arrangement so made :

Provided that no such notice shall be of effect unless either it is given at a meeting of the financial institution concerned or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the financial institution after it is given.

- (4) A director shall not vote in respect of any application to the financial institution for a loan in which he is interested, whether directly or indirectly, or in respect of any contract or arrangement in which he is interested, either directly or indirectly, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting.
  - (5) For the purposes of this section, where the interest of parents, spouse or children of any director is likely to be affected directly or indirectly by a decision of the financial institution on any matter, such interest shall be deemed to be the interest of that director.
  - (6) Without prejudice to subsection (7), the Minister may revoke the appointment of any director who contravenes or fails to comply with the provisions of this section.
  - (7) Any director who contravenes or fails to comply with the provisions of this section shall be liable on summary conviction to a fine of five hundred dollars.
27. A financial institution may provide out of the funds of the financial institution and make such arrangements for the training of any of its officers and other employees as it may consider necessary for the efficient conduct of the business of the financial institution.

PART IV

FINANCIAL PROVISIONS

28. (1) The Minister may, by the order establishing a financial institution under section 15, prescribe the authorised capital of the financial institution and the number and value of the shares into which the authorised capital shall be divided.
- (2) The Government may subscribe for the amount of the shares of a financial institution or such part thereof as the Minister may, from time to time, determine whether at par or otherwise.
- (3) Subject to this Act, but notwithstanding anything otherwise provided by law to the contrary, it shall be lawful for the Minister by order to confer authority on co-operative societies registered under the Co-operative Societies Act (except in so far as they are by their rules prohibited from so doing) and such other bodies corporate as may be prescribed by order of the Minister (except in so far as any such corporate body is by any provision of its constitution or of the instrument constituting it prohibited from so doing) to subscribe for and hold shares in a financial institution.
- (4) The Minister may, on the recommendation of the directors of a financial institution, by order increase the authorised share capital of the financial institution.
- (5) The order mentioned in subsection (1) or (3) may include provision relating to the allotment and subscription of shares (including the subscription for shares by instalments and the voting rights of the holder of shares so subscribed at meetings of the shareholders of the financial institution) and matters incidental thereto.
29. (1) The shares of a financial institution shall be registered and transferable in the books of the financial institution.
- (2) The directors of a financial institution shall be entitled without assigning any reason to decline to accept any co-operative society or other corporate body mentioned in section 28 (3) as the transferee of any share.

30. (1) A person who purports to deal with a financial institution shall not, in the matter of any transaction in that behalf, be affected by any procedural defect relating to the conferment of any authority by the financial institution in general meeting, or by the directors or any committee thereof, for the purposes of participation by the financial institution in such transaction.
- (2) Nothing in subsection (1) shall entitle any person to recover from a financial institution any debt, or to enforce against the financial institution any obligation or liability, or otherwise to treat the financial institution as bound by any transaction, if he has, in connection therewith, been guilty of or participated or acquiesced in a fraud committed upon the financial institution.
31. (1) A financial institution may, with the approval of the Minister, borrow such sums as may be required by the institution to fulfil any of its obligations or to discharge any of its functions and the directors of a financial institution may exercise all the powers of the institution to borrow money, to mortgage or charge the undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the financial institution or of any third party :

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from other institutions licensed or otherwise authorised by law to carry on banking business in Guyana in the ordinary course of business) shall not at any time, without the previous sanction of the Minister, exceed the nominal amount of the share capital of the financial institution for the time being issued, but nevertheless no lender or other person dealing with the financial institution shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

- (2) Nothing in subsection (1) shall be construed as applying to the deposit liabilities (if any) of the financial institution.
32. (1) With the approval of the National Assembly, the Minister may in writing in the name of the Government guarantee on such conditions as he may think fit, the payment of the principal and of interest on any authorised borrowings of a financial institution.
- (2) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any principal monies or interest guaranteed under the provisions of this section, the amount shall be charged on the Consolidated Fund and he shall direct the repayment out of the Consolidated Fund of the amount in respect of which there has been such default.
- (3) The financial institution shall make to the Accountant General, at such times and in such manner as the Minister may direct, payments of such amounts as may be so directed in or towards repayment of any sum issued in fulfilment of any guarantee given under this section, and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different sums and as respects interest for different periods.
- (4) The power to give guarantees conferred by subsection (1) is in addition to any like power conferred by any other law.
33. Monies standing at the credit of a financial institution may, from time to time, be invested in securities approved either generally or specifically by the Administration and the financial institution may, from time to time, with the approval of the Minister, sell all or any of such securities.
34. (1) Subject to such conditions as it may deem fit to impose a financial institution may, out of its funds and resources, make loans in accordance with the provisions of this Act in the exercise of its functions under this Act.

- (2) It shall be a condition of every loan made to a co-operative society or other body corporate mentioned in section 28 (3) by the financial institution which may be established under this Act as the successor to the Guyana National Co-operative Bank that the borrower holds paid-up shares in the financial institution to an amount equal in value to at least five per cent of the loan.
35. In making loans a financial institution may charge such rate of interest as it deems fit.
36. (1) Subject to section 34 (2), no loan made by a financial institution under this Act shall be applied otherwise than for such purposes as may be authorised by the financial institution.
- (2) If any loan made by a financial institution under this Act or any part of such loan has been misapplied the financial institution may -
- a) where such loan has been secured by mortgage, by notice in writing addressed to the mortgagor, recall the said loan or any part thereof and may require the loan or that part together with any interest due on such loan or part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the loan may thereupon be realised ;
  - b) where such loan has been secured otherwise than by way of mortgage, by notice addressed to the borrower, request the loan or any part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the purpose of the loan may thereupon be realised.
- (3) The powers conferred by subsection (2) shall be in addition to the powers conferred by any other provisions of this Act.
37. A financial institution may -
- a) postpone the payment of any sum due to it as principal and interest in respect of a loan made by it upon such terms and conditions for the carrying out of the purposes for which such loan was made

and for the ultimate repayment of such principal or payment of such interest as it may deem necessary ;

- b) from time to time, extend the period for the repayment of any loan, or compound or release any loan or any part thereof subject to such terms and conditions as it may deem fit.
38. A financial institution may at any time accept payment of the whole or any part of the amount representing the principal of a loan and interest thereon before the time when such payment is due, upon such terms and conditions as it may think fit.
39. (1) It shall be a condition in every agreement for any loan made by a financial institution for the cultivation of crops and the expenses of reaping and making merchantable such crops, that all the crops and produce reaped or gathered from the land and the by-products thereof shall, until such loan has been repaid, be dealt with and disposed of as the financial institution may direct, and, until so disposed of, shall be held by the person obtaining the loan in trust for the financial institution. Any person to whom a loan has been made, who disposes of any such crops or produce or by-products except in the manner directed by the financial institution or by this Act, shall on summary conviction be liable to a fine of five hundred dollars and to imprisonment for a term of six months.
- (2) It shall be a condition in every such agreement that the financial institution may enter agreement with any person for the disposal of any crop or produce or any by-products thereof belonging to any person to whom loans have been made under the provisions of this Act ; the last-mentioned agreement shall provide for the sale without undue delay of such crop or produce and the immediate payment to the financial institution of the proceeds of such sale or such part thereof as the financial institution shall think fit to the credit of the last-mentioned person.
- (3) Any person so entrusted with the disposal of any crop or produce or by-products thereof of any person obtaining a loan under the provisions of this Act who shall fail to pay the proceeds of sale to the financial institution as provided in subsection (2) shall be liable on summary conviction to a fine of

five hundred dollars and to imprisonment for a term of six months.

- (4) The provisions of this section shall not apply to any padi reserved by agreement as rent in lieu of payment in cash of the annual rent by a tenant or affected by a specified condition under the provisions of the Rice Farmers (Security of Tenure) Act which agreement or condition is in force at the date of the loan made by the financial institution ; and, subject to the foregoing provisions, the exercise by the financial institution of any of its powers under this section shall not entitle a landlord to give his tenant notice to quit his rice land.
40. (1) Every mortgage to secure a loan and every instrument creating a charge under the provisions of this Act shall be prepared by the financial institution. The person to whom the loan is made shall pay the legal charges in connection therewith and all necessary disbursements.
- (2) For the purpose of effecting security for the repayment of a loan made by a financial institution and the interest payable thereon, it shall be lawful for the borrower obtaining a loan to create by instrument in writing in favour of the financial institution a charge on movable or immovable property belonging to the borrower as the financial institution may approve and specified in the instrument creating the charge.
  - (3) A charge may be made in favour of a financial institution with such terms and conditions as may be prescribed and specified therein and, notwithstanding the provisions of any law, such prescription may include the creation of offences and penalties for breach of any such term or condition and the exclusion or modification of the application of any other enactment with respect to the charge ; where the charge is created on immovable property the Registrar of Deeds shall upon such notice as may be prescribed annotate the charge against the title issued in respect of the property in the same manner as if the property were subject to a mortgage passed before the Supreme Court.
41. (1) Where a financial institution has made a loan of money under the provisions of this Act it may -



- a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purpose for which it is made ;
  - b) require financial statements in such detail as it may determine to be submitted by the borrower in receipt of the loan quarterly or at shorter intervals at the discretion of the financial institution and the borrower shall comply with such request.
- (2) The financial institution may authorise in writing any of its officers or any other person to make such examination, and the borrower in receipt of the loan shall produce to such officer or person all the books, documents and other matters and things necessary for the purposes of the examination.
- (3) Any person who contravenes any of the provisions of paragraph (b) or any of the provisions of subsection (2), shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of six months.
42. Where upon any examination made under section 41 it appears to the financial institution that any sum being the whole or any part of the loan has not been applied for the purposes for which the loan was made the financial institution may order that any such sum be, within the time mentioned in the order, applied to such purposes or that such sum together with any interest due thereon on the date of the order be repaid to the financial institution within the time mentioned in the order, and any sum with the interest thereon so ordered to be repaid to the financial institution shall thereupon become a debt due to the financial institution.
43. At any time after the approval of a loan and before the actual payment of the money a financial institution may at its discretion and without assigning any reason therefor cancel or modify such approval and withhold payment of the whole or a portion of the money.
44. In any case where a financial institution has approved the making of a loan by instalments and any part of such loan has not yet been advanced if -

- a) any sum of money, whether principal or interest, due in respect of any loan made under this Act remains unpaid ; or
- b) in the opinion of the financial institution, any prior loan made under this Act has not been applied for the purpose for which it was made or has not been carefully and economically expended ; or
- c) the borrower has become insolvent or has been sentenced to a term of imprisonment without the option of the payment of a fine or has assigned his property for the benefit of creditors ; or
- d) there has been a breach or non-observance of any condition attached to the loan ; or
- e) in the opinion of the financial institution, the sums already advanced were not applied to the purposes for which the loan was made within a reasonable time,

the financial institution, without prejudice to any other remedy, may refuse to advance any portion of the loan still outstanding.

- 45. Where any property mortgaged as security for a loan made by a financial institution is sold for the purposes of the enforcement of the security the financial institution may buy such property or sell or otherwise dispose of it as it deems fit.
- 46. Where a loan is made by a financial institution on the security of a mortgage of any property, whether with or without any other security, the property, from and after the date of the mortgage, shall be charged with the payment of such loan and interest as in the mortgage mentioned, in priority, save in so far as may be otherwise specified in the mortgage, to every other debt, mortgage or charge whatever affecting the property, except any statutory claim within the meaning of the Deeds Registry Act or any loan due to any creditor which has been made in good faith before the loan made by the financial institution and which has been secured by a duly registered mortgage of the property executed to a person who is entitled as a bona fide creditor to the repayment thereof with interest.

47. (1) Any person who -

- a) obtains a loan from a financial institution under the provisions of this Act by means of any false representation ;
- b) wilfully fails to disclose any material information within his knowledge in making application for a loan from a financial institution ;
- c) wilfully applies any loan made to him by a financial institution under the provisions of this Act to any purpose other than the purpose for which the loan was made ;
- d) having obtained a loan from a financial institution under the provisions of this Act, wilfully destroys any security given in relation to any such loan,

shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of twelve months.

- (2) In any criminal proceeding in respect of an offence under subsection (1) (c) the onus of proving that he acted in good faith and without knowledge that he was not so entitled so to apply the loan or any part thereof shall be upon the person charged.

48. (1) Every financial institution shall keep proper accounts and other records in relation to its business and the directors shall prepare annually a statement of account in a form satisfactory to the Minister being a form which shall conform with established accounting principles.

- (2) The accounts and records shall be audited by an auditor appointed by the Administration.
- (3) So soon as the accounts of a financial institution have been audited, the financial institution shall send the statement of its accounts referred to in subsection (1) to the Minister and to the Administration together with a copy of any report made by the auditor on that statement or on the accounts of the financial institution.

- (4) The fees of the auditor and any other expenses of the audit shall be subject to the approval of the Administration and shall be paid by the financial institution.
  - (5) The auditor shall be entitled on the direction of the Minister or the Administration, at all reasonable times to examine the accounts and other records in relation to the business of the financial institution.
  - (6) The directors, officers and other employees of a financial institution shall grant to the auditor appointed under this section to audit the accounts of the financial institution access to all books, documents, cash and securities of the financial institution and shall give to him on request all such information as may be within their knowledge in relation to the operations of the financial institution.
  - (7) The auditor appointed under this section shall have power to summon and examine all persons whom he shall think fit to examine for the purpose of obtaining information in connection with the examination and audit of the accounts of the financial institution and respecting all other matters and things whatever necessary for the due performance of the functions vested in him and if any person summoned as aforesaid is not a public officer or an officer or other employee of a financial institution or of any public corporation or other body corporate in which the controlling interest vests in the State he is entitled to payment for his attendance as if he were a witness attending a legal proceeding in obedience to a summons issued at the instance of the State.
  - (8) Any person summoned under subsection (7) who without reasonable excuse makes default in obeying the summons is liable on summary conviction to a fine of fifty dollars or, in default of payment, to imprisonment for one month.
  - (9) A financial institution may, write off bad debts.
49. (1) So soon as its accounts have been audited, in accordance with the provisions of section 48, a financial institution shall submit to the Minister a report on its operations throughout that year, together with a statement of its accounts so audited.

- (2) A copy of the report mentioned in subsection (1) together with a copy of the report of the auditor shall be printed and shall be -
    - a) presented to the annual general meeting of shareholders of the financial institution ;
    - b) laid before the National Assembly.
50. (1) A financial institution shall maintain a reserve fund and shall, out of the net surplus for each year and before any dividend is declared, transfer to that fund a sum equal to not less than twenty-five per cent of such surplus whenever the amount of the reserve fund is less than the paid-up capital of the financial institution.
- (2) If the reserve fund is in any year insufficient to cover any net loss of the financial institution recorded in its Profit and Loss Account, an amount equivalent to the deficiency, is hereby charged on the Consolidated Fund :

Provided that if in any succeeding year net surplus accrues to the financial institution there shall be paid into the Consolidated Fund by the financial institution, from time to time, such sum as may be agreed with the Minister together with interest thereon at such rate to be determined by him until the aforesaid amount is fully repaid.
  - (3) For the purposes of this section, net surplus shall be determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit funds, provision for bad and doubtful debts, and such other contingencies and accounting provisions as are usually made by comparable financial institutions.
51. The Minister may, by the order made under section 15 establishing a financial institution (including the re-constituting of an institution mentioned in section 61 (1), apply the Banking Act, the Bank of Guyana Act, the Companies Act and the Insurance Act, or any of them, or any of the provisions thereof, to the financial institution and those enactments or provisions thereof shall apply with such adaptations, exemptions, modifications and qualifications, as may be specified in the order.

PART V

MISCELLANEOUS

52. (1) The Annual General Meeting of the shareholders of a financial institution, and of such other persons as may be specified in an order made under section 15 (3) (b) (hereinafter in this section and in section 53 and 54 referred to as "other specified persons") shall be convened by its directors not later than four months after the end of its financial year and on such date and at such time and place as they may determine.
- (2) All general meetings, other than the Annual General Meeting, shall be called special general meetings.
- (3) The directors of a financial institution shall give such notice as they consider adequate to all shareholders of a financial institution and other specified persons of the date, time and place of a general meeting.
- (4) The quorum at a general meeting shall be a majority of the shareholders and other specified persons and if there is no quorum at the meeting called, the meeting shall be adjourned for the time on the same day of the week following whereupon the shareholders and other specified persons present shall form a quorum.
- (5) The Chairman of the financial institution, or in his absence, the Deputy Chairman shall be the Chairman of general meetings ; in the absence of the Chairman and the Deputy Chairman from a general meeting the other directors present thereat may elect one of their number to preside at the meeting.
- (6) Decisions of a general meeting shall be by a simple majority and, if approved by the administration, shall be binding on the financial institution, the directors, and on all officers and other employees of the financial institution.
- (7) For the purposes of this section, the financial year of a financial institution shall be the period of twelve months beginning on the first day of January in any year or such other date as the Minister may decide but the first financial year of a financial

institution may be shortened or extended, as the case may be, for a period not exceeding six months.

53. (1) The directors of a financial institution may call a special general meeting of shareholders of the financial institution and of other specified persons whenever they consider it necessary or desirable to do so if adequate notice as provided in section 52 (3) is given and the notice contains a statement of the intended business of the meeting.
- (2) A special general meeting shall deal only with the business for which it is called and may take decisions only with respect to such business.
- (3) The directors of a financial institution shall be obligated to call a special general meeting on receipt of a petition therefor carrying the signatures of the duly authorised representatives of shareholders representing not less than ten per cent of the paid-up share capital of the financial institution.
- (4) A petition under subsection (3) shall contain the following information -
- a) a statement of the business to be discussed at the meeting ;
  - b) a duly executed affidavit certifying that the signatures on the petition are authentic signatures of the duly authorised representatives of the shareholders whose signatures they purport to be ;
  - c) an indication of the number of shares held by the shareholders mentioned in paragraph (b).
54. Every shareholder of a financial institution, and every person who is a specified person pursuant to an order made under section 15 shall be entitled to one vote at general meetings of the shareholders of the financial institution, and of other specified persons.
55. (1) The Minister may, by order which shall be subject to affirmative resolution of the National Assembly, provide for the merger of two or more financial institutions.

- (2) An order made under subsection (1) may -
- a) exclude the application to any such merger of any provision of this Act ;
  - b) modify any provision of this Act in its application to any such merger ;
  - c) contain particular provisions in relation to any such merger, including provisions relating to the vesting of property, the transfer of assets and liabilities, monetary arrangements and the preservation of rights and liabilities, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law ;
  - d) contain such provisions that may extend to the property or interests of a subsidiary of a financial institution.
56. (1) The Minister may, by order which shall be subject to affirmative resolution of the National Assembly, dissolve a financial institution.
- (2) An order dissolving a financial institution may, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law, include such provisions relating to the vesting of property, the transfer of assets and liabilities, monetary arrangements, the preservation of rights and liabilities existing immediately prior to the dissolution as well as such other provisions as the Minister considers necessary or expedient to give full effect to the dissolution.
57. (1) Where, with the approval of the appropriate authority, an officer -
- a) is seconded or temporarily transferred from a pensionable office within the meaning of the Pensions Act to an office with the Administration or with a financial institution, section 5 of that Act shall apply to him as if his service in the office with the Administration or the financial institution, as the case may be, were service in a public office ;
  - b) is transferred from a pensionable office within the meaning of the Pensions Act to a substantive appointment in an office with the Administration



or with a financial institution, his service with the Administration or the financial institution, as the case may be, shall be other public service within the meaning of, and for the purposes of, such provisions in relation thereto as are contained in the Pensions Act.

(2) Where a teacher who has done qualifying service within the meaning of the Teachers Pensions Act is, with the approval of the appropriate authority -

a) seconded or temporarily transferred from his pensionable office as a teacher to an office with the Administration or with a financial institution, section 5 of the Pensions Act (as it applies mutatis mutandis to a teacher by section 7 C of the Teachers Pensions (Amendment) Act 1971) shall apply to him as it applies in the case of a public officer ;

b) is transferred from his pensionable office as a teacher to a substantive appointment in an office with the Administration or with a financial institution, his service with the Administration or with the financial institution, as the case may be, shall be treated as if it were other public service within the meaning of and for the purposes of, such provisions in relation thereto as are contained in, the Pension Act and as if he were a public officer to whom the Pensions Act applies.

(3) In this section, "appropriate authority" means the person or authority vested by law with power to appoint the officer to the pensionable office held by him (and to which the Pensions Act applies) or to appoint the teacher to the office held by him as a teacher, as the case may be.

58. Any minutes made of meetings of a financial institution shall, if duly signed by the Chairman or the Deputy Chairman or other member elected to preside at a meeting of the financial institution, without further proof of any other matter or thing, be receivable in all legal proceedings as prima facie evidence of the proceedings of the financial institution of which minutes have been made and that every meeting of the financial institution in respect of the proceeding of which minutes have been so made to have been duly convened and held.

59. No written law prescribing a period of limitation within which a sum of money may be recovered shall apply to a claim for a sum of money by a financial institution.
60. Subject to this Act, the Minister may make regulations for carrying into effect the purposes of this Act and, in particular, but without prejudice to the generality of the foregoing, regulations may be made in relation to the regulation and management of the affairs of a financial institution.

PART VI

CERTAIN BANKS TO BE ESTABLISHED  
AS CO-OPERATIVE  
FINANCIAL INSTITUTIONS

61. (1) The following institutions, that is to say -
- a) the Guyana National Co-operative Bank ,
  - b) the Guyana Agricultural Co-operative Development Bank ,
  - c) the Guyana Co-operative Mortgage Finance Bank ,
  - d) the GNCB Trust Company Limited,
- may be reconstituted by being established as financial institutions by order under section 15.
- (2) An order under section 15 reconstituting the Guyana National Co-operative Bank and the GNCB Trust Company Limited by establishing them as financial institutions under this Act may, in addition to the provisions which may be included therein pursuant to section 15 (12), contain provisions relating to the allotment of shares in the financial institutions so established to the shareholders of the said Bank and the said Company, respectively.
- (3) Upon the coming into force of an order establishing as a financial institution under this Act -
- a) the Guyana National Co-operative Bank, the Guyana National Co-operative Bank Act shall be repealed ;

- b) the Guyana Agricultural Co-operative Development Bank or the Guyana Co-operative Mortgage Finance Bank, the Public Corporations Act and the respective orders establishing them as public corporations thereunder shall cease to have effect in relation to the respective Banks, anything in the said Act to the contrary notwithstanding ;
- c) the GNCB Trust Company Limited, the Companies Act shall, notwithstanding any law, cease to have effect in relation to the said Company,

without prejudice, however, to anything for which provision is made in any such order pursuant to subsection (2) or subsection (12) of section 15.

Passed by the National Assembly on the 23rd June, 1976.

F. A. NARAIN  
Clerk of the National Assembly



MAURITIUS

AN ACT

To provide for the setting up of export processing zones, for the issue of certificates to export enterprises, for the operation of such enterprises and for various reliefs and exemptions to be granted to them, and for matters connected therewith or incidental thereto.

ENACTED by the Parliament of Mauritius, as follows

1. This Act may be cited as the Export Processing Zones Act 1970.
2. In this Act, unless the context otherwise requires
  - "adequate security" means security which has been accepted as adequate by the Comptroller for the purposes of section 11 of this Act ;
  - "bonded factory" means a factory situate in an export processing zone ;
  - "certificate" means an export enterprise certificate issued under section 6 of this Act ;
  - "company" means a company which carries on business or has an office or place of business in Mauritius ;
  - "Comptroller" means the Comptroller of Customs ;
  - "duty" means the fiscal, customs or excise duty for the time being leviable under any law in force ;
  - "enforcement officer" means a Customs and Excise Officer, an officer of the Ministry of Finance or of the Ministry of Commerce and Industry designated in writing by his respective Minister as an enforcement officer for the purposes of this Act ;
  - "export" has the meaning assigned to it by section 2 of the Customs Ordinance, 1947 ;
  - "export enterprise" means a company in respect of which a certificate is in force ;
  - "export processing zone" means any area or building declared to be an export processing zone under section 3 of this Act ;
  - "export product" means a product or produce in respect

of which a declaration has been made under section 5 of this Act ;

"import" has the meaning assigned to it by section 2 of the Customs Ordinance, 1947 ;

"manufacture" means a process whereby a resultant finished article falls to be classified under a main heading set out in Part I of the First Schedule to the Customs Tariff Act, 1969, which is different from the main heading under which the materials or components used in the process fell to be classified and includes :

- a) the production of any article by the process of mechanical or chemical transformation of any inorganic or organic substance, whether such transformation is carried out by power driven machinery or by manual labour ;
- b) the making, processing, altering, repairing, ornamenting, finishing or the breaking up or demolition of any article ;
- c) the assembly of component parts of manufactured products :

Provided that the Minister may by Order published in the Gazette declare that, notwithstanding the foregoing, a certain specific process or a process which results in a specified percentage of value being added to the materials or components used shall also constitute manufacture within the meaning of this section ;

"Minister" means the Minister to whom responsibility for the subjects of Commerce and Industry are assigned ;

"production day" means the day on which an export enterprise commences, or is deemed to commence, its operations ;

"purchase" means the purchase of dutiable goods ex bond, whether the goods have been imported or have been locally produced or manufactured ;

"the Ordinance" means the Income Tax Ordinance, 1950 ;

"year of assessment" has the meaning assigned to it by section 2 of the Ordinance.

3. The Minister may, with the object of attracting, promoting or increasing the manufacture of export products, by notice published in the Gazette declare:

- a) any area of land on which a factory has been, is being or is likely to be built ;
- b) any factory ;
- c) any area of land which immediately surrounds a factory or the plot on which a factory is being or is likely to be built,

to be an export processing zone.

4. It shall not be lawful :

- a) to manufacture, pack, unpack or store goods or to carry on any other activity of a commercial or industrial nature in an export processing zone otherwise than in a bonded factory ;
- b) except in the case of an export enterprise, to establish, maintain or operate a bonded factory in an export processing zone.

5. Where an application in the prescribed form is made to that effect by a company, the Minister may, if he considers it expedient in the public interest so to do, declare any manufactured article, substance, matter or other thing or the product of deep sea fishing (including fresh or frozen fish) to be an export product.

6. (1) Where an application in the prescribed form is made to that effect by a company which manufactures or proposes to manufacture an export product, the Minister may, if he considers it expedient in the public interest so to do, issue to the company an export enterprise certificate, subject to such conditions as he thinks fit to impose, and declare that the company shall, for so long as the certificate shall remain in force, be an export enterprise.

(2) A certificate shall be in the prescribed form and shall specify :



- a) the production day of the export enterprise ;
  - b) the tax relief period of the export enterprise, being a period of not less than ten nor more than twenty years ;
  - c) the export product which the export enterprise is or will be manufacturing ;
  - d) the capital equipment, machinery and spare parts required by the export enterprise for equipping and operating a bonded factory (hereinafter referred to as "scheduled equipment") ;
  - e) the materials, components, substances, matters or other things or the produce of deep sea fishing, as the case may be, required by the export enterprise for the manufacture of export products (hereinafter referred to as "scheduled materials").
7. (1) Subject to subsection (2), the Minister may, by notice in writing addressed to an export enterprise, at any time, amend any certificate or any condition attached thereto.
- (2) No amendment shall be made to a certificate so as to extend the tax relief period of an export enterprise beyond twenty years.
- (3) Where the Minister amends a certificate by substituting for the production day specified therein another earlier or later production day, the provisions of this Act shall have effect in relation to that certificate as if the production day so substituted had been originally specified therein.
8. (1) Where the Minister is satisfied that an export enterprise has contravened or has failed to comply with any of the provisions of this Act or of any regulations made thereunder or any condition attached to a certificate, he may, by notice in writing, require the export enterprise, within thirty days from the date of service of the notice, to show cause why the certificate should not be revoked, and if the Minister is satisfied that, having regard to all the circumstances of the case, it is expedient so to do, he may revoke the certificate.
- (2) Where a certificate is revoked under subsection (1), the Minister shall specify the date from which

the revocation shall become operative and the provisions of this Act shall, from that date, cease to have effect in relation to the certificate so revoked.

- (3) Notwithstanding the provisions of subsection (1), the Minister may, instead of revoking a certificate, direct that the tax relief of the export enterprise shall be restricted to such period as may appear to him to be appropriate.
9. It shall not be lawful for an export enterprise to carry on, during its tax relief period, any trade or business other than in the export product specified in its certificate.
10. (1) In any year of assessment, the assessable income, total income or chargeable income of an export enterprise as specified in any statement issued under section 36PC of the Ordinance and accruing during its tax relief period shall be exempt from tax under the Ordinance.
  - (2) Any sums paid by way of dividend to a shareholder by an export enterprise after production day and within the five years next following shall be exempt from tax under the Ordinance.
11. (1) Subject to sections 12 and 13, where an export enterprise imports or purchases any dutiable goods to be used in a bonded factory, no duty shall be paid thereon if they are, subject to such conditions as the Comptroller may approve, transported directly and forthwith to a bonded factory and placed there under conditions of adequate security.
  - (2) The Comptroller may require an export enterprise to enter into a bond in the prescribed form, in such amount as he may determine, whereby the export enterprise undertakes to obtain, receive, keep, use or dispose of scheduled equipment or scheduled materials only in strict conformity with the provisions of this Act or of any regulations made thereunder or with any conditions specified in its certificate.
12. (1) No scheduled equipment shall be removed from a bonded factory except with the written authorization of the Comptroller.

- (2) No scheduled materials or export product shall be removed from a bonded factory except :
- a) for the purpose of being exported ;
  - b) for transfer to another bonded factory, with the permission and according to the directions of the Comptroller ;
  - c) for consumption in Mauritius, with the approval of the Minister and subject to the payment of the appropriate duty ;
  - d) for destruction in such manner as the Comptroller may direct.
- (3) Any person who, without lawful authority or reasonable excuse :
- a) removes any scheduled equipment, scheduled materials or export product from a bonded factory ;
  - b) is found in possession of any scheduled equipment, scheduled materials or export product outside a bonded factory ;

shall commit an offence.

13. (1) If at any time there is in any bonded factory a deficiency in the quantity of dutiable scheduled equipment or materials which ought to be found therein, the export enterprise shall, without prejudice to any other proceedings under this Act, be liable to pay to the Comptroller the duty leviable on the goods not satisfactorily accounted for :

Provided that if the Comptroller is satisfied that the deficiency has been caused by reasonable wastage or unavoidable breakage, leakage or other accident, he may remit the whole or any part of the duty leviable on the goods found deficient.

- (2) An export enterprise shall be required, by notice in writing, to pay any duty under this section, and the duty shall be paid within thirty days of the issue of the notice.

14. (1) a) Every employee shall be employed at not less than a weekly rate of pay.

- b) For the purposes of determining the amount which may accrue to any employee for overtime, for work performed on a public holiday or for the grant of paid leave, or the amount to be deducted in respect of absences, the basic rate per hour shall be deemed to be one forty-fifth of the weekly basic rate.
- (2) An employee may be required to work for more than the normal number of hours on any day other than a public holiday, and no payment for overtime shall thereupon accrue to the employee if the number of hours of actual work in the week does not exceed forty-five.
- (3) a) An employee may be required to work on any public holiday.
  - b) If an employee performs not less than a normal day's work on a public holiday the employer may, in respect of the normal day's work, instead of paying the employee at double rate, pay him at the normal rate and grant him one day off duty with a normal day's pay in the next following week.
- (4) An employee shall not be allowed or required to work for more than seven consecutive days.
- (5) An employee who, without his employer's consent or without good and sufficient cause, absents himself from work on a day which immediately precedes or follows a public holiday, shall forfeit one normal day's pay in the next following week or, if he is entitled to paid holidays, the amount which would have accrued to him in respect of the next ensuing paid holiday.
- (6) A female employee who has at any time had three confinements shall, if she is pregnant thereafter, be intitled to maternity leave without pay but shall not be entitled to any maternity allowance.
- (7) A woman may be required to work between the hours of ten at night and five in the morning, but she shall not be required to resume work before a lapse of twelve hours.
- (8) Where any employee reckons not less than three years' continuous service with an employer and his services

are terminated, he shall be entitled to receive compensation which shall be equivalent to not less than two weeks' wages for each year of service he reckons with that employer :

Provided that no compensation shall be payable in any case of dismissal on grounds of serious misconduct where the employer could not in good faith be expected to adopt any other course than to dismiss the employee.

- (9) The provisions of the Termination of Contracts of Service Ordinance, 1963, shall not apply to any contract of employment between an employee and his employer.
- (10) For the purposes of this section
- "employee" means any person employed by an export enterprise ;
- "good and sufficient cause" has the meaning assigned thereto in subsection 5.c) of section 6 of the Employment and Labour Ordinance ;
- "normal day" means a day of eight hours actual work ;
- "public holiday" has the meaning assigned thereto in the Public Holidays Act, 1968 ;
- "woman" means a female employee who has attained the age of eighteen years.
15. (1) Subject to subsection (2), the contents of any application made by, or of any certificate issued to, any company under the provisions of this Act, shall not be published, except at the instance of the company.
- (2) The Minister shall cause a notice to be published in the Gazette relating to
- a) every export product ;
- b) the name of every export enterprise ;
- c) the issue or revocation of every certificate.
16. (1) Any enforcement officer may, at all reasonable times

and, if so required, on showing proof of his identity, enter any export processing zone or bonded factory for the purpose of ensuring that the provisions of this Act (other than section 14) and any regulations made thereunder are being complied with.

- (2) Any enforcement officer may require an export enterprise or any person who is a director, secretary or other officer thereof to furnish him with any information touching the business or activities of the export enterprise.
  - (3) Any person who wilfully obstructs or hinders an enforcement officer acting in the exercise of his functions under this section or, without reasonable excuse, fails or refuses to give to an enforcement officer any information required of him under this section shall commit an offence.
17. (1) The Minister may make such regulations as he deems necessary for carrying into effect the provisions of this Act and for prescribing anything that is or may be required to be prescribed.
- (2) Any regulations made under this section shall be laid on the table of the Assembly.
18. (1) Any person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder shall commit an offence.
- (2) Any person who, in any application, declaration or statement made for the purposes of this Act or of any regulations made thereunder, makes a statement which is false or misleading in any material particular, shall commit an offence.
  - (3) Any person who keeps any record or account relating to an export enterprise which is false or misleading shall commit an offence.
  - (4) Any person who commits an offence against this Act shall, on conviction, be liable to a fine not exceeding ten thousand rupees and to imprisonment for a term not exceeding twelve months.
  - (5) Where an offence under this Act has been committed by a company, any person who, at the time of the commission of that offence, was a director, secre-

tary or other officer of the company, or was purporting to act in any such capacity, shall likewise commit an offence and, on conviction, be liable to the penalties provided for that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions.

19. The Schedule to the Industrial Courts Ordinance shall have effect as if the following item were added thereto

13. Section 14 of the Export Processing Zones Act, 1970.

20. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any of the enactments specified in the Schedule to this Act and, save as otherwise expressly provided, nothing in this Act contained shall affect the operation of those enactments.

21. This Act shall be deemed to have had effect as from the third day of November, one thousand nine hundred and seventy.

Guy T. d'ESPAIGNET,  
Clerk of the  
Legislative Assembly





JAMAICA

1. This Law may be cited as the Industrial Incentives Law, 1956, and shall come into operation on a day to be appointed by the Governor by Proclamation.

PART I

GENERAL

2. In this Law, unless the context otherwise requires "annual allowances", "chargeable income", "initial allowances" and "year of assessment" shall have the same meaning as in the Income Tax Law, 1954, and where pursuant to this Law any annual allowance is made, such allowance shall be made subject to and in accordance with the provisions of that Law ;

"approved enterprise" means a company approved by the Governor in Council under section 4 of this Law for the manufacture of an approved product ;

"approved product" means a product of manufacture approved by the Governor in Council under section 3 of this Law for manufacture by an approved enterprise ;

"benefit" means the relief in regard to income tax or tonnage tax and customs duties enjoyed by an approved enterprise in virtue of this Law ;

"company" means any company incorporated or registered under any law in force in the Island and any company which, though incorporated or registered outside the Island, carries on business or has an office or place of business therein ;

"date of production" means the date declared pursuant to subsection (2) of section 4 of this Law ;

"factory" includes a place or an establishment at or in which an item specified in the Fourth Schedule is produced ;

"manufacture" includes -

- a) the production by any method of an item specified in the Fourth Schedule ;
- b) preparation for sale ;

"Minister" means the Minister charged for the time being with responsibility for the subject of industrial development.

3. (1) Subject to the provisions of sections 6 and 7 of this Law, the Governor in Council may, by order, declare that a product of manufacture shall be an approved product for the purpose of this Law if he is satisfied that the manufacture of the product would -
    - a) be of benefit to the Island, both economic and non-economic considerations being taken into account ; and
    - b) have a beneficial effect on employment both in numbers and in gross wages.
  - (2) An order may be made under subsection (1) of this section in respect of a product which is being manufactured in the Island at the date of the order.
  - (3) The Governor in Council, before declaring under subsection (1) of this section that a product of manufacture shall be an approved product for the purpose of this Law, shall also have regard to the following considerations -
    - a) the effect which approval would have on existing industries ;
    - b) whether manufacture of the product would utilise raw materials or skill available in the Island ;
    - c) whether the existing capacity for manufacture of the product is sufficient to meet the demand for the product ;
    - d) the element of risk involved in establishing a successful manufacture of the product.
  - (4) When approving a product for the purposes of this Law, the Governor in Council may, by the same order, declare that all approved enterprises manufacturing the approved product shall be entitled either to one hundred PER CENTUM or to fifty PER CENTUM of the benefits of this Law, that is to say, in regard to relief from income tax relief in respect of the whole of the chargeable income of the company or of one-half of the chargeable income of the company (as the case may be) which, but for the provisions of this Law, would be chargeable with income tax and, in regard to tonnage tax and customs duty, either the whole or one-half of the tax or duty, as the case may be.
4. (1) Subject to the provisions of sections 6 and 7 of this

Law, the Governor in Council may, by order, declare that a company which is manufacturing, or proposes to manufacture, an approved Product is an approved enterprise for the purpose of this Law if he is satisfied that the company -

- a) is adequately financed ;
  - b) has adequate trained personnel in its employ or is able to obtain the services of such personnel ;
  - c) has access to the necessary technical information ;
  - d) is able to obtain adequate raw materials ;
  - e) possesses, or will possess, the necessary factory.
- (2) In every order made under subsection (1) of this section, a date shall be declared to be the date on which production is deemed to begin for the purpose of this Law.
- (3) Every order made under this section shall specify the factory premises in respect of which the benefits of Part III of this Law may be enjoyed.
- (4) On the application of an approved enterprise, the Governor in Council may, in his absolute discretion and upon such conditions as he may think fit, amend an order made under this section in respect of the factory premises specified therein if the Governor in Council is satisfied that it is necessary, in order to promote the manufacture of the approved product by the approved enterprise that the factory premises in respect of which the order was made, should be varied, and such amending order shall specify the factory premises in respect of which the benefits of Part III of this Law may be enjoyed after the amending order has been made.
- (5) On the application of an approved enterprise the Minister may, in his discretion and upon such conditions as he thinks fit, amend an order made under this section in respect of the date of production specified therein ; and thereupon the provisions of this Law shall, subject to any conditions specified in relation to such amendment, have effect as if for the date of production declared pursuant to subsection (2) of this section there were substituted the date of production amended as aforesaid.
- (6) Without prejudice to the generality of subsection (5) of this section, the amendment of an order pursuant to that subsection may be made on terms which permit

an option exercised in accordance with subsection (2) of section 10 of this Law to be changed at any time before the date of production as amended, or on terms which require that no such change in the exercise of an option shall be made.

5. All applications for the approval of a product as an approved product or the approval of a company as an approved enterprise shall be addressed to the Minister in such form and with such particulars as may be prescribed.
6. (1) Before any order is made under section 3 or section 4 of this Law, the Minister shall cause the fact that the Governor in Council is about to be asked to consider whether a product for manufacture should be an approved product for the purpose of this Law or whether a company should be an approved enterprise for the purpose of this Law to be advertised in the Island and elsewhere if the Minister shall so deem it necessary.
  - (2) The advertisement referred to in subsection (1) of this section shall contain such particulars as to the product or the company of which such approval is being sought as the Minister may think necessary in order that any person interested in the manufacture or the importation of the product may object to the product or the company being so approved.
  - (3) The advertisement shall state a period within which any objection to the approval of the product or the company shall be made by any person who is interested in the manufacture or the importation of the product.
  - (4) Every objection received by the Minister within the time stated in the advertisement or within such extended time as the Minister may allow shall be considered by the Minister and shall be the subject of a report by the Minister to the Governor in Council which shall be considered by the Governor in Council before any order is made under section 3 or section 4 of this Law.
  - (5) This section shall not apply to an amending order made under subsection (4) of section 4 of this Law.
7. (1) Subject to the provisions of subsections (2) and (3) of this section, the Governor in Council shall not approve:
  - a) a product for manufacture as an approved product ;  
or
  - b) a company as an approved enterprise ;

if such product or company is approved, recognised or licensed for the purpose of any of the Laws specified in the First Schedule to this Law, or if such company has, prior to the commencement of the Industrial Incentives (Amendment) Act, 1967, been a recognized manufacturer within the meaning of that expression in the Textile Industry (Encouragement) Law.

- (2) Notwithstanding that the products described in the Second Schedule to this Law have been declared to be pioneer products under the Pioneer Industries (Encouragement) Law, nothing in subsection (1) of this section shall prevent a person who, prior to the date of the commencement of this Law, has been declared or has applied to be declared to be a pioneer manufacturer under the Pioneer Industries (Encouragement) Law in respect of any one of such products from applying to be declared an approved enterprise under this Law if :
- a) the application is made within three months from the date of commencement of this Law ; and
  - b) the applicant complies with the provisions of this Law which requires that only a company can be an approved enterprise

and the Governor in Council shall have an absolute discretion to approve the product and the company as an approved product and an approved enterprise for the purposes on this Law upon such terms and conditions as regards adjustment of benefits received under the Pioneer Industries (Encouragement) Law or otherwise as he may think fit.

- (3) Notwithstanding that the Buttons (Manufacture Encouragement) Law (which is one of the Laws specified in the First Schedule to this Law) provides for the recognition of the manufacturers of buttons for the purposes of that Law, the provisions of subsection (2) of this section shall apply to buttons and the manufacturers thereof recognised under the Buttons (Manufacture Encouragement) Law prior to the commencement of this Law as if buttons and recognised manufacturers thereof were pioneer products and pioneer manufacturers under the Pioneer Industries (Encouragement) Law and subsection (2) shall apply accordingly.
- (4) Upon an application being granted under subsection (2) or subsection (3) of this section the applicant shall cease to be a pioneer manufacturer under the Pioneer Industries (Encouragement) Law or a recognised manu-

facturer under the Buttons (manufacture Encouragement) Law, as the case may be.

8. Subject to the provisions of section 7 of this Law, the Governor in council shall have an absolute discretion to grant or refuse to grant approval in respect of a product for manufacture as an approved product or a company as an approved enterprise for the purpose of this Law.

Provided that, if a company which is applying for approval as an approved enterprise is, at the time of such application, manufacturing the approved product in Jamaica, the Governor in Council may, as a condition of his granting the application, require the applicant to incorporate a company in Jamaica, upon such terms and conditions as he may determine, and grant approval in respect of that company when so incorporated.

## PART II

### INCOME TAX BENEFITS

9. In this Part of this Law, unless the context otherwise requires, "income tax" means the tax payable by companies under the law for the time being relating to income tax.
10. (1) Subject to the provisions of this part of this Law, an approved enterprise shall, at its option, be entitled to either one or the other of the reliefs from income tax defined in sections 11 and 12 as the first and second options respectively for the periods therein respectively stated.  
  
(2) The option created by subsection (1) of this section shall be exercised before the date of production and, having been exercised, shall not be capable of change ;

Provided that an approved enterprise may, at any time during the period of seven years referred to in section 11 of this Law or during the period of six years referred to in section 12 of this Law, surrender the right to benefits in regard to income tax and elect to be assessed for income tax thereafter under the law relating to income tax.

- (3) Nothing in this law shall affect any liability to income tax incurred by an approved enterprise in respect of profits made prior to the commencement of the period of relief defined in section 11 or section 12 or section 29 or section 30 of this Law as the case may be.

- (4) Notwithstanding anything in the law relating to income tax an approved enterprise shall not, after it has become an approved enterprise, be entitled to initial allowances in respect of assets acquired prior to or during, the period of relief defined in section 11 or section 12 or section 29 or section 30 of this Law as the case may be.
11. The first option referred to in section 10 of this Law shall, subject to the conditions specified in section 10 of this Law and in this section and to the terms of any order made under subsection (4) of section 3 of this Law, comprise the relief from income tax following, that is to say -
- a) relief from income tax for seven years from the date of production in respect of profits or gains earned from the manufacture of the approved product ;
  - b) during the period for which relief from income tax continues, annual allowances shall not be made but a notional depreciation of assets shall be made at the approved rates within the meaning of the law relating to income tax ;
  - c) after the expiration of the said period of seven years, annual allowances may be made upon the original cost of the assets less the notional depreciation for which provision is made in paragraph (b) of this section ;
  - d) after the expiration of the said period of seven years, an approved enterprise may, for the purpose of the assessment of income tax, carry forward in respect of the next succeeding six years of assessment losses which have not been written off incurred in the period during which the company was an approved enterprise without taking into account any depreciation of assets.
12. The second option referred to in section 10 of this Law shall, subject to conditions specified in section 10 of this Law and in this section and to the terms of any order made under subsection (4) of section 3 of this Law, comprise the relief from income tax following, that is to say.
- a) relief from income tax in respect of profits or gains earned from the manufacture of the approved products for the first four years of a period of



six years from such date as the approved enterprise may select not being more than three years from the date of production, income tax being payable in respect of the remaining two years of the said period of six years as follows :

- (i) if the relief from income tax is total relief in respect the fifth year on 33-1/3 % of the chargeable income, before deduction of annual allowances. In respect of the sixth year on 66-2/3 % of the chargeable income, before deduction of annual allowances ;
  - (ii) if the relief from income tax is in respect of one one half of the chargeable income. In respect of the fifth year on 66-2/3 % of the whole of the chargeable income, before deduction of annual allowances. In respect of the sixth year on 83-1/3 % of the whole of the chargeable income, before deduction of annual allowances.
- b) prior to the commencement of the period of six years referred to in paragraph (a) of this section annual allowances may be made but such allowances shall cease to be made during the first four years of the said period of six years ;
  - c) after the expiration of the first four years of the said period of six years annual allowances may be made upon the original cost of the assets less any annual allowances made in accordance with paragraph (b) of this section ;
  - d) after the expiration of the said period of six years, an approved enterprise may, for the purpose of assessment of income tax, carry forward in respect of the next succeeding six years of assessment losses which have not been written off incurred in the period during which the company was an approved enterprise taking into account any annual allowances made pursuant to paragraphs (b) and (c) of this section ,
13. (1) During the period of seven years referred to in section 11 of this Law or the period of six years referred to in section 12 of this Law or the period of ten years referred to in section 29 of this Law or the relevant number of prescribed years referred to in section 30 of this Law an approved enterprise shall place in a separate account all profits or gains which have been relieved of income tax in accordance with the provisions of section 11 or

section 12 or section 29 or section 30 of this Law and, if it intends to pay a dividend to its shareholders out of such profits or gains, such dividend shall be paid out of such amount.

- (2) Unless, pursuant to the first proviso to section 21 of the Income Tax Law, 1954, the Commissioner of Income Tax otherwise authorises, income tax shall be deducted by an approved enterprise which pays any dividend pursuant to subsection (1) of this section as if such dividend had been paid out of profits or gains within the meaning of the provisions of the law relating to income tax as regards the deduction of tax by a company on the payment of a dividend by that company.
- (3) An approved enterprise making deductions of income tax pursuant to subsection (2) of this section shall be deemed to be collecting income tax on behalf of the Commissioner of Income Tax and shall pay to the Commissioner of Income Tax or to such person as he may direct the amounts so deducted.
- (4) A shareholder to whom a dividend is paid pursuant to subsection (1) of this section shall be exempt from income tax in respect thereof if he is -
  - a) a resident in the Island ; or
  - b) if not so resident, is not liable to income tax in respect of such dividend in the country in which he is resident.

Provided that the exemption from income tax created by this subsection -

- (i) shall not extend to surtax ; and
  - (ii) shall not exceed, as regards the rate of the tax from which the shareholder is relieved, the rate of the tax which would, but for the provisions of this Part of this Law, have been paid by the company on the profits out of which the dividend is paid.
- (4 a) Where a shareholder to whom a dividend is paid pursuant to subsection (1) of this section is not resident in the Island and is liable to income tax in respect of the dividend in the country in which he is resident, he shall be exempt from so much income tax in respect of that dividend as the Commissioner of Income Tax is satisfied exceeds his liability in respect of such dividend in the country in which he is resident.

Provided that the exemption from income tax created by this subsection -

- (i) shall not extend to surtax ; and
  - (ii) shall not exceed, as regards the rate of the tax from which the shareholder is relieved, the rate of the tax which would but for the provisions of this Part of this Law, have been paid by the company on the profits out of which the dividend is paid.
- (5) Save as is otherwise provided in this Part of this Law, the provisions of the law relating to income tax in regard to the deduction of income tax from dividends, the refund of income tax to shareholders and the liability to, and recovery of surtax shall apply to dividends paid by an approved enterprise pursuant to subsection (1) of this section.
14. (1) The Governor in Council may, on the application of an approved enterprise, revoke the order made under section 4 of this Law by which the company became an approved enterprise and, upon such revocation, nothing in this Law shall prevent the company from being granted any special treatment granted pursuant to any of the Laws specified in the First Schedule to this Law.
- (2) Where any company which is an approved enterprise fails or neglects to commence to manufacture a relevant approved product in marketable quantities on or before the date of production, the Minister may, by notice in writing, require such company, within thirty days of receipt of such notice, to establish to the satisfaction of the Minister that -
- a) the failure or neglect to commence to manufacture that approved product in marketable quantities as aforesaid was due to some cause beyond the control of the company ; and
  - b) there is a reasonable prospect of that company commencing to manufacture that approved product in marketable quantities within such time as the Minister may consider to be reasonable, and if the company fails to satisfy the Minister accordingly the Minister, if he considers it expedient so to do, may, by order, terminate the approval of that company in relation to that product either by amending or revoking, as the case may require, the order under section 4 by which the company became an approved enterprise in relation to that approved product.

- (3) Where the Minister is satisfied that any representations made by or on behalf of a company to him or to the Jamaica Industrial Development Corporation in connection with the application of that company to be declared an approved enterprise in relation to an approved product were false in any material particular or were made with intent to deceive or were otherwise not made in good faith and that such representations substantially influenced the decision to declare that company an approved enterprise in relation to that product the Minister may, by notice in writing, require such company, within thirty days of receipt of such notice, to show cause to the satisfaction of the Minister why the order under section 4 by which the company became an approved enterprise in relation to that product should not be revoked or amended so as to terminate the approval of that company in relation to that product and, if the company fails to show cause accordingly, the Minister may, if he considers it expedient so to do and after consultation with the Jamaica Industrial Development Corporation, by order, revoke or amend accordingly the order made under section 4 by which the company became an approved enterprise in relation to that approved product.
- (4) Upon the coming into force of an order made pursuant to subsection (2) or subsection (3):
- a) the company to which the order relates shall, as respects the approved product to which the order relates, cease to be an approved enterprise for the purposes of this Law but without prejudice to the continued operation of section 16 and section 17 ; and
  - b) without prejudice to the continued operation of section 19 the factory premises of that company shall, as respects that product, cease to be factory premises for the purposes of this Law.
- (5) In this section, "relevant approved product", in relation to any approved enterprises, means an approved product in relation to which such approved enterprise has been declared under section 4 to be an approved enterprise.

PART III

BENEFITS IN RESPECT OF TONNAGE TAX AND  
CUSTOMS DUTIES

15. (1) In an order made under subsection (1) of section 3 of this Law the Governor in Council may declare that all approved enterprises manufacturing the approved product referred to in such order shall be entitled to one hundred per centum or per fifty centum of the benefits in respect of tonnage tax and customs duties created by this Part of this Law.
- (2) If a declaration of the kind indicated in subsection (1) is not made by the order made under subsection (1) of section 3 of this Law declaring a product to be an approved product, the Governor in Council may, by a subsequent order, make such a declaration.
- (3) If an order has been made pursuant either to subsection (1) or to subsection (2) of this section, every approved enterprise to which such order applies shall be entitled to import into the Island, during such time as it may continue to be an approved enterprise, any of the articles specified in the Third Schedule to this Law with the benefit in respect of tonnage tax and customs duty, if the approved enterprise satisfies the Collector General that such articles are imported for the construction, alteration, reconstruction or extension of the factory premises specified in an order made under section 4 of this Law or for equipping such factory premises or any extension thereof used or intended to be used for the manufacture by the approved enterprise of the approved product, but no articles shall be imported with any benefit in respect of tonnage tax or customs duty under this section if the Collector General is of the opinion that such articles are intended for the purpose of effecting repairs to the factory or to any extension thereof, or to any apparatus, machinery, appliances or equipment contained in the factory or any extension thereof or for replacing any apparatus, machinery, appliances or equipment in the factory or any extension thereof.
- (4) For the purposes of this section -
- a) articles for equipping factory premises (or any extension thereof) shall be deemed to include equipment for offices and other ancillary facilities necessary for the proper administration of the factory premises (or any extension thereof) and

for the health, safety, hygiene and welfare at the factory premises (or any extension thereof) of persons there employed ; and

- b) an approved enterprise which, during the period from the date of application to be declared an approved enterprise to the date on which the declaration is made, imports any articles to which subsection (3) of this section relates, shall be regarded as having been an approved enterprise with effect from the first date during that period on which it imported any such article as aforesaid.

(5) The Governor in Council may from time to time, by order amend the Third Schedule to this Law -

- a) by deleting therefrom any article being manufactured in Jamaica, if the Governor in Council is satisfied that such article manufactured as aforesaid is available in a quantity sufficient to meet the demand therefore and is of a quality and is sold at a price reasonably comparable with the quality and price of similar articles not manufactured in the Island ; or
- b) by adding an article thereto.

16. Every approved enterprise which imports into the Island any article with any benefit in respect of tonnage tax or customs duty under the provisions of section 15 of this Law shall upon being required to do by the Collector General -

- a) keep such record in such form and containing such particulars as may be required by the Collector General of the articles so imported by him ; and
- b) cause such articles to be marked with such mark and in such manner as may be required by the Collector General ; and
- c) permit the Collector General or any person authorised by him at all reasonable times to inspect such record and to have access to any factory, warehouse or other premises under its control for the purpose of examining any such articles which the Collector General may believe to be therein and of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

17. No article imported into the Island by an approved enter-

prise with any benefit in respect of tonnage tax or customs duty under the provisions of this Law shall be used for purposes other than the manufacture of the approved product or sold, given away or otherwise disposed of by such enterprise except -

- a) in the case of an assignment of the factory for the purpose of which such article was imported into the Island, to the assignee of such factory ;  
or
- b) upon the approved enterprise paying or giving security to the satisfaction of the Collector General for the payment of an amount equivalent to the amount of tonnage tax and of customs duty which would have been payable upon the importation of such article but for the provisions of this Law ; or
- c) after the expiration of five years from the date of importation into the Island of such article.

18. An approved enterprise shall cease to be an approved enterprise for the purpose of this Part of this Law, at the expiration or sooner determination of the period of seven years referred to in section 11 of this Law, or of the period of six years referred to in section 12 of this Law, or of the period of ten years referred to in section 29 of this Law or of the relevant number of prescribed years referred to in section 30 of this Law as the case may be.

19. (1) Subject to the provisions of subsection (3) of this section, no factory premises in respect of which benefits under Part III of this Law have been enjoyed, whether they are still being used for the manufacture of an approved product by an approved enterprise or not shall, without the prior approval of the Governor in Council be used at any time within ten years from the date declared by an order made under section 4 of this Law to be the date on which production is deemed to begin for any other purposes than those of the manufacture of an approved product by an approved enterprise ;

Provided that the Governor in Council may, as a condition for the grant of his consent, require that all the sums, or in his discretion any part of such sums which but for the provisions of this Part of this Law would have been payable as tonnage tax or as customs on the importation of any articles used in the construction, alteration, reconstruction, extension or equipping of the factory premises shall be paid to the Collector General.

- (2) Any person using, or permitting another person to use, any such factory in contravention of the provisions of subsection (1) of this section shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to a fine not exceeding one hundred pounds and in default of payment to imprisonment for a term not exceeding six months and in the case of a continuing offence to a further fine of fifty pounds in respect of each day during which the offence continues.
- (3) The provisions of this section shall not apply to any factory premises which have ceased to be used for the manufacture of an approved product by an approved enterprise if all the sums which but for the provisions of section 15 of this Law would have been payable as tonnage tax or customs duty on the importation of any articles for the construction, alteration, reconstruction or extension of such premises or for equipping such premises or any extension thereof for the purpose of manufacturing the approved product have been paid.

#### PART IV

#### MISCELLANEOUS

20. Nothing in this Law shall exempt an approved enterprise from making any return to the Commissioner of Income Tax or from complying with the law relating to income tax in any other respect so as to establish the liability, of the approved enterprise to income tax nor from complying with the law relating to the collection of tonnage tax and customs duties so as to establish the liability, if any, of the approved enterprise to tonnage tax or customs duties.
21. (1) The provisions of section 75 of the Income Tax Law, 1954, shall apply to any false statement or representation made or any false return delivered or any false accounts kept or prepared with reference to any of the benefits created by Part II of this Law as if such false statement or representation had been made or such false return had been delivered or such false accounts had been kept or prepared with reference to income tax or profits or gains chargeable under the Income Tax Law, 1954.
- (2) Every approved enterprise which contravenes the provisions of section 16 of this Law and every



director, manager, agent and officer of the approved enterprise who is knowingly a party to the contravention shall be guilty of an offence and on summary conviction thereof before a Resident Magistrate shall be liable to a fine not exceeding five hundred pounds and, in default thereof, every such director, manager, agent or officer shall be liable to be imprisoned for a term not exceeding twelve months.

- (3) Every approved enterprise which contravenes the provisions of section 17 of this Law and every director, manager, agent and officer of the approved enterprise who is knowingly a party to the contravention shall be liable to a penalty of three times the value of the article in respect of which the contravention occurred and, in default of payment, every such director, manager, agent or officer shall be liable to be imprisoned for a term not exceeding twelve months.
22. For the purpose of assessment to income tax, either at the full or, in virtue of the provisions of this Law, at a reduced rate, of the chargeable income of a company which is, or has been, an approved enterprise, the Commissioner of Income Tax may refuse to accept an amount as payable or paid to the company or as an expense incurred by the company in a particular year of assessment which is shown by the company in its accounts as payable, paid or incurred, as the case may be, in that year of assessment on the ground that such an amount relates to a transaction entered into by the company, otherwise than in the normal course of business with the object either of inflating its profits or gains in a year of assessment in which its profits or gains were, in virtue of the provisions of this Law, either wholly, or partially relieved of income tax or with the object of artificially reducing its profits or gains in a year of assessment in which its profits or gains are not, in virtue of the provisions of this Law, wholly relieved from income tax.
23. Notwithstanding the provisions of section 4 of the Income Tax Law, 1954, it shall be lawful for the Commissioner of Income Tax to certify in such form as may be prescribed the benefits enjoyed by an approved enterprise under the provisions of this Law in order that such certificates may be produced by the approved enterprise to the fiscal authorities of any other country in which the approved enterprise may be liable to suffer taxation.
24. The Governor in Council may make regulations in regard to -

- a) any matters required by this Law to be prescribed ;
  - b) the adjustment of profits or gains when the accounting period of an approved enterprise falls partly within and partly outside:
    - (i) the period of seven years or six years under section 11 or section 12, as the case may be ; or
    - (ii) the period of ten years under section 29 ;  
or
    - (iii) the relevant number of prescribed years under section 30.
- during which relief in respect of income tax is enjoyed pursuant to this Law ;
- c) the adjustment of profits and gains, including the adjustment of allowances and carrying forward of losses, when a company was at the time that it became an approved enterprise, already engaged in business ;
  - d) any other matter or thing, whether similar to the above or not, in respect of which it may be expedient to make regulations for the purpose of carrying this Law into effect.

#### PART V

#### MODIFICATION OF THIS LAW IN RELATION TO ITEMS SPECIFIED IN THE FOURTH SCHEDULE

- 25. Notwithstanding any other provisions of this Law, in the case of a company declared to be an approved enterprise in relation to an approved product being an item specified in the Fourth Schedule the period of relief from Customs duties, tonnage tax and income tax permitted under this Law shall not exceed seven years and only the first option referred to in section 10 (that is to say, the reliefs from income tax defined in section 11) shall be available to such company.
- 26. The Minister may from time to time, by order, amend the Fourth Schedule.

Provided that where any order under this section removes any item from that Schedule such removal shall not affect the validity or continuance of anything done or entered

into or any approval given before the coming into operation of the order.

PART VI

INCENTIVES APPLICABLE TO PRODUCTS DECLARED ON OR  
AFTER 28TH MAY, 1963

27. (1) In this Part -

"new product" means-

- a) a product which is, pursuant to section 3, declared an approved product on or after the 28th day of May, 1963 ; or
- b) a product which was, pursuant to section 3, declared an approved product prior to the 28th day of May, 1963 and which the Minister declares to be a new product pursuant to subsection (2) of this section ;

"income tax" has the same meaning as that ascribed to it by section 9.

- (2) The Minister may by order declare an approved product to be a new product if he is satisfied that companies approved under section 4 to manufacture that product (whether or not companies to which this Part applies) are not exploiting the market potential of the product.
- (3) For the purposes of subsection (2) companies therein specified shall be regarded as not exploiting the market potential of a product if, having regard to such information as is reasonably available, the Minister is satisfied that less than twenty per centum of the market in Jamaica for that product is being supplied by such companies.

28. This Part shall apply to any company which -

- a) on or after the 28th day of May, 1963 is, pursuant to an order under section 4, declared to be an approved enterprise in relation to a new product ; or
- b) at the date of the coming into force of an order made pursuant to subsection (2) of section 27 is an approved enterprise in relation to the manufacture of a product declared by that order to

be a new product and at that date is engaged in the manufacture of that product on terms which attract relief from income tax pursuant to paragraph (a) of section 11 or paragraph (a) of section 12, as the case may be.

29. (1) Notwithstanding any other provision of this Law, in lieu of the relief from income tax permitted pursuant to subsections (1) and (2) of section 10 and either section 11 or section 12, an approved enterprise to which this Part applies shall, subject to the provisions of subsection (2) be entitled to the following relief from income tax, that is to say:
- a) relief from income tax in respect of profits or gains earned from the manufacture of the new product for a period of ten years commencing:
    - (i) in the case of an approved enterprise which pursuant to the exercise of an option under section 10 is enjoying benefits under section 12, from the date selected for the commencement of income tax relief pursuant to paragraph (a) of section 12 ;
    - (ii) in any other case, from the date of production applicable to the approved enterprise pursuant to section 4.
  - b) prior to the commencement of the period of ten years referred to in paragraph (a) annual allowances may be made but such allowances shall cease to be made during the said period of ten years ;
  - c) after the expiration of the said period of ten years annual allowances may be made upon the original cost of the assets less any annual allowances made in accordance with this paragraph (b) ;
  - d) after the expiration of the said period of ten years the approved enterprise may, for the purpose of assets of income tax, carry forward in respect of the next succeeding six years of assessment losses which have not been written off incurred during the period of ten years aforesaid.
- (2) An approved enterprise to which this Part applies may at any time during the period of ten years referred to in subsection (1) surrender the right to benefit in regard to income tax and elect to be assessed for income tax thereafter under the law relating to income tax.

30. (1) Where the factory premises of an approved enterprise to which this Part applies are located in or are transferred to a special development area, the provisions of this Law shall, in relation to that approved enterprise, be construed subject to the following modification, that is to say, as if, in section 29, for all references to a period of ten years there were submitted the relevant number of prescribed years.

(2) In this section -

"the relevant number of prescribed years" means, in relation to any approved enterprise, the number of years which is applicable to that approved enterprise by virtue of an order under section 31 substituting some other period of years for the period of ten years ;

"special development area" means an area prescribed by the Minister to be a special development area pursuant to section 31.

31. (1) Subject to the provisions of this section, the Minister may by order prescribe -

a) the areas of Jamaica which shall be special development areas ;

b) the number of years in respect of which benefits may be enjoyed by an approved enterprise to which this Part applies whose factory premises are located in a special development area ;

Provided that if any order under this section is amended or revoked by a subsequent order under this section and the effect of such amendment or revocation is to reduce the number of which benefits may be enjoyed in any special development area or to terminate the prescription of any area as a special development area or to diminish any other right granted in relation to a special development area under this Law such reduction, termination or diminution as aforesaid shall be deemed not to be applicable to an approved enterprise to which this Part applies whose factory premises are at the date of commencement of the subsequent order located or approved by the Minister to be located, in that special development area.

(2) An order under this section may contain such ancillary provisions as the Minister considers necessary or expedient to give effect to the order.



REPUBLIC OF KENYA

AN ACT OF PARLIAMENT TO GIVE PROTECTION TO CERTAIN APPROVED  
FOREIGN INVESTMENTS AND FOR MATTERS INCIDENTAL THERETO

ENACTED by the Parliament of Kenya, as follows : -

1. This Act may be cited as the Foreign Investments Protection Act, 1964.

2. (1) In this Act, unless the context otherwise requires -

"approved" in relation to any enterprise, foreign currency, period or proportion, means any enterprise, currency, period or proportion specified in the relevant certificate issued under section 3 of this Act ;

"foreign assets" includes foreign currency, credits, rights, benefits or property, any currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit, or the use or exploitation of foreign rights, benefits or property, and any profits from an investment in an approved enterprise by the holder of a certificate issued under section 3 of this Act in relation to that enterprise ;

"foreign national" means a person who is not a citizen of Kenya, and includes a body corporate not being a body incorporated in Kenya ;

"the Minister" means the Minister for the time being responsible for finance.

(2) For the avoidance of doubt it is hereby declared that assets shall not cease to be foreign assets by reason of their being assets in some other part of the Commonwealth, and that currency shall not cease to be foreign currency by reason of it being in Kenya as well as in some place outside Kenya :

Provided that in the case of currency, the relevant sum originates from outside Kenya.

3. (1) A foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for a certificate that the enterprise in which the assets are



proposed to be invested is an approved enterprise for the purposes of this Act.

- (2) The Minister shall consider every application made under subsection (1) of this section and in any case in which he is satisfied that the enterprise would further the economic development of, or would be of benefit to, Kenya, he may in his discretion issue a certificate to the applicant.
  - (3) Foreign nationals who have already invested foreign assets in Kenya shall be entitled to the grant of a certificate on application provided that a certificate may be withheld if the Minister is not satisfied that the enterprise is of benefit to Kenya.
  - (4) Every certificate shall state -
    - a) the name of the holder ;
    - b) the name and a description of the enterprise ;
    - c) the proportion of the foreign assets invested or to be invested by the holder to the total assets of the enterprise, and where the investment consists of the acquisition of shares or stock in a body corporate, the number or amount and description thereof ;
    - d) the relevant foreign currency ;
    - e) if the assets have not yet been invested, the value thereof and the period within which they shall be invested ;
    - f) such other matters as may be necessary or desirable for the purposes of this Act.
4. The Minister may in his discretion amend a certificate granted under section 3 of this Act -
- a) in any case in which he is satisfied that some other foreign national has succeeded to the interest in the enterprise of the holder of the certificate, by substituting for the name of the holder the name of his successor :

Provided that the Minister shall not substitute the name of any person who has acquired the interest of the holder by the expenditure,

- directly or indirectly, of assets other foreign assets ;
- b) in any case where an interest in the enterprise passes to any other person on the death of the holder ;
  - c) in any case where the name of the enterprise is altered, by substituting the name as so altered ;
  - d) in any case in which new foreign assets are invested or are to be invested in the enterprise by the holder, or the holder has withdrawn or been paid, in accordance with this Act, any part of his investment by varying the approved proportion in accordance therewith ;
  - e) in any case where the investment consists of the acquisition of shares or stock of a body corporate, and new shares or stock are acquired otherwise than by the investment of assets which are not foreign assets, by amending the number or amount and the description thereof ;
  - f) with the written consent of the holder of the certificate, by varying the approved foreign currency ;
  - g) by extending the period during which foreign assets are to be invested ; and
  - h) subject to these foregoing provisions and to the written consent of the holder, in such other manner as may be necessary or desirable.
5. If, at the time at which a certificate is issued under this Act, any foreign assets or part thereof to which such certificate relates have not been invested in the approved enterprise, they shall be so invested within the approved period, and, if not so invested within that period, the certificate shall be deemed to have been revoked.
6. Nothing in this Act shall affect the obligation of an investor other than an investor from one of the scheduled territories to comply initially with the requirements of the Exchange Control Act.
7. Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate may,

in respect of the approved enterprise to which such certificate relates, transfer out of Kenya in the approved foreign currency and at the prevailing official rate of exchange -

- a) the profits, after taxation, of his investment of foreign assets ;
  - b) the approved proportion of the net proceeds of sale of all or any part of the approved enterprise, either in liquidation or as a going concern ; and
  - c) the principal and interest of any loan specified in the certificate.
8. No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt payment of compensation contained in section 19 of the Constitution of Kenya and reproduced in the Schedule to this Act.
9. The Minister may make regulations or give directions generally for the better carrying out of the purposes of this Act and prescribing the manner in which applications shall be made for certificates under this Act, and the information which shall accompany such applications.

SCHEDULE

THE CONSTITUTION OF KENYA

19. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say -

- a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit ; and
- b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property ; and
- c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest or right in or over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the Supreme Court for -

- a) the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled ; and
- b) the purpose of obtaining prompt payment of that compensation :

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the right or interest in the property) from a tribunal or authority, other than the Supreme Court, having

jurisdiction under any law to determine that matter.

- (3) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court or any other tribunal or authority in relation to the jurisdiction conferred on the Supreme Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which applications or appeals to the Supreme Court or applications to the other tribunal or authority may be brought).
- (4) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any payment of that compensation, the whole of that payment (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Kenya.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (4) of this section to the extent that the law in question authorizes -
  - a) the attachment, by order of a court, of any payment or part of any payment of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party ; or
  - b) the imposition of reasonable restrictions on the manner in which any payment of compensation is to be remitted.
- (6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or subsection (2) of this section -
  - a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property -
    - (i) in satisfaction of any tax, duty, rate, cess or other impost ;

- (ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Kenya ;
- (iii) as an incident of a lease, tenancy, mortgage, charge bill of sale, pledge or contract ;
- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations ;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants ;
- (vi) in consequence of any law with respect to the limitation of actions ; or
- (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ; or

- b) to the extent that the law in question makes provision for the taking of possession or acquisition of -
  - (i) enemy property ;
  - (ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the

persons entitled to the beneficial interest therein ;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property ;  
or

(iv) property subject to a trust for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(7) Nothing contained in or done under the authority of any Act of Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the Act in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by Parliament ; and nothing contained in or done under the authority of any law made by a Regional Assembly shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over any property where the property, interest or right is vested in a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided by that Regional Assembly.

RULES OF PROCEDURE

Rules of Procedure for Granting a "Certificate of Approved Enterprise"

Application received by Treasury who will consult with -

- a) Ministry of Agriculture in regard to investments in Agriculture Schemes ; or
- b) Ministry of Commerce and Industry in regard to Industrial Schemes ; or
- c) Ministry of Tourism and Wildlife in regard to an investment designed to promote the Tourist Industry ; or
- d) Ministry of Natural Resources in regard to an investment in industry under his control, e.g. timber and paper manufacture.

The Treasury will process and grant certificates in respect of purely financial investments or loans, made to Insurance Companies, Banking Organizations, Hire Purchase Companies, Unit Trusts, etc.

Note : - "Certificates of Approved Enterprise" will not normally be granted in the following cases but applications will nevertheless be considered on their merits : -

- a) Speculative investments, such as a person purchasing a share of a public company quoted on the Nairobi Stock Exchange.
- b) Investments which are not of economic value. The change of ownership of an existing building or business ; would not qualify unless it could be proved that the business or building was being purchased for expansion.
- c) Merchanting organizations.

All applications must be supported by adequate proof that the funds which are the subject of the investment will be remitted to Kenya.



All intending investors are advised to consult the Treasury in regard to the possibility of obtaining a "Certificate of Approved Enterprise" before the investment is made, the investor should not anticipate the issue of a "Certificate of Approved Enterprise".

Any investor who receives a "Certificate of Approved Enterprise" will also be entitled to receive a certificate for presentation to his own Government to obtain that Government's guarantee for the investment, e.g. American investors can obtain an investment guarantee from the American Government.

Investments that already have been granted "Approved Status" under the Exchange Control Act (Cap. 113) may obtain a "Certificate of Approved Enterprise" in respect of their past investments, but will not get an additional certificate for future investments unless the investment is approved in accordance with section 6.

"Certificate of Approved Enterprise" will be issued in the following circumstances within the discretion of the Minister for Finance : -

- (i) (a) All investments that have already received "Approved Status".
- (b) All investments in sterling which would have received "Approved Status" had the Exchange Control Act not been restricted to the Non-Sterling Area.
- (ii) Funds provided to the undermentioned Institutions either by way of capital or loans :
  - (a) Banks.
  - (b) Investment Companies.
  - (c) Insurance Companies.
  - (d) Building Societies.
  - (e) Hire Purchase Companies.
  - (f) Unit Trust Companies.
- (iii) (a) New industries, provided their production can be absorbed in East Africa or exported.

- (b) Investments in existing industries that require expansion.
- (iv) (a) Oil Refining.
  - (b) Distribution of oil.
- (v) Investments made to increase the Tourist Industry such as : -
  - (a) Hotels, Motels, Safari Lodges.
  - (b) Safari and Fishing Clubs where daily/ temporary membership may be obtained.
  - (c) Air Charter Companies.
  - (d) Travel Agencies.
  - (e) Any other business designed to promote the Tourist Industry.
- (vi) Investments made to increase the Agricultural potential of a farm or estate. Investment guarantees will not be granted to effect a change of owner, the new investor will have to draw up a development programme to expand the Agriculture Scheme he intends to purchase, that expansion scheme will have to receive the Ministry of Agriculture's approval.
- (vii) Investment guarantees will be given for : -
  - (a) New Multi-storey Buildings to provide Offices, Flats and Shops.
  - (b) New Housing Schemes.
  - (c) New Hotel Buildings, etc., connected with the Tourist Industry.
- (viii) Investment guarantees will be given in respect of any undertaking not mentioned above which provides employment for a substantial number of unemployed and thereby relieves the unemployment problem in Kenya.

6th October 1964

FORM "A"

(to be used for investment in an  
EXISTING enterprise)

APPLICATION FOR CERTIFICATE OF APPROVED ENTERPRISE

Foreign Investments Protection Act, 1964

To : The Permanent Secretary,  
The Treasury,  
P.O. Box 30007  
Nairobi, Kenya.

Sir,

I, the undersigned, hereby apply for a certificate to the effect that the enterprise described hereunder, in which my assets have been/are to be invested, is an approved enterprise within the meaning of the above Act.

A. - DETAILS OF THE APPLICANT

1. Full name .....

(Write the name of the foreign investor)

2. Permanent postal address .....

.....

(State the address to which correspondence can be directed.)

3. Nationality .....

B. - DETAILS OF THE ENTERPRISE

4. Title .....

.....

(State the name of the enterprise in which the investment has been/is to be made)

- 5. Location .....  
.....  
(The area within which the enterprise is established)
- 6. Description .....  
(Full details of nature and type of enterprise)
- 7. Capital Structure .....  
.....  
(Give full details of the authorized and issued capital of the enterprise in Kenya)

Note : - This statement must be corroborated by a certificate in suitable form by the auditors to the enterprise.

- 8. (a) For an enterprise incorporated in Kenya state -
  - (i) Registration N° .....
  - (ii) Date of registration .....
- (b) For an enterprise incorporated outside Kenya state -
  - (i) Country of Incorporation .....
  - (ii) Kenya Registration N° .....  
and Date .....

C. - DETAILS OF THE INVESTMENT

- 9. Foreign assets invested .....  
.....  
.....
- 10. Proportion of applicant's foreign investment to total investment .....  
.....

11. If the investment was/is to be in the form of Shares or Stock, give full details of NUMBER, AMOUNT and TYPE .....

.....  
.....

12. The foreign currency in which the investment was/is to be made .....

.....

Note : - This statement must be supported by acceptable documentary evidence such as a banker's certificate, etc.

13. Period within which the foreign assets are to be fully invested .....

.....

14. Name and address of Kenya Bankers .....

.....

D. - GENERAL

15. Any other relevant information which might assist in consideration of the application (note should be given here of any Treasury (Exchange Control) reference by which approved status has previously been granted)

.....  
.....  
.....  
.....  
.....  
.....

DECLARATION

I, ..... hereby  
declare that the details stated above are, to the best  
of my knowledge and belief, correct.

Date ..... Signature of Applicant .....

---

FOR OFFICIAL USE ONLY

Application received .....

Reference N° .....

Initials .....

Banker's Certificate .....

Auditors Certificate .....

Registration Certificate .....

Approved/Not approved. Initials .....

Approved Certificate N° .....

Issued on .....

REMARKS :

FORM "B"

(to be used for investment in a  
PROPOSED enterprise)

APPLICATION FOR CERTIFICATE OF APPROVED ENTERPRISE

Foreign Investments Protection Act, 1964

To : The Permanent Secretary,  
The Treasury,  
P.O. Box 30007  
Nairobi, Kenya.

Sir,

I, the undersigned, hereby apply for a certificate to the effect that the proposed enterprise described hereunder, in which my assets are to be invested, is an approved enterprise within the meaning of the above Act.

A. - DETAILS OF THE APPLICANT

1. Full name .....

of .....

(Write the names of foreign investors)

2. Permanent postal address .....

.....

(State the address to which correspondence can be directed in Kenya)

3. Nationality .....

B. - DETAILS OF THE ENTERPRISE

4. Title .....

.....

(State the name of the enterprise in which the investment is to be made)

5. Location .....

(The area within which the enterprise is to be established)

6. Description .....

(Full details of nature and type of enterprise)

7. (a) Proposed Capital Construction .....

(Distinguish between \* loan, debenture, preference and ordinary  
\* Terms of loan to be stated)

(b) Programme for Issuing Capital .....

(c) Subscription by : -

(i) Foreign Nationals .....

(ii) Kenya Citizens .....

(Give names and permanent residential addresses together with amounts and categories in 7 (a))

(d) Methods of subscription .....



(State whether cash, machinery, and materials, semi-finished goods, provisions of patented processes, technical services, etc., by subscribers in 7 (c) (i) and (ii)

8. Proportion of applicant's foreign investment to total investment .....

9. The foreign currency in which the investment is to be made .....

10. Objects of the enterprise .....

(Describe fully in the initial stages and subsequently)

11. Anticipated benefits to the economy .....

(E.g., increase of exports of saving of imports, new technical progress, employment of local labour, etc.)

12. Estimated annual turnover and profits during first, second and third years of operation .....

13. Period within which the foreign assets are to be fully invested .....

14. Name and address of Kenya Bankers .....

C. - GENERAL

15. Any other relevant information which might assist in consideration of the application .....

DECLARATION

I, ..... hereby declare that the details stated above are, to the best of my knowledge and belief, correct.

Date ..... Signature of Applicant .....

Important Note : - Any certificate issued under section 3 of the Act, as a result of this application, is liable to be revoked unless -

- (a) satisfactory documentary evidence is produced within the period stipulated, regarding receipt of the foreign assets ;
- (b) particulars of the Kenya registration of the enterprise are lodged with the Treasury as soon as registration is effected.

---

FOR OFFICIAL USE ONLY

Application received .....  
Reference N° .....  
Initials .....  
Registration particulars received .....  
Banker's Certificate .....  
Auditors Certificate .....  
Approved/Not approved Initials .....  
Approved Certificate N° .....  
Issued on .....

CERTIFICATE OF APPROVED ENTERPRISE  
Foreign Investments Protection Act, 1964

Certificate N° .....

To : .....  
.....  
.....

Sir,

Reference your application .....

In accordance with section 3 of the Foreign Investments Protection Act, 1964, the undermentioned certificate of APPROVED ENTERPRISE is issued.

1. Name of Holder .....

2. Name and Description of Enterprise .....  
.....

3. Total Investment of Enterprise :

Sh. .... of which

(a) Amount of Foreign Investment :

(i) Capital : (See (b) below) .. .. Sh. ....

(ii) Loan : .. .. . Sh. ....

is acknowledged.

(b) The Capital of Sh. .... has been recognized by the issue of ..... Shares of Sh. .... each in your favour.

4. The Foreign Investment is recognized as having been made in ..... currency.

5. The foregoing certificate is issued subject to your complying with the General condition specified hereunder.

.....  
.....

Note : -

- (1) This certificate is issued subject to a certificate being received in due course from your Kenya Bankers certifying that the money has been received from outside Kenya.
- (2) Loan interest at the rate of ..... per cent is agreed for ..... years payable on ..... on each year.

Note : - Residents of the non-scheduled territories are required to comply with the Exchange Control Act (Cap. 113).

CERTIFICATE OF APPROVED ENTERPRISE

Foreign Investments Protection Act, 1964

ADDENDUM N° ..... TO CERTIFICATE OF  
APPROVED ENTERPRISE N° .....

To : .....  
.....  
.....

Sir,

Receipt is acknowledged of your Banker's certificate dated ..... wherein it is certified that the sum of Sh. .... has been received in Kenya from .....

A copy of this certificate has been sent to your Bankers for their information.



KINGDOM OF LESOTHO

ACT

To provide tax incentives for approved manufacturers and related industries, hotel and casino-keepers, and building companies establishing or expanding their operations in Lesotho ; to establish a Pioneer Industries Board to grant such approval subject to the agreement of the Minister responsible for commerce and industry ; and to provide for related or connected matters.

Enacted by the Parliament of Lesotho.

1. This Act may be cited as the Pioneer Industries Encouragement Act 1969 and shall be deemed to have commenced on the 1st day of August 1968.
2. (1) In this Act unless the context otherwise requires -
  - "Act" means this Act and any regulations made thereunder ;
  - "approved existing manufacturer" has the meaning ascribed thereto in section 13 ;
  - "approved hotel or casino-keeper" has the meaning ascribed thereto in section 15 ;
  - "approved building company" has the meaning ascribed thereto in section 17 ;
  - "approved manufacturer" has the meaning ascribed thereto in section 7 ;
  - "Board" means the Pioneer Industries Board established by section 3 ;
  - "Collector" means the Collector of Income Tax appointed in terms of section 3 of the Income Tax (Consolidation) Proclamation, or the public officer charged with the collection of tax by the law generally governing tax on income of companies ;
  - "company" means a company registered in accordance with the laws of Lesotho and includes an external company so registered ; "Lesotho company" has an identical meaning but excludes an external company even though registered ;
  - "date of production" means the date on which an



approved manufacturer commences to produce a product in marketable condition and quantity or a service pursuant to an approval in terms of section 7 ;

"Minister" means the Minister responsible for commerce and industry ;

"regulation" means a regulation made under section 24, and

"year" means a period of twelve months commencing on any specified date.

- (2) The Board shall consist of the following persons or their context otherwise requires, expressions shall have the same respective meanings as are ascribed thereto in the law generally governing tax on income of companies.
3. (1) There is hereby established a Board to be known as the Pioneer Industries Board.
- (2) The Board shall consist of the following persons or their respective representatives -
    - a) the public officer responsible for commerce and industry ;
    - b) the Secretary to the Cabinet ;
    - c) the public officer responsible for finance ;
    - d) the public officer responsible for economic planning ;
    - e) the public officer responsible for works ; and
    - f) the Managing Director of the Lesotho National Development corporation.
  - (3) The Board is empowered to co-opt any competent person to advise it during its deliberations.
  - (4) The Board shall be competent to transact its business if four of the members are present.
  - (5) The Chairman of the Board shall be the public officer responsible for commerce and industry or his representative, and in the event of an equity of votes the Chairman shall have a second or casting vote.

4. The powers and duties of the Board are to exercise such powers and perform such duties as are required by this Act, or as the Minister lawfully confers or requires pursuant to this Act.
5. Subject to this Act, the Board shall determine its own procedure and the conduct of its business.
6. The provisions of this Act shall apply notwithstanding any provision to the contrary contained in the Income Tax (Consolidation) Proclamation or in any other law generally governing tax on income of companies.
7. (1) The Board may in its discretion, but subject to the agreement of the Minister, approve an applicant as eligible for tax incentives in terms of section 8 if that applicant -
  - a) is registered as a Lesotho company or as a co-operative society in accordance with the laws of Lesotho, and is in possession of any licence required in respect of the manufacturing referred to in paragraph (b) ;
  - b) undertakes to establish a new factory or plant in Lesotho engaging in manufacturing, or in a process which the Board deems similar to manufacturing (or has established such a new factory or plant, with a date of production subsequent to the commencement of this Act) ; and
  - c) satisfies the Board that it will contribute to the economic development of Lesotho.
- (2) An approval under subsection (1) shall specify the activities to which it is applicable and an applicant approved, with the agreement of the Minister, shall be referred to as an "approved manufacturer" in respect of such activities.
- (3) Subject to the agreement of the Minister, the Board may specify such conditions in respect of the approval of an applicant under this section as it determines to be in the interests of the economy or public weal of Lesotho or of the particular industry concerned.
- (4) An approval under subsection (1) shall expire if the date of production of the approved manufacturer does

not occur prior to a date three years from the date of approval (or prior to such later date as the Board may allow), but in any case not later than the 1st day of January 1978.

- (5) For the purposes of this section, the expression "new factory or plant" means a factory or plant composed, to an extent acceptable to the Board, of machinery and equipment (whether new or used) which have not been used previously in Lesotho and of new or unused buildings, which machinery, equipment and buildings are not, in the opinion of the Board, directly replacing machinery, equipment and buildings presently within Lesotho.
8. (1) Subject to this Act, an approved manufacturer may elect either -
    - a) to be exempt, for a period of six years from its date of production, from the charge, levy and payment of tax on income of companies in respect of income received by or accrued to it or in its favour from activities to which the approval under section 7 is applicable ; or
    - b) for the purpose of ascertaining its taxable income, to deduct the amounts specified in section 10.
  - (2) An approved manufacturer shall indicate in writing to the Collector on or before its date of production (or, in the case of an approved manufacturer having a date of production prior to the publication of this Act in the Gazette, on or before such date as the Collector may specify), whether it elects to receive tax benefits in accordance with paragraph (a) or paragraph (b) of subsection (1).
9. (1) Subject to this Act, an approved manufacturer electing to receive tax benefits in accordance with paragraph (a) of subsection (1) of section 8 shall ascertain its taxable income for each year of assessment in accordance with the provisions of the law generally governing tax on income of companies, but no tax on income shall be charged, levied or paid on taxable income to which any exemption provided by section 8 is applicable.

- (2) Where the last day of any period of exemption granted to an approved manufacturer falls within a period, otherwise than on the last day thereof, for which it is required to make a return of income in accordance with the provisions of the law generally governing tax on income of companies, the Collector shall apportion on a time basis the income or loss shown by the return so as to determine the amount thereof which is attributable to the last part-year of the exemption period.
- (3) An assessed loss incurred by an approved manufacturer in respect of a year to which an exemption provided by section 8 is applicable, including any loss attributable to the exemption period in accordance with the foregoing subsection, shall be carried forward and set off, as soon as may be, against the income of that manufacturer arising after the exemption period has expired :

Provided that, where any income of the approved manufacturer has been exempted from tax under the provisions of section 8, the total amount of any loss to be so carried forward and set off shall be limited to any excess of the aggregate of all such assessed or attributable losses arising during the exemption period, over the aggregate of all such exempted income.

- (4) Subject to the provisions of the next following subsection, taxable income shall be ascertained in respect of a year of assessment, or portion thereof, subsequent to the period of exemption as if all amounts had been deducted by the manufacturer during the period of exemption to the fullest extent allowable in terms of the law generally governing tax on income of companies.
  - (5) Where, under the law generally governing tax on income of companies, a special allowance for depreciation of any asset falls to be made in the year of assessment during which that asset is first brought in to use, being an allowance which is additional to any annual allowance to be made for the depreciation of that asset in that year, such special allowance shall be left out of account in applying the provisions of subsections (1) and (4) of this section.
10. (1) Subject to this Act, an approved manufacturer elect-

ing to receive tax benefits in accordance with paragraph (b) of subsection (1) of section 8 shall ascertain its taxable income for each year of assessment in accordance with the provisions of the law generally governing tax on income of companies, but, for the purpose of ascertaining its taxable income, may deduct the following amounts : -

- a) in respect of machinery and equipment (whether new or used) which has not been used previously in Lesotho and which, during the year of assessment and prior to the 1st day of January 1978, is brought into use and used for carrying out activities to which an approval under section 7 is applicable, an allowance (to be known as the machinery write-off allowance) for that year of assessment equal to one hundred per cent of the capital cost to that manufacturer of such machinery or equipment :

Provided that any depreciation deduction set forth in the law generally governing tax on income of companies shall not apply to machinery or equipment to which the machinery write-off allowance is applicable so long as that machinery or equipment is owned by the same company ;

- b) in respect of machinery and equipment qualifying for the machinery write-off allowance, a further allowance (to be known as the machinery investment allowance) in the same year of assessment equal to forty-five per cent of the capital cost calculated in respect of that machinery write-off allowance :

Provided that any investment or similar allowance set forth in the law generally governing tax on income of companies shall not apply to machinery or equipment to which this machinery investment allowance is applicable ;

- c) (i) in respect of a new or unused building (other than a dwelling) or an improvement thereto which, during the year of assessment and prior to the 1st day of January 1978, is brought into use and used for carrying out activities to which an approval under section 7 is applicable, an allowance (to be known as the building initial allowance) equal to fifty per cent of the capital cost

to that manufacturer of such building or improvement :

Provided that any depreciation deduction set forth in the law generally governing tax on income of companies shall not apply to a building or improvement to which the building initial allowance is applicable so long as that building or improvement is owned by the same company and used for carrying out activities to which an approval under section 7 is applicable ;

- (ii) in respect of a building or improvement which has qualified, in a previous year of assessment, for the building initial allowance in respect of the same manufacturer and which, during the year of assessment, is used for carrying out activities to which an approval under section 7 is applicable, an allowance (to be known as the building depreciation allowance), in each of the twenty years subsequent to the year of assessment during which the building initial allowance was applicable, equal to five per cent of the capital cost to that manufacturer of that building or improvement less the amount of the building initial allowance received by that manufacturer in respect thereof ;
- d) in respect of a building or an improvement thereto qualifying for the building initial allowance, a further allowance (to be known as the building investment allowance) in the same year of assessment equal to twenty-five per cent of the capital cost to that manufacturer of that building or improvement ;
- e) (i) in respect of a new or unused dwelling which, during the year of assessment and prior to the 1st day of January 1978, is brought into use and used for the exclusive occupation of a person or the household of a person who is an employee of that manufacturer and employed by it for carrying out activities to which an approval under section 7 is applicable, an allowance (to be known as the industrial housing initial allowance)

equal to twenty per cent of the capital cost to that manufacturer of that dwelling ;

Provided that any depreciation deduction set forth in the law generally governing tax on income of companies shall not apply to a dwelling to which the industrial initial allowance is applicable so long as that dwelling is owned by the same company ;

- (ii) in respect of a dwelling which has qualified in a previous year of assessment, for the industrial housing initial allowance in respect of the same manufacturer and which, during the year of assessment, is used for the exclusive occupation of a person or the household of a person who is an employee of that manufacturer and employed by it for carrying out activities to which an approval under section 7 is applicable, an allowance (to be known as the industrial housing depreciation allowance), in each of the four years subsequent to the year of assessment during which the industrial housing initial allowance was applicable, equal to twenty-five per cent of the capital cost to that manufacturer of that dwelling less the amount of the building initial allowance received by that manufacturer in respect thereof ;
- f) in respect of a dwelling qualifying for the industrial housing initial allowance, a further allowance (to be known as the industrial housing investment allowance) in the same year of assessment equal to twenty-five per cent of the capital cost to that manufacturer of that dwelling ;
- g) during the year of assessment and prior to the 1st day of January 1980, an allowance (to be known as the utilities and transportation allowance) equal to fifteen per cent of the cost to that manufacturer -
  - (i) of electric power, water or sewerage services used by that manufacturer for carrying out activities to which an approval under section 7 is applicable ; and

(ii) of transporting within Lesotho, Botswana, Swaziland or the Republic of South Africa materials, goods or articles used by that manufacturer for carrying out activities to which an approval under section 7 is applicable, or goods or articles manufactured or produced by activities to which such an approval is applicable, so long as such cost qualifies for deduction from that manufacturer's income as a loss or outgoing incurred by it in the production of income under the law generally governing tax on income of companies ;

h) an allowance (to be known as the citizen training allowance) equal to one hundred and ten per cent of the cost to that manufacturer, during the year of assessment and prior to the 1st day of January 1980, of the tuition, room and board at any educational institution (or in any practical attachment course) recognised by the Collector in respect of a Lesotho citizen who is an employee of that manufacturer and is or will be employed by it for carrying out activities to which an approval under section 7 is applicable :

Provided that no deduction that may be set forth in the law generally governing tax on income of companies shall apply to tuition, room or board to which the citizen training allowance is applicable ; and

i) an allowance (to be known as the citizen wage allowance) equal to ten per cent of the cost to that manufacturer, during the year of assessment and prior to the 1st day of January 1980, of the wages or salary paid to a Lesotho citizen by reason of that citizen being an employee of that manufacturer and being employed by it for carrying out activities to which an approval under section 7 is applicable, so long as such cost qualifies for deduction from that manufacturer's income as a loss or outgoing incurred by it in the production of income under the law generally governing tax on income of companies.

(2) For the purposes of subparagraphs (i) and (ii) of paragraph (e) of the preceding subsection "an employee", in relation to an approved manufacturer which is a company, does not include a person who



is a director of that company, or who controls directly or indirectly more than 10 per centum of the votes of the members of that company in general meeting.

11. No deduction provided for in section 10 shall be allowed in respect of machinery or equipment, a new or unused building or improvement thereto, or a new or unused dwelling which in the opinion of the Collector is directly replacing machinery or equipment, a building or improvement thereto, or a dwelling previously or presently within Lesotho :

Provided that the Collector may allow such a deduction to the extent that in his opinion such machinery or equipment, new or unused building or improvement thereto, or new or unused dwelling constitutes an improvement over the machinery or equipment, building or improvement thereto or dwelling being replaced, but other than to the extent that such improvement is brought about by the replacement of items whose value has been diminished by reason of wear and tear.

12. There shall be set off by an approved manufacturer electing to receive tax benefits in accordance with paragraph (b) of subsection (1) of section 8 any balance of assessed loss incurred by it (whether by reason of the special deductions provided in section 10 or otherwise) in any previous year which has been carried forward from the preceding year of assessment, to the same extent as is allowed by the law generally governing tax on income of companies.
13. (1) The Board may in its discretion, but subject to the agreement of the Minister, approve an applicant as eligible for the tax incentives provided in section 14 if that applicant -
- a) is registered as a Lesotho company or as a co-operative society in accordance with the laws of Lesotho, and is in possession of any licence required in respect of the factory or plant referred to in paragraphs (b) and (c) ;
  - b) owns a factory or plant in Lesotho engaging in manufacturing or in a process which the Board deems similar to manufacturing ;
  - c) undertakes to expand that factory or plant ;  
and

- d) satisfies the Board that such expansion will contribute to the economic development of Lesotho.
  - (2) An approval under subsection (1) shall specify the activities to which it is applicable and an applicant approved, with the agreement of the Minister, shall be referred to as an "approved existing manufacturer" in respect of such activities.
  - (3) Subject to the agreement of the Minister, the Board may specify such conditions in respect of the approval of an applicant under this section as it determines to be in the interests of the economy or public weal of Lesotho or of the particular industry concerned.
14. (1) Subject to this Act, an approved existing manufacturer shall ascertain its taxable income for each year of assessment in accordance with the provisions of the law generally governing tax on income of companies, but may, for the purpose of ascertaining its taxable income, deduct in like manner and to the same extent as though it were an approved manufacturer, in respect of its activities to which an approval under section 13 is applicable (provided that the proposed expansion is completed prior to a date two years from the date of such approval, or prior to such later date as the Board may allow) the following allowances -
- a) the machinery write-off allowance and the machinery investment allowance in respect of machinery and equipment ;
  - b) the building initial allowance and the building investment allowance in respect of a building or an improvement thereto ;
  - c) the building depreciation allowance in respect of a building or an improvement thereto ;
  - d) the industrial housing initial allowance and the industrial housing investment allowance in respect of a dwelling ;
  - e) the industrial housing depreciation allowance in respect of a dwelling ;  
and
  - f) the citizen training allowance in respect of training.

- (2) The provisions of section 11 and section 12 shall apply, mutatis mutandis, in respect of an approved existing manufacturer eligible to receive deductions by reason of section 13.
15. (1) The Board may in its discretion, but subject to the agreement of the Minister, approve an applicant as eligible for the tax incentives provided in section 16 if that applicant -
- a) is registered as a Lesotho company or as a co-operative society in accordance with the laws of Lesotho, and is in possession of an hotel liquor licence or a casino licence in respect of the hotel or casino referred to in paragraph (b) ;
  - b) undertakes to establish, or has established subsequent to the commencement of this Act, a new hotel or casino in Lesotho, or, being the owner of an hotel or casino presently doing business in Lesotho, undertakes to expand that hotel or casino ; and
  - c) satisfies the Board that the establishment or expansion of such hotel or casino will contribute to the economic development of Lesotho.
- (2) An approval under subsection (1) shall specify the activities to which it is applicable and an applicant approved, with the agreement of the Minister, shall be referred to as an "approved hotel-keeper" or as an "approved casino-keeper", as the case may be, in respect of such activities.
- (3) Subject to the agreement of the Minister, the Board may specify such conditions in respect of the approval of an applicant under this section as it determines to be in the interests of the economy or public weal of Lesotho or of the tourist industry.
16. (1) Subject to this Act, an approved hotel or casino-keeper shall ascertain its taxable income for each year of assessment in accordance with the provisions of the law generally governing tax on income of companies, but may, for the purpose of ascertaining its taxable income, deduct in respect of its activities to which an approval under section 15 is applicable (provided that the proposed establishment or expansion is completed prior to a date two years

from the date of such approval, or prior to such later date as the Board may allow) the following allowances : -

- a) the machinery write-off allowance and the machinery investment allowance (subject to the provisos thereto) in respect of machinery, implements, utensils, furnishings, and articles (whether new or used) which have not been used previously in Lesotho and which during the year of assessment and prior to the 1st day of January 1978, are brought into use and used by the approved hotel or casino-keeper for carrying out activities to which an approval under section 15 is applicable ;
  - b) the building initial allowance (subject to the proviso thereto) and the building investment allowance in respect of a building (other than a dwelling for an employee of the approved hotel or casino-keeper) or an improvement thereto which, during the year of assessment and prior to the 1st day of January 1978, is brought into use and used by the approved hotel or casino-keeper for carrying out activities to which an approval under section 15 is applicable ;
  - c) the building depreciation allowance in respect of a building (other than a dwelling for an employee of the approved hotel or casino-keeper) or an improvement thereto which has qualified, in a previous year of assessment, for the building initial allowance in respect of the same hotel or casino-keeper and which, during the year of assessment, is used for carrying out activities to which an approval under section 15 is applicable ;
  - d) the industrial housing initial allowance, the industrial housing investment allowance and the industrial housing depreciation allowance in respect of a dwelling, in like manner and to the same extent as though the hotel or casino-keeper were an approved manufacturer.
- (2) For the purposes of paragraphs (b) and (c) of subsection (1) of this section "an employee", in relation to an approved hotel or casino-keeper which is a company, includes any officer of that company.

- (3) The provisions of section 11 and section 12 shall apply, mutatis mutandis, in respect of an approved hotel or casino-keeper eligible to receive deductions by reason of section 15.
17. (1) The Board may in its discretion, but subject to the agreement of the Minister, approve an applicant as eligible for the tax incentives provided in section 18 if that applicant -
- a) is registered as a Lesotho company or as a co-operative in accordance with the laws of Lesotho, and is in possession of any licence required in respect of the construction referred to in paragraph (b) ;
  - b) undertakes to construct, own and lease -
    - (i) dwellings in Lesotho at a capital cost to it of not less than 100,000 rands ; or
    - (ii) one or more industrial buildings in Lesotho to such standards and in such place or places as the Board may approve ; and
  - c) satisfies the Board that the construction of such dwellings or industrial buildings will contribute to the economic development of Lesotho.
- (2) An approval under subsection (1) shall specify the activities to which it is applicable and an applicant approved, with the agreement of the Minister, shall be referred to as an "approved building company" in respect of such activities.
- (3) Subject to the agreement of the Minister, the Board may specify such conditions in respect of the approval of an applicant under this section as it determines to be in the interests of the economy or public weal of Lesotho.
18. (1) Subject to this Act, an approved building company shall ascertain its taxable income for each year of assessment in accordance with the provisions of the law generally governing tax on income of companies, but may, for the purpose of ascertaining its taxable income, deduct from income received by or accrued to it or in its favour from the lease of dwellings or industrial buildings to which an approval under section 17 is applicable (provided that the proposed

dwellings or industrial buildings are completed prior to a date two years from the date of such approval, or prior to such later date as the Board may allow) the following allowances -

a) in respect of dwellings -

(i) the industrial housing initial allowance (subject to the proviso thereto) and the industrial housing investment allowance in respect of a new or unused dwelling which, during the year of assessment and prior to the 1st day of January 1978, is brought into use, owned and leased by the approved building company pursuant to an approval under section 17 ; and

(ii) the industrial housing depreciation allowance in respect of a dwelling which has qualified for the industrial housing initial allowance in a previous year of assessment and which during the year of assessment is owned and leased by the approved building company pursuant to an approval under section 17.

b) in respect of an industrial building -

(i) the building initial allowance (subject to the proviso thereto) and the building investment allowance in respect of a building or an improvement thereto ;

(ii) the building depreciation allowance in respect of a building or an improvement thereto, in like manner, and to the same extent as though the approval under section 17 were an approval under section 7, and as though the leasing of such building had the effect of bringing it into use for carrying out approved activities.

(2) For the purposes of this section, the income of a company from which any allowance herein provided may be deducted shall, where the company owns more than one industrial building, or dwellings and one or more industrial buildings, being buildings or dwellings to which an approval is applicable under section 17, be taken to be the income received by or accrued to or in favour of that company from all such buildings and dwellings, as though they together constituted a single source of such income.

(3) The provisions in section 11 and section 12 shall apply, mutatis mutandis, in respect of an approved building company eligible to receive deductions by reason of section 17.

19. There shall be included in a taxpayer's income all amounts allowed to be deducted under the provisions of this Act, for the purpose of ascertaining that taxpayer's taxable income, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment :

Provided that all amounts which in terms of this subsection are required to be included in a taxpayer's income shall be deemed to have been received by or to have accrued to or in favour of the taxpayer from a source within Lesotho notwithstanding that such amounts may have been recovered or recouped outside Lesotho.

20. (1) In the case of any asset for which an allowance has been given under a provision of this Act, if -
- a) the asset ceases to be used for the purposes contemplated by the Board when granting the relevant approval under subsection (1) of section 7 ;
  - b) the asset is not disposed of by the owner thereof but is used in some other trade or business of the owner ; and
  - c) it appears equitable to the Collector that further deductions for depreciation of the asset should be made in computing taxable income arising from that other trade or business,

the Collector may treat the total of the allowances made under this Act in respect of the asset as though they had been made under the law generally governing tax on income of companies, and may grant such further annual deductions for depreciation of the asset as are not inconsistent with such law.

- (2) Upon the revocation of any approval by the Board in terms of this Act, an asset for which an allowance has been given pursuant to that approval shall be deemed no longer to be used for the purposes mentioned in paragraph (a) of subsection (1) of this section.

21. (1) Subject to the provisions of subsection (2) of this section, the capital cost of any asset shall be taken to be the price paid therefor by the purchaser.
- (2) Where the contract for purchase of an asset which qualifies for any allowance under the provisions of this Act has not been concluded on ordinary commercial terms by a purchaser and vendor dealing with each other at arms length, and the vendor is not subject to any tax in Lesotho, on income or in respect of any recoupment of allowances arising to him by reason of such contract, the Collector may determine the capital cost of the asset for all the purposes of this Act to be its fair market value at the date of its purchase, or the price paid therefor, whichever amount is the lower.
22. (1) Notwithstanding any provision to the contrary in any law contained, no transfer duty shall be imposed or be payable in respect of the acquisition of property by an approved manufacturer, an approved existing manufacturer, or an approved hotel or casino-keeper for carrying out activities to which an approval under section 7, section 13 or section 15 is applicable :
- Provided that this exemption shall not apply to any portion of a lease in excess of twenty years.
- (2) For the purpose of this section, "property" shall have the same meaning as is ascribed thereto in the law generally governing imposition and payment of transfer duty.
23. (1) Where an approved manufacturer, an approved existing manufacturer, an approved hotel or casino-keeper or an approved building company fails to comply substantially with any conditions specified in respect of such approval under subsection (3) of section 7, subsection (3) of section 13, subsection (3) of section 15, or subsection (3) of section 17, respectively, the Board may call upon such person to show cause why that approval should not be revoked.
- (2) If such manufacturer, hotel or casino-keeper, or building company fails to show such cause to the satisfaction of the Board, the Board, subject to the agreement of the Minister, may revoke such



approval, and any tax incentives pursuant to that approval, from such date as it may decide or may amend such approval or the conditions thereof, as it deems fit.

24. The Minister may by Notice in the Gazette make regulations for carrying out the purposes, principles and provisions of this Act, and may, without prejudice to the generality of the foregoing, make regulations prescribing the manner in which application is to be made for an approval under section 7, 13, 15 or 17, the manner in which an approval shall be granted and issued, and the forms of an approval.



REPUBLIC OF LIBERIA

AN ACT AMENDING THE INVESTMENT INCENTIVE CODE  
OF THE REPUBLIC OF LIBERIA

The Senate and the House of Representatives of the  
Republic of Liberia Legislature Assembled :

Recognizing The great benefits derived from the Open Door Policy of Liberia which provides for non-nationalization of private enterprise, free movement of capital including the repatriation of dividends and also of the capital originally invested in the case of change of ownership or termination of enterprise as well as facilitating the employment of the necessary foreign technical and managerial personnel together with unstricted home transfer of savings of such personnel ;

In compliance with the strategy of integrated national development oriented to a balanced development of the nation's human and natural resources, maximum participation of all the people in the national development effort and consequent widespread participation in the benefits of development ;

Recognizing industrial development as one of the essential means of achieving the fullest possible utilization of the nation's potentials through:

- employment generation at all levels,
- expansion and diversification of production,
- contributing to fastest possible economic growth, and
- improving the country's balance-of-payments position ;

Being aware of the need for an active industrialization policy in order to achieve the above objectives, encouraging the establishment and expansion of industrial activities which :

- utilize to the highest possible extent Liberian manpower at all levels and contribute to advancing their skills through training schemes (on-the-job and otherwise),

- utilize raw materials and products of Liberian origin to the maximum possible extent,
- utilize to a maximum extent ancillary activities available in the productive and service sectors of Liberia,
- contribute to making Liberia independent of importation of basic necessities as far as it is economically feasible,
- contribute to the expansion and diversification of Liberia's exports,
- contribute to a wholesome distribution of employment opportunities all over the country ;

Bearing in mind the intention of Liberia to expand trade relations and broaden economic--and more specifically : industrial--cooperation with other African countries ; and

Convinced that the Investment Incentive Code adopted in 1966 has been a valuable instrument in stimulating industrial development and that further improvement in the light of present circumstances will make it even more valuable in the future :

It is enacted by the Senate and the House of Representatives of the Republic of Liberia in Legislature Assembled :

#### Section 1.

That from and immediately after the passage of this Act, the Investment Incentive Code is hereby amended and the revised Code below recited word for word is hereby adopted as the Investment Incentive Code of the Republic of Liberia.

### INVESTMENT INCENTIVE CODE

#### Section 2.

##### Definitions

As used in this Act, unless the context otherwise requires, the following terms shall mean :

"Incentives" - Certain customs duty, income tax and other benefits which the Government is to offer under this Act to new and expanding business enterprises for the purposes of promoting the economic growth and development of Liberia.

"Project proposal" - The final plan describing the planned Operation, the required investment and containing projected balance sheets and profit statements. The project proposal also contains the incentives requested. The project proposal is submitted along with a draft Investment Incentive Contract as proposed by the Sponsor. When approved, the project proposal becomes a part of the Investment Incentive Contract.

"Investment Incentive Contract" - a Contract, supported by the approved Project Proposal, between the Government of the Republic of Liberia and the Sponsor of an Investment Project setting out the customs duty, income tax and other benefits (Incentives) granted by the Government of the Republic of Liberia in respect of an Investment Project.

"Approved Investment Project" - an Investment Project in respect of which an Investment Incentive Contract has been signed by the Government of the Republic of Liberia and the Sponsor. An Investment Project may become an Approved Investment Project whether the project is a completely new enterprise or the essential expansion of an existing enterprise where essential expansion shall mean an increase of existing facilities through an incremental investment amounting to at least 25 percent of the sum total of capital hitherto invested and associated with commensurate increase in employment.

"Sponsor" - One or more person(s), partnership(s), corporation(s) or other entity (entities) or any combination thereof that undertake, finance and operate an Approved Investment Project in Liberia. The term Sponsor shall

include sponsor or assignee if the assignment is made in accordance with Section 15 of this Act.

"Approved Imports" - Capital, plant and equipment, machinery and know-how imported for use in creation of the facilities for an Approved Investment Project ; furthermore, raw materials, semi-finished products, auxiliary materials and other supplies required in the production processes of the final products. Goods which are being produced in Liberia in sufficient quantity and which are approximately equal in quality and price to goods intended to be imported as determined by the Government shall be excluded from Approved Imports. Goods considered by the Sponsor as Approved Imports shall be specified in the Project Proposal and in the case of existence of competing local supplies, the onus of verifying insufficiency of such shall rest with the Sponsor and be detailed in the Project Proposal.

### Section 3.

#### The Application of this Act

- (1) Incentives may be granted to Sponsors undertaking Approved Investment Projects in Liberia, that :
  - process, fabricate, manufacture finished and semi-finished goods from raw materials and/or assemble finished goods from component parts, i.e., enterprises of the Manufacturing Sector.
- (2) Incentives may also be granted to Sponsors undertaking other Approved Investment Projects in Liberia, that belong to the Sector of :
  - a) Agriculture, Forestry and Fishing, or
  - b) Mining and Quarrying ; or
  - c) Electricity, Gas and Water, to the extent that this is not contrary to the Public

Authorities Law, or

- d) Building and Construction, or
  - e) Transport and Communications, or
  - f) Those Sub-Sectors of the Services Sector which provide technical services to the Sectors listed in subsection (1) and in paragraphs (a) through (e) in the present subsection, or
  - g) Those Sub-Sectors of the Trade and Catering and of the Services Sectors which provide services and supplies to Tourism.
- (3) An Approved Investment Project may be a combination of activities belonging to more than one of the Sectors and Sub-Sectors listed in subsections (1) and (2) above.
- (4) All persons or entities seeking duty, tax or other privileges as incentives for a new investment or investment into essential expansion of existing businesses in Liberia shall do so under this Act provided that all rights and privileges which have been granted to as well as obligations of enterprises doing business in Liberia prior to the enactment of this Act shall remain unaffected by the operation of this Act.
- (5) An Investment Incentive Contract shall be negotiated and signed by the Government of the Republic of Liberia with the Sponsor of an Approved Investment Project.

#### Section 4.

##### Conditions

No enterprise shall be accorded the Approved Investment Project status, that is no Incentives shall be granted unless it satisfies the following conditions :

- a) Falls within the overall priority as established by the National Planning Council,



- b) Ensures the permanent employment of Liberians at all levels, and carries out appropriate training schemes and, in case of expansion increases, employment and augments training activities in harmony with the volume of expansion,
- c) Leaves an option open for Liberians to contribute to the enterprise by purchasing shares or otherwise participating in the ownership,
- d) Produces a local value added amounting to not less than 25 percent of the value of gross output,
- e) Takes its raw material and other supplies of Liberia origin and imports only such items of which the local product is not available in sufficient quantity and/or its quality or price is not approximately equal with the intended imports as determined by the Government.

#### Section 5.

##### Incentives

- (1) Enterprises that are granted Investment Incentives Contract shall be entitled to the following customs duty benefits in respect of the approved Investment Project :
  - a) Approved Imports of machinery and equipment to be used in establishing the approved Investment Project shall be exempted from import duty up to 90 percent of the dutiable value of such imports. No exemption shall be made for construction materials and spare parts on non-capital equipment. Any equipment with less than a three-year life may be considered non-capital,
  - b) Approved Imports of raw materials, semi-finished products and other supplies used in the productive operations of the Approved Investment Project shall be exempt from import duty up to 90 percent of the dutiable value of such imports.

- c) Approved imports listed under paragraphs (a) and (b) above shall not be exempt from consular fees.
- (2) Enterprises that are granted Investment Incentives Contract shall be entitled to the following income tax benefits in respect of the Approved Investment Project :
- a) Profits reinvested into fixed assets shall be exempt from income tax ; exemption for reinvestment into housing for employees must receive prior approval from the Concession and Investment Commission (CIC),
  - b) All the remaining profits of the enterprise shall be exempt from 50 percent of the income tax that would be otherwise payable.
- (3) Enterprises that are granted Investment Incentives Contract shall be entitled to full rebate on import duties and full refund of income tax as well as of excise tax paid by them in respect of manufactured goods exported from the production of the Approved Investment Project.
- (4) Sponsors of Enterprises having Investment Incentive Contract in respect of an Approved Investment Project may be granted by the Government, upon application by the Sponsor in the Project Proposal, one or more of the following additional benefits ;
- a) The lease of available land for plant site in Government owned Industrial Park at a preferential rate during the term of lease together with all possible assistance by Government in making available other necessary infrastructural facilities,
  - b) Support in securing loans and/or contribution to equity capital of pertinent Government agencies with priority given in this respect to smaller entrepreneurs,
  - c) Reasonable tariff protection that has to be calculated so as to protect the local

ex-factory price inclusive of excise tax, if any,

- d) Loss carry-forward provisions as regulated by the income tax law of Liberia,
- e) Accelerated depreciation and an initial depreciation as regulated by the income tax law of Liberia,
- f) The Government and its Agencies shall purchase products from the production of the Approved Investment Project, provided, the quantities are sufficient and the quality and price of the products are equal to those intended to be purchased from elsewhere. The sufficiency of quantities and the similarity of equality and price of goods are to be determined by the Government of Liberia,
- g) Furthermore, an indirect benefit flows from what is stipulated in paragraph (e) in Section 4 of this Act.

## Section 6.

### Period and degree of Incentives

- (1) Incentives described in subsections (1), (2) and (3) as well as in paragraph (c) of subsection (4) in Section 5. Shall be granted for a period not exceeding five (5) years.
- (2) The beginning of this period should commence from the date of arrival of the machinery and equipment at the port in respect of Incentives under Section 5 subsection (1) and from the date when marketable production starts in respect of Incentives under Section 5 subsections (2), (3) and in paragraph (c) of subsection (4). These two dates have to be specified in the Project Proposal and in the Investment Incentive Contract.
- (3) Other Incentives described in Section 5 but not specifically mentioned in subsection (1) of this Section shall extend for the life of the Investment Incentives Contract.

- (4) The possibility of an extension of the Incentive period as described in subsections (1) and (2) above is regulated by Section 10 of this Act.
- (5) Certain Incentives may be granted fully or partially depending on the fulfilment by the Approved Investment Project of certain national development strategy criteria : such as national development priority, location, employment, linkage effects. This applies to Incentives described in subsections (1) and (2) of Section 5.

### Section 7.

#### Obligations under the Investment Incentive Contract

- (1) The Sponsor of an Approved Investment Project shall undertake the following obligations under an Investment Incentive Contract :
  - a) To implement the project substantially as described in the Project Proposal and in compliance with the terms of the Investment Incentive Contract.
  - b) To employ Liberian manpower and to select and train Liberians on a systematic basis in skills required at all levels in the Operation of the Approved Investment Project.
  - c) To ensure that at any time of the implementation and the operation of the project the outstanding risk-bearing capital of its own shall not be less than one third of the borrowed capital ; not taking into account a possible participation in stock by a public corporation or the Government of the Republic of Liberia.
  - d) To permit such audits as are necessary to ascertain compliance with the terms of the Investment Incentive Contract.

- e) To submit, at the time of filling the annual income tax return and making application for tax refund, if any, to the Concession and Investment Commission :
- (i) such reports as make it possible to judge, the compliance or otherwise with the terms of the Investment Incentive Contract and the specific obligations detailed in the present section ;
  - (ii) a copy of the latest balance sheet ;
  - (iii) a copy of the relevant profit and loss statement ;
  - (iv) a statement from the chief executive officer of the Approved Investment Project on the compliance or lack of compliance with the terms of the Investment Incentive Contract.
- (2) All reports submitted in accordance with paragraph (e) of the preceding subsection shall be considered confidential and inviolate.

## Section 8.

### Application procedures

- (1) Application for Incentives shall be addressed simultaneously to the Chairman of the Concession and Investment Commission and to the Ministry responsible for the Sector in which the Approved Investment Project is to operate. The application shall include the following :
- a) Name, address and biographical data of the Sponsor ;
  - b) Banking references ;
  - c) form of organization and domicile of the Sponsor's business;
  - d) The Project Proposal, including the nature of the business ; proposed general

location ; date proposed for commencement of operation ; land, building, machinery and equipment required and their value ; volume and value of materials and other supplies required and their proposed source of supply ; manpower required in the unskilled, skilled, technical, clerical, managerial and other categories and their proposed source or origin ; estimated total investment into fixed and working capital and the initial amount of capitalization by class of stock and other liabilities ; a proforma balance sheet and profit and loss account. All these data should be projected in respect of each of the first five (5) years of operation.

- e) The proposed dates for commencement of Incentives (see subsection (2) of section 6).
  - f) The Incentives required ; the period for which Incentives are required ; the degree of Incentives (as determined by subsection (5) of Section 6).
  - g) A technical and economic feasibility report and an analysis of the benefits to the Liberian economy in accordance with guidelines established by the Concession and Investment Commission.
- (2) The Ministry responsible for the Sector in which the Approved Investment Project is to operate shall mean :
- a) The Ministry of Commerce, Industry and Transportation in respect of Approved Investment Projects listed in subsection (1) and in paragraphs (e) and (f) of subsection (2) of Section 3.
  - b) The Ministry of Agriculture in respect of projects in paragraph (a).
  - c) The Ministry of Lands and Mines in respect of projects in paragraph (b).
  - d) The Public Utilities Authority in respect of project in paragraph (c).

- e) The Ministry of Public Works in respect of project in paragraph (d).
  - f) The Ministry of Information, Cultural Affairs and Tourism in respect of projects in paragraph (g), all of subsection (2) of Section 3.
- (3) In case a project is so combined that it falls into the category of more than one Sector, the prescribed Ministry copy of the application should be submitted to the Ministry into whose purview the Sector falls that is considered the main field of activity by the sponsor, simultaneously submitting additional copies with due cross-references to the other ministries concerned in accordance with the subsection.

#### Section 9.

##### Procedure for granting Investment Incentive Contracts

- (1) There shall be established the Concession and Investment Commission.
- (2) Upon the submission of an application and a Project Proposal the Secretariat shall evaluate the proposal taking into account the objectives of the Investment Incentive Act, the recommendations of the responsible Ministry and the likelihood that the proposed project will be able to continue profitable operations after Incentive period comes to an end. If necessary, the Project Proposal will be revised. Upon receipt of a written evaluation of the Secretariat, the Concession and Investment Commission shall vote to either reject or accept the Project Proposal. If accepted, the Minister responsible for the Sector in question shall have an Investment Incentive Contract prepared with the Sponsor of the project.
- (3) If the application for an Investment Incentive Contract indicates that the total fixed capital for the proposed investment

project is less than \$ 2,000,000.00 the vote of the Concession and Investment Commission shall submit the Investment Incentive Contract for the signature of the Minister of Finance on behalf of the Government of the Republic of Liberia. Copies of the Investment Incentive Contract shall then be submitted to the Ministry of Planning and Economic Affairs and other agencies concerned.

- (4) If the application for an Investment Incentive Contract indicates that the total fixed capital for the proposed project is \$ 2,000,000.00 or more, the Chairman of the Concession and Investment Commission shall submit the application with his recommendation, to the Chairman of the Executive Committee of the National Planning Council. The Executive Committee of the National Planning Council shall vote whether to accept or reject the granting of the Incentives for the Proposed Project and, if accepted, an Investment Incentive Contract shall be drawn up with the Sponsor. The Executive Committee of the National Planning Council shall authorize the Minister of Finance to sign the Investment Incentive Contract on behalf of the Government of the Republic of Liberia.
- (5) The Concession and Investment Commission shall be responsible for making an annual review of each Investment Incentive Contract and to make recommendation, if necessary, for cancellation of the contract to the Chairman of the Executive Committee of the National Planning Council under Section 12 of this Act.
- (6) The Secretariat of the Concession and Investment Commission shall prepare an annual report for the Executive Committee of the National Planning Council. The report shall be based on the information received under paragraph (e) of subsection (1) of Section 7 of this Act, and their opinion as to whether the operation of each project is substantially in compliance with their respective Investment Incentive Contracts.



- (7) A member of the Concession and Investment Commission or the Sponsor may appeal against a substantive decision of the Concession and Investment Commission on acceptance or rejection of a Project Proposal or a recommendation to cancel an Investment Incentive Contract. The appeal shall be directed to the Executive Committee of the National Planning Council through its Chairman.

## Section 10.

### Extension of the Incentive Period

- (1) It is the intention of this Act that no **Incentives** shall be granted to projects which will require further Incentives after the expiration of their Investment Incentive Contract.
- (2) Recognizing, however, that there may occur extenuating circumstances causing, for instance, unavoidable delays in beginning the production, an Investment Incentive Contract may be extended in part or in whole on the following conditions :
  - a) That the extension shall be viewed as a prolongation of the total five (5) years of the normal Incentive Period.
  - b) That no extension shall be made for a period longer than a maximum of two years.
  - c) That an evaluation of the original Project Proposal, the actual operation, and the plan for the period of the extension indicates that the company will be able to operate without Incentives after the expiration of the extension.
  - d) That the extension be approved in the same manner as described in Section 9 so that the procedure described in subsection (4) shall apply to all extensions regardless of the size of the investment.
  - e) That only one extension can be given.

Section 11.

Penalties

- (1) No improper use, such as sales or transfers to persons or entities or use for activities not directly related to an Approved New Investment Project shall be made of any articles imported without duty pursuant to exemption under this Act. Upon evidence of such improper use, the laws of Liberia pertaining to such violation shall apply.
- (2) Notwithstanding the provisions of subsection (1) of this Section, any articles imported without duty pursuant to a customs exemption under this Act may be sold, transferred or used for activities not directly related to Approved New Investment Project upon payment of the customs duties and other charges required to be paid on such articles if not exempted.

Section 12.

Cancellation of Investment Incentives Contracts

- (1) Applying the same procedure as on approval, the same body that approved of a Project Proposal shall cancel an Investment Incentive Contract for any of the following reasons :
  - a) Mis-representation, fraud or other illegal acts committed by the Sponsor of the Approved New Investment Project in obtaining the Contract ;
  - b) Misuse of the import duty exemption privileges ;
  - c) Liquidation of the investment ;
  - d) Failure to submit a report pursuant to paragraph (e) of subsection (1) of Section 7, provided, however, that if the Sponsor submits the required report within ninety (90) days after receiving notice of default, the requirement shall be deemed to have been fulfilled;

- e) Failure to commence operations within the time stipulated in the contract, bearing in mind the stipulations of Section 10;
- f) Failure to fulfil their obligations under the Investment Incentive Contract as described in Section 7.

### Section 13.

#### Appeals

- (1) The Sponsor shall have the right to appeal to questions of fact or law to the Circuit Court from an administrative decision under Section 11, and for reinstatement of a contract cancelled under Section 12.
- (2) In lieu of an appeal to the Circuit Court, the Government and the Sponsor may agree and so state in the Investment Incentive Contract that the appeal from an administrative decision shall be submitted to arbitration according to procedures agreed between the parties, and the decision of the arbitrators shall be final.
- (3) An appeal or submission to arbitration under this Section of an Investment Incentive Contract the cancellation of which would cause irreparable damage to the Sponsor.

### Section 14.

#### Liabilities of Sponsor

Where there are several sponsors of a New Incentive Project their liabilities to the Government under the Investment Incentive Contract shall be joint and several.

### Section 15.

#### Assignment

An Investment Incentive Contract may be assigned only with the prior written consent of the Concession and Investment Commission after agreement

with the Minister of Finance ; provided that the Contract may be assigned without written consent, to any persons, partnerships, corporations or other entities that have been specified in the Contract subject to notification to the Concession and Investment Commission that such assignment has been made.

Section 16.

Execution of the Act

The Concession and Investment Commission shall be primarily responsible for the Execution and Enforcement of this Act.

Section 17.

This Act shall take effect immediately upon publication in Hand Bills.

REPUBLIC OF MALAWI

AN ACT TO ENCOURAGE AND CONTROL THE ORDERLY PROMOTION AND DEVELOPMENT OF INDUSTRY IN MALAWI.

ENACTED by the Parliament of Malawi as follows -

1. This Act may be cited as the Industrial Development Act, 1966, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. In this Act unless a contrary intention appears -

"application" means an application for a licence in accordance with Section 4 to manufacture any product at any place in Malawi, and includes an application to manufacture a different or additional product and an application to manufacture at a different or additional place ;

"licence" means a licence to manufacture issued under this Act ;

"manufacture" means to subject physical matter to any process which materially changes it in substance, character or appearance, and includes the assembly of parts and the repair, maintenance or servicing of vehicles ;

"product" means any article, thing or substance produced as a result of any manufacturing process.

3. (1) Subject to the provisions of section 20, from and after the coming into operation of this Act, every person manufacturing for sale any product at any place in Malawi must be in possession of a licence to manufacture such product at such place, issued by the Minister under this Act.

(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and shall be liable to a fine of K 400 and to imprisonment for one year and in the case of a continuing offence shall be liable to a further fine of K 200 and imprisonment for six months in respect of each day on which the offence continues.

4. An application for a licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

5. (1) Where a person is, immediately prior to the commencement of this Act, manufacturing any product at any place in Malawi he shall be permitted a period of grace of three months from the date of such commencement in which to apply for a licence, and the Minister may in such case waive the application fee payable in respect of such application.
- (2) Upon receipt of an application under subsection (1) the Minister shall issue to the applicant, upon payment of the prescribed fee, a licence to manufacture that same product, at that same place.
6. In the case of an application not coming within the terms of section 5, the Minister shall cause such application to be published in such manner as may be prescribed.
7. An application may indicate that the applicant desires protection by the granting of a licence to manufacture a particular product, to the exclusion either generally or in respect of any part of Malawi, of other manufacturers of that product.
8. (1) Any person wishing to make representations concerning an application published in accordance with section 6 shall do so in writing to the Minister within the period specified in rules made under this Act and shall forward a copy of such representations to the applicant.
- (2) Any representations made under subsection (1) must be relevant and related to any matter referred to in section 10 (2).
- (3) The Minister may require the person making representations to give evidence in person and may invite any person to submit verbal or written evidence relating to any matter referred to in section 10 (2).
9. (1) The Minister may, if he considers in any particular case that the circumstances so warrant, appoint a person or persons to conduct an inquiry into an application and any representations made in respect thereto, and to submit a report to him.
- (2) An inquiry under this section shall be conducted in accordance with rules made by the Minister.

- (3) Where the Minister considers it desirable he may require two or more applications to be inquired into conjointly.
10. (1) After considering an application, and any representations or any report made in respect thereof, the Minister shall decide whether the application should be granted or refused, or should be granted in part and refused in part, and shall so inform the applicant in writing.
  - (2) The grounds on which the Minister may refuse to grant a licence, either absolutely or in part, shall be one or other of the following -
    - a) that the capital, technical skill or raw materials available are, in the opinion of the Minister, inadequate to secure the successful establishment and operation of the particular enterprise in which the applicant proposes to engage and that the failure of the applicant's enterprise would be likely to prejudice the successful development of the industry concerned ;
    - b) that the place at which the applicant proposes to establish a manufacturing establishment is not a suitable situation for the industry concerned ;
    - c) that a licence for the manufacture of the product which the applicant proposes to manufacture has been granted to someone else in respect of the same part of Malawi and giving exclusive protection under section 12 ;
    - d) that the granting of such a licence would not, in the opinion of the Minister, be in the best interests of the economy or public weal of Malawi or of the particular industry concerned.
  - (3) Before deciding to grant a licence, the Minister shall also be satisfied that the applicant has interests in land, buildings and machinery, or has entered into agreements or negotiations to acquire such interests, which are sufficient to ensure that the manufacture of the product concerned will commence without undue delay.
11. (1) Where the Minister decides to grant a licence he may, upon payment of the prescribed fee, issue to



the applicant a licence to manufacture the product specified in the licence at such place as shall also be specified in the licence.

- (2) Where the application is from a person already in possession of a licence, but is for a licence to manufacture a different or additional product, or for a licence to manufacture the same product at a different or additional place, the Minister may, upon payment of the prescribed fee, issue a new licence, or may amend the existing licence accordingly.
12. (1) Where the applicant has asked for protection in accordance with section 7 and the Minister has decided to grant a licence under section 11, he may, if he is satisfied that it is in the public interest and in the interests of the efficient development of the industry concerned, grant protection by excluding all other manufacture of the products in respect of which protection was requested, or one or some of such products, either in Malawi generally or in any specified part of Malawi.
  - (2) Exclusive protection may be granted in accordance with subsection (1) for any period up to but not exceeding five years but may, at the Minister's discretion, upon application in the prescribed form not less than six months before the expiry of such period, be renewed for such further period not exceeding five years as the Minister may determine.
  - (3) Where the Minister has granted exclusive protection under this section he shall not, during the period of such protection, issue any other licence which conflicts with the exclusive nature of such protection.
13. (1) Where a person to whom a licence has been issued under this Act has, in the opinion of the Minister -
  - a) failed within a reasonable time to commence to manufacture the product in respect of which the licence was issued ; or
  - b) ceased to manufacture the product in respect of which the licence was issued ;the Minister may call upon such person to show cause why the licence should not be cancelled.

- (2) If a person who, under subsection (1), has been called upon to show cause why his licence should not be cancelled, fails to show such cause to the satisfaction of the Minister, the Minister may cancel such licence from such date as he may decide or may amend such licence as he deems fit, or if exclusive protection has been attached to the licence he may remove such exclusive protection.
14.
  - (1) No licence shall be transferred from one person to another without the prior approval of the Minister.
  - (2) An application for the transfer of a licence from one person to another person shall be made to the Minister in such manner and in such form as may be prescribed.
  - (3) The Minister may, in his discretion, grant or refuse the application and may, if the application is granted, amend the licence concerned, or where exclusive protection has been attached to the licence he may remove such exclusive protection :  

Provided that a transfer shall not be permitted in the case of a licence which has been issued to a person who, at the time of the proposed transfer, has not commenced active production.
  - (4) In the case of a licence granted to a company, a transfer of the control of the company shall be deemed to be a transfer of the licence. The decision of the Minister as to whether any transaction involves the transfer of the control of a company shall be final and shall not be questioned in any court.
  - (5) Rules made by the Minister may prescribe procedure for ascertaining whether any proposed transaction will involve transfer of the control of a company for the purpose of this Act.
15. Unless earlier cancelled under section 13 or section 18, a licence issued under this Act shall be valid in the first place for the current calendar year only, but shall be renewed from year to year, upon payment of the prescribed fee.
16. The issue of a licence to any person under this Act shall not be deemed in any way to relieve the licensee from compliance with any other written law relating to the activity for which the licence was issued.

17. The Minister may make rules generally for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the foregoing, he may make rules -
- a) prescribing anything required to be prescribed under this Act ;
  - b) in respect of any matter for which he is required to make rules under this Act ;
  - c) regulating the procedure at an inquiry ordered under section 9 ;
  - d) classifying products for the purpose of the issue of licences.
18. (1) Any person who knowingly makes a false statement in any application or in connection with any matter in respect of which he is required to give information under this Act shall be guilty of an offence, and shall be liable to a fine of K 100 and to imprisonment for three months, and where a licence has been issued in connection with such false statement the court on convicting for an offence under this subsection may, at the request of the prosecution, forthwith cancel such licence.
- (2) Any person who contravenes any provision of this Act for which no other penalty is prescribed, shall be guilty of an offence and shall be liable to a fine of K 100 and to imprisonment for three months.
19. Where an offence under this act is committed by a company or other body corporate, or by a society, association or other body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.
20. (1) This Act shall apply to any manufacturing enterprise which -

- a) employs, in the aggregate, anywhere in Malawi, ten or more persons, including managers, directors or sales, clerical or other staff ; or
  - b) irrespective of the number of persons employed therein, uses any engines, motors, or other appliances providing, in the aggregate, mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or any other source, of not less than twenty five horse power.
- (2) Notwithstanding subsection (1) the Minister, may, by notice in the Gazette -
- a) declare any specified manufacturing enterprise or any description of manufacturing enterprise to be subject to this Act ; or
  - b) exempt any specified manufacturing enterprise or any description of manufacturing enterprise from the provisions of this Act.
21. The Industrial Licensing Ordinance is hereby repealed and all subsidiary legislation made thereunder is hereby revoked.

Passed in Parliament this twenty-first day of December, one thousand, nine hundred and sixty-six.

C.K.M. MFUNE  
CLERK OF PARLIAMENT

FEDERAL REPUBLIC OF NIGERIA

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :

GENERAL

1. (1) There shall continue to be a body to be known as the Nigerian Enterprises Promotion Board (in this Decree hereafter referred to as "the Board") which shall have and may exercise such functions as may be conferred on it by or under this Decree.
- (2) The Board shall have general power to advance and promote enterprises in which citizens of Nigeria shall participate fully and play a dominant role and in particular, without prejudice to the generality of the foregoing, the Board shall have power -
  - a) to advise the Commissioner on clearly defined policy guidelines for the promotion of Nigerian enterprises ;
  - b) to advise the Commissioner on measures that would assist in ensuring the assumption of the control of the Nigerian economy by Nigerians in the shortest possible time ;
  - c) to determine any matter relating to business enterprises in Nigeria generally in respect of commerce and industry that may be referred to it in accordance with any direction of the Commissioner and to make such recommendations as may be necessary on those matters in such manner as may be directed by the Commissioner ; and
  - d) to perform such other functions as the Commissioner may determine or as may be conferred on it by this Decree or any other enactment.
- (3) The members of the Board shall be appointed by the Federal Executive Council and shall comprise -
  - a) five Nigerians from outside the Public Services of the Federation or the States who shall be persons of proven integrity (one of whom shall be appointed as the Executive Chairman of the Board) ;

b) a representative each of the following Federal Ministries, that is -

- (i) Industries ;
- (ii) Finance ;
- (iii) Economic Development ;
- (iv) Trade ; and
- (v) Internal Affairs,

who shall be persons of the rank of Deputy Secretary or above ;

c) the Secretary of the Capital Issues Commission ; and

d) the Director of each of the Stock Exchanges in Nigeria.

(4) a) The Executive Chairman of the Board referred to in subsection (3) (a) above shall be appointed by the Federal Executive Council on the recommendation of the Commissioner and shall hold office on such terms as the Federal Executive Council may from time to time approve. The Executive Chairman shall preside over the meetings of the Board and shall be responsible for the day-to-day management of the affairs of the Board.

b) There shall be a Secretary of the Board who shall be appointed by the Commissioner on the recommendation of the Board and who shall be the head of the Board's Secretariat and shall be responsible to the Chairman for the efficient implementation of the Board's decisions. The Secretary shall be in attendance at all meetings of the Board.

(5) The Board shall have power to co-opt any person to attend its meetings.

(6) A member of the Board shall hold office for such period as may be specified in his instrument of appointment.

2. (1) There shall continue to be for each State a Nigerian Enterprises Promotion Committee (hereafter in this Decree referred to as "the Committee").
- (2) The Committee in each State shall consist of -
  - a) the Permanent Secretary responsible for Industries in the State who shall be chairman of the Committee ;
  - b) an officer in the Ministry of Trade ;
  - c) the Registrar of Co-operative Societies ;
  - d) six other persons to be appointed by the State Commissioner or State Commissioners, as the case may be, for trade and industries, and of the six persons at least three shall be Nigerians from outside the Public Service of the Federation or the States who shall be persons with proven experience in commerce or industry ;and members of such Committee shall hold office for such period as may be directed by the Military Governor of the State.
- (3) The Committee shall have power to co-opt any person to attend its meetings.
- (4) The Secretary of the Committee shall be an officer in the Ministry of Trade or Industry of the State or any other fit and competent person in the public service of the State appointed by the Military Governor of that State.
- (5) The principal functions of the Committee shall be -
  - a) to assist and advise the Board on the implementation of this Decree ;
  - b) to ensure that the provisions of this Decree are complied with by any alien resident or carrying on business in the State ;
  - c) to recommend to the Board such other measures as may be necessary in the opinion of the Committee to enable full effect to be given to the provisions of this Decree ; and



- d) to perform such other functions as may be assigned to it by the Board.
- (6) If in any State any office mentioned in this section does not exist or is combined with another office the reference in any provision to the office mentioned there shall be construed as a reference to that office or the offices so combined in the State which in the opinion of the Military Governor most nearly corresponds to the office so mentioned, and the decision of the Military Governor in this regard and as to the number of members of the Committee shall be final.
3. (1) Subject to such directions as may be given by the Commissioner, the Board or any Committee established by this Decree may determine its own quorum, and may, subject as aforesaid, otherwise regulate its own proceedings.
- (2) There may be paid to the members of the Board or any Committee remuneration and allowances payable in accordance with the current regulations of the Government of the Federation.
- (3) The validity of any proceedings of the Boards or of any Committee shall not be affected by -
- a) any vacancy in its membership ;
  - b) any defect in the appointment of any member ; or
  - c) the fact that any person not entitled to do so took part in the proceedings.
- (4) The expenses of the Board in the exercise of its functions shall be paid out of funds provided by the Government of the Federation.

#### PROMOTION OF NIGERIAN ENTERPRISES

4. (1) All enterprises specified in Schedule 1 to this Decree are hereby, subject to this Decree, exclusively reserved for Nigerian citizens or associations and accordingly -
- a) as from the appointed day no person, other than a Nigerian citizen or association, shall be the

owner or part owner of any such enterprise in Nigeria ; and

- b) no such enterprise shall be established in Nigeria by an alien on or after the commencement of this Decree.
- (2) Nothing in this section shall as from the commencement of this Decree and before the appointed day preclude the sale or transfer in accordance with the provisions of this Decree by any person of any of the enterprises affected by this section.
- 5. Subject to this Decree, as from the appointed date no alien shall be the owner or part-owner of any of the enterprises specified in Schedule 2 to this Decree unless the equity participation of Nigerian citizens or associations in the enterprise is not less than sixty per cent.
  - 6. Subject as aforesaid, as from the appointed date no alien shall be the owner or part-owner of any of the enterprises specified in Schedule 3 to this Decree unless the equity participation of Nigerian citizens or associations in the enterprise is not less than forty per cent.
  - 7. (1) Notwithstanding sections 4, 5 and 6 above any alien who immediately before the commencement of this Decree was the owner or part-owner of any body corporate carrying on an enterprise the business of which comprised enterprises specified in Schedules 1, 2 and 3 to this Decree or in any two of those Schedules may after the appointed date continue to be owner or part-owner of any such body corporate if -
    - a) the annual turn-over of the body corporate was not less than N25,000,000 ;
    - b) the business of the body corporate was being carried on in not less than 10 States in the Federation ;
    - c) the equity participation of Nigerian citizens or associations is by the 30th June 1977 not less than sixty per cent.

- (2) Sections 4, 5 and 6 above shall not apply in the case of any non-trading holding company the subsidiary companies of which have in respect of the applicable enterprises by the appointed date, complied with the provisions of this Decree.
  - (3) For the purposes of subsection (2) above, the expressions "holding company" and "subsidiary company" have the meanings respectively assigned thereto in section 147 of the Companies Decree 1968.
8. For the purposes of section 4 above, an enterprise shall be deemed to be an alien enterprise unless the entire capital or proprietary interest, whether financial or otherwise, in the enterprise in so far as it concerns any of the enterprises in Schedule 1 to this Decree is also owned and controlled by Nigerian citizens or associations.
9. (1) As from the commencement of this Decree no enterprise to which section 4 of this Decree applies (whether or not operated by, or as a company) and no enterprise to which section 5, 6 or 7 of this Decree applies which is being operated otherwise than by or as a private company shall be sold or in any manner transferred to Nigerian citizens or associations unless the terms and other conditions of and pertaining to the sale or transfer have been approved by the Board.
- (2) As from the commencement of this Decree as aforesaid no shares in or in respect of any enterprise to which section 5, 6 or 7 of this Decree applies which is an enterprise operated by or as a public company shall with a view to securing compliance (to any extent whatsoever) with the provisions of section 5, 6 or 7 of this Decree be sold or in any manner transferred to Nigerian citizens unless the approval of the Capital Issues Commission (hereafter referred to as "the Commission") has been obtained with respect to -
- a) the price at which the shares are to be sold or transferred and the timing of the sale ; and
  - b) the terms and other conditions pertaining to the sale or transfer, including the manner of the selection of the buyers or transferees or, where applicable, the manner of the allotment of the shares among the buyers or transferees.

- (3) This section shall have effect notwithstanding any other requirement in any law (including, where applicable, the Companies Decree 1968) and such other law shall be construed subject to this Decree.
  - (4) Without prejudice to subsection (3) above, the powers conferred on the Commission under the Capital Issues Decree 1973 shall be construed as including power to grant approvals for the purposes of this Decree and any rules made by the Commission may be adapted or otherwise modified by the Commission for the purposes of this Decree.
  - (5) Notwithstanding anything to the contrary in this section the Commission shall be charged with the function of determining the prices of shares in enterprises to which the Decree relates and in the case of public companies there shall be an Allotment Committee of that Commission which shall consist of the following persons that is -
    - (i) a representative of the Board,
    - (ii) a representative of the Lagos Stock Exchange, and
    - (iii) a representative of the appropriate issuing house.
10. (1) Where approval of the Board or, as the case may be, of the Allotment Committee of the Commission has not been obtained as required under section 9 of this Decree or if any application in relation thereto has been refused -
- a) any sale or transfer of any enterprise concerned or of any shares of other proprietary interest in or in respect of any affected enterprise shall be void and shall be of no effect ; and
  - b) any moneys received in relation to or connected with any of the transactions referred to in the section shall forthwith be repaid without interest by the vendor or transferor, and if any such money is not repaid within 14 days after the date of the notification of the refusal to give the approval the directors of any company

concerned shall be jointly and severally liable to repay that money with interest at the rate of five per cent per annum from the expiration of the 14th day :

Provided that a director shall not be liable if he proves that the default in the repayment of the money is not due to misconduct or negligence on his part, and that all the moneys involved had been kept in a separate bank account to facilitate repayment.

- (2) The reference in paragraph (b) of subsection (1) above to "directors of a company" shall -
- a) in the case of a partnership, be construed as a reference to the partners of the body concerned ; and
  - b) in the case of any other unincorporated body, be construed as a reference to the person in whom is vested the beneficial ownership of the enterprise concerned.

11. (1) In considering applications for approval pursuant to section 9 of this Decree the Board or, as the case may be, the Allotment Committee of the Commission shall have regard to the following general guidelines, that is to say : -
- a) Beneficial ownership of the enterprises affected should be as widespread as the circumstances of each case would justify and deliberate efforts must be made to prevent the concentration of ownership in a few hands.
  - b) Except in the case of owner-managers, no enterprise should be sold or transferred to a single individual and in no case is a single individual to be allowed to have control of more than one enterprise.
  - c) Where appropriate, allotment rules made or approved by the Board or the Allotment Committee of the Commission as appropriate shall be such that would ensure that -
    - (i) no individual holding more than 5 per cent of the equity of an enterprise or holding a portion of the equity valued at more

than N50,000, whichever is the higher, is allotted any further portion of the equity in that enterprise ;

(ii) no individual shall be allotted more than 5 per cent of the equity of an enterprise or any portion of the enterprise valued at more than N50,000, whichever is higher ;

(iii) no individual shall be allotted any portion of the equity of an enterprise that would make any holding of that individual of the equity of the enterprise concerned to exceed 5 per cent of the total equity of that enterprise or to attain a value exceeding N50,000, whichever is higher.

d) Not less than 10 per cent total equity shares of any Schedule 2 or 3 enterprise or where only a fraction is being sold not less than 10 per cent of the amount of sale is reserved for the employees of the enterprise concerned and of the 10 per cent not less than one half shall be reserved for the non-managerial staff.

e) Consideration in a form acceptable to the Board or the Commission should pass from the transferee to the seller or transferor and, where appropriate, all rights including agency rights, sole representation and all other ancillary rights should pass to the buyer or transferee.

(2) For the purposes of subsection (1) above, the Allotment Committee shall have regard to information as to the existing shareholdings of individuals seeking to acquire further interests in enterprises to which this Decree relates.

12. (1) Without prejudice to the operation of any enactment, there shall continue to be for the purposes of this Decree a number of inspectors of enterprises (in this Decree hereafter referred to as "inspectors") who shall be designated as such by an order published in the Federal Gazette by the Commissioner from among members of the public services of the Federation and of the States, and when so designated the inspectors shall, as respects any exercise of the functions conferred upon them by virtue of this Decree be responsible to the Board and no other person or authority.

(2) The inspectors shall, subject to this section, have such powers and carry out such functions as the Board may confer on them.

(3) Notwithstanding subsection (2) above, for the purpose of carrying out any of their functions, such inspectors -

a) shall have a right of access at all times as may be necessary to any building or premises where any enterprise is being carried on or which they reasonably suspect is being used for any purpose to which this Decree relates ;

b) may inspect such building or premises, or business in order to determine whether or not the building or premises is being used, or as the case may be, the business is being carried on, for the purposes authorised by this Decree, and may require the production of all books of account or other documents and inspect them for ensuring that the provisions of this Decree are being complied with ; and

c) shall be entitled to require from the directors or other officers of the enterprise such information and explanation as may be deemed necessary.

(4) Any person, who -

a) without lawful excuse the proof of which shall lie on him -

(i) refuses to admit into his building or premises any inspector appointed under this section ; or

(ii) denies such inspector the right to inspect the building or premises or the business for the determination or the matter specified in subsection (3) (b) above ; or

(iii) refuses or neglects to give any information which any inspector may require from him ;  
or

b) in respect of any request for information from any inspector, makes any statement which he knows to be false or which he has no reason to believe to be true ; or

- c) in any way obstructs any inspector in the discharge of such functions as may be conferred on him by this section,

shall be guilty of an offence under this Decree.

13. (1) If the Board is satisfied that -

- a) an alien has been engaging in any of the enterprises specified in Schedule 1 to this Decree ;  
or
- b) that an alien enterprise is being carried on in contravention of section 5, 6 or 7 or any other provision of this Decree,

the Chairman of the Board may direct an inspector to seal up any premises in which the offending enterprise is being carried on.

(2) Whenever an inspector has sealed up any premises he shall be deemed to have been duly directed to do so by the Chairman.

(3) Every police officer shall if called upon by an inspector give all reasonable assistance to the inspector necessary to effect the sealing up of any affected premises and to prevent unauthorised persons from having access to or interfering with the premises or any goods contained therein.

14. (1) Where, on or after the appointed day, any alien continues to be the owner or part owner of any enterprise in contravention of section 4 of this Decree, it shall be lawful for the Board -

- a) to take over, sell or otherwise dispose of the enterprise, and
- b) to distribute the proceeds of such sale or disposal (if any) -

- (i) in the case of partnerships, to the proprietors of the enterprise duly registered under the Registration of Business Names Act 1961 or any other applicable law ;

- (ii) in the case of companies, to the shareholders of the company ; and



(iii) in any other case, in such manner as may be directed by the Board ; and

any expenses incurred by the Board in relation to the exercise of any of the powers conferred by this subsection shall be a charge upon and be defrayed by the Board from the proceeds of such sale on disposal.

(2) It shall be sufficient for the purposes of taking over any enterprise under subsection (1) (a) of this section -

- a) in the case of partnerships, if the certificate of registration or business permit of the enterprise is cancelled ;
- b) in the case of a company, if the certificate of registration or business permit of the company is cancelled ; and
- c) in other case, if the assets of the association are registered by the Registrar of Business Names, or as the case may be, the Registrar of Companies or any person duly authorised to do so, in the name of the Federal Military Government.

(3) In this section "business permit" means any business permit issued pursuant to section 8 of the Immigration Act 1963.

15. (1) The Board may by instrument in writing, request any person carrying on any enterprise to which this Decree relates to furnish such estimates, returns or other information as may be specified and he may by that instrument specify the time, manner and form in which such estimates, returns or information are to be furnished, and it shall be the duty of any such person to comply with the request.

(2) Any person, who -

- a) refuses or neglects to give any information which the Board may require pursuant to subsection (1) above ; or
- b) in respect of the information so required makes any statement which he knows to be false or which he has no reason to believe to be true;

shall be guilty of an offence and shall on conviction be liable to a fine of N1,000 or to imprisonment for three years.

16. The Commissioner may with the prior approval of the Federal Executive Council as from the commencement of this Decree and before the appointed day or such other day as may be specified for the purposes of any particular order (or in respect of any enterprise) by an order published in the Gazette -
- a) alter the list of enterprises specified, respectively in Schedules 1, 2 or 3 to this Decree by way of addition, substitution or deletion ;
  - b) as respects section 6 or 7 above, vary the extent of the equity participation of Nigerian citizens or associations in the enterprise ;
  - c) make such different provisions in relation to different enterprises or as respects different areas of the Federations, and impose such terms as he may deem necessary.

#### OFFENCES AND PENALTIES

17. (1) Any person who -
- a) acts as a front or purports for the purpose of defeating or in manner likely to defeat the object of this Decree, to be the owner or part owner of any enterprise ; or
  - b) operates any enterprise for or on behalf of any alien who is under this Decree -
    - (i) not permitted to operate the enterprise ;  
or
    - (ii) disqualified from operating the enterprise ; or
    - (iii) not permitted to own or be part owner of such enterprise,
- shall be guilty of an offence under this section, and shall be liable on conviction to a fine of N15,000 or to imprisonment for a term of 5 years or to both such fine and imprisonment.

- (2) It shall not be lawful for any Nigerian citizen or association to employ, whether on full time or part time basis, any alien for the operation of any enterprise previously owned wholly or partly by that alien which the alien has disposed of pursuant to the provisions of this Decree, except with the prior approval of the Federal Commissioner for Internal Affairs after consultation with the Board.
18. (1) Any person found guilty of an offence under this Decree for which no penalty is provided shall upon conviction be liable to a fine of N10,000 or to imprisonment for 5 years or to both such fine and imprisonment.
- (2) Where an offence under this Decree is committed by a body of persons, therein -
- a) in the case of a body corporate, every director or officer of that body shall be deemed to be guilty of the offence ;
- b) in the case of a partnership or other association, every partner or officer of that body shall be deemed to be guilty of the offence.
- (3) No person shall, however, be deemed to be guilty of an offence under subsection (2) above, if he proves to the satisfaction of the court that the offence was committed without his consent and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.
19. (1) Subject to section 104 of the Constitution of the Federation (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings) any inspector or officer of the Board may in a court of competent jurisdiction prosecute an offender for an offence under this Decree.
- (2) It shall not be an objection to the competency of an inspector to give evidence as a witness in any prosecution for an offence under this Decree that the action is prosecuted or conducted by that inspector.

MISCELLANEOUS PROVISIONS

20. (1) The Commissioner may make regulations generally for the purpose of giving effect to the provisions of this Decree, and may in particular, without prejudice to the generality of the foregoing provision, make regulations -
- a) prescribing the forms for returns and other information required under this Decree ;
  - b) prescribing the detailed powers and functions of inspectors ;
  - c) prescribing the procedure for obtaining any information required under this Decree ;
  - d) requiring returns to be made, within the period specified therein, by any enterprise to which this Decree applies ;
  - e) prescribing any fees payable under this Decree ; and
  - f) prescribing such other matters as may be referred to him by the Federal Executive Council.
- (2) Any regulations made pursuant to subsection (1) above shall be presented to the Federal Executive Council for the approval of that Council together with any report and recommendations of the Board including any measures which the Commissioner proposes in relation thereto.
21. Any person aggrieved by any decision of the Board or by the exercise of any power under this Decree shall have the right to forward a petition on such grievance to the Commissioner who may, notwithstanding anything to the contrary in this Decree and subject to the approval of the Federal Executive Council, confirm or reverse the decision of the Board or take such further measures in relation to the petition as he may think just and reasonable.
22. Except as otherwise prescribed by this Decree, there shall be no right of appeal against any act, matter or thing done or purported to be done by or under this Decree ; and without prejudice to the operation of any other enactment excluding the jurisdiction of a court

of law in respect of certain proceedings, and for the avoidance of doubt, no proceedings by way of originating summons, certiorari, mandamus, prohibition, injunction or any other prerogative writ shall lie or be instituted on account of or in respect of such act, matter or thing done or purported to be done.

23. (1) In this Decree, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them : -

"alien" means a person or association whether corporate or unincorporate other than a Nigerian citizen or association ;

"appointed date"

a) in the case of any enterprise to which section 7 applies, means 30th June 1977 ; and

b) in every other case, means 31st December, 1978.

"Commission" means the Capital Issues Commission established by section 1 of the Capital Issues Decree 1973 ;

"Commissioner" means the Federal Commissioner charged with responsibility for industries ;

"company" means any company registered under the Companies Decree 1968 or under any enactment replaced by that Decree ;

"enterprise" includes any industrial or commercial undertaking ;

"Nigerian citizen or association" means -

a) a person who is a citizen of Nigeria by virtue of the Constitution of the Federation ;

b) any person of African descent, not being a citizen of Nigeria, who is a national of any country in Africa which is a member country of the Organisation of African Unity, and who continues to reside and carry on business in Nigeria, if the

country of which he is a national also permits citizens of Nigeria to establish and operate businesses or enterprises in that country on the basis of reciprocity ; and

- c) any company registered under the Companies Decree 1968, partnership, association or body (whether corporate or unincorporate), and except as otherwise prescribed under this Decree, the entire capital or other financial interest of which is owned wholly and exclusively by citizens of Nigeria ;

"ownership" in relation to any enterprise includes any proprietary interest in the enterprise beneficially, and any derivative of that word shall be construed accordingly ;

"prescribed" means prescribed by this Decree or by regulations ;

"shares" includes stocks.

- (2) The reference in this Decree to "equity participation of Nigerian citizens or associations" is a reference to stocks and shares which Nigerian citizens or associations have in such industry which do not bear fixed interest or dividend.
  - (3) Section 22 of this Decree shall not be so construed as to exclude the right to appeal against any decision of a court in connection with any criminal offence created under this Decree.
24. (1) The Nigerian Enterprises Promotion Decree 1972 is hereby repealed and the following enactments, that is to say -
- a) the Nigerian Enterprises Promotion (Amendment) Decree 1973 ;
  - b) the Nigerian Enterprises Promotion (Amendment) Decree 1974 ;
  - c) the Nigerian Enterprises Promotion (Amendment) (N° 2) Decree 1974 ; and

d) the Nigerian Enterprises Promotion Decree 1976,  
are hereby, consequentially, repealed.

(2) Without prejudice to section 6 of the Interpretation Act 1964 the repeal of the enactments specified in subsection (1) of this section shall not affect anything done under or pursuant to those enactments.

25. (1) This Decree may be cited as the Nigerian Enterprises Promotion Decree 1977.

(2) This Decree shall be deemed to have come into force on 29th June 1976.

SCHEDULES

SCHEDULE 1

Section 4

Enterprises Exclusively Reserved for Nigerians

1. Advertising and public relations business.
2. All aspects of pool betting business and lotteries.
3. Assembly of radios, radiograms, record changers, television sets, tape recorders and other electric domestic appliances not combined with manufacture of components.
4. Blending and bottling of alcoholic drinks.
5. Blocks and ordinary tile manufacture for building and construction works.
6. Bread and cake making.
7. Candle manufacture.
8. Casinos and gaming centres.
9. Cinemas and other places of entertainment.
10. Commercial transportation (wet and dry cargo and fuel).
11. Commission agents.
12. Departmental stores and supermarkets having an annual turnover of less than N2,000,000.
13. Distribution agencies excluding motor vehicles, machinery and equipment and spare parts.
14. Electrical repair shops other than repair shops associated with distribution of electrical goods.
15. Establishments specialising in the repair of watches, clocks and jewellery, including imitation jewellery for the general public.
16. Estate agency.



17. Film distribution (including cinema films).
18. Garment manufacture.
19. Hairdressing.
20. Ice-cream making when not associated with the manufacture of other dairy products.
21. Indenting and confirming.
22. Laundry and dry-cleaning.
23. Manufacturers' representatives.
24. Manufacture of jewellery and related articles, including imitation jewellery.
25. Manufacture of suitcases, brief cases, hand-bags, purses, wallets, portfolios and shopping bags.
26. Municipal bus services and taxis.
27. Newspaper publishing and printing.
28. Office cleaning.
29. Passenger bus services of any kind.
30. Poultry farming.
31. Printing of stationery (when not associated with printing of books).
32. Protective agencies.
33. Radio and television broadcasting.
34. Retail trade (except by or within departmental stores and supermarkets).
35. Rice milling.
36. Singlet manufacture.
37. Stevedoring and shorehandling.
38. Tyre retreading.

39. Travel agencies.

40. Wholesale distribution of local manufactures and other locally produced goods.

SCHEDULE 2

## Section 5

Enterprises in Respect of which Nigerians  
must have Majority Interest

1. Banking-commercial, merchant and development banking.
2. Basic iron and steel manufacture.
3. Beer brewing.
4. Boat building.
5. Bottling of soft drinks.
6. Business services (other than machinery and equipment rental and leasing) such as business management and consulting services ; fashion designing.
7. Clearing and forwarding agencies.
8. Canning and preserving of fruits and vegetables.
9. Coastal and inland waterways shipping.
10. Construction industry.
11. Departmental stores and supermarkets having annual turnover of not less than N2,000,000.
12. Distribution agencies for machines and technical equipment.
13. Distribution and servicing of motor vehicles, tractors and spare parts thereof or similar objects.
14. Fish and shrimp trawling and processing.
15. Fertilizer production.
16. Grain mill products except rice milling.
17. Industrial cleaning.
18. Insecticides, pesticides and fungicides.
19. Internal air transport (scheduled and charter services).
20. Insurance-all classes.

21. Lighterage.
22. Manufacture of bicycles.
23. Manufacture of biscuits and similar dry bakery products.
24. Manufacture of cement.
25. Manufacture of cosmetics and perfumery.
26. Manufacture of cocoa, chocolate, and sugar confectionery.
27. Manufacture of dairy products, butter, cheese, milk and other milk products.
28. Manufacture of food products like yeast, starch, baking powder, coffee roasting ; processing of tea leaves into black tea.
29. Manufacture of furniture and interior decoration. Manufacture of metal fixtures for household, office and public building.
30. Manufacture of leather footwear.
31. Manufacture of matches.
32. Manufacture of metal containers.
33. Manufacture of paints, varnishes or other similar articles.
34. Manufacture of plastic products such as plastic dinnerware, tableware, kitchenware, plastic mats, plastic machinery parts, bottles, tubes and cabinets.
35. Manufacture of rubber products, rubber footwear, industrial and mechanical rubber specialities such as gloves, mats, sponges and foam.
36. Manufacture of tyres and tubes for bicycles and motorcycles ; of tyres and tubes for motor vehicles.
37. Manufacture of soap and detergents.
38. Manufacture of wire, nails, washers, bolts, nuts, rivets and other similar articles.

39. Other manufacturing industries such as non-rubber and non-plastic toys, pens, pencils, umbrellas, canes, buttons, brooms and brushes, lampshades, tobacco pipes and cigarette holders.
40. Mining and quarrying.
41. Oil milling, cotton ginning and crushing industries.
42. Paper conversion industries.
43. Plantation sugar and processing.
44. Plantation agriculture for tree crops, grains and other cash crops.
45. Printing of books.
46. Production of sawn timber, plywood, veneers and other wood conversion industries.
47. Petro-chemical feedstock industries.
48. Publishing of books, periodicals and such like.
49. Pulp and paper mills.
50. Restaurants, cafes and other eating and drinking places.
51. Salt refinery and packaging.
52. Screen printing on cloth, dyeing.
53. Inland and coastal shipping.
54. Slaughtering, storage associated with industrial processing and distribution of meat.
55. Tanneries and leather finishing.
56. Wholesale distribution of imported goods.
57. Photographie studios, including commercial and aerial photography.

SCHEDULE 3

Section 6

Enterprises to which Section 6 Applies

1. Distilling, rectifying and blending of spirits such as ethyl alcohol, whisky, brandy, gin and the like.
2. Tobacco manufacture.
3. Manufacture of basic industrial chemicals (organic and inorganic) except fertilizers.
4. Manufacture of synthetic resins, plastic materials and man-made fibres except glass.
5. Manufacture of drugs and medicines.
6. Manufacture of pottery, china and earthenware.
7. Manufacture of glass and glass products.
8. Manufacture of burnt bricks and structural clay products.
9. Manufacture of miscellaneous non-metallic mineral products such as concrete, gypsum and plastering products, including ready-mixed concrete ; mineral wool, abrasive ; asbestos products ; graphite products.
10. Manufacture of primary non-ferrous metal products such as ingots, bars and billets ; sheets, strips, circles, castings, rods, tubes, pipes and wire rods ; casting and extrusions.
11. Manufacture of (fabricated metal) cutlery, hand tools and general hardware.
12. Manufacture of structural metal products-components of bridges, tanks, metal doors and screens, window frames.
13. Manufacture of miscellaneous fabricated metal products, except machinery and equipment, such as safes and vaults ; steel springs furnaces ; stoves, and the like.
14. Manufacture of engines and turbines.

15. Manufacture of agricultural machinery and equipment.
16. Manufacture of metal and wood working machinery.
17. Manufacture of special industrial machinery and equipment, such as textile and food machinery, paper industry machinery, oil refining machinery and equipment, and the like.
18. Manufacture of office, computing and accounting machinery.
19. Manufacture of other machinery and equipment except electrical equipment, pumps, air and gas compressors ; blowers, air-conditioning and ventilating machinery ; refrigerators, and the like.
20. Manufacture of electrical industrial machinery and apparatus.
21. Manufacture of radio, television and communication equipment and apparatus.
22. Manufacture of electrical appliances and houseware.
23. Manufacture of electrical apparatus and supplies not elsewhere classified, such as insulated wires and cables, batteries, electric lamps and tubes, fixtures and lamp switches, sockets, switches, insulators, and the like.
24. Ship building and repairing (excluding boat building).
25. Manufacture of railway equipment.
26. Manufacture of motor vehicles and motorcycles.
27. Manufacture of aircraft.
28. Manufacture of professional and scientific and measuring and controlling equipment, such as laboratory and scientific instruments, surgical, medical and dental equipment, instruments and supplies and orthopaedic and prosthetic appliances.
29. Manufacture of photographic and optical goods.
30. Manufacture of watches and clocks.

31. Ocean transport/shipping.
32. Oil servicing companies.
33. Storage and warehousing - the operation of storage facilities and warehouses (including bonded and refrigerated warehouses) for hire by the general public.
34. Textile manufacturing industries.
35. Hotels, rooming houses, camps and lodging places.
36. Data processing and tabulating services (on a fee or contract basis).
37. Production of cinema and television films (or motion picture production).
38. Machinery and equipment rental and leasing.
39. All other enterprises not included in Schedule 1 or 2 not being public sector enterprises.

Made at Lagos this 12th day of January 1977.

Lt.-General O. OBASANJO,  
Head of the Federal Military  
Government,  
Commander-in-Chief of the  
Armed Forces,  
Federal Republic of Nigeria



EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its effect).

The Decree re-enacts the Nigerian Enterprises Promotion Decree 1972 to introduce provisions necessary for the implementation of the next stage of the indigenisation programme. The effective date of the Decree is 29th June 1976 while the appointed date, that is, the date on which all affected enterprises are expected to have complied with the applicable provisions of the Decree is 30th June 1977 in the case of enterprises to which section 7 applies, and 31st December 1978 in every other case.



PAPUA NEW GUINEA

An Act to provide for the regulation and control and promotion of investment (particularly foreign investment) in the interests of national development, and for that purpose to establish a body to be known as the National Investment and Development Authority and to define its powers and functions, and for related purposes.

MADE by the House of Assembly to come into operation on a date to be fixed by the High Commissioner in Council by notice published in the Government Gazette.

## PART I

### INTRODUCTORY

#### 1. PURPOSES OF THIS ACT.

The purposes of this Act are -

- a) to facilitate the channelling of investment into those fields of business activities that will make the best use of resources consistent with national development and investment policies ; and
- b) to facilitate Papua New Guinean participation in investment and in the ownership, management and control of foreign enterprises ; and
- c) to enable the identification of activities that will achieve the purposes set out in paragraphs (a) and (b) ; and
- d) for the promotion of those purposes, to provide for the control of foreign investment,

and to set up a National Investment and Development Authority in order to assist the Government in achieving those purposes.

#### 2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

"activity" means, subject to Subsections (2) and (3), an economic activity set out in the publication entitled International Standard Industrial Classification of All Economic

Activities (I.S.I.C.) published by the Department of Economic and Social Affairs, Statistical Office of the United Nations, under the symbol ST/STAT/m.4/Rev.2 ;

"advertisement" includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing light or sound ;

"alternate member" means an alternate member of the Board ;

"carrying on business" includes -

- a) establishing or using a share transfer or share registration office ; and
- b) administering, managing or otherwise dealing with property as an agent, legal personal representative or trustee, whether by servants or agents or otherwise ; and
- c) maintaining an agent for the purpose of soliciting or procuring orders whether or not the agent is continuously resident in Papua New Guinea ; and
- d) maintaining an office, agency or branch (however described) whether or not that office, agency or branch is also used for one of those purposes by another enterprise ; and
- e) undertaking a building, construction or assembly project which will not be completed within 12 months,

but an enterprise shall not be regarded as carrying on business by reason only that it -

- f) is or becomes a party to an action or suit or any administrative or arbitration proceeding or effects settlement of an action, suit or proceeding or of a claim or dispute ; or

- g) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs ; or
- h) maintains a bank account ; or
- i) effects a sale through an independent contractor ; or
- j) by an advertisement, solicits or procures an order which becomes a binding contract only if the order is accepted outside Papua New Guinea ; or
- k) creates evidence of a debt or creates a charge on real or personal property ; or
- l) secures or collects any of its debts or enforces its rights in regard to any securities relating to any such debts ; or
- m) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time ; or
- n) invests any of its funds or holds any property ; or
- o) collects information or undertakes a feasibility study;

"carry on", in relation to a business, has a corresponding meaning ;

"co-operative society" means a society registered under the Co-operative Societies Act 1965, as in force from time to time ;

"co-opted member" means a person deemed to be a member of the Board under Section 16 ;

"corporation" has the same meaning that it has in the Companies Act 1963, as in force from time to time ;

"enterprise" means, subject to Subsection (4), any

person or body or association of persons engaged or proposing to become engaged in the carrying on of business for gain ;

"foreign enterprise" means -

a) in the case of an enterprise that is a corporation - an enterprise that -

- (i) does not have its central management or control in Papua New Guinea ;  
or
- (ii) has its voting power controlled by persons who are not Papua New Guineans ; or
- (iii) is incorporated or established by or under the law of a place outside Papua New Guinea ; or
- (iv) is the subject of a declaration under Section 6;

and, without limiting the generality of those provisions; includes -

- (v) an enterprise in which 26 per centum or more of the voting power is held or controlled by persons who are not Papua New Guineans ;  
and
  - (vi) an enterprise in which 26 per centum in number or value of the shares are beneficially owned by persons who are not Papua New Guineans ; and
- b) in the case of an enterprise that is a co-operative society or a savings and loan society - an enterprise one or more of the members of which is not a Papua New Guinean ; and
- c) any other enterprise one or more of the partners or members of which is not a Papua New Guinean,

and includes -

- d) subject to Subsection (6), an enterprise in which the management or control is in the hands of persons who are not Papua New Guineans ; and
- e) an enterprise that is a natural person other than a Papua New Guinean ; and
- f) an enterprise that is a public authority or an instrumentality of the Government of a place outside Papua New Guinea;

but does not include -

- g) an enterprise that is licensed under the Central Banking Act 1973, as in force from time to time, or the Banks and Financial Institutions Act 1973, as in force from time to time ; or
- h) the Government or a Government-controlled corporation ; or
- i) in relation to any provision of this Act - an enterprise that is exempted from the operation of that provision under Section 7 ;

"Government-controlled corporation" means any body, corporate or unincorporate, that is established and regulated by or under an Act (including the Companies Act 1963, as in force from time to time) ; and -

- a) in which more than 50 per centum in number or value of the shares are beneficially owned by the Government or another Government-controlled corporation ; or
- b) the affairs of which are controlled by the Government or another Government-controlled corporation, or by nominees of the Government or another Government-controlled corporation ;



"local enterprise" means an enterprise other than a foreign enterprise ;

"member of the Board" includes a co-opted member and an alternate member of the Board ;

"NIDA" means the National Investment and Development Authority established by this Act ;

"Papua New Guinean" means -

a) a person who is a citizen of Papua New Guinea within the meaning of any law relating to such citizenship ; or

b) until such time as there is such a law - a person or a member of a class of persons declared under Subsection (7),

and includes the Government, Government-controlled corporations and local enterprises ;

"registered enterprise" means an enterprise registered under Part VI ;

"registration", in relation to an enterprise, means registration under Part VI, and "registered" has a corresponding meaning ;

"savings and loan society" means a society registered under the Savings and Loan Societies Act 1961, as in force from time to time ;

"statutory enterprise" means an enterprise that is an instrumentality of the Government established by or under an Act, and includes any enterprise that is declared by the Regulations to be a statutory enterprise for the purposes of this Act ;

"the Board" means the Board of NIDA ;

"the Chairman" means the Chairman of the Board ;

"the Deputy Chairman" means the Deputy Chairman of the Board ;

"the Deputy Executive Director" means the Deputy Executive Director of NIDA ;

"the Executive Director" means the Executive Director of NIDA ;

"the Priorities Schedule" means the National Investment Priorities Schedule published under Part III ;

"the Regulations" means the regulations made under this Act ;

"this Act" includes the Regulations.

- (2) The Regulations may make provisions varying the application, for the purposes of the definition of "activity" in Subsection (1), of the categories set out in the publication referred to in that definition.
- (3) In any case where there is a doubt as to the category of activities into which any aspect of the business of an enterprise falls, the decision of the High Commissioner in Council is final.
- (4) Where in the opinion of the Minister, after consultation with NIDA, the activity in which a person is engaged is primarily and mainly intended for a religious, educational or charitable or other socially useful purpose, or for any other non-profit purpose that is socially desirable and to be encouraged, or for a combination of such purposes, the Minister may, by notice published in the Government Gazette, declare that it is not an enterprise within the meaning of Subsection (1).
- (5) For the purposes of this Act, a person carries on business in Papua New Guinea notwithstanding that the business is carried on partly within and partly outside Papua New Guinea.
- (6) For the purposes of paragraph (d) of the definition of "foreign enterprise" in Subsection (1), "control" means control which is exercisable in law or in practice.
- (7) For the purposes of paragraph (b) of the definition of "Papua New Guinean" in Subsection (1), the High

Commissioner in Council may, by notice published in the Government Gazette, declare persons or a class of persons to be Papua New Guineans.

3. ACT TO BIND THE GOVERNMENT.

- (1) Subject to Subsection (2), this Act binds the Government.
- (2) Nothing in Subsection (1) affects investment by the Government.
- (3) Where by or under any Act the Government or a Minister may give to any statutory enterprise directions as to policy, that power includes power to give directions, not inconsistent with this Act or the law establishing the enterprise, on any matter that may be provided for, by direction, regulation, condition of registration or otherwise, under this Act in relation to a foreign enterprise.

4. APPLICATION OF OTHER LAWS.

- (1) The provisions of this Act apply notwithstanding anything in any other law other than a law establishing or regulating the activities of a statutory enterprise.
- (2) Nothing in this Act derogates any other power of control of investment or employment under any other law, except that no such power shall be exercised in a manner inconsistent with this Act.
- (3) Registration of an enterprise under this Act to carry on business in respect of a particular activity does not of itself relieve the enterprise from compliance with any other law.
- (4) In particular, and without limiting the generality of Subsection (3), registration does not extend the powers of a corporation.

5. EFFECT OF CONDITIONS.

For the avoidance of doubt, it is hereby declared that no condition imposed under this Act shall, of itself -

- a) confer on an enterprise any right or privilege in relation to a matter which is the subject of any other law ; or
- b) affect any right or privilege under any other law.

6. DECLARATION OF FOREIGN ENTERPRISES.

- (1) Where NIDA is of the opinion that an enterprise is or may be a foreign enterprise, it may, by notice in writing to the enterprise, call upon the enterprise to show, within a reasonable time fixed in the notice, why it should not be declared under this section to be a foreign enterprise for the purposes of this Act.
- (2) A notice under Subsection (1) shall set out the grounds for the opinion.
- (3) If, after considering any representations made by the enterprise and any other matters that it considers relevant, NIDA is of the opinion that the enterprise is a foreign enterprise it shall advise the Minister who may, by notice published in the Government Gazette, declare the enterprise to be a foreign enterprise.
- (4) A person aggrieved by a declaration under Subsection (3) may appeal to the Supreme Court which may confirm or annul the declaration, and may make such further or other order that seems to it to be just in the circumstances.
- (5) Notice of the decision of the Supreme Court on an appeal under Subsection (4) shall be published in the Government Gazette.

7. EXEMPTIONS.

If, after receiving a report from NIDA, the Minister is of the opinion that -

- a) the purpose, structure, control or operation of a foreign enterprise ; or
- b) the source, purpose or use of an investment, or the beneficial ownership or use of the returns from a foreign investment,

is such that it is not necessary that it should be

treated for the purposes of any provision of this Act as a foreign enterprise or a foreign investment, as the case may be, the Minister may, by notice published in the Government Gazette, exempt it from the operation on such conditions as the Minister thinks proper.

8. INVESTMENT GUIDELINES.

In the administration of this Act and especially in the drawing up of the Priorities Schedule, and in all the activities of Government and Government Departments and instrumentalities (including NIDA) in relation to planning for investment and implementation of investment plans, the provisions of Schedule 1 shall be followed, as and when appropriate.

PART II

THE NATIONAL INVESTMENT  
AND DEVELOPMENT AUTHORITY

Division 1. -

Establishment and Status.

9. ESTABLISHMENT.

- (1) A body to be known as the "National Investment and Development Authority" is hereby established.
- (2) NIDA -
  - a) is a corporation, with perpetual succession ;  
and
  - b) shall have a seal ; and
  - c) may acquire, hold and dispose of real and personal property ; and
  - d) may sue and be sued in its corporate name.
- (3) All courts and persons acting judicially shall take judicial notice of the seal of NIDA affixed to a document and shall presume that it was duly affixed.

10. GOVERNMENT CONTROL OF NIDA.

- (1) In the exercise of its powers and the performance of its functions under this Act, NIDA shall comply with all directions as to policy by the Minister.
- (2) The Minister is responsible to the High Commissioner in Council for the exercise of powers and performance of functions by NIDA.
- (3) All reports and recommendations by NIDA to the Government shall be given through the Minister.
- (4) In the exercise and performance of his powers and functions under this Act the Minister shall consult all other relevant Ministers on all matters relating to Departments within their control.

Division 2. -

Functions and Powers.

11. GENERAL.

The functions and powers of NIDA prescribed by this Division are in addition to its functions and powers under any other provision of this or any other Act.

12. FUNCTIONS.

- (1) Subject to this Act and to any other law, it is the duty of NIDA to contribute to the achievement of the purposes of this Act, especially in relation to the regulation of foreign investment.
- (2) In particular, NIDA -
  - a) shall, to the best of its ability, advise and assist investors or potential investors ; and
  - b) shall, in conjunction with other planning agencies of the Government, contribute to planning for investment ; and
  - c) shall, after consultation with any Department, instrumentality, or other person or body which in the opinion of NIDA may be affected, recommend to the Government measures to attract investment to special areas or activities ; and

- d) shall co-ordinate and monitor -
  - (i) Government planning for investment ; and
  - (ii) action approved by the Government for the promotion of investment ; and
  - (iii) evaluations and negotiations concerning proposals for foreign investment and any other proposals that require registration under this Act ; and
  - (iv) supervision of the performance of any conditions to which any investment is subject by virtue of this Act ; and
- e) shall recommend to the Government matters for incorporation in the Regulations ; and
- f) shall take such other action approved by the High Commissioner in Council as being conducive to the performance of its other functions.

### 13. POWERS.

- (1) Subject to Subsection (2), NIDA has power to do, in Papua New Guinea or elsewhere, all things necessary or convenient to be done for or in connexion with the attainment of its objects.
- (2) NIDA has no power of direction or control of any Department or branch of the Government or any instrumentality of the Government.

### Division 3. -

#### Board.

### 14. BOARD OF NIDA.

There shall be a Board of NIDA, which shall be constituted in accordance with this Division and is responsible for the affairs of NIDA.

### 15. CONSTITUTION OF BOARD.

- (1) The Board shall consist of -

- a) the Executive Director ; and
  - b) the Director, Central Planning Office ; and
  - c) the Managing Director of the Papua New Guinea Development Bank ; and
  - d) the Managing Director of the Investment Corporation of Papua New Guinea ; and
  - e) the Secretary for Finance ; and
  - f) the Secretary, Department of Labour and Industry ; and
  - g) the Director of Agriculture, Stock and Fisheries ; and
  - h) the Director of Forest ; and
  - i) the Secretary, Department of Foreign Relations and Trade ; and
  - j) the Director of Lands, Surveys and Mines ; and
  - k) the Secretary, Department of Business Development ; and
  - l) in relation to any question - any person deemed to be a member under Section 16 in relation to that question.
- (2) A member of the Board (other than a co-opted member) may, with the approval of the Minister, appoint by notice in writing an alternate.
- (3) An alternate -
- a) shall, in the absence of the member for whom he is the alternate from a meeting of the Board, stand in the place of that member for all purposes of the meeting ; and
  - b) may, with the approval of the member and of the Chairman, attend any other meeting of the Board but except as provided by paragraph (a) is not entitled to vote or be counted towards a quorum in relation to any matter.



16. CO-OPTION OF OTHER MEMBERS.

- (1) Where in the opinion of the Minister or of NIDA a question before NIDA affects or may affect -
  - a) a Department, the Departmental Head of which is not ex officio a member of the Board ; or
  - b) a Government instrumentality or body ; or
  - c) a particular group of persons in an area,  
a representative of the Department, the instrumentality or body or the group of persons, as the case may be, nominated in accordance with Subsection (2), shall be deemed to be a member for the purposes of the discussion and determination of that question.
- (2) The representative referred to in Subsection (1) shall be nominated -
  - a) in the case of a Department - by the Departmental Head ; and
  - b) in the case of a Government instrumentality or body - by the instrumentality or body ; and
  - c) in the case of a group of persons - by the Minister.

17. CHAIRMAN AND DEPUTY CHAIRMAN.

- (1) Subject to Subsection (2), the High Commissioner shall appoint a member of the Board to be the Chairman and another member to be the Deputy Chairman.
- (2) A co-opted member or an alternate member is not eligible to be the Chairman or the Deputy Chairman.
- (3) In the event of the absence (whether from Papua New Guinea or from a meeting) of the Chairman, or his inability or unavailability to act, the Deputy Chairman has all the powers and functions of the Chairman.

18. MEETINGS OF THE BOARD.

- (1) Meetings of the Board shall be held at least once a month and at such other times and at such places as the Chairman or, in the absence of the Chairman and the Deputy Chairman, the Minister, determines.
- (2) At a meeting of the Board the Chairman, or in the absence of the Chairman, the Deputy Chairman shall preside.
- (3) Subject to Subsection (4), the quorum at a meeting of the Board comprises the Chairman or Deputy Chairman and nine other members.
- (4) If within half an hour of the time appointed for a meeting of the Board a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place and, if at the adjourned meeting a quorum in accordance with Subsection (3) is not formed within half an hour from the time appointed for the meeting, the Chairman or Deputy Chairman and five other members constitute a quorum.
- (5) All questions before a meeting shall be decided in accordance with the majority of votes of the members present and voting, and in the event of an equality of votes on a matter the member presiding has a casting as well as a deliberative vote.
- (6) The Board shall cause minutes of its meetings to be kept.
- (7) Subject to this Act, the procedures of the Board are as decided by it.

19. DISCLOSURE OF INTEREST BY BOARD MEMBERS.

- (1) Where a member of the Board has a direct or indirect financial interest in a matter being considered or about to be considered by the Board he shall, as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board.

- (3) In Subsection (1), "indirect financial interest" includes an interest of a spouse or child.

20. EXCLUSION, ETC., OF CERTAIN MEMBERS.

- (1) In this section -

"interested member" means a member who has made a disclosure under Section 19 ;

"relevant matter" means, in relation to an interested member, a matter being considered or about to be considered by the Board in relation to which the member has made a disclosure under Section 19.

- (2) Where at a meeting at which a relevant matter is to be considered the number of members present who are not interested members is sufficient to constitute a quorum those last-mentioned members, after taking into account the nature and extent of the interests concerned, shall resolve, in relation to each interested member -

- a) that he be excluded from the deliberations of the Board while the relevant matter is being considered ; or
- b) that he be permitted to take part in the deliberations of the Board with respect to the relevant matter but not to vote ; or
- c) that he be permitted to take part in the deliberations or decision of the Board with respect to the relevant matter as if he were not an interested member,

and effect shall be given to the resolution accordingly.

- (3) Where it appears at a meeting of the Board that it would be impracticable for action to be taken in accordance with Subsection (2) the Board -

- a) may dispose of the matter as if no member of the Board was an interested member ; and

- b) shall, as soon as practicable, advise the Minister that it has taken action under this subsection.

Division 4. -

Staff.

Subdivision A. - Executive Director and  
Deputy Executive Director.

21. APPOINTMENT OF EXECUTIVE DIRECTOR AND DEPUTY EXECUTIVE DIRECTOR.

There shall be an Executive Director and Deputy Executive Director of NIDA, who shall be appointed by the High Commissioner in Council by notice published in the Government Gazette.

22. DUTIES OF EXECUTIVE DIRECTOR.

The Executive Director shall manage NIDA and shall in relation to the management of NIDA act in accordance with its policy and with the directions of the Board.

23. DUTIES OF THE DEPUTY EXECUTIVE DIRECTOR.

The Deputy Executive Director shall perform such duties as the Executive Director directs, and in the event of a vacancy in the office of the Executive Director or his absence or inability to act the Deputy Executive Director shall perform the duties of the Executive Director and has and may exercise the powers and functions of the Executive Director.

24. TENURE AND CONDITIONS OF SERVICE.

- (1) Subject to this Act, the Executive Director and the Deputy Executive Director hold office for such periods, not exceeding four years, as are specified in the instruments of their respective appointments and on such terms and conditions as the High Commissioner in Council determines, and are eligible for re-appointment.
- (2) A person who has attained the age of 65 years shall not be appointed or re-appointed to be the Executive Director or Deputy Executive Director, and a person shall not be appointed or re-appointed for a period

that extends beyond the date on which he will attain the age of 65 years.

25. SALARY AND ALLOWANCES.

The Executive Director and the Deputy Executive Director shall be paid salaries and allowances at such rates, or in accordance with such scales of rates, as are determined by the High Commissioner in Council.

26. LEAVE OF ABSENCE.

The Minister may grant leave of absence to the Executive Director or the Deputy Executive Director upon such terms and conditions as to remuneration and otherwise as are determined by the High Commissioner in Council.

27. SUPERANNUATION BENEFITS.

The Regulations may make provision for the establishment of a superannuation scheme to provide benefits for the Executive Director and the Deputy Executive Director on retirement, resignation, retrenchment or death.

28. RESIGNATION.

The Executive Director or the Deputy Executive Director may resign his office by writing under his hand delivered to the High Commissioner in Council, but the resignation does not have effect until accepted by the High Commissioner in Council.

29. TERMINATION OF APPOINTMENT.

If the Executive Director or the Deputy Executive Director -

- a) becomes permanently incapable of performing his duties ; or
- b) engages in paid employment outside the duties of his office ; or
- c) absents himself from duty for 14 consecutive days or for 28 days in any period of 12 months, except on leave granted by the Minister ; or
- d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit ; or

- e) fails to comply with his obligation under Section 19,

the High Commissioner shall terminate his appointment.

30. PUBLIC SERVICE RIGHTS.

- (1) If an officer of the Public Service is appointed to be the Executive Director or the Deputy Executive Director, his period as the Executive Director or the Deputy Executive Director shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of -
  - a) leave of absence on the ground of illness ; and
  - b) furlough, or pay in lieu thereof (including pay to dependants or personal representatives on the death of the officer).
- (2) The provisions of Section 115 of the Public Service (Interim Arrangements) Act 1973, as in force from time to time, apply in relation to the offices of Executive Director and Deputy Executive Director as if they had been specifically included in that section.

31. OATH AND AFFIRMATION OF OFFICE AND DECLARATION OF SECRECY.

- (1) Before entering upon the duties of his office, an Executive Director and Deputy Executive Director shall make and subscribe an oath or make an affirmation in the form in Schedule 2, and a declaration of secrecy in the form in Schedule 3.
- (2) The oath or affirmation shall be taken or made before the High Commissioner or a person appointed by the High Commissioner for the purpose.

Subdivision B. - Officers and Employees.

32. APPOINTMENT OF OFFICERS.

- (1) NIDA may, with the approval of the Minister, appoint to be officers of NIDA such persons as it thinks fit and necessary for the purposes of this Act.

- (2) The officers of NIDA constitute the Service of NIDA.
- (3) Subject to this Part and to the Regulations, officers hold office on such terms and conditions as the Chief Minister determines.
- (4) If an officer appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an officer of NIDA shall be counted as service in the Public Service for the purposes of determining his rights (if any) in respect of -
  - a) absence or leave on the ground of illness ;  
and
  - b) furlough or pay in lieu thereof (including pay to dependants or personal representatives on the death of the officer).
- (5) The provisions of Section 115 of the Public Service (Interim Arrangements) Act 1973, as in force from time to time, apply in relation to offices in the Service of NIDA as if they had been specifically included in that section.

### 33. REGULATIONS FOR THE SERVICE OF NIDA.

The Regulations may make provision in relation to the Service of NIDA and, in particular, may -

- a) prescribe the terms and conditions of employment of officers ; and
- b) make provision for the establishment of a superannuation scheme to provide benefits for officers of NIDA on retirement, resignation, retrenchment or death.

### 34. TEMPORARY AND CASUAL EMPLOYEES.

- (1) NIDA may appoint such temporary and casual employees as it thinks necessary for the purposes of this Act.
- (2) Employees so appointed shall be employed on such terms and conditions as NIDA determines.

Division 5. -

General.

35. INFORMATION.

- (1) Subject to this section, NIDA or the Executive Director may -
- a) require any person to give to it or him any information in his possession or under his control or
  - b) inspect, and take copies of or extracts from, any books and records in the possession or under the control of any person,
- that in the opinion of NIDA or of the Executive Director, as the case may be, relates or relate to the exercise or performance of the powers or functions of NIDA or to the achievement of the purposes of this Act.
- (2) Subsection (1) does not affect the operation of any Act by or under which any information, book or record is to be kept confidential.
- (3) Subject to Subsection (4), a person who, without reasonable excuse (the burden of proof of which lies upon him), refuses or fails to give any information, or to make available for inspection under Subsection (1) (b) any book or record, or furnishes information that is false or misleading in a material particular, is guilty of an offence.

Penalty : \$5 000.00.

Default penalty : \$250.00.

- (4) It is a defence to a charge of an offence against Subsection (3) if the person charged proves that the information, book or record was not relevant to the exercise or performance of the powers or functions of NIDA or to the achievement of the purposes of this Act.

36. DELEGATION.

- (1) NIDA may, by instrument in writing, delegate to a



person all or any of its powers and functions (other than this power of delegation or any prescribed power or function) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters, and to the whole of Papua New Guinea or the part of Papua New Guinea, specified in the instrument of delegation.

- (2) Where a delegation under this section does not specify an area within which the delegated powers and functions are to be exercised, the powers and functions may be exercised in any place (whether within or outside Papua New Guinea).
- (3) A delegation under Subsection (1) is revocable in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by NIDA.

#### 37. REPORTS BY NIDA.

- (1) NIDA shall, at least once in every year, at such time or times as are directed by the Minister, furnish to the Minister, for presentation to the House of Assembly, a report on -
  - a) its operations since its last report under this Act ; and
  - b) the workings of this Act ; and
  - c) such other matters relating to the achievement of the purposes of this Act as it thinks proper to include ; and
  - d) such other matters as are prescribed or as the Minister directs.
- (2) In addition, NIDA may, and at the direction of the Minister shall, from time to time, furnish other reports to the Minister on any matter referred to in Subsection (1) (a),(b),(c) or (d).

#### 38. APPLICATION OF PUBLIC BODIES (FINANCIAL ADMINISTRATION) ACT.

The Public Bodies (Financial Administration) Act 1969,

as in force from time to time, applies to and in relation to NIDA subject to the exceptions and modifications specified in Schedule 4.

39. PROTECTION OF NIDA.

A member of the Board, the Deputy Executive Director, an officer or employee of NIDA or a delegate of NIDA, is not liable for any act or omission done or made bona fide and without negligence under or for the purposes of this Act.

PART III

INVESTMENT PRIORITIES

40. NATIONAL INVESTMENT PRIORITIES SCHEDULE.

- (1) The High Commissioner in Council shall from time to time publish a National Investment Priorities Schedule, which shall be revised at least once in every period of 12 months.
- (2) It is a function of NIDA to advise and make recommendations to the Minister concerning the Priorities Schedule.

41. PURPOSE OF THE SCHEDULE.

- (1) The purpose of the Priorities Schedule is to inform potential investors and persons and bodies responsible for planning, promoting or encouraging investment of the priorities attached by the Government to investment in particular areas and fields.
- (2) It is a function of NIDA to ensure that any relevant provisions of the Priorities Schedule are drawn to the attention of investors and potential investors.

42. FORM OF THE SCHEDULE.

The Priorities Schedule shall set out -

a) lists of activities in which business -

(i) by registered foreign enterprises is allowed ; or

(ii) is reserved for local enterprises ; and

- b) guidelines for potential foreign investors, and the minimum terms and conditions that are required or expected to be complied with ; and
- c) such other matters as the High Commissioner in Council directs.

43. EFFECT OF PART III.

For the avoidance of doubt, it is hereby declared that nothing in this Part permits the use of compulsion by the Government or by NIDA, and in particular nothing in this Part authorizes the making of subordinate legislation under this Act to give effect to the Priorities Schedule.

PART IV

INVESTMENT GUARANTEES

44. GUARANTEES TO FOREIGN ENTERPRISES.

- (1) All foreign enterprises registered under Part VI are entitled to the rights specified in Schedule 5.
- (2) No law at any time in force in Papua New Guinea or a part of Papua New Guinea made after the date of commencement of this Act affects this section or Schedule 5 unless the contrary intention appears, either expressly or by implication, in that law.

PART V

PRELIMINARY ACTIVITIES  
OF CERTAIN ENTERPRISES

45. NOTIFICATION OF INVESTIGATIONS, INQUIRIES AND REPORTS.

- (1) This section applies to a person -
  - a) who is acting as a servant or agent of a person other than a Papua New Guinean ; or
  - b) who, being a person other than a Papua New Guinean, is acting on his own behalf,but does not apply to a registered enterprise.

- (2) Where NIDA believes or suspects that a person to whom this section applies is conducting any inquiry or investigation to determine the feasibility of carrying on any activity in Papua New Guinea, or is negotiating with a person in Papua New Guinea with a view to carrying on any activity in Papua New Guinea, and that it is desirable for the purpose of the performance of the functions of NIDA that it be informed of progress, NIDA may, by notice in writing to that person, require him to inform NIDA whether he is conducting such an inquiry, investigation or negotiation or intends to do so, and if he is conducting such an inquiry, investigation or negotiation to give such information as to the inquiry, investigation or negotiation, and its purpose and subject-matter, as NIDA requires.
- (3) NIDA may require any information given in accordance with a requirement under Subsection (2) to be verified by statutory declaration.
- (4) A person on whom a requirement is made under Subsection (2) who, without reasonable excuse (the burden of proof of which is upon him), fails to furnish information as required under that subsection, or furnishes information that is false or misleading in a material particular, is guilty of an offence.

Penalty : \$5 000.00.

Default penalty : \$250.00.

- (5) It is a defence to a charge of an offence against Subsection (4) for failing to furnish information if the person charged proves that the information was not relevant to the performance of the functions of NIDA or to the achievement of the purpose of this Act.

#### 46. OFFICIAL NEGOTIATIONS.

It is the duty of all Departments, Government-controlled corporations and other Government instrumentalities to keep NIDA informed of, and of progress in, any negotiations concerning the entry into or extension of any activity in Papua New Guinea by a foreign enterprise

in which the Department, corporation or instrumentality is involved or which comes to its notice, and of all applications by or on behalf of a foreign enterprise for, or for the extension of, a licence or other right relevant to the carrying on of any activity in Papua New Guinea.

47. CHANNELLING OF APPLICATIONS THROUGH NIDA.

The Regulations may provide that all or any applications by or on behalf of a foreign enterprise for, or for the extension of, a licence or other right relevant to the carrying on of any activity in Papua New Guinea may or shall, notwithstanding anything in any other law, be made through NIDA.

PART VI

CONTROL OF FOREIGN ENTERPRISES

Division 1. -

Introductory.

48. INTERPRETATION OF PART V.

(1) In this Part -

"existing activity" means an activity being carried on in Papua New Guinea by an enterprise immediately before the commencement of this Act ;

"new activity" means, in relation to an enterprise, an activity which is not an existing activity or a permitted activity ;

"permitted activity" means, in relation to an enterprise, an activity in relation to which the enterprise is registered.

(2) Where an activity is carried on by an enterprise by virtue of a right, granted by or under an Act, it is not an existing activity, and in carrying on the activity the enterprise shall be deemed not to be merely continuing to carry on business, for the purposes of this Part unless -

- a) the right is related to a specific area of land owned by the enterprise, or in which the enterprise has rights allowing the activity to be carried on ; or
- b) where the right is not related to such an area of land, the activity is carried on on land owned by the enterprise, or in which the enterprise had rights allowing the activity to be carried on, immediately before the commencement of this Act.

49. EXEMPTIONS.

- (1) The High Commissioner in Council, after receiving a report from NIDA, may, by notice in writing to the enterprise, exempt a foreign enterprise from all or any of the provisions of this Part on such conditions as seem to him proper.
- (2) An exemption, and the revocation or variation of an exemption, shall be notified in the Government Gazette.

50. REQUIREMENT OF LOCAL INCORPORATION.

Notwithstanding anything in this Act, the Minister may, after receiving a report from NIDA, refuse to register a foreign enterprise that is a corporation on the ground that it is not incorporated under any law of Papua New Guinea if an appropriate form of incorporation is available.

Division 2. -

Existing Activities.

51. CONTINUATION OF EXISTING ACTIVITIES.

- (1) In this section, "the prescribed period" means the period prescribed for the purposes of Section 54 (1).
- (2) Subject to this Act, a foreign enterprise may carry on business in an existing activity until the end of the prescribed period and for the additional period or periods applicable under Subsection (3).

- (3) In relation to any existing activity, the additional periods referred to in Subsection (2) are -
- a) where application is not made for registration in relation to the activity within the prescribed period - the period of one month after the end of the prescribed period ; and
  - b) where application is made for registration in relation to the activity within the prescribed period, the period during which the application is being dealt with, and -
    - (i) if the application is or is deemed to be withdrawn - the period of one month after the date of the withdrawal ; and
    - (ii) if registration is refused - the period of one month after the date of notification of the refusal under Section 54 (12).

52. NOTICE OF EXISTING ACTIVITIES, ETC.

A foreign enterprise that was, immediately before the commencement of this Act, carrying on business in Papua New Guinea shall, within such time as is prescribed or such further time as NIDA allows, give notice to NIDA in the prescribed form of -

- a) its existing activities ; and
- b) its constitution,

and shall furnish such other information as is prescribed.

53. REQUIREMENT TO REGISTER.

NIDA may at any time, by notice in writing in the form approved by the Minister, require a foreign enterprise that was, immediately before the commencement of this Act, carrying on business in Papua New Guinea, to apply for registration under this Division.

54. REGISTRATION OF CERTAIN ENTERPRISES.

- (1) Where a foreign enterprise is required under Section 53 to apply for registration, it shall within the prescribed period apply, in the form approved by the Minister, to NIDA for registration.

- (2) Within the prescribed period after the lodging of the application NIDA shall examine the application and if, in the opinion of NIDA, the application is not correctly completed or there are relevant documents missing NIDA shall decline to accept the application, and may return it to the applicant indicating the defects in it.
- (3) Where the application is returned by NIDA it shall be deemed to have been withdrawn by the applicant unless within the prescribed period after the date when NIDA returned the application to the applicant he makes an application with the defects corrected.
- (4) Where NIDA accepts the application it shall within the prescribed period make a recommendation to the Minister, including a recommendation as to any conditions to be imposed if the application is granted.
- (5) Within the prescribed period after receipt of the recommendation from NIDA, the Minister shall formulate proposals in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.
- (6) Within the prescribed period after the formulation of proposals under Subsection (5) the Minister shall notify the enterprise -
  - a) as to the existing activities (if any) in respect of which it is proposed to register the enterprise and as to the activities (if any) in respect of which registration will be refused ; and
  - b) in the case of an existing activity in respect of which it is proposed that the enterprise will become registered - of the proposed conditions (if any) of registration ; and
  - c) in the case of an existing activity in respect of which registration will be refused - of the reasons for the proposed refusal.
- (7) Within the prescribed period after the date of forwarding to the enterprise a notification under Subsection (6), the enterprise may make representations to the Minister in relation to the notification.



(8) Within the prescribed period after -

- a) the end of the period prescribed for the purposes of Subsection (7) ; or
- b) the receipt of representations from the enterprise,

whichever first occurs, the Minister shall -

- c) where he is satisfied that the matter should be considered by the High Commissioner in Council - refer the matter, or request another Minister to refer the matter, to the High Commissioner in Council for directions ; and
- d) in any other case - consider the matter (including any representations made by the enterprise) in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.

(9) Within the prescribed period after -

- a) the giving of directions under Subsection (8) (c); or
- b) consideration of the matter under Subsection (8) (d),

as the case may be, the Minister shall, subject to any directions from the High Commissioner in Council, approve registration of the applicant in respect of any existing activity, on such conditions (if any) as he thinks proper, or refuse registration.

(10) Where the Minister approves registration, he shall immediately notify the applicant of the decision and request the applicant to advise whether the applicant will accept registration on those terms.

(11) Where within the prescribed period after the date of forwarding to the enterprise a notification under Subsection (10) -

- a) the applicant advises that he will accept registration on the proposed terms - the Minister shall direct NIDA to register the enterprise accordingly ; or

- b) the applicant does not so advise - the application for registration shall be deemed to be withdrawn.
- (12) An approval or refusal of registration under Subsection (9) and a direction under Subsection (11) (a) shall be notified in the Government Gazette, together with, in the case of an approval of registration, details of any conditions subject to which it was given.

Division 3. -

New Activities.

55. RESTRICTION OF NEW ACTIVITIES.

A foreign enterprise shall not carry on business in a new activity until it is registered under Section 56 in respect of the activity.

56. REGISTRATION FOR NEW ACTIVITY.

- (1) Where a foreign enterprise intends to carry on business in a new activity, it shall apply to NIDA in the form approved by the Minister, accompanied by the prescribed particulars, for registration under this section.
- (2) An application shall not be accepted by NIDA unless the proposals it contains are consistent with the Priorities Schedule.
- (3) Within the prescribed period after the lodging of the application NIDA shall examine the application and if, in the opinion of NIDA, the application is not correctly completed or where are relevant documents missing, NIDA shall decline to accept the application, and may return it to the applicant indicating the defects in it.
- (4) Where the application is returned by NIDA it shall be deemed to have been withdrawn by the applicant unless within the prescribed period after the date when NIDA returned the application to the applicant he makes an application with the defects corrected.
- (5) Where NIDA accepts the application it shall within the prescribed period make a recommendation to the

Minister, including a recommendation as to any conditions to be imposed if the application is granted.

- (6) Within the prescribed period after receipt of the recommendation from NI DA, the Minister shall -
  - a) where he is satisfied that the matter should be considered by the High Commissioner in Council - refer the matter, or request another Minister to refer the matter, to the High Commissioner in Council to formulate proposals ; and
  - b) in any other case - formulate proposals in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.
- (7) Within the prescribed period after the formulation of proposals under Subsection (6), the Minister shall notify the enterprise -
  - a) as to activities (if any) in respect of which it is proposed to register the enterprise and as to the activities (if any) in respect of which registration will be refused ; and
  - b) in the case of an activity in respect of which it is proposed that the enterprise will become registered - of the proposed conditions (if any) of registration ; and
  - c) in the case of an activity which is proposed will no longer be permitted - of the reasons for the proposed refusal.
- (8) Within the prescribed period after the date of forward to the enterprise a notification under Subsection (7), the enter may make representations to the Minister in relation to the notification.
- (9) Within the prescribed period after -
  - a) the end of the period prescribed for the purposes of Subsection (8) ; or
  - b) receipt of representations from the enterprise,whichever first occurs, the Minister shall -

- c) where he is satisfied that the matter should be considered by the High Commissioner in Council - refer the matter, or request another Minister to refer the matter, to the High Commissioner in Council for directions ; or
  - d) in any other case - consider the matter (including any representations made by the enterprise) in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.
- (10) Within the prescribed period after -
- a) the giving of directions under Subsection (9) (c); or
  - b) consideration of the matter under Subsection (9) (d),
- as the case may be, the Minister shall, subject to any directions from the High Commissioner in Council, approve or refuse registration of the applicant in respect of any activity.
- (11) Where the Minister approves registration, he shall immediately notify the applicant of the decision and request the applicant to advise whether the applicant will accept registration on those terms.
- (12) Where within the prescribed period after the date of forwarding to the enterprise a notification under Subsection (11) -
- a) the applicant advises that he will accept registration on the proposed terms - the Minister shall direct NIDA to register the enterprise accordingly ; or
  - b) the applicant does not so advise - the application for registration shall be deemed to be withdrawn.
- (13) An approval or refusal of registration under Subsection (10), and a direction under Subsection (12), shall be notified in the Government Gazette, together with, in the case of an approval or registration, details of any conditions subject to which it was given.

Division 4. -

Registered Enterprises.

57. CARRYING ON BUSINESS FOLLOWING REGISTRATION.

Subject to this Act, a registered enterprise may carry on business in an activity in relation to which it is registered.

58. ISSUE OF CERTIFICATE OF REGISTRATION.

On the registration of an enterprise under this Part, NIDA shall issue to the enterprise a certificate of registration in the prescribed form.

Division 5. -

Variation of Registration, etc.

59. VARIATION BY THE GOVERNMENT.

(1) If the Minister, after receiving a report from NIDA, is of the opinion that -

a) a registered enterprise has contravened or failed to comply with a condition of its registration ;  
or

b) a foreign enterprise that is exempt under Section 49 has contravened or failed to comply with a condition of the exemption,

the Minister, in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted, may advise the enterprise -

c) of his opinion ; and

d) of the grounds for the opinion ; and

e) that he proposes to vary the conditions of the registration or exemption, as the case may be ;  
and

f) of the variation that he proposes to make.

(2) Within the prescribed period after the date of the forwarding to the enterprise of advice under Subsection (1), the enterprise may make representations to the Minister in relation to the notification.

(3) After -

- a) the end of the period prescribed for the purposes of Subsection (2) ; or
- b) receipt of representations from the enterprise, whichever first occurs, the Minister shall -
- c) where he is satisfied that the matter should be considered by the High Commissioner in Council - refer the matter, or request another Minister to refer the matter, to the High Commissioner in Council for directions ; or
- d) in any other case - consider the matter (including any representations made by the enterprise) in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.

(4) After -

- a) the giving of directions under Subsection (3) (c) ; or
- b) consideration of the matter under Subsection (3) (d),

as the case may be, the Minister shall, subject to any directions from the High Commissioner in Council, vary or refuse to vary the registration or exemption, as the case may be.

(5) A decision under Subsection (4) shall be notified in the Government Gazette.

#### 60. VARIATION AT THE REQUEST OF AN ENTERPRISE.

(1) A registered enterprise may apply, in the prescribed form, to NIDA for variation of all or any of the terms and conditions of its registration or exemption.

- (2) NIDA shall consider the application as soon as practicable and shall make a recommendation to the Minister.
- (3) As soon as practicable after receipt of the recommendations from NIDA, the Minister may formulate proposals in consultation with any other Minister who, in the opinion of the Minister, should, in the circumstances, be consulted.
- (4) As soon as practicable after the formulation of proposals under Subsection (3), the Minister may advise the enterprise -
  - a) as to whether it is proposed to vary the terms and conditions of the registration or exemption, as the case may be ; and
  - b) in the case of a proposal to vary the terms and conditions - of the proposed variation ; and
  - c) in the case of a proposal to refuse variation - of the reasons for the proposed refusal.
- (5) Within the prescribed period after the date of the forwarding to the enterprise of advice under Subsection (4) the enterprise may make representations to the Minister in relation to the notification.
- (6) As soon as practicable after -
  - a) the end of the period prescribed for the purposes of Subsection (5) ; or
  - b) the receipt of representations from the enterprise,whichever first occurs, the Minister shall -
  - c) where he is satisfied that the matter should be considered by the High Commissioner in Council - refer the matter, or request another Minister to refer the matter, to the High Commissioner in Council for directions ; or
  - d) in any other case - consider the matter (including any representations made by the enterprise) in consultation with any other Minister who, in the

opinion of the Minister, should, in the circumstances, be consulted.

(7) As soon as practicable after -

- a) the giving of directions under Subsection (6) (c);  
or
- b) consideration of the matter under Subsection (6) (d),

as the case may be, the Minister shall, subject to any directions from the High Commissioner in Council, vary or refuse to vary the terms and conditions of registration or exemption, as the case may be.

(8) A decision under Subsection (7) shall be notified in the Government Gazette.

Division 6. -

Cancellation of Registration, etc.

#### 61. CANCELLATION

(1) If the Minister, after receiving a report from NIDA, is of the opinion that -

- a) a registered enterprise has contravened or failed to comply with a condition of its registration ;  
or
- b) a foreign enterprise that is exempt under Section 49 has contravened or failed to comply with a condition of the exemption;

and the Minister considers that, having regard to the nature of the contravention or failure, it is undesirable that the enterprise should continue to be registered or exempted, as the case may be, he shall refer the matter to the High Commissioner in Council.

(2) Where the High Commissioner in Council is of the opinion -

- a) that the contravention or failure has taken place ; and



b) that it is undesirable that the enterprise should continue to be registered or exempted, as the case may be,

the High Commissioner in Council may advise the enterprise -

c) of his opinion ; and

d) of the grounds for the opinion ; and

e) that he proposes to cancel the registration or exemption, as the case may be.

(3) Within the prescribed period after the date of the forwarding to the enterprise of advice under Subsection (2) the enterprise may make representations to the Minister.

(4) After -

a) the end of the period prescribed for the purposes of Subsection (3) ; or

b) the receipt of representation from the enterprise,

whichever first occurs, the High Commissioner in Council shall consider the matter (including any representations made by the enterprise) and may cancel the registration or exemption, as the case may be.

(5) A decision under Subsection (4) shall be notified in the Government Gazette.

#### 62. STATUS OF ENTERPRISE FOLLOWING CANCELLATION.

Subject to Section 64, an enterprise shall cease to carry on business within the period of one month after cancellation of its registration.

#### 63. NOTIFICATION.

After -

a) the end of the period of one month after the cancellation of the registration of an enterprise ;  
or

- b) the date last fixed under Section 64 in relation to an enterprise;

whichever last occurs, the Executive Director shall forward to any person or authority who in his opinion is affected, a notification in the prescribed form that the registration of the enterprise has been cancelled.

Division 7. -

Temporary Continuation of Certain Activities.

64. CARRYING ON BUSINESS FOR THE PURPOSE OF WINDING-UP.

- (1) Where the registration of an enterprise is refused or is cancelled in relation to an activity, the enterprise may apply to NIDA in the prescribed form to temporarily continue to carry on business in the activity.
- (2) On receipt of an application under Subsection (1), NIDA may fix a date on which the enterprise shall cease to carry on business in the activity concerned, and until that date or a later date fixed under Subsection (3), the enterprise may continue to carry on business for the purpose only of winding-up its affairs in relation to the activity.
- (3) Where a date has been fixed under this section in relation to an enterprise and NIDA is satisfied that the enterprise is using its best endeavours to wind up its affairs but that the enterprise ought to be allowed further time for that purpose, NIDA may, in its discretion, on the application of the enterprise in the prescribed form, from time to time fix a later date in substitution for the date last fixed under this section in relation to that enterprise.

Division 8. -

Offences.

65. OFFENCES GENERALLY.

- (1) Where -

- a) any condition of the exemption of an enterprise under Section 49 is not complied with ; or
- b) a notice under Section 52 is not given by an enterprise in accordance with that section ;  
or
- c) a requirement under Section 53 is not complied with in accordance with that section and Section 54 ; or
- d) the conditions of the registration of an enterprise are not complied with ;

the enterprise and any director, officer or member of the enterprise who is in default is guilty of an offence.

Penalty : \$10 000.00.

Default penalty : \$200.00.

- (2) An enterprise which carries on business in contravention of this Part is guilty of an offence.

Penalty : \$10 000.00.

Default penalty : \$200.00.

- (3) In a prosecution under this section, the burden of proof that an enterprise was carrying on business only for the purpose of winding-up its affairs or was not carrying on business is on that enterprise.

- (4) A certificate purporting to be signed by the Executive Director, stating that on a specified date or during a specified period -

- a) a condition imposed under this Act had not been complied with ; or
- b) a notice under Section 52 had not been given ;  
or
- c) a requirement under section 53 had not been complied with ; or
- d) an enterprise was carrying on any class of business ; or

- e) an enterprise was not registered;  
is evidence of that matter.

Division 9. -

Registers.

66. MAINTENANCE OF REGISTERS.

- (1) The Executive Director shall keep, or cause to be kept, in accordance with any directions of NIDA, a register or registers in which there shall be entered -
  - a) all notices of exemption under Section 49 ; and
  - b) all notices of existing activities under Section 52 ; and
  - c) all applications for registration ; and
  - d) all registrations ; and
  - e) all variations of registrations under Section 59 or 60 ; and
  - f) all cancellations of registrations or exemptions under Section 61 ; and
  - g) such other matters as are prescribed or as the Minister directs.
- (2) The mere production of a register or a document purporting to be, or to be a copy of or extract from a register kept under Subsection (1) is prima facie evidence of the matters contained in it.

PART VII

CONTROL OF TAKE-OVERS

67. SHARE TRANSFERS.

- (1) Where a person offers to acquire any share of another person in an enterprise, he shall immediately send a notice in writing, of the offer to NIDA.

Penalty : \$5 000.00.

- (2) A court that convicts a person of an offence against Subsection (1) may direct that a share in relation to which the offence was committed, and which has, in accordance with the offer, been acquired by the offeror or a person on his behalf or on behalf of whom the offer was made, be forfeited to the Government.
- (3) Nothing in Subsection (1) applies to the acquisition of a share -
  - a) by a Papua New Guinean who is or becomes the beneficial owner of the share ; or
  - b) by a spouse, ancestor or descendant of the beneficial owner of the share.
- (4) In this section -

"invitation" means a statement, however made, that is not an offer but expressly or impliedly invites the holder of a share to offer or dispose of the share ;

"offer" includes an invitation, but does not include an offer made at an official meeting of a stock exchange in the ordinary course of trading on the stock exchange ;

"share" includes an interest in a share, a right or an option to acquire a share and a right to vote or of decision as to the carrying on of business attached to a share.

#### 68. CHANGE IN STATUS OF ENTERPRISES.

- (1) Where a local enterprise becomes a foreign enterprise, the provisions of Part VI apply as though references in that Part to the commencement of this Act were references to the day following the change in the status of the enterprise.
- (2) Where the circumstances of a registered foreign enterprise change in such a way that, if the enterprise had, on the date of registration or initial registration, been wholly owned and controlled by Papua New Guineans it would, by virtue of the change,

have become a foreign enterprise, the provisions of Part VI apply as if the references in that Part to the commencement of this Act were references to the day following the change in the circumstances of the enterprise.

- (3) The references in Subsection (2) to a change in the circumstances of an enterprise shall, where the change took place by reason of a series of events, be read as references to the last of those events.

## PART VIII

### CONTROL OF CERTAIN AGREEMENTS

#### 69. AGREEMENTS TO WHICH PART VIII APPLIES.

- (1) Subject to Subsection (2), this Part applies to any agreement or arrangement to which a foreign enterprise is a party under which payments are to be made in foreign exchange by or to an enterprise in Papua New Guinea.
- (2) Subsection (1) does not apply to an agreement or arrangement exempted from the operation of this Part by the Minister, after receiving a report from NIDA.
- (3) A declaration or exemption under Subsection (2) -
  - a) may relate to a specific agreement or arrangement or to a class of agreements or arrangements; and
  - b) may be made or given -
    - (i) by notice published in the Government Gazette ; or
    - (ii) by notice in writing to a party to the agreement or arrangement concerned.
- (4) In this section, "foreign exchange" has the same meaning that it has in Part V of the Central Banking Act 1973, as in force from time to time.

70. EXISTING AGREEMENTS, ETC.

- (1) Where an agreement or arrangement to which this Part applies is in force on the date of commencement of this Act, a party to the agreement or arrangement shall, within the prescribed time, furnish to NIDA details of the agreement or arrangement.
- (2) If details of an agreement or arrangement are not furnished in accordance with Subsection (1), each party to the agreement is guilty of an offence.

Penalty for an offence against this subsection :

\$5 000.00.

71. FUTURE AGREEMENTS, ETC.

- (1) Subject to this section, no agreement or arrangement to which this Part applies shall be entered into after the commencement of this Act unless details of it have been given to NIDA for a period of one month and such further time (if any) as is necessary to allow action under this section to be completed.
- (2) If details of a proposed agreement or arrangement are not given in accordance with Subsection (1), each party to the agreement or arrangement is guilty of an offence.

Penalty : \$5 000.00.

- (3) Within the period of one month referred to in Subsection (1), the Minister may, after receiving a report from NIDA, by notice in writing to a party to the proposed agreement or arrangement -
  - a) approve the agreement or arrangement and waive the balance of the period ; or
  - b) call upon a party to the agreement or arrangement to show cause within a period fixed in the notice why the agreement or arrangement should not be prohibited under Subsection (6).
- (4) At the end of the period fixed under Subsection (3) (b), the Minister, after receiving a report

from NIDA, shall consider any recommendations made on the matter, and shall either -

- a) approve the proposed agreement or arrangement ;  
or
  - b) refer the matter to the High Commissioner in Council.
- (5) If within the period fixed under Subsection (3) (b) a party to the proposed agreement or arrangement so requests the Minister shall, before referring the matter to the High Commissioner in Council, refer it to an independent tribunal appointed by the High Commissioner in Council for a report, and in referring the matter to the High Commissioner in Council shall also submit the report of the tribunal.
- (6) If -
- a) the High Commissioner in Council considers that because of restrictive provisions contained in the proposed agreement or arrangement it is not in the best interests of Papua New Guinea ; or
  - b) the proposed agreement or arrangement would artificially reduce any amount payable in Papua New Guinea;
- the High Commissioner in Council may, by notice in writing to a party to the proposed agreement or arrangement, prohibit it, but otherwise shall approve it.
- (7) A prohibition or approval under Subsection (6) shall be notified in the Government Gazette.
- (8) A person who enters into or purports to enter into, or who acts in accordance with or gives effect to, an agreement or arrangement that is prohibited under Subsection (6) is guilty of an offence.

Penalty for an offence against this subsection :

\$10 000.00.

Default penalty : \$500.00.



72. FURTHER INFORMATION.

- (1) The Minister or NIDA may at any time, by notice in writing to a party to an agreement or arrangement, or a proposed agreement or arrangement, to which this Part applies, require him to furnish, within a time fixed in the notice, such information as he or it requires concerning the agreement or arrangement.
- (2) A person who, without reasonable excuse (the burden of proof of which is upon him), refuses or fails to comply with a requirement under Subsection (1) is guilty of an offence.

Penalty for an offence against this subsection :

\$5 000.00.

Default penalty : \$250.00.

73. DEFENCES.

- (1) It is a defence to a charge of an offence against Section 70 (2) or 71 (8) if the person charged establishes that the agreement or arrangement -
  - a) contained no restrictive provisions other than those inherent in the subject-matter of the agreement or arrangement and generally accepted as being usual and reasonable ; and
  - b) did not artificially reduce any amount payable in Papua New Guinea;or that the offence was inadvertent.
- (2) Nothing in Subsection (1) affects any other action that may be taken under this Part.

PART IX

GOVERNMENT CORPORATIONS

74. EFFECT OF PART IX.

For the avoidance of doubt, it is hereby declared that nothing in this Part of itself provides power to establish a corporation.

75. ESTABLISHMENT OF GOVERNMENT CORPORATIONS.

- (1) It is the responsibility of NIDA, in conjunction with other appropriate authorities, to maintain a continuous survey of the national economy and of business development and requirements in order to ascertain if, and in what areas and fields, it is desirable that a Government-controlled corporation be established -
  - a) in order to ensure or to assist further private development ; or
  - b) because adequate private investment is not available for an industry or proposed industry that is considered by the Government to have a high priority for development ; or
  - c) because an industry needs to be established, maintained or expanded to meet the needs of an area ; or
  - d) because the creation of a Government-controlled corporation is the appropriate method for the Government to take part in a venture with private enterprise, another Government (including the Government of a place outside Papua New Guinea) or an international agency ; or
  - e) in the national interest.
- (2) Where NIDA is satisfied that the establishment of such a corporation is or may be desirable, it shall so report to the Minister, with recommendations as to the constitution, functions and powers of the proposed corporation and such other matters as it thinks proper or as the Minister directs.

76. CONTINUING RESPONSIBILITIES OF NIDA.

- (1) NIDA is charged with the responsibility for the supervision of the activities of corporations referred to in Section 75.
- (2) The extent and manner of supervision by NIDA and its powers for that purpose shall be as provided for in the constitution of the corporation.

- (3) NIDA shall ensure that the Minister is kept fully informed at all times of the results of its supervision under this section of the activities of corporations, and for that purpose shall make to him such reports and at such times as it thinks desirable or as he requires.

PART X

MISCELLANEOUS

77. FALSE STATEMENTS.

A person who, in a statement made or information furnished under or for the purposes of this Act makes, without reasonable excuse (the burden of proof of which is upon him), a statement or gives information that is false or misleading in a material particular is guilty of an offence.

Penalty : \$10 000.00.

78. NIDA TO CONSULT WITH AFFECTED BODIES, ETC.

- (1) Where NIDA is of the opinion that particular policies and programs administered by it affect a local or regional government body it shall as far as practicable advise that body of those policies and programs and shall in the conduct of its affairs take into account the views (if any) expressed by that body.
- (2) NIDA shall, as far as practicable, advise organizations which in its opinion represent enterprises engaged in a particular industry of the policies and programs administered by NIDA to the extent to which those policies and programs affect that industry.
- (3) In this section "local or regional government body" means -
  - a) provincial governments ; and
  - b) local government authorities within the meaning of the Local Government Act 1963, as in force from time to time ; and
  - c) local government councils.

79. REGULATIONS.

The High Commissioner in Council may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and generally for achieving the purposes of this Act, and in particular for prescribing -

- a) the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act ; and
- b) the returns and information to be supplied under or for the purposes of this Act ; and
- c) penalties not exceeding \$500.00 and default penalties not exceeding \$10.00 for offences against or contraventions of the Regulations.

Sec. 8.

SCHEDULE 1

National Investment Guidelines

1. There should be the maximum practicable use and expansion of facilities and services available from existing enterprises owned and controlled by Papua New Guineans.
2. The creation of desirable new enterprises owned or controlled by Papua New Guineans should be encouraged as far as practicable.
3. Small-scale enterprises owned and controlled by Papua New Guineans should be encouraged as far as practicable.
4. The maximum use should be made of Papua New Guinean labour and in particular provision should be made for the employment of women, and every effort should be made to rapidly increase the general level of skill of the Papua New Guinean work-force.
5. As rapidly as practicable, Papua New Guineans should replace others at all levels of employment, particularly in managerial, professional and technical positions at the highest levels, and, if at any time suitably qualified Papua New Guineans are not available to fill any position, provision should be made especially by foreign enterprises for training with a view to having the position filled by a Papua New Guinean within a reasonable time.
6. The maximum use should be made of Papua New Guinean raw materials, manufactures and supplies.
7. As far as practicable, all processing of Papua New Guinean materials should be carried out in Papua New Guinea.
8. Investment in rural and less-developed areas should be encouraged.
9. Investment should be encouraged in industries that reduce reliance on imports and on existing exports.
10. Every effort should be made to conserve the environment.
11. The essential relation between the spiritual integrity of the people and their physical surroundings should be scrupulously respected.

12. Foreign enterprises should not endanger Papua New Guinea's national integrity or undermine its foreign policy and, in particular, no foreign enterprise should interfere in the affairs of Papua New Guinea.
13. Foreign enterprises should not receive more favourable treatment from the Government than Papua New Guinea enterprises.
14. Foreign enterprises should, on balance, make an important positive contribution to the well being of Papua New Guineans generally, and should not have serious adverse effects on Papua New Guineans in the area in which the foreign enterprise is located.
15. In respect of natural resource industries national and community benefits should be at the highest level consistent with the continued operation of the foreign enterprise.
16. As practical and appropriate, provision should be made in the case of new foreign investment for the acquisition of equity by or on behalf of the Government, or for joint ventures with enterprises owned or controlled by Papua New Guineans.
17. The equity of the Government and of Papua New Guineans in large scale operations by foreign enterprises for the exploitation of natural resources should normally be as great as practicable.
18. In general, Government purchases of equity in foreign enterprises should be paid for out of future earnings.
19. Provision should normally be made for control of foreign enterprises to be transferred to Papua New Guinea hands.
20. Any ancilliary economic activity generated within Papua New Guinea should be conducted, as far as possible, by Papua New Guineans.
21. In general, foreign enterprises should provide any required infrastructure, and where infrastructure is provided by the Government specifically for a project it should, in general, be a condition of its provision that the Government obtain an equity in the enterprise to the value of the infrastructure provided or be otherwise compensated for it.

22. In general new foreign investment should come from a geographically wide range of sources, to avoid excessive dependence of the economy or a major sector of the economy on a single country or a limited region.
23. In general agreement with foreign enterprises should provide for disputes between those enterprises and the Government to be settled by Papua New Guinea tribunals as if all parties to the dispute were Papua New Guineans.

Sec. 31.

SCHEDULE 2

Oath and Affirmation of Office

OATH

I, \_\_\_\_\_, do swear that I will well and truly serve The Government of Papua New Guinea in the office of Executive Director (or Deputy Executive Director) of NIDA.

So help me God !

AFFIRMATION

I, \_\_\_\_\_, do solemnly and sincerely promise and declare that I will well and truly serve The Government of Papua New Guinea in the office of Executive Director (or Deputy Executive Director) of NIDA.



Sec. 31.

SCHEDULE 3

Declaration of Secrecy

I, \_\_\_\_\_, the Executive Director (or Deputy Executive Director) of NIDA, do solemnly and sincerely declare that I will at all times maintain secrecy in relation to the affairs of the Board and of NIDA and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as a member of the Board, except by authority of the Board or under compulsion or obligation of law.

(Signature of declarant)

Declared at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Before me :

(Signature of person before whom declaration is made)

Sec. 38.

SCHEDULE 4

Exceptions and Modifications to  
the Public Bodies  
(Financial Administration)  
Act 1969

Provision.	Modification, etc.
Section 8	Not applicable.
Section 10	Not applicable.
Section 11	Not applicable.
Section 13	Not applicable.
Section 15	Not applicable.
Section 16	Not applicable.
Section 17	(a) Applies only financial statements.  (b) Applies as if references to the High Commissioner were references to the Minister.

Sec. 44.

SCHEDULE 5

Investment Guarantees

1. There will be no nationalization or expropriation of the property of the enterprise or its investors except -
  - a) in accordance with law ; and
  - b) for a public purpose defined by law ; and
  - c) in payment of compensation as defined by law.
2. Subject to any laws relating to taxation and exchange control, the enterprise and its investors shall be allowed the right -
  - a) to remit overseas earnings and expatriate capital; and
  - b) to remit amounts necessary to meet payments of principal, interest and service charges, and similar liabilities on foreign loans, and the costs of other foreign obligations, approved by the Government,at the exchange rate prevailing under any law of Papua New Guinea at the time of remission or repatriation.
3. Subject only to the exchange rate prevailing under any law of Papua New Guinea at the time, the enterprise and its investors shall be allowed the right to remit overseas all compensation received in accordance with the guarantee set out in paragraph 1 (c).
4. Subject to any agreement between the Government and the enterprise, no rate, tax, rent, charge, due, duty, tariff or other levy and no related procedure or practice shall discriminate against the enterprise or its investment on the grounds of its origin.



WESTERN SAMOA

1965, N° 27

AN ACT to encourage the establishment and expansion of enterprises in Western Samoa, by making provisions for the grant of certain relief from customs duties, income tax and business licence fees to persons engaging in approved enterprises ; and for purposes incidental to or connected with any of the foregoing purposes. (21 October 1965).

BE IT ENACTED by the Legislative Assembly of Western Samoa in the Parliament assembled as follows : -

1. Short title -

This Act may be cited as the Enterprises Incentives Act 1965.

2. Interpretation -

In this Act, unless the context otherwise requires, -

"Approval Orders" means an order approving an enterprise made under section 14 of this Act ;

"Approved enterprise" means an enterprise in respect of which an approval order has been made under section 14 of this Act ; and means only the expansion of the enterprise where the approval relates only to such expansion ;

"Board" means the Incentives Board establishment by section 4 of this Act ;

"Collector" means the Collector of Customs ;

"Commissioner" means the Commissioner of Inland Revenue ;

"Date of production", in respect of an enterprise, means the date of production specified in an order approving that enterprise, which shall not be later than the date set out opposite the class of that enterprise in the Schedule to this Act ;

"Department" means the Department of Economic Development constituted and established by the Economic Development Act 1965 ;

"Director" means the Director of Economic Development appointed under the Economic Development Act 1965 ;

"Enterprise" means an enterprise of one of the types set out in the Schedule to this Act ;

"Enterprise" means the person authorised by an approval order to conduct an approved enterprise ;

"Minister" means the Minister of Finance and Economic Development ;

"Tax holiday period", as to customs duty, income tax and business licences, or any one or two of them, means any period commencing from an approval order coming into force, and -

a) Ending at the expiration of any period up to five years from the date of production, as ordered by Cabinet in the approval order, or, if not so ordered at the expiration of such five years ; or

b) Ending later if and as granted by Cabinet under section 17 of this Act.

### 3. Administration of Act -

The Department, under the control of the Minister and subject thereto of the Director, shall be charged with the general administration of this Act.

### 4. Establishment and members of Incentives Board -

(1) There is hereby established a Board to be called the Incentives Board.

(2) The Board shall consist of -

a) The following voting members -

- (i) The Minister, who shall be the Chairman ;
- (ii) Two other members of the Legislative Assembly, to be nominated by the Assembly and appointed by the Cabinet ;
- (iii) A member of the Chamber of Commerce of Western Samoa, who is a citizen of

Western Samoa to be nominated by the Chamber and appointed by the Cabinet ; and

(iv) A planter, who is a citizen of Western Samoa, to be appointed by Cabinet ; and

b) The following non-voting ex officio members -

(i) The Director, who will also act as Secretary to the Board ;

(ii) The Financial Secretary ;

(iii) The Commissioner ; and

(iv) The Collector.

5. Deputies of members of Board -

Cabinet shall also appoint -

a) Two other members of the Legislative Assembly to be nominated by the Assembly to be the respective deputies of the two members of the Assembly appointed to be members of the Board ;

b) Another member of the Chamber of Commerce who is a citizen of Western Samoa to be nominated by the Chamber to be the deputy of the member of the Chamber appointed to be a member of the Board ;

c) Another planter to be the deputy of the planter appointed to be a member of the Board.

(2) Each deputy shall act for the member whose deputy he is whenever that member -

a) Dies or resigns or is removed from office ; or

b) From any other cause whatever is not available or eligible or is otherwise unable to act as a member of the Board.

(3) When a deputy is called on to act in consequence of -

a) Any of the contingencies specified in paragraph (a) of subsection (2) of this section, he shall



continue to act until a substitute member has been appointed ; and

- b) Any of the contingencies specified in paragraph (b) or subsection (2) of this section, he shall continue to act until such time as the member whose deputy he is again able to act.
- (4) In every case where a non-voting ex officio member of the Board is absent from a meeting of the Board, a deputy appointed by him may attend and act at the meeting in his stead.
- (5) The fact that any deputy attends and acts at any meeting shall be conclusive proof of his authority to do so, and no person shall be concerned to enquire whether the occasion has arisen which authorises or requires him to do so.

6. Terms of appointments -

- a) Subject to the other provisions of this Act, the members and deputy members of the Board to be appointed by Cabinet shall be appointed for a term of three years, but may from time to time be reappointed ;
- b) Any member or deputy member of the Board appointed by Cabinet may at any time be removed from office by Cabinet for loss of qualification, disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of Cabinet ; or at any time resign his office by written notice given to the Minister ;
- c) If any member or deputy member of the Board appointed by Cabinet dies or resigns or is removed from office, or if any deputy member is appointed to be a member, his office shall, as soon as practicable, be filled by the appointment of a new member or deputy member as the case may be in the same manner as in the case of the vacating member or deputy member ;
- d) Subject to the other provisions of this Act, every member and deputy member appointed under subsection (c) of this section shall hold office by virtue of appointment for only the residue of the term of the vacating member or deputy member ;

- e) Unless a member or deputy member of the Board appointed by Cabinet sooner vacates his office, he shall continue in office until his successor is appointed, notwithstanding the expiry of the term for which he was appointed.

7. Meetings -

- (1) Meetings of the Board shall be called by the Director on the instructions of the Chairman.
- (2) The quorum for any meeting shall be three voting members.
- (3) Every question before a meeting of the Board shall be decided by a majority of the votes of the voting members (including their deputies if any) present at the meeting.
- (4) Every meeting of the Board shall be presided over by the Chairman, or, if he is not present, by a voting member or deputy of a voting member appointed by the voting members and deputies of voting members who are present.
- (5) At any meeting of the Board the Chairman or other voting members or deputy of a voting member presiding shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.
- (6) A resolution in writing signed, or assented to by letter or telegram or cable, by a majority of the voting members of the Board or their deputies shall be as valid and effectual as if it had been passed at a meeting of the Board.
- (7) Except as otherwise provided in this Act, the Board may regulate its procedure as it thinks fit.

8. Remuneration and allowances of Board members -

- (1) There may be paid, from moneys appropriated by the Legislative Assembly for that purpose, to each member of the Board appointed under clause (ii), clause (iii) or clause (iv) of paragraph (a) of subsection (2) of section 4 of this Act who is not a full-time salaried employee of the Government.

- a) Any travelling expenses reasonably incurred by him in respect of the performance of his duties as a member of the Board ; and
  - b) Such sum as Cabinet from time to time approves in respect of each day or part of a day which such member spends upon the business of the Board.
- (2) Any such approval may be expressed to operate from the date thereof or an earlier or later date, and if not so expressed shall operate from the date thereof.

9. Members and officers to maintain secrecy -

- (1) Every member of the Board, every officer of the Department, and every other person engaged or employed in connection with the work of the Board or the Department, shall maintain and aid in maintaining the secrecy of all matters which come to his knowledge when carrying out his functions or duties under this Act, and shall not communicate any such matters to any person, except for the purpose of carrying this Act into effect.
- (2) Every person who wilfully acts in contravention of subsection (1) of this section commits an offence against this Act, and shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding three months or to a fine not exceeding one hundred pounds or to both.

Cf. 1958, N° 110, s. 6 (N.Z.).

10. Application for approval order -

- (1) Any person who is desirous of establishing or expanding an enterprise in Western Samoa may apply to the Department for an order approving such enterprise.
- (2) The applicant shall supply to the Department, with his application, the following information :
  - a) Full name, address and present occupation or main business of the applicant, and, if the applicant is a public or private company, where incorporated ;
  - b) Full name of the enterprise ;

- c) The nature of the new enterprise or expansion of existing enterprise, the resulting product of service, the anticipated volume of operations during each of the first ten years of production, where and how the product or service is to be marketed, and the price at which the applicant expects to be able to market the product or service ;
- d) The number of existing enterprises producing a similar product and their annual production, if known ;
- e) The estimated sources, amounts, form (cash or otherwise) and purposes of the capital intended to be expended on the enterprise during each of the first ten years of production ; a description and estimation of the cost of physical structures to be erected or added and of capital equipment, including vehicles, to be purchased ;
- f) Any building materials, plant, vehicles, machinery, tools (other than hand tools), raw material and other articles which the applicant claims will be required for the establishment, expansion, operation or conduct of his enterprise, and which he applies to be allowed to obtain wholly or partly free of customs import duty, and as to each of them whether it will be wholly or only partly used for those purposes, and, if only partly used, the extent of such part use ;
- g) The locality in which the enterprise or expansion will be situated and the site on which any factory will be erected, with approvals in writing to that locality and site from the Directors of Works and Health ;
- h) The nature of the title to that site held or expected to be obtained by the applicant, certified in writing by the Director of Lands ;
- i) The conditions under which workers will be employed, including salaries, wages and any provision for amenities, and housing of the workers, and the numbers of Western Samoa and of other workers intended to be employed initially, and during each of the first ten years of production, and a description of the duties of each employee ;

- j) The provisions intended for apprenticeships for or other training of Western Samoa workers, so as to increase the proportion of such workers employed in the enterprise ;
- k) The nature, source and amounts of raw materials intended to be used by the enterprise during each of the first ten years of production ;
- l) The date on or before which it is expected that -
  - (i) Work on the enterprise will commence, and
  - (ii) The enterprise will produce in marketable quantities the product intended to be manufactured or otherwise produced, or the service intended to be rendered ;
- m) The full names of the principals or intended directors, their addresses, bank and other financials references, previous background and experience in the product or service to be rendered ;
- n) An estimated product cost analysis (including operating costs) and a copy of a product or service marketability survey ;
- o) A copy of any other survey obtained as to the prospects of the enterprise ; and
- p) Such other information as the Department may require.

11. Existing enterprise producing similar product -

The Director, if he considers that the enterprise may unduly affect any efficient existing enterprise producing a similar product in Western Samoa, shall -

- a) Call on the applicant to pay to the Department the cost of publishing a notice pursuant to paragraph (b) of this section ;
- b) When that cost is paid to the Department, cause a notice to be published at least in three issues of a newspaper or newspapers published in Apia stating the nature of the application which has been made, and that objections thereto

and the grounds thereof will be considered if lodged in writing in triplicate with the Department, with a copy to the applicant, on or before such day as may be specified in the notice ; and

- c) Consider any objections which may have been received pursuant to the notice, and any reply thereto which the applicant may deliver in writing in triplicate to the Department, with a copy to the objector, within two weeks of the last day for lodging objections.

12. Director to report to Board -

The Director shall analyse and investigate each application, and shall then submit each application to the Board, together with any objections thereto and any replies to any objections, and together with the Director's report and recommendation on the application.

13. Board to report to Cabinet -

- (1) The Board may refer any application back to the Director for further information, analysis or investigation, and a revised report and recommendation.
- (2) After the Board has considered an application, it shall submit the same to Cabinet, together with all papers relating thereto received from the Director, and together with the recommendation of the Board with regard thereto.

14. Cabinet may approve enterprise -

- (1) Cabinet may by Order approve any enterprise in respect of which an application has been made in accordance with the provisions of section 10 of this Act, with or without conditions, if it is satisfied that -
  - a) The enterprise will be a benefit to the economy of Western Samoa ;
  - b) It is in the public interest so to do ;
  - c) It is either a new enterprise, or the expansion of an existing enterprise ;

- d) It will not unduly affect any existing efficient enterprise producing a similar product in Western Samoa ; and
  - e) If the enterprise is to be conducted by a company, the company is or will be incorporated under the Samoa Companies Order 1935 (Reprint S.R. 1956/126 New Zealand), or registered thereunder.
- (2) In all other cases Cabinet shall refuse to make such an Order.
- (3) The decision of Cabinet on each application shall be final.
- (3A) For the purpose of determining the date of termination of each tax holiday period of the approved enterprise, Cabinet shall consider the amounts of capital which the enterprise proposes to invest in the enterprise, and the periods, and the periods during which the enterprise proposes to invest each amount of capital, and such other factors as Cabinet thinks fit.
- (4) Each approval order shall specify -
- a) The date on or before which work on the approved enterprise is to commence ;
  - b) The date of production of the approved enterprise ; and
  - c) The date of termination of each tax holiday period of the approved enterprise ; and
  - d) Each article which Cabinet is satisfied about, and directs to be specified in the approval order, in terms of subsection (1) of section 18 of this Act ; and
  - e) Each article which Cabinet is satisfied about, and directs to be specified in the Approval order, in terms of subsection (5) of section 18 of this Act, with a statement of the extent to which it may be free of customs duty on importation into or purchase in Western Samoa.

- (5) Each approval order shall come into force on the day it is made, irrespective of whether it is later formally drawn up a signed or otherwise perfected.

15. Notification of order or refusal -

As soon as convenient after Cabinet has made a decision on an application, the Director shall -

- a) Publish, at least in one issue of a newspaper published in Apia, a copy of the approval order made, or a notice that Cabinet has refused to make such order ;
- b) Send to the applicant, the Financial Secretary, the Commissioner and the Collector a copy of the approval order made, or a notice in writing that Cabinet has refused to make such order; and
- c) Send to each objector a notice in writing stating the purpose of Cabinet's decision.

16. Subsequent application -

No person who has been refused an approval order under section 14 of this Act, or has had his approval order revoked under section 24 of this Act, shall renew his application or make fresh application for the approval of the same enterprise until after the expiration of six months from the receipt by him of notice in writing of that refusal or revocation.

17. Extension of tax holiday period -

On an enterpriser applying in writing to the Department, before the end of one of his tax holiday periods, for an extension of that period, and furnishing such information as the Department requires, the Board may recommend and Cabinet may grant an extension of that period up to any time not later than the expiration of ten years after his date of production. The decision of Cabinet on any such application shall be final, but shall not preclude a further application before the end of any extension of that period which falls short of the expiration of such ten years.



18. Relief from customs duty -

- (1) Every enterpriser conducting an approved enterprise shall be entitled, from his approval order coming into force to the end of his tax holiday period, as to customs duty to import into Western Samoa free of customs duty, those building materials, plant, vehicles, machinery, tools (other than hand tools), raw materials and other articles which Cabinet is satisfied will be required, and will be wholly used, for the establishment, expansion, operation or conduct of the enterpriser's approved enterprise, and which are specified in the approval order made by Cabinet under this section.
- (2) Any enterpriser aggrieved by the refusal of the Collector to admit any such articles free of customs duty or to refund customs duty on any such articles purchased in Western Samoa may, within two weeks of such refusal, appeal therefrom to the Board, whose decision shall be final.
- (3) Cabinet may, by supplementary order, made at any time during the enterpriser's tax holiday period as to customs duty, allow to be imported into Western Samoa free of customs duty, or to be purchased in Western Samoa with benefit of refund of customs duty, on such terms and conditions as may be stated in the order, any raw materials and any other articles which Cabinet is satisfied will be required, and will be wholly used, for the establishment, expansion, operation or conduct of that enterpriser's approved enterprise.
- (4) Notwithstanding anything hereinbefore contained, the Collector shall not be bound to refund customs duty or any article purchased in Western Samoa if that duty amounted to less than 20 tala.
- (5) Notwithstanding anything hereinbefore contained in this section, where Cabinet is satisfied that any article will be required, but will not be wholly used, for the establishment, expansion, operation or conduct of an approved enterprise, Cabinet may, in the approval order, or in a supplementary order made at any time during the enterpriser's tax holiday period as to customs duty, allow that article to be imported into Western Samoa partially free or at a reduced rate of customs duty, or to be

purchased in Western Samoa with benefit of a partial refund of customs duty, and in either case to such extent, and on such terms and conditions, as Cabinet thinks fit.

19. Special provisions relating to articles acquired free of customs duty -

Every enterpriser conducting an approved enterprise who imports into Western Samoa any article free or partially free of customs duty, or who purchases in Western Samoa any article on which he obtains a refund or partial refund of customs duty, under the provisions of section 18 of this Act, shall -

- a) Keep a record in such form and containing such particular as may be required by the Collector of the articles so imported or purchased by him ;
- b) Cause such articles to be marked with such mark and in such manner as may be required by the Collector ; and
- c) Permit the Collector or any person authorized by him at any reasonable time to inspect such record and to examine any such articles for the purpose of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

20. Restriction upon disposition of articles acquired free of customs duty -

No article acquired by any enterpriser free or partially free of customs duty under the provisions of this Act shall be sold, given away or otherwise disposed of by that enterpriser except -

- a) In the case of an assignment of his approved enterprise, for the purpose of which such article was acquired to the assignee of such enterprise ; or
- b) Upon the enterpriser paying to the Collector the customs duty on the value of the article sold given away or otherwise disposed of, which value shall be the value thereof at the date of

the sale gift or other disposal as assessed by the Collector less any customs duty already paid by him on the article and not refunded ; or

- c) After the expiration of five years from the date of the acquisition of such article.

21. Relief from income tax -

- (1) An enterpriser conducting an approved enterprise shall, during his tax holiday period, as to income tax be exempt from the payment of income tax under the Income Tax Ordinance 1955 in respect of all income arising out of the approved enterprise but shall be subject in all other respects to the provisions of the Income Tax Ordinance 1955.

Provided that if the end of his tax holiday as to income tax period does not coincide with the end of the financial year of his approved enterprise, the income for the financial year in which the last day of the tax holiday as to income tax period falls shall be apportioned between the parts of the said financial year which respectively precede and follow the end of his tax holiday period as to income tax, on the basis of the number of days falling within each period, and the income thus attributed to the part which precedes the end of his tax holiday period as to income tax shall be exempt from income tax.

- (2) Subject to the limitations contained in subsections (3) and (4) of this section, where an approved enterprise is conducted by a company, any dividends or profits paid to the shareholders of the company, or any of them, during the company's tax holiday period as to income tax, or within two years thereafter, out of the income arising from the company's approved enterprise during its tax holiday period as to income tax, shall not be taken into account in ascertaining the chargeable income or the rate of tax of such shareholders.
- (3) The provisions of subsection (2) of this section shall only apply to the extent that the total amount of dividends or profits paid to a shareholder as therein mentioned does not exceed the total amount invested by the shareholder in the approved enterprise up to the end of its tax holiday period as to income tax.

- (4) The provisions of subsection (2) of this section shall not apply to any shareholder who would become liable by any law of his country of residence to pay additional income tax owing to the fact that the dividend he received from the profits of an approved enterprise was not subject to income tax in Western Samoa.
- (5) During the tax holiday period of an enterpriser the assets of his approved enterprise shall be depreciated by such amounts as are normally allowed under the Income Tax Ordinance 1955 for wear and tear ; and at the end of his tax holiday period as to income tax the written down values of the assets of his approved enterprise shall be treated as commencing values for computing future depreciation allowances for income tax purposes.
- (6) Subject to the limitations imposed by section 57 of the Income Tax Ordinance 1955, any loss incurred by an enterpriser in the conduct of his approved enterprise, on balance over the whole of his tax holiday period as to income tax may be set off against his income arising from his approved enterprise after his tax holiday period as to income tax. For the purposes of subsection (3) of that section 57, the loss shall be deemed to have been incurred in the last year of assessment of the tax holiday period as to income tax.

22. Annual Report -

There shall be submitted by the enterpriser to the Department, with a copy to the Commissioner, within six months of the close of each financial year of his approved enterprise during his tax holiday period as to income tax a report in writing on the conduct and progress of the enterprise during the past financial year together with the annual accounts for that year duly audited by an auditor approved by the Director. Such accounts shall contain a statement giving full particulars of all capital expended on the enterprise, show how this capital has been depreciated during the financial year in question, and generally contain sufficient information to show whether or not the enterprise has complied with all conditions of his approval order during that financial year. The enterpriser shall answer all questions put to him by the Department or the Commissioner relevant to such accounts,

and shall allow an officer of the Department or the Commissioner to enter his business premises and inspect the same and inspect and take copies of or extracts from his books and records.

23. Excusing compliance with Business Licences Ordinance 1960 -

Notwithstanding anything to the contrary in the Business Licences Ordinance 1960, no enterpriser shall be liable, for the duration of his tax holiday period as to business licences to obtain or pay for any licence under the provisions of the Business Licences Ordinance 1960, in respect of all or any part of his approved enterprise.

24. Revocation of approval order -

(1) The Director, if he considers that -

- a) The information furnished in an enterpriser's application is false in a material particular ;  
or
- b) There has been undue delay in the commencement of his approved enterprise or in the production of its product in marketable quantities ; or
- c) His enterprise is not being conducted in accordance with the terms of his application or his approval order or this Act ; or
- d) Where the enterpriser is a company, there has been a significant change in its shareholding or control ; or
- e) The conditions relating to the employment of labour or the housing of workers in his approved enterprise are unsatisfactory ; may call upon the enterpriser to supply in writing within one month an explanation, and an assurance as to his future actions.

(2) If the Director does not receive such explanation and assurance within such period, or if the Board considers and Cabinet holds one or other of them to be unsatisfactory, Cabinet may revoke the approval order made under section 14 of this Act from such

earlier current or later date as Cabinet thinks fit.

- (3) When any approval order made under section 14 of this Act has been revoked under the provisions of subsection (2) of this section, Cabinet shall cause a notice in writing to that effect, and as to the date from which such revocation takes effect, to be sent to the enterpriser, and to be published at least in one issue of a newspaper published in Apia.
- (4) The provisions of sections 18, 21 and 23 of this Act shall cease to apply to such enterpriser as from the date from which such revocation takes effect.
- (5) Within three months from the date of revocation if made to take effect from an earlier or current date, and if from a later date then within three months from the date from which such revocation takes effect, the enterpriser shall pay to the Collector in respect of all articles acquired by him free or partially free of customs duty under this Act, customs duty calculated as if the articles have been disposed of under paragraph (b) or section 20 of this Act as at the date from which such revocation takes effect :

Provided that the Board shall have power to remit all or part of such customs duty on the ground of hardship.

- (6) Any sum which may be payable to the Collector under the provisions of subsection (5) of this section may be recovered by the Collector in a Court of competent jurisdiction as a debt due to the Independent State of Western Samoa.
- (7) When the date from which the revocation of an approval order takes effect does not coincide with the end of a financial year of the enterpriser, then his chargeable income in respect of the financial year in which his enterprise ceases to be an approved enterprise shall be subject to tax under the Income Tax Ordinance 1955 as if no approval order had been made under this Act covering that year, and such tax shall be recoverable accordingly.

- (8) When the date from which the revocation of an approval order takes effect does not coincide with the end of a calendar year, then within one month from the date of revocation if made to take effect from an earlier or current date, and if from a later date then within one month from the date from which such revocation takes effect, he shall be liable to comply with the provisions of the Business Licences Ordinance 1960 in respect of the calendar year during which the revocation of the approval order takes effect.

25. Head of State may amend Schedule -

The Head of State, acting on the advice of Cabinet, may from time to time by Order add to, vary or amend the Schedule to this Act :

Provided that no amendment to the Schedule shall effect the date of production specified in an approval order made before the amendment comes into force.

26. Offences -

- (1) Every enterpriser conducting an approved enterprise who contravenes any of the provisions of section 19 of this Act shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding one thousand tala and in default of payment thereof to be imprisoned for a term not exceeding twelve months.
- (2) Every enterpriser conducting an approved enterprise, or any other person, who contravenes any of the provisions of section 20 of this Act shall be guilty of an offence and on conviction thereof shall be liable to a penalty not exceeding three times the duty payable on the articles in respect of the disposal of which he contravenes such provisions, and in default of payment thereof to be imprisoned for a term not exceeding twelve months.
- (3) Every enterpriser who fails to furnish the report or any accounts or information required by section 22 of this Act within the time stipulated therein or to answer promptly any relevant question put to allow any entry inspection or taking of copies thereunder, shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding four hundred tala or to imprisonment for

a term not exceeding six months, or to both such fine and imprisonment.

27. Repeal and Savings -

- (1) Paragraph(s) of subsection (1) of section 47 of the Income Tax Ordinance 1955 is hereby repealed.
- (2) Notwithstanding that repeal, any declaration of exemption made by the Minister prior to that repeal, up to the amount specified in that declaration, shall remain in force up to the next date on which it would have been annually reviewed if that paragraph(s) had not been repealed.
- (3) Notwithstanding anything hereinbefore contained, the whole of the enterprise of any company which has the benefit, on this Act coming into force, of a declaration of exemption made by the Minister under that paragraph(s) shall be deemed to be eligible for an application under section 10 of this Act and the making of an approval order under section 14 of this Act.

Provided however that Cabinet shall have power to restrict the reliefs which the making of such an approval order would afford to the company under section 18, 21 and 23 of this Act had it not been for this proviso.



S C H E D U L E

Sections 2 and 25 :

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Types of enterprises eligible for approval under this Act :	Date of production, in each case from the date of the approval order :
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1. Factory for the processing of any of the following primary agricultural or pastoral products :	
a) Fruit crops, such as bananas, pineapples and pawpaws	2 years
b) Short-term industrial crops, such as coffee and sugar	2 years
c) Pulse and grain crops, such as rice, beans and corn	2 years
d) Minor livestock, such as poultry and pigs	2 years
e) Fruit tree crops, such as avocado, citrus and cashew	5 years
f) Long-term industrial crops : macadamia and coconuts cocoa	10 years 5 years
g) Major livestock, such as cattle	5 years
2. Factory of any other description	1 $\frac{1}{4}$ years
3. Hotel and visitor support facilities	2 years

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|--|----------|
| 4. Fisheries and fisheries development   | 2 years  |
| 5. Afforestation   | 20 years |
| 6. Research and research development   | 2 years  |
| 7. International Shipping operating any vessel having a gross tonnage of no less than 1 000 tons | 5 years  |

REPUBLIC OF SIERRA LEONE

AN ORDINANCE TO MAKE PROVISION WHEREBY THE ESTABLISHMENT AND DEVELOPMENT IN SIERRA LEONE OF INDUSTRIAL AND AGRICULTURAL ENTERPRISES MAY BE ENCOURAGED BY WAY OF RELIEF FROM CUSTOMS DUTY AND INCOME TAX AND FOR PURPOSES CONNECTED THEREWITH.

BE IT ENACTED by the Legislature of Sierra Leone, as follows : -

1. This Ordinance may be cited as the Development Ordinance, 1960.

PART I

PRELIMINARY

2. In this Ordinance, unless the context otherwise requires -

"capital allowances" means initial annual and balancing allowances as calculated in accordance with the Income Tax Ordinance ;

"company" means any company incorporated or registered under any law in force in Sierra Leone or elsewhere ;

"construction day" means the day specified in any application under section 3 of this Ordinance as being the day on or before which it is intended to commence to construct the factory to which the application relates, or, in any case where the factory is in existence before the date of such application, such day as may be specified as the construction day by the Minister, as confirmed, varied or amended under this Ordinance ;

"development certificate" means a certificate given under section 3 of this Ordinance, certifying, inter alia, a company to be a development company, and one or more of its products to be development products, or any such certificate as amended under section 4 or section 15 of this Ordinance ;

"development company" means a company certified by any development certificate to be a development company ;

"development enterprise " means the manufacture or processing by a development company at a development factory of any of its development products and the sale by it of any such development products ;

"development factory" means any factory established or occupied by a development company for the purpose of carrying on therein the manufacture or processing of its development product ;

"development product" means in respect of any development company the product or products certified as its development product or products in the development certificate issued to it ;

"factory" includes -

- (A) all buildings and structures within the same curtilage used for or in connection with -
  - a) (i) the housing of machinery, plant or apparatus of any description for the manufacture of any product ; or
  - (ii) the generation of power for such manufacture ; or
  - (iii) the carrying out of any industrial process upon any produce ; or
  - b) the storage of any raw materials, fuels or stores necessary for the manufacture of such product ; or
  - c) the storage of any such product prior to the sale thereof ; or
  - d) the proper administration of the business of the manufacturer in relation to the manufacture of such product and the sale thereof ; or
  - e) canteens, rest rooms, recreation rooms, houses, lavatories, baths and wash rooms, for workers employed by the manufacturer in the manufacture or processing of such product or in any process incidental thereto ;
  - f) agricultural or mining projects whether or not such buildings or structures are used for or in connection with manufacturing.
- (B) any building or structure outside the curtilage of the factory but wholly and necessarily used in connection therewith ;

"Minister" means the Minister charged for the time being with responsibility for the subject of Trade and Industry ;

"production day" means the day specified in any development certificate as the production day of the development company to which the certificate is granted, being the day on or before which it is anticipated that the development factory to which the certificate relates will commence to produce in marketable quantities the development product intended to be manufactured therein, or, in any case where such factory has commenced to produce the development product in marketable quantities as determined by the Commissioner of Income Tax before the date of the application for a development certificate, such day as may be specified as the production day by the Minister as confirmed, varied or amended under this Ordinance ;

"special reserve account" means an account kept by a company pursuant to section 13 of this Ordinance ;

"tax holiday period" means in respect of any development company the period specified in the development certificate not exceeding five years after the production day of that company.

## PART II

### GENERAL DEVELOPMENT

3. (1) Any company, or persons proposing to register a company, and intending that one or more factories be constructed, or, where any factory is already in existence, be occupied, in Sierra Leone for the purpose of manufacturing any product or of carrying out any industrial process thereon, may make an application in writing to the Minister for a development certificate, or for a development certificate to be given when the proposed company has been registered, certifying the company to be a development company in relation to such product or products.
- (2) In any application under subsection (1) the applicant shall -

- a) (i) give particulars of the industry and of the product or product intended to be produced by the company or proposed company in such factory ;
    - (ii) estimate in detail the date on which such factory will first produce such products in marketable quantities and the rate of production by such factory of such products on and after that date ;
  - b) where any factory is to be constructed or any existing factory altered -
    - (i) give particulars of the estimated size, cost of construction and production capacity of the factory ;
    - (ii) specify (in the case of a new factory) the locality in which it is proposed to construct such factory ;
  - c) (i) specify a proposed date for the construction day which shall not be later than 12 months after the date of the granting of the application, or, in any case where a factory is already in existence furnish such information as the Minister may require in order to be able to specify the construction day ;
    - (ii) specify a proposed date for the production day or, in any case where the production of one or more products has already commenced, furnish such information as the Minister may require in order to be able to specify the production day.
- (3) a) Upon receipt of an application submitted under this section the Minister may call for any further particulars from the applicant which he may consider necessary, and if the Minister is satisfied that the proposed activity is not being conducted in Sierra Leone on a sufficient scale or at all or that it is otherwise expedient in the public interest so to do he may give a development certificate in the terms of the application, subject to such variations thereof and to such conditions as he may think fit, or decide not to give any such certificate.
- b) The Minister may give a development certificate taking effect from such date as may be specified

in the certificate which date may be a date before the commencement of this Ordinance or before the date of the application made under subsection (1) of this section.

c) In every development certificate the Minister shall specify -

(i) the construction day, which need not necessarily be the day on which the construction of the factory commenced ;

(ii) the production day which shall not be later than eighteen months after the construction day unless the Minister shall, upon being satisfied by the applicant that a later production day is in the public interest, order otherwise ;

(iii) the tax holiday period ; and

(iv) the development product.

4. (1) At any time after the grant of its development certificate and before the expiration of its tax holiday period a development company may make an application in writing to the Minister to amend its development certificate by adding an additional development product to the development product specified in such certificate.

(2) Such application shall specify the additional development product and the reasons for the application.

(3) If the Minister is satisfied that the proposed development product is not being produced in Sierra Leone on a sufficient scale or at all or that it is otherwise expedient in the public interest so to do he may amend the development certificate granted to the applicant by specifying the proposed product as an additional development product therein, with effect from such date not earlier than the production day of that company and subject to such conditions as he may think fit, or decide not to grant any such amendment :

Provided that no amendment of any development certificate under this section shall operate to extend the tax holiday period of the development company to which that development certificate was granted.



5. (1) **Within two weeks after its construction day, or within such further time as, on a request in writing by a development company, the Minister may allow, a development company shall deliver to the Minister a statement to the effect that the construction of the proposed factory was commenced on or before its construction day, or where construction has not commenced on its construction day, the reasons therefor.**
- (2) **Within two weeks after its production day, or within such further time as, on a request in writing by a development company, the Minister may allow, a development company shall deliver to the Minister a statement showing -**
  - a) **the marketable quantities of the development product or products produced by its development factory prior to its production day ; and**
  - b) **the rate of production of its development factory in terms of marketable quantities of such products, on its production day.**
6. **The contents of any application made or of any certificate given under this Ordinance with respect to a development company shall not, except at the instance of such company, be published in the Gazette or in any other manner :**

**Provided that the Minister shall cause to be published by notice in the Gazette -**

  - a) **the name of any company to which a development certificate has been given ;**
  - b) **the development product of that company ;**
  - c) **where the production day has been ordered to be later than eighteen months after the construction day, the grounds on which such order has been made ; and**
  - d) **the name of any company whose development certificate has been cancelled.**
7. (1) **Every development company during the tax holiday period shall be entitled, upon the issue to them of a development certificate and subject to such terms and conditions as may be imposed by such certificate, to import into Sierra Leone free of customs duty, or**

to purchase in Sierra Leone subject to refund of customs duty, as provided in subsection (2) of this section during the tax holiday period, such articles as may be specified in such certificate, if the Comptroller of Customs and Excise is satisfied that such articles are or were required for the construction, alteration, reconstruction or extension of any mine, plantation, processing plant, factory or any ancillary buildings or utilities thereto deemed to be necessary for the operation of the development factory covered by such certificate, or for equipping such mine, plantation, processing plant or factory or extension thereof or any ancillary buildings or utilities thereto for the purpose of producing the development product, so however, that relief from customs duty shall not be granted under this section in respect of articles which, in the opinion of the Comptroller of Customs and Excise, are or were intended for the purpose of effecting repairs to such mine, plantation, processing plant or factory or extension thereof, or any ancillary buildings or utilities thereto, or to any apparatus, machinery, appliances or equipment relating thereto.

- (2) Every development company which satisfies the Comptroller of Customs and Excise -
- a) that any article specified in the development certificate has been purchased by the Company in Sierra Leone subject to the terms and conditions imposed by the development certificate and that Customs duty was paid upon the importation of such article ; and
  - b) as to the amount of the customs duty so paid, shall be entitled to be refunded by the Comptroller of Customs and Excise ninety per cent of the amount of the customs duty so paid :

Provided that where the development company satisfies the Comptroller of Customs and Excise that the company is unable to ascertain the amount of the customs duty paid, the company shall be entitled to be paid by the Comptroller of Customs and Excise by way of partial refund of customs duty such sum as is in the opinion of the Comptroller of Customs and Excise reasonable :

Provided further that no refund of customs duty shall be made under this subsection when the

amount of customs duty so paid, or the sum which the Comptroller of Customs and Excise assesses as a reasonable sum to be paid by way of refund of customs duty, as the case may be, is less than twenty-five pounds.

8. (1) Every development company which imports into Sierra Leone or purchases in the territory any article in respect of which the company has been granted relief from customs duty under the provisions of section 7 of this Ordinance -

(i) shall keep such record and submit such returns at such times as may be determined by the Comptroller of Customs and Excise in such form and containing such particulars as may be required by the Comptroller of Customs and Excise of the articles so imported or purchased by the company ; and

(ii) shall cause such articles to be marked with such mark and in such manner as may be required by the Comptroller of Customs and Excise ; and

(iii) shall permit the Comptroller of Customs and Excise or any person authorised by him at all reasonable times to inspect such record and to have access to any premises under the control of the company for the purpose of examining any such articles which the Comptroller of Customs and Excise may believe to be therein and of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

(2) Any development company which contravenes any of the provisions of this section shall be guilty of an offence and on summary conviction thereof shall be liable to a fine of five hundred pounds.

9. (1) No article acquired by any development company free of customs duty under the provisions of this Ordinance or in respect of which a drawback has been granted under this Ordinance shall be sold, given away or otherwise disposed of by such development company except -

a) in the case of an assignment of the development enterprise for the purpose for which such article

was acquired, to the assignee of such enterprise ;  
or

- b) upon the development company paying, or giving security to the satisfaction of the Comptroller of Customs and Excise, for the payment of -
  - (i) an amount, or such lesser amount as the Comptroller shall consider reasonable, equivalent to the amount of customs duty which, but for the provisions of this Ordinance, would have been payable upon the importation into the country of such article where such article was so imported by such development company ; or
  - (ii) an amount or such lesser amount as the Comptroller shall consider reasonable, equivalent to the amount refunded to such development company by way of relief from customs duty under the provisions of subsection (2) of section 7 of this Ordinance where such article was purchased in Sierra Leone by such development company ; or
- c) after the expiry of five years from the date of acquisition of such article.

(2) Any development company which contravenes any of the provisions of this section shall be guilty of an offence and on summary conviction thereof shall be liable to -

- (i) a penalty of three times the value of the article in respect of the disposal of which the company contravenes such provisions, but such penalty shall not be less than one hundred pounds ; and

- (ii) the said article shall be forfeited to the Crown.

10. (1) The Minister may direct that the customs duty on raw or semi-processed or processed materials required in the manufacture of articles in respect of which a development certificate has been issued, may be reduced by a specified amount or waived altogether, when imported by a development company.

(2) The general conditions prescribed in section 8 and 9 of this Ordinance shall apply to such imported materials.

11. (1) Subject to the provisions of section 14 of this Ordinance, a development company shall be exempt from income tax during its tax holiday period in relation to all income arising from any development enterprise during the said period :

Provided that if the end of the tax holiday period does not coincide with the end of an accounting period of a development enterprise, the income for the accounting period in which the last day of the tax holiday period falls shall be apportioned between the parts of the said accounting period which respectively precede and follow the end of the tax holiday period and the income thus attributed to the part which precedes the end of the tax holiday period shall be exempt from income tax.

- (2) The capital allowances on a development factory and other equipment specified in the development certificate shall be deducted from the income of the development company arising from the development enterprise during the year or years of assessment immediately following the tax holiday period :

Provided that in the calculation of such allowances any sum derived from the sale or disposal of any assets of a development factory in respect of which these allowances are granted shall be deductible from the original capital costs.

- (3) Any loss incurred in a development enterprise during the tax holiday period taken as a whole shall be available for set off without limit of time against the income arising from the development enterprise during the year or years of assessment immediately following the tax holiday period.

- (4) No company to which a development certificate has at any time been issued shall be entitled to relief under section 26A of the Income Tax Ordinance :

Provided that if a development certificate has been cancelled and is in pursuance of section 16 of this Ordinance deemed never to have taken effect, nothing contained in this subsection shall prevent the company concerned if otherwise eligible from claiming such relief.

- (5) Prior to the expiration of its tax holiday period, no development company without the prior written consent of the Minister who may impose such conditions as he thinks fit, shall carry on any trade or business other than a trade or business the whole of the profits of which are derived from its development enterprise.
12. For the purposes of the Income Tax Ordinance and this Ordinance, the Commissioner of Income Tax may direct that -
- a) any sums payable to a development company in any accounting period which, but for the provisions of this Ordinance, might reasonably and properly have been expected to have been payable, in the normal course of business, after the end of that period shall be treated as not having been payable in that period but as having been payable on such date, after that period, as the Commissioner of Income Tax thinks fit and, where such date is after the end of the tax holiday period of the development company as having been so payable, on that date, as a sum payable in respect of its new trade or business ; and
  - b) any expense incurred by a development company after the end of its tax holiday period which, but for the provisions of this Ordinance, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax holiday period shall be treated as not having been incurred after the end of its tax holiday period but as having been incurred on such date, during its tax holiday period, as the Commissioner of Income Tax thinks fit.
13. (1) The amount of the net profit arising from a development enterprise during the tax holiday period shall be credited to an account, being a special reserve account to be kept by the development company for the purposes of this section ; and no other amounts may be credited to such account.
- (2) The profits credited to the special reserve account during the tax holiday period in accordance with subsection (1) of this section shall not, so long as and to the extent that it remains so credited or not effectively distributed therefrom, be charged to tax, except under the provisions of section 14 of this Ordinance, during the tax holiday period or for a period of five years thereafter :

Provided that any profits so credited to the special reserve account after the tax holiday period shall not be exempt from tax under the provisions of this subsection.

- (3) During the tax holiday period and a period of five years thereafter each development company shall -
  - (i) on each occasion that it pays any dividend to any of its shareholders ; and
  - (ii) whenever the Commissioner of Income Tax shall so demand,  
  
deliver to the Commissioner of Income Tax a copy of its special reserve account made up to such date together with such other evidence and explanations relating thereto as he may require.
- (4) After the expiration of a period of five years after the end of the tax holiday period any sums then remaining to the credit of the special reserve account may be distributed to the shareholders of the development company who shall not thereby become chargeable to income tax in respect thereof.

14. Where it appears to the Commissioner of Income Tax that any amount of income of a development enterprise arising during its tax holiday period -

- a) ought not to have been exempted from tax either by reason of a direction under section 12 of this Ordinance having been made or by reason of the cancellation of the development certificate of such enterprise ; or
- b) has before the expiration of a period of five years after the end of the tax holiday period been effectively distributed from the development company to or for its shareholders or to or for any other person;

the Commissioner of Income Tax may (in the case of any such direction or cancellation) at any time within six years thereafter or (in the case of any such distribution) at any time within six years after the same shall have come to the notice of the Commissioner of Income Tax make such additional assessments upon the development

company or any shareholder or other person as may appear to be necessary in order to counteract any benefit from any such amount which ought not to have been exempted or has been distributed as aforesaid and direct such company to debit its special reserve account with such amount, as the circumstances require ; and the provisions of the Income Tax Ordinance relating to objections and appeals and of any rules made thereunder, shall apply "mutatis mutandis" as if such direction were a notice of assessment given under such provisions.

15. (1) Where a development company fails -

- a) to commence or cause to be commenced the construction of the proposed factory, in relation to which that company was given a development certificate, on or before the construction day ;  
or
- b) to commence to manufacture its development product in marketable quantities as determined by the Commissioner of Income Tax at the development factory on or before the production day;

the Minister shall by notice in writing, require such company, within thirty days from the date of service of such notice, to remedy such failure or to establish to his satisfaction that -

(i) such failure was due to some cause beyond the control of the company ; and

(ii) there is a reasonable prospect of such failure being remedied by such day as may be specified in such notice.

(2) Where a development company has failed to comply with a notice served on it under subsection (1) of this section, the Minister may cancel its development certificate.

(3) Where a development company has complied with a notice served on it under subsection (1) of this section by remedying the failure, or by satisfying the Minister in accordance with the terms of such notice, the Minister shall amend the development certificate issued to such company by substituting for the construction day or production day, as the case may be, specified in such certificate, either -



- a) the day on which such failure is remedied ; or
- b) a day not later than the day specified in accordance with paragraph (ii) of subsection (1) of this section ;

and thereupon the provisions of this Ordinance shall have effect as if the day so substituted was the construction day or the production day, as the case may be, in relation to such development company.

- (4) Where the Minister has been so requested in writing by any development company or is satisfied that a development company has contravened any of the provisions of this Ordinance or any condition contained in the development certificate granted to it or in any consent granted under subsection (5) of section 11 of this Ordinance and that, having regard to all the circumstances of the case, it is expedient so to do, he may cancel its development certificate.

16. Where any development certificate is cancelled under section 15 of this Ordinance such development certificate shall be deemed never to have applied to the company to which it was issued, and such company shall, notwithstanding anything contained in the Income Tax Ordinance or the Customs Ordinance, 1948, be liable -

a) to pay to the Comptroller of Customs and Excise -

- (i) all sums which, but for the provisions of section 7 of this Ordinance, would have been payable as customs duty ; and

- (ii) all sums refunded to them by the Comptroller of Customs and Excise under the authority of subsection (2) of section 7 of this Ordinance ; and

- (iii) all sums which, but for the provisions of section 10 of this Ordinance, would have been payable as customs duty on materials imported under the said section ; and

b) to pay to the Commissioner of Income Tax all sums which, but for the provisions of this Ordinance, conferring relief from Income Tax on development companies it would have been liable to pay :

Provided that -

- (i) where any cancellation under section 15 of this Ordinance is made otherwise than at the request of the development company concerned the Minister may specify as the date from which such cancellation is to take effect such date after the date when the development certificate first became operative whether before or after the date of such cancellation as the Minister thinks fit and in such case the liability of the development company to the Commissioner of Income Tax under this subsection shall be adjusted accordingly ;
- (ii) where such cancellation is made at the request of the development company concerned the Minister shall specify as the date from which the cancellation shall take effect a date not earlier than the date on which such request is made :
- (iii) if in the opinion of the Minister the liability of any company arising under this section for the payment in full of any such sums or any such tax would cause undue hardship or if for any other reason the Minister deems it expedient so to do the Minister may remit the whole or any part of such liability.

17. The Minister may from time to time prescribe forms to be used under this Part of this Ordinance.

### PART III

#### SPECIAL PROJECTS

18. In any case in which it shall appear to the Governor that a particular project or undertaking, whether because it will lead to the development of indigenous resources which would not otherwise be fully utilised or because of the scale on which it is proposed to operate or for any other reason, is likely to be of special value to the economy of Sierra Leone or to the well-being or social advancement of the people thereof it shall be lawful for the Governor to grant any special concessions to any company for the purpose of such project or undertaking and to confirm such arrangements by contract binding on the Government or by special legislation or otherwise as

may seem appropriate and in particular but without prejudice to the generality of the foregoing the Governor may -

- a) extend the duration of such company's exemption from taxation by such period as may seem appropriate to the project or undertaking in question ;
- b) exempt all dividends declared and paid by any such company in the hands of the shareholders from tax under the Income Tax Ordinance ;
- c) defer the date on which such exemption shall start (whether by postponement of the production day or otherwise) for such period as may seem good ;
- d) lay down conditions as to the percentage of profit which may be distributed during the tax holiday period ;
- e) grant any or all of the concessions for which provisions is made in Part II of this Ordinance (with or without the modifications mentioned in sub-paragraphs (a), (b), (c) and (d) of this section) or for which provision is made in the Income Tax Ordinance to any company in connection with a project or undertaking notwithstanding that such project or undertaking might not have been eligible therefor whether as a development enterprise within the definition contained in section 2 of this Ordinance or as an industrial or other undertaking or otherwise, and may in particular extend such concessions to agricultural or mineral developments ;
- f) bind the Government by contract or otherwise to provide services and other facilities and to carry out works, open communications, construct housing and to do all such things as may be judged by the Governor to be conducive to the success of the undertaking ;

Provided always that the Governor shall obtain satisfactory assurances of the fulfilment of the development proposals and shall make his concessions subject to such conditions binding upon the company to which the concessions be given as may seem appropriate to him in the circumstances.

Passed in the House of Representatives this 29 th day of November, in the year of our Lord one thousand nine hundred and sixty.

S. V. WRIGHT  
Clerk of the House of Representatives

This Printed Impression has been carefully compared by me with the Bill which has passed the House of Representatives and found by me to be a true and correct copy of the said Bill.

S. V. WRIGHT  
Clerk of the House of Representatives

DEMOCRATIC REPUBLIC OF SOMALIA

THE PRESIDENT  
OF THE SOMALI DEMOCRATIC REPUBLIC

- HAVING SEEN : The 1st, 2nd and 3rd Charter of the Revolution ;
- HAVING NOTED : Law N° 6 of 22nd August, 1976 ;
- HAVING SEEN : The approval of the Political Bureau ;
- HAVING DEEMED : It necessary to revise the law on Foreign Investment to conform with the new economic policy of the State ;
- HAVING HEARD : The Minister of Finance ;

HEREBY PROMULGATES

THE FOLLOWING LAW :

Art 1

(Foreign Investment)

1. Any Foreign Juridical or Physical person and any Somali national residing abroad who, after this law comes into force, wishes to transfer foreign capital to the Somali Democratic Republic, or re-invest profits resulting from capital already invested in the country, must apply in writing by registered mail accompanied by a delivery receipt to the State Planning Commission, stating whether the proposed investment is intended to create new productive enterprise or to enlarge, renew, re-activate or transform existing ones.
2. Investment may also be made in the form of machinery, equipment, spare parts, building installation materials and any other materia, that can be used for establishing or enlarging enterprises, provided that these materials are not produced in Somalia. Any material, machinery or equipment etc. imported into the country under this Article shall be subject to the provision of Article 15 below, and the value of such material investment shall be calculated on the basis of the valuation of the materials by the customs authority, on importation.
3. The transfer of patent rights, trade marks, and licences to Somalia that may be necessary for the proposed in-

vestment shall also be deemed as foreign investments. The value of such transfers shall be determined by the Committee on Foreign Investment.

Art. 2

(Participation of the State)

The State may directly or through a Government Agency or Public Corporation, participate in any enterprise with foreign investment to be undertaken in the country. The nature and modes of participation will be regulated by agreement between the parties.

Art. 3

Constitution and composition  
of the committee on foreign investments

1. Within 45 days of the receipt of the application mentioned in Article 1 above the State planning Commission shall submit to the Committee on Foreign Investments all documents relating to the proposed investment.
2. The Committee of Foreign Investment shall consist of :
  - 1) The Chairman of the Planning Commission Chairman
  - 2) Director General - Ministry of Finance Member
  - 3) Director General - Ministry of Industry "
  - 4) Director General - Ministry of Commerce "
  - 5) Director General - Ministry of Agriculture "
  - 6) Director General - of Somali Central Bank "
  - 7) Director General - of Somali Development Bank "
  - 8) Director General - of Somali Commercial Bank "
  - 9) Director General - of the Livestock "
  - 10) Director General - of Ministry of Fisheries "

11. Director General - of the State P. Commission  
and Secretary;

3. Experts and technicians specialised in certain fields may also be invited to attend the meetings of the Committee but they shall not have the right to vote.
4. The Committee shall meet at least once a month and the decisions of the Committee shall be taken by majority vote ; six members constituting the quorum.

Art. 4

(Duties of the Committee  
on foreign investment)

The duties of the foreign investment Committee shall be the following :

1. to decide whether a request for investment meets the requirements of productivity in Article 5 below ;
2. to ascertain from the competent ministry, agency, or company whether an application for investment corresponds with the plans for economic development of the Somali Democratic Republic ;
3. to authorize the Somali Central Bank to accept the transfer of a currency that is not one of the freely negotiable currencies according to the provisions in force ;
4. to register the foreign capital in its original currency when imported in cash or in other cases in the original currency in which the documents submitted are drawn ;
5. to authorise and evaluate for registration, patents and other rights transferred from abroad, regard being had to the documents submitted, the international price and opinion of experts in this field ;
6. to register foreign capital already invested in Somalia, as provided in Article 7 below, and to determine its amount and its original currency in order to comply with the purposes and objectives of present law ;
7. to register any re-investment of profits plus initial capital and accept or reject any request for authorisation under Article 9 ;



8. to register the firms that have at least 51 % of their capital of foreign origin as result of contributions mentioned in paragraphs 4, 5, 6 and 7 of this Article ;
9. to resolve any difference which may arise between the investor and the ministries concerned on the transfer of capital and profits ;
10. to facilitate the granting of residence visas to foreign businessmen, experts, technicians, and employees ;
11. to authorize the transfer abroad of the portion of salaries, wages, and allowances over and above the minimum amount provided in Article 19 below ;
12. to supervise the compliance with the conditions laid down for contracting medium and long term debts and issue of bonds ;
13. to authorize the contracting of foreign loans ;
14. to follow up, on the state of foreign investments, and make periodical reports to the inter-Ministerial Committee for Economic Development and make observations and proposals thereon ;
15. to provide a technical consulting service for those who may ask for information regarding Somali Laws ; administrative practises and statistical data ;
16. to carry out any duty concerning foreign investment in Somalia, with which the Committee may be entrusted, and to make proposals for the expansion and development of foreign investments.

#### Art. 5

##### (Definition of Productive Enterprises)

1. For the purpose of this Law ;

"productive enterprise" shall mean, any enterprise that produces goods and services from which economic benefits can be derived or which can be useful in the development of agriculture, livestock, fishery, industry, transport, energy, water and minerals in Somalia or any enterprise that

can be beneficial to the reclamation, irrigation, and, improvement of land, establishment of factories, workshops, power generators, transmission lines, drilling of wells, construction of aqueducts, reservoirs, roads, bridges, buildings, Hotels and construction and use of boats, floating equipments and aircrafts.

2. Appart form the cases mentioned in the above pare, productive enterprise, also includes prospecting, testing, analysing, research, and drilling activities in connection with oil and minerals exploration undertaken by foreign firms under contract to companies which have agreements with Somalia as provided in Article 22 below.

Art. 6

Procedure and Condition  
for registration

1. Within sixty days from the date of receipt of a request to invest foreign capital, the Director General of the State Planing Commission shall communicate to the applicant the decision of the Committee on foreign Investments.
2. The State Planning Commission shall examine the application for investment and if it is satisfied that, the proposed investment will bring about the establishment, enlargement, renovation, transformation or re-activation of an enterprise, issue to the investor a statement to this effect, within 90 days from the date of receipt of application. Such statement shall be construed as a registration of the investment and from that date all rights and obligations under this law shall take effect.

Art. 7

Procedure for applying  
the provisions of the present Law  
to foreign capital  
already invested in Somalia

1. Within 180 days from the date of promulgation of the present law, the foreigners or the Somali nationals residing abroad who have already invested capital in Somalia may

request the Committee on Foreign Investments to register these investments. Registration of foreign capital under Law N° 10 of 18th February, 1960 and any subsequent modification made thereto, shall be valid ; however, the Government shall have the right to review all registrations made before this Law comes into force.

2. The Committee may authorize registration and determine the amount of foreign capital invested in the business enterprises by evaluating all the assets of the company ; the evaluation shall be based on the information furnished by the interested party and on his income tax return for the current year in accordance with Decree Law N° 5 of 5th November, 1966. The assets of the company, after evaluation shall form the value of foreign capital invested excluding land. The original currency of the investment shall be determined by the Committee according to the documents presented by the interested party.
3. In the cases mentioned in the above para, the Committee must reach a decision with 180 days from the date in which the decision was communicated shall, for all purposes, be the date of registration.
4. In the notice to the investor it must be specified whether the investment is considered productive or unproductive within the meanings of Article 5 and 14 of this law.
5. All foreign investment shall enjoy from the date of registration all the benefits given under this law other than the customs and fiscal exemptions mentioned in Article 15 below.
6. The Committee on Foreign Investments may re-examine any registration of foreign capital already made with a view to ascertain whether a particular enterprise or enterprises fulfil the conditions of registration. It shall be the duty of the person or persons concerned to give the necessary information to the Committee and facilitate its inquiry. The Committee shall have the right to confirm the registration, cancel or modify in such manner as it may deem right and proper.

Art. 8

(Transfer Abroad  
of profits and capital)

1. A sum not exceeding 30 % of the capital invested of profits income, interest, installment and repayments of foreign loans, and revenue accruing from fixed assets or loans, investments and dividends and any interest actually received on shares and bonds (acquired or subscribed to in Somalia) on investments registered as productive and falling within the plans for the economic development of Somalia can be freely transferred abroad.
2. Should the profits earned in one year be less than 30 % of the invested capital, the investor shall be allowed to accumulate the unused portion of this percentage for transfer for the three succeeding years. After these 3 years the investor will lose the right to transfer the unused quota.
3. The capital investments mentioned above, shall be freely transferable abroad after five years from the date of registration, unless the Committee on Foreign Investments stating the reasons thereof, reduces this term to not less than three years or increases it to not more than seven (7) years. The transfer itself shall be made in the original currency of investment.
4. The sums which cannot be transferred under the present Article, may be used in accordance with the exchange regulations in force at the time of the transfer.

Art. 9

(Reinvestment of Profits)

1. Where all or part of profits earned by a registered foreign capital investment, which is freely transferable abroad is to be re-invested in the same enterprise or in another, the Committee on Foreign Investment must be notified. The committee shall, after it has been satisfied that the procedural requirements have been complied with, register the amount plus the original capital earning the profit ; in such cases future benefits under this law shall be calculated on the basis of registration of the profit plus initial capital as foreign capital investment, with rights under this law accruing from the date of registration.

2. No re-investment mentioned in the above paragraph shall require previous authorization unless it has reached an aggregate amount greater than that of the initial capital registered for the investor.

Art. 10

Special privileges for investments  
in Agriculture, Industry,  
Livestock and fisheries

Notwithstanding the provision of the preceding article any new investment in agriculture, industry, livestock and fisheries shall have the following privileges

- a) right to accumulate profits less than 30 % of the capital invested in 2 years and then transfer such profits within the following 5 years at the end of the 2 years period ;
- b) where, at the expiry of the concession given under Law N° 73 of 21st October, 1975, no renewal of the investor shall be entitled to a fair compensation.

Art. 11

Transfer and Alienation  
of foreign investments

1. The provisions of the present law shall apply also to cases in which the original investor surrenders all or part of the assets he has acquired in Somalia to another foreign juridical or physical person or to Somali national residing abroad.
2. The Transferee must notify the State Planning Commission, the Ministry of Finance, Ministry of Industry, Ministry of Commerce and any other Ministry concerned within fifteen days of the transfer of the property.
3. In the event of a partial or a total transfer in favour of Somali citizens residing in Somalia, both the transfer and the transferee shall give notice within fifteen days of the said transfer to the said transfer to the State

Planning Commission, the Ministry of Finance, Ministry of Industry, Ministry of Commerce and any other Ministry concerned ; and from that date the benefits given under this law shall cease on the portion of the property surrendered.

4. Notifications of transfer must be accompanied by documents proving that the transfer has been completed.

Art. 12

(Limits and procedures  
for contracting internal debts)

1. Any enterprise registered in accordance with this law may be established as foreign company or firm or as Somali company or firm.
2. Such enterprise may contract medium and long term debts in Somalia and issue bonds under the following conditions :
  - a) In the case of an enterprise established in the form of Somali Company with participation of Somali citizens residing in Somali having not less than thirty per cent of the shares of the company's capital, the aggregate sum of funds borrowed and bonds issued may exceed fifty per cent of the entire capital, and reach a maximum of seventy five per cent ;
  - b) In the case of an enterprise established in the form of Somali company or firm with the participation of public body, the aggregate sum of funds borrowed or bonds issued may exceed fifty per cent of the entire capital, and reach a maximum of the hundred per cent.
3. If the foreign investor participates by subscription, by increasing the share capital of a Somali joint-stock company, the provisions of the (a) and (b) above shall apply to the funds borrowed and bonds issued only after the increase. The enterprises referred to in the preceding paragraphs cannot subscribe to shares of other Somali or foreign enterprises operating in Somali unless the subscription has been authorized by a decree of the Minister of Finance after hearing the opinion of the Committee on Foreign Investment.

4. For the purpose of the second and the third paragraphs of this Article, debts incurred in the Somali market by an enterprise with foreign participation, including the issue of bonds, are considered to have been incurred directly by the enterprise in which the foreign capital has been invested.
5. The Ministry of Finance must be notified of the transactions relating to medium and long term borrowing and the issue of bonds contemplated by this Article as soon as they have been completed.
6. When an investment mentioned in the second paragraph of this Article is made of enterprises incorporated in Somalia with the participation of Somali citizens residing in Somalia or public bodies, the investor shall supply the Minister of Finance any information deemed for establishment the ratio of foreign capital in the company's total capital.
7. Failure to comply with the provisions of this Article shall result in foreign participants forfeiting the benefit set forth in Article 8 or be eligible for the less important benefits given in Article 15 below.

#### Art. 13

##### Limits and procedures for contracting external debts

1. Any Somali or foreign juridical or physical person, including public bodies carrying out activities in Somalia who wishes to raise a foreign loan in any form and of whatever duration, should submit a request for authorization to the committees on Foreign Investments through the state Planning Commission. The request shall be accompanied by supporting documents giving the reason for the loan, the conditions agreed upon before hand, and all the other elements needed to make a decision.
2. The above authorization is not necessary for ordinary transactions, such as discounting commercial bills, opening bank credits and granting extensions of payment for goods purchased, provide that these transactions are settled, without further renewals or extensions of payment, within twelve months.

3. The decision on requests for authorization to borrow abroad shall be made, without appeal, by the Committee on Foreign Investments.
4. The Committee may, when granting authorization, give directions in respect of the use and transfer of the loans for the purpose of insuring that the inflow of foreign capital derived from loans will not disturb the money market. The committee may also, in agreement with the competent authorities, issue directions aimed at making sure that the capital is actually and exclusively used for the purpose that the loans were authorized.

Art. 14

Registration of non productive  
foreign investments or  
foreign investments  
not within the plans for  
economic development of Somalia

1. Where the Committee on foreign investment, even after registration considers an investment of a foreign capital in Somalia, or an investment under Article 7 above non productive or that it does not come within the economic development plan of the State, up to 10 % of the profits, income, interest and revenue accruing from investments made in fixed assets or loans or dividends and interests collected on investment in shares or bonds purchased in Somalia, may be transferred abroad.
2. The transfer abroad of capital derived from possible subsequent disinvestment shall not take place before seven years have elapsed from the date of registration, and the transfer itself shall occur, in conformity with the decision of the Committee on Foreign Investments, within the following three years in the original currency.
3. Funds that cannot be transferred under the present Article may be used in accordance with more favourable exchange regulations in force at the time of the transfer.
4. With the exception of the limitation mentioned in the preceding paragraph, such investments, when registered,



shall enjoy all the benefits given under law, excluding the special customs and fiscal exemptions mentioned in Article 15 below.

Art. 15

Customs and fiscal exemptions

1. Unless otherwise provided by law, customs duties, direct taxes, and the relevant additional municipal taxes in force at the time of registration of foreign capital investment shall apply to such investments for a period of ten years from the date of registration.
2. Where it is necessary in the national interest the Minister of Finance may, on the proposal of the Chairman of the State Planning Commission with the concurrence of the minister or ministers concerned and having heard the Council of Ministers grant total or partial exemption from the levy of import duties, export duties, excise-duty, income tax and municipal tax to any enterprise for a period not exceeding five years. The exemption shall be given in conformity with law N° 26 of 10 November 1961. However, the fiscal exemptions referred to above shall, in respect of Foreign Capital registered prior to the coming into force of this law apply for a period of ten years.

Art. 16

Fiscal facilities concerning  
the constitution, merger and  
amalgamation companies and increase  
in capital

1. For a period of the two years from the date when this law enters into force, the following acts shall be subject to payment of the registration and mortgage fees, reduced by half up to a maximum fee of Sh SL. 500 and Sh. SL. 1,000 respectively :
  - a) acts relating to the constitution of companies, including cooperatives, which engage in industrial, agricultural, building, and transportation activities ;

- b) acts concerning merger, concentration, or increase of capital in any way affecting companies conducting the activities mentioned under (a) above ;
  - c) acts concerning the and issue adoption of bonds issued by companies mentioned in (a) above as well as acts concerning the registration of mortgages to guarantee both bonds and other financial transactions ;
  - d) acts regularizing de facto or irregular companies engaged in economic activities of any kind.
2. The Government concession fee for registration in the companies registers contemplated by Article 51 of the Governor General's Decree N° 1454 of 22nd December, 1938 and the notarial fees provided for by the tariffs annexed to Decree N° 69 of 29th June, 1951 with the increases mentioned in Decree N° 159 of 4th August, 1955, shall be reduced to one quarter with regard to the acts mentioned in the preceding paragraph.
  3. Such facilities shall also be granted in the case of new contributions of cash, property, credit or new companies planning to take over existing industrial, agricultural, building, or transportation enterprises, in order to enlarge, renew, transform, or reactivate them.
  4. When the increase in the capital of an enterprise occurs by the use of credit balances resulting from the revaluation of assets, the relevant tax shall be three per cent of the balances used and transferred to capital.
  5. Bonds and shares issued by the enterprises contemplated by the present law and by companies taking advantage of the benefits given under this Article, with the exception of those that have regularized their position and conducting economic activities other than industrial, agricultural, building, and transportation, shall be exempted from the surrogation stamp and registration fee as from the date their subscription, provided that the shares and bonds in question have been issued in consequence to investments made with new capital contributions, including Somalis.

Art. 17

(Guarantees for foreign investments)

1. All foreigners and Somali nationals residing abroad, who carry on economic activities in Somalia, shall enjoy the same privileges with respect to business as Somali citizens residing in Somalia and engaged in the same activities.
2. No enterprise created, enlarged, restored, reactivated or transformed with foreign capital shall receive less favourable treatment than the national enterprises existing in Somalia.
3. The property of the enterprises registered in Somalia in accordance with the provisions of this law shall be free from expropriation measures except in cases of public interest, nationalization or any other administrative measure of compulsory transfer of property. In such cases of expropriation equitable compensation shall be paid.
4. Property of the enterprises referred to above shall not be subject to administrative measures of seizure or to requisition except in case of war and then, only as long as it lasts in accordance with the relevant international conventions in force.

Art. 18

Arbitration Procedure

1. Any dispute between the owner of an enterprise or of an investment registered in accordance with this Law and Government of Somalia concerning the interpretation or enforcement of this Law shall be settled amicably as far as possible through discussion and agreement between the party concerned and the committee on Foreign Investments.
2. If no settlement is reached within ninety days from the date in which one of the parties notified the other of the subject of the dispute, the matter shall be submitted to an arbitration procedure. The Board of amicable as far as possible through discussion and agreements between arbitrators, unless otherwise agreed upon between the parties, shall be composed of one arbitrator appointed by the Government of Somalia, one by the

party concerned and a third one by the two arbitrators selected by the parties or should no agreement to this is reached, by the president of the Supreme Court of Somalia.

3. The aforesaid Board of Arbitrators shall among others have full power to settle all procedural matters on which the parties did not reach agreement.

Art. 19

Facilities For  
Personnel Employed

1. The Committee on Foreign Investment shall see that the immigration authorities facilitate the granting of permits and visas necessary for the entry and residence in Somalia of foreign personnel employed by an enterprise registered in accordance with this Law and their families with exception of undesirable persons.
2. The Committee shall also insure that the said personnel and their families are granted access, for reasons of work, to any part of Somalia that is not forbidden by law.
3. The above personnel is authorized to transfer freely to their country of origin or residence upto 50 per cent of their salaries, wages gratuities and allowances paid in Somalia for legitimate reasons by the enterprise employing them. The committee on Foreign Investments can however, stating the reasons thereof, authorize the transfer of higher percentage, not exceeding 75 per cent of the salaries, wages, gratuities, or other allowances paid in Somalia to the personnel.
4. Any enterprise registered under this law may also be authorized to transfer freely abroad, after proving by **presenting** documents that a payment has been made or a credit has been entered in proper accounts, the amount of the company's social security contributions payable abroad for the personnel employed in Somalia by the enterprise.
5. No enterprise registered under this law shall employ foreigners where suitably qualified Somalis are available.

No foreigner shall be employed in a job for which a suitable qualified Somali is available. Within one year from the commencement of the business of an enterprise, a programme for the substitution of foreign employees by Somalis shall be drawn up and submitted to the committee on foreign investments. A yearly progress report on the employment of Somalis shall be submitted to the Ministry of Labour and Sports and the Committee on Foreign Investments.

Art. 20

(Obligation to report  
transaction concerning  
Foreign investments)

1. Banks, notaries and public officials in general, who perform transactions in any way involving capital investments in Somalia are required to give particulars thereof to the Central Bank of Somalia within thirty days from the completion of the transactions, indicating the currency transferred and the amount thereof.
2. All companies and enterprises that operate in Somalia should give notice to the aforesaid Central Bank of transfers of shares or of participation interest made to foreigners or Somali nationals residing abroad within thirty days of the transfer.
3. The minister of Finance may, after hearing the Committee on Foreign Investment, without prejudice to any penalty contemplated by any other law, by executive decree impose on any person who violates the provisions of this law a fine of not less than Sh. SO. 5,000 and not more than 3 (three) times the value of the investment.
4. The fine contemplated by the preceding paragraph shall be of an administrative nature and shall be collected accordance with the provisions laid down for the collection of the State revenue.
5. An appeal against the decision of the Minister can be lodged with the competent court on grounds of illegality and interpretation of law and facts.

Art. 21

(Procedure for transferring  
abroad capital and income)

1. The transfer abroad of capital and income and income under the terms of this law, shall take place through the Central Bank or Banks authorized by the Central Bank to act as its agent pursuant to Decree Law N° 6 of 19th October, 1968.
2. The Committee on Foreign investment may on request, after hearing the opinion of the Minister of Commerce, authorize the Central Bank to effect in a currency different from that originally imported.
3. Transfer shall be effected only after all income and the relevant municipal taxes have been paid. However, the capital and income may also be transferred prior to the payment of the aforesaid taxes, provided that a suitable guarantee is given to the competent Finance Office by the person applying for transfer.

Art. 22

(Foreign investments  
not subject to the present Law)

The provisions of this law shall not apply to investment in Somalia in mineral, oil, and nuclear research. Such investments shall be subject to the Provisions of the Mining Code and the Mining Regulations and the provisions given in each of the agreements made between the Government of Somalia and the individual investing company.

The provisions of this law shall not also apply to enterprises carrying on activities in fields where at time of the enactment of this law, the Government of Somalia exercises on its own or through concessions a monopoly.

Art. 23

(Limits to the Revocability  
of registration)

1. The Government of Somalia guarantees to the investor, ~~that~~ without prejudice to Article 7 above, and subject to the provisions of this law, the registration of a foreign capital shall be irrevocable.
2. The registration contemplated by Articles 5, 6, and 13 of this law may be cancelled and foreign investors may consequently lose the rights, and guarantees given in the present law in one of the following cases only :
  - a) where the enterprise has not begun for a period of 12 months its activities in the case of establishment or reactivation or where it has not completed the enlargement or transformation within year from the date of authorization, unless the investor proves to the Committee on Foreign Investment that the delay was due to acts beyond his control ;
  - b) where the enterprise suspends its activities for a period longer than one year except in the case of war or national emergency ;
  - c) where the enterprise with the exception of those carrying on seasonal work, suspends its activities, even over a period of three years except in case of war or national emergency ; and
  - d) where the investor renounces his registration.

Art. 24

(Enjoyment of subsequent  
more favourable provisions)

No provision of the present law shall preclude the enjoyment by the investor of more favourable provisions of a general nature which might be subsequently promulgated.

Art. 25

Regulations

1. The President of the Republic, on the proposals of the Chairman of the State Planning Commission and having heard the Council of Ministers may issue regulations for the proper implementation of this law.
2. Without prejudice to the generality of the above provisions, the Chairman of the State Planning Commission may issue Rules specifying uniform evaluation standards for investments to be registered and preparing the necessary forms, such as Application for Registration of Foreign Investments, certificate of Registration and Register of Foreign Investments

Art. 26

Repeal

Law N° 10 of 18.2.1960 and Decree Law N° 3 of 3.3.1968 converted into law by law N° 17 of 15.6.1968, are hereby repealed.

Art. 27

Entry into Force

This law shall come into force as from the date of its publication in the Official Bulletin of the Somali Democratic Republic.

Muqdisho, 29.1.77

President of the Somali  
Democratic Republic

(Major General Mohamed Siyaad Barre)



REPUBLIQUE DEMOCRATIQUE DE SAO TOME E PRINCIPE

Extract from Official Journal No.20

SAO TOME AND PRINCIPE

MINISTRY FOR ECONOMIC COORDINATION, COOPERATION AND TOURISM

Decree-law No. 13/76 of 30 April

1. With the aim of encouraging and giving a new direction to the country's industrial development, this act provides for specific tax allowances to be granted for the setting up in this country of new industrial units and for the extension, reorganization or conversion of existing units; such incentives make up one of the most important instruments of promotion available to the Government for attaining our industrial development goals.
2. A policy of tax exemptions constitutes an incentive and stimulus for the industrialization of a country, and, at the present stage of our economic development, the Government is obliged to adopt such a policy in order to launch the industrial development plan.
3. It is obvious that such a plan, in the broad sense of the term, needs to be supplemented with new rules concerning industrial promotion, in which Government action in the sector will be defined, and it is considered that this action should be superimposed on the other, more usual - but indirect - forms of action adopted at present.

It is by direct intervention, which will not, however, hinder private initiative, that an attempt will be made to step up investment and direct it towards the most appropriate sectors or locations, to encourage greater productivity and competitiveness - in short, to bring about all the positive changes required for the steady advance of our country's economic development.

Under these conditions:

In implementation of the powers conferred by the People's Assembly, and under Article 26(1) of the Constitution, the Government of the Democratic Republic of Sao Tome and Principe lays down, and I myself promulgate, the following, which shall have the force of law:

Article 1

The Minister for Economic Coordination, Cooperation and Tourism shall be authorized to grant, in accordance with the provisions of this act, tax allowances to new industrial units which are set up in this country, and also to existing industrial units which are extended, reorganized or converted.

Article 2

In the granting of the allowances particular account shall be taken of:

- (1) The integration of the beneficiary establishments in the objectives of the national reorganization plan;
- (2) The contribution of the beneficiary industrial units towards the increased competitiveness of national industry and to the technological progress thereof;
- (3) The effects on the progress of other national production activities;
- (4) The value added and number of jobs created by the beneficiary establishments in relation to the capital invested;
- (5) The financial structure and technical and commercial organization of the undertakings concerned.

Article 3

For the purpose of granting tax allowances account shall be taken, where appropriate, of the degree of State participation in the undertaking's capital.

Article 4

In the allocation of the tax allowances account shall be taken of the compatibility of the sectoral objectives with those laid down in the context of policy on the reorganization of the country and the correction of regional development imbalances.

Article 5

1. The granting of tax allowances may be made conditional upon the undertakings' agreeing to fulfil, within the periods fixed, the conditions laid down for them, notably as regards promotion of technology, investment, social advancement of workers, location, exports, and quality and price of products.
2. In cases of exceptional interest for the national economy, the allocation of tax allowances may be made conditional upon the result of public tenders for establishment of the industrial units in question.
3. Exemption from or reductions in customs duties shall be granted only where there are no equivalent national products as regards quality, price and supply conditions.

Article 6

Wherever there is a choice between the tax allowances provided for in this decree-law and allowances of the same type provided for in other acts, those allowances shall be granted which are more favourable to the undertakings requesting them.

Article 7

1. The tax incentives to which this act refers may comprise:
  - (a) Exemption from or reduction in the rate of conveyance tax on transfers of real estate for the setting up, extension, reorganization or conversion of industrial units, provided that such real estate is intended solely for the exercise of the industrial activity in question, including the setting up of the allied commercial, administrative and welfare services;

- (b) Exemption from or reduction in the urban property tax for a period not exceeding five years with regard to real estate intended for the purposes listed in the preceding subparagraph;
  - (c) Exemption from the industrial tax and supplements thereto for a period not exceeding five years in respect of industrial units set up, extended, reorganized or converted;
  - (d) Exemption from or reduction in income tax during the first five years of operation;
  - (e) Exemption from or reduction in the customs duties on imports of plant and machinery intended for the setting up, extension, reorganization or conversion of industrial units, provided that the national industry cannot provide this plant and machinery on comparable terms as regards price, quality and delivery dates;
  - (f) Other forms of tax exemption or relief suited to the particular nature of the establishments.
2. In cases of extension or conversion, the tax allowances referred to in subparagraphs (a), (b), (e) and (f) shall be granted only in respect of the part extended, reorganized or converted.

#### Article 8

1. The following expressions have the meanings hereby assigned to them:
- (a) "The setting up of industries" means operations which initiate an activity or activities not coming under the heading of any existing industries;
  - (b) "The development of industries" means the expansion of the production capacity of industries;
  - (c) "The reorganization of industries" means the process by which, in an industry, changes are brought about in the way in which its component units allocate the available resources and, if necessary, in the relative positions of these units, where such a process may result in the attainment of the objectives laid down in the industrial policy adopted by the Government;

(d) "The conversion of industries" means the process by which the production resources of a particular industry are permanently assigned, in whole or in part, to activities other than those for which they are currently used, provided that this process contributes towards the attainment of the objectives referred to in the last part of the preceding subparagraph.

2. The following definitions also apply:

(a) "The setting up of industrial units" means the installation of new industrial units or the resumption of activity by industrial units of which operation has been suspended for a period exceeding two years;

(b) "The extension of industrial units" means the expansion of the production capacity of industrial units;

(c) "The reorganization of industrial units" means the series of actions by means of which, within industrial units, changes are made in the combination of the factors of production, equipment is replaced, or changes are made in management methods, where such actions may result in the attainment of the objectives laid down;

(d) "The conversion of industrial units" means the series of actions by means of which an industrial unit permanently allocates its production resources, in part or in whole, to activities other than those previously exercised, where such actions may result in the attainment of the objectives laid down.

3. The industrial reorganization referred to in 1(c) may be carried out by some form of combination or by cooperation agreements between undertakings.

4. The following constitute forms of combination:

- (a) Any form of merger or amalgamation of undertakings;
- (b) The setting up of companies limited by shares or of partnerships, through the integration of individual undertakings or groups of undertakings, provided that the aim of the resulting company or firm is to exercise the activities of the undertakings merged within it and provided that those undertakings cease to exercise their activities;
- (c) The transfer, to an undertaking, of an industrial unit or part of the property of another undertaking, provided that the transferee ceases completely the activity previously exercised by means of the property transferred.

5. The following constitute cooperation agreements between undertakings:

- (a) The setting up of groups of undertakings, including temporary groups, without affecting the separate legal personality of the participating undertakings, for the purpose of providing common services, purchasing and selling jointly or in collaboration, specializing, or rationalizing production, undertaking market studies, promoting sales, acquiring and transferring technical know-how or management techniques, developing new techniques and products, providing training and advanced training for staff, undertaking specific works or services, and for other similar purposes;
- (b) The setting up of collectivities under private law through association, possibly with State backing; of companies and of other persons governed by private law with the aim, in the sector to which they belong, of providing a technical assistance service, organizing an information system, promoting the standardization and quality of the products and an appropriate technology for the manufacturing processes, and also, more generally, studying the sector's development prospects.

Article 9

1. For the tax incentives provided for in this act to be granted, any undertaking interested must in every instance submit an application.
2. Applications must be addressed to the Minister for Economic Coordination, Cooperation and Tourism and lodged before the setting up, extension, reorganization or conversion of the industrial units referred to is commenced, except in the case of the tax allowances provided for in Article 7(e), which must be applied for before customs clearance of the imported plant and machinery.

Article 10

1. Applications for the grant of tax incentives shall be submitted to the finance office of the municipality or tax area in which the applicant undertaking ordinarily resides or has its seat; if this is outside the country, the application must be submitted to the finance office of the municipality or tax area in which its main establishment is situated, or in which it has a permanent representative, or, failing this, to the Head Office of the Finance Department.
2. Where the tax allowance comprises exemption from or a reduction in customs duties, applications must be lodged with the Economic Affairs Department.
3. Applications must contain the applicant's name, business name, or company name, indicate the place of ordinary residence or headquarters and must be clearly set out as a request.
4. In the case of the tax allowances referred to in Article 7(e), in addition to the information required under paragraph 3 of this Article, the application must also list all the items of plant and machinery to be imported.
5. Together with the application, applicants may set out the particulars of undertakings planned and the reasons for them.



6. Applications shall be presented in duplicate or, in the case of customs concessions, in triplicate, and the applicant may enclose a further copy, on ordinary paper, for use as a receipt.
7. If a customs concession is applied for, one of the copies of the application, after being duly initialled and authenticated, shall be returned to the applicant so that the latter can provide the customs authority with proof that the application has been presented, and the said authority shall issue the customs import-clearance document in order to enable the goods to be released, against a guarantee for the duties and other taxes until completion of the procedure.

#### Article 11

1. On receipt of the application, in accordance with paragraph 1 of the preceding Article, the Finance Secretary shall check that the application and accompanying documents are in order as regards form and, if there are any errors, omissions or irregularities, he shall inform the party concerned so that they may be rectified within a given period.
2. If no errors, omissions or irregularities have been found, or where any that have occurred have been rectified, the Finance Secretary shall prepare a dossier, which shall be transmitted to the Economic Affairs Department within ten days of the date of presentation of the application or of the date of rectification of any errors or omissions, together with any information considered useful for the assessment of the application.
3. In the event of disagreement between the Finance Secretary and the applicant as to the extent of any error, omission or irregularity, the dossier shall be sent immediately to the Economic Affairs Department, if the applicant so requests, by means of a statement or in the application itself.

4. Such statement shall be formulated on the day that the party concerned presents itself for that purpose; if the request is made in the application and this is accompanied by a copy on ordinary paper, the receipt shall be issued on the copy and initialled and authenticated.

#### Article 12

1. When the Economic Affairs Department has received the dossier, it shall assess it and prepare a report, in which shall be specified and proposed the appropriate conditions under Article 5(1) of this document, and also the period for the fulfilment thereof.
2. The report must also indicate the items of information which undertakings shall be required to supply so that fulfilment of the conditions laid down may be verified, and how frequently they must be supplied.

#### Article 13

1. After the dossier has been returned to the Finance Department, together with the report referred to in the preceding Article, it shall be submitted for a decision by the Minister for Economic Coordination, Cooperation and Tourism.
2. Any decision to grant tax incentives shall, where appropriate, lay down the duration of and conditions attaching to the concession.
3. The ministerial decision shall be communicated by the Head Office of the Finance Department to the Economic Affairs Department and to the applicant.

#### Article 14

If the concession requested is exemption from or a reduction in import duties on plant and machinery, the Economic Affairs Department, after submitting the information on the application, which must state whether there exists or not a national manufacturer of

the same type of plant and machinery of similar quality and on acceptable terms as regards price, quality and delivery dates and any other aspects which it is considered should be indicated concerning the application, shall send the dossier, together with the report referred to, to the Customs Department, which will submit it for a decision by the Minister for Economic Coordination, Cooperation and Tourism.

Seen and approved by the Council of Ministers on 25 March 1976.

The Prime Minister and Minister for Economic Coordination, Cooperation and Tourism, and for the Minister for Foreign Affairs, Migel Trovoada; the Minister for Agriculture, Land Reform and Defence, Manuel Pinto da Costa; the Minister for Health and Social Affairs, Carlos Dias da Graca; the Minister for Justice and Labour and for the Minister for Internal Administration, Manuel Quaresma dos Santos Costa; the Minister for Education and Culture, Alda do Espírito Santo; the Minister for Social Equipment and Environment, Nuno Xavier Daniel Dias; the Minister for Information, Daniel Lima dos Santos Daio.

Promulgated on 30 March 1976.

Be it published.

The President of the Republic, Manuel Pinto da Costa.



DEMOCRATIC REPUBLIC OF THE SUDAN

In the name of god, the Compassionate, the Merciful, and in the name of the people,

The president, in accordance with the provisions of article 225 of the Constitution hereby makes the following :

#### Title and Commencement

1. This Act may be cited as "The Development and Encouragement of Industrial Investment Act, 1974" and shall come into force upon signature.

#### Repeal and Saving

2. (1) The Development and promotion of Industrial Investment Act, 1972, is hereby repealed, provided that all concessions granted, regulations and orders made thereunder shall notwithstanding such repeal continue to be in force and shall be deemed to be granted or made under this Act.
- (2) The provisions of this Act shall apply notwithstanding any contrary provision in any other Act in force at the time of commencement of this Act.

#### Application of the Act

3. The provision of this Act shall be applied to all industrial projects within the definition of "establishment" or "craft" set out in section 4 hereof.

#### Interpretation

4. In this Act, unless the context otherwise requires : -

"Minister" means the Minister of Industry and Mining.

"Competent Authority" means Under-Secretary, Ministry of Industry and Mining or any other person or body entrusted by the Minister with performing the duties and exercising the powers of the competent authority under this Act.

"Establishment" means every existing industrial establishment of one under construction or proposed to be set up to work in a project, the main purpose of which is the production of a commodity for imme-

diate public consumption or the production of a material whether investment, intermediary or otherwise which is suitable for the production of a commodity for immediate public consumption whether by using primary or semi-manufactured materials, agricultural crops, animal products or mineral extracts and such production takes place through alteration in form, appearance, composition, substance or all such matters together and also every establishment working in the field of mining, prospection for petroleum or any other industrial activity decided by the Minister.

"Capital" means the capital employed in the establishment at the beginning of investment which consists of fixed and circulating assets plus any subsequent additions whether in the form of fixed assets (machinery, equipment and constructions) or cash or by way of employing the profits gained by the establishment if added to the original capital provided that the additions shall be made with the approval of the Minister after consultation with the Minister of Finance and National Economy.

"Commencement of production" means the date of commencement of actual production of the establishment determined by the competent authority after the expiry of the experimental period provided that it does not exceed twelve months from the date of operating the machinery.

"Sudanese industrial product" means every industrial product the percentage of the value added therein by way of manufacture in the Sudan is not less than 25 % of the total cost thereof.

"Craft" means any industrial work carried out by any person or persons which work basically depends upon various primary or intermediary materials and in which some simple equipment, tools and machinery are used or manual production used for the production of final or intermediary commodities liable for direct circulation or consumption or any other industrial work decided by the Minister.

"Committee" means the Advisory Committee for Industrial Development provided for in section 6 hereof.

CHAPTER II

Establishment in which investment  
is encouraged by this Act

5. This Act aims to encourage investment in the establishment that satisfy any of the following conditions : -
- a) that it will be of defence or strategic importance.
  - b) that its production will depend upon local raw materials or the setting up thereof will encourage the production of such materials.
  - c) that its production will have the effect of dispensing wholly or partially with importation or contribution in exportation.
  - d) that it shall directly or indirectly provide employment potentialities to Sudanese people.
  - e) that its work shall contribute in achieving the aims of economic co-operation and integration with Arab and African States.
  - f) that its work shall contribute in increasing national income.

CHAPTER III

The Advisory Committee  
for Industrial Development

6. (1) There shall be established a committee to be known as "The Advisory Committee for Industrial Development" whose functions shall be as follows : -
- a) Considering all applications submitted by establishment owners for the grant of licences for new establishments or for expansion of existing establishments and also those submitted by establishments or crafts owners for the grant of concessions, facilities or guarantees under the provisions of this Act, and submitting its recommendations thereabout to the Minister.
  - b) Submitting reports to the Minister about the



indications of industrial development and the difficulties facing industrial development and recommending appropriate solutions thereof.

- c) Considering the report provided for in subsection (4) hereof and submitting recommendations concerning the same to Minister.
  - d) Giving opinion on any matter, referred to it by Minister, concerning the purpose of this Act.
- (2) The committee may delegate any of its functions mentioned in paragraph (b) and (d) of subsection (1) hereof.
- (3) In exercising its functions, the committee may hear the point of view of persons interested in the affairs considered by it. It may also call any person or body to assist it by his or its opinion.
- (4) The competent authority shall submit to the committee an annual report showing the position and follow up of the approved project.
- (5) a) The committee shall be constituted as follows :
- 1. The Secretary, Ministry of Industry and Mining, Chairman by virtue of office.
  - 2. Two members representing Ministry of Finance and National Economy.  
One of whom shall be concerned with treasury business and the other with economics.

Members

- 3. Director General, Council of National Planning "
- 4. Governor, Bank of Sudan "
- 5. Under-Secretary, Ministry of Local Government, Housing and Community Development "
- 6. Manager, Central Electricity and Water Corporation "
- 7. Four experienced members appointed by the Minister one of whom shall be selected from members of the Sudan manufacturers Association

8. Director, Department of Industrial  
Development - Secretary

- b) The members appointed by virtue of office shall not depute in case of inability to attend, any person except their deputies or direct assistants.
- (6) More than half the members shall constitute a quorum of the committee. The decisions thereof shall be made by the majority of votes of the members present.
- (7) Meetings of the committee shall be according to regulations made by the Minister.

CHAPTER IV

Licensing

7. a) In addition to the provisions of any other Act for the time being in force, no establishment shall be set up after the coming into force of this Act, except after grants of licence by the Minister after considering the recommendations of the committee.
- b) The Minister may, after setting up the establishment in any location, grant licence to set up branch or branches of the same in any other location.

Industrial Purpose

8. The Industrial purpose for which licence to set up an establishment is granted, the location or capacity thereof shall not be changed except with the approval of Minister.

Sale, Hire and Ceding the Establishment

9. In the case of selling the establishment or any part thereof, letting or wholly or partially ceding it, its owner shall notify the Minister of such sale, hire or cession within one month of its taking place.

CHAPTER V

Grant of Concessions

10. If any establishment fulfills any of the conditions set out in Section 5 hereof the Minister may : -
- (1) a) after considering the recommendations of the committee, grant the establishment some or all the concessions provided for in subsection (3) hereof as he may deem fit. No other administrative body shall stop the implementation of such granted concessions except after reference to the committee and with the approval of the Minister ;
  - b) accept, reject or amend the recommendations of the committee concerning the grant of concession wholly or partially ;
  - c) grant all or any of the concessions herein after shown to any establishment branches.
- (2) The concessions shall be effective in all cases from the date specified by Minister.
- (3) The concessions granted by the Minister under this Act shall be as follows : -
- a) exemption from payment of Business Profits Tax for a period of five years calculated from the date of commencement of production ;
  - b) exemption from payment of business profit tax for another period of five years, if the total annual profits do not exceed 10 % of the capital of the establishment.
- Any increase of profits above this limit shall be liable to the application of taxation according to the prescribed rates.
- c) exemption from payment of business profit tax for an extra period of five years, for establishments that have increased their capital in the first ten years, provided that the exemption from the profit tax shall be at the same percentage in which the capital has been increased in such period and if the percentage of profits in such case is below 10 % of the total capital after the increase, the exemption shall be a complete

one. Provided that in the grant in respect of paragraphs (a), (b) and (c) hereof : -

- (i) Depreciation shall be calculated during the years of complete exemption at the prescribed rates in case of one working shift (8 hours) and double the prescribed rates, in case of two working shifts (16 hours) and tripple the prescribed rates in case three working shifts (24 hours) the establishment may appropriate a reserve within the expenditure to meet any increase in the prices of fixed assets when there is need for their replacement provided that the reserve shall not exceed 75 % of the value of the instalments of depreciation.
  - (ii) Every loss incurred during the period of complete or partial exemption shall be deemed as if incurred during the last year of such period ; and the expenses before operation and depreciation deductions arising within the period of exemption shall be deemed as a loss liable to be deducted from the profits.
- d) exemption from payment of customs duties, surcharges and any other duties relating to machinery, equipment or apparatus necessary for production, spare parts, raw materials, semi-manufactured or intermediary materials imported by the establishment, provided that nothing similar to the same is found in the country and sufficient in such amount as may be determined by the competent authority.
  - e) exemption from payment of any excise duties imposed upon any local raw materials introduced by the establishment in its products.
  - f) allocation of the land necessary for setting up the establishment taking into account the requirements of the future expansion of the establishment at a reduced price paid either at once or by instalments, and in the latter case, the first instalment, shall not be less than the cost of the essential services and allocating the land under a contract of lease specifying the conditions for allocation.
  - g) re-impoursement of excise duties and any other taxes or duties of whatever sort, whether, direct or indirect, which the establishment had paid for

production to be exported, packing materials used in production or for everything connected therewith after deducting 1 % of the total duties reimbursed.

- (4) The Minister may grant additional concessions to the establishments set up in the Provinces specified by him from time to time. He may, after agreement with competent Ministers make directions to grant any establishment priorities in financing by the competent banking institutions.
- (5) No duties or local rates may be imposed or increased upon industrial establishments during the exemption period except after the approval of the Minister.

## CHAPTER VI

### Other Facilities and Government Purchases

#### Other Facilities

11. (1) Notwithstanding the provisions of any other Act the Minister may, after agreement with the competent Ministers grant any establishment all or any of the following facilities as he may think appropriate provided that in granting such facilities the effects that they may have on the State budget or on any existing interests of any individual or body shall be taken into consideration : -
  - a) reduction of the rates of electricity used for the purpose of the establishment ;
  - b) reduction of rates of freight applied upon machinery, equipments, structures, apparatus and raw materials which are applied upon the products of the establishment ;
  - c) reduction of local rates applied upon the establishment to such extent as he may think appropriate ;
  - d) taking the necessary measures to ensure the provision of raw materials, intermediary commodities and spare parts required to be imported from abroad for the purposes of the establishment.
- (2) The Minister may grant any facilities or concessions provided for in this Act to handi-crafts and rural industries with the object of developing them.

Government Purchases

12. (1) Government purchases, with regard to industrial production, which have been granted a complete protection, shall be confined to such production, provided that the competition shall be local and no notice for external tender thereabout shall be made.
- (2) Notice for external tenders with regard to the industrial production which have been granted partial protection within the limit of the part which is not locally available may be made.

CHAPTER VII

Protection of local Industries

13. The Minister may, after consultation with the competent Ministers and assessment of public interest, take the necessary measures to protect the local industrial production taking into consideration its sufficiency with regard to quantity, quality and price. The measures necessary for the protection of local production shall include the following : -
  - a) Limiting the quantity of foreign imports which are similar to or a substitute for local production or prohibiting the import thereof.
  - b) Increasing customs duties on foreign imports which are similar to or a substitute for local production.

CHAPTER VIII

Cancellation of Licence

14. (1) The Minister may after giving reason cancel the licence of the establishment and accordingly cancel all concessions and facilities granted thereunder. He may also, instead of cancelling the licence, cancel all or any of the concessions or facilities in any of the following cases : -
  - a) If the licence holder : -

- (i) has not without reasonable cause, set up the establishment, started operating or made the necessary licenced alteration within the period specified therefore in the licence ; or
  - (ii) has contravened the conditions upon which the licence was granted ;
  - (iii) has given false information which resulted in granting the licence.
- b) If the establishment has ceased to work for one month or more (without sufficient cause).
- (2) The owner of the establishment or craft may, within fifteen days from the date of his notification with the decision of the Minister made under subsection (1) hereof, present an application for the revision of such decision. The Minister shall make his decision within a maximum period of one month from the date of presenting the application, provided that the decision of the Minister shall be final and shall not be challenged by any court.

## CHAPTER IX

### Investment Guarantees

#### Distinction Prohibited

15. No distinction shall be made, on granting licences, concessions and facilities under this Act, between national and foreign establishment or public or private sector establishment.

### Guarantees Against Nationalization

#### and Confiscation

16. The capital invested in the Democratic Republic of the Sudan shall enjoy the following Guarantees : -
- a) It shall not be placed under sequestration or confiscated except by a decision of a competent court in accordance with the existing laws.

- b) It shall not be nationalized except when the high interest of the country so requires and in such case the following basis shall be taken into consideration.
- (i) The investor shall be given a just compensation after evaluating his property according to such price as may be current at the time of nationalization.
  - (ii) Evaluation shall be made within six months from the date of making the nationalization order and the value of compensation shall be paid by annual payments not exceeding five years in the same currency or currencies, brought for the purpose of investment.
  - (iii) In case a dispute arises as to assessment of the value of compensation, the investor shall be entitled to request the submission of the dispute to a committee of arbitration to be constituted of one member representing the investor, another representing Government and third to be Chairman of the committee of arbitration agreed upon by the two members referred to.

#### Transfer of Profits

17. All the profits resulting from the investment of any foreign capital in the establishment, shall be liable to be transferred outside the Sudan after payment of all taxes, duties and obligations due to the Government.

#### Transfer of Capital Abroad

18. In the case of liquidation of any establishment the Government shall approve the re-transfer outside the Sudan of the net capital originally imported from outside the Sudan and registered at the Bank of Sudan, in the currency in which it was imported. The transfer shall be at the rate of exchange applicable at the time of transfer.



CHAPTER X

Penalties

19. a) Without prejudice to any penalties set out in the conditions of the contract of lease of the land granted to the establishment and subject to the provisions of any other Act, every establishment which contravenes any of the provisions of this Act shall be punished with a fine not less than LS. 200 provided that when assessing the fine the gravity of the contravention and the unjust gain obtained by the establishment shall be taken into consideration.
- b) Whoever contravenes the provisions of this Act shall be tried before a court of Magistrate of the First Class or any higher court.

CHAPTER XI

Regulations and Orders

Power to make Regulations and Orders

20. (1) The Minister may make the regulations and orders necessary for the implementation of the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing, such regulations and orders may provide for the following : -
- a) Regulating the manner and procedures for applying for licences and for appeal against the decision of the Minister under Section 14 (1) hereof and specifying the fees payable on application for a licence and on appeal.
- b) Registration of establishment and crafts, specifying the registration fees for every case and also the provisions relating to registration.
- c) Establishing a department for standard specifications under the Ministry of Industry and Mining.
- d) Regulating the manner and basis in respect of preparing cost accounts and specifying the price of the products prepared for local consumption.

(ex-factory) based upon the cost price.

Sealing Publication and Implementation of the Act

21. This Act shall be sealed by the seal of the State, published in the Gazette and implemented as a law of the state.

Made under my hand at the People's Palace this .....  
..... day of 1394 A. H. being the .....  
day of ..... 1974 A. D.

GAAFAR MOHMED NIMEIRI  
THE PRESIDENT OF THE REPUBLIC

REPUBLIEK SURINAME

GOVERNMENT JOURNAL OF SURINAM

Year 1974 - Serial Number 5

RESOLUTION No. 13667/73 of 26 January 1974

concerning publication in the Government Journal of the text - as it now stands - of the Investment Regulation (GJ 1960 No. 17, as last amended in GJ 1973 No. 164).

IN THE NAME OF THE QUEEN !

THE GOVERNOR OF SURINAM

On a proposal from the Minister for Finance,

Having regard to the Regulation of 26 February 1960 (GJ No.17) concerning tax measures to encourage private investment, known as the "Investment Regulation";

HAS DECIDED:

That the Regulation of 26 February 1960 (GJ No. 17) concerning tax measures to encourage private investment, known as the "Investment Regulation", as last amended and supplemented by the Regulation of 24 October 1973 (GJ No. 164), shall be published in the Government Journal alongside this Resolution.

Paramaribo, 26 January 1974

Johan H. Ferrier

The Minister for Finance,  
H.A.E. Arron

Done at Paramaribo on 26 January 1974,  
The Minister for Home Affairs,  
C.D. Ooft.

Text of the Investment Regulation, as last amended in GJ 1973 No. 164.

INVESTMENT REGULATION

SECTION I

Article 1

Definitions

For the purpose of applying the provisions laid down by or pursuant to this Regulation:

- (a) "the Minister" means the Minister for Finance;
- (b) "the Board" means the Investment Board referred to in Article 11;
- (c) "the competent authority" means the authority competent in the first instance and/or on appeal to decide on applications as referred to in this Regulation;
- (d) "new enterprise" means an enterprise which the competent authority has declared will, for the purpose of applying this Regulation, be regarded as a new enterprise;
- (e) "extension of an existing enterprise" means the extension of an existing enterprise in relation to which the competent authority has declared that, for the purpose of applying this Directive, the extension shall be regarded as the extension of an existing enterprise;
- (f) "initial investment" means the total amount of:
  - 1. the capital invested in assets that are to be written off in accordance with sound commercial practice provided such assets are employed for the operation of a new enterprise or for the operation of an enterprise that has undergone an extension of which such assets are part.
  - 2. The costs that are not to be regarded as costs attaching to the acquisition or manufacture of assets referred to in 1 above, that are incurred in setting up the new enterprise or in respect of the extension of an existing enterprise and that are to be set off against profits by way of depreciation.Such assets or costs as referred to above shall be taken into consideration only insofar as they were acquired or incurred prior to a date to be fixed in each case in accordance with Article 9(4);
- (g) "body" means a limited company or a body as referred to in subparagraph (b) of the third paragraph of Article 1 of the 1922 Income Tax Law.

Article 2

General condition governing reliefs

An entrepreneur may not derive any rights from the provisions laid down by or pursuant to Articles 4, 5, 6, 7, 22, 23, 24 and 25 or from an exemption from import duties granted under Article 8 if and once he neglects to keep regular accounts in Surinam for his enterprise. The accounts shall at any event be regarded as irregular where they are not regularly closed each year or where they are not kept in such a way that the information needed to implement this Regulation can directly be obtained therefrom with the requisite degree of accuracy.

Article 3

Ministerial provisions

The Minister is hereby empowered to issue binding provisions regarding the declaration and determination of profits exempt pursuant to Article 5 of the Investment Tax Law and of losses deductible when net income or profit are being calculated for income tax purposes.

N.B. The provisions in question are given in Regulation No.2582 of the Minister of Finance, dated 5 April 1960 (GJ 1960 No. 35).

SECTION II

Types of relief and obligations of new enterprises and extensions of existing enterprises

Article 4

Choice between types of relief in respect of income tax payable by new enterprises

1. In relation to the types of income tax relief provided for in Articles 5 and 6, new enterprises may request application of Article 5 (temporary exemption from income tax) or application of Article 6 (maximum rate and free depreciation). The choice, to be indicated in the request referred to in Article 9(1), shall be formally recorded in the decision comprising the declaration referred to in that Article. Once this has been done, such choice shall be irrevocable.
2. The right to request application of Article 5 or Article 6 referred to in paragraph 1 shall apply only where and insofar as the new enterprise is managed by a body.
3. Paragraph 1 shall not apply to new enterprises designated as such by the Minister in accordance with Article 13(2). Where a request is made in respect of such an enterprise for application of Article 5 or Article 6, the Minister may, in agreement with the wishes of the Ministerial Council, rule that one of those Articles shall apply in whole or in part.

Article 5

Temporary exemption from income tax  
in respect of new enterprises

1. Without prejudice to Article 4(3), profits made by a new enterprise in the accounting year in which effective operation of the enterprise began and in the subsequent five accounting years shall be exempt from income tax, provided that such exemption shall no longer be applicable as soon as and to the extent that in any accounting year the algebraic sum of the profits made is more than twice the amount of the initial investment.
2. Without prejudice to the restrictions laid down in the preceding paragraph, the figure of five accounting years specified therein shall, upon request, be increased by one for every tranche of Sur.f. 55 000 by which the initial investment exceeds Sur.f. 100 000 or for every tranche of Sur.f. 10 000 by which the average remuneration paid each accounting year to workers employed by the new enterprise and performing other than managerial functions - calculated over the five accounting years referred to in the preceding paragraph - exceeds Sur.f. 20 000, so that the increase resulting in the largest number of accounting years is applicable, provided that such increase may under no circumstances exceed five accounting years.
3. Where based on the amount of the initial investment, the request referred to in the preceding paragraph must be submitted within six months of expiry of the period stipulated in Article 9(4). Where the request is based on the average level of remuneration, it must be submitted within six months after expiry of the period during which an exemption was granted pursuant to paragraph 1.
4. After consultation with the Inspector of Direct Taxes, the competent authority shall decide on the request as promptly as possible, but in any event within six months of receipt thereof.
5. Subject to paragraph 4, profits referred to in paragraph 1 shall be calculated on the basis of the 1922 Income Tax Law.
6. Losses made in the same year or in previous years but not by the new enterprise shall not be set off against profits made by that enterprise in the years referred to in paragraph 1.

Losses made by the new enterprise in the years referred to in paragraph 1 shall not be set off against profits or income accruing in the same year or in subsequent years but not to the new enterprise.

The arrangements for setting off losses referred to in the preceding sentence of this paragraph against profits made by the new enterprise shall take precedence over the arrangements for setting off losses not made by that enterprise.

7. The preceding paragraphs shall also apply to profits made in the years referred to in paragraph 1 on the transfer in whole or in part of the new enterprise unless the enterprise or the part thereof that has been transferred is, after the transfer, operated entirely or to an appreciable extent and directly or indirectly by the same person (natural person or body) or persons by whom or on whose behalf the request referred to in Article 9(1) was submitted.
8. Except insofar as this Article provides otherwise, the provisions of the 1922 Income Tax Law and of the Regulation of 17 December 1954 (GJ No. 111) shall continue to apply in full to the entrepreneurs concerned and to exempt profits.

#### Article 6

Free depreciation in respect of the initial investment carried out by new enterprises

When profits made by a new enterprise are calculated for income tax purposes, the amount of depreciation in respect of the assets forming part of the initial investment may, during the period in which depreciation is practicable in accordance with sound commercial practice, be freely determined. The total amount of depreciation in respect of an asset referred to above during one or more years may not exceed the total amount to be written off in accordance with sound commercial practice.

#### Article 7

Depreciation rules governing initial investment in respect of extensions of an existing enterprise

1. The competent authority may, if so requested, rule that, when profits made by an enterprise which has undergone extension are calculated for income tax purposes:
  - (a) the rate of depreciation to be allowed in accordance with sound commercial practice in respect of buildings belonging to the assets that form part of the initial investment may be increased to 30% during the first year of depreciation and;
  - (b) the amount of depreciation in respect of assets not covered by (a) and forming part of the initial investment in the period during which depreciation is practicable in accordance with sound commercial practice may be determined freely.



2. The increase in the amount of depreciation referred to in paragraph 1(a) shall not affect the depreciation to be carried out in accordance with sound commercial practice in subsequent years.
3. The total amount of depreciation in respect of an asset referred to in paragraph 1 over one or more years must not exceed the total amount of depreciation to be carried out in accordance with sound commercial practice.

#### Article 8

##### Temporary exemption from import duties for new enterprises and extensions of existing enterprises

1. If so requested, the competent authority shall grant full or partial exemption from import duties in respect of:
  - (a) business assets that will be used in connection with the operation of a new enterprise or an enterprise which has undergone extension and that form part of the initial investment;
  - (b) materials and goods intended for the manufacture of business assets as referred to in (a) above;
  - (c) basic and auxiliary materials and packaging material intended for use or consumption in a new enterprise or in an enterprise which has undergone extension.
2. An exemption as referred to in paragraph 1 may be made conditional on certain rules and restrictions being complied with.
3. Exemptions in respect of materials referred to in paragraph 1(c) shall be valid for a period of not more than three years to be laid down in the relevant decision.
4. The competent authority may exclude certain goods referred to in paragraphs 1(a), (b) and (c) from the exemption.
5. Exemptions shall not be granted in respect of goods referred to in paragraphs 1(a), (b) and (c) that are also manufactured in Surinam in cases where it is to be expected that the granting of an exemption would result in unfair conditions of competition for the domestic producers of those goods.

SECTION III

Declaration in respect of new enterprises and extensions of new enterprises and deadline for the submission thereof

Article 9

Declaration in respect of new enterprises and extensions of existing enterprises

1. The declaration to the effect that an enterprise or an extension of an existing enterprise will be treated as a new enterprise or an extension of an existing enterprise for the purposes of this Regulation may, where this is desirable for reasons of general economic policy, be issued if a request to this effect has been submitted and:
  - (a) where the enterprise has not yet been established in Surinam or has been established there for not more than one year or where the extension has not yet been completed or was completed within the preceding twelve months, and
  - (b) where the initial investment amounts to not less than Sur.f. 50 000 and where a total annual remuneration of not less than Sur.f. 20 000 will be paid to workers performing other than managerial functions and, in the case of an extension of an existing enterprise, to such workers as, by virtue of the extension, are recruited over and above the number employed previously.
2. The decision comprising a declaration as referred to in paragraph 1 may include rules and restrictions applicable to the enterprise and entrepreneur concerned.
3. The establishment of an enterprise or the extension of an existing enterprise shall be deemed to have taken place within the preceding twelve months where, on the date on which the request referred to in paragraph 1 is submitted, not more than twelve months have elapsed since the date on which effective operation of the enterprise or the extension began.
4. The decision comprising the declaration referred to in paragraph 1 shall determine, in the light of the nature and circumstances of the enterprise concerned or of the extension, the period during which the amount to be regarded as the initial investment has to be disbursed in full.

5. The authority empowered to issue declarations as referred to in paragraph 1 may, in cases that it deems suitable, rule that and to what extent capital invested in operating stocks or land shall be included in the initial investment.

Article 10 has lapsed.

**SECTION IV**

**Procedure**

Article 11

**Establishment and composition of the Investment Board**

1. An Investment Board shall be established comprising seven members, including representatives of the Department of Finance, the Department of Economic Affairs, the Department of Agriculture, Stock Farming and Fisheries, and the Department of Construction.
2. The Chairman, the Deputy Chairman and the other members of the Board and their deputies shall be appointed and dismissed by the Governor.
3. The Governor is hereby empowered to lay down rules governing the Board's procedural methods, the swearing in of its members and the establishment of a secretariat.

Article 12

**Task and powers of the Board**

1. In addition to the responsibilities conferred upon it under the ensuing articles of this Regulation, the Board shall have the task of advising the Government, if so requested or at its own initiative, on the desirability of statutory measures aimed at granting, in appropriate cases, reliefs other than those provided for in this Regulation for the purpose of encouraging private investment in Surinam.
2. The Governor may confer upon the Board tasks relating to investment in Surinam other than those described in paragraph 1 and in the ensuing articles.

3. The Board is hereby empowered to obtain any information it deems necessary to perform the tasks conferred upon it or to fulfil its responsibilities.
4. Where appropriate, the Board may propose to the Minister measures for protecting domestic industry.

### Article 13

#### Decision at first instance

1. Requests as referred to in this Regulation must be submitted in writing to the Board, which shall decide on them in the first instance.
2. The Board shall refrain from taking any decision:
  - (a) where it concerns an enterprise for which an official concession is required or an enterprise as referred to in Article 22, 23, 24 or 25;
  - (b) where it concerns an enterprise which, pursuant to an agreement concluded with the Government, pursuant to a licence granted by the Government or pursuant to any statutory provisions, enjoys a de facto or de jure monopoly;
  - (c) where it concerns an enterprise to which reliefs have been granted by or pursuant to a special regulation;
  - (d) where the Board deems such to be desirable.

It shall then forward the written request, together with its own opinion, to the Minister, who shall subsequently decide on it in agreement with the wishes of the Ministerial Council. Article 12(3) shall apply by analogy.

3. Copies of any decision taken pursuant to paragraph 1 or paragraph 2 shall be forwarded to the Minister or the Board as the case may be and also to the applicant and to the Inspector of Direct Taxes and the Inspector of Import and Excise Duties insofar as it is of concern to those officials for the purpose of fulfilling their statutory responsibilities.
4. Decisions regarding requests referred to in this Regulation shall state the reasons on which they are based.
5. Decisions that serve to grant a request in whole or in part shall contain the information necessary for their implementation.

Article 14

Decision on appeal

1. The party concerned may, within thirty days of his receiving a copy thereof, lodge with the Minister an appeal in writing against a decision taken by the Board on the basis of Article 13 or Article 15.
2. Where the copy referred to in paragraph 1 is neither sent to the party concerned by registered letter nor presented to him by a competent official, the party concerned shall not be required to produce evidence regarding the day of receipt. In the event of a dispute regarding the date of dispatch of the written appeal, the date of the postmark or, where it was not sent by post, the date of the departmental stamp of receipt shall be the determining factor.
3. The Minister shall decide on the appeal in agreement with the wishes of the Ministerial Council.
4. Before deciding on the appeal, the Minister shall obtain the opinion of the Board. He may fix a reasonable deadline by which the Board is to deliver its opinion. Where that deadline is not met, he shall not be required to await its opinion. Article 12(3) shall apply by analogy.
5. Copies of the decision on appeal shall be forwarded to the Board and the applicant and also to the Inspector of Direct Taxes and the Inspector of Import and Excise Duties insofar as it is of concern to those officials for the purpose of fulfilling their statutory responsibilities. Where the decision at first instance is revoked in whole or in part, Article 13(4) shall apply by analogy.
6. Subject to Article 17, there shall be no legal remedy against a decision taken by the Minister and referred to in paragraph 4 above and in Article 13(2).

Article 15

Power to repeal or amend decisions

1. A decision taken pursuant to this Regulation shall be repealed:
  - (a) where any fraudulent action has been taken by or on behalf of the party concerned with a view to obtaining a favourable decision on his request;
  - (b) where the enterprise in respect of which or in respect of an extension of which the decision was taken is closed down by the entrepreneur or has been altered in such a way that the grounds on which the decision was taken have wholly or partly ceased to exist;

- (c) where the accounts of the enterprise in respect of which the decision was taken are not, or are no longer, regarded as regular accounts within the meaning of Article 2.
2. Without prejudice to paragraph 1, a decision taken pursuant to this Regulation may be repealed where a provision or restriction laid down in the relevant decision has been infringed or not fully complied with.
  3. The competent authority shall not decide to repeal a decision on the ground referred to in paragraph 1(c) or on that referred to in paragraph 2 without giving the party concerned the opportunity to remedy the irregularity as far as possible in a manner and by a date laid down by the said authority and to make good the damage caused to the State as estimated by the said authority. Where the party concerned avails himself of that opportunity, the decision shall not be repealed.
  4. Paragraph 3 shall not apply where the irregularity is repeated or where, in view of the seriousness thereof, there are no reasonable grounds for applying that paragraph.
  5. A decision in respect of the number of accounting years covered by the exemption from income tax referred to in Article 5 shall, unless there are grounds for repealing it, be amended where the amount of the initial investment proves to be greater or less than that of which the competent authority had been informed before taking the decision.
  6. The Minister, who shall act in accordance with the wishes of the Ministerial Council, and the Board, where one of its own decisions is concerned, are hereby empowered to repeal or amend decisions.
  7. A copy of the repeal or amendment decision shall be forwarded to the Minister where the decision was taken by the Board and to the Board where the decision was taken by the Minister. Copies shall also be forwarded to the party concerned and to the Inspector of Direct Taxes and the Inspector of Import and Excise Duties insofar as it is of concern to those officials for the purpose of fulfilling their statutory responsibilities. The decision shall contain the information necessary for its implementation.

#### Article 16

##### Consequences of repeal or amendment

1. A decision repealed on the basis of Article 15(1)(a) shall be deemed never to have been taken.
2. Where a decision is repealed on one of the other grounds listed in Article 15, the repeal shall have effect retrospectively to the beginning of the accounting, tax or calendar year in which that ground first arose.

3. For the purpose of applying the statutory provisions governing demands for back income tax, repeal or amendment shall be regarded as a new act.
4. Demands for back income tax based on a repeal or amendment as referred to in this Article may also be made after the period normally set for demands for back income tax has expired but not where two years have elapsed since the date of the repeal or amendment decision.
5. Import duties still payable as a result of the repeal may be collected on the basis of Royal Decree No.23 of 3 April 1869 (see GJ 1937 No. 143, as since amended).

#### Article 17

##### Powers of the civil courts

1. The civil courts are hereby empowered to take cognizance of claims for compensation in respect of damage arising out of the improper repeal or amendment of a decision taken pursuant to this Regulation.
2. A repeal or amendment decision shall be deemed to have been taken improperly where a statutory provision or a principle of sound administration has been contravened.
3. Claims as referred to in paragraph 1 shall no longer be valid once five years have elapsed since the party concerned received a copy of the repeal or amendment decision. The first sentence of Article 14(2) shall apply by analogy.

#### SECTION V

##### Final provisions

#### Article 18

##### Transfer of an enterprise

1. A decision taken on the basis of this Regulation shall be applicable and the reliefs granted by Articles 5 and 6 or pursuant to Articles 7 and 8 may, therefore, be enjoyed only as long as the new enterprise or the enterprise in respect of an extension of which the decision was taken is operated by the natural person or body by whom or on whose behalf the request giving rise to the decision was submitted. Where the new enterprise or the enterprise in respect of an extension

of which the decision was taken is transferred to another natural person or body and where operation of that enterprise is assumed by that natural person or body, the Minister may, however, after consulting the Board and in accordance with the wishes of the Ministerial Council, rule, if so requested, that the decision shall remain in force and that, without prejudice to Article 4(2), the natural person or body to whom the enterprise has been transferred shall replace the person by whom or on whose behalf the request referred to in the preceding sentence was submitted.

2. The Minister may make his decision taken on the basis of paragraph 1 conditional on compliance with provisions and restrictions relating inter alia to the amounts to be written off by the enterprise in respect of assets that have been transferred.

#### Article 19

##### Exemption from duties and costs

Any documents drawn up pursuant to or in accordance with any of the foregoing provisions shall be exempt from stamp duty and from any other duties and costs chargeable by the Treasury.

#### Article 20

##### Requirement to maintain secrecy

1. It is prohibited for any person to pass on any information concerning the business or activities of another person that comes to his knowledge or is notified to him by virtue of his office and in connection with the implementation of this Regulation except insofar as is necessary for the purpose of implementing this Regulation or for the purpose of levying and collecting any taxes payable in Surinam.
2. For the purpose of implementing paragraph 1 and Article 332 of the Surinamese Penal Code, membership of the Board shall be regarded as an office.

Article 21 has lapsed.



Article 22

Special provisions governing investment  
companies and holding companies

1. Without prejudice to Article 25(1) and (2) of the 1922 Income Tax Law, the net income from securities accruing to a limited company established in Surinam whose business is concerned exclusively or almost exclusively with the acquisition, possession, management and disposal of securities - with the exception of the gain obtained through a change in the value, or through the disposal, of securities - shall be liable to income tax at a rate equal to one twelfth of the rate stipulated in Article 36 of the 1922 Income Tax Law, subject to a maximum rate of 3 percent.
2. No account shall be taken of the net gain obtained or the loss made through a change in the value, or through the disposal, of securities when determining the profits of a limited company as referred to in paragraph 1.
3. The Minister may, at the request of a limited company whose business involves the acquisition, possession, management and disposal of securities, rule that gains obtained by the company through the acquisition, purchase, management and disposal of securities shall, subject to conditions to be laid down by him, be taxed on the basis of paragraphs 1 and 2.
4. For the purpose of applying this Article, "securities" includes Treasury bills and also commercial paper and banker's acceptances that are used as short-term investment instruments.

Article 22(a)

1. No foreign exchange margin shall be charged in respect of foreign investments which are made abroad by investment or holding companies or by companies exploiting intellectual property rights and which are financed out of funds held abroad.
2. The Board may, in the case of processing companies or companies carrying out assembly work that comply with rules to be laid down by it, propose that the Minister take the necessary steps to ensure that the Central Bank of Surinam charges the foreign exchange margin solely on expenditure incurred abroad and regarded as having been financed out of the export receipts of value added generated in Surinam, in which case the foreign exchange margin shall not be more than half the rate currently in force.

3. "Value added" as referred to in paragraph 2 means expenditure other than that incurred in respect of the importation of services, basic and auxiliary materials, machinery and any other materials needed in order to manufacture the product in question.

#### Article 23

##### Special provisions governing companies exploiting intellectual property rights

1. Without prejudice to Article 25(1) and (2) of the 1922 Income Tax Law, net income accruing to a limited company established in Surinam which is concerned exclusively or almost exclusively with generating revenue in countries outside Surinam through the disposal or transfer of the right to use copyrights, patents, models of secret processes or recipes, trade marks and the like, and also royalties - including rental - in respect of films and the use of industrial, commercial or scientific machinery or equipment and consideration in respect of the granting of technical assistance, with the exception of any gains obtained through a change in value, or through the disposal of, the items referred to above, shall be liable to income tax at a rate equal to one twelfth of the rate stipulated in Article 36 of the 1922 Income Tax Law, subject to a maximum rate of 3 percent.
2. No account shall be taken of the net gain obtained or the loss made through a change in the value, or through the disposal, of the items specified in paragraph 1 when determining the profit of a limited company as referred to in that paragraph.
3. The Minister may, at the request of a limited company whose business includes the activities referred to in paragraph 1, rule that the gains specified in that paragraph shall, subject to conditions to be laid down by him, be taxed on the basis of paragraphs 1 and 2.

#### Article 24

##### Additional provisions governing investment companies, holding companies and companies exploiting intellectual property rights

1. With regard to the profits of limited companies as referred to in Articles 22 and 23, the rate stipulated in Article 36 of the 1922 Income Tax Law shall be charged independently on such profits as consist of net income from securities and net income as referred to in Article 23(1), on the one hand, and of any other profits made by such limited companies, on the other.

2. Article 25(1) and (2) of the 1922 Income Tax Law shall not apply to the income of limited companies as referred to in Article 22(1) and Article 23(1) or to the income of those to which Article 22(3) or Article 23(3) has been applied, unless the body enjoying such income is itself a limited company as referred to in Article 22 or Article 23.
3. For the purpose of levying income tax in respect of a natural person resident in Surinam who has, during the preceding five years, either alone or together with his relatives, held directly or indirectly shares in a limited company as referred to in Article 22(1) or Article 23(1) or to which Article 22(3) or Article 23(3) has been applied equal to not less than one tenth of the nominal paid-up capital, the said shares shall be deemed to form part of the business assets. Article 3(4) of the Regulation of 17 December 1954 (GJ No. 111) shall not be applicable in such cases.

For the purpose of applying this provision, "relatives" means the spouse, the relatives in blood or by affinity in direct line and those in the second degree in the collateral line.

4. For the purpose of applying paragraph 3, more detailed rules may be laid down by decree.

#### Article 25

##### Special provisions governing shipping companies and international airline companies

1. Limited companies established in Surinam that engage exclusively or almost exclusively in shipping operations, including the letting of sea-going vessels, shall be liable for income tax in respect of profits made through such business at a rate equal to one fifth of the rate stipulated in Article 36 of the 1922 Income Tax Law, subject to a maximum rate of 9 percent.
2. Limited companies as referred to in paragraph 1 may, where and insofar as such is in accordance with sound commercial practice in the determination of annual profits made by way of its shipping operations, set aside a reserve for the purposes of spreading out evenly the costs of maintaining sea-going vessels and covering the risks associated with sea-going vessels in respect of which insurance is normally taken out but has not been taken out.
3. Where compensation in respect of the loss of or damage to a sea-going vessel or the income obtained through the disposal thereof is greater than the book value of that vessel or of the part damaged, a limited company as referred to in paragraph 1 may, when determining the profit made by way of its shipping operations, set aside the balance for the purpose of reducing the replacement or repair costs to be borne where and for as long as the intention is to replace or repair the vessel. The reserve shall, where it exceeds the difference between the

replacement or repair costs and the book value of the vessel that has been lost or disposed of or of the part damaged, be regarded as profit. The reserve set up on the basis of this paragraph shall be regarded profit not later than the fourth accounting year following that in which it was set up unless a longer period is needed for the replacement or repair of the vessel or unless such replacement or repair is delayed on account of special circumstances, provided that, in either case, the replacement or repair operation has begun.

4. The Minister may, at the request of a limited company established in Surinam that engages among other things in shipping operations, rule that, subject to conditions to be laid down by him, profits made by way of its shipping operations shall be taxed on the basis of paragraphs 1, 2 and 3.
5. This article shall also apply to airline companies that engage exclusively or almost exclusively in international airline operations, including the letting of aircraft.

#### Article 25(a)

##### Establishment of a single Central Body

A single Central Body may be established by decree with the task of coordinating the measures taken on the basis of this Regulation to encourage investment.

#### Article 25(b)

##### Determination of prices

The Minister for Economic Affairs may, in consultation with the Minister for Finance, lay down rules governing the prices at which enterprises that have been granted reliefs on the basis of this Regulation are to sell their products.

#### Article 25(c)

##### Applicability of the Surcharge Regulation

The 1971 Surcharge Regulation shall also apply to this Regulation.

Article 26

Extension of the Exemption from Rental Value Tax

1. The following subparagraph 7 shall be added after subparagraph 6 of sub-section (c) of Article 4 of the Regulation of 13 December 1910 (GJ No.88) introducing a tax on the rental value of buildings and the property belonging thereto, as set out in GJ 1948 No.154:
  - "7. as a factory or place of work, including, insofar as they are in the immediate vicinity, the ancillary stores, sheds, offices, workers' dwellings and buildings intended for the mental and physical welfare of workers."
2. Paragraph 1 shall have effect retrospectively to the beginning of the 1959 tax year.

Article 27

Title

1. This Regulation shall be cited as the "Investment Regulation".
2. It shall enter into force on a date to be fixed by the Governor.



UNITED REPUBLIC OF TANZANIA

CHAPTER 533

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FOREIGN INVESTMENTS (PROTECTION)

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An Act to give protection to certain approved Foreign Investments  
and for matters incidental thereto

(20th September, 1963)

1. This Act may be cited as the Foreign Investments (Protection) Act, 1963.
2. (1) In this Act unless the context otherwise requires -
  - "approved" in relation to any enterprise, foreign currency, period or proportion, means an enterprise, currency, period or proportion specified in the relevant certificate issued under section 3;
  - "Foreign assets" includes foreign currency, credits, rights, benefits or property, any currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit, or the use or exploitation of foreign rights, benefits or property, and any profits from an investment in an approved enterprise by the holder of a certificate issued under section 3 in relation to that enterprise;
  - "foreign national" means a person who is not a citizen of Tanganyika, and includes a body corporate not being a body incorporated in Tanganyika;
  - "the Minister" means the Minister for the time being responsible for finance.

(2) For the avoidance of doubts it is hereby declared that all assets shall not cease to be foreign assets by reason of their being assets in some other part of the Commonwealth, and that currency shall not cease to be foreign currency by reason of it being currency in Tanganyika as well as in some place outside Tanganyika:

Provided that in the case of currency, the relevant sum originates from outside Tanganyika.
3. (1) A foreign national who has invested, or who proposes to invest, foreign assets in Tanganyika may apply to the Minister for a certificate that the enterprise in which the assets are, or are proposed to be, invested is an approved enterprise for the purposes of this Act.



(2) The Minister shall consider every application made under subsection (1), and in any case in which he is satisfied that the enterprise would further the economic development of, or benefit, Tanganyika, he may in his discretion, issue a certificate to the applicant.

(3) Every certificate shall state -

- (a) the name of the holder;
- (b) the name and a description of the enterprise;
- (c) the proportion of the foreign assets invested or to be invested by the holder to the total assets of the enterprise, and where the investment consists of the acquisition of shares or stock in a body corporate, the number or amount, and description thereof;
- (d) the relevant foreign currency;
- (e) if the assets have not yet been invested, the value thereof and the period within which they shall be invested;
- (f) such other matters as may be necessary or desirable for the purposes of this Act.

4. The Minister may in his discretion amend a certificate granted under section 3 -

- (a) in any case in which he is satisfied that some other foreign national has succeeded to the interest in the enterprise of the holder of the certificate, by substituting for the name of the holder the name of his successor;

Provided that the Minister shall not substitute the name of any person who has acquired the interest of the holder by the expenditure, directly or indirectly, of assets other than foreign assets;

- (b) in any case where the name of the enterprise is altered, by substituting the name as so altered;
- (c) in any case in which new foreign assets are invested or are to be invested in the enterprise by the holder, or the holder has withdrawn or been paid, in accordance with this Act, any part of his investment by varying the approved proportion in accordance therewith;
- (d) in any case where the investment consists of the acquisition of shares or stock of a body corporate, and new shares or stock are acquired otherwise than by the investment of assets which are not foreign assets, by amending the number or amount, and the description thereof;
- (e) with the written consent of the holder, by varying the approved foreign currency;
- (f) by extending the period during which foreign assets are to be invested; and
- (g) subject to the foregoing provisions and to the written consent of the holder, in such other manner as may be necessary or desirable.

5. If at the time at which a certificate is issued under this act, any foreign assets or part thereof to which such certificate relates have not been invested in the approved enterprise, they shall be so invested within the approved period, and, if not so invested within that period, the certificate shall be deemed to have been revoked.
6. (1) If, at any time, any approved enterprise or any property belonging thereto is compulsorily acquired by, or at the direction of, the Government in furtherance of the nationalisation or expropriation thereof, or of any industry of which such enterprise forms a part, the full and fair value of such enterprise or property shall be ascertained and the holder of a certificate relating to such enterprise shall be paid a proportion specified in his certificate as the approved proportion.  
  
(2) Where the approved enterprise is, or is carried on by, a body corporate, and the investment of the holder of a certificate consists of the purchase or other acquisition of the shares or stock of such corporate body with foreign assets, then, if the shares or stock of the holder in such body corporate are compulsorily acquired by, or at the direction of, the Government as aforesaid, the provisions of subsection (1) shall not apply, but the full and fair value of such shares or stock shall be ascertained and such value shall be paid to the holder in respect of the shares and stock specified in the certificate.  
  
(3) If any question arises between the Government and the holder of a certificate as to the value of any enterprise, property, stock or share, the question shall be referred to and determined by arbitration, and at any such arbitration each party shall appoint one arbitrator, who shall jointly appoint a third.  
  
(4) Compensation paid under this section shall be paid in the approved foreign currency and may be transferred out of Tanganyika at the prevailing official rate of exchange.
7. Notwithstanding the provisions of any other law for the time being in force, the holder of a certificate may, in respect of the approved enterprise to which such certificate relates, transfer out of Tanganyika in the approved foreign currency and at the prevailing official rate of exchange -
  - (a) the profits, after taxation, of his investment of foreign assets;
  - (b) the approved proportion of the net proceeds of sale of all or any part of the approved enterprise, either in liquidation or as a going concern;
  - (c) the principal and interest of any loan specified in the certificate.
8. The Minister may make regulations or give directions for the better carrying out of the purposes of this Act and prescribing the manner in which applications shall be made for certificates under this Act, and the information which shall accompany such applications.

KINGDOM OF TONGA

AN ORDINANCE TO ACTIVELY ENCOURAGE ENTREPRENEURSHIP FOR THE ESTABLISHMENT AND GROWTH OF INDUSTRIES AND TOURISM IN THE KINGDOM THROUGH A SYSTEM OF GRANTING RELIEF FROM CERTAIN TAXES AND DUTIES AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

BE IT ORDAINED by the King and Privy Council of Tonga in pursuance of the powers conferred by the Act of Constitution of Tonga, as amended, and by the Government Act, as amended, as follows :

PART I

INTRODUCTION

1. THIS Ordinance may be cited as THE INDUSTRIAL DEVELOPMENT INCENTIVES ORDINANCE, 1977 and shall come into force from the date of its promulgation.
2. In this Ordinance and any Regulations made hereunder, unless the context otherwise requires -

"Approved Industrial Enterprise" means an enterprise belonging to any of the categories as defined in Section 3 of this Ordinance in respect of which a Development Licence has been issued by the Minister under Section 5 of this Ordinance.

"Approved Product" means a product of manufacture approved by the Minister.

"Assessable Income" means income as defined in the Income Tax Act.

"Commissioner" means the Commissioner of Inland Revenue as defined in the Income Tax Act.

"Company" means any corporate body whether registered under the Companies Act or not and any partnership consisting of more than 7 persons.

"Controller" means the Controller of Customs.

"Customs Duty" means the tariff or import duty as set out in Schedule I to the Customs Duties Act.

"Customs Duties Act" means the Customs Duties Act of the Kingdom as amended from time to time and the regulation framed thereunder.

"Depreciation" means deduction of an allowance for capital expenditure incurred in creating assets at such rates as prescribed under Section 6 (2) (a) of the Income Tax Act.

"Development Incentives" means relief from Income Tax, Customs Duty, Port and Service Tax, with-holding tax and any other form of relief or assistance as expressly provided for under this Ordinance with the prime objective of encouraging entrepreneurship and promoting industrial development.

"Development Licence" means a licence issue by the Minister under Section 5 of this Ordinance.

"Export Levy" means any duty or tax payable by any person under any enactment for the time being in force relating to the levy of such duty or tax on exports of product(s).

"Foreign Exchange Control Act" means the Foreign Exchange Control Act as amended from time to time and any Regulations framed thereunder.

"Income Tax" means Income Tax as defined, imposed and payable under the Income Tax Act.

"Income Tax Act" means the Income Tax Act of the Kingdom as amended from time to time and any regulations framed thereunder.

"Kingdom" means the Kingdom of Tonga.

"Minister" means the Minister of Labour Commerce and Industries or such Minister whom Privy Council may appoint to be responsible for the time being for the regulation and development of Industries and Tourism in the Kingdom.

"Non Resident" means a person who is not deemed to be resident in the Kingdom whether the term is applied to an individual or a company.

"Partnership" means an association of not more than 7 persons carrying on business as partners but does not include a company registered under the Companies Act.

"Port and Services Tax Act" means the Port and Services Tax Act,

as amended from time to time and any Regulations made under the Act.

"Port and Service Tax" means the tax leviable, to be collected and paid on all goods imported into the Kingdom as specified in Section 2 (1) of the Port and Services Tax Act.

"Product of Manufacture" means any commodity prepared or created through some form of processing, manufacturing or assembly and is for sale.

"Sale" means the transfer of ownership of a product of manufacture for a consideration and shall include service charges, rental and tariff on prime facilities to the visitor industry.

"Tax Holiday" means an exemption from payment of income tax for any specified period.

"Withholding Tax" means the tax on withholding income referred to in Section 71 of the Income Tax Act.

"Tourist Act" means the Tourist Act of the Kingdom as amended from time to time and any regulations framed thereunder.

3. (1) In this Ordinance, the term

"Industrial Enterprise" means -

- a) any "company" ;
- b) statutory bodies established under any enactment by the King and the Legislative Assembly of Tonga or under any Ordinance ;
- c) co-operative societies registered under the Co-operative Societies Act ;
- d) private entrepreneurship be it a sole proprietorship concern or a partnership firm comprising of not more than seven partners, Tongan or foreign ;  
  
engaged in or desirous of engaging in any processing industry, manufacturing industry, assembly industry including packaging industry and/or providing approved prime facilities to the visitor industry if the product of manufacture or the prime facilities are intended for sale.

(2) Activities merely in the nature of drying or dehydration of any agricultural produce shall not normally be covered by the meaning of the term "processing".

- (3) "Prime Facilities" are those which are visitor producing in their own right as distinct from ancillary services which, essentially, provide the backup facilities to the tourist industry. Prime facilities would include :

Accommodation such as hotels, motels, boarding houses, guest houses, apartments and caravans.

Cruising Vessels : (Vessels registered in Tonga and providing tourist standard accommodation and facilities used for the purpose of sightseeing and cruising between Tongan ports) ;

Tourist Attractions : (International standard sporting facilities such as golf, tennis, gamefishing etc. established to attract overseas tourists and major recreational and sight seeing facilities such as marina oceanariums, tropical gardens and parks and specially developed tourist sites incorporating aspects of Tongan culture and tradition).

- (4) In the event of any doubt as to whether or not an enterprise is an "Industrial Enterprise" for the purpose of grant of development incentives and other assistance, the decision of the Minister responsible for the regulation and development of industries shall be final.

## PART II

### DEVELOPMENT LICENCE

4. Any person desiring to establish an industrial enterprise with the express intent of processing, manufacturing or assembling a product or creating a prime facility to the visitor industry of the kind specified in Section 3 of this Ordinance or an expansion of such an existing industrial enterprise shall first make an application to the Minister in such form and manner as may be prescribed by the Minister clearly specifying the product(s) of manufacture or prime facility to be created and the Minister, with due regard to the provisions of this Ordinance, The Tourist Act, and any other considerations which he may wish to take into account, may either approve the said industrial enterprise and the product(s) of manufacture and/or the Prime facility or refuse the application and no appeal shall lie against the decision of the Minister.

5. (1) In the event of the Minister approving an application cited in Section 4 ante, he shall either himself issue or authorise in writing any other person under his administrative direction to issue a "Development Licence" in favour of the industrial enterprise so approved by him, inter alia, specifying in the licence the approved product(s) of manufacture and/or the prime facility being created and the development incentives that would be available to the said enterprise in relation to the approved product of manufacture or the prime facility.
  - (2) The Minister may, on application, grant a Development Licence to any industrial enterprise established and in operation prior to the commencement of this Ordinance if, on application by such enterprise and after taking into account all relevant factors, he is satisfied that it will be equitable and justified to grant the licence to the said enterprise in the manner specified in the preceding section. Such a licence shall not, however, entitle the enterprise to avail the incentives under this Ordinance retroactively.
6. No licence issued under this Ordinance shall be transferable ; a licence issued under this Ordinance shall exempt the holder from obtaining any other licence required in connection with his approved industrial enterprise under any other Act.

### PART III

#### DEVELOPMENT INCENTIVES

7. (1) Every approved industrial enterprise shall be entitled to exemption from payment of any income tax in respect of any assessable income earned by the said enterprise relating to the approved product or approved prime facility for a period of up to first five consecutive years as determined by the Minister commencing from the date of the Development Licence provided that in respect of a "company" the period of exemption or tax holiday may be extended up to five more consecutive years in exceptional circumstances by His Majesty in Council.
- (2) In respect of expansion of an industrial enterprise, for making an approved product or creation of approved prime facility, that amount of additional assessable income accruing directly as a result



of such expansion shall be exempt from income tax for a period of up to five consecutive years as determined by the Minister from the date of Development Licence granted by him approving such expansion, the precise period of exemption being specified in the licence.

- (3) Every shareholder of a company approved as an "industrial enterprise" for the purpose of this Ordinance shall be entitled to exemption from payment of any income tax on the income received by him or his nominee as dividend on his shareholding in the said enterprise relating to the tax holiday period specified in subsections (1) and (2) of the main section provided further that such dividend has been actually received by him not later than 2 years after the expiry of the said tax holiday period.
  - (4) The provisions of Part II, Section 3 of the Income Tax Act, and the first schedule thereto shall remain inoperative for the duration of the tax holiday period specified in subsections (1), (2) and (3) of the main section of this Ordinance.
8. (1) Any non resident registered company or a non resident shareholder of such company shall be exempt from the payment of "withholding tax" on withholding income relating to the initial tax holiday, such exemption shall not however be available for any extended period of the tax holiday as may be approved by His Majesty in Council under proviso to Section 7 of this Ordinance.
- (2) The provisions of subsection (2) (a) of Section 71 and Section 75 of the Income Tax Act shall remain inoperative for the duration of the period specified in the preceding subsection.
9. (1) An approved industrial enterprise may provide for depreciation of its assets after the expiration of the period of tax holiday specified in Section 7 (1) and 7 (2) of this Ordinance on the original value of such assets provided further that the amount of depreciation is in accordance with such rates the Commissioner considers reasonable and any general instructions of His Majesty in Council as may be issued from time to time under Section 6 (2) (a) of the Income Tax Act.
- (2) In lieu of the five year tax holiday, an approved industrial enterprise of a capital intensive nature may opt for depreciating its assets fully on an

accelerated basis at more than the normal rate prescribed under subsection (2) (a) of Section 6 of the Income Tax Act for depreciation of such assets within five years, such option once exercised being final. The option under this subsection, if exercised, shall be communicated in writing to the Minister and the Commissioner not later than three months from the date of issue of Development Licence.

- (3) The relief from payment of income tax on dividends received by a shareholder of a company as specified in Section 7 (3) of this Ordinance shall be available to the shareholder notwithstanding that the said company has opted for accelerated depreciation in lieu of the tax holiday provided for under subsection (2) of this section.
10. Notwithstanding the provisions of Section 6 (1) of the Income Tax Act or any other provisions relative thereto, the net losses incurred by an approved industrial enterprise during any tax assessment year(s) may be carried forward and set off against future profits without any monetary limit provided further that such set off shall be against the profit accruing during the year(s) immediately following the year(s) in which such loss(es) has been incurred and accumulated.

Explanation : If an enterprise incurs losses, say during 1978, 1979, 1980, the cumulative loss may be set off against the profits accruing during 1981 and onwards (1981 being the year immediately following 1980) and 1981, 1982 etc. as necessary till they are fully set off.

11. (1) The Commissioner, may, on application from an approved productive enterprise postpone the collection of income tax payable after the tax holiday period by one or more years on a continuous basis if, on considerations of national economy, the Commissioner feels that it is in public interest to so postpone the collection of tax(es), provided that the Commissioner shall consult the Minister as to the economic state of the enterprise, its employment potential and its contributions to the national economy before making his decision and that no appeal shall lie against his decision.
- (2) The powers of the Commissioner set forth in subsection (1) of this section are in amplification of the powers vested in him under Section 34 (5) of the Income Tax Act.

12. (1) Notwithstanding any provisions of the Customs Duties Act, an approved industrial enterprise may import "capital goods" free of customs duty for a period of two years from the date of issue of development licence approving the said enterprise or expansion thereof if such goods are solely required for processing, manufacturing or assembling the approved product and/or for creating the approved prime facility : provided further, if the said goods are misused, sold or otherwise disposed off, full customs duty leviable thereon as at the time of their importation shall be recovered on such goods.
- (2) The term "capital goods" means items such as plants, equipments, machinery, components and spare parts thereof and automobiles such as tractors, forklifts, trucks and goods carrier vans, deluxe tour buses and tour boats but will exclude motor cars, minimokes and motor cycles.
- (3) In the event of any doubt at the time of actual importation of any item whether or not it is of the category of "capital goods", the decision of the Controller taken in consultation with the Minister shall be final.
- (4) Notwithstanding any provisions of the Customs Duties Act, semi finished products and/or raw materials including packaging materials imported by an approved industrial enterprise and used in the processing, manufacturing, assembling the approved product and packaging thereof shall be exempt from payment of any customs duty leviable thereon if the final finished product(s) is/are re-exported. In regard to the said goods, the customs duty shall, however be payable at the time of importation, such duty being refunded to the approved industrial enterprises at the time of re-exportation of the final finished product(s) on the basis of actual exports as evident by documentation to the satisfaction of the Controller.
- (5) Notwithstanding any provisions of the Customs Duties Act, raw materials, including fuel imported by an approved industrial enterprise for use during trial runs shall be exempt from payment of any customs duty leviable thereon provided the period of trial run, which shall in no case exceed six months, is specified in the Development Licence. The Customs Duty shall, however, be payable at the time of importation of the raw material and shall be refunded to the said enterprise on production of a declaration

by the said enterprise to the satisfaction of the Controller.

13. (1) Notwithstanding the provisions of the Port and Services Tax Act, Port and Service Tax shall be levied and collected at a 50 % concessional rate on all "capital goods" referred to in Section 12 (1) of this Ordinance.
- (2) Port and Services Tax shall be leviable and collected on all other goods imported in accordance with the Port and Services Tax Act provided further that the said tax shall be refunded to the approved enterprise if such goods qualify for refund of customs duty in the manner specified in Section 12, Subsections (3) and (4) of this Ordinance.
14. On application by an approved industrial enterprise exporting an approved product of manufacture and on the recommendation of the Minister, the Controller may exempt the said enterprise from payment of such levy fully or partially for any specified period.
15. Subject to the provisions of the Foreign Exchange Control Act or the Regulations framed thereunder and the Income Tax Act, a non resident approved industrial enterprise or a non resident shareholder of a company approved as an "Industrial enterprise" shall be entitled to remit overseas funds in the nature of dividends, profits, gains, interest and capital provided further that -
  - a) where the enterprise is financed by locally raised funds, profits etc. specified above accruing from such investments shall not be repatriated ; where, however, the financing is partly through overseas funding and partly by locally funds, the amount repatriable shall be determined on a pro rata basis by the Minister of Finance or any other person authorised under the Foreign Exchange Control Regulations ;
  - b) in respect of capital gains, the amount repatriable shall be restricted to the amount transferred in through the Banking System or other approved methods ;
  - c) expatriate employees shall be entitled to remit overseas their salaries and wages received in the Kingdom up to the amount on which Income Tax has been paid.

16. (1) Notwithstanding the provisions of any other Laws of the Kingdom, it shall be unlawful for any person, corporate or otherwise, to establish or expand, after the date of commencement of this Ordinance any manufacturing, processing or assembly operation and/or create Prime facilities or expand thereof without the prior written consent of the Minister either under this Ordinance or under the Tourist Act, if the product of manufacture or Prime facilities are intended for sale.

Such a consent is necessary irrespective of whether or not the person intends to avail the development incentives under this Ordinance.

- (2) Any person contravening the provision of subsection (1) of this section shall be liable on conviction to a fine not exceeding one thousand pa'anga.
- (3) On application by any approved industrial enterprise and on the recommendation of the Minister, the Minister of Finance or any other person authorised under the Foreign Exchange Control Regulations may, if he considers it expedient, by an order published in the gazette either wholly prohibit or quantitatively restrict the importation of any goods into the Kingdom for any period specified by him.
- (4) Notwithstanding the provisions of the Customs Duties Act, on application by an approved industrial enterprise and on the recommendations of the Minister, the Controller may, if he deems it expedient, either lower or raise the rate of Customs Duty on any goods of all or any origin and description imported into the Kingdom for such period(s) specified by him.

#### PART IV

##### MISCELLANEOUS

17. (1) It shall be lawful for the Minister, the Commissioner, the Controller or any other person authorised by any of them :
- a) to enter the premises of industrial enterprise, approved or otherwise, with the express intent of inspecting the processing, manufacturing, assembly operations or operation of the prime facilities or any processed, manufactured, assembled or imported goods ;

- b) to himself collect, scrutinise, take or require the production of any document, material as sample or any information orally or in writing if in the opinion of the Minister, the Commissioner or the Controller it is expedient to do so for the purposes of this Ordinance.
- (2) No person shall :
- a) obstruct the Minister, the Commissioner, the Controller or the authorised person in the exercise of their powers and duties under subsection (1) of this section ;
  - b) wilfully fail to give information or to produce any documents or samples required of him ;
  - c) knowingly give false information relating to any matter relating to this Ordinance.
- (3) Any person who contravenes the provisions of this Section or any order issued thereunder shall be liable upon conviction to a fine not exceeding five hundred pa'anga or to a term of imprisonment not exceeding six months or both.
18. The Minister, the Commissioner or the Controller under this Ordinance shall have the power to revoke, cancel or modify such licence or order issued under this Ordinance and no cause of action whatsoever shall lie against such revocation or modification provided that before any revocation or modification order is made, the Minister, the Commissioner or the Controller shall give an opportunity to the "Industrial enterprise" or any other person as necessary as to why the proposed revocation or modification should not be made. No appeal shall lie against such revocation or modification order.
19. (1) The Minister may with the consent of His Majesty in Council from time to time make such Regulations as are in his opinion necessary or expedient for giving effect to the provisions of this Ordinance and the due administration thereof.
- (2) All such Regulations shall be duly published in the Gazette.

Made at the Palace, Nuku'alofa this        day of        1977.

THE INDUSTRIAL DEVELOPMENT INCENTIVES  
ORDINANCE, 1977 (SECTION 19 (1))

THE INDUSTRIAL DEVELOPMENT INCENTIVES  
REGULATIONS, 1977

In exercise of the powers conferred by Section 20 of The Industrial Development Incentives Ordinance, 1977 the Minister of Labour, Commerce and Industries with the consent of His Majesty in Council makes the following regulations :

PART I

PRELIMINARY

1. These Regulations may be cited as The Industrial Development Incentives Regulations, 1977.

2. In these Regulations, unless the context otherwise requires -

"Ordinance" means The Industrial Development Incentives Ordinance, 1977 ;

"Committee" means the standing Committee established under regulation 5 hereof ;

"Minister" means the Minister of Labour, Commerce and Industries or such Minister appointed by Privy Council to be responsible for Tourism and Industries ;

"Ministry" means the Ministry responsible for the regulation and development of industries and tourism in the Kingdom ;

"Incentives" means the Development Incentives as provided for under the Ordinance ;

"Licence" means the Development Licence issued under Section 5 of the Ordinance.

PART II

APPLICATION FOR DEVELOPMENT LICENCE

3. (1) Every application under Section 4 of the Ordinance shall be made on the form as prescribed by the Minister.

- (2) Six copies of the application in the manner specified in Subsection (1) above shall be lodged with the Secretary of the Ministry or any officer of the Ministry as authorised by him. A fee of Five Pa'anga shall be paid on each application.
4. The Minister or the Secretary may call for such additional information or documentation from the applicant or carry out or cause to be carried out any inspection of premises as deemed expedient for a proper consideration of the application.

### PART III

#### ADVISORY COMMITTEE

5. (1) There shall be set up a standing Committee consisting of :
  - a) The Minister, who shall be the Chairman ;
  - b) The Secretary of the Ministry, who shall be the Member-Secretary of the Committee ;
  - c)
  - d) Three members viz.
  - e)
    - (i) The Secretary of Finance
    - (ii) The Chief Planning Officer and
    - (iii) The Managing Director, Tonga Development Bank who shall all be ex-officio members of the Committee.
- (2) The Secretary of the Committee may, with the consent of the Chairman, invite any other person(s) to attend any meeting of the Committee for consultation or opinion.
- (3) The Chairman and any two other members shall constitute the quorum at any meeting of the Committee.
- (4) The Minister may, with the consent of the Cabinet, prescribe any remuneration payable as fee to the members of the Committee.



6. (1) The Secretary shall submit all applications made under Clause 3 of these Regulations to the Committee for its consideration and recommendation.
  - (2) Save as otherwise directed by the Chairman, the Secretary shall give not less than three days' notice for convening a meeting of the Committee.
  - (3) The Secretary shall keep adequate record of the deliberations of the Committee and its recommendations in respect of each application.
7. The Committee shall scrutinise all applications for licensing of industrial enterprises and make appropriate recommendations to the Minister inter alia on
    - a) approval to the establishment or expansion of the industrial enterprise as may be the case ;
    - b) approval to the product(s) of manufacture and/or creation of Prime facility(ies) and
    - c) the incentives that may be granted in each case.

In regard to investment applications from foreign entrepreneurs for establishment of industrial enterprises in the Kingdom or expansion thereof either as joint ventures or otherwise, the Committee shall, inter alia, determine whether such investments bring positive, substantial and continuing benefits to the people of Tonga with reference to any of the following characteristics or criteria before making recommendations to the Minister :

- (i) Requiring substantial amounts of risk capital ;
- (ii) Processing local resources ;
- (iii) Substantial contribution to local value added, to the extent such value can be determined ;
- (iv) Bringing access to managerial and marketing skills, modern technology and technical expertise ;
- (v) Labour intensive, i.e. with a medium to high labour to capital ratio ;
- (vi) Having export potential as would augment

- the country's foreign exchange earnings ;
- (vii) Import substitution resulting in conservation and saving of foreign exchange ;
  - (viii) A reasonable level of local equity participation ;
  - (ix) Having a multiplier effect providing base for the establishment and growth of ancillary industries ;
  - (x) Likely to bring complementary benefit(s) to other manufacturers or producers in Tonga and
  - (xi) Any other criteria, which, in the Committee's view, are relevant to approval and licensing of such enterprises.

#### PART IV

##### DEVELOPMENT LICENCE

8. (1) A licence to an industrial enterprise shall normally be in the form prescribed in the Schedule to these Regulations and shall bear a number, date and seal of the Ministry.
- (2) A licence issued under Subsection (1) above shall clearly specify the incentives and other forms of assistance that are being made available to the approved industrial enterprise, the extent thereof and the approved product(s) and/or prime facility(ies) in respect of which such incentives and assistance are being made available.
- (3) A copy of the licence issued under Subsection (1) above shall be transmitted to the Ministry of Finance, the Commissioner of Inland Revenue, the Controller of Customs, the Minister of Police (where such a licence relates to a foreign investor) and to other concerned Government Departments/Organisations.
- (4) Prior to the issue of a licence to any industrial enterprise, the Minister may, if he deems it necessary, publicise his intention to licence the said enterprise to elicit opinions and/or objections to the issuance of such licence and any such action of the Minister shall not be called to question.

PART V

MISCELLANEOUS

9. (1) The Minister may, at his discretion, require the Committee to advise him on any application made to him by Industrial Enterprises under Section 11, 14 and 16 of the Ordinance or any matter covered by Sections 18 and 19 of the Ordinance.
- (2) The Minister may, on the advise of the Committee, reserve any specified industry(ies) for local entrepreneurs if, on a consideration of the state of industrial development in the Kingdom, he deems it expedient to do so.
10. The holder of a licence issued under the Ordinance shall at all times keep adequate and satisfactory record(s) of production and financial accounts relating to the approved product and/or prime facility in respect of which the incentives and other forms of assistance have been specified in the licence and that the decision of the Commissioner of Inland Revenue or the Controller of Customs, as may be the case, taken in consultation with the Minister as to whether or not such records are adequate and satisfactory shall be final.

Made at Nuku'alofa, this            day of            1977

BARON VAE  
Minister of Labour, Commerce  
& Industries

SCHEDULE  
(SECTION 8 (1))

Form of Development Licence

Licence N°

File N°

THE MINISTRY OF LABOUR, COMMERCE & INDUSTRIES  
KINGDOM OF TONGA

To ; Nuku'alofa  
Date :

Sir/Madam,

Subject : Development Licence for the establishment/  
expansion of .....  
for the manufacture of .....  
...../creation of prime  
facility(ies) viz. ....  
..... in the  
Kingdom of Tonga.

Reference : Your application N° ..... dated  
..... on the subject.

With reference to your application cited above, licence  
is hereby granted under Section 5 of the Industrial  
Development Incentives Ordinance, 1977 to the esta-  
blishment/expansion of .....  
and to the manufacture of the following product(s)/  
creation of the following prime facility(ies) to the  
extent indicated against each :

<u>Sl.No</u>	<u>Description of the approved product(s) or prime facility(ies)</u>	<u>Quantity (to the extent quantifiable)</u>	<u>Remarks if any</u>
i)			
ii)			
iii)			
ETC.			

The following Development Incentives will be available to the said enterprise only in respect of the manufacture of the product(s) and/or creation of the prime facility(ies) specified above under the relevant sections of the Ordinance noted against each incentive :

Section 7 (Tax Exemptions) :

- Tax Holiday upto the first ..... consecutive years from the date of issue of the Licence.
- Exemption for the shareholder from payment of income tax during the tax holiday period.

Section 8 (Withholding Tax) :

- Exemption from payment of withholding tax during the tax holiday period indicated above.

Section 9 (Depreciation of assets) :

Depreciation to commence after the tax holiday period in the manner provided under the Section

OR

Accelerated depreciation in the manner prescribed under the Section. (Option for the incentive, if exercised, should be communicated to the Minister and the Commissioner of Inland Revenue within three months from the date of this licence).

Section 10 (Carry forward of losses) :

Permission to carry forward losses in the manner prescribed under Section 10.

Section 12 (Customs Duty exemption/Drawback) :

Full exemption from payment of Customs Duty for TWO years on capital goods imported.

Facility of drawback of duty paid on raw materials and semi-finished products imported if the finished products are exported.

Facility of drawback of duty paid on raw materials (listed in the enclosure to this Licence) imported up to ..... months from the date of this Licence, such period being reckoned as "Trial Run" period.

Section 13 :

Payment of Port & Services Tax at a 50 % concessional rate on capital goods imported.

Facility of drawback of Port & Services Tax paid in respect of imported semi-finished products and raw materials in the manner provided under the Section.

The exemptions etc. mentioned above will be available from the date of this Licence.

Your kind attention is drawn to Sections 11, 14, 15 and 16, of the Ordinance as also to Section 10, of the Industrial Development Incentives Regulations, 1977.

The various Ministries of the Government and Statutory Bodies will be happy to offer you any other reasonable assistance to the extent such assistance is necessary and feasible.

We wish your enterprise all success in its constructive endeavour.

Please acknowledge receipt of this Licence.

Yours faithfully,

Secretary  
Ministry of Labour, Commerce  
& Industries

Encl : (i)  
(ii)  
etc.

cc : for information and necessary action to :

- (1) Secretary of Finance
  - (2) Deputy Commissioner of Inland Revenue
  - (3) Collector of Customs
  - (4) Hon. Minister of Police & Principal Immigration Officer
  - (5) Tourist Officer
  - (6) The Central Planning Office
  - (7) The Managing Director, Tonga Development Bank
  - (8) The Manager, Tonga Electric Power Board
  - (9) The Manager, Tonga Water Board
  - (10) The Director, Commodities Board
- etc.

Note : \* - Strike out these where not applicable ;

- Additional clauses may be added where necessary ;

- The proforma to be used with suitable modification for approval and licensing of existing enterprises under Section 5 (1) of the Ordinance.





TRINIDAD AND TOBAGO

AN ORDINANCE TO REGULATE THE HOLDING OF LAND BY ALIENS AND COMPANIES UNDER ALIEN CONTROL.

(1st July, 1921)

1. This Ordinance may be cited as the Aliens (Landholding) Ordinance.
2. (1) In this Ordinance -

"alien" means a person who is not a British subject, and includes a company incorporated in the Colony or in any other part of His Majesty's dominions if it is under alien control as hereinafter explained, and also every corporation incorporated in a foreign country, but shall not include any of the subjects or citizens of a foreign state upon whom there has been conferred by treaty the right to hold land within the Colony ;\*

"debenture" includes every mortgage or charge by a company, whether floating or otherwise, on any of the company's property or on its undertaking or on its uncalled capital, and also every obligation by the company (not being a bill of exchange or promissory note) for the payment of a debt or the repayment of money lent or to be lent, and also debenture stock ;

"land" includes tenements and hereditaments, both corporeal and incorporeal, and every interest therein, but does not include money charged on land, or oil rights as defined in the Oil Rights (Alien Control) Ordinance ;

"member of a company" includes any person entitled under the memorandum or articles or any resolution of the company to participate in its assets or in its divisible profits ; but a servant or agent of the company shall not be deemed to be a member by reason only that the amount of his emoluments depends

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\* List of countries with which treaties have been concluded under this Ordinance : -

Columbia, Germany, Greece, Italy, Roumania, Spain, Switzerland and Turkey.

wholly or partially on the amount of the company's profits ;

"mortgage" includes every instrument creating a mortgage or charge on land, except a debenture ;

"share" includes stock, and, in the case of a company not having a share capital, the interest of a member in the assets of the company ;

"unlicensed alien" means an alien who does not hold a licence granted under this Ordinance.

- (2) The expression "alien" when used in this Ordinance shall, for the purpose of enabling the government of any foreign state to own land for consular use, but only in so far as it is necessary for such purpose, be deemed to include the government of any foreign state ; and the relevant provisions of this Ordinance shall, subject to the aforesaid limitation, be construed accordingly.

RESTRICTIONS ON THE HOLDING OF LAND  
AND MORTGAGES BY ALIENS

3. (1) Subject to the provisions of this Ordinance, neither land in the Colony nor a mortgage on land in the Colony shall, after the commencement of this Ordinance, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to His Majesty.
- (2) Provided that -
- a) land may be acquired and held by an unlicensed alien on an annual tenancy or for any less interest for the purposes of his residence, trade, or business, but an unlicensed alien shall not so hold more than five acres of land in all ;
  - b) land acquired by an unlicensed alien under a will or on an intestacy shall not be forfeited if, within one year from the death of the testator or intestate or within such extended time, if any, as the governor may decide to be reasonable, the land is sold or the alien obtains a licence to hold the land ;

- c) a mortgage acquired by an unlicensed alien under a will or on an intestacy shall not be forfeited ; but the alien shall not, unless he obtains a licence to hold the mortgage, be entitled to foreclose or enter into possession of the mortgaged land ;
  - d) nothing in this Ordinance shall affect the interest of a judgment creditor in the land of his judgment debtor, but the debtor's land shall not be acquired by an unlicensed alien ;
  - e) nothing in this Ordinance shall affect the estate or interest of an alien in any land or mortgage held by him at the commencement of this Ordinance.
4. (1) The Governor may, if he thinks fit, grant to any alien a licence to hold land as owner or tenant or mortgagee for any estate or interest, either subject to any conditions or not :
- Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the office of the Registrar General.
- (2) On breach of any condition in a licence to hold land as owner or tenant or mortgagee, the estate and interest of the alien in the land or mortgage held under the authority thereof shall be forfeited to His Majesty.
5. (1) Land or a mortgage forfeited under this Ordinance shall not vest in His Majesty unless and until a judgment is obtained declaring the forfeiture, but on such judgment being obtained, the title of His Majesty shall relate back to and commence at the time when the forfeiture took place.
- (2) A judgment declaring a forfeiture of land shall operate to vest in His Majesty all the estate and interest of the alien in the forfeited land.
  - (3) A judgment declaring a forfeiture of a mortgage shall operate to vest in His Majesty all the estate and interest of the alien in the mortgaged land subject to any right of redemption subsisting therein, and also to vest in His Majesty the right to recover and receive and to enforce all securities for the mortgage money.

PROVISIONS AS TO COMPANIES  
UNDER ALIEN CONTROL

6. (1) For the purposes of this Ordinance, a company shall be deemed to be under alien control -
- a) if any of its directors is an unlicensed alien ;  
or
  - b) if more than one-third of the votes exercisable at any meeting of the company, or which would be exercisable if a meeting of the company was held, are vested in unlicensed aliens ; or
  - c) in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed aliens ;  
or
  - d) in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed aliens ; or
  - e) if the amount paid or payable in any period of twelve months as dividends to those members the company who are unlicensed aliens exceeds one-third of the total amount paid or payable by the company as dividends in the same period ; or
  - f) if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed aliens ; or
  - g) if the annual interest on the debentures of the company for the time being held by unlicensed aliens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.
- (2) A company which is under alien control and is a member of another company shall, for the purpose of deciding the status of that other company, be treated as an alien, notwithstanding that its representative, if any, appointed under section 114 of the Companies Ordinance, may not himself be an alien. But a company which is a member of another company shall not, for the purpose aforesaid, be treated as an alien by reason only that its representative appointed as aforesaid is an alien.

7. Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in the Colony, holding or intending to acquire more than five acres of land in the Colony, may -
- a) restrict or prohibit the issue or transfer of its shares or debentures to aliens ;
  - b) restrict or prohibit the holding by aliens of share warrants and of debentures transferable by delivery ;
  - c) refuse to register an alien as a member or as the holder of a debenture ;
  - d) require such evidence as it may think fit as to the nationality of any person desiring to be registered as a member or as the holder of a debenture, and as to the nationality of the holder of a share warrant or debenture transferable by delivery or of a coupon or other document entitling the bearer to payment of any dividend or interest.
8. (1) The Governor may, if he thinks fit, grant licences, either subject to conditions or not, authorising an alien -
- a) to be a director of a company ;
  - b) to vote at meetings of a company ;
  - c) to hold shares or debentures ; and
  - d) to be a member of a company having no share capital :

Provided that a licence shall be operative only as to the company named therein and as to the number of votes, shares, or debentures specified therein.

- (2) On breach of any condition in a licence granted under this section, the licensee shall forthwith cease to be a director of the company and to be entitled to vote at any meeting of the company, and all shares and debentures in the company held by the licensee shall be forfeited to His Majesty.

9. (1) A judgment declaring that a share or debenture has become forfeited under this Ordinance shall operate to vest in the Governor the right to transfer that share or debenture and to recover and receive dividends or income thereof as from the time when the forfeiture took place.
  - (2) A share or debenture which has been declared to be forfeited under this Ordinance shall be sold or otherwise dealt with for the benefit of the Colony as the Governor may direct.
10. The Colonial Secretary shall send a copy of every licence to the company concerned at its registered office.
11. (1) A company shall cause a copy of every licence received by it to be recorded in the company's register of members or debenture holders (as the case may require) opposite the name of the licensee, and to be endorsed on every share certificate or debenture issued in respect of any share or debenture held by the licensee.
  - (2) If a company makes default in complying with the requirements of this section, it shall be liable, on summary conviction, to a fine of twenty-four dollars for every day during which the default continues, and every director, manager, and officer of the company who knowingly and wilfully authorises or permits the default shall be liable, on summary conviction, to a like fine.
12. (1) A company shall not, without the consent of the Governor, issue a share warrant or debenture transferable by delivery in respect of any share or debenture held by an alien under a licence granted under this Ordinance.
  - (2) If a company issues a share warrant or a debenture transferable by delivery in breach of the provisions of this section, it shall be liable, on summary conviction, to a fine of four hundred and eighty dollars in respect of each share specified in the warrant and in respect of each debenture, and every director, manager, and officer of the company who knowingly and wilfully authorises or permits such issue shall be liable, on summary conviction, to a like fine.
13. (1) A transfer without the consent of the Governor of a share or debenture held by an alien under a licence, and any entry in the company's register of members

or debenture holders of the transferee specified in any such transfer, shall be void and of no effect.

- (2) The Governor shall not refuse his consent to such a transfer except on the ground that the share or debenture specified in the transfer has become forfeited under this Ordinance.

RESTRICTIONS ON TRUSTS  
IN FAVOUR OF ALIENS

14. (1) This section applies to the following property only ; namely, land situate in the Colony, mortgages of such land and shares, and debentures of any company incorporated in the Colony.

- (2) With a view to preventing evasion of the foregoing provisions of this Ordinance, no person shall, without the licence of the Governor, hold any property to which this section applies in trust for an alien, and any such property so held shall be forfeited to His Majesty.

- (3) Any person who intentionally contravenes the provisions of this section shall be guilty of a misdemeanor punishable on summary conviction or on indictment :

Provided that on summary conviction he shall be liable to a fine of ninety-six dollars.

- (4) Nothing in this Ordinance shall apply to a trust in favour of an alien subsisting at the commencement of this Ordinance.

- (5) In this section, the expression "trust" includes any arrangement, whether written or oral, express or implied, and whether legally enforceable or not, whereby any property to which this section applies, or any interest therein or any rights attached thereto, is or are held for the benefit of or to the order or at the disposal of an alien ; but does not include -

a) the duties incident to a mortgage ;

b) the duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is vested in the mortgagor or his interest therein is extinguished ;



- c) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or his interest therein is extinguished ;
  - d) the duties of a trustee in bankruptcy to the bankrupt or his creditors ; or
  - e) the duties of a trustee for the purposes of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.
15. The provisions of this Ordinance as to licences and the effect of breach of a condition in a licence shall apply to land, mortgages, shares, and debentures intended to be held or held in trust for an alien in like manner as it applies to land, mortgages, shares, or debentures intended to be held or held by an alien.

#### PROCEDURE AND EVIDENCE

16. For the purpose of establishing a forfeiture under this Ordinance the Attorney General may, in accordance with the procedure provided by the Crown Suits Ordinance, apply to the Supreme Court for a declaration that any right, or interest sought to be affected is forfeited to the Crown.
17. (1) Without prejudice to any other right to discovery, the Attorney General may, in proceedings for establishing a forfeiture under this Ordinance, administer interrogatories to and obtain discovery of documents from a defendant as to any matter or document tending to prove his alienage or the alienage of any other person, or to discover any land, mortgage, share, or debentures held by him or in trust for him, or as to any relevant matter or document.
- (2) It shall not be a valid ground for refusing to answer any such interrogatory or to disclose or produce any document that the answer or document might or would expose the defendant or any other person to the risk of a prosecution under this Ordinance.
- (3) Provided that in the prosecution of a defendant under this Ordinance, the fact that he has disclosed any matter in answer to an interrogatory administered under this section and disclosed or produced any

document in compliance with an order for discovery obtained under this section shall not be admissible in evidence.

SUPPLEMENTAL

18. Every licence granted under this Ordinance shall be subject to a stamp duty of \$ 2.40, which shall be paid by the licensee in accordance with the provisions of the Stamp Duty Ordinance.

AN ORDINANCE TO AMEND THE ALIENS (LANDHOLDING) ORDINANCE,  
CH. 21. N° 3.

(2nd May, 1962)

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Trinidad and Tobago, and by the authority of the same, as follows : -

1. This Ordinance may be cited as the Aliens (Landholding) (Amendment) Ordinance, 1962, and shall be read as one with the Aliens (Landholding) Ordinance, hereinafter referred to as the Principal Ordinance.
2. The Principal Ordinance is amended by inserting after section 4 thereof the following sections -
  - "4 A.
    - (1) The Governor may grant to an alien an annual general licence to hold as mortgagee, in accordance with the law relating to mortgages, land that is held as security for funds that the alien may from time to time invest on loan in the Territory.
    - (2) Where an alien to whom an annual general licence has been granted under subsection (1) acquires land as a result of the exercise of his power of sale or foreclosure -
      - a) subsection (1) of section 4 has no application to land so acquired ;
      - b) the land shall be sold or otherwise disposed of absolutely within a period of five years or within such extended time as the appropriate authority may consider reasonable after it is so acquired so that the alien no longer has, directly or indirectly, any interest or control in respect thereof except by way of security.
    - (3) An annual general licence granted under subsection (1) has effect only when that licence is registered in the office of the Registrar General.
    - (4) An annual general licence granted by the Governor under subsection (1) is subject to the following conditions : -
      - a) the funds loaned by such an alien upon the security of mortgages on lands in the Territory shall be loaned to residents of the Territory ;

b) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien in a company, by a Director and the Secretary : -

- (i) the number of mortgage loans taken by residents of the Territory ;
- (ii) the names of the mortgagors ;
- (iii) the amounts loaned ;
- (iv) the rates of interest charged ;
- (v) a full description of each property affected ;
- (vi) the date and registered number of the mortgage ; and
- (vii) the number of mortgaged properties which have become vested in such an alien as owner by virtue of the exercise of his powers as a mortgagee, the respective dates on which such properties became so vested, the sums due thereon, and a description of the properties so vested.

(5) The Governor may at any time revoke an annual general licence under the provisions of subsection (1) of this section but such revocation does not affect anything done under that licence.

4 B.

Notwithstanding any other provision of this Ordinance, this Ordinance does not apply in respect of an alien within the meaning of the Alien Bankers Ordinance, who holds a licence from the Governor under that Ordinance, or to a body corporate to whom that Ordinance has been made applicable and to whom a licence is granted under that Ordinance."

3. Section 18 of the Principal Ordinance is hereby amended by -

- a) re-numbering section 18 as section 18 (1) ;
- b) inserting after the words "every licence" occurring therein, the words "other than an annual general licence granted under section 4 A," ;

c) adding the following subsection at the end thereof, namely : -

"(2) An annual general licence granted under section 4 A is subject to a stamp duty of \$ 500.00 which shall be paid by the Licensee in accordance with the Stamp Duty Ordinance, and is renewable at the commencement of every year."

4. The Principal Ordinance is amended by substituting for the word "Colony" wherever it appears therein, the word "Territory".

Passed by the House of Representatives this second day of May in the year of Our Lord, one thousand nine hundred and sixty-two.

G. R. LATOUR  
Clerk, House of Representatives

Passed by the Senate this second day of May in the year of Our Lord, one thousand nine hundred and sixty-two.

J. P. OTTLEY  
Clerk of the Senate



REPUBLIC OF UGANDA

AN ACT TO PROVIDE FOR THE PROTECTION OF FOREIGN INVESTMENTS  
AND FOR OTHER PURPOSES CONNECTED THEREWITH.

Date of Assent : 29th July, 1964.

Date of Commencement : 30th July, 1964.

Be it Enacted by the President and the National Assembly,  
in this present Parliament assembled, as follows : -

1. (1) Any foreign national who has invested or intends to invest foreign assets in any sector of the national economy may apply to the Minister in the prescribed manner for a certificate of an approved enterprise.
- (2) The Minister shall consider every application made under this section and upon being satisfied that the enterprise would further the economic development of, or benefit, Uganda, may issue the certificate to the applicant.
- (3) A certificate issued under subsection (2) of this section shall state,
  - a) the name of the holder ;
  - b) the name and description of the enterprise ;
  - c) the proportion which the investment or the intended investment of foreign assets bears to the total assets of the enterprise, and the amount and description of such investment ;
  - d) the number or amount and description of shares or stock, in any case where the investment of foreign assets consists in the acquisition of shares or stock in a body corporate ;
  - e) the relevant foreign currency ;
  - f) the period within which the foreign assets are to be invested ; and
  - g) such other matters as may be necessary or desirable for the purposes of this Act.
- (4) Whenever the Minister is satisfied in respect of a certificate issued under this Act, that,
  - a) a foreign national, other than the person to whom the certificate was issued, has succeeded to the enterprise ;



- b) the name or description of the enterprise has changed ; or
- c) there is an enlargement of, or substantial variation in, the investment in the enterprise,

he may amend the certificate so issued to take account of any such change or variation.

- (5) Where a person does not carry out the investment within the period specified in the certificate, the certificate shall cease to have effect and accordingly the certificate shall be revoked by the Minister.
  - (6) The Minister may, for sufficient cause shown and subject to the provisions of subsection (5) of this section, extend the period specified in a certificate issued under this Act.
2. (1) No approved enterprise, interest in or right over any property or any undertaking forming part of the enterprise shall be compulsorily taken possession of or acquired save in accordance with the provisions of section 22 of the Constitution.
- (2) Subject to the provisions of the preceding subsection, compensation in respect of the approved proportion of the value of the enterprise specified in the certificate issued under section 1 of this Act, shall be paid within a period not exceeding six months from the date of the taking of possession or acquisition.
  - (3) Any person not satisfied with a compulsory acquisition or possession under subsection (1) of this section or the amount of compensation payable thereon, may apply to the High Court for the determination of,
    - a) his interest or right ;
    - b) the legality of the taking possession or acquisition of the property, interest or right ; and
    - c) the amount of the compensation to which he is entitled and the prompt payment of that compensation.

- (4) The Chief Justice may, by statutory instrument, make Rules relating to the procedure to be followed for the purposes of the immediately preceding subsection, including provision for the lodging of appeals from the decisions of the High Court.
3. Notwithstanding the provisions of any other written law the holder of a certificate may, in respect of the enterprise to which the certificate relates, transfer out of Uganda in the approved foreign currency and at the prevailing official rate of exchange,
- a) the profits, after payment of the relevant taxes, of his investment of foreign assets ;
  - b) the approved proportion of the net proceeds of sale of all or any part of the approved enterprise ;
  - c) the principal and interest of any loans specified in the certificate ; and
  - d) any compensation paid under the provisions of this Act.
4. The Minister may, by statutory instrument, make Regulations,
- a) prescribing the manner in which applications may be made under section 1 of this Act, and the information which shall accompany any such application ; and
  - b) generally for the proper carrying into effect the provisions and purposes of this Act.
5. (1) In this Act unless the context otherwise requires,
- "approved" means approved by the Minister ;
  - "enterprise" means an industry, undertaking or business or property or an enlargement of any such industry, undertaking or business or property, any investment or loan, or any part of any such industry, undertaking or business, property, investment or loan ;
  - "foreign assets" includes foreign currency, credits, rights, benefits or property obtained by the expenditure of foreign currency, the provision of foreign credit or the use of foreign rights, benefits or property, and any profits

from an investment in an approved enterprise by the holder of a certificate issued under section 1 of this Act, in relation to that enterprise ;

"foreign national" means a person who is not a citizen of Uganda.

- (2) For the purposes of this Act, assets from a Commonwealth country shall be deemed to be foreign assets.

THE FOREIGN INVESTMENTS (PROTECTION) REGULATIONS, 1965.

In exercise of the powers conferred upon the Minister by section 4 of the Foreign Investments (Protection) Act, 1964, these Regulations are hereby made this 23rd day of February, 1965.

1. An application for a certificate for an approved enterprise shall be made in the form set out in Form I in the Schedule to these Regulations.
2. A certificate of an approved enterprise shall be in the form set out in Form II in the Schedule to these Regulations.
3. The holder of a certificate of an approved enterprise shall, by the end of the period stipulated in the certificate, furnish the Minister with adequate documentary evidence that the investment described in the certificate has been made.
4. (1) Notwithstanding the provisions of regulation 3 of these Regulations, the holder of a certificate of an approved enterprise shall furnish the Minister, on demand, with any information, document or any other evidence relating to,
  - a) the implementation of the approved enterprise ;
  - b) the fulfilment of the conditions of the approval ;  
and
  - c) the determination of the extent of any furtherance of the economic development of or benefit to Uganda.(2) For the purposes of sub-regulation (1) of this regulation the information required shall include,
  - a) any production scheme showing the volume and value of production ;
  - b) any services scheme showing the creation of services and the volume and value of the services intended to be rendered ;
  - c) any import and export scheme showing the anticipated volume of imports and exports ;
  - d) any employment scheme showing a programme of training for persons who are citizens of Uganda

to acquire the requisite skills in the particular enterprise ;

- e) any date on or before which it is expected to make the services under a service scheme available or commence production in marketable quantities of any product specified under a production scheme ;
- f) any other information which the Minister may from time to time require.

- 5. The protection afforded by a certificate of an approved enterprise shall only be effective to the extent that satisfactory documentary evidence continues to be made available to show that the investment in the enterprise described in the certificate has been or is being maintained.
- 6. If at any time there is a dispute as to the value of any foreign assets specified in a certificate of an approved enterprise, the burden of proof shall lie on the holder of the certificate.
- 7. These Regulations may be cited as the Foreign Investments (Protection) Regulations, 1965.

A.A. NEKYON,  
Minister of Planning  
and Community  
Development  
(holding the portfolio  
of the Minister of Finance)

Form I

SCHEDULE

THE GOVERNMENT OF UGANDA

APPLICATION FOR A CERTIFICATE OF AN  
APPROVED ENTERPRISE

(Under section 1 of the Foreign Investments (Protection Act, 1964).

TO :

The Secretary to the Treasury,  
Ministry of Finance,  
P.O. Box 103,  
Entebbe, Uganda.

Sir,

I, the undersigned, hereby apply for a certificate of an approved enterprise within the provisions of the above Act.

A. DETAILS OF THE APPLICANT :

- 1. Full name of the applicant .....
- .....
- 2. Full address (registered office outside Uganda if a firm or corporate body) .....
- 3. Nationality .....
- 4. Main field of business .....
- 5. The locality in which it is intended to carry on the enterprise .....
- 6. Full address and telephone number of applicant's representative in Uganda .....
- 7. Name and address of banks or other financial institutions which are authorised to supply information about the applicant .....
- .....

8. Name and address of applicant's bank in Uganda .....

B. DETAILS OF THE ENTERPRISE :

9. Give the name or commercial title of the enterprise established or to be established in Uganda and state its legal form as an individual or corporate body ...

.....

10. Describe fully the nature and object of the enterprise

.....

.....

C. DETAILS OF THE FOREIGN INVESTMENT IN RELATION TO THE OVERALL CAPITAL STRUCTURE OF THE ENTERPRISE :

11. Complete the table(s) below giving details of the intended capital structure of the enterprise at the time of completion of the investment of foreign capital :

a) Proportion of Foreign Investment in Equity Capital of Enterprise :

Total Equity Capital of Enterprise (in E.A. Shs)	Investment in Foreign Currency and Assets in Equity Capital of Enterprise		Local Investment in Equity Capital of Enterprise (in E.A. Shs)	Percentage of Equity Investment in Foreign Currency and Assets to Total Equity Capital of Enterprise
	In Foreign Currency or Assets remitted to Uganda			
	Equivalent in E.A. Shs			

b) Foreign Investment in Loan Capital of Enterprise :

Principal Amounts of Loans in Foreign Currency remitted to Uganda	Rate of Interest on Principal Amount of Loans
---	---

12. Where the investment of foreign assets consists in the acquisition of shares or stock in a body corporate, state the number or amount and description of shares or stock .....

.....

.....



13. State the period within which the foreign investment is to be made in the enterprise (giving dates) .....

.....

D. GENERAL :

14. Give any other information which may be helpful in connection with the consideration of this application .....

.....

.....

DECLARATION

I, ..... hereby declare that the details stated above are, to the best of my knowledge and belief, correct.

.....  
Signature of Applicant

Date .....

NOTE. - This form must be filled in triplicate.

NOTES FOR THE GUIDANCE OF FOREIGN INVESTORS

(To be printed on back of application form)

1. The applicant is advised to refer to the full text of the Foreign Investments (Protection) Act, 1964, and Regulations made thereunder, before making an application. The Foreign Investments (Protection) Act and Regulations are available at all Uganda High Commissions and Embassies in the U.K., U.S.A., India, U.S.S.R., West Germany, Ghana and the Government Printer, P.O. Box 33, Entebbe, Uganda.
2. Any certificate issued under section 1 (2) of the Act will be revoked under section 1 (5) and will cease to be effective unless the investor carries out the

investment described in paragraph 11 of the application within the period specified in paragraph 13 of the application.

3. The holder of a certificate of an approved enterprise shall be required to produce satisfactory documentary evidence that the investment described in the application form has been made by the end of the investment period.
4. A certificate issued under the Act may be amended by the Minister if he is satisfied that,
  - a) a foreign national, other than the person to whom the certificate was issued, has succeeded to the enterprise ;
  - b) the name or description of the enterprise has changed ; or
  - c) there is an enlargement of, or substantial variation in, the investment in the enterprise ;and the Minister may, for sufficient cause shown extend the period specified in a certificate.

Form II

THE GOVERNMENT OF UGANDA

CERTIFICATE OF INVESTMENT  
IN AN APPROVED ENTERPRISE.

(Issued under section 1 of the Foreign Investments (Protection) Act, 1964).

The provisions of the Foreign Investments (Protection) Act, 1964, shall apply to the following investment :

1. Name of the holder .....
2. Address of the holder .....
3. Name and description of the enterprise .....
- .....
4. Approved Capital Investment :

a) Proportion of Approved Foreign Investment in Equity Capital of Enterprise :

Total Equity Capital of Enterprise (in E.A. Shs)	Investment in Foreign Currency and Assets in Equity Capital of Enterprise		Local Investment in Equity Capital of Enterprise (in E.A. Shs)	Percentage of Equity Investment in Foreign Currency and Assets to Total Equity Capital of Enterprise
	In Foreign Currency or Assets remitted to Uganda			
	Equivalent in E.A. Shs			

b) Approved Foreign Investment in Loan Capital of Enterprise :

Principal Amounts of Loans in Foreign Currency remitted to Uganda	Rate of Interest on Principal Amount of Loans
---	---

5. The number or amount and description of any shares or stock held by the approved investor in the enterprise

.....  
 .....

6. The date by which the foreign assets shall have been invested in the enterprise is .....  
.....  
.....
7. Other conditions, if any, on the basis of which this certificate is issued, are .....  
.....  
.....

Minister of Finance

Date of publication : 5th March, 1965.

THE FOREIGN INVESTMENTS DECREE, 1977.

A DECREE TO EXEMPT FOREIGN INVESTORS FROM CERTAIN TAXES,  
TO PROVIDE FOR A FOREIGN INVESTMENTS ADVISORY COMMITTEE  
AND OTHER MATTERS CONNECTED OR INCIDENTAL THERETO.

1. Notwithstanding any provision of any written law to the contrary,
  - (1) Any foreign national intending to invest in Uganda and for that purpose importing any plant, machinery or any construction material which is not obtainable in Uganda shall be exempted from the payment of import duties and sales tax otherwise payable on such commodities.
  - (2) Any holder of a certificate issued under subsection (2) of section 1 of the Foreign Investments (Protection) Act shall be exempted from the payment of the Corporation tax, the selective income levy and the withholding tax in respect of the enterprise to which the certificate relates :

Provided that the exemption granted under this subsection shall not apply to any profit cumulatively exceeding fifty per centum of the capital investment made by such holder of a certificate or to a profit realized from a sale of the whole or any part of the enterprise, not taking into account any direct taxes paid or any interest payable on the capital.

- (3) The provisions of subsections (1) and (2) shall not apply to any foreign national who invested or was a holder of a certificate issued in respect of an investment made before the commencement of this Decree or to a person if the investment made by him is less than the equivalent of four million Uganda shillings in approved currency or in the commodities referred to in subsection (1) or partly in such currency and commodities.
- (4) The provisions of this section shall apply only to investments made in relation to the commodity producing enterprises specified in the Schedule to this Decree.
- (5) The Minister may, by statutory order, amend the Schedule to this Decree.

2. (1) There is hereby established a committee which shall be known as the Foreign Investment Advisory Committee consisting of,
    - a) the Secretary to the Treasury as its chairman ;
    - b) the Permanent Secretary to the Ministry responsible for industry ;
    - c) the Permanent Secretary to the Ministry responsible for planning ;
    - d) the Permanent Secretary to the Ministry responsible for commerce ;
    - e) the Permanent Secretary to the Ministry responsible for agriculture ;
    - f) the Solicitor-General ; and
    - g) a representative of the Bank of Uganda.
  - (2) The Committee may co-opt advisers from any Ministry or Corporation.
  - (3) The Foreign Investment Advisory Committee shall advise the Minister in the exercise of the powers vested in him by subsections (1) and (2) of the Foreign Investments (Protection) Act in respect of investments in enterprises to which this Decree relates.
3. The Foreign Investments (Protection) Act is hereby amended by substituting for paragraph (a) of section 3 thereof, the following,
    - "(a) within twelve months, after the accounting year, the profits, after payment of the relevant taxes, if any, of his investment of foreign assets ;".

MADE under my hand and the Public Seal, this 13th day of October, 1977.

AL-HAJJI FIELD MARSHAL Dr. IDI AMIN DADA,  
V.C., D.S.O., M.C., C.B.E.,

Life President.

SCHEDULE

1. Crop production (excluding the processing of coffee, cotton, tea and tobacco).
2. Processing of forest products.
3. Fish processing.
4. Sugar industry.
5. Textile industry.
6. Steel industry.
7. Chemical industries including fertilizers, pharmaceuticals and pesticides.
8. Leather industry including the making of shoes, bags and briefcases.
9. Oil milling industry.
10. Paper production.
11. Mining industry.
12. Glass and plastic products.
13. Ceramics industry.
14. Manufacture of tools, implements, equipment and machinery.
15. Beverages and distilleries industries.
16. The manufacturing of industrial spare parts.
17. Building materials, e.g. bricks, tiles and cement.

Date of publication : 13th October, 1977.



REPUBLIC OF ZAMBIA

AN ACT TO PROVIDE FOR THE LICENSING AND CONTROL OF MANUFACTURING ENTERPRISES ; TO PROVIDE INCENTIVES FOR INVESTMENT ; TO REGULATE THE MAKING OF CONTRACTS RELATING TO THE TRANSFER OF FOREIGN TECHNOLOGY AND EXPERTISE TO ENTERPRISES OPERATING IN ZAMBIA ; AND TO PROVIDE FOR MATTERS CONNECTED WITH OR INCIDENTAL TO THE FOREGOING.

ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY

1. This Act may be cited as the Industrial Development Act, 1977, and shall come into operation on such date as the Minister may, by statutory order, appoint.
2. In this Act, unless the context otherwise requires -  
"agreement for the transfer of technology and expertise" includes an agreement in respect of any licence, know-how, commercial franchise, conditional purchase optional purchase or hire-purchase, involving the importation into Zambia of technology or expertise relating to any manufacturing enterprise ;

"enterprise" means a manufacturing undertaking ;

"Income Tax" means the tax chargeable under the Income Tax Act ;

"licence" means a manufacturing licence issued under Part II ;

"manufacture" means the commercial transformation of raw materials or semi-processed 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 or recovering of minerals ;

"objector" means any person who, in accordance with the provisions of this Act, objects to the issue of a licence ;

"Rucom" means Rucom Industries Limited, a company registered under the Companies Act ;

"rural area" means any area in Zambia other than Kabwe Urban District, Kafue Township, Livingstone District, Lusaka Urban District, and the Copperbelt Province with the exception of Ndola Rural District ;

"Sales Tax" means the tax chargeable under the Sales Tax Act, 1975 ;

"Selective Employment Tax" means the tax chargeable under the Selective Employment Tax Act, 1975.

PART II

MANUFACTURING LICENCES

3. (1) No person shall manufacture any product, whether intended for sale in or outside Zambia, except under a licence issued by the Minister under this Part.  
  
(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred kwacha or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
4. An application for a licence shall be in the prescribed form and shall -
  - a) describe the product or products to which it relates ;
  - b) describe the place or places where manufacturing is to be carried on ;
  - c) be accompanied by a comprehensive feasibility study showing the economic viability of the proposed enterprise and describing the technology to be employed therein ; and
  - d) comply with such other conditions as the Minister may, from time to time, prescribe.
5. If in the opinion of the Minister additional particulars are required of any matter contained in an application for a licence, he may call upon the applicant to furnish such particulars and may, in the event of failure to supply such particulars, reject such application.
6. Before considering any application for a licence, the Minister shall cause to be published in the Gazette a notice of such application, giving such particulars about the applicant and the enterprise for which such application is made as the Minister shall consider sufficient to enable an objection to be made as hereinafter provided.
7. (1) Within thirty days from the date of publication of a notice under section six, any person who is engaged in Zambia in any enterprise which is identical with or similar to the enterprise for which a licence has

been applied and who claims that financial loss will be caused to him if a licence is issued to the applicant may object to the issue of such licence by submitting to the Minister and to the applicant a notice in writing, giving the reasons on which his objection is based.

- (2) The Minister may, for the purpose of considering an objection made under this section, require the objector to answer such questions or to furnish such particulars as the Minister shall deem necessary, and may rely for his decision on any evidence not submitted by the applicant or the objector.
8. (1) If the Minister is satisfied with respect to any application for a licence that -
- a) such application is made in accordance with this Act ;
  - b) where any objection has been notified against such application, there is no merit in it ; and
  - c) the proposed enterprise is in the best interests of Zambia ;
- he shall issue a licence to the applicant.
- (2) If the Minister rejects an application for a licence or decides that there is no merit in any objection notified, he shall give reasons for such rejection or decision to the applicant or to the objector, as the case may be.
9. (1) The applicant or, as the case may be, the objector, may, if aggrieved by a decision of the Minister under section eight, appeal to the Minister in writing to reconsider his decision and may tender additional evidence or further particulars to be taken into consideration.
- (2) A notice of appeal for reconsideration shall be given in writing to every party concerned and any decision made pursuant to such reconsideration shall be communicated in writing to the person at whose instance such decision is made and to every party concerned.
- (3) The Minister may, in consequence of such appeal cancel, confirm, or vary any licence issued under this Part, or issue a licence previously refused.
10. (1) Subject to the provisions of this Act, an application for a licence and all matters connected therewith shall be secret and shall not be communicated to any

person otherwise than in the course of business.

- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred kwacha or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
11. (1) No licence shall be transferred or varied except with the prior approval of the Minister.
  - (2) The Minister may, in his discretion, grant or refuse the transfer or variation of a licence and may, where a transfer or variation is granted, direct that the licence be amended to substitute or add thereon such conditions as he may deem necessary or desirable.
  - (3) Where any licence is issued to a company or association, any major change in the control of such company or association shall be deemed to be an unlawful transfer of a licence, unless such change is notified to the Minister before it takes effect and the Minister gives his consent to the transfer of the licence.
  - (4) Any licence which is unlawfully transferred or varied may be cancelled by the Minister.
12. Every person who is at the commencement of this Act carrying on any manufacturing enterprise shall within six months after such commencement apply to the Minister for a licence under this Act.
  13. The Minister may, by statutory order, exempt any person from all or any of the provisions of this Part relating to licensing and may grant different exemptions in respect of any person or class of persons.

### PART III

#### AGREEMENTS FOR TRANSFER OF TECHNOLOGY AND EXPERTISE

14. (1) Every agreement for the transfer of technology or expertise shall be registered with the Minister by any beneficiary thereof as soon as it is made and shall not be acted upon unless it is so registered.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred kwacha or to imprisonment for a term

not exceeding six months, or to both such fine and imprisonment.

15. Every contract for the transfer of technology or expertise shall provide that -
  - a) any royalties or fees charged shall bear a reasonable relationship to the use of such technology or expertise ;
  - b) any liability to pay royalties or fees shall cease upon the lawful termination of the agreement or if such technology or expertise becomes public knowledge otherwise than through the fault of the licensee ;
  - c) there shall be a reduction in royalties or fees if a third party acquires and uses such technology or expertise otherwise than through the fault of the licensee ;
  - d) any technical assistance shall, where necessary, include technical personnel as well as full instructions and practical explanations expressed in clear and comprehensive English on the operation of any equipment involved ;
  - e) the transferor shall provide technical assistance in connection with marketing programmes and purchasing of equipment involving the use of such technology or expertise ;
  - f) the transferee shall acquire the right to continued use of such technology or expertise after the termination of the agreement ;
  - g) the transferor shall, if the transferee so requires, continue to supply spare parts and raw materials for a period of up to five years following the termination of the agreement ;
  - h) subject to the directions of the Minister, the transferee shall enjoy the benefits and privileges of the most favoured licensee.
16. A contract for the transfer of technology and expertise shall not contain any condition :
  - a) which restricts the use of competitive techniques ;
  - b) providing for any form of control over the management of the licensee's enterprise ;

- c) which restricts the manner of sale of products or the export of products to any country ;
  - d) which restricts the sources of supply of inputs ;
  - e) which restricts the volume or structure or production ;
  - f) which limits the ways in which any patent or other know-how may be used ;
  - g) which provides for the payment of royalties or fees in foreign currencies or outside Zambia, except with the prior approval of the Bank of Zambia.
17. The Minister may, by statutory order, regulate -
- a) the payment of royalties or fees ;
  - b) the conditions under which technical assistance may be negotiated or accepted.

#### PART IV

#### INCENTIVES

18. (1) For the purpose of determining the eligibility of enterprises for the incentives described in section twenty, the Minister, upon application therefor, may, in accordance with subsection (3), classify an enterprise as a priority enterprise.
- (2) The following shall be the criteria by which an enterprise may be classified as a priority enterprise :
- a) maximum utilisation of domestic raw materials ;
  - b) production of intermediate goods which are used by other industries ;
  - c) diversification of its industrial structure ;
  - d) creation of substantial opportunities for permanent employment ;
  - e) improvement of domestic industrial skills or fostering the development of domestic technology ;

- f) promoting industrial development in rural areas.
  - (3) An enterprise which, in the opinion of the Minister, satisfies two of the criteria described in paragraphs (a), (b) and (c) and two of the criteria described in paragraphs (d), (e) and (f) may be classified as a priority enterprise.
19. (1) An application for classification as a priority enterprise shall be made by the management of the enterprise concerned and shall be submitted to the Minister in writing, stating the criteria and the particulars on which such application is based.
- (2) The Minister's decision in respect of such application shall be communicated to the applicant in writing and shall, where such application is rejected, state the reasons for the rejection.
- (3) Nothing in this section shall limit the number of applications which may be made in respect of any enterprise.
20. The following incentives shall apply to priority enterprises :
- a) preferential treatment with respect to Government purchasing, unless the tender price submitted by such enterprise exceeds the lowest bid by ten per centum ;
  - b) preferential treatment with respect to the granting and processing of import licences ;
  - c) rebates on customs duty payable on capital equipment, raw materials and other intermediate goods where -
    - (i) in the case of capital equipment, labour intensive techniques of production are not a viable alternative ;
    - (ii) in the case of raw materials, they are not available from domestic sources of supply ;
    - (iii) in the case of intermediate goods, they do not inhibit the creation of domestic value-added ;
  - d) relief from sales tax in respect of the items



described in paragraph (c), subject to the provisions of the said paragraph ;

- e) relief from Selective Employment Tax, for such period as the Minister responsible for the administration thereof may prescribe ;
- f) relief from Income Tax in such manner and for such period as the Minister responsible for the administration thereof may prescribe.

21. The following incentives shall apply to any enterprise which satisfies the Minister that it exports a substantial amount of its products ;

- a) relief from any tax or customs duty payable on the importation of machinery intended for use in the manufacture of such products or any other export product ;
- b) relief from Income Tax, in such manner and for such period as the Minister responsible for the administration thereof may prescribe ;
- c) favourable adjustment to export tariff rates, in such manner as the Minister responsible for the administration thereof may, in any particular case, determine ;
- d) relief from import tariff in respect of raw materials, subject to such conditions and in such manner as the Minister responsible for the administration thereof may determine ;
- e) preferential treatment with respect to the granting and processing of import licences.

22. (1) Any enterprise which provides training facilities or incurs training expenses for Zambian citizens shall be entitled to write off against Income Tax any such expenses or expenses incurred in the provision of such facilities.

(2) There shall be accorded to any expatriate instructor hired for any such training which is undertaken in Zambia, such facilities and privileges with respect to the granting of employment permits as the Minister responsible for the administration thereof shall determine.

23. The following incentives shall apply to any enterprise which is located in a rural area :

- a) eligibility to apply for loans from the Development Bank or Zambia ;
  - b) eligibility to purchase or apply for the rental of any factory or office facilities constructed in rural areas by Rucom, the Development Bank of Zambia or any other agency approved by the Minister responsible for rural development ;
  - c) the use of Rucom's marketing and extension services ;
  - d) the use of advisory services belonging to Rucom, the Development Bank of Zambia or any other agency approved by the Minister responsible for rural development, in project feasibility studies, accountancy, technology, marketing, and the choice of projects.
24. The following incentives shall apply to any enterprise which utilises investment provided from outside Zambia or which, in the opinion of the Minister, employs within Zambia a significant amount of foreign capital :
- a) a right to remit, on cessation of business interest, the value of such foreign capital or such investment, subject to the law relating to exchange control at the time of application for remittance ;
  - b) on making application therefor, an election to remit any accrued profits or dividends during the twelve-month period immediately following the end of the financial year to which the application refers, subject to any law relating to exchange control at the time of such application ;
  - c) any remittable profit which is reinvested in Zambia shall be credited to any amount which may be remitted on cessation of business ;
  - d) immunity from nationalisation unless the highest considerations of public interest so require.
25. No tax shall be charged on any expenditure made by any enterprise in respect of research and development conducted by such enterprise or on behalf of such enterprise by a recognised research institution.
26. Nothing in this Act contained shall authorise the grant of any incentive without prior consultation with the Minister or other person responsible for administering such incentive.

27. (1) The management of any enterprise, including a priority enterprise, claiming any incentive or right contained in sections twenty to twenty-five (inclusive), may make application therefor to the Minister responsible for administering such incentive, submitting with such application, a recommendation by the Minister.
- (2) The provisions of section nineteen shall, mutatis mutandis, apply to any application made under this section.
28. The Minister may withdraw any incentive granted by or under this Act if the enterprise concerned no longer qualifies for any such incentive.

PART V

MISCELLANEOUS

29. (1) Every enterprise which is licensed under this Act or which enjoys any incentive provided by or under this Act may be required by the Minister to comply with such conditions as the Minister may, by statutory order, specify.
- (2) Without prejudice to the provisions of subsection (1), the Minister may require any such enterprise to -
- a) submit to the Minister, at the end of each financial year, audited annual financial statements ;
  - b) submit to the Minister, at the end of each financial year, production and cost accounts ;
  - c) submit to the Minister, at the end of each financial year, an annual report outlining developments within the enterprise ;
  - d) submit to the Minister a report advising him of plans for any significant changes within the enterprise ;
  - e) produce and allow the inspection on the premises of records and statements relating to the enterprise ;
  - f) allow the inspection of plant and offices relating to the enterprise ;

- g) allow investigations and interviews with, or on behalf of, the Minister regarding any matter provided for by or under this Act ;
  - h) in the case where incentives are given for a specified period, undertake not to cease production for a period of at least three years after the cessation of such incentives except for causes beyond its control ;
  - i) adhere to any plans and programmes as well as other information submitted to the Minister in accordance with this Act.
30. If an application for a licence or for any incentive under this Act is successful, or if any such licence or incentive is cancelled or withdrawn, the Minister shall cause to be published in the Gazette the following particulars in respect of the enterprise concerned :
- a) the name ;
  - b) the location ;
  - c) the products ;
  - d) the incentives and the period applicable thereto.
31. (1) If the Minister is of the opinion that an enterprise has -
- a) failed to comply with any condition imposed by or under this Act or any other written law ;  
or
  - b) failed to produce for sale, at the place specified in the licence, any product specified in such licence ;
- he may cause a notice in writing to be served at the registered office of such enterprise, requiring such compliance or the rectification of such default within a period of thirty days or such longer period as he may determine.
- (2) Unless, within the time specified in subsection (1), such enterprise satisfies the Minister that it is able to rectify such default, or, as the case may be, comply with such condition, the Minister may cancel the licence and withdraw any incentives granted to such enterprise.

32. (1) Where -

- a) an enterprise ceases production contrary to any undertaking given under paragraph (h) of subsection (2) of section twenty-nine ; or
- b) any incentive granted by or under this Act is cancelled pursuant to section thirty-one or section thirty-three ;

The Minister may require the enterprise concerned to pay the sum which would have been payable if incentives had not been granted to such enterprise.

- (2) Any sum payable under this section may be recovered as a civil debt.

33. (1) Any person who fraudulently makes any false statement or conceals any material particular in any application, report or interview made or required to be made by or under this act, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred kwacha or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

- (2) Where any licence, incentive or other benefit has been granted in consequence of such false statement or concealment as is referred to in subsection (1), the Minister may cancel or withdraw any such licence, incentive or benefit.

34. Where a licence or incentive has been cancelled or withdrawn, an application for the restoration of such licence or incentive may be made if the circumstances which led to the cancellation or withdrawal thereof are no longer applicable.

35. The Minister may make regulations for the better carrying out of the purposes of this Act and may in such regulations prescribe anything which by this Act may be made or prescribed.

36. (1) The Pioneer Industries (Relief from Income Tax) Act is hereby repealed.

- (2) Notwithstanding such repeal, a pioneer company (as defined in such Act) shall continue to enjoy the benefits to which it is entitled in accordance with the provisions of the said Act for the period for which they are granted.



European Communities — Commission

**Investment laws of ACP countries**

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With this publication the Commission of the European Communities presents the 4th edition of a collection of investment laws in the African, Caribbean and Pacific countries (ACP), signatories of the Lomé Convention.

The previous editions (1966/1971/1974) contained the investment laws of the African countries and Madagascar, signatories of the 2 successive Conventions, Yaoundé I (1963) and — also including Mauritius — Yaoundé II (1969), as well as the Central African Customs and Economic Union (UDEAC).

With the Lomé Convention (1975) covering a total of 52 States, it became necessary to split up this collection.

For practical reasons, 2 volumes are therefore now being issued: Volume I, covering the French-speaking States (issued in August 1978), and Volume II, covering mainly the English-speaking States.

While almost all the French-speaking ACP countries have specific investment legislation or codes, this is only to a certain degree the case in the English-speaking ACP countries, whose policy in the field is often to be found in a number of regulations, spread over a vast set of laws.

Where available, a number of relevant laws have thus been reproduced, e.g. tax laws or investment and development laws, which refer to foreign investments, etc.

Accordingly, omissions cannot be excluded, but it is the editor's hope that the next edition will fill such lacunae.









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