

## A BILL

ENTITLED

AN ACT to Repeal the Jamaica Export Free Zones Act and to make provisions in respect of the development, regulation, construction, supervision, management and control of Special Economic Zones in Jamaica; and for connected matters.

[ ]

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 Jamaica, and by the authority of the same, as follows:—

### PART I—*Preliminary*

1. This Act may be cited as the Special Economic Zones Act, 2015, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title  
and  
commence-  
ment.

Interpretation.

2. In this Act, unless the context otherwise requires—

“appointed day” means the day appointed under section 1 for the coming into operation of this Act;

“assets” means any form of property, irrespective of its use or intended use;

“Authority” means the Special Economic Zone Authority established by section 5;

“authorization” means a licence, an authority or an approval, issued by the Authority under this Act, in accordance with section 39;

“benefits” means the tax reliefs and incentives for Special Economic Zones that are conferred on developers and occupants by Part V, including those specified in the First Schedule;

“Board” means the Board of Directors of the Authority, established by section 8;

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“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 12;

“concession agreement” means the contractual arrangements under a concession-agreement, licence-agreement or master-concession regarding any one or more of the following rights; that is, the right to develop, construct, exploit, manage, operate or maintain the infrastructure, buildings, equipment, facilities or amenities in a Zone;

“condition”, in relation to an authorization, includes a limitation or restriction;

“customs duties” means the duties payable under the *Customs Act*;

“customs territory” means Jamaica including the archipelagic waters of Jamaica as defined in section 5 of the *Maritime Areas Act* and the territorial waters thereof as defined in section 12 of that Act, but excluding the Special Economic Zones;

“developer” means a company limited by shares that is incorporated under the *Companies Act* and is established by a sponsor for the purposes of entering into a master-concession or a licence-agreement;

“document” means, in addition to a document in writing, anything in which information of any description is recorded;

“effective date”, in relation to a master-concession or a licence-agreement, means the date on which all conditions precedent to its effectiveness set out therein have either been met to the satisfaction of the Authority or waived by the Authority, as the case may be.

“excluded activities” means the activities specified in section 41(1);

“existing Free Zone” means a Free Zone, designated as such by or pursuant to the repealed enactment, that is in existence and operating as such immediately before the appointed day;

“fixed lease payment” means the lease rent payable by the developer, under a site lease agreement pursuant to a master-concession, to the Authority for the lease of the zone area;

“functions” includes powers and duties;

“Government company” means a company registered under the *Companies Act*, being a company in which the Government or an agency of Government holds more than fifty *per cent* of the shares;

“infrastructure”, in relation to a Zone, means the basic infrastructure which a developer is required to construct or cause to be constructed within the Zone under the master-concession or the licence-agreement, such as—

- (a) site preparation;
- (b) internal roads;
- (c) common areas;

- (d) common facilities, such as guard houses and Government offices
- (e) fences; and
- (f) utilities, such as water, electricity, data communication and sewage;

“licence-agreement” means a concession agreement between the Authority and the developer of a Zone established or intended to be established on land that is not vested in the Authority as the registered proprietor or head lessee of the land;

“master-concession” means a concession agreement concluded between the Authority and the developer of a Zone established or intended to be established on land that is vested in the Authority as the registered proprietor or head lessee of the land;

“Minister” means the Minister responsible for industry;

“MSME” means an occupant that is a micro enterprise, small enterprise or medium enterprise as described in the Second Schedule;

“occupant” means a person, other than a developer of a Zone or zone user, who conducts business in the Zone under a subconcession made by that person with the developer, being a subconcession that is in accordance with a master-concession or a licence-agreement held by the developer;

“operating certificate” means the document issued by the Authority to a developer under section 23 evidencing that the Authority has entered into a master-concession or a licence-agreement with the developer;

“register” means the register kept and maintained under section 40;

“repealed enactment” means the *Jamaica Export Free Zones Act*;

“revenue laws” means the several revenue imposing enactments referred to in the First Schedule;

“security interest” includes—

- (a) a security interest as defined in section 2 of the *Security Interests in Personal Property Act*; and
- (b) any mortgage or charge of an estate or interest in real property;

“Special Economic Zone” or “Zone” means an area designated under section 18;

“Special Economic Zone Fund” or “Fund” means the fund established by paragraph 8 of Part I of the Third Schedule;

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Schedule.

“site lease agreement” means the agreement executed between the Authority and a developer under a master-concession, granting a leasehold interest to the developer of the zone area;

“sponsor” means an investor who, or a consortium of investors that, proposes to provide shareholder capital to finance, directly or indirectly, the business that a developer will undertake pursuant to a master-concession or a licence-agreement;

“subconcession” means a concession agreement entered into between a developer and an occupant;

“zone area” means the geographical area of a Zone, as designated in the master-concession or licence-agreement between the Authority and a developer;

“zone user” means a person, not being a developer or an occupant, who performs activities or services in a Zone on the basis of an authorization from the Authority.

**3. This Act applies to Special Economic Zones established in Jamaica.**

Application  
of Act.

Act to be regarded as customs enactment.

4. This Act shall be regarded as an enactment relating to the customs for the purposes of the *Customs Act*.

PART II—*Special Economic Zone Authority*

Establishment of the Authority.

5.—(1) For the purposes of this Act, there is established a body to be known as the Special Economic Zone Authority which shall be a body corporate to which section 28 of the *Interpretation Act* applies.

Third Schedule.

(2) The provisions of Part I of the Third Schedule shall have effect as to the constitution, administration and financing of the Authority, and otherwise in relation thereto.

(3) Subject to subsection (4), the Authority may raise capital by the issuing of shares on such terms and conditions as the Minister may prescribe by order published in the *Gazette*.

(4) The Government, or an agency of the Government, shall at all times hold no less than 50.1% of any shares issued under subsection (3).

Functions of Authority.

6. The functions of the Authority are to—

- (a) regulate and supervise Zones;
- (b) acquire real property, whether freehold or leasehold, and to act as a landlord in respect of real property that is vested in the Authority as registered proprietor or head lessee;
- (c) advise the Minister on matters of general policy relating to Zones;
- (d) recommend to the Minister the location of Zones;
- (e) issue guidelines and directions to developers, occupants and zone users for the implementation of this Act;
- (f) manage the Fund;
- (g) consider and determine applications by prospective developers on the basis of the relevant eligibility criteria specified in the Fourth Schedule;

Fourth Schedule.

- (h) negotiate and enter into master-concessions and licence-agreements in accordance with this Act on the basis of the relevant eligibility criteria specified in the Fourth Schedule and any approval criteria that the Minister may prescribe by order published in the *Gazette*; Fourth  
Schedule.
- (i) approve subconcessions in accordance with this Act, on the basis of the relevant eligibility criteria specified in the Fourth Schedule and any approval criteria that the Minister may prescribe by order published in the *Gazette*;
- (j) manage and operate a business acceleration centre for the coordination of its activities with those of Government entities, in order to enhance the efficiency and competitiveness of Zones;
- (k) receive and take prompt action to resolve complaints from developers, occupants and zone users in a Zone, and exporters of goods and services located in the customs territory to a Zone;
- (l) facilitate the mediation and settlement of disputes among persons referred to in paragraph (k);
- (m) make recommendations to the Minister as to the making of regulations under this Act;
- (n) promote and market Zones;
- (o) raise capital to support the execution of its functions on a commercial basis to the extent practicable, and to reduce its dependence on public resources;
- (p) establish subsidiaries for the more effective implementation of its functions; and
- (q) perform such other functions relating to the administration and operation of Zones as may be assigned to it by or under this Act or any other enactment.

Operating  
principles of  
the  
Authority.

7.—(1) The Authority shall, in the performance of its functions, operate on business principles that maximize its effectiveness and efficiency, and have regard to the desirability that its operations—

- (a) enhance the Jamaican economy by increasing levels of investment and creating job opportunities;
- (b) promote measures, actions and investments aimed at improving the logistics chain of which the Zones are a part;
- (c) foster the development and expansion of the Zones in collaboration with the Government, international organizations and the private sector;
- (d) ensure that the environment is protected in the course of the development and operation of Zones;
- (e) enable persons conducting business in the Zones to compete effectively in the conduct of their business;
- (f) promote research and development in the fields of Zone activities, and related services, facilities and amenities; and
- (g) collaborate with universities and other educational institutions for the promotion of technical and operational education and training in the fields of Zone development, promotion, operation and management.

(2) The Authority shall not permit any existing business operating in the customs territory to be transferred or reestablished in a Zone as a developer or an occupant, during the Zone-establishment period.

(3) In subsection (2), “Zone-establishment period” means the period of ten years from the appointed day or such other period as the Minister may prescribe by order subject to affirmative resolution.

(4) In exercising his functions under subsection (3), the Minister shall take into account the level of development of Zones in Jamaica and the need to protect Jamaica’s tax base from erosion.

Establishment  
of Board.

8.—(1) There is established, for the purposes of this Act, a Board of Directors of the Authority.



(2) The provisions of Part II of the Third Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto. Third Schedule.

9. Subject to the provisions of this Act, the Board is responsible for overseeing the general administration of the Authority. Functions of Board.

10. The Minister may, after consultation with the chairman of the Board, give to the Board directions of a general character as to the policy to be followed by the Board in the performance of its functions, as appear to the Minister to be necessary in the public interest; and the Board shall give effect to the directions. Ministerial directions.

11.—(1) The Authority may, subject to the provisions of this Act, delegate to any person the performance of such of its functions, other than the power of delegation, as it may, from time to time, consider to be necessary. Delegation of functions.

(2) A delegation of any function under subsection (1) is revocable by the Authority and the delegation shall not preclude the performance of that function by the Authority.

12.—(1) Subject to subsection (2), the Board may appoint and employ competent and experienced person as the Chief Executive Officer of the Authority, at such remuneration and on such terms and conditions as it thinks fit. Appointment of officers and other employees.

(2) An individual who would not be eligible to be an appointed member of the Board by virtue of paragraph 2 of Part II of the Third Schedule is not eligible to be appointed as Chief Executive Officer. Third Schedule.

(3) For the proper carrying out of the provisions of this Act, the Chief Executive Officer may appoint and employ to any office with the Authority, officers and employees, at such remuneration and on such terms and conditions as he thinks fit, subject to the approval of the Board.

(4) Except with the prior approval of the Minister responsible for the public service—

- (a) no salary in excess of the prescribed rate shall be assigned to any office specified in subsection (1) or (3); and

- (b) no appointment shall be made to any such office to which a salary in excess of the prescribed rate is assigned.

(5) For the purposes of subsection (4), the “prescribed rate” shall be such rate as the Minister responsible for the public service may prescribe by order subject to affirmative resolution.

(6) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Authority, and any officer so appointed or while so employed, in relation to other rights as a public officer, shall be treated as continuing in the service of the Government.

(7) The Chief Executive Officer shall consult with the Board in establishing the qualification for the various offices within the Authority, and shall advise the Board on all appointments to fill such offices.

Pensions,  
gratuities and  
other retiring  
benefits.

**13.** The Authority may, with the approval of the Minister responsible for the public service—

- (a) enter into arrangements respecting schemes, whether by way of insurance policies or otherwise; and
- (b) make regulations,

for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits, relating to officers and employees of the Authority and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such officers and employees.

Functions of  
Chief  
Executive  
Officer.

**14.—**(1) The Chief Executive Officer shall be responsible for the day-to-day administration and management of the Authority.

(2) The Chief Executive Officer shall be responsible for planning, directing, supervising and coordinating the activities of the Authority in the performance of the functions conferred upon the Authority by section 6, including—

- (a) the development of the programmes, performance targets and service standards of the Authority for the approval of the Board;

- (b) implementation of the programmes, performance targets and service standards referred to in paragraph (a);
- (c) the preparation and submission of the strategic, corporate and other plans for the approval of the Board;
- (d) ensuring administrative support for the Board and any committees of the Board established under Part II of the Third Schedule, as is required;
- (e) ensuring that the Board is kept abreast of matters relevant to the administration and management of the Authority;
- (f) the performance of such other functions as are conferred upon the Chief Executive Officer by or under this Act or any other enactment.

Third  
Schedule.

(3) The Chief Executive Officer shall have regard to the advice and recommendations given to the Chief Executive Officer by the Board.

15.—(1) No civil or criminal action, suit or other proceedings may be brought, nor may any professional sanction be taken, against any person, who in good faith, under this Act or any regulations made under this Act, discloses to the Authority information requested by the Authority or submits a report or other document to the Authority.

Protection of  
persons  
exercising  
functions  
under this  
Act, etc.

(2) No suit or other legal proceedings may be brought or instituted personally in respect of any act done or omission made in good faith, against any officer, employee or agent of the Authority in the course of carrying out the provisions of this Act or any regulations made under this Act.

### PART III— *Restriction on Operation of Special Economic Zones*

16.—(1) Except under and in accordance with the provisions of this Act and any regulations made under this Act, a person shall not hold himself out as providing, developing, constructing, exploiting, managing or maintaining infrastructure, buildings, equipment, facilities or amenities in a Zone.

Restrictions  
on operation,  
etc. of Special  
Economic  
Zones.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or, in default of payment thereof, to imprisonment for a term not exceeding two years.

Restriction  
on single-  
entity Zones.

17.—(1) Subject to this Act, unless the Minister in the public interest directs otherwise after having regard to the matter set out in subsection (2), the Authority shall not allow the development of single-entity Zones, that is to say, Zones whose operation is restricted to one business entity operating under a master-concession or licence-agreement.

(2) The matters referred to in subsection (1) are -

- (a) whether the area is one that is identified as having growth potential in the Government's development plan;
- (b) the existence of required off-site infrastructure, including roads, telecommunication, ports, airports;
- (c) whether the proposed location and its surroundings have the capacity to absorb any necessary infrastructure improvements;
- (d) the availability of water and electric power supply for use in the zone;
- (e) the availability of vacant land nearby for use as possible zone expansion;
- (f) the availability of skilled, semi-skilled and non-skilled labour force around the zone;
- (g) whether the area is strategically located;
- (h) whether the proposed zone will be situated in an area where controls can be established to prevent adverse environmental activities.

PART IV—*Designation of Special Economic Zones, Master-Concessions and Licence-Agreements*

*Designation of Special Economic Zone*

18.—(1) The Minister may, on the recommendation of the Authority, after consultation with the Minister responsible for finance, designate a geographical area as a Special Economic Zone by order published in the *Gazette*. Designation of Special Economic Zone.

(2) The Authority may allow the establishment of—

- (a) general Zones; or
- (b) specialized Zones, that is to say, Zones limited to specific economic activities, such as maritime or aviation related Zones (which may include dry docks, bunkering facilities, aircraft maintenance and repair, or tank farms).

19.—(1) The Minister may, by order published in the *Gazette*, transfer to the Authority any property belonging to the Government which appears to him to be necessary or useful to the Authority in carrying out its functions under this Act, and such property shall vest in the Authority by virtue of the order and without further assurance. Transfer of property.

(2) An order made pursuant to subsection (1) shall—

- (a) specify the amount of compensation (if any) payable to the Government in relation to property so transferred, and the manner in which such compensation shall be paid; and
- (b) contain such incidental, consequential or supplementary provisions as the Minister may think necessary or expedient for the purposes of the order.

(3) All property vested in the Authority under this Act shall, in addition to its exemption under the First Schedule, from property tax, be exempt from sewerage rates and all rates imposed under the provisions of Part VII of the *Kingston and St. Andrew Corporation Act*, or of the *Parochial Rates and Finance Act*.

*Master-Concessions and Licence-Agreements*

Procedures  
for  
development,  
*etc.* of Zones.

**20.**—(1) The Authority shall establish procedures for the marketing, initiation and conduct of negotiations in relation to the making of applications by sponsors for the entry into master-concessions and licence-agreements.

(2) Procedures established under subsection (1)—

- (a) shall be commercially reasonable; and
- (b) may include requirements for the payment of prescribed fees.

(3) Subject to section 22, the Authority may enter into master-concessions and licence-agreements under this Act.

Authority  
may  
investigate  
and require  
information.

**21.**—(1) In executing the procedures under section 20, the Authority may—

- (a) carry out such investigations in relation to the applicant as it considers appropriate in order to verify the accuracy of the information in the application; and
- (b) request further information and documents from the applicant for the purposes of considering the application.

(2) The Authority shall exercise due diligence in order to ensure that sponsors and developers are not engaged in—

- (a) money laundering or other financial crimes;
- (b) the financing of terrorism; or
- (c) the manufacture or proliferation of weapons of mass destruction.

Minister's  
approval  
required.

**22.** The Authority shall not enter into a master-concession or a licence-agreement unless the Minister has approved the Authority's doing so by order published in the *Gazette*.

Operating  
certificate.

**23.** Where, pursuant to section 20, the Authority enters into a master-concession or a licence-agreement, the Authority shall issue an operating certificate in the prescribed form to the developer.

**24.—(1)** The Fifth Schedule provides for certain rights and obligations of developers and the Authority, respectively, that shall arise under a master-concession or licence-agreement.

Rights and obligations under master-concessions and licence-agreements.

(2) The rights and obligations referred to in subsection (1) shall be in addition to any other rights and obligations that may be agreed by the parties to the master-concession or licence-agreement and that are not inconsistent with the provisions of the Fifth Schedule.

Fifth Schedule.

**25.—(1)** Upon the effective date of a master-concession, the Authority shall, in accordance with the provisions of the master-concession, confer on the developer vacant and exclusive possession and quiet enjoyment of the relevant zone area, which shall include the sole and exclusive right to enter upon, occupy, possess and use the relevant zone area.

Authority's duties to confer vacant possession, etc. under master-concession.

(2) Zone areas shall be free and clear of any security interest or other encumbrance that is inconsistent with the rights and interest granted to the developer under the master-concession, and for the avoidance of doubt this paragraph shall not preclude—

- (a) security interests granted by the developer in accordance with the master-concession or licence-agreement; or
- (b) security interests granted by the Authority which are subject and subordinate to the rights and interest of the developer under the master-concession or licence-agreement.

**26.** Subject to the provisions of the master-concession, the Authority shall, throughout the term of a master-concession, use its best efforts to facilitate the supply of services and facilities external to the zone area, such as road access, water, electricity, telecommunications and waste water, as are reasonably required for the commercial operation of the Zone by the developer.

Authority to facilitate supply of utilities.

**27.—(1)** Subject to its provisions, a master-concession or licence-agreement shall remain in force for such term, not exceeding fifty years from the effective date thereof, as may be specified therein.

Duration of master-concession and licence-agreement.

(2) The term of a master-concession or licence-agreement may be extended by the Authority on such terms and conditions as the Authority may, in writing, determine.

Earnings and fees of developer.

**28.** Subject to the provisions of this Act and the terms and conditions of the master-concession or licence-agreement, the developer shall, during the term thereof—

- (a) be entitled to set and revise the rents and service charges payable by occupants, zone users and other persons in respect of the operation and management of the Zone by the developer; and
- (b) enjoy all benefits granted to it under this Act and the revenues to which it is entitled under the master-concession or licence-agreement, as the case may be.

Payments by developer.

**29.—**(1) The developer shall pay an annual licence fee to the Authority in accordance with the provisions of the master-concession or licence-agreement.

(2) In the case of a master-concession, the developer shall pay a fixed lease payment to the Authority as consideration for the lease of the zone area to the developer.

Expiry and termination.

**30.** A master-concession may include provisions that provide that, upon the termination of the master-concession (whether by expiry of the term thereof, or otherwise)—

- (a) subject to the provisions of the master-concession, the assets of the developer necessary for the Zone's operation, including infrastructure, developer's equipment, facilities, records, computer systems, software licences and other intellectual property used by the developer prior to the termination of the master-concession, shall be transferred to the Authority;
- (b) after full completion of any Zone-related works in accordance with the agreed construction programme, and subject to the relevant provisions of the master-concession, the Authority may pay termination compensation, based on a percentage of the written down book value of the assets referred to in



paragraph (a) that were constructed or brought into the Zone by the developer during the term of the master-concession and remain in the Zone.

**31.**—(1) A developer shall not assign, transfer or otherwise dispose of its rights or obligations under a master-concession or a licence-agreement without the prior written consent of the Authority. Assignment.

(2) With respect to an assignment or other transfer of any obligation under a master-concession by the developer, the developer shall, unless the Authority otherwise agrees in writing, retain responsibility for its obligations under this Act and the master-concession as if no such assignment or transfer had occurred, until the obligations have been performed to the satisfaction of the Authority.

**32.**—(1) The developer shall manage and operate the Zone on a common user basis, that is to say, the Zone shall in principle be open to prospective occupants who satisfy the eligibility criteria established under this Act. Developer to manage Zone on common user basis.

(2) The developer shall refrain from indulging in any unfair or discriminatory practice against any occupant or prospective occupant.

(3) Subsection (1) shall not apply to a Zone referred to in section 17.

**33.** The developer of a Zone shall—

- (a) promptly commence operations and the construction of Zone-related works (if any) upon the effective date of the master-concession or licence-agreement (in this section referred to as the “applicable agreement”) at its own cost and expense;
  - (b) execute the agreed construction programme (as updated from time to time) for the construction of the Zone-related works;
  - (c) at all times during the term of the applicable agreement, comply with applicable law, any guidelines and directions lawfully issued by any authority, and any licences or permits granted to the developer;
- General obligations under master-concession or licence-agreement.

- (d) make payments to the Authority in accordance with the provisions of the applicable agreement;
- (e) maintain the infrastructure of the Zone in good working order and condition, normal wear and tear excepted;
- (f) develop, construct, manage, operate and market the Zone in accordance with any applicable law or standard prescribed by the Minister, on the recommendation of the Authority.

*Subconcessions*

Sub-concessions.

**34.** Subject to the provisions of this Act, a developer of a Zone may enter into subconcessions with occupants for the use of sites located in the Zone.

Provisions required under subconcession.

**35.** The developer shall ensure that, at all times, any subconcession referred to in section 34 provides that—

- (a) the term of the subconcession shall not exceed the term of the developer's master-concession or the licence-agreement, as the case may be;
- (b) the occupant shall not, during the term of the subconcession, perform activities which are included in the list of excluded activities;
- (c) the occupant shall take reasonable steps to control pollution of the air, land and sea by oil, chemicals, emissions, hazardous material, effluent, solid waste and other waste originating or emitting from the zone area, to the satisfaction of the Authority, the National Environment and Planning Agency and in accordance with any applicable law pertaining to the environment; and
- (d) all agreements between the Authority and the developer in respect of landscaping, zoning, design and construction standards shall be complied with.

Subconcession to be under an authorization.

**36.—(1)** A subconcession shall not come into effect unless the developer has applied for and obtained an authorization from the Authority with respect to the subconcession.

(2) The Authority shall grant an authorization with respect to a subconcession if the Authority is satisfied that—

- (a) the subconcession is consistent with the terms and conditions of the master-concession or licence agreement held by the developer;
- (b) the subconcession is in conformity with section 35; and
- (c) the occupant is not engaged, and there is no reason to suspect that the occupant will engage, in any activity referred to in section 21(2) or any of the excluded activities.

(3) The Authority shall not, without prior consultation with the Commissioner of Customs and Excise, issue an authorization for a subconcession involving goods to which the *Excise Duty Act* applies; and any such authorization shall comply with such logistical and security requirements as the Commissioner of Customs and Excise may determine.

**37.** In the event of any conflict between a master-concession or a licence-agreement and a subconcession, the provisions of the master-concession or the licence-agreement, as the case may be, shall prevail.

Master-concession or licence-agreement to prevail over sub-concession if inconsistent.

**38.** In the event of the termination of a master-concession prior to the expiration of the original term of the master-concession—

- (a) subject to the rights of a holder of a security interest granted by the developer in accordance with the master-concession, the Authority shall assume the interim responsibility for the management and operation of the Zone and may make such arrangements with respect thereto as it considers necessary; and
- (b) the occupants shall have the right to continue to operate within the Zone in accordance with their subconcessions until such time as either a new master-concession comes into effect with respect to the Zone or the Zone is closed, as the case may be.

Continuation under sub-concession after early termination of master-concession.

*Authorizations*

Application  
for  
authorization  
for zone  
users.

**39.**—(1) The Authority may, upon application being made to it in the prescribed form and manner by a developer, issue an authorization to a zone user, authorizing the zone user to carry out or operate, as the case may be, any activity, service or facility in the Zone.

(2) An application under subsection (1) shall be accompanied by the prescribed application fee.

(3) The Authority may require the applicant to provide any further information that it considers necessary to determine the application.

(4) The Authority may—

- (a) grant the authorization, subject to such terms and conditions as it thinks fit, upon payment of the fee prescribed in relation to the activity, service or facility; or
- (b) refuse to grant the authorization.

(5) Where the Authority refuses to grant an authorization under subsection (4) (b), it shall so inform the applicant, in writing, stating the reasons for the refusal.

(6) The Authority shall not, without prior consultation with the Commissioner of Customs and Excise, issue an authorization for the operation of a retail trade within the Zone, and any such authorization shall comply with such logistical and security requirements as the Commissioner of Customs and Excise may determine.

Register.

**40.**—(1) The Authority shall keep or cause to be kept, for the purposes of this Act, a register of operating certificates issued with respect to master-concessions and licence-agreements, and authorizations issued with respect to subconcessions and zone users, under this Act.

(2) The Authority shall, forthwith, cause to be entered in the register with respect to each operating certificate and authorization—

- (a) the name, address and occupation or description of the person to whom the operating certificate or authorization is issued;

- (b) the date on which it was issued;
- (c) the Zone to which the operating certificate or authorization relates; and
- (d) the activities which the person to whom the operating certificate or authorization is issued is entitled to carry out in the Zone.

(3) The register shall be kept in such form as the Authority thinks appropriate, including by electronic means.

(4) The Authority shall update the register from time to time and correct clerical errors in the register.

(5) Information on the register may be made available for inspection by the public, whether by electronic means or otherwise.

41.—(1) A developer or an occupant shall not carry on any of the following activities, whether directly or indirectly, in a Zone— Excluded activities.

- (a) extractive industries, including mining, quarrying or drilling for natural resources (but not including the lawful extraction of water for the developer's or occupant's own use);
- (b) tourism services;
- (c) telecommunications services;
- (d) public utilities (but not including the generation of electricity by a developer or an occupant solely for its own use and not for supply to any other person other than the Single Buyer pursuant to a standard offer contract for net billing or a wheeling arrangement under the *Electricity Act*);
- (e) financial services regulated by the Bank of Jamaica or the Financial Services Commission;
- (f) construction services, unless as part of a manufacturing process within a Zone;
- (g) real estate;
- (h) health services, excluding research and development;

- (i) catering services;
- (j) retail trade; and
- (k) such other activities as the Minister may, specify by order prescribed in the *Gazette*.

(2) The Minister responsible for finance may, after consultation with the Minister, add to or remove or otherwise amend the list of excluded activities; however, an amendment of the list shall not apply so as to negatively impact a developer or an occupant who is already carrying on an activity that was not included on the list prior to such amendment.

#### PART V—*Zone Benefits*

Zone  
benefits.  
First  
Schedule.

**42.**—(1) The Authority shall enjoy the benefits specified in the First Schedule.

(2) Developers and occupants shall enjoy the benefits specified in the First Schedule, for the duration of the master-concession, licence-agreement or subconcession to which each is a party, as the case may be.

(3) The provisions set out in the First Schedule shall be read in conjunction with the relevant revenue laws to which they, respectively, relate.

(4) A developer and an occupant shall maintain books and records in accordance with any relevant revenue laws.

#### PART VI—*Special Customs Regime for Zones*

Customs to  
facilitate  
Zones.

**43.**—(1) In order to facilitate the efficient operation of Zones in Jamaica, the Commissioner of Customs and Excise shall make arrangements for—

- (a) the availability of customs services in Zones on a continuous basis to meet the needs of the developers and occupants;
- (b) customs procedures and systems that enable electronic transactions and payments and pre-arrival clearance of goods;

- (c) the facilitation of imports of capital goods and equipment destined to remain in a Zone;
- (d) the efficient transportation of goods and equipment destined for a Zone from the point of entry, under customs control, directly and without any unnecessary delay, to its destination, subject to complying with such security and bonding arrangements as are acceptable to the Commissioner of Customs and Excise;
- (e) expediting the determination of the accuracy and authenticity of declarations concerning imports and exports into or from a Zone, prior to the release of the goods;
- (f) the release of goods from a Zone the release of goods destined to or originating from a Zone prior to the final determination of customs duties, taxes, fees and charges, provided that all regulatory requirements, including security requirements, have been met;
- (g) the expeditious release of low risk consignments;
- (h) the expedited release of goods bound for a Zone, entered through air cargo facilities, provided that all regulatory requirements, including security requirements, have been met;
- (i) the import or export of software through a data communication link;
- (j) efficient and flexible procedures and practices to be applied for goods imported from the customs territory into a Zone and exported from a Zone into the customs territory; and
- (k) simplified customs procedures for the movement of goods through the customs territory from one Zone to another Zone.

(2) Goods entering the customs territory from the Zone shall thereupon be deemed to be imported into the customs territory, and the provisions of the *Customs Act* shall apply thereto accordingly.

**44.** Subject to the provision of this Act, the Customs Act shall apply in the Zone to the extent required for the Commissioner of Customs and Excise to carry out his obligations under this Act.

*Customs Act*  
to apply in  
Zone.

PART VII—*Offences and Penalties*

Offences of  
unlawful  
entry.

**45.**—(1) A person who, without a reasonable excuse, enters or remains in a Zone without a valid pass issued by the Authority commits an offence and shall be liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(2) Subsection (1) shall not apply to an officer or employee of the Government or a Government entity while acting in an official capacity.

Offence of  
furnishing  
false  
information.

**46.** A person commits an offence if that person furnishes any information required of him under any notice under this Act which he knows to be false in any material particular, and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years.

Breach of  
offence for  
which no  
penalty is  
provided.

**47.** A person who commits an offence under this Act or regulations made under this Act for which no specific penalty is prescribed shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding six months.

PART VIII—*Miscellaneous*

Service of  
documents.

**48.** Any summons, notice or other document required or authorized to be served upon the Authority under this Act or any other enactment may, unless there is express provision to the contrary, be served by delivering same to the chairman or secretary, or by sending it by registered post addressed to the secretary at the principal office of the Authority.

Regulations.

**49.**—(1) The Minister may, after consultation with the Authority, make regulations generally for the better carrying out of the provisions



and purposes of this Act and, without limiting the generality of the foregoing, the regulations may make provisions—

- (a) prescribing fees, charges and cost recovery measures to be imposed by the Authority for services provided by or on behalf of the Authority;
- (b) facilitating the raising of capital by the Authority through the issuance of equity securities or other financial instruments (and such regulations may apply such provisions of the *Companies Act* or of any other enactment as the Minister thinks necessary, with such modifications as the Minister thinks fit);
- (c) determining criteria for the designation of Zones;
- (d) determining the application process, criteria, conditions, terms and procedures for designation of Zones and the issue of authorizations under this Act;
- (e) determining the general conditions of entry of persons into a Zone;
- (f) regulating and managing the Fund;
- (g) requiring information from developers, occupants and zone users, and the inspection of their books and records by the Authority or persons so authorised on its behalf;
- (h) facilitating the corporatization of the Authority in order to introduce and strengthen the use of corporate and business management techniques in its administration.

(2) For the purpose of giving effect to this Act, the Minister may, by order subject to affirmative resolution, make such amendment to any law as appears to him to be necessary or expedient to ensure consistency with the provisions of this Act.

(3) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under subsection (1) may provide in respect of a breach of any provision thereof, on summary conviction in a Resident Magistrate's Court, for a fine not exceeding one million dollars.

Minister may  
amend  
monetary  
penalties and  
Schedules.

**50.**—(1) The Minister may, by order subject to affirmative resolution, amend or vary any monetary penalties prescribed by or under this Act or amend any of the Schedules, other than the First Schedule.

First  
Schedule.

(2) Subject to subsection (3), the Minister responsible for finance may, after consultation with the Minister, amend the First Schedule by order published in the *Gazette*, subject to affirmative resolution.

(3) No amendment shall be made to the First Schedule pursuant to subsection (2) that would reduce or eliminate any of the benefits enjoyed by an existing developer or existing occupant during the remainder of the term of the master-concession, licence agreement or subconcession to which he is a party, as the case may be.

(4) For the purposes of subsection (3), an existing developer or occupant means a developer or an occupant who is party to a master-concession, licence agreement or subconcession that is in effect as at the date that the amendment comes into operation.

Repeal and  
amendment  
of  
enactments.

**51.** The *Jamaica Export Free Zones Act* is repealed.

(2) The *Income Tax Act* is amended—

(a) in section 38, by inserting next after subsection (1A) the following as subsection (1B)—

“(1B) This section shall apply as if the rate at which—

- (a) the occupant shall deduct tax from distributions by way of dividends paid out of profits derived from the conduct of a trade, profession or vocation in the Zone, is 0%; and
- (b) the developer shall deduct tax from distributions by way of dividends paid out of profits derived from non-exempt income from the conduct of a trade, profession or vocation in the Zone, is 0%.”;

- (b) delete the words “Jamaica Export Free Zones Act” wherever they appear and substitute therefor in each case the words “*Special Economic Zones Act*”.

PART X—*Transitional Provisions*

52. In this Part—

Interpretation  
in this Part.

“approved enterprise” means any enterprise approved under the *Jamaica Export Free Zones Act*.

- (a) by a Promoter; or  
(b) if the enterprise is a promoter, by the Council,

to carry on a approved activity within the meaning of that Act;

“continuing beneficiary” means a Free Zone Promoter or an approved enterprise that immediately before the appointed day, was entitled to fiscal incentives under the repealed enactment;

“council” means the Jamaica Free Zone Council constituted under section 2A of the *Jamaica Export Free Zones Act*;

“existing Free Zone” means a Free Zone in existence under the repealed enactment immediately before the appointed day;

“fiscal incentive” means any exemption or relief, in respect of any tax, duty, levy or other impost, that is granted under any of the revenue laws.

“Free Zone Promoter” or Promoter” means—

- (a) any person who is licensed by the Council to promote develop or operate any area of land or a building or part of a building as a Free Zone pursuant to the *Jamaica Export Free Zones Act*; and  
(b) the Port Authority.

53.—(1) Any Free Zone Promoter of an existing Free Zone which desires to continue its activities as a developer under this Act shall enter into a master-concession or a licence-agreement with the Authority

Tax  
Incentives  
applicable to  
former Free  
Zones.

within a period of four years from the appointed day, and on doing so shall be deemed to a developer for the purposes of this Act.

(2) Any approved enterprise within an existing Free Zone which desires to continue its activities as an occupant under this Act shall enter into a subconcession with a developer within a period of four years from the appointed day, and on doing so shall be deemed to be an occupant for the purposes of this Act.

(3) The Minister may by notice published in the *Gazette* extend the period specified in subsections (1) and (2) for an additional period of up to six months.

Instruments granted under the repealed enactment.

**54.** Notwithstanding the repeal of the *Jamaica Export Free Zones Act*, all licences, agreements, instruments or other documents granted, made or given under the provisions of the repealed enactment shall, subject to this Act and in so far as they are consistent with this Act or the regulations made under the Act, continue in force for a period of four years from the appointed day or (where it arises) until the end of an additional period referred to in section 53(3).

Savings in respect of repealed enactment.

**55.** Notwithstanding the repeal of the *Jamaica Export Free Zones Act* and subject to the provisions of this section, a continuing beneficiary shall continue to be entitled to the fiscal incentives to which he was entitled under the repealed enactment until the 31<sup>st</sup> day of December, 2019 or such earlier date as he becomes entitled to benefits under this Act.

Transitional provisions in respect of capital allowances.

**56.—**(1) Where immediately before the 1st day of January, 2020, by virtue of the fiscal incentives available under the repealed enactment (as extended for four years after its repeal, by virtue of this Act), no initial allowance or annual allowance was made to a continuing beneficiary in respect of capital expenditure incurred by the continuing beneficiary before the 1st day of January, 2020, the continuing beneficiary shall, where permitted, be entitled to an initial allowance and an annual allowance, in accordance with subsection (2), in respect of that capital expenditure.

(2) Capital expenditure referred to in subsection (1) (other than capital expenditure incurred on the purchase, alteration or

improvement of a private motor vehicle) shall be deemed, for the purposes of the First Schedule to the *Income Tax Act*, to be capital expenditure incurred on the 1st day of January, 2020, and—

- (a) subject to subsection (3), an initial allowance shall, where permitted, be made in accordance with the First Schedule to the *Income Tax Act* in respect of the amount of that capital expenditure; and
- (b) annual allowances shall, where permitted, be made in accordance with the First Schedule to the *Income Tax Act* in respect of the amount of that capital expenditure.

(3) For greater certainty, no initial allowance shall be made under subsection (2)(a) in respect of capital expenditure for which an initial allowance has previously been made.

## FIRST SCHEDULE

(Sections 2, 5, 43,  
51 and 56)*Benefits*

- Interpretation of Schedule. 1.—(1) In this Schedule—
- “Commissioner General” means the Commissioner General appointed under section 10 of the *Tax Administration Jamaica Act*;
- “permitted accounting period” has the meaning assigned to it in section 6(7) of the *Income Tax Act*;
- “termination date” means the 31st day of December, 2019;
- “year of assessment” has the meaning assigned to it in section 2(1) of the *Income Tax Act*.
- Assets tax relief. 2. An occupant of a Zone is exempt from tax under the *Assets Tax (Specified Bodies) Act*.
- Customs duty relief. 3.—(1) Goods imported into the Zone by a developer or an occupant shall be exempt from customs duties under the *Customs Act*.
- (2) Goods imported into the customs territory by an importer on which customs duties are paid shall, if sold by the importer to a developer or an occupant in a Zone, be treated as having been exported from the customs territory by the importer.
- (3) The provisions of the *Customs Act* in relation to obtaining a refund of customs duty upon the exportation of goods shall apply to the goods.
- Income Tax Relief. 4.—(1) In this paragraph, except where otherwise specified, references to the “Act” are references to the *Income Tax Act*.
- (2) A developer or an occupant of a Zone shall enjoy the following relief for the purposes of the Act, that is to say—
- (a) section 30(1)(b) of the Act shall apply as if there were a 12.5% rate of tax on the chargeable income of the developer or occupant derived from the conduct of a trade, profession or vocation within the Zone;
- (b) the developer or an occupant shall be exempt from the payment of income tax on profits derived from rentals of property in the Zone, except for any rental where the landlord (whether the developer or an occupant) and tenant are connected persons within the meaning

of section 2(2), however, the transaction shall be in accordance with section 17 of the *Income Tax Act*;

- (c) section 30(3)(b)(iii) of the Act shall apply as if there were a 0% rate of tax on dividend income derived from shares held by the developer or occupant;
  - (d) section 32A of the Act shall apply to a developer and an occupant, however—
    - (i) rental income derived by the developer or the occupant from property in the Zone shall be treated as falling within subsection (4)(b) of that section; and
    - (ii) subsections (10) and (11) of that section shall not apply to an occupant;
  - (e) subject to subparagraph (f), a promotional tax credit in an amount equal to the developer's or occupant's expenditure on research and development and training, up to a maximum which is equal to 10% of the tax on the developer's or occupant's chargeable income from a trade, profession or vocation within the Zone; and
  - (f) any amount of promotional tax credit that exceeds the limit set out in subparagraph (e) above in a year of assessment shall not be credited against tax payable in any other year of assessment and shall not be subject to a refund under the *Income Tax Act*.
- (3) Section 40(1A) of the Act shall apply as if the rate at which—
- (a) the occupant shall deduct tax from distributions by way of dividends paid out of profits derived from the conduct of a trade, profession or vocation in the Zone, is 0%; and
  - (b) the developer shall deduct tax from distributions by way of dividends paid out of profits derived from non-exempt income from the conduct of a trade, profession or vocation in the Zone.
- (4) Subject to the provisions of this paragraph, the Act (other than sections 36E, 36F, 36G, 36H and 36I) shall apply to a developer and an occupant.

(5) For the purposes of section 53 of the *Special Economic Zones Act*, a Free Zone Promoter or approved enterprise who enters into a master-concession, licence-agreement or subconcession—

- (a) in 2016, shall become entitled to the benefits under this paragraph with effect from the 1st day of January, 2016;
- (b) in 2017, shall become entitled to the benefits under this paragraph with effect from the 1st day of January, 2017;
- (c) in 2018 (where section 53(3) of the *Special Economic Zones Act* applies), shall become entitled to the benefits under this paragraph with effect from the 1st day of January, 2018.

(6) Notwithstanding subparagraph (5), where a Free Zone Promoter or approved enterprise is permitted or required to compute his income, profits or gains by reference to a permitted accounting period (within the meaning of section 6(7) of the Act), his income, profits or gains for the permitted accounting period ending in the calendar year in which he enters into a master-concession, licence-agreement or subconcession as referred to in section 53 of the *Special Economic Zones Act* shall be calculated as a fraction of his income, profits or gains for that permitted accounting period—

- (a) the numerator of which is the number of months from the 1st day of January of that calendar year to the end of the permitted accounting period; and
- (b) the denominator of which is the number of months of the permitted accounting period.

(7) Where a developer or an occupant is carrying on activities in a Zone which are outside of rental earning activities, the developer or occupant shall establish a separate company to carry on the activities.”

General  
consumption  
tax relief.

5.—(1) In this paragraph, references to the “Act” are references to the *General Consumption Tax Act*.

(2) The First Schedule to the Act shall apply as if—

- (a) for references to the “*Jamaica Export Free Zones Act*” were substituted references to the “*Special Economic Zones Act*”; and
- (b) in relation to a developer or an occupant of a Zone—
  - (i) for the purposes of Group 15A of Part II of the First Schedule to the Act, the tax rate



were 0% on supplies from the customs territory into the Zone and on imports from outside of the customs territory into the Zone;

- (ii) for the purposes of Part IVA and VI of the First Schedule to the Act, the tax rate were 0% on the supply of electricity or telephone service to the Zone.

(3) For the purposes of the Act, where a Free Zone Promoter or an approved enterprise becomes a party to a master-concession, licence-agreement or subconcession in accordance with section 53 of the *Special Economic Zones Act*, this paragraph shall apply to him from the 1st day of the taxable period next following the date upon which he becomes such a party.

Property tax relief.

6.—(1) In this paragraph references to the “Act” are references to the *Property Tax Act*.

(2) The Authority shall be exempt from property tax on land vested in the Authority, whether by way of freehold or leasehold, for the location of a Zone.

Stamp duty relief.

7.—(1) In this paragraph, references to the “Act” are references to the *Stamp Duty Act*.

(2) The following instruments are exempt from stamp duty payable under the Act, to the extent set out in this paragraph—

- (a) instruments for the purchase, lease or other acquisition of land for the use by the developer as a Zone, to the extent of 50% of the stamp duty that would otherwise be payable on such instruments;
- (b) instruments for the sale or lease of land by the developer to occupants or zone users in connection with the development or operation of a Zone, to the extent of 100% of the stamp duty that would otherwise be payable on such instruments.

(3) A developer or an occupant of a Zone is exempt from additional stamp duty on items imported by the developer or the occupant into the Zone.

(4) The Authority is exempt from stamp duty payable under the Act where the relevant instrument relates to a transaction involving land for use in relation to the promotion, development or construction of a Zone.

Transfer tax relief.

8.—(1) In this paragraph, references to the “Act” are references to the *Transfer Tax Act*.

(2) A developer of a Zone is exempt from transfer tax payable under the Act on the sale of land by the developer for the purposes of use in the development or operation of a Zone.

(3) The Authority is exempt from transfer tax payable under the Act, where the transfer relates to land for use in relation to the promotion, development and construction of a Zone.

Exclusion from other relief.

9.—(1) A developer or an occupant is not eligible for relief under the enactments specified in subsection (2).

(2) Subsection (1) relates to the following enactments—

- (a) *Bauxite and Alumina Industries (Encouragement) Act*;
- (b) *Income Tax Relief (Large-Scale Projects and Pioneer Industries) Act*;
- (c) *Petroleum Refining Industry (Encouragement) Act*; and
- (d) *Urban Renewal (Tax Relief) Act*.

## SECOND SCHEDULE (Section 2)

*MSME*

For the purposes of the definition of "MSME"—

- (a) 'micro enterprise' means an enterprise with not more than three employees or an annual turnover of less than the equivalent of ten thousand dollars in the currency of the United States of America;
- (b) 'small enterprise' means an enterprise with between four and ten employees or an annual turnover of more than the equivalent of between ten thousand and forty thousand dollars in the currency of the United States of America;
- (c) 'medium enterprise' means an enterprise with between eleven and fifty employees or an annual turnover of more than the equivalent of between forty thousand and one hundred and fifty thousand dollars in the currency of the United States of America.

THIRD SCHEDULE (Sections 2, 5, 8,  
12 and 14)

## PART I

*The Authority**Financial Provisions, Accounts and Reports*

Funds and  
resources of  
Authority.

1.—(1) The funds and resources of the Authority shall consist of—

- (a) such sums as may, from time to time, be placed at the disposal of the Authority by Parliament; and
- (b) all other sums and other property which may, in any manner, become payable to or vested in the Authority in respect of any matter relating or incidental to its functions.

(2) The expenses of the Authority, including the remuneration of officers and employees, shall be paid out of the funds of the Authority.

Power to  
invest  
moneys, etc.

2. All moneys of the Authority not immediately required to be expended for the purpose of meeting any of the obligations or discharging any of the functions of the Authority may be invested in such securities or other investment as may be approved, either

specifically or generally, by the Minister responsible for finance and the Authority may sell any or all of the securities or other investment.

Accounts and  
audit.

3.—(1) The Authority shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister being a form which conforms with established accounting principles.

(2) The accounts of the Authority shall be audited annually by an auditor appointed by the Authority with the approval of the Minister.

(3) An Auditor so appointed shall be a registered public accountant within the meaning of section 2 of the *Public Accountancy Act*.

(4) The members of the Board and the officers and employees of the Authority shall—

- (a) grant to the auditor appointed under paragraph (2), access to all books or other documents, cash and securities of the Authority; and
- (b) give to the auditor, upon request, all such information as may be within their knowledge in relation to the business of the Authority.

(5) The auditor's fee and any expenses of the audit shall be paid by the Authority.

(6) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records of the Authority in relation to the business of the Authority.

Operating  
plan.

4. The Authority shall, not later than the 30th day of November in each year, submit to the Minister responsible for finance and the Minister, for his approval a corporate plan, an operating plan, and estimates of revenue and expenditure, for the ensuing financial year.

Returns, etc.

5. The Authority shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Authority and afford him facilities for verifying the information in such manner and at such time as he may reasonably require.

Annual  
report.

6.—(1) The Authority shall prepare in the prescribed form and submit to the Minister responsible for finance and the Minister

a quarterly, half-yearly and annual reports in accordance with the *Public Bodies Management and Accountability Act*.

(2) The Minister shall cause copies of the report together with the auditor's report to be laid on the table of the House of Representatives and the Senate.

*Seal and Execution of Documents*

Seal and  
execution of  
documents.

7.—(1) The seal of Authority shall be—

- (a) kept in the custody of the chairman or the secretary of the Board; and
- (b) authenticated by the signatures of the chairman or any other member of the Authority authorized to act in that behalf by the Authority, and the secretary of the Board.

(2) All documents (other than those required by law to be under seal) made by, and all decisions of, the Authority may be signified under the hand of the chairman or any member authorized to act in that behalf or the secretary of the Board.

*Special Economic Zone Fund*

Special  
Economic  
Zone Fund.

8.—(1) For the purposes of this Act, there is established a fund to be known as the Special Economic Zone Fund.

(2) The Fund shall be administered by the Authority in accordance with the Act and in accordance with any applicable law or standard prescribed by the Minister, on the recommendation of the Authority.

(3) The Board shall establish, after consultation with the Accountant-General, such procedures and practices as appear to the Board expedient for the purposes of the Fund.

(4) The Special Economic Zone Fund is exempt from income tax under the *Income Tax Act*.

Moneys  
constituting  
the Fund.

9.—(1) The Authority shall set aside 65% of its annual net profits to be credited to the Fund.

(2) The Authority may also deduct from the Fund an amount, as it may think appropriate, to be used for supporting scientific research, market research, public relations and vocational training.

## PART II

*The Board of Authority*

Constitution  
of Board.

- 1.—(1) The Board shall consist of—
- (a) five members appointed by the Minister by instrument in writing, being individuals who appear to the Minister to be appropriate for appointment under this paragraph (hereinafter referred to as the “appointed members”);
  - (b) a senior public officer in the Ministry responsible for industry, nominated by the Permanent Secretary in the Ministry responsible for industry, who shall be the members *ex officio*;
  - (c) a representative of the Minister responsible for finance;
  - (d) the Commissioner General of Tax Administration Jamaica or his nominee; and
  - (e) the Commissioner of Customs and Excise or his nominee.
- (2) The appointed members shall include—
- (a) three representatives of the private sector, appointed from among persons recommended by a body (or a group of bodies) representing private sector interests, recognized by the Government;
  - (b) an attorney-at-law.
- (3) The appointed members shall be appointed from among persons who have exhibited through professional or academic expertise in shipping, transport, logistics, economic development, commercial or engineering activities, administration or human resources management.

Disqualification  
for  
appointment.

- 2.—(1) The following individuals shall not be eligible to be appointed members of the Board, that is to say—
- (a) members of the House of Representatives or the Senate;
  - (b) members of the Council of the Kingston and St. Andrew Corporation or any Municipal Council or any Parish Council;

- (c) an individual who is not a fit and proper person within the meaning of paragraph 3; or
- (d) an undischarged bankrupt.

(2) An individual shall not be appointed to the Board unless the individual has forwarded to the Minister a voluntary declaration declaring that he is not ineligible for appointment under this paragraph.

Meaning of fit and proper person.

3.—(1) For the purposes of paragraph 2, an individual, whether in Jamaica or elsewhere, is a fit and proper person if—

- (a) the individual—
  - (i) has not been convicted of an offence involving fraud, dishonesty or moral turpitude or of an offence listed in the Second Schedule to the *Proceeds of Crime Act* or an offence that is similar to any such offence in another jurisdiction;
  - (ii) is not an undischarged bankrupt; and
  - (iii) is in compliance with any tax and other statutory requirements imposed on the individual;
- (b) the individual's employment record or any other information does not give the Minister reasonable cause to believe that the individual carried out any act involving dishonesty or any act involving impropriety that will interfere with his ability to fulfill his functions; and
- (c) the individual is, in the opinion of the Minister—
  - (i) an individual of sound probity, and is able to exercise competence, diligence and sound judgment in fulfilling his functions;
  - (ii) an individual who possesses the knowledge skills and experience which are necessary for the intended functions to be carried out by that an individual; an
  - (iii) an individual whose appointment will not raise an issue of conflict of interest or undue influence.

- Temporary appointments. 4. The Minister may appoint any individual to act temporarily in the place of any appointed member of the Board in the case of the absence or inability to act of such member in keeping with the composition of the Board.
- Chairman and deputy chairman. 5.—(1) The Minister shall appoint a chairman and a deputy chairman from among the appointed members.
- (2) In the case of the chairman being absent from or unable to act at any meeting, the deputy chairman shall exercise the functions of the chairman, if the deputy chairman is present at the meeting and is able to so act.
- (3) In the case of the chairman and the deputy chairman being absent from or unable to act at any meeting, members of the Board present at the meeting shall elect one of their number to act as chairman at that meeting.
- Leave of absence. 6.—(1) On the application of any member, the Minister may grant leave of absence to the member.
- (2) The Minister may direct a member to proceed on leave of absence if the member has been charged of an offence involving fraud, dishonesty or moral turpitude or of an offence listed in the Second Schedule to the *Proceeds of Crime Act* or an offence that is similar to any such offence in another jurisdiction.
- Tenure of office. 7.—(1) Subject to the provisions of this Schedule, the appointment of every appointed member of the Board shall be evidenced by an instrument in writing.
- (2) The instrument shall specify the period of office of the member, which shall not exceed three years.
- (3) Every appointed member of the Board shall be eligible for re-appointment.
- Resignation. 8.—(1) The Chairman may, at any time, resign his office by instrument in writing addressed to the Minister.
- (2) The resignation shall take effect as from the date of receipt by the Minister of the instrument.
- (3) An appointed member other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman.
- (4) From the date of the receipt by the Minister of such instrument, the member shall cease to be a member of the Board.



9. The Minister may revoke the appointment of any member if the member— Revocation  
of  
appointment.
- (a) is unable to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);
  - (b) is convicted and sentenced to a term of imprisonment or to death;
  - (c) becomes bankrupt or compounds with, or suspends payment to, his creditors;
  - (d) becomes disqualified for appointment by virtue of paragraph 2;
  - (e) fails to discharge the functions of his office in a competent manner;
  - (f) fails to attend three consecutive meetings of the Board, or any of its committees, without reasonable excuse or explanation; or
  - (g) engages in such activities as are reasonably considered prejudicial to the interest of the Authority.

10. The names of the members of the Board as first constituted and every change in the membership thereof shall be published in the *Gazette*. Publication  
of  
membership.

11.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Board may determine. Procedure  
and meetings.

(2) The Chairman may, at any time, call a special meeting of the Board and shall call a special meeting within seven days of the receipt of a written request for that purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of his absence or inability to act, the deputy chairman or the individual elected in accordance with paragraph 5(3), as the case may be, shall preside at meetings of the Board.

(4) Subject to sub-paragraph (5), decisions of the Board shall be by a majority of the members present and voting, however, in addition to an original vote the chairman, deputy chairman or other member presiding at a meeting shall have an original and a casting vote in any case in which the voting is equal.

(5) The quorum for meetings of the Board shall be five.

(6) The minutes of each meeting of the Board shall be kept in proper form and shall be confirmed by the chairman as soon as practicable at a subsequent meeting.

(7) The validity of any proceedings of the Board shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

Remuneration. 12.—(1) There shall be paid to the chairman, deputy chairman and other members of the Board such remuneration (whether by way of honorarium or fees) and such allowances, as the Minister responsible for the public service may determine.

Disclosure of interest. 13.—(1) A member who is, in any way, directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose or cause to be disclosed the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the meeting and the member shall not—

- (a) in the case of a contract, take part in any deliberation or decision of the Board with respect to the contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Board with respect to the matter if the Board decides that the interest in question might affect prejudicially the member's consideration of the matter,

and shall further excuse himself from the meeting while the matter is under discussion.

(2) A notice given by a member at a meeting of the Board to the effect that he is a member of a specific company, firm or other body and is to be regarded as interested in any contract which is made after the date of the notice with the company, firm or body shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

(3) A member need not attend in person a meeting of the Board in order to make a disclosure which he is required to make under this paragraph, if he takes reasonable steps to ensure that the disclosure is made by notice which is taken into consideration and read at such a meeting.

Service of documents. 14. Any summons, notice or other document required or authorized to be served upon the Board under the provisions of this or any other enactment may, unless there is express provision to the contrary, be served by delivering same to the chairman or

secretary of the Board, or by sending it by registered post addressed to the secretary of the Board at the principal office of the Authority.

Appointment  
of  
committees.

15.—(1) The Board may appoint committees for special purposes connected with the functions of the Board and which, in the opinion of the Board, would be better regulated and managed by means of committees.

(2) The number of members of a committee appointed under sub-paragraph (1), the terms of appointment of such members, the quorum of the committee and the areas within which the committees are to exercise authority shall be determined by the Board.

(3) Committees of the Board shall make recommendations to the full Board for its ratification and decision.

Office of  
chairman or  
member not a  
public office.

16. The office of chairman, deputy chairman or, member of the Board or any of its committees shall not be a public office for the purpose of Part V of the *Constitution of Jamaica*.

FOURTH SCHEDULE (Section 6)

*Eligibility Criteria to be applied by the Authority*

1. The following eligibility criteria shall be applied by the Authority—

- (a) a developer and an occupant shall be a company limited by shares registered under the *Companies Act*;
- (b) on the effective date of the master-concession or licence-agreement, the amount of issued and paid-up share capital of a developer shall not be less than US\$1,500,000.00;
- (c) investments by a developer in any Zone shall be sufficient to accommodate at least three occupants, except for developers of single-entity Zone or specialized Zones;
- (d) on the effective date of the master-concession or licence-agreement, the amount of issued and paid-up share capital of an occupant shall not be less than US\$25,000.00;
- (e) investments by an occupant in Zone-related buildings, machines, equipment, facilities and other necessary

assets during the first year of the occupant's subconcession shall not be less than US\$50,000.00.

2. Notwithstanding anything to the contrary in paragraph 1—
  - (a) even if a MSME does not meet the relevant criteria in paragraph 1, the Authority may issue a written approval to a MSME to establish itself in a Zone as occupant in the event that, in the opinion of the Authority, the MSME has a sufficient development potential (as shown in its business plan approved by the Authority) to so warrant; however, the MSME shall be a company limited by shares registered under the Companies act and have a subconcession agreement with a developer and the investment to which paragraph 1(e) relates shall not be less than US\$25,000.00;
  - (b) in order to provide time for a MSME referred to in paragraph 2(a) to meet the relevant criteria in paragraph 1, the written approval contemplated by sub-paragraph 2(a) shall be valid for such period (not being more than four years from the date of its issuance) as the Authority may determine in writing;
  - (c) in the event that, in the opinion of the Authority, the MSME has met the relevant criteria in paragraph 1 within the period referred to in paragraph 2(b), the written approval may be extended by the Authority.
3. A Free Zone Promoter or an approved enterprise referred to in section 53 shall be deemed to satisfy the requirements of this Schedule.

FIFTH SCHEDULE (Section 24)

RIGHTS AND OBLIGATIONS OF DEVELOPERS

*General*

Environment, Safety and Security

1.—(1) The developer shall take adequate steps to control pollution of the air, land and sea by oil, chemicals, emissions, hazardous waste, effluent solid and other waste in the zone area.

(2) The Authority shall not be liable for the cleaning-up of pollution, and the developer shall save, protect, indemnify and hold the Authority harmless for the cleaning-up of pollution.

2. The developer shall set up systems and facilities for waste water and solid management and treatment in the Zone in accordance with applicable national standards and industry best practices.

3.—(1) The developer shall be responsible for the provision and maintenance of perimeter fencing around the zone area and for its own security arrangements within the zone area in order to maintain the proper and orderly conduct of its business and the general security of the zone area, having full regard to the provisions of any applicable law and in such a manner as it deems fit.

(2) The developer shall abide by and implement any instruction issued by any competent authority aiming at enhancing the security measures within and around the zone area.

4.—(1) Subject to applicable law, a competent authority shall be entitled, if and when deemed necessary by such authority, to deploy security personnel in the zone area.

(2) The developer shall not be entitled to any compensation for any disruption of its operations or loss or damage resulting from any competent authority's actions other than those resulting from its willful or grossly negligent acts or omissions.

5. The developer shall ensure that access to the Zone is granted to a reasonable extent to the following parties, if party does not obstruct the operations of the Zone—

- (a) the Authority and any duly authorized employee or representative thereof; and
- (b) any duly authorized employee or representative of the Government in the performance of its legal duties.

#### DEVELOPER UNDER MASTER-CONCESSION

##### *General and Financial Issues*

6. The master-concession may include conditions precedent such as the financing of the developer, financial close and the granting of applicable permits; and the developer shall comply with and fulfil the conditions precedent.

7. Subject to fulfilment of conditions precedent, on the effective date of the master-concession, the Authority and the developer shall enter into a site lease agreement, the executed copy of which shall be set out in a schedule to the master-concession, sufficient to convey to the developer a valid leasehold interest in the Zone

area pursuant to Jamaican law, free and clear of liens and other encumbrances.

8. The term of the site lease agreement shall be coterminous with the term of the master-concession to the intent that if the master-concession is earlier terminated or extended, the term of the site lease agreement shall be automatically terminated or extended or, if appropriate, renewed on *mutatis mutandis* identical terms for the relevant period.

9. Except as otherwise provided herein, the developer shall not cede, delegate, assign or transfer its rights or obligations under the master-concession without the prior written consent of Authority.

#### *Construction Works*

10. The developer shall undertake Zone-related works by developing, designing, financing, constructing and commissioning of main infrastructure to industry best practices.

11.—(1) The Developer shall be liable to the Authority for all the works or services performed by a contractor as if performed or failed to be performed by the developer.

(2) A contractor shall be responsible only to the developer, who in turn shall be responsible to the Authority in accordance with the provisions of the master-concession.

12.—(1) The following minimum conditions shall apply to the execution of all stages of the Zone-related works—

- (a) the Authority shall be entitled to monitor the development of all stages of the Zone-related works through a construction observer appointed by the Authority.
- (b) subject to sub-paragraph (2), the developer shall have the right to and responsibility for selecting the designer and the builder and agreeing to the provisions of the design contract and building contract, without the approval of the Authority.

(2) The Authority's approval (such approval shall not be unreasonably withheld) shall be required for—

- (a) the provisions of the building contract for the purposes of—
  - (i) enabling its assignment to the Authority upon termination of the master-concession (subject to any prior assignment right of the lenders, in any); and
  - (ii) enabling the implementation of the collateral warranty from the designer and the builder;
- (b) the provisions of the collateral warranty provided by the builder.

13.—(1) The Authority and the developer through the construction observer shall agree prior to the start of any construction works within a Zone on the application of the applicable zoning, landscaping, design and construction standards.

(2) For the avoidance of doubt, when constructing public buildings in a Zone, the developer shall not be responsible for the provision of communication systems, computer equipment and furniture.

#### *Assets and Insurances*

14. The right, title and interest in and to the developer's assets within the Zone shall remain vested with the developer from the effective date of the master-concession and throughout the term of thereof and may become the property of the Authority on the termination date, subject to any right of compensation contemplated by the master-concession.

15. The developer shall effect and maintain such insurance on the developer's property as well as the main infrastructure leased by the developer from the Authority against all risks as the developer deems fit.

#### DEVELOPER UNDER LICENCE-AGREEMENT

#### *General and Financial Issues*

16. The developer shall exercise due diligence and the highest standard of care to ensure that the developer's financial affairs are administered to industry best practices.

17. The developer shall not sell any land within its Zone without prior written consent of the Authority.

*Construction Works*

18. The developer shall undertake Zone-related works by developing, designing, financing, constructing and commissioning of main infrastructure to industry best practices.

19. The Authority shall be entitled to monitor the development of all stages of the Zone-related works through a construction observer appointed by the Authority.

20. The Authority and the developer through the construction observer shall agree prior to the start of any construction works within a Zone on the application of the applicable zoning, landscaping, design and construction standards.

*Accommodation*

21. A developer or an occupant of a Zone shall provide suitable accommodation and amenities for the public officers who are assigned to the Zone to execute functions under this Act or any other enactment.

Passed in the House of Representatives this 1st day of December, 2015 with twenty-five (25) amendments.

MICHAEL A. PEART  
*Speaker.*

Passed in the Senate this 11th day of December, 2015 with fifteen (15) amendments.

FLOYD E. MORRIS  
*President.*



MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to implement a comprehensive regulatory framework for the operation of Special Economic Zones and provide for any consequential amendment to any related legislation which may be affected by the implementation of this Act.

Major provisions of the Bill include—

- (a) the establishment of a Special Economic Zone Authority;
- (b) the empowerment of the Special Economic Zone Authority to establish a Special Economic Zone Fund to support the development of the Special Economic Zone development;
- (c) provisions relating to the designation, promotion, development, operation and management of Special Economic Zones;
- (d) the grant of benefits and other measures in order to attract domestic and foreign investment.

ANTHONY HYLTON  
Minister of Industry, Investment and Commerce.

**A BILL**

**ENTITLED**

**AN ACT to Repeal the Jamaica Export Free Zones Act and to make provisions in respect of the development, regulation, construction, supervision, management and control of Special Economic Zones in Jamaica; and for connected matters.**

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As passed in the Honourable House of Representatives.

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As passed in the Honourable Senate.

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