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SUPPORT TO THE DEVELOPMENT OF SMALL-SCALE  
INDUSTRIAL SECTOR IN ZAMBIA - PREPARATORY ASSISTANCE

DP/ZAM/86/010

ZAMBIA

Technical report: Legal Constraints on Small-Scale Industrial  
Development and Proposals for Reform

Prepared for the Government of Zambia  
by the United Nations Industrial Development Organization

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**T A B L E   O F   C O N T E N T S**  
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## INTRODUCTION

This report is part of Project No. ZAM/86/010/A/01/37: SUPPORT TO THE DEVELOPMENT OF SMALL-SCALE INDUSTRIAL SECTOR IN ZAMBIA - PREPARATORY ASSISTANCE. The Preparatory Assistance Document required a review of all laws pertaining to small-scale industrial development and proposals on how the laws could be improved to benefit small-scale entrepreneurs.

The report is divided into three parts. The first outlines the range of the forms of assistance available under existing legislation to the small-scale industrial sector. The section identifies one area of the law which needs special attention: the incentives available to small-scale industry. It is suggested that those offered under the Investment Act are less useful and attractive than those offered under the repealed Industrial Development Act.

The second assesses the legislative structure for coordinating and implementing assistance to small-scale industry. It is suggested that there is a need for much firmer coordination to render the assistance currently available more effective, and to enhance the capability to absorb more assistance. A central role for the Ministry of Commerce and Industry is suggested, and the potential role of district councils in small-scale industrial development highlighted.

The third part reviews the detailed regulatory legislation relating to small-scale enterprises. It is argued that the prerequisites for legal operation of a small-scale enterprise are too onerous and that the licensing and registration procedures need reform. It is suggested that there is need for review and reform of the legislation relating to land use, the organisation of businesses, conditions of service for employees and consumer protection.

The final section of the report, the recommendations, arises from the discussion of the issues in Parts I, II and III. The recommendations fall into three categories:

- those that can be implemented under existing legislative powers;
- those that can be implemented by promulgation of a statutory instrument;
- those that require a review process and/or legislative change.

There are two appendices to the report, one containing draft proposals for amendments to the licensing and registration procedures and to the law on incentives for small-scale enterprises; and the other comparing incentives offered under the current Investment Act and the repealed Industrial Development Act.

PART I: PRESENT LEGISLATION EMPOWERING ASSISTANCE  
TO SMALL-SCALE INDUSTRIES

i) Forms of Assistance by SIDO

a) Assistance to SSI generally

The Small Industries Development Act (SID Act), No. 18 of 1981, establishes a Small Industries Development Organisation (SIDO) to:

- formulate, coordinate and implement national policies and programmes relating to the development and promotion of small industries;
- carry out research projects, surveys and market research on any aspect connected with small industries;
- provide, or assist in providing, training facilities for persons engaged in or employed or to be employed in small industries and coordinate the activities of other institutions engaged in such training;
- provide extension, management and consultancy services for such industries;
- promote local and foreign investment in small industries;
- assist in locating and developing industrial estates, common facility services, and ancillary services. (emphasis added throughout)

A "smallscale enterprise" is defined under the Act as one having capital assets of less than K250,000. An "enterprise" is defined as an undertaking engaged in manufacture or the provision of services (the latter including the supply or provision of goods and commodities).

Small-scale enterprises may be registered under the Act if they comply with the provisions of the Trades Licensing Act and if they are approved in writing by SIDO. The most significant effect of registration is to entitle a small-scale enterprise to apply for any incentives provided under the Investment Act, No. 5 of 1986.

The Small Industries Development Act also provides for the registration by SIDO of another category of enterprises: the "village enterprise". SIDO must be satisfied that such an enterprise:

- is located in a village, rural or semi-urban area;
- uses labour-intensive processes as far as is practicable; and
- uses local raw materials as far as is practicable.

An enterprise registered as a village enterprise by SIDO is exempt from the provisions of the Trades Licensing Act. Any of the incentives offered under the Small Industries Development Act or the Investment Act may be granted to a registered village enterprise at the discretion of the Minister on such terms and conditions as he sees fit.

b) Registered enterprises eligible for incentives

A business enterprise intending to avail itself of the incentives offered under the Investment Act must apply to the Investment Committee established by the Act for a certificate of incentives. Every holder of a certificate of incentives is entitled to the common incentives offered under the Act (section 26(i)): - for a period of five years, a deduction from taxable income for each tax year of fifty per centum of the total salaries paid to Zambian manpower employed in the enterprise during that tax year:

Provided that the amount of salary of any such employee which is in excess of five times the minimum wage for the time being fixed for a general worker shall not be taken into account for this incentive; and

- for a period of five years, full exemption from tax on dividends; and
- for a period of three years, exemption from payment of selective employment tax; and
- for a period of ten years, a deduction from taxable income of fifty per centum of the expenses incurred during each tax year on -
  - i) any training programme agreed upon by the Committee, to train Zambian employees; and
  - ii) any research and development programme, agreed upon by the Committee, conducted either by the enterprise itself or through a recognised research institution, for the purpose of adapting a technology or product to local conditions or of substituting a local input for an imported one.

The deduction relating to employee salaries and training, research and development expenses are in addition to any allowance or deductions provided for in the Income Tax Act (CAP 668) for the same or a similar purpose. (section 26(2)).



As well as qualifying for the common incentives available to all business enterprises holding a certificate of incentives under the Investment Act, small scale and village enterprises qualify for an additional incentive (section 29): they are exempt from payment of tax on income for the first five years of operations; and, for the next five years, are to pay only half of the applicable rate.

The Investment Act also provides additional incentives for enterprises in rural areas. If a small-scale or village enterprise qualified for these, it would extend its tax relief period beyond ten years, and for its third 5-year period of operations, pay tax at two-thirds of the prevailing rate for companies. (section 28).

A small-scale or village enterprise which is also an exporter would also qualify under the Investment Act for additional incentives relating to relief from sales tax on imported inputs used in producing goods for export, and tax deductions on cost of export promotion and foreign market prospection. (section 27).

c) Investment Act incentives contrasted with previous legislation

It is notable that the incentives offered under the Investment Act relate only to various forms of tax relief. They are to be contrasted with the more comprehensive incentives offered under the Industrial Development Act CAP 674 (No. 18 of 1977), which the Investment Act repeals. (section 45)

Those incentives covered:

- preferential treatment with respect to Government purchasing;
- preferential treatment with respect to the granting and processing of import licences;
- rebates on customs duty payable on capital equipment, raw materials and other intermediate goods, where:
  - a) in the case of capital equipment, labour-intensive techniques of production were not a viable alternative;
  - b) in the case of raw materials they were not available from domestic supply; or
  - c) in the case of intermediate goods, they did not inhibit the creation of domestic value-added;

- relief from sales tax on the items and criteria set out immediately above;
- relief, as the Minister prescribed, from selective employment tax.

In addition, any enterprise which satisfied the Minister that it exported a substantial amount of its products was also entitled to the following incentives:

- relief from tax or customs duty payable on the importation of machinery intended for use in the manufacture of such products;
- favourable adjustment to export tariff rates, as determined by the Minister;
- relief from import tariffs in respect of raw materials, as the Minister determined;
- and preferential treatment with respect to the granting and processing of import licences.

Any enterprise which incurred training expenses or provided training facilities for Zambian citizens was entitled to write-off against income tax the expenses of providing them. Incentives were also provided for any enterprise located in a rural area. Any enterprise utilising investment provided from outside Zambia which, in the opinion of the Minister, employed within Zambia a significant amount of foreign capital, was also eligible for incentives. There was no tax on expenditure by any enterprise on research and development, whether conducted by the enterprise itself or by a recognised research institution.

Criticism of the incentives offered under the old Industrial Development Act had focussed on the need to tailor them more specifically to the requirements of small scale industry (Mulwila and Turner, 1982: 155-162) and the need to make them more specific, and less dependent on Ministerial discretion (IAS/FEB, 1984). However, the "reforms" made by the Investment Act have not addressed either of these issues, but have merely based incentives entirely on tax relief, and eliminated incentives of potential benefit to small scale enterprise (e.g. preferential treatment with respect to Government purchasing).

ii) Assistance by Management Services Board

SIDO is not the only institution endowed with a statutory responsibility for assisting small scale industrial development in Zambia.

The Management Services Board Act, No. 8 of 1981, establishes a Board to provide sound management and organisational development in the parastatal and other sectors of the economy. This Board may, inter alia, provide professional consultancy services, management training programmes and assist in developing management capabilities in the small-scale business sector by providing services relating to entrepreneurial selection, training, consulting and counselling.

iii) Assistance by the Development Bank of Zambia

The Development Bank of Zambia (Amendment) Act of 1982 authorised the Bank to set up a special Small Industries Fund, for the purpose of financing small industry. The Act provided that, in utilising this fund, the Bank would not be bound by the minimum loan mark of K25,000 imposed by section 17(3) of the Development Bank of Zambia Act CAP 712 (No. 35 of 1972). Nor is the Bank limited to providing loans - it may also enter into equity participation arrangements. Under the Act, the "small industries" to which the DBZ can render assistance are defined as small-scale and village enterprises registered with SIDO.

iv) Assistance by Bank of Zambia Credit Guarantee Scheme

The Bank of Zambia Act, No. 24 of 1985 inter alia empowers the Bank to operate a credit guarantee scheme to protect financial institutions against losses incurred by them in granting loans or advancing funds for the purpose of promoting small enterprises. However, guarantees on loans will not be honoured by the Bank unless it is satisfied that at the time of making the loan or advancing funds the financial institution concerned acted in good faith, in accordance with prudent banking practices, and in conformity with regulations set out in the Act to ensure that the project to be financed is technically feasible and economically viable.

v) Loan guarantees to cooperatives

It should also be noted that under the Cooperative Societies Act, CAP 689, the Minister is empowered to guarantee loans secured by cooperatives from commercial banks.

vi) Commentary

It may be seen that the existing legislation provides for the following kinds of assistance to small-scale industry:

1. training and management advisory services (SIDO, and MSB - the latter managerial training);
2. research (SIDO)
3. extension and consultancy services (SIDO, MSB)
4. raw materials supply (SIDO)
5. provision of industrial estates and common facility services (SIDO)
6. investment promotion (SIDO)
7. policy development (SIDO)
8. tax relief (Investment Committee dependent on SIDO registration)
9. loan guarantees (Ministry responsible for cooperatives, Bank of Zambia)
10. loans and/or equity participation (DBZ)

The legislative provision for assistance to small-scale industry is, therefore, quite comprehensive, and inadequacies largely to be attributed to gaps in implementation, resulting from inadequate infrastructure to carry out the legislative burden, or ineffective direction and coordination of the available assistance.

There is, however, one notable inadequacy within the legislation itself: the narrowness of the incentives for small-scale industry provided under the new Investment Act. It is therefore suggested that these be augmented by the provision of additional specific incentives to small-scale industry along the lines proposed by the Law Development Commission (LDC undated: 53-54.) This would restore important incentives such as preferential treatment with respect to government and parastatal purchasing, and preferential treatment with regard to the granting and processing of import licences. But it would also have the effect of making these incentives exclusive to small-scale industry, and not to other sectors, and thereby greatly enhance their attractiveness.

This is important, because "enticing" small industries to register, and therefore open themselves up to full participation in development, can only be achieved if the incentives consequent upon registration are perceived as worthwhile. This also implies that there needs to be much more than mere legislative provision - it also needs to be clear that there are vigorous and functioning practical programmes of assistance to small-scale industry, not just "paper tiger" provisions and institutions.

That is why firm coordination of assistance to small-scale industry is so essential, and will be considered separately in Part II.

It may also be that SIDO requires some strengthening and specific assistance to enable it to provide the services to small-scale industry that it is legislatively empowered to provide. One area at least seems ripe for technical assistance - training of officers who will mediate loans for small-scale enterprises through DBZ and the Bank of Zambia Credit Guarantee Scheme, preparing the necessary feasibility studies to meet the legal requirements. If there are difficulties in locating these officers in SIDO itself, they could be located in an extension service provided by the Ministry of Commerce and Industry, for example. SIDO registration merely renders a small-scale enterprise eligible to apply for DBZ loans. It does not mean that the DBZ can ignore the requirements of the law - nor does it mean that only SIDO can prepare the necessary documentation. It could act as a conduit only, directing registered entrepreneurs to the DBZ itself. Additional technical assistance could be located there, to enable the DBZ to attend more promptly to loan applications, and perhaps to divert their approach away from an emphasis on equity participation (only 14 enterprises assisted so far), towards more loan disbursements as such.

The current legislative structure also makes available a convenient statutory channel for the disbursement of funds to small-scale industry by way of loans - the DBZ Small Industries Fund. It is suggested that, for this particular form of assistance to small-scale industry (i.e. loans to small enterprises), this fund is the most appropriate disburser, as it is established by Parliament, must maintain a separate account and make a separate annual report to Parliament, and embodies standards and experience of disbursement acceptable to donors.

## **PART II: LEGISLATIVE STRUCTURE FOR SMALL-SCALE INDUSTRIAL DEVELOPMENT**

Currently, small-scale industrial development assistance is the responsibility or concern of numerous agencies, governmental, quasi-governmental and non-governmental, with problematic relationships among themselves.

i) Role of Small Industries Development Organisation (SIDO)

The Small Industries Development Act establishes that the Small Industries Development Organisation (SIDO) may formulate, coordinate and implement national policies and programmes relating to the development and promotion of small industries. This is in the general context of the Act's objectives of fostering and encouraging the development of small industries and providing for the granting of incentives to them.

a) Duty to report to Parliament

This does not mean, however, that SIDO acts autonomously or alone in carrying out these tasks. SIDO is a statutory body, established by Parliament and charged with facilitating small-scale industrial development. It must also report to Parliament, and the Act establishes a procedure for this under section 17. SIDO must report annually to the Minister concerning its activities. This annual report must contain information on the financial affairs of SIDO, including a balance sheet, an audited statement of revenue and expenditure, and any other information the Minister may require. The Minister must lay this report before the National Assembly within a specified time.

The Minister referred to in the Act is the Minister of Commerce and Industry. This is not specified in the Act, but it is the case by virtue of the Statutory Functions Act, CAP 3 (No. 43 of 1970). Section 3(2) of that Act provides that "unless the context otherwise requires, any reference in any Act to the 'Minister' ... on whom statutory functions are conferred ... by any provision thereof shall be construed as a reference to the member of the cabinet ... vested with such functions."

b) Relationship with the Minister

The role of the Minister is specified in various other provisions of the Small Industries Development Act. The Minister may appoint two members of SIDO, with experience in matters relating to small industry. Members nominated to SIDO by ministries or organisations must be approved by the Minister. The Minister may request for the replacement of a member. Members may resign by giving one month's notice in writing to the Minister. (section 4). SIDO may accept grants and donations from sources outside Zambia only with Ministerial approval. It may raise loans only with Ministerial approval. Travel, transport and subsistence allowances of SIDO members are determined by the Minister. (section 14). Appeals against refusals by SIDO to register small-scale enterprises are to be made to the Minister. (section 18). The Minister may approve and grant applications for incentives by registered small-scale enterprises. (section 19). If a small-scale enterprise is convicted of any offence under any written law, it is the Minister who may cancel its registration and withdraw its incentives (section 20).

It is the Minister who may restore registration or incentives when satisfied that the circumstances which led to their cancellation or withdrawal no longer apply (section 21). SIDO itself may register approved village enterprises, but subject to any specific or general directions of the Minister (section 22). The Minister may grant a registered village enterprise any of the incentives under the Small Industries Development Act or the Investment Act. (section 23). SIDO has to maintain separate registers of registered small scale enterprises and registered village enterprises, containing such information as the Minister requires, at such places as the Minister prescribes, and open to public inspection on conditions set by the Minister (section 26). Finally, section 29 provides that:

"The Minister may, by statutory instrument, make regulations prescribing all matters which by this Act are required to be prescribed, or which are necessary or expedient for the proper carrying out of the provisions of (the) Act".

c) Function as quasi-autonomous governmental institution

Thus, the Small Industries Development Act clearly recognises the pivotal role of the Ministry of Commerce and Industry in small-scale industrial development. SIDO is a quasi-autonomous governmental body established, as are most such bodies, to function in ways which are not usual in a Government department. It may be compared with the public corporation in the United Kingdom, of which it has been said:

"Whenever Parliament is willing to grant a measure of autonomy, the public corporation is commonly employed. It has a legal existence of its own, and can be given statutory functions which operate outside the normal organisation of the (Government). It offers scope for many kinds of governmental experiment, under which central control, local control and independence can be blended in any desired proportions." (Wade, 1982: 142).

In considering the position of nationalised industries in Britain, Wade concludes (page 145) that Ministers are in a commanding position vis-a-vis the management of such industries, by virtue of their power to appoint and remove members, to give general directions, and, most importantly, by wielding their financial power. Thus, while the day-to-day administration of nationalised industry in Britain is supposed to be the sphere of independent self-management, and broad policy formulation an area open to governmental intervention, Wade believes that Government exercises considerable power in both spheres.

If that is the case with nationalised industry in Britain, then it is potentially much more the case with SIDO in Zambia, as the Act itself gives the Minister so many responsibilities in the administrative sphere. The financial centrality of the Minister is reinforced by the fact that Parliament appropriates funds for the purposes of SIDO (section 14) and that these are allocated in the Ministry of Commerce and Industry's budget. Government's commanding position in relation to SIDO is ensured, finally, by the power which the Act vests in the President to appoint both the SIDO Chairman (section 4), and the SIDO Director (section 10). It should be noted that, by virtue of section 26 of the Interpretation and General Provisions Act, CAP 2, the power to appoint may be construed as including the power to remove.

d) Respective roles of Chairman and Director

It is also noteworthy that the SIDO Director as defined by section 10 of the Small Industries Development Act is the chief executive officer of SIDO; but it is the Chairman who heads SIDO itself, and it is SIDO which is charged with fostering and encouraging small-scale industrial development, including formulating, coordinating and implementing national policies and programmes. The Director attends SIDO meetings, and may address them, but does not have any voting power, and may be asked to withdraw by the chair. (section 10). The Act provides that SIDO must meet at least once every six months.

It is therefore very clear that Parliament established SIDO because it considered that such an organisation would be a more effective developer of small-scale industry than a government department; but that Parliament did not intend SIDO to operate as an autonomous body. Parliament intended SIDO to be an executory statutory body, responsible to Parliament itself, through the Ministry of Commerce and Industry. The appropriate channel of communication would be between the Ministry and SIDO itself, and not between the Ministry and the Director

ii) The District Councils

There is another governmental agency which has a direct interest in small-scale industrial development: the Ministry of Decentralisation. This is because this Ministry is responsible for decentralisation under the Local Administration Act, No. 15 of 1980, which establishes district councils as the key element in the decentralisation exercise.

a) Role of District Councils in small-scale industrial development

The Act also confers upon district councils responsibility for inter alia, administering the economic affairs of the District; formulating long- and short-term district economic development programmes; erecting, purchasing and maintaining buildings ... where it is in the



public interest, for use for business or professional purposes; and establishing and maintaining the business of manufacturer, wholesaler and retailer. (Schedule to the Act, Part I). As district councils are to formulate their development programmes within the guidelines stipulated by overall Party policies and programmes, small-scale industrial development will clearly be expected to be a focus of district plans by the Party and its Government. Councils are empowered by the Local Administration Act to enter into agreements with Government, other councils, or any person or authority, to establish and maintain any undertaking, service or facility which the Act empowers them to establish or maintain. They may also establish a joint committee or board to run the undertaking. (section 45). Councils are also empowered to make loans of money to persons or authorities for the erection, purchase or maintenance of buildings for use for business purposes, where it is in the public interest. (section 51).

b) Financing of Councils

Councils receive income by way of appropriations from Government (section 29), various levies (section 52), the operation of business enterprises (section 44(1) and the Schedule to the Act, Part I, para. 70), and they may also borrow money (section 35). However, no council is permitted to borrow money or to receive any grant of money from a foreign government or a foreign organisation. (Section 35(2)).

c) Nature of Financial control by central Government

The Act establishes that the national Government will exercise a significant measure of financial control over councils through two devices: annual estimates and audit. Each council is required to prepare and adopt annual estimates of revenue and expenditure for the approval of Parliament. (section 28 (i)). Where a council decides that it needs additional expenditure for a special purpose, it must receive Parliamentary approval of its supplementary estimates (section 28(2)). No council is permitted to incur any expenditure which is not included in its annual estimates (section 28(4)). The Act also establishes that the Government may make grants or loans directly to councils for the purpose of performing their functions. These grants or loans may be made on such terms and conditions as Government determines. (section 29(i)). Any such grant or loan is to be paid out of moneys appropriated by Parliament for the purpose, and is to be made available directly to the council concerned (section 29(2)).

The Act also provides in detail for the conduct of the financial affairs of councils (and these provisions go hand in hand with each council's own detailed financial regulations.) The regulation of borrowing is also provided for in detail. (sections 35, 36, 37, 38). Under the provisions relating to audit, the Auditor-General has the duty, inter alia, of satisfying himself that the moneys spent by a council have been applied to the purposes for which they were appropriated by Parliament. (section 39). The Auditor-General reports directly to the President, who is required to lay the report before the National Assembly. (section 40 (i)). The President may give a council whatever directions he thinks are necessary to secure compliance by the Council with any recommendations made by the Auditor-General. (section 40(2)). As well, there are detailed provisions relating to disallowing any expenditure made contrary to law, and recovering the moneys involved (section 41).

d) Functions of district secretariats

Other aspects of the relationship between district councils and national Government are governed by Part IX of the Act, which establishes a district secretariat for each district to discharge all the functions set out in Part III of the schedule to the Act. These functions include:

- the coordination of Government functions in the District;
- carrying out the day-to-day administration of the Council;
- preparing annual reports on the activities of the District;
- preparing annual estimates of revenue and expenditure;
- preparing district development plans and programmes;
- consulting provincial organs of the Party and Government, or, where necessary, the appropriate organs of the Party and the Government directly, on any technical matters pertaining to administration or implementation of any development project or programme in the district;
- responsibility for the proper administration of the Council so as to achieve effective decentralisation in the district.

All these functions are to be carried out by the District Secretariat in each district, under the general supervision of each District Executive Secretary. The District Secretariat is made up of whatever offices each council itself designates. However, the Minister may, by statutory order, prescribe the functions of each member of a district secretariat.

e) Objectives of decentralisation

The legislation therefore aims to improve coordination of the activities of Government institutions (i.e. Ministries) at the local (i.e. district) level, emphasising the horizontal relationships of Government institutions at district level. Previously, the emphasis was on vertical relationships, with all Government institutions at district level turning directly to their national headquarters. Under the 1980 Local Administration Act, all development activities are to be initiated and implemented as much as possible at district level, coordinated by the District Secretariat, but with provision for direct consultation where necessary, with the appropriate organs of the Party and its Government. As the over-riding objective of the legislation is to achieve decentralisation and a significant measure of district autonomy, it would be inimical to that objective to provide legislatively for the detailed form of council - Government relationships. In practice, of course, councils remain significantly dependent on national Government for financing and other forms of assistance and thus Government control over council policies and operations, while indirect, is nonetheless important.

f) Relationship between district councils and ministries

The legislation, therefore, does not prevent any district council from consulting directly with any Ministry or other institution of Government (it is not, for example, necessary for the Ministry of Decentralisation to act as a "mediator"). This means that, while it would be useful for all the Ministries which have a concern in small-scale industrial development (e.g. Finance and National Commission for Development Planning, Commerce and Industry, Decentralisation) to work in cooperation along normal civil service lines (inter-Ministry committees, etc), it is not essential to any programme organised by say, a specific district council with Ministry of Commerce and Industry assistance, that they should do so. The Ministry of Commerce and Industry is able to work directly with councils, especially through the commercial and industrial secretaries. However, the cooperation of the Minister of Decentralisation could be important if, for example, the Ministry of Commerce wished to request him to exercise his statutory powers under section 83, and, say, prescribe the functions of district commercial and industrial secretaries to include significant responsibility for small-scale industrial development.

iii) The Development Bank of Zambia (DBZ)

The DBZ is, in both practice and potential, another significant statutory actor in small-scale industrial development. This is by virtue of its general mandate under the Act establishing it: to assist in the economic development of Zambia (in conformity with priorities of the Government's national development plans); and also by virtue of the special responsibility it has been given since the creation of the DBZ Small Industries Fund, by the Amendment Act of 1982.

a) Role of Development Bank of Zambia

The DBZ, like SIDO and district councils, is a statutory body, established by an Act of Parliament, and with its powers, duties and functions set out in that enabling legislation. Its role is to make long- and medium-term finance available to any approved recipient, corporate or unincorporate, for the purposes of economic development. It may also choose to participate in the enterprise on an equity basis.

b) Relationship of Board with Minister

The DBZ has a Board of Directors which is responsible for the policy and administration of the affairs of the Bank. The Bank must report annually to Parliament, via the Minister of Finance. The Minister also appoints five of the nine Board members, including the Managing Director, who is the chief executive officer. The Minister may also give directions in writing to the Board, after consultations with each director.

c) May accept grants

The Bank may acquire funds from grants, inter alia, and it may create special funds - these provisions have enabled the channelling of donor money via the DBZ to small-scale businesses.

d) Cannot provide short-term finance

However, a major gap in the Bank's lending mandate is that it cannot provide short-term finance in small amounts. This is a constraint, as many small-scale entrepreneurs are most in need of small loans for use as short-term working capital. Even loans for setting up a small-scale enterprise often need only be very small.

e) Duty of Board to scrutinise all loan applications

The DBZ Board must approve all applications for finance, including considering each written application, together with the Managing Director's comments. Thus, by law, the DBZ cannot meet one SIDO proposal, that it should fund all the projects that SIDO recommends after carrying out feasibility studies. The DBZ Board has a statutory duty to consider each application separately and in detail, and it cannot merely accept SIDO's recommendation. This is so even in relation to disbursements from the DBZ Small Industries Fund, for which only SIDO - registered applicants are eligible.

iv) Other statutory bodies: Bank of Zambia and Management Services Board (MSB)

Two further statutory bodies must be included in a survey of the legislative structure for assistance to small-scale industry: the Bank of Zambia, and the Management Services Board. This is because each plays some role in small-scale industrial development (The Bank through its credit guarantee scheme, and the Board through its training function), and each is established, like SIDO or the DBZ, by an enabling statute which defines its role, functions and mode of organisation. Each therefore has a responsibility to report publicly on its activities, and to be subjected to the scrutiny of Parliament. And each has a Minister responsible for aspects of its policy direction and administration. It is therefore possible to envisage them as part of any structure which might be established to coordinate all the actors in this arena, just as it is possible to envisage District Councils (through the Ministry of Decentralisation, or even directly in the case of, say, participants in a pilot project), SIDO and DBZ participating in an effort at structural coordination such as an Inter-Ministerial Committee.

v) The Village Industries Service (VIS)

However, it is not so easy to envisage how the other major actor in small-scale industrial development, VIS, would fit into such a coordination structure. Unlike all the other institutions involved in this area, the VIS is not a statutory body - rather, it is a kind of non-governmental organisation (NGO). It is not established by an Act of Parliament, but simply as a registered society with its own constitution.

a) Status as a registered society

This means merely that, like every other society or association in Zambia, the VIS had to register with the Registrar of Societies within 28 days of its formation, as provided in the Societies Act, CAP 105. The purpose of this Act is to provide for the better control of societies by registration, and it is clear from the provisions of the Act that its main aim is to prevent the growth of unauthorised associations of a political nature or which might be prejudicial to peace and good order.

b) Effect of registration

Once registered, a society cannot change its name, or the provisions of its rules or constitution, or increase or decrease its objects, or affiliate to an organisation of a political nature outside Zambia, without giving notice within one month to the Registrar. In addition, every society must have a registered office and postal address at all times.

c) Relationship with Minister

Despite the fact that the relevant Minister does not have the kind of relationship she/he might have with a statutory body, the Minister nonetheless may exercise some control over a registered society. She/he may require a registered society to provide the following information:

- a copy of its constitution and/or rules
- a list of office bearers
- a copy of its annual accounts or returns, including a copy of its duly audited accounts and any other information the Minister may require.

Any Ministerial order requiring information is binding on all the office bearers of a society, as well as on those managing or assisting in managing the society.

In addition, the Minister may make rules by statutory order for the better carrying out of the provisions of the Act, including rules requiring that accounts should be submitted to the Registrar at particular times, and rules for receiving annual or periodic returns relating to the constitution, objects, membership and management of a society.

The Minister, therefore, while unable to exercise the degree of supervision and control provided for in relation to statutory bodies, is still able to require that important information should be made available. However, the Act does not provide for any additional element of public responsibility on the part of a registered society. The Minister does not, for example, have to report to Parliament. It is this lack of public accountability which raises a question as to the suitability of this essentially non-governmental institution to play such a major role in small-scale industrial development as envisaged in Government policy statements, and even in the SID Act itself.

d) The VIS Constitution

Some light may be thrown on this issue by examining the VIS Constitution, which governs the way in which VIS operates, as well as establishing its functions.

The VIS Constitution establishes its objects as the promotion of industries and crafts on the basis of small-scale, labour intensive units in villages in order to maximise employment, generate income-earning opportunities and promote education, training and research to improve village life.

VIS perhaps gains its prominence in Government plans for small-scale industrial development from its special relationship to the President. His Excellency the President is the patron of VIS, and empowered under the Constitution to appoint the entire VIS Council, consisting of a National Director and up to thirty other members. This council is given the task of determining the policy of VIS, subject to the patron's directions. It is supposed to meet twice a year at least, including holding an annual general meeting.

The National Director is required to submit the following written reports to the AGM:

- progress during the relevant period
- independently audited accounts of income and expenditure
- plans for the future, including estimates.

The Constitution provides that the council may appoint such executive officers, and other staff as it may decide, on whatever terms and conditions it determines. All staff are to be responsible to and under the direction and control of the National Director.

The VIS is established as a non-profit organisation. All its income is to be expended solely in pursuit of the objects for which it was created. The Constitution provides that VIS may accept income, service or equipment from any source, public or private, Zambian or international, or by way of grants, donations or subsidies.

The National Director is established as the officer responsible for properly maintaining and supervising the VIS accounts and accounting system. Provision is made for the operation of banking accounts and procedures for authorising payments by cheque. Procedures are also established for an annual independent audit. The Constitution says that the accounts should be open to inspection, upon reasonable notice, by the patron, the Council, or any person authorised by them. Of course, under the law relating to registered societies, the Minister also possesses powers in relation to access to this, and other information. The Constitution also contains various provisions designed to facilitate VIS's operations. For example, it confers upon VIS the power to establish, on its own, or jointly with others, companies or other enterprises for production, distribution or sale of village output. It also confers a power to deal with property. VIS is given to power to borrow, but only to the extent of K5000, unless with the prior written authority of the Council.

To amend the VIS Constitution requires a resolution of three-quarters of the membership of the Council, and the Patron's approval.

vi) Commentary

The above review of the existing legislative structure for small-scale industrial development assistance raises a number of issues for consideration.

First, it is clear that a need exists for some kind of body to coordinate the existing institutions involved in small-scale industrial development. This would strengthen their effectiveness as well as making clearer channels of assistance available to donors. Such a mechanism might take the form of an inter-ministerial committee under the chairmanship of, say, the Minister of Commerce and Industry.

Second, there is obviously some confusion regarding the roles and functions of some of the institutions. It is suggested that, in fact, the legislation itself provides quite clear guidelines, but that it is being overlooked or given an incorrect emphasis by some institutions. For example, it is clear that it was Parliament's intention that the DBZ and the commercial banks through the BOZ credit guarantee scheme would provide loan finance to small-scale enterprises, while SIDO provided other services, including assistance with the preparation of loan requests. The legislation does not envisage SIDO as a disburser of loans. It is necessary, therefore, for there to be some evaluation of the financing provision made so far, to determine if it is adequate, particularly in the area of short-term lending of small sums. That this is a crucial area is borne out by the findings of an IAS survey of small-scale industry in Lusaka. (Turner, 1985).



Of the 156 entrepreneurs interviewed, none had set up their business using a loan from a bank or any other kind of formal financial institution. This research was done prior to the creation of the credit guarantee scheme, but it reinforces the need for assistance schemes for small-scale industry which will overcome the formidable problems of small-scale entrepreneurs in dealing with banks. The same research also revealed that eighty-four per cent of those interviewed used less than K500 to set up their business; in fact just over half set up their business with less than K50 "working capital", usually in the form of savings from formal employment, often as an artisan. Top priority for entrepreneurs setting up a business was the purchase of tools and other equipment, and of raw materials. Very low priority was accorded to obtaining some kind of premises for carrying on the business. Only one respondent had received a loan from a government institution since setting up the business. None had ever received a loan from a bank to assist in the running of their business, although six had approached a bank for such a loan. All six had been turned down. Three said that the reason for the refusal had been that they had no security to offer the bank, one had found the bank officers uncooperative; and the other two did not know why their applications had been refused. Again, these data point to the need for a flexible, readily-available, short-term small loans fund, and to the need for advisory and mediation services to assist small-scale entrepreneurs to assess their needs, decide on the appropriate institution to direct their request to, and then to actually assist them in the actual applications and provision of the necessary supporting documentation.

This review of existing structural arrangements also highlights the fact that, if any of the institutions engaged in small-scale industrial assistance are not functioning particularly effectively, or in accordance with current Government plans and priorities, a formidable array of Ministerial powers already exists in the legislation and the practice of government to enable Ministers to tighten their control of institutions within their portfolio, to guide them towards more effective action, and to require better accountability for their programmes.

The review also highlights the potential role of district councils as prime movers in small-scale industrial development, and points to the need for a coordinated programme to raise awareness among district councils themselves of this potential role, and to devise policies and programmes for implementing effective small-scale industrial development by district councils.

There is also a need for serious consideration to be given to the issue of the status of the VIS - whether its current status as a non-governmental organisation gives it valuable capacities and ways of operating which are worth preserving? or whether, as a major actor in small-scale industrial development, with significant Government support, it ought to be made more publicly accountable, and placed on a statutory basis, as are all the other small-scale industrial development institutions.

Finally, if the Ministry of Commerce is to occupy a pivotal position in small-scale industrial development, it is clear that it could greatly enhance its standing among small-scale entrepreneurs themselves by implementing procedures and/or establishing a mechanism to facilitate

1. approval for applications for incentives by registered small-scale enterprises, and
2. granting of incentives to registered village enterprises.

Both these powers rest with the Minister under the SID Act, but without some form of technical assistance, it is doubtful that the Minister will be able to act expeditiously.

PART III: REGULATION OF SMALL-SCALE INDUSTRY

i) Prerequisites for access to incentives: licensing and registration

For a small-scale enterprise to gain access to the incentives offered under the small-scale industrial development legislation (see Part I), and to operate within the bounds of legality, certain requirements must be met.

a) Registration of business name

If a small-scale enterprise intends to carry on business under a business name which does not consist of the true surnames of each of the individual partners, plus their christian names or initials if desired, then that enterprise must be registered under the Registration of Business Names Act, CAP 687 (No. 29 of 1931). The Registrar of Business Names must be furnished with particulars of the business name, the nature of the business, and the principal place of the business, using standard application forms.

b) Trades licensing

A small-scale enterprise must obtain a trades licence, if it is to operate legally and become eligible for registration with SIDO and, thus, gain access to the incentives offered under the SID Act. (section 18). The Trades Licensing Act CAP 707 (No. 41 of 1968) provides that no person shall sell goods by way of business unless she/he is the holder of a licence issued under the Act, and in accordance with the terms of such a licence.

1. Grounds for refusal to issue licence

The Act sets out certain general principles relating to the issue of licences. A licensing authority has a discretion to refuse to issue a licence if it is satisfied that the applicant is under the apparent age of 21; or that the issue of such a licence is likely to cause nuisance or annoyance to people occupying premises or residing in the neighbourhood of the business premises; or that the business premises do not conform to the requirements of the law; or that the issue of a licence would conflict with any approved or proposed town planning scheme or zoning area; or that the issue of such a licence would operate against the public interest. The licensing authority may issue a licence subject to such terms and conditions as it deems fit.

2. Types of licence available

Various types of licence, attracting various levels of fees for their issue, are available under the Trades Licensing Act. A trading 'retail' licence authorises the licensee to carry on business as a retailer, at specified premises, of certain specified goods or classes of goods. A stall licence authorises a person to sell specified goods from a stall in a specified market. A hawker's licence is for those itinerant traders with no fixed place of business who go about from place to place selling goods which they carry with them in any vehicle other than a tricycle, a bicycle or a handcart. (No hawker may sell goods within half a mile of any licensed store or stall, or from any shop, booth, tent or stall, under the Hawker's Licences Regulations, Government Notice No. 104 of 1958). A pedlar's licence is for those who operate as a hawker does, but who do use a tricycle, bicycle or handcart, or carry their goods on their person. There is also a trading (wholesale) licence, and a commercial traveller's licence. A commercial traveller is defined as a person who travels from place to place within Zambia for the purpose of soliciting or receiving orders for the supply of goods, provided that any person who merely solicits or receives orders on behalf of a licensed wholesaler is not deemed to be a commercial traveller as long as he works only within 15 miles of the wholesaler's premises. A manufacturer's licence is issued to businesses turning raw materials into finished goods.

A licence is renewable annually. The licensing authority is the appropriate local authority and each licensing authority must maintain a register of licences available for public inspection.

3. Village enterprises exempt

Village enterprises, as distinguished from small-scale enterprises, are exempt from the provisions of the Trades Licensing Act under the SID Act but only if they are registered with SIDO as an approved village enterprise. (section 22).

4. Need to satisfy public health and factories legislation

District Councils, carrying out their functions as licensing authorities, have made the duties imposed on them by the Public Health Act, CAP 535 (No. 12 of 1930) and the Factories Act, CAP 514 (No. 2 of 1966) into an integral part of the licensing system. As noted above, they may refuse a licence if the business does not conform to the requirements of the law.

The Public Health Act makes it a duty for every local authority to take all lawful, necessary, reasonable and practicable measures to prevent the occurrence or deal with the outbreak or prevalence of any infectious, communicable or preventable disease, and to safeguard and promote public health. Local authorities consequently have responsibility for the construction of buildings in their areas and detailed plans are required by them and detailed conditions are set out in the Act for carrying out all construction activities. Under the Act, any factory or trade premises not kept clean and free of offensive smells or not ventilated properly or over-crowded or badly lit constitutes a nuisance. Under subsidiary legislation, the Public Health (Drainage and Latrine) Regulations, Government Notice No. 1 of 1932, a local authority may require the construction of drainage or latrine facilities by the owner of a building. And under the Public Health (Control of Habitation in Factories, Workshops and Trade Premises) Regulations, Government Notice No. 275 of 1952, no person is to use any such premises for residential or sleeping purposes, except with written permission from the local authority.

The Factories Act applies to any premises in which people are employed in manual labour in any process for or incidental to the manufacture, assembly, alteration, repair, ornamentation, finishing, cleaning, washing, breaking up or demolition, or the adaptation for sale of any article for trade or purposes of gain. Premises are not excluded from the definition of a factory by reason only that they are open-air premises. A register of factories is to be maintained by the Commissioner and any person occupying a factory is supposed to register it. The Act includes detailed provisions relating to cleanliness, overcrowding, ventilation, lighting, sanitary conveniences and safety (especially relating to machinery, dangerous substances and fire precautions). There are also welfare provisions relating to the supply of drinking water, washing facilities, facilities for sitting and first aid. Specific provisions relate to the lifting of excessive weights and the notification of accidents. No building is to be erected or converted for use as a factory and no extensions are to be made to existing factories except in accordance with plan drawings approved by the Commissioner.

There is also subsidiary legislation, including the Factories (Electricity) Regulations, Statutory Instrument No. 254 of 1967, which provides specific safety standards for any undertaking where electrical energy is used; and the First Aid Boxes Regulations, Statutory Instrument No. 251 of 1967, which sets out in detail the required contents of first aid boxes. (For example, factories with under ten employees are required to have on hand 14 items, including a rubber bandage or tourniquet, safety pins and at least 12 assorted wound dressings.)

c) Need to apply for certificate of incentives

A small-scale or village enterprise registered with SIDO becomes eligible for the incentives offered under the Investment Act. In order to obtain them it must apply to the Investment Committee for a certificate of incentives. The Investment Act specifically provides (section 25 (2)) that simpler forms or procedures of application than those used by large or foreign enterprises may be prescribed for the benefit of small-scale or village enterprises.

d) Summary of procedures

To operate legally and obtain access to current incentives for small-scale industrial development, a small-scale or village enterprise must:

- i) register its business name, if it has one
- ii) obtain a trades licence, if it is a small-scale enterprise (and thereby satisfy the requirements of the public health and factories legislation)
- iii) register with SIDO
- iv) obtain a certificate of incentives under the Investment Act.

It should be noted that this does, in fact, amount to procedural improvement, as prior to the Investment Act, productive small-scale and village enterprises were required by law to also obtain a manufacturing licence from the Ministry of Commerce and Industry. They are no longer required to do this by virtue of section 2(c) of the Investment Act which provides that:

"Nothing in this Act shall apply to

(c) a small-scale enterprise or village enterprise registered under the provisions of the Small Industries Development Act, 1981, except as specifically provided ...".

Part VI of the Act, which deals with the registration of manufacturers, does not make any specific provision for small-scale or village enterprises.

e) Commentary

The present licensing and registration procedure is nonetheless quite complex and requires considerable facility with bureaucratic procedures to complete successfully. Some small-scale enterprises may be able to deal satisfactorily with the requirements. But Small Enterprises Promotions Limited's experience, even with enterprises sufficiently developed to meet SEP's equity participation requirements, has been that obtaining all the necessary licences and registrations is complicated and time-consuming. They therefore take it upon themselves to ensure that all the requirements are met. "We are certain, they say, "that our doing so does not deprive the SSEs of any meaningful experiences." (SEP, 1984: 1).

It is certainly clear that village enterprises, whether in the rural or peri-urban areas, need assistance in completing the licensing and registration procedures. Of a sample of 156 small informal enterprises in Lusaka, only 19 (12.2%) had even the most rudimentary office stationery (e.g. pens, paper, envelopes) on hand at the time of the interview. Eighty seven per cent of the sample had never written a business letter (Turner, 1985: 15). Of the 156 interviewees, only 23 (14.7%) had the appropriate licence. Of the remainder, 49 (31.4%) believed that they did not need a licence to operate their business; 15 (9.6%) said they were able to operate easily without a licence; 11 (7.1%) believed that the licence fees were too high; 9 (5.8%) said that the process of getting a licence was too complicated; 4 had registered with institutions such as SIDO or VIS and did not believe that any other kind of licence was necessary; and the remainder did not know or would not say why their business was unlicensed. (Turner, 1985: 16).

This would seem to indicate a need for at least an advisory service to assist small-scale enterprises to complete the licensing and registration procedures successfully; and for a "mediation service" which would actually carry out the process for village enterprises. The service could also act as an advocate of the advantages of registration, thus bringing many more enterprises into the development picture.

It is also clear that there is a need for an effort to continue streamlining the licensing and registration process, a task begun in the Investment Act, with the exemption of registered small-scale and village enterprises from the need to obtain a manufacturing licence from the Ministry. Precise draft legislative proposals to achieve such streamlining have already been put forward by the Law Development Commission (LDC). (See LDC, undated: 48-54). The same proposals have also been put before the Minister, as a result of the Workshop on Legal Constraints for small-scale enterprises in Zambia, held in Lusaka in September 1984.

However, apparently no progress has been made in moving towards legislation. The Law Development Commission proposals, for example, have yet to be placed before the Commissioners for their consideration, an essential prerequisite before they can be submitted to the Prime Minister's office which originally requested them. It is therefore clear that it is necessary for some assistance to be provided to prioritise these proposals, perhaps in the form of technical assistance to the Ministry, which could both facilitate their consideration internally, and act as an advocate to get action at the Law Development Commission.

Finally, it is clear that there needs to be some short-term and long-term consideration given to the issue of the extent to which the current factories and public health legislation, which form an integral part of the licensing process, are appropriate or useful in current Zambian conditions.

In the Lusaka small-scale industry survey, 37.8% of the sample conducted their business in the open-air, without a shelter or any kind. 31.4% did own a shelter, but in most cases these were very simple structures, at their most sophisticated consisting of concrete-block walls with an asbestos roof. Another sizeable group (23.1%), mainly those operating in markets, rented the shelter (stand) from which they carried on their business. (Turner, 1985: 7). As we have already seen, very few of these enterprises were properly licensed. However, these enterprises currently existing on the margins need to be brought within the mainstream of small-scale industrial development, if Government policy objectives are to succeed in practice. It is not enough merely to promote new, untried enterprises, while ignoring the opportunity to develop existing ones which have already demonstrated a measure of viability, longevity and creativity. Ways therefore have to be devised of bringing these existing enterprises within the ambit of legality, access to incentives, and development, thereby enhancing their income - and employment - generation potential. Already, the exemption of village enterprises from the trades licensing legislation has "eaten away" at the blanket application of the law and opened up development opportunities for these businesses. However, it would be better if this issue were considered comprehensively, in all its ramifications, and not piecemeal, by way of exemptions, perhaps not on very clear grounds, for more and different classes of industry. As a short-term measure, the licensing authorities could be brought together in a series of dual-purpose workshops. These could educate and train them in Government's policy priorities towards small-scale industry, and discuss and formulate appropriate approaches for the annual licensing exercise; and also draw ideas from those directly involved in the field on which the longer-term process of revising and updating this legislation (both Acts are colonial legacies) could be based.



Technical assistance for the training and discussion workshops, and inputs to facilitate them, would be appropriate. For the longer-term project, assistance could take the form of technical expertise from similar legal jurisdictions, to work with nationals in a major law revision exercise, perhaps based in the Law Development Commission.

ii) LOCATION OF THE BUSINESS

Legislation regulating urban land use and land holding has an effect on the location and legality of small-scale business operations.

a) Town and country planning legislation

The Town and Country Planning Act, CAP 475 (No. 232 of 1961) appoints the Northern, Southern and Eastern Province planning authorities to cover those areas, and appoints local authorities as planning authorities in the City of Lusaka, City of Kitwe, City of Ndola and the Municipalities of Chingola, Kabwe, Livingston, Luanshya and Mifulira. The planning authorities may be required to prepare development plans for their areas, designating certain areas for specific purposes, such as residential and industrial. The objectives of such a development plan are summarised in the Second Schedule to the Act: 'Every development and regional plan shall have for its general purpose orderly, co-ordinated, harmonious and progressive development of the area to which it relates in order most effectively to promote health, safety, order, amenity, convenience and general welfare of all its inhabitants, as well as efficiency and economy in the process of development and the improvement of communications.' (emphasis added) A development plan may define any area that the planning authority thinks should be developed or re-developed as a whole - this may be for the purposes of dealing satisfactorily with bad layout or obsolete development, or for providing for the relocation of population or industry ... etc.

All future developments in an area must comply with the zoning requirements set down in a development plan, once it has been approved. Prior permission must be gained from the planning authority by anyone wanting to develop an area. Development is defined as 'the carrying out of any building, rebuilding, or other works or operations on or under land, or the making of any material changes in the use of land or buildings with certain listed exceptions'. (emphasis added) A 'material change' is not defined, but the Act indicates that it does include moving from one category of use (e.g. residential) to another (e.g. commercial).

It is, therefore, under this Act that the sale of goods from homes can be prevented, as an inappropriate form of activity in a residential area. It is this Act which embodies the practice of land use zoning as the appropriate objective of urban planning in Zambia. Small-scale manufacturing activity of any kind, for example, is not permissible in a residential area.

b) Legislation for high-density residential areas

As much current informal sector small-scale manufacturing takes place in high-density housing areas, the Housing (Statutory and Improvement Areas) Act, CAP 441 (No. 30 of 1974), which provides for the control and improvement of housing in areas designated by the Minister as statutory housing or improvement areas (which numerous high-density areas now are) is also of importance.

Every building erected and every improvement made on land to which the Act applies has to be in accordance with specifications approved by the National Housing Authority, or by the Council in whose jurisdiction the land is situated. In improvement areas the Council may, with the Minister's approval, make charges for services and levy rates. Part of this service charge is for water, usually provided at taps shared by a number of houses. Under the Act the Council is entitled where one or more of the occupants is in default or arrears on their water charges for at least three months to discontinue the water supply to the part of the improvement area in which the building of the occupant is situated.

An occupant may also, under the Act, occupy premises as a residence for himself and his 'immediate' family only, and use his best endeavours to expel any trespasser, and not take in any other occupant without the consent of the Council.

The Act also provides that occupants must ensure that no damage is caused to premises which must be kept clean and clear of litter and in a 'continuous state of good repair'.

In both statutory housing and improvement areas land cannot be transferred, transmitted, mortgaged, charged or otherwise dealt with except in accordance with the provisions of the Act. It is possible for the Council which has jurisdiction over an area to issue a Council certificate of title, where land is transferred in the prescribed manner, and in a prescribed fee is paid. In improvement areas, the Council may issue an occupancy licence in respect of a piece of land, so long as no more than one occupancy licence is issued to any one person. Unless a person holds such an occupancy licence, they may not build, use, let, sell, create lien or security or in any way deal with any dwelling or building erected on any piece of land. An occupancy licence is valid for not more than 30 years. Every occupancy licence has to be registered in the prescribed manner: its holder has such rights and obligations in respect of the piece of land and licensor may, with three months' notice, revoke an occupancy licence on the grounds that the licensee has committed a breach of or has failed to comply with any of the conditions of the licence, or that the licensee has refused to pay the prescribed fee.

The provisions of this Act, in the current context of small-scale industrial development, contribute to the insecurity of small-scale manufacturers. The fragility of their conditions of land tenure serves to discourage any sense of permanence, or interest in investment in the enterprise, or in the improvement or expansion of the manufacturing premises.

c) Powers of district councils

The Local Administration Act, No. 15 of 1980, inter alia, defines the functions of local authorities, in schedule 1 to the Act, which covers four pages of small print. These functions include: to prohibit and control the development and use of land and buildings and the erection of buildings in the interests of public health, public safety, and the proper and orderly development of the area of the Council; to control the demolition and removal of buildings and to require the alteration, demolition and removal of buildings which do not conform to plans and specifications in respect thereof approved by the Council, or are a danger to public health or safety; and to prohibit and control the carrying on of offensive, unhealthy and dangerous trades.

d) Marketing laws

The legality of the location of a small-scale enterprise is also affected by legislation regulating the selling of goods.

The Markets Act, CAP 473 (No. 21 of 1937), provides for the establishment and regulation of markets, by the Minister or a local authority (now the relevant District Council), and under the control of the latter - which is empowered to make by-laws regulating their management and use.

The Local Authority Market Regulations, Statutory Instruments No. 215 of 1968 and 146 of 1969, subsidiary legislation passed under the Markets Act, establish the 'goods' which it is permissible to sell in a market: they are those defined in the parent Act as foodstuffs, livestock and other agricultural and natural products, the growth and produce of Zambia, or articles of handicraft made or sold by or on behalf of the same person (not being a body corporate or partnership) of which not less than 75 per centum in content or value of the materials used shall have been grown or produced in Zambia.

Clearly, there is already some confusion about how this definition of 'goods' that may be sold in a market should be applied in practice. Otherwise, it is difficult to see how, for example, welders, tailors using synthetic materials, watch or radio repairers, or small grocery retailers, could be found in any market at all.

The Regulations also establish that no person may sell any goods as defined in the Markets Act in any public place within a two-mile radius of any market, unless they have a trade licence.

Other kinds of goods, wares or merchandise (i.e those falling outside the Markets Act definition of goods, but inside the Trades Licensing Act definition) may not be sold anywhere, by way of business, without the seller being in possession of the appropriate trade licence. And under the Hawker's Licences Regulations, Government Notice No. 104 of 1958, no hawker may sell goods within half a mile of any licenced store or stall.

All this, however, is complex and confusing, difficult for the police, public and sellers alike to interpret and apply. For example, while the Small Industries Development Act exempts 'village enterprises' from the operation of the Trades Licensing Act, it does NOT exempt them from the Markets Act and its subsidiary legislation. This would mean that any registered village enterprise in a 'semi-urban area', while eligible for development incentives, would be constrained insofar as actually selling its products was concerned, if they fell within the Markets Act definition of "goods." Instead of being 'exempt' from the Trades Licensing Act, such a small industry operator would, in fact, require a licence to sell his/her goods within a two-mile radius of a market.

e) Commentary

The legality of the location of a small business is important because many existing enterprises are illegal, and therefore outside the ambit of development measures, because they contravene the law. There is a need to devise ways of both maintaining civic standards and generating small-scale industrial growth. The Law Development Commission has proposed (LDC, undated: 44-45) that productive informal sector activities which are not harmful, unhealthy or dangerous should be permitted in residential areas, for example. It is suggested that the workshops proposed in relation to (i) above would also be appropriate fora for the discussion of this issue. Practical and agreed policies for immediate application could be arrived at relating to appropriate standards, the demolition or alteration of structures, and appropriate land use zoning practices. These discussions could feed into the longer-term project for more comprehensive law reform proposed at (i) above, which could be expanded to include the town planning, housing and local authority legislation. The Markets Act would need to be included in the exercise to streamline licensing and registration procedures proposed at (i) above.

In addition, it is suggested that inputs to facilitate policy dialogue on the question of the location and form of future small-scale industrial development could be provided. This dialogue could take place at a national workshop to discuss the industrial estate concept, private industrial estate initiatives, and the existing locations of small-scale enterprise. The objective would be to devise a national policy, for implementation by all the institutions and agencies concerned with small-scale industrial development, and which would take account of the differing needs of rural and urban enterprises, small-scale and village enterprises, and different industries. (e.g. the needs of cobblers are very different from those of welders).

It would be essential that this policy discussion and formulation forum included significant participation by district councils and ZESCO (the Zambia Electricity Supply Corporation). The Lusaka small-scale industry survey revealed that 141 of those interviewed (90.4%) used only manual tools. Yet 50 of that 141 knew how to use some electrical equipment. And 22 of that 50 said that they did not use electrically operated tools because they had no electricity supply.

Eighty-seven of the 156 interviewees said that water was required in their production process. But of that 87, 48 had no water supply of their own. They had to carry their water from either a communal tap (41), a communal borehole (4), or a stream or similar "informal" source of supply (3). (Turner, 1985:7) One argument advanced in favour of the industrial estates concept is that it will assist small-scale industrial development by giving enterprises easy access to water and electricity. But unless an industrial estate provided water to each enterprise, it would not represent a significant advance over existing conditions - and there are indications that some of the "industrial estates" provided by SEP, VIS or SIDO have/will have only a communal water supply. And this supply will be paid for on a communal basis, with no regard to differences in consumption (e.g batik-making requires enormous quantities of water, as does jewellery production - but tailoring needs almost none at all).

It may also emerge, if ZESCO is involved in such discussions, that it has plans to electrify various areas, which would mean that electricity supply would come directly to some existing enterprises. This might be a more cost-effective way of providing this service than relocating such businesses in an "industrial estate" somewhere else, particularly as the consequent benefits to entire communities would be enormous.

It might even prove more cost-effective to integrate ZESCO (electricity supply) and district councils (water supply) into this whole aspect of small-scale industrial development, channelling donor inputs to them rather than to industrial estate development projects.

iii) ORGANISATION OF THE BUSINESS

There are four modes of organisation open to a small-scale enterprise under existing legislation:

- sole proprietorship
- partnership
- company formation
- cooperative society formation

a) Sole proprietorship

Sole proprietors do not have to fulfill any special legal requirement, except for the registration of their business name, in certain circumstances.

b) Partnership

The Partnership Act of 1890 provides for the formation of a partnership, which is defined as an association of persons carrying on a business in common with a view to making a profit. This form of association can be oral or in writing and, sometimes, it can be implied from conduct. Any partnership, nevertheless, is subject to certain uniform rules which have been laid down in the Partnership Act. An example of these rules is that every partner is entitled to take part in the management of the partnership affairs unless the partnership agreement provides otherwise. A partnership is an unincorporated association which does not enjoy the benefits of incorporation.

c) Company formation

The Companies Act, CAP 686, provides that any two or more persons may form a company for any lawful purpose; and any company so formed enjoys all the benefits of incorporation including limited liability, perpetual succession and power to own property. A company must be formed in a particular way by taking formal steps such as filing certain documents with the Registrar of Companies. The Act, however, does not give the Registrar any discretion over incorporation of companies once the provisions of the Act in relation to the filing of the memorandum of association, filling in of specified forms, and payment of stamp duty have been complied with. The Registrar may only refuse to incorporate a company if it is not formed for a lawful purpose or if it proposes to be incorporated under a name that is misleading or undesirable.

On application to register a company, it is not necessary to state precisely the situation of the company's registered office. What is required is simply to state that "the registered office shall be situated in Zambia." But on commencement of business or any time within 14 days of incorporation, a company is required to furnish the Registrar with a residential address at which the company can be found or contacted. This address is not necessarily that of the place at which the company carries on business: it could even be the residential address of one of the shareholders or the registered office of the lawyer who promoted the company. The significance of this for small industries, most of which are not operated at fixed business premises, is that they can easily fit within the requirements of the Companies Act.

The Companies Act does not place any restrictions on the minimum capital, or other conditions, which must be met by a private company before it begins business. A private company can therefore begin with very little capital, which would be the case with most small-scale and all village enterprises.

Company formation has well-known benefits such as limiting liability, making access to credit easier, and lessening tax liabilities.

d) Cooperative society formation

The Co-operative Societies Act provides yet another mode of organisation for small industries. This Act provides for the formation of a co-operative society which, like a company, is a corporate body and enjoys all the attributes of incorporation. It is formed in a particular way by taking certain formal steps. A co-operative society is defined as an organisation which has as its primary object the promotion of the economic interests of its members in accordance with cooperative principles. Additional objects, such as cultural objectives or the general welfare of the members may, however, also be pursued. The Act requires that at least ten persons (or two cooperative societies) may form a co-operative society. The Act also imposes a duty on the Minister and the Registrar of Co-operative Societies to assist co-operators in terms of finance and co-operative education.

A co-operative society is much easier and cheaper to form than a company, especially with the assistance of the Registrar of Co-operative Societies. A co-operative society also allows for the participation of more people since one of the principles of co-operation is open and voluntary membership.

To this end, no one person can own more than one-fifth of the share capital of a co-operative society. A private company, on the other hand, restricts membership through the prohibition of share offers to the general public. The Minister can also guarantee loans secured by co-operative societies from commercial banks.

The above factors make a co-operative society an attractive form of association for running small industries. Nonetheless, this form of business organisation cannot facilitate some kinds of cooperatives, especially those requiring skills not necessarily possessed by many people, namely, manufacturing skills. This problem could be overcome if the Co-operative Societies Act allowed less than ten persons to form a co-operative society.

e) Hire purchase legislation

There is one other piece of existing legislation which could be construed as aiming to assist in the operation, although not the foundation, of a business enterprise.

The Hire Purchase Act, No. 16 of 1969, regulates hire purchase agreements and certain instalment sales. Generally, it does not apply to agreements under which the purchase price exceeds K3000. This is a detailed and conventional piece of legislation which includes no provision for the recovery of goods (in case of default on payment) except through court action. Perhaps for that reason, combined with its onerous written requirements, it has not been popular, although the recovery of debts is one of the major problems faced by small-scale manufacturers in Zambia and one might have expected them to welcome an opportunity to regularise their financial transactions with their customers.

f) Commentary

There is, therefore, an adequate range of existing modes of organisation for small-scale industries.

The fact that small industries can be operated in four different ways raises the question as to what can be achieved by each of these four ways. Companies and partnerships, for instance, have been denounced as instruments for capitalism, while cooperative societies have been described as associations for the poor, and sole proprietorship as a symbol for self-reliance. It can therefore be contended that whatever the Government wishes to achieve through the development of small industries will largely be influenced by the mode of organisation chosen for any particular small industry. Since no particular mode has been prescribed, it cannot be discounted that small manufacturing industry development in current conditions may achieve the opposite of declared government policy objectives - capitalist, profit-oriented expansion, rather than co-operative, employment-generating economic growth.



It is suggested that it is necessary, therefore, for a policy dialogue to be instituted at national level on this issue, involving at least the Ministry of Finance and National Commission for Development Planning, the Ministry of Commerce and Industry, the Department of Cooperatives, the various other institutions involved in small-scale industrial development (SEP, SIDO, VIS) and the Ministry of Legal Affairs.

An advisory and mediation service could be provided to small-scale and village enterprises, to advise and assist them in forming the most advantageous type of business for their numbers and the activity they are engaged in. This could be provided via an extension service located in the Ministry, or via institutions such as SIDO and VIS.

The need for such a service is emphasised by the experience of SEP who report (SEP, 1984:2) that the legal profession renders exorbitant charges for company formation. In 1984, costs had been as high as K1000 for drawing up the memorandum and articles of association, and registering the company. SEP argue that "it is not really the law which imposes such heavy costs but its administration". Technical assistance in the form of an extension team of legally-trained nationals could overcome this problem currently faced by small-scale industry.

The requisite change in the Cooperative Societies Act could be promoted, with the Ministry of Commerce and Industry taking an advocacy role, so that producer cooperatives could be given more emphasis, and the numbers in a manufacturing cooperative permitted to be less than ten.

Finally, the Law Development Commission could be assigned the specific task of overhauling the hire purchase legislation, to make it, *inter alia*, a vehicle for assisting small scale entrepreneurs with the formidable task of regulating sales on credit. It has been suggested (Rebeling; 1987: 81) that the Minister should exempt small-scale enterprises from Part III of the Act, which he calls "very unfavourable" to them. This part covers financial provisions relating to agreements and provides, *inter alia*, that:

25% of the purchase price will be the initial payment made, and that the period for payment is 18 months.

Unfortunately, by virtue of section 28 of the Act, it will not be possible for the Minister to merely exempt small-scale industry. That section provides that:

"The Minister may, by statutory notice, order that any agreement ... entered into by any body corporate established directly by a law of Zambia ... shall be exempted from any of the provisions of this Act."

This does not provide, therefore, for blanket exemptions, and it would be necessary to work out some other formula.

iv) EMPLOYEE PROTECTION

There are a number of enactments relating to wages and conditions for employees. As well, many of the provisions of the Public Health Act and the Factories Act are designed to protect and promote the well-being of employees. (noted above, section (i), Licensing and Registration).

a) Regulation of conditions of employment

The Employment Act, CAP 512 (No. 57 of 1965), provides, inter alia, for the general regulation of contracts of service. No person under 14 may be employed, and for those aged 14-16 any contract of service is deemed to be a daily one. The Act establishes minimum paid holiday allowances, requirements about the provision of housing and rent allowances, medical attention to employees, the need for an adequate water supply at the place of work and various detailed requirements relating to wages.

The Minimum Wages and Conditions of Employment Act, No. 25 of 1982, empowers the Minister, if he is of the opinion that no adequate provision exists for the effective regulation of minimum wages or conditions for any group of workers, to prescribe minimum wages and conditions by statutory order. Employers whose workers are the subject of such an order are required by the Act to maintain records of wages, allowances and benefits paid to workers. The Act also empowers the Labour Commissioner to secure observance of any order made under the Act.

The Employment of Women, Young Persons and Children Act, CAP 505 (No. 10 of 1933), applies to all children under 14, all young people between the ages of 14 and 18, and all females. No child may be employed in any industrial undertaking except one in which only members of the same family are employed. An 'Industrial undertaking' includes all industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished. It does not, however, include agricultural or commercial undertakings. Nor is any young person under 16 to be employed in an industrial undertaking, except one in which only members of the same family are employed, unless the young person is either employed under a contract of apprenticeship entered into under the Apprenticeship Act or in possession of a certificate signed by a Labour Officer authorising such employment. There is a general prohibition on night work for women.

b) Regulation of apprenticeship

The Apprenticeship Act, CAP 511 (No. 36 of 1964), regulates the employment of apprentices in designated trades including bricklaying, carpentry, masonry, motor vehicle mechanics, panel beating, radio mechanics or servicing, sheet metal working, welding and woodworking (machinists). No minor (i.e. person under 21) may be employed in any of these trades for more than six months, except as an apprentice, unless the Controller gives permission. The minimum age for becoming an apprentice is 15. The required period of apprenticeship is five years, although a one-year remission may be earned if a test taken in the fourth year is passed. All contracts of apprenticeship must be registered. No apprenticeship contract is binding unless it has been completed in the prescribed written form, signed by the employer and the apprentice (or his/her guardian in the case of a minor) and registered by the Controller. The Act also includes powers enabling the transfer of apprenticeship contracts, the suspension of apprenticeships, and their rescission. The first schedule to the Apprenticeship (Contract) Regulations, Statutory Instrument 311 of 1965, establishes minimum educational qualifications for apprentices. Examples are: a bricklayer's apprentice must have passed Grade 7 with an average rating of C; so must an apprentice to a panel beater, welder or carpenter. An apprentice motor vehicle mechanic or a radio mechanic must have passed Form II, with four passes including English and mathematics.

Under the Apprenticeship Regulations, Statutory Instrument No. 288 of 1965, employers are required to keep comprehensive records on their apprentices, including making quarterly reports to the Controller on the work performed, and the manner in which it has been done.

The employer is required to provide for his apprentices 'suitable and sufficient' training in every aspect of the requisite trade. At specified intervals an inspector assesses the practical progress of every apprentice. There are also various provisions relating to minimum wages, leave entitlements, maximum hours of work and supplementary educational courses.

c) Welfare provision

Finally, there is the welfare provision of the Zambia National Provident Fund Act, CAP 513 (No. 1 of 1966) providing for the administration of such a Fund, and the payment of contributions into and benefits out of the Fund. All employees of 18 or over and all apprentices are eligible. Every employer must register under the Act in the prescribed manner, and must notify the Secretary of all his/her employees. The employer has to pay statutory contributions into the Fund in respect of each employee, at specified periods. (There is special provision for casual employees.) The employee's share of the statutory contribution may be deducted from his/her wages by the employer. Benefits are paid at 45 (to those retired from employment) or at 50. They are also payable on permanent emigration from Zambia, and to members of the family on death or disability (mental or physical) which renders a person unemployable. Monthly returns and contributions are supposed to be made by the employer.

d) Commentary

The point raised by these enactments, considered collectively, is that has been no comprehensive attempt to consider the law relating to the conditions of employment in Zambia since the very early years of independence. Consequently, the existing provisions are entirely directed towards conditions of formal employment and apply to very few people in Zambia. Meanwhile, all those employed in the 'informal' sector, including those in small-scale manufacturing, receive no protection at all. (Unless the occasional prosecution or denial of a licence, resulting in the loss of their job because the enterprise closes, can be considered 'protection'.) Thus, there is a kind of 'informal duality' in conditions of employment, with those in formal employment enjoying increasingly good provision, and those outside formal employment enjoying none at all.

From the point of view of formulating policy for the future, this formidable gap has to be addressed. Perhaps the solution is to devise new forms of socialist employment, in cooperatives and collectives or perhaps the solution is to recognise the present duality and, without in any sense accepting it as unchangeable, to introduce standards more appropriate to the current scale and level of small-scale manufacturing, which nonetheless provide some protection for employees in this sector, and the beginnings of a more socially-responsible approach by employers. It has to be remembered that one major aim of encouraging the growth of small-scale enterprises is to create employment - thus, the law should, perhaps, seek to strike a balance between providing necessary protection for employees, on the one hand, and setting realistic standards for enterprises to achieve in current economic circumstances, on the other. At present, the operators of many small-scale enterprises are concerned only to avoid all contact with 'authority' and the law. They want to remain in the 'informal' sector, outside the ambit of officialdom. This means that not only do employees remain unprotected, but there is no expansion of employment either, as these kinds of businesses are likely to remain very small, under-developed, and even vestigial.

The forum for national policy dialogue on appropriate forms for the organisation of small-scale industry, suggested in section (iii) above, could be expanded to include specific discussion of the implication for employment generation and employee protection. The Ministry of Labour and Social Services would also be included, if that were the case, together with the trade unions, the Industrial Participatory Democracy, and the employer's organisations.

Growing out of that forum, there could be a major law reform project, directed towards a comprehensive review of legislation relating to conditions of employment in Zambia. This project could be based in the Law Development Commission, but with technical assistance seconded both from othersimilar jurisdictions, and from national institutions such as other sections of Government and the University of Zambia. This project would also include special consideration of the need to encourage apprenticeship training in small-scale industry. The aim would be to devise legislation which would promote expansion of apprentice employment and training.

An ILO/SATEP survey in Lusaka and Kitwe revealed that only 28 per cent of employment in manufacturing, repair and construction activities was accounted for by apprentices and unpaid family workers, mostly the latter. The reason identified for the low utilisation of apprentice labour in Zambia was the absence of a system to adequately reward the trainer, while at the same time taking care of the trainee's interests and needs. In some African countries, notably in West Africa, up to 60 per cent of informal sector employment is accounted for by apprentices. Regular wages are not usually paid and, in West Africa, apprentices often pay entrance and exit fees. The suggestion for expanding this form of employment in Zambia put forward by the ILO/SATEP team was for a public subsidy to the forms of training in the informal sector. It was pointed out that it was unfair to make the informal sector bear all the costs of training, especially in view of the heavy subsidisation of formal training.\* (It should also be remembered that, under the Small Industries Development Act, provision is made for the deduction from income tax of expenses incurred in providing training - perhaps this suggests the beginnings of a possible new approach to the concept of apprenticeship training, especially as, with positive incentives to register, many more small-scale enterprises will fall within the ambit of the income tax legislation and authorities.)

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\* This paragraph is based on a paper presented at the ILO/SATEP seminar on Prospects for Growth and Employment in the Urban Informal Sector in Zambia, held in Lusaka, November 3-4, 1981: Youth Employment Prospects in the Informal Sector - The need and scope for apprenticeship training, by George Aryee.

v) PROTECTION OF THE PUBLIC

a) The Legislation

Again, many of the provisions of the Public Health and the Factories Act are aimed at maintaining product quality control and thereby protecting the general public.

Similarly, the provisions of the Hire Purchase Act are largely designed to protect the buying public.

In addition, there are two enactments specifically designed to protect the general public.

The Control of Goods Act, CAP 381 (No. 41 of 1966), enables the President to provide by regulation for the control of the distribution, disposal, purchase and sale, and the wholesale and retail prices of any manufactured or unmanufactured commodity and for the control of imports into and exports from Zambia. Subsidiary legislation passed under this Act includes various price control statutory instruments, especially relating to foodstuffs, clothing and footwear, household items, and furniture. There is also the Control of Goods (Display of Prices) Order, Statutory Instrument No. 239 of 1967, which requires any retail dealer of, say, clothing, footwear, or household articles to display their prices clearly in the prescribed manner. Under the Control of Goods Form of Invoices Order, Statutory Instrument No. 237 of 1967, any retailer of controlled goods must provide an invoice if requested by the purchaser at the time of sale.

The Standardisation of Soap Act, CAP 695 (No. 24 of 1957), is an act to regulate and control the manufacture of soap. It defines 'soap' and sets out a 'schedule' of ingredients for various kinds of soap. Anyone who contravenes the provisions of the Act is guilty of an offence. (This Act is noted for purposes of comprehensiveness, and also because it is probable that any cooperatives or small-scale entrepreneurs engaged in the manufacture of soap are contravening the provisions of this enactment.)

b) Commentary

This section reveals only that there is no real consumer protection legislation relating to the quality of manufactured goods in Zambia. It would eventually be useful (although probably outside the scope of this project) to have a report by the Law Development Commission on the possible form that consumer protection legislation in Zambia could take. Such legislation would need to take into account the policy objective of promoting income and employment generation through small-scale industrial development, while at the same time ensuring that public health and safety are protected, and product quality of all manufacturers and retailers (including small-scale enterprises) enhanced.

## RECOMMENDATIONS

### i) Introduction

The recommendations arising from this review of the law relating to small-scale industry fall into three broad initial categories:

- a) measures which could be implemented immediately, utilising powers conferred by existing legislation;
- b) measures which would require some legislative change, but only in the form of a gazetted statutory instrument promulgated by a Minister, and not in the form of an amendment to an existing Act, or the formulation of a new Act;
- c) measures which would require substantial legal change either
  1. to amend existing legislation, or
  2. to review an entire area of the law and make proposals for comprehensive reform.

The proposed measures, therefore, range from the immediate to the long-term.

The recommendations address themselves to more than merely removing legal constraints or impediments to vigorous small-scale industrial development. They also address the broader issue of improving the existing legislation which is supposed to facilitate small-scale industrial development; as well as the issue of improving the coordination and implementation of the existing legislation, so that it will be a more effective tool of development.

However, the issue of removing legal constraints on small-scale industrial development remains an important one, and the recommendations suggest review and reform of existing laws designed to govern the operation of businesses, especially manufacturing businesses.

It is possible to contend that reform of detailed regulatory legislation is unnecessary, as existing small-scale enterprises clearly manage to operate even with all the detailed laws relating to health, town planning and conditions of employment still in place.

However, even if it proved possible to entice much of this existing small-scale industry to register and therefore enter the "development fold", without any reform of the existing regulatory legislation, by offering the "carrot" of assistance and incentives, a problem would still manifest itself as soon as some developmental objectives were realised and the businesses began to grow and prosper. Instead of being small, backyard enterprises in hidden locations, they would become larger enterprises, with employees, in visible public locations. In fact, the overall objectives of the small-scale industrial development policy (employment - and income-generation) will only be achieved if this kind of transformation takes place on a wide scale. And, as well as promoting the transformation of existing enterprises, the policy aims at creating entirely new enterprise.

Such a transformation and proliferation of productive activities would inevitably draw the attention of the existing authorities concerned with harmonious social, economic and physical development - public health and factories inspectorates, and planning and labour authorities, for example. That, therefore, is why it is necessary to review the existing laws and make comprehensive proposals for reform. It is not enough that some small units presently manage to survive in spite of the law. It is necessary that the regulatory law is moulded, instead, to accommodate and promote the development, expansion and prosperity of the small-scale industrial sector. The law should not only provide forms of assistance to small-scale businesses, it should also regulate their growth along benign and socially-acceptable, as well as economically viable, lines. For example, any small-scale or village enterprise registered under the Small Industries Development Act loses its eligibility for incentives if it contravenes any written law (such as, for example, existing public health legislation). And if the existing authorities, anxious to regulate a burgeoning sector of the economy, then began to apply the existing laws with any rigour, the result would be a severe setback to small-scale industrial development, and perhaps even the undermining of the policy.

ii) Recommendations which can be implemented under existing legislation

a) National policy formulation and coordination

1. that support be provided to the Ministry of Commerce and Industry to assist it to convene a national policy forum to discuss the future direction of small-scale industrial development; that this forum should include participants from all the institutions and agencies currently and potentially involved; and that the forum should include discussion of appropriate measures, formulation of a plan of implementation, and identification of the appropriate implementing agency/agencies;
2. that the necessary support be provided to establish a Standing Inter-Ministerial Committee for the Coordination of small-scale Industrial Development;



3. that technical assistance and financial support be provided to set up a series of discussion workshops for district council personnel, with the objective of informing district councils on Government policy priorities regarding small-scale industrial development, on the potential role of councils, and on the forms of assistance available;
- b) Financing
1. that training be provided for officers (perhaps based in SIDO, perhaps in a Ministry of Commerce and Industry extension unit) who would be able to advise small-scale entrepreneurs on the kinds of financial assistance available; and even provide a mediation service, helping with the presentation of loan applications to the DBZ Small Industries Fund, or the commercial banks (utilising the BOZ Credit Guarantee Scheme);
  2. that support be provided to the DBZ to enable them to expedite consideration of the influx of loan applications which would result;
- c) Improvement of delivery systems
1. that technical assistance be provided to strengthen SIDO's capacity to deliver all the different kinds of assistance to small-scale industry that it is legislatively empowered to provide (including, for example, market research, extension, management and consultancy services, and investment promotion);
  2. that technical assistance and financial support be provided to set up a series of discussion and training workshops for district council and other appropriate personnel to formulate a practical and uniform approach to licensing of small-scale businesses, approaches which would both promote public health, employment conditions and environmental standards, and also more vigorous small-scale industrial growth;
  3. that the necessary support be provided to enable the Ministry of Commerce and Industry to establish a liaison office to work with district councils in small-scale industrial development;
  4. that support be provided to enable an advisory and mediation unit to be established, to assist small-scale entrepreneurs with the licensing and registration process;

5. that support be provided to enable the establishment in the Ministry of Commerce and Industry of a team of legally-trained nationals, to advise small-scale entrepreneurs on the best form of organisation for their kind of enterprise, and to draw up partnership agreements, cooperative rules, or company memoranda and articles of association, as appropriate;
  6. that the necessary support be provided to introduce a mechanism or procedure in the Ministry of Commerce and Industry to expedite the granting of incentives to registered small-scale and village enterprises;
- d) Improvement of monitoring of existing small-scale industrial development institutions
1. that the Minister of Commerce and Industry be encouraged to take measures to achieve the proper administration and functioning of SIDO, including the delineation of the roles and responsibilities of the Chairman and the Director; the taking of a more prominent role in policy formulation and administrative supervision by the SIDO Board; and the formation of Committees to carry out certain Board functions;
  2. that the Minister be encouraged to exercise carefully all his existing powers under the Small Industries Development Act, including his power to
    - monitor and, on occasion, make appointments to the Board
    - require specific information in SIDO's annual report
    - require SIDO to maintain publicly-accessible registers of small-scale and village enterprises.
- iii) Recommendations which require promulgation of a statutory instrument
1. that the Minister of Decentralisation be encouraged to redefine, by statutory order, the role and responsibilities of the District Commercial and Industrial Secretary, to include a significant responsibility for small-scale industrial development at district level.

iv) Recommendations requiring a review process and/or legislative change

1. that the Minister of Commerce and Industry be encouraged to establish a body to investigate the issue of the status of the VIS, and whether or not it would be more appropriate to establish VIS as a statutory body; and, if the latter, to expedite the necessary legislation;
2. that the necessary support be provided to enable the Ministry of Commerce and Industry to establish a working group to formulate special incentives for small-scale industry, and to draw up the necessary amendment to the Investment Act (a suggested draft amendment is contained in Appendix I; Appendix II lists incentives lost when the Investment Act repealed and replaced the Industrial Development Act);
3. that the necessary support be provided to enable the Ministry of Commerce and Industry to establish a working group to formulate proposals to streamline the licensing and registration process for small-scale and village enterprises (a draft amendment to the SID Act is set out in Appendix II); and to enable the Ministry to advocate the priority of these, and other recommendations for legal change, with the Law Development Commission, Cabinet office, and the Ministry of Legal Affairs;
4. that the necessary support be provided to enable the Ministry of Finance to establish, as a matter of urgency, a working group to consider whether or not the current legislative provision for short-term finance for small-scale industry is adequate and, if not, to propose appropriate amendments to the existing law;
5. that assistance be provided to enable the appropriate institution (perhaps the Law Development Commission) to institute a review of the law relating to public health, factories standards, and land use, with the objective of arriving at proposals to reform these laws in such a way as to facilitate vigorous small-scale industrial development along socially-desirable lines;
6. that the Minister of Commerce and Industry be encouraged to advocate a Law Development Commission project to suggest reforms in the current legislation regulating hire purchase agreements, to enable such legislation to be utilised by small-scale businesses;

7. that the necessary support be provided to enable the Ministry of Labour and Social Services to initiate a comprehensive review of all legislation relating to conditions of employment, paying particular attention to the issues of
  - accommodating small-scale industry while meeting international obligations
  - expanding apprenticeship employment
  - encouraging employment expansion generally
  - addressing current gap between provision for the few in formal employment, and the complete lack, in practice, of provision for those outside formal employment;
8. that the Minister of Commerce and Industry be encouraged to establish a working group to consolidate existing and suggest new consumer protection legislation which will allow small-scale industry to develop, while protecting public health and safety.

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## Appendix I

### Recommendations for Amendments to the Small Industries Development Act Number 18 of 1981

These recommendations arose from the Workshop on Legal Constraints for Small-Scale Enterprises in Zambia, held at Mulungushi Hall from September 10-12, 1984. They were presented to the Minister of Commerce and Industry early in 1985. Identical recommendations are also contained in the draft report by the Law Development Commission on the Productive Informal Sector. (with one small difference, probably inadvertent: The Ministry of Commerce and Industry has been omitted from the composition of the proposed Licensing Committee - LDC, undated: 54).

These recommendations deal with the issues of licensing and registration, and of incentives.

#### 1. BACKGROUND

Given the unduly lengthy and complicated administrative procedures for granting the requisite licences to intending small-scale entrepreneurs, and in view of the existing legal constraints hampering accelerated development of small-scale manufacturing activities, this memorandum will propose measures to overcome these hindrances.

It will therefore propose measures to spell out the criteria for the registration of small-scale enterprises, to overcome unnecessary delays in the licensing procedure, and to facilitate the availability of realistic incentives for small-scale enterprises. It is proposed that these improvements can be achieved by way of amendments to sections 2, 18 and 19 of the SMALL INDUSTRIES DEVELOPMENT ACT NO. 18 of 1981, and by introduction into that Act of a new section relating to licensing procedures.

Although the SID Act contains criteria which a village enterprise must meet before it can be registered, and although medium and large scale enterprises must also satisfy certain criteria before they may qualify for the incentives offered under the INDUSTRIAL DEVELOPMENT ACT, the SID Act contains only one criteria which a small-scale enterprise must satisfy before it qualifies for registration with SIDO and enjoyment of the benefits of such registration. That criterion is that the small-scale enterprise must conform with the requirements of the TRADES LICENSING ACT.

This criterion seems inappropriate. In the case of a manufacturing small-scale enterprise, for example, it means that it must obtain a manufacturer's licence (issued by the District Council) before it can be registered by SIDO. But in order to obtain that manufacturer's licence, it must first obtain a manufacturing licence (issued by the Ministry of Commerce and Industry) and secure business premises which are to the satisfaction of the District Council. Yet one of the forms of assistance which many small-scale enterprises anticipate receiving from SIDO is assistance in securing business premises in the first place.

If SIDO cannot register a small-scale enterprise until it already has business premises fitted up to the satisfaction of the licensing authorities, then one of SIDO's most valuable forms of assistance to small-scale industry will be rendered mainly to enterprises prior to their becoming eligible even to register with SIDO. This defeats one of the objects of the SID Act, which is to encourage all small-scale enterprises to register with SIDO and thus facilitate orderly development of the small-scale industrial sector.

It is therefore proposed that the requirement for compliance with the TRADES LICENSING ACT prior to registration with SIDO should be dropped, and that SIDO registration should depend on other criteria.

It is also clear, from the above explanation, that the present licensing procedures are unduly lengthy and complicated for small-scale entrepreneurs. A small-scale manufacturing enterprise, for example, requires different licences, issued by separate authorities, each with its own procedures.

It is therefore proposed that the present system of licensing should be rationalised and centralised in respect of those small-scale enterprises registered with SIDO. It is proposed that a LICENSING COMMITTEE should be established under the auspices of SIDO and composed of representatives of all those concerned with the issuing of licences.

This COMMITTEE would facilitate expeditious decision-making regarding the issue of the requisite licences to small-scale enterprises, while at the same time safeguarding the interests of the various licensing authorities in the maintenance of proper standards by small-scale enterprises.

Finally, the present SID Act contains no specific incentives for small-scale industry. Instead, the incentives available are merely those contained in the INDUSTRIAL DEVELOPMENT ACT NO. 18 of 1977 which were devised with the needs of quite a different sector - medium and large scale industry - in mind. Proposals are therefore advanced for the incorporation into the SID Act itself of incentives specifically devised to encourage small-scale industrial development.

## 2. PROPOSALS

### 2.1 REGISTRATION CRITERIA

It is proposed that specific criteria be introduced into the SMALL INDUSTRIES DEVELOPMENT ACT NO. 18 OF 1981 and used to assess applications for registration as a small-scale enterprise with SIDO.

It is proposed that these criteria should be:

- the potential of the proposed or existing enterprise to meet development priorities as established from time to time in the National Development Plan, e.g. the utilisation of domestic raw materials and the creation of employment;
- the economic viability of the project and the suitability of the entrepreneur involved;
- an upper limit of K350,000 capital assets of the enterprise excluding land and buildings, or such other amount as may be set by the Minister of Commerce and Industry from time to time.

It is also proposed that if a small-scale enterprise is refused registration, the ground for SIDO's refusal should be clearly spelt out, particularly in order to enable the Minister to determine appeals fairly.

### 2.2 LICENSING PROCEDURE

It is proposed that a new LICENSING COMMITTEE should be set up by the Small Industries Development Organisation (SIDO), with membership drawn from SIDO itself, the Ministry of Commerce and Industry, Small Scale Enterprises Promotion Limited (SEP), the Division of Provincial and Local Government, the Bank of Zambia, the Inspectorate of Factories, and the Inspectorate of Public Health.



This COMMITTEE would be responsible for considering all licensing applications by small-scale enterprises registered with SIDO. This new administrative procedure would considerably speed up the current lengthy licensing process, by ensuring that only one body made up of representatives of those institutions identified above need look at each application and come to a decision whether or not the respective licences ought to be issued.

### 2.3 INCENTIVES

It is proposed that the following specific incentives be introduced into the SMALL INDUSTRIES DEVELOPMENT ACT NO. 18 OF 1981 and made available to small-scale enterprises upon registration with SIDO:

- preferential treatment with respect to Government and parastatal purchasing e.g the Government Stores Purchase Programme and purchases by the Ministry of Works and Supply;

preferential treatment also includes exemption from registration fees, security deposits, and free supply of tender forms, etc.;

- preferential treatment with respect to the granting and processing of import licences, i.e. the extension of the current Bank of Zambia scheme for allocation of foreign exchange to small-scale enterprises recommended by SIDO and the Ministry of Commerce and Industry;
- rebate on excise and customs duty and relief from sales tax on capital equipment and locally produced intermediate goods;
- favourable adjustment to export tariff rates for small-scale enterprises which are also exporting enterprises;
- relief from income tax for a period of five years after which income tax shall be levied at 50% of corporate tax;
- in order to encourage reinvestment in the enterprise, enhanced capital and investment allowances after the tax holiday period, as follows:

#### Capital allowances

- a) industrial building: wear and tear at 30% (currently 5%) on written down value each year;
- b) plant, machinery and equipment: wear and tear at 50% (currently 30%) on the written down value each year;

Investment allowances

- a) industrial building: 50% on cost in the first two years of ownership (currently 20%) in the first year only);
- b) plant, machinery and equipment: 50% on cost in the first two years of ownership.

These proposed changes could be introduced by way of appropriate amendments to sections 2, 18 and 19 of the SMALL INDUSTRIES DEVELOPMENT ACT NO. 18 of 1981 as suggested in the Draft Amendments.

3 DRAFT AMENDMENTS

3.1 PROPOSED AMENDMENT TO SECTION 2 (DEFINITION)

'Small scale enterprise' is an enterprise in respect of which SIDO is satisfied that it:

- a) is meeting or has the potential to meet development priorities as established from time to time in the National Development Plan;
- b) uses local raw materials as far as practicable;
- c) uses labour intensive processes as far as is practicable; and
- d) has capital assets not exceeding three hundred and fifty thousand kwacha excluding land and buildings, or such other amount as may be set by the Minister from time to time.

3.2 PROPOSED AMENDMENT TO SECTION 18 (REGISTRATION PROCEDURES AND CRITERIA)

- s. 18 (1) An enterprise shall be registered as a small-scale enterprise if it is approved in writing by SIDO as a small-scale enterprise.
- (2) Application for registration under this Part may be made to SIDO and shall be in the prescribed form.
- (3) In assessing applications for registration, SIDO shall have regard for the following criteria:

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- (a) that the enterprise in question satisfies the definition of a small-scale enterprise as set out in section 2 of this Act;
- (b) that the enterprise in question, or the proposed enterprise, is economically viable;
- (c) that the entrepreneur/s involved in the enterprise or the proposed enterprise is/are appropriate person(s) to be engaged in the type of business concerned;
- (4) SIDO shall give in writing reasons for its decision in the event of a decision to refuse to register an enterprise as a small-scale enterprise.
- (5) An appeal against refusal to register any small-scale enterprise may be made to the Minister in the manner prescribed, and the decision of the Minister shall be final.

3.3 PROPOSED AMENDMENT TO SECTION 19 (INCENTIVES)

- s. 19 (1) Any small-scale enterprise registered under the provisions of this Part may apply in the prescribed manner for any of the following incentives:
- (a) preferential treatment with respect to Government and parastatal purchasing;
  - (b) preferential treatment with respect to the granting and processing of import licences;
  - (c) rebate on excise and customs duty and relief from sales tax on capital equipment and locally produced intermediate goods;
  - (d) favourable adjustment to export tariff rates for small-scale enterprises which are also exporting enterprises;
  - (e) in order to encourage reinvestment in the enterprise, enhanced capital and investment allowances after the tax holiday period is ended, as follows:

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(i) capital allowances

- industrial building: wear and tear at 30% on written down value each year;
- plant, machinery and equipment: wear and tear at 50% on written down value each year;

(ii) investment allowances

- industrial buildings: 50% on cost in the first two years of ownership;
- plant, machinery and equipment: 50% on cost in the first two years of ownership.

3.4 PROPOSED NEW SECTION (LICENSING COMMITTEE)

A Committee shall be established for the purpose of assessing applications for licences by small-scale enterprises registered with SIDO composed of representatives from the following institutions:

- Small Industries Development Organisation  
(chair)
- The Ministry of Commerce and Industry
- Small Scale Enterprises Promotion Limited
- The Division of Provincial and Local Government
- The Bank of Zambia
- The Inspectorate of Factories, and
- The Inspectorate of Public Health

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Appendix II

Comparison of incentives under the Investment Act, No. 5 of  
1986 and the repealed Industrial Development Act, No. 18 of  
1977

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Investment Act (current)

INCENTIVES

for all holders of certificate of incentives (including SSEs)

- reduction from taxable income of 50% of Zambian salaries, for 5 years (unless salary more than 5 times minimum wage)
- full exemption from dividends tax for 5 years
- exemption from selective employment tax for 3 years
- reduction from taxable income of 50% on expenses incurred in approved training programmes for Zambian employees, or approved research and development for technology or product adaptation, or substitution of local for imported input.

for exporters

- retention of percentage of foreign exchange earnings and use as determined by Minister
- income tax relief
- access to export promotion fund, if any
- access to free trade zones, if any
- relief from tax and duty on imported inputs to produce export goods
- tax relief for export promotion and foreign market prospectation exercises

Industrial Development Act (repealed)

INCENTIVES

for priority enterprises (including SSEs)

- preferential treatment with respect to Government purchasing
- preferential treatment in granting and processing of import licences
- rebate on customs duty payable on capital equipment, raw materials and other intermediate goods
- relief from sales tax on those items
- relief from selective employment tax
- relief from income tax

for exporting enterprises (including SSEs)

- preferential treatment in granting and processing of import licences
- relief from tax/customs duty payable on importation of machinery to manufacture export goods
- favourable adjustment to export tariff rates
- relief from import tariffs on raw materials
- relief from income tax

for agriculturalists

- income tax relief
- selective employment tax relief
- access to preferential borrowing
- other facilities as declared by Government
- one-third prevailing tax rate for first 5 years
- one half for next 5 year
- two-thirds for next 5 years

for rural enterprises (including SSEs)

- eligibility to apply for DBZ loans
- eligibility to purchase/rent factories, offices in rural areas constructed by RUCOM, DBZ or other approved agency
- use of RUCOM's marketing and extension services
- use of RUCOM, DBZ or other govt. advisory services for project feasibility studies, accountancy, technology, marketing, choice of projects.

for enterprises utilising foreign investments (including SSEs)

- right to remit foreign capital invested, on cessation of business
- right to apply to remit profits and dividends (annually)
- right to remit any remittable profit reinvested in Zambia on cessation of business
- immunity from nationalisation (unless highest public interest requires)

for training and research (including SSEs)

- tax relief for expenses in training  
Zambians, or providing training  
facilities
- preferential treatment in processing of  
employment permits for expats hired to  
do training
- tax rebate on research by recognised  
research institution

for small-scale and village enterprises

- eligible for all above incentives if  
registered with SIDO

for small-scale and village enterprises

- tax rebate in first 5 years
- one-half prevailing tax rate in  
second 5 years

LIST OF LEGISLATION REVIEWED OR CITED

1. Small Industries Development Act, No. 18 of 1981
2. Investment Act, No. 5 of 1986
3. Income Tax Act, CAP 668
4. Industrial Development Act, CAP 674  
(No. 18 of 1977) - repealed by Investment Act 1986
5. Management Services Board Act, No. 8 of 1981
6. Development Bank of Zambia Act, CAP 712 (No. 35 of 1972)
7. Development Bank of Zambia  
(Amendment) Act, No. 29 of 1982
8. Bank of Zambia Act, No. 25 of 1985
9. Statutory Functions Act, CAP 3 (No. 43 of 1970)
10. Interpretation and General Provisions Act, CAP 2
11. Constitution of Zambia, CAP 1
12. Local Administration Act, No. 15 of 1980
13. Registration of Business Names Act, CAP 687 (No. 29 of 1931)
14. Trades Licensing Act, CAP 707 (No. 41 of 1968)
15. Hawkers Licences Regulations, Government Notice No. 104 of 1958
16. Public Health Act, CAP 535 (No. 12 of 1930)
17. Factories Act, CAP 514 (No. 2 of 1966)
18. Public Health (Drainage and Latrine) Regulations, Government  
Notice No. 1 of 1932
19. Public Health (Control of Habitation in Factories, Workshops  
and Trade Premises) Regulations, Government Notice No. 275 of  
1952
20. Factories (Electricity) Regulations, Statutory Instrument No. 254  
of 1967
21. First Aid Boxes Regulations, Statutory Instrument No. 251  
of 1967



22. Town and Country Planning Act, CAP 475 (No. 232 of 1961)
23. Housing (Statutory and Improvement Areas) Act, CAP 441 (No. 30 of 1974)
24. Markets Act, CAP 473 (No. 21 of 1937)
25. Local Authority Market Regulations Statutory Instruments Nos. 215 of 1968 and No. 146 of 1969
26. Partnership Act of 1980
27. Companies Act, CAP 686
28. Cooperative Societies Act, CAP 689
29. Hire Purchase Act, CAP 691 (No. 16 of 1969)
30. Employment Act, CAP 512 (No. 57 of 1965)
31. Minimum Wages and Conditions of Employment Act, No. 25 of 1982
32. Employment of Women, Young Persons and Children Act, CAP 505 (No. 10 of 1933)
33. Apprenticeship Act, CAP 511 (No. 36 of 1964)
34. Apprenticeship (Contract) Regulations, Statutory Instrument No. 311 of 1965
35. Apprenticeship Regulations, Statutory Instrument No. 288 of 1965
36. Zambia National Provident Fund Act, CAP 513 (No. 1 of 1966)
37. Control of Goods Act, CAP 381 (No. 41 of 1966)
38. Standardisation of Soap Act, CAP 695 (No. 24 of 1957)
39. Societies Act, CAP 105