



Government of the Republic of Trinidad and Tobago

**Ministry of Trade and Industry**

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# *Special Economic Zones Bill*

***THE SENATE***

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SPEAKING NOTES  
SENATOR THE HONOURABLE PAULA GOPEE-SCOON  
MINISTER OF TRADE AND INDUSTRY

NOVEMBER 30<sup>TH</sup>, 2021

Thank you Madam President.

I beg to move that a Bill to establish the SPECIAL ECONOMIC ZONES BILL, be now read a second time.

Madam President, as I proceed to pilot the **SPECIAL ECONOMIC ZONES BILL**, permit me the opportunity to provide a brief background to, justification for and benefits of this proposed new regime, which represents a transformational shift in how economic spaces will now be governed and developed in Trinidad and Tobago.

## INTRODUCTION

Madam President, the Bill that is before the Senate today is intended to replace the existing Free Zone legislation and create a new SEZ Regime for Trinidad and Tobago. This is a progressive and necessary move by the Government to not only modernize and create a more internationally competitive and attractive investment climate, but also to allow us to meet our international tax obligations.

### *TT's Current Free Zones regime*

Madam President, Trinidad and Tobago's current Free Zones Programme was established in 1988 (**more than three decades ago**) and designed to attract export-oriented, non-energy activities. The 1988 Free Zones Act enabled the creation of the Trinidad and Tobago Free Zones Company Limited (TTFZCO) which currently regulates all free zones and free zone enterprises.

Over the years, the MTI has reviewed the quality and effectiveness of Investment Promotion and the Free Zones Regime in Trinidad and Tobago.

Our Technical Review has shown that Trinidad and Tobago's existing free zones have played an insufficient role in growing and diversifying the economy because of the following reasons:

- **an ineffective policy framework** – the development, promotion and management of free zones in Trinidad and Tobago are not driven by an overarching policy or strategy, which would provide a clear road map to guide medium- and long-term plans to build the capacity of zones and attract foreign and domestic investment;
- **a weak legal and regulatory framework** – the overall legal and regulatory framework for Free Zones is fragmented, weak and does not support a modern regime;
- **a weak institutional framework** – approvals through the TTFZCO can be cumbersome and there is very little expertise in the development and management of modern SEZs; and
- **poor performance by existing zones** – the single multi-tenant site and limited factory free zones reflect poorly on the ability to attract new, dynamic investments.

**The reality is Madam President, after 32 years, there are only 15 companies under the existing Free Zones Regime.**

***Global Perspective***

Madam President, you will appreciate that the needs of the local, regional and global economies have significantly changed since the 1980s. Consequently, many countries have had to develop and implement structural reforms to achieve sustained and inclusive growth in a more competitive and globalized world. This imperative was recently underscored by the International Monetary Fund in its concluding statement following its 2021 Article IV Mission to Trinidad and Tobago.

Madam President, there exists a wide variety of economic zones across the globe, from basic free zones focused on facilitating trade logistics, which are common in developed countries, to integrated zones, aimed at industrial development or developing innovation capabilities, which are common in developing countries. According to UNCTAD's 2019 World Investment Report, there are nearly 5,400 zones across 147 economies, up from 4,000 five years ago. This growth, according to the Report, is "part of a new wave of industrial policies and a response to increasing competition for internationally mobile investment".

**Compliance with International Tax Standards**

Madam President, it is important to consider the provisions of this Bill in the context of multilateral developments in the Global Taxation System. The Base Erosion and Profit Shifting (BEPS) initiative was endorsed by G20 leaders in 2013 and aims to provide governments with clear international solutions for fighting loopholes in the current global tax system. Currently, 141 countries and jurisdictions are members of the BEPS Inclusive Framework.

In October 2017, Trinidad and Tobago became a Member of the BEPS Inclusive Framework. All jurisdictions that are members of the BEPS Inclusive Framework are subject to a peer review of their implementation of their international commitments, which is undertaken by the Forum on Harmful Tax Practices (FHTP) of the OECD.

There are four minimum BEPS standards and Action 5 is the standard that is **most relevant to this Bill**. Since the beginning of the BEPS Action 5 peer reviews, the Forum on Harmful Tax Practices (FHTP) has reviewed over 300 preferential regimes to ensure that there are no harmful features associated with the activities they are intended to attract. As a result, virtually all harmful preferential regimes have been amended or abolished.

To determine a country's compliance with Action 5, the FHTP considers the following main factors:

- a) *The regime imposes no or low effective tax rates* on income from geographically mobile financial and other service activities;
- b) *The regime is ring-fenced from the domestic economy* (i.e. taxpayers benefiting from the regime are treated in a more beneficial way than similar transactions with associated enterprises in the domestic market or if enterprises which benefit from the regime are explicitly or implicitly prohibited from operating in the domestic market);
- c) *The regime lacks transparency* (for example, the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure); and
- d) There is *no effective exchange of information* with respect to the regime

Madam President, in the last global review by the FHTP in April 2021, Trinidad and Tobago and Tobago's Free Zone Regime was classified as "Harmful." This was primarily due to issues related to (i) ring fencing; and (ii) the absence of an effective exchange of information framework.

### *Evolution of New Special Economic Zones Regime*

In 2015, when the People's National Movement took the reins of Government, it was a priority to transform Trinidad and Tobago through a fundamentally new, modern economic regime.

The Ministry of Trade and Industry developed a Special Economic Zones Policy for Trinidad and Tobago in March 2017. This Policy sought to create a modern and innovative framework upon which Trinidad and Tobago could transform its investment climate. In July 2017, an information session was held with the local private sector on the SEZ Policy.

In October 2017, when Trinidad and Tobago joined the BEPS Inclusive Framework, the Government proactively pursued the following actions to bring our economic zones regime in compliance with international standards:

- (i) with effect from 01 January 2019, no new entrants were permitted into the Free Zone regime (i.e. Trinidad & Tobago kept the Free Zones regime administratively closed off in practice and no new entities were allowed into the regime);
- (ii) A Revised SEZ Policy was approved by Cabinet in July 2019; and
- (iii) Over the period 2019-2021, Draft SEZ Legislation was prepared with stakeholder consultation, taking into consideration regional and international best practice.

### **Revised SEZ Policy-2019**

To ensure coherence with the OECD/BEPS Framework, Cabinet in July 2019 approved a Revised Special Economic Zones Policy for Trinidad and Tobago, as well as the Incentive Framework for Enterprises in Designated Zones. This new Policy served as the foundation upon which this 2021 Bill was built upon, with the goal of attracting foreign investment and stimulating domestic investment, whilst remaining internationally compliant and competitive.

Madam President, modern Special Economic Zones require a solid regulatory framework, strong institutions, good governance and a legal infrastructure that is transparent and predictable. Some of the key national legislation and practices that were reviewed by Trinidad and Tobago included those in Jamaica, the Dominican Republic, Costa Rica, and South Africa.

The new SEZ regime takes into account the varying types of activities and locations of zones and the need for varying levels and types of incentives (fiscal and non-fiscal) to encourage interest and investment.

### **Objectives of the SEZ Regime**

Madam President, the main objectives of the SEZ Regime, as outlined in the 2019 Revised SEZ Policy, are:

- i) to expand the country's revenue base;
- ii) to increase and diversify the investments and exports in economic zones;
- iii) to increase and enhance private sector participation in the economy through inter alia SEZ development and operations;
- iv) to integrate SEZ enterprises with national developmental objectives to facilitate economic development across all regions of the country; and
- v) to increase compliance of SEZ operations with local, regional and international standards and laws.

**Madam President, the SEZ Bill is quite substantial and includes:**

- **12 Parts;**
- **90 Clauses; and**
- **5 Schedules.**

This Bill provides for the designation, development, operation, and management of Special Economic Zones; for the establishment of the Special Economic Zones Authority; for the repeal of the Free Zones Act, Chap. 81:07; and for the regulation of Special Economic Zones.

Permit me now to explain the main provisions of the Bill.

## **THE SEZ BILL**

Madam President, the SEZ Bill comprises twelve Parts and five Schedules. I will now take you through the key aspects of the Bill.

Part I of the Bill is the usual Interpretation Section and makes Provision for the Act to come into operation on Proclamation by the President.

## **PART II - SPECIAL ECONOMIC ZONES AUTHORITY**

Madam President, **Part II** treats with the establishment of the Trinidad and Tobago Special Economic Zones Authority as well as its functions and powers.

### *Functions of the Authority*

The functions of the Authority are outlined in Clause 5 of the Bill and include:

- Reviewing and assessing applications for Operator Licences, SEZ Enterprise Licences and Single Zone Enterprise Licences;
- Regulating and supervising all Zones;
- Advising the Minister (*to whom responsibility for Industry is assigned*) on matters to support policy formulation relating to Zones; and
- Recommending to the Minister, the designation of Zones.

Importantly the Authority must:

- Review and assess the performance of all Zones and report to the Minister on the performance of all such Zones;
- Formulate standards and prescribe codes of practice to be observed by Operators, SEZ Enterprises or Single Zone Enterprises;
- Facilitate an enabling environment in areas designated as Special Economic Zones;
- In working with various stakeholders, ensure that the modern infrastructure required to attract foreign direct investment and stimulate domestic investment is developed; and
- Promote economic development in local communities and advance further diversification of the economy.

### *Responsibilities of the Authority*

Clause 5 (2) sets out the responsibilities of the Authority, which are not unique and are typical of most Authorities. These include the responsibilities for finances, contracting, procurement, human resources, service standards and performance targets, developing a code of conduct for employees, the operating plan, and budget and annual report of the Authority.

### *Powers of the Authority*

Madam President, in order to execute the functions, Clause 6 vests the Authority with certain powers. I want to bring a number of these powers to your attention. These include the power to:

- Issue guidelines and directions to Operators, SEZ Enterprises and Single Zone Enterprises in respect of the implementation of this legislation;
- Carry out investigations in relation to applicants and licensees in order to verify the accuracy of information in the application and the Authority can request further information and documents from the applicant where necessary; and

- To grant and set the terms and conditions of licences and to amend, vary, suspend or revoke licences.

**One of the functions outlined in Clause 5 is that the Authority must regulate and supervise Zones and this speaks to a compliance function for the Authority.** Accordingly, to carry out this compliance function, the Authority:

- Has been invested with the power to inspect licensees and Zones in order to monitor and ensure compliance with this legislation and compliance of licensees with the terms and conditions of their licences;
- Has the ability to take enforcement actions for non-compliance;
- Can take enforcement measures in the event of any non-compliance with, or breach of, this Act or the terms and conditions of a licence’;
- Has the power to establish and maintain registers required under this legislation; and
- Lastly, in terms of powers I would note that the Authority is invested with such other powers as are necessary or expedient for the performance of its functions.

### **PART III - BOARD OF MANAGEMENT OF THE AUTHORITY**

Madam President, **Part III** treats with the establishment of the Board, the responsibilities, resignation, removal, absence and disclosure of interests of its members; committees, immunity, meetings and quorum.

#### *Establishment and composition of the Board*

Clause 7 (1) establishes the Board which will manage the Authority.

- **Madam President, this Board will be comprised of eleven members.** I would note that during the development of the Bill, there was much discussion on the composition of this Board, as it the goal of this Government to ensure that the Board is invested with adequate expertise, technical capabilities and competencies to enable the Board to execute its crucial role in generating economic activity for this country.
- **Six members will be appointed by the Minister** based on their qualifications and at least seven years’ experience in finance, information technology, economics, business management, engineering, or accounting.
- **Two members will be Attorneys-at-Law** with at least seven years’ experience who shall be appointed by the Minister on the advice of the Judicial and Legal Service Commission.
- **The remaining three members** will be the Chief Executive Officer, ex officio of the Authority; a senior officer of the Town and Country Planning Division and a senior officer of the Inland Revenue Division.



### *Term of Members*

Madam President, I would note that in Clause 7 (4), it states that **in the case of the FIRST Board,**

- The Chairman, and three other members shall be appointed for a term of four years;
- The Deputy Chairman and two other members shall be appointed for a term of three years; and three members shall be appointed for a term of two years in order for there to be continuity.
- Also in Clause 7 (5), it states that appointments to **the Board subsequent to the first appointment** of the Board shall be for periods not exceeding four years and shall not exceed, whether consecutively or not, eight years in aggregate in respect of each member.

### *Responsibilities of the Board*

**We now turn to the responsibilities of this Board.**

Clause 8 (1) states that the Board shall:

- be responsible for carrying out the functions of the Authority specified in Clause 5 and shall provide general or specific directions to the Chief Executive Officer with respect to the functions of the Authority; and
- Have access to any information concerning an individual or other person, whether or not incorporated, which may be obtained by the Authority as a result of the functions of the Authority;

In Clause 8(2) it states the Minister may give to the Board such general policy directives in writing with respect to the carrying out of its functions under this Act as he considers necessary or expedient and the Board shall give effect to such directives.

Clause 9 treats with the resignation, removal and absence of members of the Board and these provisions mirror the typical provisions one would find captured in any recent legislation which treats with the establishment of Boards.

Clause 10 to 13 treats with provisions such as the disclosure of interest by members of the Board; Committees appointed by the Board; the immunity of Board members; the quorum and frequency of Board meetings. These provisions also mirror the typical provisions you will find in any recent legislation which treats with the establishment of Boards.

## **PART IV - STAFF OF THE AUTHORITY**

Madam President **Part IV** of the Bill treats with the staff of the Authority and includes clauses in respect of the appointment and functions of the Chief Executive Officer, employment of staff of the Authority, establishment of the pension fund and immunity of the Chief Executive Officer and staff. I will not delve into this in any detail, as these provisions are typical in the establishment of other relevant statutory authorities.

## **PART V - FINANCIAL PROVISIONS**

It is not necessary to go into any detail into **Part V** which deals with the normal Financial provisions required to be followed by any Authority including:

- The Funds and resources of the Authority;
- The Authority's power to borrow and invest;
- The Authority's mandate to keep proper accounts and records;
- The accounts of the Authority and audit of the accounts of the Authority by the Auditor General;
- Accountability of the Authority for annual reporting; and
- Exemption from taxes etc.

Madam President, I wish however to devote some time to **Parts VI** and **VII** of the Bill.

## **PART VI - DESIGNATION OF SPECIAL ECONOMIC ZONES**

**Part VI** includes clauses in respect of the designation of a Special Economic Zone and the types of Special Economic Zones.

### *Types of Special Economic Zones*

Clause 31 is to be read with Schedule 3 which sets out the various types of Special Economic Zones and the permitted economic activities which may be carried out in each Zone.

There are six **(6)** main types of SEZs envisaged under the Bill:

- **Free Port:** a duty free area (i.e. free from VAT and Import duties), located at a port of entry (air or sea) where imported goods may be unloaded for warehousing, repackaging or processing of imported goods for value-adding activities, and logistics services;
- **Free Trade Zone:** a duty free area that accommodates specific activities targeted for international trade;

- **Industrial Park:** A purpose-built industrial estate that leverages domestic and foreign fixed direct investment in value-added manufacturing industries and logistics and distribution;
- **Specialized Zone:** a place designated for specialized activities including: (i) manufacturing; (ii) maritime services; (iii) aviation services; (iv) fishing and fish processing; (v) agriculture and agro processing; (vi) information and communications technology; (vii) creative industries; (viii) financial services; (ix) medical tourism services; (x) renewable energy; (xi) logistics and distribution; and (xii) business process outsourcing;
- **Development Zone:** area where activities are focused on the development of a specific geographic region with emphasis on factors such as employment, skills training, entrepreneurship and rural development and overall social and economic development of the area. This arrangement will promote economic activity equitably in less developed communities.
- **Single Zone Enterprise:** will be restricted to one business entity engaged in any of the aforementioned activities:
  - (i) manufacturing; (ii) maritime services; (iii) aviation services; (iv) fishing and fish processing;
  - (v) agriculture and agro processing; (vi) information and communications technology; (vii) creative industries; (viii) financial services; (ix) medical tourism services; (x) renewable energy;
  - (xi) logistics and distribution; and (xii) business process outsourcing;

These activities are intimately linked to the existing and new economic sectors being targeted to further transform the domestic economy.

#### ***Designation of a Special Economic Zone***

Clause 30 (1), empowers the Minister, on the recommendation by the Authority to designate by Order, a geographical area as a Special Economic Zone. That Order will specify the type of Special Economic Zone that is designated.

Madam President, Subclauses 30 (3)(a) to (j) outline the various factors that must be taken into account, when considering the designation of a geographical area as a Special Economic Zone. These include:

- the intended size, topography, geographical limits and location of the proposed Special Economic Zone;
- whether the area is one that is identified as having growth potential in the Government's development plan;
- the existence of required off-site infrastructure, including roads, telecommunication and ports;
- the availability of land and unencumbered land titles;
- the proximity to resources, population centers and infrastructure;
- the infrastructure and other utility requirements including water, power, sewage, telecommunication, solid waste and waste water management;
- approvals of land uses and zoning requirements to facilitate the Special Economic Zones;

- environmental standards and requirements; and
- any other factors the Authority considers relevant.

## **PART VII - LICENSING PROVISIONS**

Madam President, next I will turn to the most crucial part of this legislation. **Part VII** treats with the Licensing Provisions for an Operator Licence; an SEZ Enterprise Licence; or a Single Zone Enterprise Licence. It covers the requirements, eligibility criteria and application process for these types of Licences and the duration, amendments or variation, renewal, suspension and surrender of same.

Madam President, during the development of this legislation, the Government held several discussions with the Organisation for Economic Co-operation and Development (OECD).

The key issues raised by the OECD include:

- the responsibility of persons and entities that will operate in these zones and be required to pay taxes; and
- the level of transparency in terms of the information and documentation an entity should provide in the application for a licence.

These issues, if addressed, will enable tax authorities in Trinidad and Tobago to determine whether such persons and entities are in compliance with their tax obligations. Further, the Authority in assessing an application for a licence, will consider whether an applicant meets a prescribed Economic Substance Test.

The Economic Substance Test shall be applied by the Authority to determine **whether the proposed operating expenditure, qualified full-time personnel and level and quality of investment of an applicant are adequate, necessary and relevant in relation to its proposed core income generating activities and the size and nature of its proposed operations.**

Madam President, apart from the SEZ Authority, the main actors under the new SEZ Regime will be:

- (i) ***Operators***
- (ii) ***Special Economic Zone Enterprises***
- (iii) ***Single Zone Enterprises***

Madam President, conceptually one can think of an Operator as similar to a commercial landlord. The Operator will establish a Zone and within this zone, SEZ Enterprises will establish their operations. The Single Zone Enterprise is unique because they operate as a single entity zone.

Madam President, it should be noted that this Part also treats with the requirements, eligibility criteria, application process, duration, amendments or variation, renewal, suspension and

surrender for an Operator License, the SEZ Enterprise License and Single Zone Enterprises License.

Madam President, Clause 32 empowers the Authority with the approval of the Minister, to issue 3 types of licences:

- (1) **an Operator Licence** – a person who is carrying on the business of managing a Special Economic Zone as an Operator is required to be the holder of a valid Operator Licence (**Clause 33**);
- (2) **an SEZ Enterprise Licence** - any enterprise which is to engage in any of the economic activities set out in Schedule 3 in a Special Economic Zone; is required to get this type of licence (**Clause 48**);
- (3) **a Single Zone Enterprise Licence** – any enterprise which is to engage in any of the economic activities set out in Schedule 3 in a Zone for which it also is responsible for managing and in which it is the only business in operation; is required to get this type of licence (**Clause 48**).

#### ***Who can apply for an Operator Licence?***

Madam President, it should be noted that **Clause 34** of the Bill provides that a public body, a private body, or a public body and a private body which have entered into a public-private partnership arrangement, may apply for an Operator Licence.

Clause 35 outlines the **application process** for an Operator Licence, while Clause 49 outlines the application process for an SEZ Enterprise Licence or Single Zone Enterprise Licence. In all 3 processes the applicant will be required to make an application to the Authority in the prescribed form and provide their name, address and contact information and a description of the proposed business activity. Clause 35 (1) (c) requires the applicant for an Operator Licence to provide a description of any premises at which the applicant proposes to carry out activities under the Operator Licence. This requirement does not appear in the application process for the SEZ Enterprise Licence or Single Zone Enterprises Licence.

Subclause 35 (2) (a) to (h) outline the **information and documentation** which the applicant must submit to the Authority for an Operator Licence while subclause 49 (2) (a) to (e) treats with the information and documentation which the applicant must submit to the Authority for an SEZ Enterprise Licence or Single Zone Enterprises Licence.

An applicant for any of the 3 Licences will be required to submit inter alia:

- a completed ANTI-MONEY LAUNDERING/COUNTER FINANCING OF TERRORISM/ PROLIFERATION FINANCING (AML/CFT/PF) risk assessment questionnaire;
- an Operation Plan; and
- such other documents as may be prescribed or required by the Authority.

#### ***Considerations of the Authority for the grant of an Operator Licence, an SEZ Enterprise Licence or Single Zone Enterprise Licence (Clauses 36 -51)***

Madam President, in assessing whether it should issue a Licence; the Authority must:

- take into account the nature of the proposed business activity;
- whether the applicant has complied with the Act or has previously failed to comply with this Act or has been in breach of the terms and conditions of a licence; and
- and such other matters as may be prescribed

***Grant and Notification of an Operator Licence, SEZ Enterprise Licence or a Single Zone Licence by the Authority (Clauses 37 & 51)***

Madam President, once the application process and assessment for the Operator Licence, SEZ Enterprise Licence or a Single Zone Licence is completed, the Authority is empowered with the approval of the Minister under Clauses 37, 51(1) and 51(2) respectively; to grant the relevant type of Licence if it is satisfied that the applicant has met the requirements of the Act and would be able to fulfil its obligations and be able to comply with the terms and conditions of type of Licence granted.

***Refusal to grant an Operator Licence, an SEZ Enterprise Licence or a Single Zone Enterprise Licence (Clauses 38 & 52)***

Madam President, it should be noted that that Authority can refuse to grant any of the 3 types of Licences. The particulars of the refusal process are the same for the 3 types of licences and are captured in Clause 38 for the Operator's Licence and in Clause 52 for the SEZ Enterprise and the Single Zone Enterprise Licence.

***Terms and conditions of the Operator Licence, an SEZ Enterprise Licence or a Single Zone Enterprise Licence***

Another important element of the licensing of Operators, SEZ Enterprises or a Single Zone Enterprises is the terms and conditions under which they must operate and it is to noted Madam President, that the provisions in the Bill which relate to the terms and conditions are the same for all 3 types of licences. Clause 39 treats with the Operator Licence and Clause 53 treats with the SEZ Enterprise or a Single Zone Enterprise Licence.

***Obligations of Operators (Clause 40)***

The Bill sets out the obligations of Operators as follows, to:

- manage the Zone specified in his Operator Licence in accordance with this Act and the terms and conditions of his Licence;
- facilitate the provision of infrastructure and other services in order to achieve the strategic and operational goals for the Zone;
- adequately demarcate within the Zone a customs territory and make suitable provision for the movement of conveyances (transport), vessels and goods entering or leaving the Zone or any customs territory within the Zone in accordance with the instructions of the Comptroller of Customs and Excise;
- provide adequate facilities and amenities in the Zone for occupational safety and health;

- adopt guidelines for SEZ Enterprises operating within the Zone in order to promote their safe and efficient operation; and
- in coordination with the Authority, promote the Zone as an investment opportunity.

***Annual submission of Operations Plan to the Authority by Operators***

A crucial element in the compliance obligations of Operators is the provision of information regarding their planned operations within the Zone. As a result in addition to the requirement to submit an Operations Plan at the application stage, an Operator is required as a matter of continuing compliance, to submit an Operations Plan on an annual basis to the Authority (**Clause 40 (2)**).

***Annual submission of Operations Plan to the Authority by the SEZ Enterprise or Single Zone Enterprise***

- Clause 54 requires an SEZ Enterprise or Single Zone Enterprise as a matter of continuing compliance, to submit an Operations Plan on an annual basis to the Authority.

***Reporting and compliance requirements by SEZ Enterprises and Single Zone Enterprises***

Clause 55 outlines the additional reporting and compliance requirements for SEZ Enterprises and Single Zone Enterprises. The SEZ Enterprise or Single Zone Enterprise are required to:

- report to the Authority at intervals that the Authority may determine; information relevant to the compliance with its Operations Plan, statistical data on its operations, and other information on its operations.
- submit to the Authority, the latest audited financial statements; and
- submit evidence that the SEZ Enterprise or Single Zone Enterprise is meeting the eligibility requirements set out in Schedule 4.

Madam President, a policy decision was taken that an Operator Licence shall be valid for such period not exceeding fifty (50) years, unless previously revoked or surrendered. This extended term is due to the need to recognize the significant investment which will be required by Operators and hence the need to give greater predictability to these persons.

Clause 56 states that unless previously revoked or surrendered, an SEZ Enterprise Licence or Single Zone Enterprise Licence shall be valid for such period not exceeding five (5) years as may be specified in the SEZ Enterprise Licence or Single Zone Enterprise Licence.

***Amendment, Variation or Renewal of a Licence***

It should be noted that the Bill also provides for the amendment, variation or renewal of a Licence.

Clause 58 of the Bill outlines the simple and straightforward steps for SEZ Enterprises and Single Zone Enterprises seeking the renewal of their licenses after the five years' period which *inter alia* include the submission of an application for same, at least three months before the expiration of a license. Where the

Authority is satisfied that an SEZ Enterprise or Single Zone Enterprise has been compliant with the provisions of the Act and the terms and conditions of his Licence, the License will be renewed.

### ***Enforcement Action by the Authority***

Clause 44 deals with enforcement action against an Operator, while Clause 59 outlines the enforcement action which can be taken by the Authority against the holder of a SEZ Enterprise Licence or Single Zone Enterprise licence. Clause 44 and 59 contain the same provisions with respect to enforcement actions. I will note some general points:

- The Authority, when it determines that a Licensee is not in compliance with this Act or the terms and conditions of his Licence, can:
  - Issue a Notice of Non-Compliance to require the Licensee to take corrective action;
  - suspend the Operator Licence and issue a Notice of Non-Compliance to require the Operator to take corrective action; or
  - revoke the Operator Licence.
- The Authority must inform the Licensee of its decision and the reasons for its decision, in writing, if it decides to suspend or revoke a Licence in keeping with the requirements of due process.

### ***Notice of Non-Compliance and corrective action***

Madam President, Clause 45 deals with the Notice of Non-Compliance and corrective action by the Operator. Clause 60 outlines the content of a Notice of Non-Compliance and corrective action required by the holder of a SEZ Enterprise Licence or Single Zone Enterprise Licence.

### ***Effect of suspension or revocation (Clauses 46 and 61)***

The provisions in respect of the effect of suspension or revocation of each type of licence are the same. I wish to note the following points:

- Where a Licence is suspended, the Licensee shall immediately cease all activities under the Licence for such time as the suspension remains in force.
- Where a Licence is revoked, the Licensee shall immediately cease all activities under the Licence.

### ***Surrender of licence (Clauses 47 and 62)***

Lastly in respect of this Part Madam President, it is to be noted that the process for the surrender of a Licence is the same regardless of the type of licence. I wish to bring the following points to the attention of this Honourable Senate:

- A Licensee shall not surrender his Licence without the prior approval of the Authority and the Authority shall not approve the surrender of a Licence unless it is satisfied that the Licensee has,
  - ceased all activities under the Licence; and
  - complied with the terms and conditions of his Licence.
- Where the Authority approves the surrender of a Licence, it shall, in writing, inform the operator of its approval.
- The surrender of a Licence does not prevent the former holder of a Licence from applying for another Licence.



## **PART VIII - SUPPORT MEASURES AND BENEFITS**

Madam President, **Part VIII** of the Bill includes clauses in respect of Support Measures and Zone Benefits (both fiscal and non-fiscal) to Licensees, as well as Customs arrangements applicable to Zones which are in **Schedules I and II**.

It is important to note the Benefits to be granted to Operators, SEZ Enterprises and Single Zone Enterprises will be in accordance with the relevant taxation laws (**Clause 64**) which are regularly reviewed by the Minister of Finance who has primary responsibility for these pieces of Legislation.

This approach will ensure that the new SEZ regime is flexible as tax benefits can be easily modified through the usual periodic amendments to the relevant tax laws as a result of the Annual National Budget.

## **PART IX - INSPECTORS**

Madam President, I have already indicated the importance of compliance in this new SEZ regime. The Bill in **Part IX** requires the Authority to establish an inspection programme to monitor compliance with the requirements of the legislation and the terms and conditions of licences.

You may wish to note the following with respect to the inspection programme:

- It covers such areas as the appointment, conduct and powers of inspectors under the inspection programme;
- The Authority is to conduct inspections with or without notice; and.
- A report must be submitted to the Authority upon completion of the inspection. The powers of inspectors that are appointed under this Bill include the power to:
  - enter any premises specified in a licence
  - make copies of documents
  - seize anything which may be of evidential value, and
  - direct the temporary suspension of activity which he believes to be in breach of the Act or the terms and conditions of a licence

## PART X - OFFENCES AND PENALTIES

- Madam President, **Part X** of the Bill treats with offences and penalties and includes clauses in respect of
  - misrepresentation in an application for a licence,
  - false information,
  - confidentiality,
  - The offence of holding oneself out to be a licensee, administrative fines and general penalties.

### Confidentiality

- Clause 74 addresses the issue of confidentiality and it states that the Authority shall not disclose any trade secrets, documents, information or other matters disclosed to it under the administration of this Act except
  - (a) for the purposes of law enforcement for Court proceedings;
  - (b) pursuant to an order of the Court;
  - (c) to the Permanent Secretary in the Ministry with responsibility for trade; or
  - (d) **where required under any other written law.** Madam President, in this Government's discussions with the Global Forum and the OECD, a major concern was the ability of Trinidad and Tobago to share tax information with our global partners to ensure compliance with our tax reporting obligations. This Honourable House should note that Clause 74 (1) (d) allows for the sharing of any relevant tax information to meet our international tax reporting obligations if mandated by any other law. The wording of this sub-clause was discussed with the OECD and it met with their approval.

While some offences and penalties specific to licensing and the Register are set out under Parts VII and XI, the majority of the offences and penalties created under this Bill are set out in this Part X. It is to be noted that the penalties set out in this Bill are comparable to those, included in the Cannabis Control Act and the Real Estate Agents Bill. Some examples include:

Clause and Content	Penalty
<b>Clause 72 treats with a misrepresentation in an application for a licence.</b>	Clause 72 states that an applicant for a licence who knowingly provides false or misleading information to the Authority commits an offence and is liable on: <ul style="list-style-type: none"> <li>• summary conviction to a fine of <b>five hundred thousand (\$500,000.00) dollars</b> and to imprisonment for a term of <b>three (3) years</b> or</li> <li>• conviction on indictment to a fine of <b>one million dollars (1,000,000.00)</b> and to imprisonment for <b>ten (10) years</b>.</li> </ul>
<b>Clause 73 treats with a person's provision of false information to the Authority.</b>	Clause 73 states that where a person furnishes information required of him under this Act, which he knows to be false in any material particular, he commits an offence and shall be liable on summary conviction to a fine of <b>five hundred thousand (\$500,000.00) dollars</b> and to imprisonment for a term of <b>three (3) years</b> ; or on conviction on indictment to a fine of <b>one million (1,000,000.00) dollars</b> and to imprisonment for <b>ten (10) years</b> .
<b>Clause 74(4) treats</b>	Clause 74(4) requires that a Member, employee of the Authority or any person

Clause and Content	Penalty
<b>with penalties for disclosure of confidential information and documentation</b>	concerned with the administration of the Act who discloses documents, information or any other matter related to the administration of the Act in contravention of this Clause, commits an offence and is liable on summary conviction to a fine of <b>five hundred thousand (\$500,000.00) dollars</b> and imprisonment for a term of <b>two (2) years</b> .
<b>Clause 75 treats with the offence of holding oneself out to be a licensee.</b>	Clause 75(1) states that a person shall not hold himself out as an Operator, a SEZ Enterprise or Single Zone Enterprise unless he holds a licence issued under this Act. According to Clause 75 (2), if a person contravenes sub clause 75 (1), he commits an offence and is liable on summary conviction to a fine of <b>one million (1,000,000.00) dollars</b> and to imprisonment for <b>five (5) years</b> or on conviction on indictment to a fine of two million, <b>five hundred thousand (2.5 million) dollars</b> and to imprisonment for <b>ten (10) years</b> .

Madam President, Clause 76 addresses administrative fines and Clause 77 treats with general penalties.

## PART XI – REGISTERS

Madam President, **Part XI** of the Act treats with Registers established under the Act and includes clauses in respect of the

- public register;
- private register;
- the duty to correct and update registers;
- additions to, removals from and restoration of name to public register;
- the certificate of grant of licence; and
- the offence to alter a register without lawful authority.

### *Public Register*

- **The Authority is required to establish and maintain a separate public register** for each type of licence and cause each licence which is granted to be registered in the appropriate register.
- The Authority is obligated to make the public register accessible to the public on a website established by the Authority, to allow inspection of the register and provide certified copies or extracts from the public register to persons, upon payment of the prescribed fee.

### *Private Register*

- **Clause 79 treats with the creation and maintenance of a private register.** The Authority is obligated to establish and maintain a private register containing any information submitted in an AML/CFT/PF risk assessment questionnaire.
- Clause 79 (2) obligates the Authority to not disclose information provided in an AML/CFT/PF risk assessment questionnaire, except to

- the Supervisory Authority;
  - for the purposes of law enforcement or court proceedings;
  - pursuant to an order of the Court; or where required under any written law.
- Clause 79 (3) states that the Authority may, on his own motion, or when requested by the Supervisory Authority, provide a certified copy of or an extract from the registers to the Supervisory Authority.

## [PART XII – MISCELLANEOUS]

Madam President, **Part XII** includes clauses in respect of the transfer of property, appeals, amendments to schedules, regulations and consequential amendments. It also covers transitional, repeals and savings provisions.

### *Appeals*

Clause 85 provides that a person who is aggrieved by a decision of the Authority under the Act to refuse to grant or renew a licence, to suspend or revoke a licence, or to impose a civil fine, may, within thirty days of being informed of that decision, **appeal** to the High Court.

### *Amendment of Schedules*

Clause 86 states that the Minister of Trade and Industry may, by Order subject to the negative resolution of Parliament, **amend Schedules** 1, 2, 3 and 4.

### *Regulations*

Clause 87 empowers the Authority to **make Regulations** and Clause 87 (3) outlines that Regulations shall be subject to negative resolution of Parliament.

## ***Transitional Provisions***

Madam President next we turn to the Clause which repeals the existing Free Zones Act and brings that Regime to a close. Clause 88 is the repeal and transitional provision of the Act. Clause 88 (1) states that the Free Zones Act is repealed.

### ***Grandfathering***

Madam President a major issue for the OECD with the Action 5 BEPS Standard is that **jurisdictions are not allowed to grandfather the benefits granted to firms beyond 30 June 2021.**

Therefore, as can be seen by the provisions of clause 88, it is the clear intention of this Bill to bring the benefits and status of existing Free Zones to an ultimate conclusion by the **31<sup>st</sup> January 2022**. Thus there will be no extensive grandfathering of the benefits currently enjoyed under the Free Zones Act.

Clause 88 (2) states that orders made under Clause 3 of the Free Zones Act (*relating to the designation of Free Zones*) granted prior to the 31st December, 2018 shall remain in force until the **31st January 31, 2022** or replaced by corresponding Orders made pursuant to this SEZ Bill.

Clause 88 (3) outlines that an Enterprise granted approval under the provisions of Clause 15(2) of the Free Zones Act (*relating to approval to an enterprise to undertake an approved activity*), prior to the 31st December 2018, shall be entitled to all benefits under the said Act until the **January 31, 2022**; or such other date as the Minister may, by Order, prescribe.

Madam President, existing approved enterprises under the Free Zones Act have not been excluded from benefiting under the new SEZ Regime.

Clause 88 (4) states that, any approved Enterprise under the Free Zones Act may apply to the Authority for an SEZ Enterprise Licence or a Single Zone Enterprise Licence.

Clause 88 (5) states that such an application shall be made within six months of the coming into effect of the Act and shall be considered in accordance with Clauses 35 or 49, respectively.

Clause 88 (6) outlines that any approved enterprise under the Free Zones Act during the transitional period shall not enjoy any new benefit or right conferred by the SEZ Act, unless such benefit or right was existed under the Free Zones Act.

## SCHEDULES

Madam President the last area of the Bill I will now discuss are the five (5) Schedules:

- Schedule 1** Treats with the benefits for Operators and the Schedule is a table which outlines a listing of the benefits Operators can be granted by the Authority and the related legislation from which the benefit is granted.
- Schedule 2** Treats with the benefits for SEZ Enterprises/Single Zone Enterprises operating in the types of Zones. The Schedule outlines a listing of the type of Zone, the relevant benefits given to specific Zone types and the related legislation under which the benefit is granted.
- Schedule 3** Treats with the types of Special Economic Zones and Permitted Economic Activities. The Schedule defines the types of Special Economic Zones and their permitted activities.
- Schedule 4** Treats with the eligibility criteria to be applied by the Authority in assessing an SEZ Enterprise/Single Zone Enterprise/Operator. The Schedule is broken into three tables.
- The first table treats with the eligibility criteria to be applied by the Authority for SEZ Enterprises based on whether the applicant is a Micro-Enterprise, Small and Medium Enterprise (SME) or Large Enterprise.
  - The second table treats with the eligibility criteria to be applied for Single Zone Enterprises and
  - The third table treats with the eligibility criteria for Operators.

### Schedule 1 - Benefits for Operators –

<b>Benefit</b>	<b>Related Legislation</b>
Exemption from property tax obligation	In accordance with Clause 16(1) of the Property Tax Act, Chap 76.04

<b>Benefit</b>	<b>Related Legislation</b>
Exemption from Import Duties for all approved capital goods, spare parts, raw materials, building materials and other articles for development and management of Zones	In accordance with the provisions of the Customs Act, Chap 78.01
Stamp duty exemption on instruments for the purchase, lease or other acquisition of land for use by an Operator	In accordance with the provisions of the Stamp Duty Act, Chap 76.01

**Schedule 2 - Benefits for SEZ enterprises/single zone enterprises operating in the following zones**

<b>Type of Zone</b>	<b>Benefit</b>	<b>Related Legislation</b>
<b>1) Free Port</b>		
	<b>Allowances/Credits:</b> <ul style="list-style-type: none"> <li>• Reinvestment relief</li> <li>• Enhanced relief</li> </ul>	In accordance with the provisions of the Income Tax Act, Chap 75.01
	<b>VAT:</b> <ul style="list-style-type: none"> <li>• Goods supplied to Zone shall be zero rated</li> <li>• Services provided by non-residents in Zone shall be zero rated</li> </ul>	In accordance with the provisions of the Value Added Tax Act, Chap 75.06
	<b>Customs Duties</b> <ul style="list-style-type: none"> <li>• exemption on importation of all approved capital goods, spare parts, raw materials, stock in trade and other articles for use in Zone</li> </ul>	In accordance with the provisions of the Customs Act, Chap 78.01
<b>2) Free Trade Zone</b>		
	<b>Allowances/Credits:</b>	In accordance with the

Type of Zone	Benefit	Related Legislation
	<ul style="list-style-type: none"> <li>• Reinvestment relief</li> <li>• Enhanced relief</li> </ul>	provisions of the Income Tax Act, Chap 75.01
	<b>VAT:</b> <ul style="list-style-type: none"> <li>• Goods supplied to Zone shall be zero rated</li> <li>• Services provided by non-residents in Zone shall be zero rated</li> </ul>	In accordance with the provisions of the Value Added Tax Act, Chap 75.06
	<b>Customs Duties</b> exemption on importation of all approved capital goods, spare parts, raw materials and other articles for use in Zone	In accordance with the provisions of the Customs Act, Chap 78.01
<b>3)Industrial Park</b>	<b>Corporation Tax:</b> Reduced Corporation Tax	In accordance with the provisions of the Corporation Tax Act, Chap 75.02
	<b>Allowances/Credits:</b> <ul style="list-style-type: none"> <li>• Reinvestment relief</li> <li>• Enhanced relief</li> <li>• Research and Development allowance</li> </ul>	In accordance with the provisions of the Income Tax Act, Chap 75.01
	<b>VAT:</b> <ul style="list-style-type: none"> <li>• Goods supplied to Zone shall be zero rated</li> <li>• Services provided by non-residents in Zone shall be zero rated</li> </ul>	In accordance with the provisions of the Value Added Tax Act, Chap 75.06
	<b>Customs Duties</b> <ul style="list-style-type: none"> <li>• exemption on importation of all approved capital goods, spare parts, raw materials and other articles for use in Zone</li> </ul>	In accordance with the provisions of the Customs Act, Chap 78.01



Type of Zone	Benefit	Related Legislation
	<b>Property Tax</b> <ul style="list-style-type: none"> <li>• exemption from property tax obligation</li> </ul>	In accordance with Clause 16(1) of the Property Tax Act, Chap 76.04
4)Specialized Zone	<b>Corporation Tax:</b> Reduced Corporation Tax	In accordance with the provisions of the Corporation Tax Act, Chap 75.02
	<b>Allowances/Credits:</b> <ul style="list-style-type: none"> <li>• Reinvestment relief</li> <li>• Enhanced relief</li> <li>• Research and Development allowance</li> </ul>	In accordance with the provisions of the Income Tax Act, Chap 75.01
	<b>VAT:</b> <ul style="list-style-type: none"> <li>• Goods supplied to Zone shall be zero rated</li> <li>• Services provided by non-residents in Zone shall be zero rated</li> </ul>	In accordance with the provisions of the Value Added Tax Act, Chap 75.06
	<b>Customs Duties</b> exemption on importation of all approved capital goods, spare parts, raw materials and other articles for use in Zone	In accordance with the provisions of the Customs Act, Chap 78.01
	<b>Property Tax</b> <ul style="list-style-type: none"> <li>• Exemption from property tax obligation</li> </ul>	In accordance with Clause 16(1) of the Property Tax Act, Chap 76.04
5) Development Zone	<b>Corporation Tax:</b> Reduced Corporation Tax	In accordance with the provisions of the Corporation Tax Act, Chap 75.02
	<b>Allowances/Credits:</b> <ul style="list-style-type: none"> <li>• Reinvestment relief</li> <li>• Enhanced relief</li> </ul>	In accordance with the provisions of the Income Tax Act, Chap 75.01
	<b>VAT:</b> <ul style="list-style-type: none"> <li>• Goods supplied to Zone zero rated</li> </ul>	In accordance with the provisions of the Income Tax Act, Chap 75.01

Type of Zone	Benefit	Related Legislation
	<ul style="list-style-type: none"> <li>• Services provided by non-residents in Zone zero rated</li> </ul>	
	<p><b>Customs Duties</b> exemption on importation of all approved capital goods, spare parts, raw materials and other articles for use in Zone</p>	<p>In accordance with the provisions of the Customs Act, Chap 78.01</p>
	<p><b>Property Tax</b> • exemption from property tax obligation</p>	<p>In accordance with Clause 16(1) of the Property Tax Act, Chap 76.04</p>

### Schedule 3 - Types of Special Economic Zones and Permitted Economic Activities

For the purposes of the definitions of the types of Special Economic Zones and their permitted activities—

- (a) “development zone” – activities focused on the development of a specific geographic region with emphasis on factors such as employment, skills training, entrepreneurship and rural development and overall social and economic development of the area;
- (b) “free port” – a duty free area, located at a port of entry where imported goods may be unloaded for warehousing, repackaging or processing of imported goods for value-adding activities, and logistics services;
- (c) “free trade zone” – a duty free area that accommodates specific activities targeted for international trade;
- (d) “industrial park” – a purpose built industrial estate that leverages domestic and foreign fixed direct investment in value-added manufacturing industries; and logistics and distribution;
- (e) “single zone enterprise” – restricted to one business entity engaged in any one of the following business activities (i) manufacturing; (ii) maritime services; (iii) aviation services; (iv) fishing and fish processing; (v) agriculture and agro processing; (vi) information and communications technology; (vii) creative industries; (viii) financial services; (ix) medical tourism services; (x) renewable energy; (xi) logistics and distribution; and (xii) business process outsourcing; and
- (f) “specialized sector development zone” – a place designated for specialized activities including (i) manufacturing; (ii) maritime services; (iii) aviation services; (iv) fishing and fish processing;

(v) agriculture and agro processing; (vi) information and communications technology; (vii) creative industries; (viii) financial services; (ix) medical tourism services; (x) renewable energy; (xi) logistics and distribution; and (xii) business process outsourcing.

**Schedule 4 - Eligibility criteria to be applied by the Authority in assessing an SEZ Enterprise/Single Zone Enterprise/Operator**

**Eligibility Criteria for SEZ Enterprise**

<b>Eligibility Criteria to be applied by the Authority</b>	<b>Micro-Enterprise</b>	<b>Small and Medium - Enterprise (SME)</b>	<b>Large Enterprise</b>
The SEZ Enterprise shall be: - incorporated or registered in Trinidad and Tobago in accordance with the Companies Act, Chap. 81:01	√	√	√
<b>Eligibility Criteria to be applied by the Authority</b>	<b>Micro-Enterprise</b>	<b>Small and Medium - Enterprise (SME)</b>	<b>Large Enterprise</b>
New investments in Zone within first two year period	US\$10,000	US\$50,000	US\$1,000,000
Sales Turnover	< TT\$250,000	>TT\$250,000 - <TT\$10,000,000	>TT\$10,000,000
No. of full-time qualified employees physically present in the Zone	1-5	6-50	>50

### Eligibility Criteria for Single Zone Enterprise

Eligibility Criteria to be applied by the Authority	Single Zone Enterprise
1. The Single Zone Enterprise shall be: (a) Incorporated or registered in Trinidad and Tobago in accordance with the Companies Act  OR (b) Registered under the Registration of Business Names Act	√
Eligibility Criteria to be applied by the Authority	Single Zone Enterprise
2. New investments in Zone within first two year period	US \$5,000,000.00
3. Sales Turnover	TT \$25,000,000.00
4. No. of full time employees physically present in the Zone	> 50

### Eligibility Criteria for Operator

Eligibility Criteria to be applied by the Authority	Operator
New investments in Zone-related buildings, machines, equipment, facilities and other necessary assets during the first two years	US \$10,000,000

### Schedule 5 - Consequential Amendments

Schedule 5 treats Consequential amendments which are noted in Clause 90 of the Bill.

<i>First Column</i>	<i>Second Column</i>
Financial Intelligence Unit of Trinidad	In Clause 8(1), by deleting the words “and the Non-Profit

and Tobago Act, Chap. 72:01	Organisations Act, 2019” and substituting the words “, the Non-Profit Organisations Act, 2019 and the Special Economic Zones Act, 2021”.
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## CONCLUSION

Madam President, this Bill is a tangible manifestation of government policy relating to economic diversification, investment promotion, public private partnerships and compliance with international taxation rules. The Bill is transformational as it will alter the manner in which economic spaces are to be developed and managed in the future.

It is fact that the then UNC Government during 2010-2015 made no real attempt to transform the economic environment to attract new non-energy sector investments. Their Plans spoke to “*Growth Poles*” without any overarching framework to develop a fair and equitable regime in which all areas of the country could attract investment and develop.

**This Bill provides a comprehensive framework inter alia:**

- I. Establishment of a SEZ Authority;**
- II. The Designation and Regulation of Various Economic Zones;**
- III. The **incentivised development of existing and new sectors;****
- IV. The Licensing, Monitoring and Compliance of Operators, SEZ Enterprises and Single Zone Enterprises;**
- V. Benefits for Operators and Enterprises; and**
- VI. The Repeal of the Free Zones Act.**

## NEXT STEPS IN THE IMPLEMENTATION OF THE SEZ REGIME

Madam President, as with the implementation of any legislation and the creation of any new regime or system, there are immediate actions that must be taken in order to implement and operationalize the new SEZ regime.

Some of the critical next steps include:

- a) Implementation of the SEZ Incentive Framework, in light of the a two-pillar solution to address the tax challenges arising from the digitalisation of the economy, and more specifically a global minimum corporate income tax;
- b) facilitating existing Free Zone Enterprises, that are eligible, to transition to the new SEZ regime;
- c) setting up and operationalizing the SEZ Authority; and
- d) developing Regulations to enable the full operationalisation of the SEZ Act.

Madam President, I thank you.

