



**Ministry of Industry,
Investment & Commerce**

**Presentation by: Hon Minister of Industry, Investment and Commerce
in support
Of the Bill entitled**

The Special Economic Zones Act (2015)

Mr. Speaker, I am pleased to bring before this Honourable House, the Special Economic Zone Bill which is the linchpin of the Logistics Hub Initiative and an important element of the growth agenda. Essentially, the Bill ensures that our efforts to build an internationally competitive business environment will have a modern framework to support it, as envisioned in Vision 2030.

Mr. Speaker, the first Free Zone in Jamaica was established in 1976, some forty years ago, under the Kingston Free Zone Act. This was later repealed and replaced by the Jamaica Export Freezone Act of 1982. Both legislations laid the foundation for an export-centric regime that did not offer sustainable benefits to the local economy due to its restrictive nature. While we enjoyed many years of a vibrant garment industry in the Free Zone, our economy did not transition to provide competitive services and at the end of the Multi-Fiber Agreement the industry collapsed. This industry was replaced by the Business Process Outsourcing Sector. Today, the sector continues to have great potential for growth which we expect to realise within the new SEZ regime.

Mr. Speaker, the new SEZ Regime will not only build on our past, but will provide a more inclusive and sustainable framework. We envision that the zones will attract new economic activities, supported by the provisioning of new infrastructure. It will also allow domestic suppliers to sell to companies located in the SEZs and potentially become part of global supply chains. Incubators will be a key feature to ensure our MSME sector has an opportunity to be part of this growth initiative. Mr. Speaker, this will support the development of human capital and much needed employment for Jamaicans.

While it is true that the new SEZ legislation will ensure that Jamaica is in conformity with the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures by the December 2015 agreed deadline, the legislation before us is much more than a reaction to the WTO, it represents an opportunity.

Mr. Speaker, after extensive consultation and input from Ministries, Departments and Agencies across Government, the private sector, academia, key stakeholders and the general public, along with local and international technical assistance, the following key areas were identified to replace our Free Zones Act and develop a competitive Special Economic Zone regime. The main objectives identified were:

- i. attract new and diverse investments in the special economic zones;
- ii. enhance the impact of SEZ investments on local investors and communities;
- iii. expand the footprint of SEZs across the island;
- iv. establish effective investor facilitation programmes; and
- v. establish an effective and efficient regulatory Authority.

Mr. Speaker, what we are seeking to build is a robust and modern regime that will be to the benefit of, not just out international investors but the Jamaican economy as a whole. Already, we are laying the foundation for the Logistics Hub and logistics-centred economy through a joined-up Government approach.

As you will recall the Ministry of Transport, Works and Housing, and the Port Authority have entered into a concession agreement with CGM CMA to operate the Kingston Container Terminal. This investment will result in the expansion of trade volumes from 1.4 million TEUs (24ft equivalent units) to 5 million TEUs by the end of their agreement. The intended investment to modernise the infrastructure is valued at approximately 600 million USD. Our own Kingston Wharves Limited is also expanding and expecting to grow their volumes to 1 million TEUs. Mr Speaker, this is more than four times the volume we currently trade over our ports.

This improved infrastructure will allow us to attract other maritime industries such as ship-chandlery, wet and dry-dock services, and bunkering services to include the proposed LNG Hub. We envision complementary aviation industries such as airport cargo zones, perishables and cold chain industries. The SEZ regime seeks to facilitate the realisation of these initiatives.

Mr. Speaker, the new Special Economic Zone Regime will not be done in isolation, but will be a critical element of the work across Government. The work of the Trade Facilitation Taskforce, the capacity building of our MSMEs, the efforts to improve our business environment, the focus on building a National Quality Infrastructure, and the work to build a robust intellectual property regime are just a

few of the areas that are collectively being targeted to improve Jamaica's business environment.

Mr. Speaker, I have always maintained that logistics performance is essential to a strong business environment, especially for a small island developing state. This view is supported by the World Bank, Logistics Performance Index 2014, which stated, **“Improving logistics performance is at the core of the economic growth and competitiveness agenda. Policymakers globally recognize the logistics sector as one of their key pillars for development.”** The World Bank also estimates, there are approximately **3,000 zones** in **135 countries**, accounting for over **68 million direct jobs** and over **\$US 500 billion** of direct trade-related value addition within special economic zones. It, therefore, follows that we are progressing in the right direction!

Mr Speaker, it is on this premise that we present The Special Economic Zones Bill which seeks to implement a comprehensive regulatory framework for the operation of Special Economic Zones, and provides for consequential amendments to be made to those legislations which are affected by the implementation of this Bill.

Accordingly, the Special Economic Zones Bill seeks to repeal the Jamaica Export Free Zones Act and make provision for the following:

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

PART I – Preliminary

This Part highlights certain key terms such as “sponsors”, “developers”, “occupants”, and “zone users”. These terms represent the key stakeholders in this new regime.

Sponsors are investors responsible for the establishment of a company limited by shares, referred to as a developer, which will undertake businesses in a Zone pursuant to a master-concession or licence-agreement concluded with the Special Economic Zone Authority. A developer may thereafter conclude a subconcession agreement with an occupant to conduct business operations within a zone, and apply for authorizations for zone users to establish facilities and perform activities or services within the Zone.

This Part further provides that the Act applies to Special Economic Zones established in Jamaica, and shall be regarded as an enactment relating to the customs for the purposes of The Customs Act.

PART II - The Special Economic Zones Authority

Part II provides for the establishment of a Special Economic Zone Authority as a body corporate, which has the power to issue shares subject to Ministerial directives. At all times, the Government or a government agency must hold 50.1% or more of the shares in the Authority.

Among the responsibilities of the Authority are: the regulation and supervision of Zones, the making of recommendations to the Minister in relation to the location of Zones, the management of the Special

Economic Zones Fund, the negotiation and conclusion of concession agreements with developers, and taking on the role of landlord for Zones vested in the Authority.

The Authority is expected to operate in accordance with business principles, which serve to maximize its effectiveness and efficiency and among other things, enhance the Jamaican economy by increasing levels of investment and job creation as well as promote measures, actions, and investments aimed at improving the logistics chain of which, the Zones are a part.

Similarly to the current Free Zones, the Special Economic Zones are considered to be extra-territorial. Accordingly, the Authority is not allowed to permit any movement or the establishment of existing businesses from the customs territory that is, Jamaica, into the Zone during the Zone-establishment period. This period refers to the period of ten years, from the day this legislation comes into force, or such other date as may be prescribed by Order, subject to affirmative resolution. It is important to note that this provision is intended to preclude the erosion of Jamaica's tax base.

The Bill also provides for the establishment of a Board of Directors, which is responsible for overseeing the general administration of the Authority. The Board shall consist of members from both the public and private sectors, and shall act in accordance with any Ministerial directives received in relation to the policy to be followed by the Board in the performance of its functions. In relation to its internal management, the Authority shall be headed by a Chief Executive Officer.

Among the functions of the Authority are: the negotiating and entering into master-concessions or licence agreements, and the approving of subconcessions in accordance with the Act, the relevant eligibility criteria set out therein, and any approval criteria that the Minister may prescribe by Order.

The eligibility criteria stipulate that proposed developers and occupants must first establish a company limited by shares. It also set minimum limits to the paid-up share capital of the company, which the investors namely, developers have to establish for the specific purpose of zone development in the amount of One Million Five Hundred Thousand US Dollars (US\$1,500,000). The conditions to be applied for the admission of local firms into zones are moderate and flexible. Accordingly, a minimum level of paid-up share capital has been set at an amount of Twenty Five Thousand US Dollars for occupants. This will allow medium sized local enterprises to enter into a zone.

MSMEs are also afforded the opportunity for growth in the international market as they are allowed to enter Zones and enjoy fiscal benefits as occupants provided that they have, among other things, established a company limited by shares, and concluded a subconcession with the developer.

PART III – Restrictions on Operations of Special Economic Zones

With regard to restrictions on the operation of Special Economic Zones, it is an offence for a person to among other things, hold himself out as providing, developing, or constructing a Zone.

The Bill further places a restriction on the proliferation of single-entity zones but does not preclude their establishment altogether. In fact, it stipulates the criteria that are to be applied by the Minister in determining whether to allow the establishment of such zones in the public's interest. The criteria are as follows:

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

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

This Part provides for the designation of a geographical area as a Special Economic Zone pursuant to the recommendation of the Authority to the Minister of Industry, and the said Minister having consulted the Minister of Finance. The Bill contemplates two types of Zones: (i) General Zones and (ii) Specialized Zones. The latter is limited to specific economic activities such as maritime or aviation related Zones.

The Minister may also transfer property belonging to the Government to the Special Economic Zones Authority, where it appears to him to be necessary or useful to the Authority in carrying out its functions under this Act. Such property shall be vested in the Authority.

In relation to the conclusion of a master-concession or a licence-agreement, it is the duty of the Authority to establish procedures for the marketing, initiating and conducting of negotiations in relation to the making of applications by sponsors who are desirous of entering into a master-concession or a licence-agreement.

To this end, it is important to note that a master-concession is concluded where the proposed developer will be operating on land vested in the Authority. However, where the proposed developer has its own land, said developer will negotiate and conclude a licence-agreement with the Authority. Government companies or statutory bodies, which own land would conclude licence-agreement and become developers (formerly Promoters) under this new regime.

The Authority may also carry out such investigations in relation to the applicants as it considers appropriate in order to verify the accuracy of the information in the application, as well as require further information and documents for the purpose of considering the application.

It is also incumbent on the Authority to exercise due diligence in order to ensure that sponsors and developers are not engaged in the following activities: money laundering and other financial crimes, terrorism financing and the manufacturing or proliferation of weapons of mass destruction.

Further, the Authority ought not to conclude any master-concession or licence-agreement without the prior approval of the Minister. However, once the requisite approval is obtained it may conclude the relevant concession agreement, and issue an operating certificate to the developer. A concluded master-concession or licence-agreement shall be in effect for a maximum duration of fifty years unless otherwise agreed.

Thereafter and in their business operations, the developers will be entitled to set and revise the rents and service charges payable by occupants, zone users and other persons as well as enjoy all benefits granted to it under this Act and the revenue laws. However, where the developer has signed a master-concession, it must pay an annual licence fee to the Authority and a fixed lease payment as rent for the government land on which it is established. Conversely, a developer who is operating on his own land will only pay an annual licence fee to the Authority.

In relation to employment within the Zones, this Part expressly states that the developer must first offer employment to CARICOM nationals before other nationals subject to said persons meeting the requirements of the developer, including requirements regarding skills and competencies.

Also, a developer may conclude a subconcession with occupants desirous of starting their businesses in a zone. The Authority must however, authorize the conclusion of same in order for the agreement to take effect. On the authorization of the subconcession, the occupant will be entitled to the same tax and other benefits to which the developer is entitled.

In relation to Zone Users, it is the duty of the developer to apply for an authorization for a zone user to carry out activities or services or operate any facilities in the Zone.

This Part also lists a number of activities referred to as excluded activities, which a developer or occupant is not allowed to conduct in a Zone. These activities include but are not limited to tourism services, telecommunication services, financial services regulated by the Bank of Jamaica or the Financial Services Commission, and retail trade.

PART V – ZONE BENEFITS

This Part stipulates that the Authority shall enjoy benefits specified in the First Schedule of this Act, and that the developers and occupants will be entitled to certain benefits for the duration of their respective agreements. Such benefits include but are not limited to:

- (a) exemption from tax under the Assets Tax (Specified Bodies) Act in the case of occupants;
- (b) exemption from the customs duty under the Customs Act in relation to goods imported into the Zone;
- (c) 12.5% rate of tax chargeable income of the developer or occupant derived from the conduct of a trade, profession or vocation within the Zone in accordance with the Income Tax Act;
- (d) exemption from the payment of income tax on profits derived from rentals of property in the Zone, except for any rental where the landlord (whether the developer or an occupant) and tenant are connected persons within the meaning of the Income Tax Act.

PART VI – SPECIAL CUSTOMS REGIME FOR ZONES

This Part stipulates that in order to facilitate the efficient operation of Zones in Jamaica, the Jamaica Customs Agency shall make arrangements for matters such as:

- (a) the availability of customs services in Zones on a continuous basis to meet the needs of the developers and occupants
- (b) customs procedures and systems that enable electronic transactions and payments and pre-arrival clearance of goods
- (c) the facilitation of imports of capital goods and equipment destined to remain in a Zone

PART VII – OFFENCES AND PENALTIES

This Part specifies that it is an offence for a person to enter or remain in a Zone without a valid pass issued by the Authority or a reasonable excuse. It is also an offence to furnish false information. Both of these offences attract fines and terms of imprisonment.

Lastly, a person who commits an offence under this Act or regulations for which no specific penalty is prescribed shall be liable to a fine of One Million Dollars or in default of such payment, imprisonment not exceeding six months.

PART VIII – MISCELLANEOUS

This Part includes a Regulation making power and provides that the Minister may amend or vary monetary penalties prescribed under this Act, by Order subject to affirmative resolution. Further, the Jamaica Export Free Zones Act is repealed under this Part.

PART IX – TRANSITIONAL PROVISIONS

Among other things, this Part stipulates that a Free Zone Promoter of an existing Free Zone which desires to continue its activities as a developer under this Act shall enter into a master-concession or a licence-agreement with the Authority within a period of four years from the day this legislation comes into effect. Similarly, an approved enterprise must conclude a subconcession agreement with a developer within this four years transitional period for example, the Port Authority of Jamaica would be deemed a developer under this regime subject to entering into a licence agreement.

It also states that current Free Zone Promoters and Approved Enterprises shall continue to be entitled to the fiscal incentives to which said Promoter and Approved Enterprise were entitled until the 1st day of December, 2019 unless they become a developer or occupant under this current regime, which will result in their being entitled to the benefits under this Act.