

**FINANCIAL SERVICES PROMOTION AGENCY
(TRANSFER OF UNDERTAKING) ACT**

Act 16 of 2006 – 22 September 2006

ARRANGEMENT OF SECTIONS

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**FINANCIAL SERVICES PROMOTION AGENCY
(TRANSFER OF UNDERTAKING) ACT**

1. Short title

This Act may be cited as the Financial Services Promotion Agency (Transfer of Undertaking) Act.

2. Interpretation

“Agency” means the Financial Services Promotion Agency established under the Financial Services Development Act 2001;

“appointed date” means 1 October 2006;

[EDITORIAL NOTE: The appointed date has been prescribed by GN 138 of 2006.]

“assets” includes movable and immovable property;

“Board of Investment” means the Board of Investment established under the Investment Promotion Act;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“undertaking” means the contracts, assets, rights, obligations, interests and liabilities in favour of, or against, or of the Agency.

3. Transfer of undertaking

(1) The undertaking of the Agency shall vest, on 1 October 2006, in the Board of Investment.

(2) A deed under private signature setting out the items comprised in the undertaking shall be drawn up and signed by the Agency and the Board of Investment.

(3) The deed referred to in subsection (2) shall, as far as practicable, be drawn up before 1 October 2006.

4. Effect of transfer of undertaking

Notwithstanding any other enactment or anything contained in any contract or agreement—

- (a) any right or obligation existing in favour of, or against, the Agency before 1 October 2006 shall, in respect of the undertaking vested in the Board of Investment, on 1 October 2006, be a right or obligation enforceable in favour of, or against, the Board of Investment;
- (b) nothing contained in or authorised by this Act shall—
 - (i) invalidate or discharge the contract or other agreement;
 - (ii) release any surety wholly or in part from any liability under, or in respect of, the contract or agreement; or
 - (iii) otherwise place the Board of Investment in a position which is less favourable than the Agency would have been if this Act had not been passed.

5. Pending proceedings

Any action, arbitration, proceedings or cause of action relating to the undertaking which immediately before 1 October 2006 may be pending or in process against, or in favour of, the Agency, or to which the Agency is a party, may be continued and enforced by, against or in favour of, the Board of Investment.

6. Evidence

Any document, matter or thing which, if the Act had not been passed, would have been admissible in evidence in respect of any matter for, or against, the Agency shall, on or after 1 October 2006, be admissible in evidence in respect of the same matter for, or against, the Board of Investment.

7. Provisions relating to staff

(1) Every person on the staff of the Agency immediately before 1 October 2006 shall, as from the appointed date, be entitled to be transferred to the Board of Investment on terms and conditions, including any accrued pension rights, which shall not be less favourable than those obtained by him before 1 October 2006.

(2) The period of service with the Agency of every person exercising his right to be transferred to the Board of Investment under subsection (1) shall be deemed to be an unbroken period of service with the Board of Investment.

(3) No person on the staff of the Agency shall, on account of the transfer of the undertaking, be entitled to claim that his contract of service has been terminated in breach of any enactment.

(4) Any disciplinary inquiry or proceedings, pending or in process against any person on the staff of the Agency may, as from 1 October 2006, be taken up, continued and completed by the Board of Investment and any resulting order or decision shall have the same force and effect as if made by the Board of Investment.

(5) Any person who fails to accept in writing an offer of transfer to the Board of Investment made to him by the Board of Investment under this section within one month of such offer shall be deemed to have refused such offer, and the person shall be deemed to have retired from his Office, unless he is offered and accepts employment in a statutory body specified in the Schedule to the Statutory Bodies Pension Funds Act.

8. Regulations

(1) The Minister may make regulations to provide for any matter necessary for, or consequential to, the implementation of the Act.

(2) Notwithstanding any other enactment, regulations made under subsection (1) may provide that the last financial year of the Agency shall be deemed to include the period between the date immediately following the date of the closing of the last annual accounts of the Agency and 1 October 2006.

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