

FREE ZONE ACT, 1995 ACT 504

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ACT 504

FREE ZONE ACT, 19951(1)

AN ACT to enable the establishment of free zones for the promotion of economic development, to provide for the regulation of activities in free zones and for related matters.

Establishment of Free Zones Authority

1. Establishment of the Free Zones Authority

There is established by this Act an Authority to be known as the Free Zones Authority.

2. The governing body of the Authority

(1) The governing body of the Authority is a Board consisting of

(a) the Minister responsible for Trade and Industry as chairman, and

(b) eight other persons four of whom shall be appointed from the private sector.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution and shall include at least two women.

3. Functions of the Authority

The functions of the Authority are

(a) to grant licences to applicants under this Act;

(b) to assist applicants for licences under this Act by providing services for obtaining other relevant licences, permits and facilities;

(c) to examine and recommend for approval agreements and treaties relating to the development and activities of the free zones;

(d) to monitor the activities, performance and development of free zone developers and enterprises;

(e) to ensure compliance by free zone developers and enterprises with this Act and any other laws relevant to free zone activities;

(f) to register and keep records and data on the programmes of developers, operators and enterprises in free zones;

(g) to perform any other functions that are incidental to the performance of its functions under this Act or any other enactment.

4. Tenure of office of members of the Board

(1) A member of the Board other than the chairman shall hold office for a term of four years and is eligible for re-appointment.

(2) A member of the Board other than the chairman may resign from office in writing addressed to the President through the chairman or may be removed from office by the President in consultation with the Council of State for stated reasons.

(3) Members of the Board shall be paid the allowances determined by the Minister responsible for Finance.

5. Meetings of the Board

(1) The Board shall meet at least once every month for the dispatch of business at the times and places determined by the chairman.

(2) The chairman shall preside at the meetings of the Board and in the absence of the chairman the members present shall elect one of their number to preside.

(3) The quorum for a meeting of the Board is five.

(4) Questions at a meeting of the Board shall be determined by a majority of the members present and voting, and where there is an equality of votes the person presiding shall have a casting vote.

(5) The Board may co-opt a person to attend any of its meetings but a person co-opted does not have the right to vote on a matter for decision before the Board.

(6) The validity of the proceedings of the Board shall not be affected by a vacancy among its members, or by a defect in the appointment or qualification of a member.

(7) A member of the Board who has an interest in a contract proposed to be entered into on behalf of the Authority shall disclose in writing to the Board the nature of the personal interest and is disqualified from participating in the deliberations of the Board in respect of the contract.

(8) A member of the Board who infringes subsection (7) ceases to be a member of the Board.

(9) Except as otherwise provided in this section, the Board shall regulate the procedure for its meetings.

6. Committees of the Board

(1) The Board may for the performance of its functions appoint committees of the Board comprising members of the Board or non-members or both, and may assign to a committee the functions determined by the Board.

(2) A committee composed entirely of non-members may only advise the Board.

Establishment of Free Zones

7. Declaration of free zones

(1) Subject to the Constitution and to any other enactment in force relating to the acquisition of property, the President may, on the recommendation of the Board by notice published in the Commercial and Industrial Bulletin in the Gazette declare

(a) an area of land or a building as a free zone, and

(b) an airport, a river port, seaport, or lake port as a free port.

(2) A declaration under subsection (1) shall specify the area and the scope of activities in the free zone concerned.

8. Qualification of free zone developers

(1) A person shall not develop, or manage, or develop and manage a free zone unless it is a body corporate registered under the Companies Act, 1963 (Act 179) or a partnership registered under the

Incorporated Private Partnerships Act, 1962 (Act 152).

(2) A body corporate or partnership may be licensed to develop, manage, or develop and manage the

free zone under this Act.

9. Rights and responsibilities of a free zone developer

(1) Subject to the Constitution, a free zone developer may, for the purpose of its activities,

(a) acquire land within the area declared in respect of it, or

(b) lease or sub-lease real property it owns, has leased or has the right to use, sell or lease and

may sell or rent buildings to free zone enterprises.

(2) A developer is responsible for

(a) the construction and maintenance of buildings, warehouses, factory shells and may provide or contract other persons to provide utilities or services such as water, electric power, telecommunications and sewerage,

(b) the development of any other infrastructure necessary for the enhancement of the efficient and effective activities of the zone, in accordance with the Regulations,

(c) the provision of fencing and enclosures to separate the zone from the national customs territory, and ensuring security of the zone,

(d) the provision and contribution to the cost of facilities for the on site customs services determined by the Customs, Excise and Preventive Service,

(e) the undertaking of an investment or a financial venture to facilitate and promote the development of the zone, and

(f) the submission within the periods directed by the Board, reports on development in the relevant zone to the Authority.

10. Sub-contracting by developers

(1) A licensed developer may undertake or sub-contract the management, control and promotion of

the free zone development in the declared area.

(2) The developer shall apply for a licence for a person to whom a sub-contract has been given by it

under subsection (1).

(3) The application for a licence for a sub-contract shall be made to the Authority and shall be accompanied with the executed sub-contract.

Free Zone Enterprises

11. Export free zone enterprises

Subject to this Act, a person may apply for a licence to establish an enterprise in a free zone.

12. Qualification of enterprise

(1) A person shall not carry on a trade, business or industry within a free zone unless it is registered

under

(a) the Companies Act, 1963 (Act 179), or

(b) the Incorporated Private Partnerships Act, 1962 (Act 152),

and is the holder of an incorporated licence authorising the carrying on of that trade, business or industry

under this Act.

(2) A company or partnership qualified under subsection (1) and licensed under section 16 is a free

zone enterprise.

13. Rights and responsibilities of a free zone enterprise

(1) A free zone enterprise has the right to produce any type of goods and services for export but shall

not produce goods that are environmentally hazardous.

(2) A free zone enterprise is free

(a) to store, warehouse, pack, unpack and repack, divide, sub-divide, group, break down, assemble, disassemble, bottle, rebottle, can, recan, decant, alter, sample, display, grade, test, classify, mark, label, relabel, finish, handle, mix, combine, clean, manipulate, restore, join, transform, transit, and tranship, transfer, mount, refine, salvage, destroy, demolish, confect, process and manufacture a foreign or domestic raw material, intermediate, semi-finished or finished goods or components for export or re-export;

(b) to render and sell any type of information processing, computer-aided design, computer-aided printing and publishing, software development telemarketing and any other similar and related services;

(c) to render and sell financial, banking, insurance, commercial, advisory, repair and maintenance, professional training and any other services subject to the relevant laws and regulations; and

(d) to carry out any other activities relevant to its licence that are considered necessary by the Board.

14. Change of line of production

A free zone enterprise may change its production lines and process as often as it considers necessary

subject to the prior approval of the Board.

Licensing

15. Application for licences to develop or operate an enterprise

(1) An application for a licence to develop, manage or establish an enterprise in a free zone

(a) shall be in writing,

(b) shall be submitted to the secretariat of the Authority,

(c) shall specify the zone to be developed or managed or both or the trade, business or industry for which the licence is required, and

(d) shall be accompanied with the information required by the Board.

(2) The Board shall respond to an application within twenty-eight working days from the date of the

receipt of the application.

16. Grant of licence to developers and enterprises

(1) The Board may grant a licence authorising

(a) the development or management or both of a free zone, or

(b) the carrying on of a trade, business or industry within the free zone.

(2) A licence shall not be granted for the carrying on of

(a) the business of banking unless the applicant is also registered and licensed under the Banking Act, 2004 (Act 673), or

(b) the business of insurance, unless the applicant is also registered under the Insurance Act,

1989.2(2)

(3) A licence issued under this section shall be signed personally by the chairman of the Board.

17. Conditions of licence

The Board may attach to a licence the conditions that it considers appropriate concerning employment

skills, development, impact on the environment, creation of job opportunities and the degree of export

orientation.

18. Revocation

(1) The Board may revoke a licence where it is satisfied that there has been a breach of a condition

attached to the licence.

(2) The Board may, on the request of the licensee, vary any of the conditions attached to the licence.

(3) Before revoking a licence, the Board shall give not less than fourteen working days notice of its

intentions to the licensee and shall consider the representations made to it by the licensee.

19. Register

(1) The Board shall establish and maintain a register of licences granted under section 16.

(2) There shall be entered in the register in respect of each licence,

(a) the name of the person to whom the licence is granted, and

(b) the zone to be developed or managed or both or the trade, business or industry to which the licence relates.

(3) The register shall be kept by the Board and shall be open for inspection by the public subject to

the payment of the fee prescribed by the Board.

20. Transfer of licence

A licensee shall not transfer a licence issued in respect of it to any other person without the prior

approval of the Board.

Import and Export

21. Non-application of import laws to free zones

Except in so far as the laws are made applicable by the Regulations, the laws in force relating to the

importation and exportation of goods and services, other than consumer goods for commercial purposes,

shall not apply to

(a) the bringing of goods directly from a country outside the Republic into a free zone, or

(b) the dispatch of goods for export out of a free zone to a country outside the Republic.

22. Exemption from taxes of import into free zone area

Subject to article 174 of the Constitution, the imports of a free zone developer, sub-contractor or enterprise into a free zone or single-factory zone are exempt from direct and indirect taxes and duties.

23. Sales in national customs territory

(1) The Minister may, by legislative instrument, authorise the sales of up to thirty percent of the annual production of goods and services of a free zone and single factory zone enterprise to the national

customs territory.

(2) Sales of goods from free zone enterprises or single factory zones to the national customs territory

shall be considered as imports and are subject to the rules and regulations relating to imports into the

national customs territory.

(3) Damaged or rejected goods, or samples, may be sold by the free zones and single-factory zones to

the national customs territory, and the goods shall be considered as part of the thirty percent of annual

production of the free zones and single-factory zones authorised to be sold to the national customs

territory and are subject to the applicable duties and taxes.

(4) An instrument issued under subsection (1) shall provide penalties for contravention of an authority

provided in it.

24. Sales from national customs territory to free zones

(1) Sales of goods and services by a domestic enterprise from the national customs territory to enterprises in the free zone and single-factory zone shall be considered as exports.

(2) A domestic enterprise is eligible to benefit from the prevailing export incentive available to a national exporter and shall not require an export licence for the sale of goods and services to enterprises

in the free zone or single-factory zone.

(3) An enterprise in a free zone or single-factory zone may purchase goods and services sold by a domestic enterprise with local currency obtained through conversion of foreign currency through a bank

or a licensed foreign exchange bureau.

25. Entry into free zone by officers

(1) An authorised officer of any of the revenue services, a member of the Police Service or an officer

authorised by the Minister may, in the discharge of their official duties, at any time enter and inspect a

free zone, buildings, aircraft, ships, boats or vehicles in the free zone.

(2) An officer exercising a power of entry or inspection shall on request produce the authorisation of

that officer.

(3) A person who prevents or obstructs an entry authorised by subsection (1), or attempts to do so,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand United

States dollars or its equivalent in cedis or to a term of imprisonment not exceeding six months or to both

the fine and the imprisonment.

26. Responsibility of Customs Excise and Preventive Service

(1) The Customs, Excise and Preventive Service is responsible for the control of zero-rated goods

(a) within a free zone,

(b) in transit between two free zones, and

(c) in transit between a free zone and a point of entry into or exit out of the Republic.

(2) The Minister, after consultation with the Minister responsible for customs and excise and the Commissioner of Customs, Excise and Preventive Service may, by legislative instrument, make Regulations

- (a) adopting or modifying for the purposes of this Act, any of the regulations relating to customs operations;
- (b) governing the movements of persons, vehicles or goods into and out of a free zone, from and out to other parts of the customs territory;
- (c) covering the keeping, storage and handling of goods in free zones;
- (d) covering the keeping and preserving of accounts and records in a specified form in respect of goods in free zones; and
- (e) relating to the provision of security by bond or otherwise on goods in transit between free zones and points of entry and exit from and to other countries.

27. Missing dutiable goods

Where goods stored in a free zone are found to be missing without an acceptable explanation, the Commissioner may request the licensee to pay the duty on the goods at the rate in force at that time in addition to the penalty which may be imposed by the Commissioner.

Incentives

28. Tax concession

(1) Subject to article 174 of the Constitution, free zone developers and enterprises granted licences

under this Act are exempted from the payment of income tax on profits for the first ten years from the

date of commencement of operation.

(2) The income tax rate after ten years shall not exceed a maximum of eight percent of the profit.

(3) A shareholder is exempted from the payment of withholding taxes on dividends arising out of free

zone investments.

29. Investors

(1) A foreign investor may take and hold a maximum of one hundred percent of the shares in a free

zone enterprise.

(2) A domestic investor may take and hold a maximum of one hundred percent of the shares in an

export free zone enterprise.

(3) Foreign and domestic investors have equal status within the export free zones.

30. Investment guarantees, transfer of profits

Subject to this section, an enterprise in a free zone shall be guaranteed unconditional transfer through

an authorised dealer bank in free convertible currency of

(a) dividends or net profits attributable to the investment,

(b) payments in respect of loans servicing where a foreign loan has been obtained,

(c) fees and charges in respect of a technology transfer agreement, and

(d) the remittance of proceeds net of the taxes and any other obligations, in the event of the sale or liquidation of the enterprise or an interest attributable to the investment.

31. Guarantee against expropriation

(1) An enterprise in a free zone shall not be nationalised or expropriated by the Government, and a

person who owns, whether wholly or in part, the capital of an enterprise shall not be compelled by law to

cede personal interest in the capital to any other person.

(2) The Republic shall not acquire an enterprise to which this Act applies unless the acquisition is in

the national interest or for a public purpose and under a law which makes provision for

(a) the payment of fair and adequate compensation, and

(b) a right of access to the High Court for the determination of the investor's interest or right and

the amount of compensation to which the investor is entitled.

(3) A compensation payable under this section shall be paid without undue delay and authorisation for

its repatriation in convertible currency, where applicable, shall be issued.

32. Dispute settlement procedures

(1) Where a dispute arises between a licensee in a free zone and the Government in respect of an

activity in the free zone, efforts shall be made through mutual discussion to reach an amicable settlement.

(2) A dispute between a licensee and the Government in respect of an activity in a free zone which is

not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to

arbitration

(a) in accordance with the rules of procedure for arbitration of the United Nations Commission of International Trade Law, or

(b) in the case of a foreign investor, within the framework of a bilateral or multilateral

agreement on investment protection to which the Government and the country of which the

investor is a national are parties, or

(c) in accordance with any other national or international machinery for the settlement of investment disputes agreed to by the parties.

(3) Where, in respect of a dispute, there is disagreement between the licensee and the Government as

to the method of dispute settlement to be adopted, the choice of the licensee shall prevail.

33. Operation of foreign currency account

(1) A free zone enterprise is permitted to operate a foreign currency account with banks in the Republic.

(2) The terms and conditions under which the accounts shall be operated shall be set out in the licence

granted under section 16.

(3) The Bank of Ghana shall be consulted by the Council on the terms and conditions referred to in

subsection (2).

34. Employment in free zones

(1) Free zone developers and enterprises are free to negotiate and establish contracts of employment with employees that include wage scales, minimum working hours, employee suspension and dismissal, settlement of dispute arising between employers and employees, and any other terms of employment which are consistent with International Labour Organisation Conventions on workers rights and conditions of service.

(2) Work and resident permits are required for a foreign national who wishes to live in Ghana and work in a free zone.

(3) An application for a work and resident permit for foreign employment of free zone enterprises shall be submitted to the Council which shall take the necessary action in consultation with the Immigration Service.

(4) A foreign employee shall pay appropriate tax to the Government on income earned in the Republic including income earned in the free zone during that period of work in accordance with the existing income tax legislation and subject to the provisions of a double taxation agreement between the Government and the Government of the foreign employee.3(3)

35. Residence in free zones and identity cards

(1) The Board shall issue identity cards to the employees of licensed operators in a free zone.

(2) A person who enters or leaves a free zone may be subject to inspection by a person authorised by the Council to do so.

(3) A person who obstructs or prevents a person authorised by the Council in the performance of functions under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding five hundred United States dollars or its equivalent in cedis or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

Administration and Miscellaneous Provisions

36. Secretariat of the Board

(1) The Board shall have a secretariat.

(2) The Minister responsible for Trade and Industry shall assign to the secretariat of the Board the

public officers required by the Board for the implementation of its functions.

(3) The Minister may, by legislative instrument, make Regulations on the functions of the secretariat.

37. Moneys for the expenditure of the Board

Parliament shall provide the Board with the moneys required by the Board to meet its expenditure.

38. Annual report

The Minister shall submit to Parliament as soon as practicable and not more than six months after the

end of each financial year a report dealing generally with the activities of the Board during the financial

year to which the report relates.

39. Offences by bodies corporate

(1) Where an offence is committed under this Act, the Regulations or any other law by a body of persons

(a) in the case of a body corporate, every director and officer of the body corporate shall be deemed to have committed that offence, and

(b) in the case of a firm or partnership every partner shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence under subsection (1) if it is proved that the act constituting the offence was committed by another person and without the personal knowledge or connivance of, and that due diligence was exercised by, that person to prevent the commission of the offence having regard to the circumstances.

40. Smuggling

A person who

(a) in contravention of a provision of this Act carries or attempts to carry a thing into or out of a free zone, or

(b) conceals anything with intent to illegally carrying it into or out of a free zone, commits an offence and is liable on conviction to a term of imprisonment of not less than three months and not more than five years.

41. Regulations

(1) The Minister may, by legislative instrument, make Regulations for the effective implementation of this Act including Regulations which exempts licensed enterprises from the existing laws and regulations.

(2) The Regulations may provide for offences and prescribe penalties for contravention which shall not exceed a fine of one thousand penalty units or a term of imprisonment not exceeding twelve months or both the fine and the imprisonment.

42. Repeal

Spent.4(4)

43. Interpretation

In this Act, unless the context otherwise requires,

“Authority” means the Free Zones Authority established by section 1;

“Board” means the governing body of the Authority;

“Centre” means the Ghana Investment Promotion Centre;

“Commissioner” means the Commissioner of Customs, Excise and Preventive Service;

“developer” includes a person who acquires a free zone area and is licensed for its use or uses it

for operations allowed under this Act, or rents or sells it or provides services to enterprises wishing to

carry on or are carrying on business within the zone and the agents or sub-contractors of the developer;

“domestic enterprise” means an enterprise incorporated in the Republic and operating outside a free zone;

“enterprise” means an industry, a project, an undertaking or a business for commercial purposes or a part of it;

“free zone” includes an area or a building declared as a free zone by publication in the Commercial

and Industrial Bulletin in the Gazette and a single factory zone, free port, free airport, free river or

lake port;

“goods” include both animate and inanimate things;

“importer” and “exporter” means respectively the owner or person for the time being in

possession of or beneficially interested in the goods at the time of the importation or exportation;

“Minister” means the Minister responsible for Trade and Industry;

“national exporter” means an exporter other than a free zone exporter;

“Regulations” means Regulations made under this Act;

“revenue services” means the Customs, Excise and Preventive Service and the Internal Revenue

Service;

“single factory zone” means a factory or building declared as a free zone.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 31st August, 1995. It came into force on 15th September, 1995.

2 (Popup - Footnote)

2. P.N.D.C.L. 227.

3 (Popup - Footnote)

3. Substituted by the Free Zone (Amendment) Act, 2002 (Act 618).

4 (Popup - Footnote)

4. The section repealed the Ghana Industrial Free Zone Authority Decree, 1979 (S.M.C.D. 157).