



GHANA

THE FREE ZONE ACT, 1995

(No 504)

PART I - FREE ZONE DEVELOPERS

PART II - ESTABLISHMENT OF FREE ZONES; DEVELOPERS OF FREE ZONES

PART III - FREE ZONE ENTERPRISES

PART IV - LICENCING

PART V - IMPORT AND EXPORT

PART VI - INCENTIVES

PART VII - ADMINISTRATION AND MISCELLANEOUS PROVISIONS

In exercise of the powers conferred on the Minister responsible for Trade and Industry by sections 26(2) and 41 of the Free Zone Act 1995 (Act 504), and after consultation with the Minister responsible for customs and exercise and the Commissioner of Customs, Excise and Preventive Service in accordance with section 26(2) of Act 504, these Regulations are made this 22nd day of February, 1996.

PART I - FREE ZONE DEVELOPERS

Section 1. Establishment of Free Zones Board

There is established by this Act a Board to be known as the Free Zones Board, referred to in this Act as the "Board".

Section 2. Composition of the Board

- (i) The Board shall consist of
 - o (a) a Chairman who shall be the Minister for Trade and Industry; and
 - o (b) eight other persons four of whom shall be appointed from the private sector.
- (ii) The members of the Board shall be appointed by the President in consultation with the council of State and shall include at least two women.

Section 3. Functions of the Board

The functions of the Board are to

- (a) grant licences to applicants under this Act;
- (b) assist applicants for licenses under this Act by providing services for obtaining other relevant licenses, permits and facilities;
- (c) examine and recommend for approval agreements and treaties relating to the development and activities of the free zones;
- (d) monitor the activities, performance and development of free zone developers and enterprises;
- (e) ensure compliance by free zone developers and enterprises of this Act and any other laws relevant to free zone activities.
- (f) register and keep records and data on the programmes of developers, operators and enterprises in free zones;
- (g) perform such other functions as are incidental to the foregoing.

Section 4. Tenure of office of members of the Board and allowances.

- (i) A member of the Board other than the Chairman shall hold office for a term of four years and is eligible for re-appointment.
- (ii) A member of the Board other than the Chairman may at any time resign his 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.
- (iii) Members of the Board shall be paid such allowances as the Minister responsible for Finance shall determine.

Section 5. Meetings of the Board.

- (i) The Board shall meet for the dispatch of business at such times and places as the chairman may determine but shall meet at least once every month.
- (ii) The Chairman shall preside at all meetings of the Board and in his absence the members present shall elect one of their number to preside.
- (iii) The quorum for a meeting of the Board shall be five of the members.
- (iv) Questions at a meeting of the Board shall be determined by a majority of members present and voting and where there is equality of votes the person presiding shall have a casting vote.
- (v) The Board may co-opt any person to attend any of its meetings except that a person co-opted does not have the right to vote on any matter before the Board for decision.
- (vi) 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.
- (vii) A member of the Board who has an interest in a contract proposed to be entered into on behalf of the Board shall disclose in writing to the Board the nature of his interest and shall be disqualified from participating in any deliberations of the Board in respect of the contract.
- (viii) A member of the Board who infringes subsection (7) of this section is liable to be removed from the membership of the Board.
- (ix) Except as otherwise provided in this section, the Board shall regulate the procedure for its meetings.

Section 6. Committees of the Board

The Board may for the discharge of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to them such functions as the Board may determine except that a committee composed entirely of non-members may only advise the Board.

PART II - ESTABLISHMENT OF FREE ZONES; DEVELOPERS OF FREE ZONES

Section 7. Declaration of Free Zones.

- (i) Subject to the Constitution and 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, declare:
 - (a) any area of land or building as a free zone;
 - (b) any airport, river port, sea port, or lake port as a free port.
- (ii) A declaration under subsection (1) of this section shall specify the area and the scope of activities in the free zone concerned.

Section 8. Qualification of free zone developers.

- (i) No person shall:
 - a) develop;
 - (b) manage; or
 - (c) develop and manage

a free zone unless it is a body corporate registered under the Companies Code 1963 (Act 179) or a partnership registered under the Private Partnership Act 1962 (Act 152).

- (ii) The body corporate or partnership shall be licensed to develop, manage or develop and manage free zone under this Act.

Section 9. Rights and responsibilities of a free zone developer.

- (i) 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; and
 - (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.
- (ii) It shall be the responsibility of a developer to:
 - (a) construct and maintain buildings, warehouse factory shells and provide or contract other persons to provide utilities or services such as water, electric power, telecommunications and sewerage;
 - (b) develop all other infrastructure necessary for the enhancement of the efficient and effective activities of the zone, in accordance with any regulations made under this Act;
 - (c) provide fencing and enclosures to separate the zone from the national customs territory, and ensure security of the zone;
 - (d) provide and contribute to the cost of facilities for such on site customs services as shall be determined by the Customs, Excise and Preventive Services (CEPS);
 - (e) undertake any investment or financial venture to facilitate and promote the development of the Zone; and
 - (f) submit, within such periods as the Board may direct, reports on development in the relevant zone to the Board.

Section 10. Sub-contracting by developers.

- (i) A licensed developer may undertake or sub- contract the management, control and promotion of the free zone development in the declared area.
- (ii) The developer shall apply for a licence for any person to whom a sub-contract has been given by it under subsection (1)
- (iii) The application for a licence for a sub-contract shall be made to the Board and shall be accompanied with the executed sub-contract.

PART III - FREE ZONE ENTERPRISES

Section 11. Export free zone enterprises

Subject to the provisions of this Act any person may apply for a licence to establish an enterprise in a free zone.

Section 12. Qualification of enterprise.

- (i) No person shall carry on a trade, business or industry within a free zone unless it is registered under:
 - (a) the Companies Code 1963 (Act 179); or
 - (b) the Private Partnership Act 1962 (Act 152)

and is the holder of a licence authorising the carrying on of that trade, business or industry under this Act.

- (ii) A company or partnership qualified under subsection (1) and licenced under section 16 shall be referred to as a free zone enterprise.

Section 13. Rights and responsibilities of a free zone enterprise.

- (i) A free zone enterprise shall have the right to produce any type of goods and services for export but shall not produce any goods that are environmentally hazardous.
- (ii) A free zone enterprise shall be free to:
 - (a) store, warehouse, pack, unpack and repack, divide, sub-divide, group, breakdown, assemble, disassemble, bottle, rebottle, can, recan, decant, alter, sample, display, grade, test, classify, mark, label, relable, finish, handle, mix, combine, clean, manipulate, restore, join, transform, transit and transship, transfer, mount, refine, salvage, destroy, demolish, confect, process and manufacture any foreign or domestic raw material, intermediate, semi-finished or finished goods or components for export or re-export;
 - (b) render and sell any type of information processing, computer-aided design, computer-aided printing and publishing, software development tele-marketing and any other similar and related services;
 - (c) render and sell financial, banking, insurance, commercial, advisory, repair and maintenance, professional training and other services subject to all relevant laws and regulations for the time being in force; and
 - (d) carry out any other activities relevant to its licence as may be considered necessary by the Board.

Section 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 prior approval of the Board.

PART IV - LICENCING

Section 15. Application for licenses to develop a free zone or operate an enterprise in a free zone

- (i) An application for a license to develop, manage or establish an enterprise in the free zone shall -
 - (a) be in writing;

- o (b) be submitted to the Secretariat of the Board;
 - o (c) specify the zone to be developed or managed or both for the trade, business or industry for which the license is required; and
 - o (d) be accompanied with such information as the Board may require.
- (ii) The Board shall cause response to be made to an application within twenty eight working days from the date of the receipt of the application.

Section 16. Grant of license to developers and enterprises

- (i) The Board may grant a license authorizing -
 - o (a) the development or management or both of a free zone; or
 - o (b) the carrying on of a trade, business or industry within the free zone.
- (ii) no license shall be granted for the carrying on of: -
 - o (a) the business of banking, unless the applicant is also registered and licensed under the Banking Law 1989 (P.N.D.C.L. 225); or
 - o (b) the business of insurance unless the applicant is also registered under the Insurance Law 1989 (P.N.D.C.L 227).
- (iii) A license issued under this section shall be under the signature of the Chairman of the Board.

Section 17. Conditions of license

The Board may attach to a license such conditions thinks appropriate concerning employment skills, job opportunities and degree of export orientation.

Section 18. Revocation

- (i) The Board may revoke a license where it is satisfied that there has been a breach of condition attached to the license.
- (ii) The Board may upon the request of the licensee vary at any time the conditions attached to the license.
- (iii) Before revoking a license, the Board shall give not less than fourteen working days notice of its intentions to the licensee and shall consider any representations made to it by the licensee.

Section 19. Register

- (i) The Board shall establish and maintain a register of licenses granted under section 16 of this Act.
- (ii) There shall be entered in the register in respect of each license:
 - o (a) the name of the person to whom the license is granted; and
 - o (b) the zone to be developed or managed or both or the trade, business or industry to which the license relates.
- (iii) The register shall be kept by the Board and shall be open for inspection by the public subject to such fee as the Board may determine.

Section 20. Transfer of license

No licensee shall transfer a license issued in respect of it to any other person without the prior approval of the Board.

PART V - IMPORT AND EXPORT

Section 21. Non-application of import laws to free zones

The Laws for the time being 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 Ghana into a free zone; or
- (b) the dispatch of goods for export out of a free zone to a country outside Ghana, except in so far as such laws are made applicable by regulations made under this Act.

Section 22. Exemption from taxes of imports into free zone areas

The imports of a free zone developer, sub-contractor or enterprise into a free zone single-factory zone shall be exempt from direct and indirect taxes and duties.

Section 23. Sales in national customs territory

- (i) The Minister may by legislative instrument authorize the sale of up to 30 percent of the annual production of goods and services of a free zone and single factory zone enterprise to the national customs territory.
- (ii) Sale of goods from free zone enterprises single factory zones to the national customs territory shall be considered as imports and shall be subject to the rules and regulations relating to imports into the national customs territory.
- (iii) Damaged or rejected goods, or samples may be sold by the free zones and single-factory zones to the national customs territory; and such goods shall be considered as part of the 30 percent of annual production of the free zones authorized to be sold to the national customs territory and as such shall be subject to the applicable and taxes.
- (iv) An instrument issued under subsection (i) of this section shall provide penalties for contravention of any authority provided in it.

Section 24. Sales from national customs territory to free zones

- (i) 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.
- (ii) A domestic enterprise shall be eligible to benefit from the prevailing export incentives available to a national exporter and shall not require an export license for sale of any goods and services to enterprises in the free zone or single factory zone.
- (iii) 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 the banks and any licensed foreign exchange bureau.

Section 25. Entry into free zone by officers

- (i) An authorized officer of any of any of the Revenue Services, member of the Police Force or an officer authorized 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.
- (ii) An officer exercising any power of entry or inspection shall on request produce his authorization.
- (iii) Any person who prevents or obstructs an authorized by subsection (1) of this section or attempts to do so, commits an offense and is liable on summary conviction to a fine not exceeding \$1,000 or its equivalent in cedis or imprisonment for a term not exceeding six months or to both.

Section 26. Responsibility of Customs Excise and Preventive Service

- (i) The Customs Excise and Preventive Service shall be responsible for the control of

- zero-rated goods -
 - o (a) within a free zone;
 - o (b) in transit between two free zones; and
 - o (c) in transit between a free zone and a point of entry into or exit out of Ghana.
- (ii) The Minister after consultation with the Minister responsible for Customs and Excise and the Commissioner of Customs, Excise and Prevention Service may by legislative instruments make regulations -
 - o (a) adopting or modifying for the purposes of this Act any of the regulations relating to customers operations;
 - o (b) governing the movement of persons, vehicles or goods into and out of a free zone, from and out to other parts of the customs territory;
 - o (c) covering the keeping, storage and handling of goods in free zones;
 - o (d) covering the keeping and preserving of accounts and records in a specified form in respect of goods in free zones; and
 - o (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.

Section 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 the time in addition to any penalty which may be imposed by the Commissioner.

PART VI - INCENTIVES

Section 28. Tax concession

- (i) Free zone developers and enterprises granted licenses under this Act shall be exempted from the payment of income tax on profits for the first ten years from the date of commencement of operation.
- (ii) The income tax rate after ten years shall not exceed a maximum of 8 percent.
- (iii) A shareholder shall be exempted from the payment of withholding taxes on dividends arising out of free zone investments.

Section 29. Investors

A foreign investor may take and hold a maximum of 100 percent of the shares in any free zone enterprise.

Section 30. Investments guarantees, transfer of profits

Subject to this section any enterprise in a free zone shall be guaranteed unconditional transfer through any authorized dealer bank in free convertible currency of: -

- (a) dividends or net profits attributable to the investments;
- (b) payments in respect of loans servicing where a foreign loan has been obtained;
- (c) fees and charges in respect of any technology transfer agreement; and
- (d) the remittance of proceeds (net of all taxes and other obligations) in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

Section 31. Investment guarantees, transfer of profits

- (i) No enterprise in a free zone shall be nationalized or expropriated by Government and no person who owns, whether wholly or in part, the capital of an enterprise shall

be compelled by law to cede his interest in the capital to any other person.

- (ii) There shall not be any acquisition of an enterprise to which this Act applies by the state unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for
 - (a) 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 right and the amount of compensation to which he is entitled.
- (iii) Any compensation payable under this section shall be paid without undue delay and authorization for its repatriation in convertible currency, where applicable, shall be issued.

Section 32. Dispute settlement procedures

- (i) Where a dispute arises between a licensee in a free zone and the Government in respect of any activities in the free zone, all efforts shall be made through mutual discussion to reach an amicable settlement.
- (ii) Any dispute between a licensee and the Government in respect of any activities in a free zone which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows -
 - (a) in accordance with the rules for 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 any 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.
- (iii) where in respect of any 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 and the Government as to the method of dispute settlement to be adopted, the choice of the licensee shall prevail.

Section 33. Operation of foreign currency account

- (i) Each free zone enterprise shall be permitted to operate a foreign currency account with banks in Ghana.
- (ii) The terms and conditions under which the accounts shall be operated shall be set out in the license in the license granted under section 16 of this Act.
- (iii) The Central Bank shall be consulted by the Board on the terms and conditions referred to in subsection (2) of this section.

Section 34. Employment in free zones

- (i) Free zone developers and enterprises shall be free to negotiate and establish contracts of employment with employees that include wage scales, minimum working hours, employee suspension and dismissal, settlement of disputes arising between employers and employees, and other such terms of employment as shall be consistent with I.L.O. Conventions on workers rights and conditions of service.
- (ii) Work and resident permits shall be required for any foreign national who wishes to live in Ghana and work in a free zone.
- (iii) Application for work and permits for foreign employees of free zone enterprises shall be submitted to the Board which shall take the necessary action in consultation with the Immigration Service.
- (iv) Subject to the existence of a double taxation agreement between the Government of Ghana and the Government of the foreign employee, the foreign employee shall be totally exempt from payment of income tax to the Government of Ghana on income earned in the free zone during the period of that work and resident permits issued shall remain valid except that the employee shall be liable of income tax in his home country.

Section 35. Investment guarantees, transfer of profits

- (i) The Board shall issued identity cards to all employees of licensed operators in a free zone.
- (ii) A person who enters or leaves a free zone may be subject to inspection by any person authorized by the Board to do so.
- (iii) A person who obstructs or prevents any person authorized by the Board in performance of his functions under subsection (2) of his section commits an offense and his liable on summary conviction to a fine not exceeding \$500.00 or its equivalent cedis or to imprisonment for a term not exceeding six months or to both.

PART VII - ADMINISTRATION AND MISCELLANEOUS PROVISIONS**Section 36. Secretariat of the Board**

- (i) The Board shall have a Secretariat.
- (ii) The Minister for Trade and Industry shall assign to the Secretariat of the Board such public officers as the Board may require for the implementation of its functions.
- (iii) The Ministry may by legislative instrument make regulations on the functions of the Secretariat.

Section 37. Monies for the expenditure of the Board

There shall be provided to the Board by Parliament such monies as it may require to meet its expenditure.

Section 38. Annual Report

The Minister shall submit to Parliament as soon as practicable and in any event 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.

Section 39. Offenses by corporate bodies

- (i) Where an offense is committed under this Act, regulations made under this Act or any other law by a body of persons: -
 - (a) Where the body of persons is a body corporate every director and officer of the body corporate shall be deemed to be guilty of the offense; and
 - (b) where the body of persons is a firm or partnership every partner shall be considered to be guilty of the offense.
- (ii) A person shall not be guilty of an offense by virtue of this section if he proves that the act constituting the offense was committed by a person other than himself and without his knowledge or connivance and that he exercised all due diligence to prevent the commission of the offense having regard to all the circumstances.

Section 40. Smuggling

A person who: -

- (a) in contravention of any provision of this Act carries or attempts to carry anything into or out of a free zone; or
- (b) conceals anything with intent to illegally carry it into or out of a free zone,

commits an offense and is liable on conviction to imprisonment of not less than three months or more than five years.

Section 41. Regulations

- (i) The Minister may take regulations for the effective implementation of this Act including regulations which exempt licensed enterprises from the provisions of existing laws and regulations.
- (ii) Regulations may provide for offenses and prescribe penalties for contravention which shall not exceed a fine of 2 million cedis or imprisonment for a term not exceeding twelve months or both.

Section 42. Repeal

The Ghana Industrial Free Zone authority Decree 1979 (S.M.C.D. 157) is hereby repealed.

Section 43. Interpretation

In this Act unless the context otherwise requires:-

"Center" means the Ghana Investment Promotion Center;

"Commissioner" means the Commissioner of Customs, Excise and Preventive Service;

"enterprise" means an industry, project, undertaking or business for commercial purposes or any part of it;

"free zone" means an area or building declared as a free zone by publication in the Commercial and Industrial Bulletin and includes single factory zones, free port, free airport, free river or lake port;

"developer" means 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 which wish to carry on or are carrying on business within the zone and included agents or subcontractors of the developer;

"domestic enterprise" means an enterprise incorporated in Ghana and operating outside a free zone;

"goods" include both animate and inanimate thing;

"importer" and "exporter" means respectively owner or person for the being in possession of or beneficially interested in any goods at the time of the importation or exportation;

"Minister" means Minister responsible for Trade and Industry;

"single factory zone" means a factory or building declared as a free zone;

"national exporter" means any exporter other than a free zone exporter;

"Revenue Service" means Customs, Excise and Preventive Service and the Internal Revenue Service.



International Labour Organization

NATLEX database

Disclaimer

infonorm@ilo.org