

ACT 504

FREE ZONE ACT, 1995

ARRANGEMENT OF SECTIONS

Establishment of Free Zones Authority

SECTION

1. Establishment of the Free Zones Authority.
2. The governing body of the Authority.
3. Functions of the Authority.
4. Tenure of office of members of the Board.
5. Meetings of the Board.
6. Committees of the Board.

Establishment of Free Zones

7. Declaration of free zones.
8. Qualification of free zone developers.
9. Rights and responsibilities of a free zone developer.
10. Sub-contracting by developers.

Free Zone Enterprises

11. Export free zone enterprises.
12. Qualification of enterprise.
13. Rights and responsibilities of a free zone enterprise.
14. Change of line of production.

Licensing

15. Application for licences to develop or operate an enterprise.
16. Grant of licence to developers and enterprises.
17. Conditions of licence.
18. Revocation.
19. Register.
20. Transfer of licence.

Import and Export

21. Non-application of import laws to free zones.
22. Exemption from taxes of import into free zone area.
23. Sales in national customs territory.
24. Sales from national customs territory to free zones.
25. Entry into free zone by officers.
26. Responsibility of Customs Excise and Preventive Service.
27. Missing dutiable goods.

Incentives

28. Tax concession.
29. Investors.

SECTION

30. Investment guarantees, transfer of profits.
31. Guarantee against expropriation.
32. Dispute settlement procedures.
33. Operation of foreign currency account.
34. Employment in free zones.
35. Residence in free zones and identity cards.

Administration and Miscellaneous Provisions

36. Secretariat of the Board.
37. Moneys for the expenditure of the Board.
38. Annual report.
39. Offences by bodies corporate.
40. Smuggling.
41. Regulations.
42. Repeal.
43. Interpretation.

ACT 504

FREE ZONE ACT, 1995¹

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;

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

- (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, sea port, 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 tele-marketing 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

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

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

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.

U (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. B

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,

