

THE GAMBIA FREE ZONES ACT 2001

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THE GAMBIA FREE ZONES ACT 2001

NATIONAL ASSEMBLY

A BILL ENTITLED

AN ACT to provide for the creation of Free Zones, investment incentives for investors who invest in the Zones and for matters connected therewith.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title 1. This Act may be cited as The Gambia Free Zones Act 2001.

Interpretation 2. In this Act, unless the context otherwise requires –

“Agency” means The Gambia Investment Promotion and Free Zones Agency established under section 3 of The Gambia Investment Promotion Act 2000;

“Board” means the Board of the Agency established by section 6 of The Gambia Investment Promotion Act 2000;

“commercial activity” includes trading in, breaking bulk, grading, re-packing or re-labelling of goods and the provision of services;

“company” means a company within the meaning of the Companies Act;

“customs officer” means a customs officer appointed under the Customs Act and Excise Act;

“customs territory” means the territory in which the customs laws of The Gambia apply in full, but does not include a Zone;

“excise duty” has the meaning given to it in the Excise Act;

“Free Zone” or “Zone” means any area in The Gambia designated as a Free Zone where goods and services are deemed, insofar as import duties and taxes are concerned, as being outside the customs territory where the benefits provided under Part III apply;

“goods” includes all kinds of articles, wares, merchandise and stock and, where any such goods are sold under the Customs Act and Excise Act, includes the proceeds of sale;

“import duties and taxes” includes all duties, taxes, fees and other charges which are collected on or in connection with the importation and

exportation of goods in relation to the customs territory, for the time being leviable under any written law, but does not include fees and charges which are limited in amount to the costs of services rendered under this Act;

“infrastructure” means a physical structure such as a road, bridge, or storm sewer which facilitates economic activity or other activity or protects property;

“licence” means a licence issued under this Act;

“manufacture” includes the conversion by manual or mechanical means of organic or inorganic material into a new product by changing the size, shape, composition, nature or quality of such materials and includes processing, the assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction;

“one-stop centre” means a facility within which all matters required to ensure that all investments relating to the Zones are catered for;

“person” includes a juristic person;

“Secretary of State” means the Secretary of State responsible for matters relating to trade;

“Zone developer” means a corporate body, which has been granted a licence under this Act which has been granted a licence under this Act to develop and provide infrastructure in all or part of a Zone;

“Zone enterprise” means a corporate body, operating or carrying on business within a Zone;

“Zone export” means any product sold or services supplied by a Zone enterprise for exportation to another Zone or direct to or through the customs territory;

“Zone import” means any input or service to be supplied to a Zone for an enterprise within a Zone, whether from outside or inside the customs territory;

“Zone investor” means a Zone developer, Zone operator or Zone enterprise;

“Zone investors” means a Zone developer, Zone operator and Zone enterprise;

“Zone operator” means a corporate body, granted a licence under this Act to engage in the management of a Zone.

PART II - ADMINISTRATION

Preliminary

Administration of this Act

3. (1) This Act shall be administered by The Gambia Investment Promotion and Free Zones Agency established under section 3 of The Gambia Investment Promotion Act 2000.

(2) Accordingly, all the provisions relating to the Agency, including the Board, members of the Board, Chief Executive and other staff of the Agency and legal proceedings, shall, insofar as they are not inconsistent with this Act, apply for the purpose of administering this Act.

(3) For the purpose of determining the overall objectives and functions of the Agency, sections 4 and 5 of this Act shall be read together with sections 4 and 5, respectively, of The Gambia Investment Promotion Act 2000.

Objectives and functions of the Agency under this Act

Objectives of the Agency under this Act

4. For the purposes of this Act, the objectives of the Agency are to promote The Gambia as a trade gateway and investment haven and to -

- (a) facilitate the development of the Zones;
- (b) regulate and administer approved activities within the Zones;
- (c) set up mechanisms for the integration, co-ordination, planning and monitoring of Free Zones;
- (d) transform selected areas in The Gambia into highly developed agro-industrial, commercial, tourist, banking, investment and financial centres; and
- (e) vest the Free Zones with the status of a separate customs territory within the framework of the Constitution and the national sovereignty and territorial integrity of The Gambia.

Functions of the Agency under this Act

5. (1) Without prejudice to the generality of the powers conferred on the Agency under this Act or any other law, the Agency shall, for the purposes of this Act -

- (a) make rules for the orderly and fair development and operation of Zones and Zone enterprises;
- (b) determine registration procedures and negative list criteria for Zones and Zone investors;
- (c) examine and process applications for licences by the Zone investors and issue the relevant licences;
- (d) determine procedures for providing the benefits accruing to Zone investors;
- (e) ensure adequate security within the Zones;
- (f) integrate, co-ordinate, plan and monitor the Free Zones to ensure compliance with the laws of the Gambia except where otherwise

exempted under this Act;

- (g) allocate areas, spaces, wharves and any other facility or structure which is available at a Zone on such terms as the Agency considers appropriate;
- (h) determine entry of personnel into a Zone;
- (i) advise the Secretary of State on all aspects of development of the Zones;
- (j) implement the policies and programmes of the Government with regard to the development of the Zones;
- (k) identify and map out the areas to be designated as Zones;
- (l) plan the development and maintenance, and finance the basic infrastructure up to the perimeter of the Zones;
- (m) examine and process applications for designation of Zones and issue relevant approvals;
- (n) promote and market Zones among investors;
- (o) issue certificates of origin to Zone enterprises for the purpose of a generalized system of preferences and other trade preferences given under bilateral or multilateral trade agreements;
- (p) act as a one-stop centre through which the Zone enterprises and other business investors outside the Zones can channel their applications for permits and facilities;
- (q) perform all such administrative functions in relation to the Zones as would normally be performed by local authorities.
- (r) maintain current data on the performance of the programme in each Zone and by Zone enterprises;
- (s) assist in securing from any Department of State, Government department, agency or other relevant body, any permission, exemption, authorisation, licence, land, or any other thing required for the purpose of establishing or operating a business enterprise in the Zones;
- (t) monitor the performances of Zone investors in respect of their obligations as set out in contracts or licences, and take appropriate action in the event of any violations of these obligations;
- (u) support the customs and taxation authorities and the security forces in their enforcement of the laws of The Gambia within the Free Zones.

- (v) Safeguard and protect Government revenues and foreign currency earnings, arising from the operation of the Free Zones;
- (w) ensure that Zone investors comply with the laws of The Gambia;
- (x) establish guidelines for Zone investors; and
- (y) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Agency or the exercise of its powers under this Act.

(2) The Agency may construct buildings, roads and other infrastructure in the Zones.

PART III- PROVISIONS RELATING TO FREE ZONES

Application

Application of this Part

6. This Part applies to investors who seek to invest in the Free Zones in order to receive the investment incentives provided in this Act.

Declaration of Zones

Declaration of Zones

7. (1) The Secretary of State may, on recommendation of the Agency, by Notice published in the *Gazette*, declare any area of The Gambia to be a Free Zone.

(2) Every declaration of a Zone under subsection (1) shall define the limits of the Zone and shall remain in force until revoked by the Secretary of State by Notice published in the *Gazette*.

Licensing (General)

Licences

8. (1) No person shall carry on business as a Zone investor, or hold himself or herself out as providing or maintaining activities, facilities, services or doing business within a Zone unless that person is licensed in that capacity under this Act.

(2) Subject to this Part, the Agency may, on receiving an application in the prescribed form, issue a licence to the applicant to carry on business as a Zone developer, a Zone operator or Zone enterprise, as the case may be.

(3) The Agency shall render its decision on an application for a licence within 30 consecutive days from the date that a completed application has been submitted to it.

Register of Licences

9. (1) The Agency shall keep and maintain in such form as it considers appropriate a register of the holders of current licences issued under this Act specifying in relation to each holder of a licence –

- (a) the licensee's name;

- (b) the address of the principal place at which the licensee carries on business; and
- (c) the name or style under which the business is carried on, if different from the name of the actual licensee.

(2) Where –

- (a) a change occurs in any particulars which are required to be entered in the register of licence holders with respect to a licensee; or
- (b) a licensee ceases to carry on the business or operations to which the licence relates,

the licensee shall, within fourteen days of the occurrence of the change or cessation of business, as the case may be, give to the Agency particulars of the change or cessation of business in the prescribed form.

(3) A licence issued under this Act is not transferable to any other person.

Duration of licence

10. A licence issued under this Act shall be for a period of not less than one year and not more than thirty years from the date of issue and is renewable.

Suspension, amendment or revocation of Licences

11. (1) The Agency may suspend, amend or revoke any licence issued under this Act where the licensee –

- (a) fails within six months of the issue of the licence to carry out any activity authorised by the licence;
- (b) substantially ceases, for a reasonable length of time, its or his activity in the Zone; or
- (c) contravenes the provisions of this Act, or the conditions attached to the licence.

(2) Where the Agency suspends, amends or revokes a licence under subsection (1)–

- (a) it shall notify the licensee accordingly; and
- (b) in the case of a suspension or revocation, the licensee shall cease to carry on any activity within the Zone immediately upon such notification.

(3) A licensee may, on being notified of a suspension or revocation, lodge a complaint to the Secretary of State who shall, within thirty days, investigate the complaint and either confirm or overrule the decision of the Agency and inform the licensee accordingly.

(4) Where the Secretary of State confirms the decision of the Agency to suspend or revoke a licence, the licensee shall cease to carry on any activity within the Zone immediately on being informed of the decision.

(5) A person who contravenes subsection (2)(b) or (4) commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis or more than five hundred thousand dalasis or to imprisonment for a term not exceeding three years or to both.

Zone Developers and Zone Operators

Qualifications of Zone developers and Zone operators

12. (1) No person shall carry on business as a Zone developer or Zone operator or hold himself or itself out as providing or maintaining activities, facilities, services or doing business within a Zone unless that person has been issued a licence and granted a lease by the Agency.

(2) Before a person can qualify to be a Zone developer or Zone operator, that person shall –

- (a) be a company or corporation incorporated in The Gambia for the purpose of developing or operating a Zone; and
- (b) have adequate capital as determined by the Agency.

(3) A Zone developer may apply and obtain a Zone operator's licence from the Agency if it qualifies as a Zone operator under this Act.

Licensing of Zone developers

13. (1) A person may apply to the Agency for a licence to develop all or part of a Free Zone.

(2) The Agency may grant a licence to an applicant for a Zone Developer's Licence on such terms and conditions as it thinks proper, provided that the Agency is satisfied that the applicant has -

- (a) the necessary expertise required for developing all or any part of a Zone as determined by the Agency;
- (b) prepared a suitable development plan;
- (c) proved that the investment proposed is commercially viable and has an adequate equity base; and
- (d) shown that the terms on which the applicant proposes to sub-lease or otherwise make property in the Zone available to Zone enterprises shall be on terms and conditions acceptable to the Agency.

Functions of Zone developers

14. (1) A Zone developer shall –

- (a) make improvements to the Zone and provide and maintain facilities according to the plans approved by the Agency;
- (b) provide or facilitate provision of infrastructure and other services according to the design and engineering studies submitted to the Agency, together with the application and implementation

schedule;

- (c) provide adequate enclosures to segregate the Zone area from the customs territory;
- (d) make provisions for the movement of persons, conveyances, vessels and goods entering or leaving the Zone;
- (e) keep and maintain adequate and proper accounts and other records in relation to its business in the English language;
- (f) report on Zone activities, performance and development to the Agency on an annual basis or as required by the Agency;
- (g) provide in a Zone at its own expense and free of charge adequate facilities and offices for personnel of the Agency, Customs and Excise Department and other officials of Government agencies whose presence is necessary in a Zone to ensure compliance with this Act and the laws of The Gambia; and
- (h) except where otherwise exempted under this Act, comply with the laws of The Gambia.

(2) A Zone developer may –

- (a) appoint a Zone operator or, subject to section 19 (3), act as a Zone operator to undertake the management and administration of the Zone;
- (b) sublease any part of the Zone to licensed Zone enterprises, and charge fees in convertible foreign currency for services that it provides in the Zone.

*Licensing of
Zone
operators*

15. (1) A person may apply to the Agency for a licence to operate all or part of a Free Zone.

(2) The Agency may grant a licence to an applicant for a Zone Operator's Licence on such terms and conditions as it thinks proper, provided that the Agency is satisfied that the applicant has -

- (a) the necessary expertise required for operating in all or any part of a Zone as determined by the Agency;
- (b) prepared a suitable operational plan; and
- (c) proved that the operations proposed are commercially viable and has an adequate equity base.

*Functions of
Zone
operators*

16. A Zone operator shall -

- (a) manage and administer a Zone;

- (b) make provisions for the movement of persons, conveyances, vessels and goods entering or leaving the Zone;
- (c) keep and maintain adequate and proper accounts and other records in relation to its business in the English language;
- (d) report on Zone activities, performance and development to the Agency on an annual basis or as required by the Agency; and
- (e) except where otherwise exempted under this Act, comply with the laws of the Gambia.

Zone Enterprises

Licensing of Zone enterprises

17. (1) A person shall not carry on business as a Zone enterprise in a Zone unless the person holds a valid licence issued by the Agency.

(2) The Agency may issue a licence to an applicant, on such terms and conditions as it thinks proper, including but not limited to conditions regarding employment and export levels, to carry on business as a Zone enterprise if satisfied that the application complies with the objectives of this Act, and that the applicant –

- (a) is a registered business entity authorised to trade in goods or services in The Gambia;
- (b) proposes to engage in at least one activity eligible to be undertaken by a Zone enterprise within the Zone and that the activity does not have a deleterious impact on the environment or public health;
- (c) carries on trade, business or industry to be carried on within the Free Zone is primarily for export outside The Gambia;
- (d) has a commercially viable investment proposal;
- (e) has an adequate equity base;
- (f) has prepared a suitable development plan;
- (g) will provide new employment for citizens of The Gambia within The Zone and will increase output and value added to boost the economy.

Operations Within Zones

Goods deemed to be exported and imported into The Gambia or other Zones

18. Unless otherwise provided under this Act or under any other law, goods which are taken out from -

- (a) the customs territory and brought into a Zone shall be deemed to be exported from The Gambia;
- (b) a Zone and taken into the customs territory for use therein or

services provided by a Zone developer, Zone operator or Zone enterprise to any part of the customs territory shall be deemed to be imported into The Gambia ; or

- (c) a Zone or services provided by a Zone operator or Zone enterprise to another Zone shall be deemed to be an export.

Goods manufactured in Zones

19. Goods manufactured and services provided by a Zone developer, Zone operator or Zone enterprise shall not be taken out of the Zone except for export—

- (a) abroad or to another Zone; or
- (b) into the customs territory, subject to normal import and customs procedures and payments of import duties.

Authorised activities provided in the First Schedule

20. The activities specified in the First Schedule of this Act may be carried out at a Zone.

Restriction on goods and activities

21. (1) The Agency may order the exclusion or removal from a Zone of any goods or discontinuance of any activity, service or operation which in its opinion, is dangerous or prejudicial to the public interest, health or safety:

Provided that the Agency shall not issue an order under this section without first giving a person who would be affected by its decision an opportunity to be heard.

(2) Any person who contravenes an order of the Agency under subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand dalasis for each day that the offence continues.

(3) Subject to this Act, no person except security personnel, shall reside within a place declared a Zone without the prior written permission of the Agency .

Removal of goods from a Zone

22. (1) Goods in a Zone may, with the prior written approval of the Agency and under the supervision of a customs officer, be taken out of the Zone—

- (a) into the customs territory or another Zone for repair or maintenance, and subject to such conditions as may be imposed by the Agency; or
- (b) for destruction.

(2) A person who without the prior written approval of the Agency or without the supervision of a customs officer takes goods out of a Zone for repair, maintenance or destruction, commits an offence and is liable to a fine of five hundred thousand dalasis or treble the value of the goods, whichever is greater, or imprisonment for a term not exceeding three years or both and the goods shall be liable to forfeiture under the Customs Act and the Excise Act.

*Foreign
exchange
transactions*

23. (1) Unless otherwise provided under this Act or under any other law, payments by Zone investors to persons in the customs territory or abroad shall be done through commercial banks in the customs territory.

(2) Zone investors, shall have autonomous and independent access to and control over their capital and earnings and may freely maintain foreign currency accounts with both local and overseas commercial banks.

(3) Foreign currency transactions between Zone enterprises and persons resident outside the customs territory shall be exempt from all exchange control regulations.

(4) Zone investors may obtain loans or guarantees in local and foreign currency.

Benefits to Zone Investors

Exemptions

24. (1) Subject to subsection (2), a Zone investor shall be granted exemption from all taxes and customs duties payable on all imports provided that the imports, are used or to be used exclusively within the Zone, and subject to any other limitations specified by the regulations made pursuant to this Act.

(2) Where import duty or sales tax has been paid by a Zone investor in respect of any goods on their importation into the customs territory, no refund shall be allowed merely because the goods are later transferred into a Zone.

(3) Zone investors, within a Zone are exempt from the payment of -

- (a) import duty, excise duty and sales tax on goods produced within or imported into a Zone, unless the goods are entered for consumption into the customs territory;
- (b) import duty on capital equipment;
- (c) corporate tax or income tax -
 - (i) in the case of trading activities in the Zones, for the first ten years of operations from the date of first obtaining a lease or licence from the Agency and the tax rate shall not exceed six percent per annum for the years following the expiry of the exemption granted under this paragraph;
 - (ii) in the case of approved tourism related projects, to the normal rate of tax but shall pay a flat rate of ten percent for a period of twenty years;
- (d) withholding tax on dividends and other payments during the period that it is exempted from payment of income tax under paragraph (c); and
- (e) municipal taxes.

(4) Zones investors shall also be exempted from quotas or other restrictions or prohibitions on import or export trade with the exception of trade in firearms, military equipment or other illegal goods.

PART IV-OFFENCES AND PENALTIES

Offences and penalties

25. (1) A person who, without lawful excuse -

- (a) fails to comply with any condition attached to a licence;
- (b) refuses to furnish or furnishes any information or produces any document which is false or misleading in a material particular;
- (c) obstructs any officer of the Agency , Customs and Excise Department or any other public officer in the performance of his or her duties;
- (d) refuses or neglects to provide information which the Agency may reasonably require for the purposes of the enforcement of this Act;
- (e) refuses without lawful excuse to admit an officer or agent of the Agency into the premises of his or its business enterprise or Zone enterprise or otherwise obstructs any inspection by an officer or agent of the Agency;
- (f) takes or uses the title of Zone enterprise, Zone operator or Zone developer or any other title or description that may reasonably induce a belief in any other person that the person using the title or description is registered under this Act;
- (g) take or use any name, title or description that leads to the belief that he or she is registered under this Act;
- (h) fraudulently or by false representation obtains or procures a licence under this Act;
- (i) fraudulently makes or produces or causes to be made or produced a forged document;
- (j) breaks into a Zone;
- (k) aids and abets the commission of an offence under this Act; or
- (l) contravenes any provision of this Act or regulations made under it,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, except where otherwise provided in this Act –

- (a) in the case of paragraph (a), (b), (c), (d), (e), (f) or (g), to a fine of not less than five thousand dalasis; and
- (b) in the case of paragraph (h), (i), (j) or (k), to a fine of not less than ten thousand dalasis or imprisonment for a term of not less than twelve months or to both.

(3) Where an offence is committed by –

- (a) a body corporate, other than a partnership, every director, manager or officer of the body; and
- (b) a partnership, every partner or officer of that body,

is deemed to have committed that offence and is liable on conviction to a fine of not less than thirty thousand dalasis or to a term of imprisonment of not less than one year or to both.

PART V - MISCELLANEOUS PROVISIONS

Restriction on appropriation of property

26. The State shall not appropriate the property of any investor under this Act without due compensation and that that the appropriation is for a public purpose.

Settlement of disputes

27. (1) Where any dispute arises between the Agency and a Zone investor, the parties concerned shall first attempt to reach an amicable settlement through negotiation but in the event of a failure to reach a settlement, the dispute shall be referred to arbitration under the Arbitration Act (Cap. 9 of the Laws of The Gambia 1990).

(2) Each of the parties shall appoint one arbitrator of their choice and the third arbitrator shall be appointed by the parties jointly and in the event of a failure to agree on a third arbitrator by the parties, the two arbitrators shall appoint the third arbitrator who shall act as the chairman of the arbitration proceedings.

(3) No appeal shall lie to the courts against the decision of the arbitration.

Regulations

28. (1) The Secretary of State may, on the advice of the Agency, make regulations for the better carrying out of the provisions of this Act and may for health, environmental or public security reasons, exclude goods from being taken into or services being provided in a Zone.

(2) The Secretary of State may, on the recommendation of the Agency, by Order published in the Gazette add to, vary, suspend or delete all or any part of the Schedule to this Act.

SCHEDULE

Section 20

LIST OF AUTHORISED ACTIVITIES WITHIN FREE ZONES

- (a) warehousing;
- (b) breaking bulk;
- (c) assembling;
- (d) storing, grading , cleaning and mixing;
- (e) labelling, packaging and repackaging;
- (f) processing;
- (g) manufacturing;
- (h) telecommunication and information technology;
- (i) energy;
- (j) financial services and off shore services;
- (k) health and veterinary services;
- (l) transportation services;
- (m) provision of such other services as determined by the Secretary of State on the recommendation of the Agency.

OBJECTS AND REASONS

The Bill seeks to provide for the establishment of Free Zones in The Gambia as approved in the Government Investment Policy document.

Power is given to the Secretary of State responsible for trade to declare any area of the Gambia to be a Free Zone.

Investment in authorised activities within the Zones attract incentives which include, among other things, exemption from payment of -

- (a) capital registration;
- (b) import duty, excise duty and sales tax on goods produced within or imported into a Zone;
- (c) import duty on capital equipment; and
- (d) withholding tax on dividends and other payments during a specified period.

The Bill provides for the Act to be administered by The Gambia Investment Promotion and Free Zones Agency established under The Gambia Investment Promotion Act thus saving cost.

For the purpose of administering the Act, the Agency has additional objectives and functions, including –

- (a) facilitating the development of the Zones;
- (b) regulating and administering approved activities within the Zones;
- (c) vesting the Zones with the status of a separate customs territory within the framework of the Constitution and the national sovereignty of The Gambia; and
- (d) making rules for the orderly and fair development and operation of the Zones.