

TRADE AND INVESTMENT

THE LAW DIGEST

TOPIC: HOW TO OBTAIN A FREEZONES LICENCE
IN GHANA: THE LEGAL REGIME

Contributor

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INTRODUCTION

The Ghana Free Zone Board (GFZB) was established by the Free Zone Act, 1995 (Act 504) as amended by the Free Zone (Amendment) Act, 2002 (Act 618) to enable the establishment of free zones in Ghana for the promotion of economic development; to provide for the regulation of activities in free zones and other related purposes.

FREE ZONES AUTHORITY

The Free Zones Authority is established by Act 504, as amended by Act 618. The governing body of the authority consists:

- i. the Minister responsible for trade and industry as Chairman; and
- ii. eight other persons, four of whom shall be appointed from the private sector.

The functions of the Authority are

- iii. to grant licenses to applicants under this Act;
- iv. to assist applicants for permits under this Act by providing services for obtaining other relevant licenses, permits, and facilities;
- v. to examine and recommend for approval agreements and treaties relating to the development and activities of the free zones;
- vi. to monitor the activities, performance, and development of free zone developers and enterprises;
- vii. to ensure compliance by free zone developers and enterprises with this Act and any other laws relevant to free zone activities;
- viii. to register and keep records and data on the programs of developers, operators, and enterprises in free zones;
- ix. to perform any other functions that are incidental to the performance of its duties under this Act or any other enactment.

ESTABLISHMENT OF FREE ZONES

Section 7 of Act 504, as amended, provides for the establishment of free zones in Ghana. It states that subject to the Constitution of the Republic of Ghana and any other enactment in force relating to the acquisition of property; the President may on the recommendation of the Board of free zones by notice in the Commercial and Industrial Bulletin in the Gazette declare as follows:

- i. an area of land or building as a free zone;
- ii. an airport, a river port, seaport, or lake port as a free zone.

However, a declaration made to that effect under section 7(1) shall specify the area and the scope of activities in the free zone concerned. The President is therefore empowered to declare any part of Ghana a free zone to promote economic development and increase investments drive in the Republic of Ghana. However, a company licensed to operate under the free zone enclave is mandated by law to export at least 70% of what it produces. The remaining 30% shall be considered as exports and subject to the relevant statutory regime applicable to transport commodities, and the payment of taxes be allowed by the free zone enterprise to be sold on the local market.

STATUTORY COMPLIANCE OF A FREE ZONE ENTERPRISE

Free zone investors do not require any minimum capital investment. However, as stated above, investors must indicate their ability to fulfil the minimum 70% export requirement. New investors are required to go through the following steps to obtain a free zone license:

- i. incorporate a company in Ghana with the Registrar-General's Department and obtain Certificates of Incorporation and Commencement of Business,
- ii. obtain and complete the GFZA Application Form and submit together with the following documents:
 - a. Business Plan
 - b. Copy of Certificate of Incorporation
 - c. Copy of Certificate to Commence Business
 - d. Copy of Companies Code
 - e. Evidence of possession or lease of real property or intent to acquire such property
 - f. Memorandum of Understanding (MOU) with prospective clients
 - g. Environmental Protection Agency Permit (where necessary)
 - h. Evidence of Funding/Capital Transfer
 - i. Any other relevant document

At this stage, the free zone authority shall raise an invoice for the necessary statutory fees and charges to be paid pursuant to the submission of the completed forms and the required documents. The GFZA shall notify the applicant of the status of his/her application for License within 28 working days of receipt of a complete application

A license specifying authorized activity to be undertaken (i.e., Developer, Manufacturer, Commercial or Service Industry) by the applicant shall be issued to the successful applicant. Once the license is accessed and approved, the enterprise is expected to commence operations within six months after that as a free zone enterprise in Ghana.

TYPES OF LICENSE

The grant of a permit may be any of the following:

- i. Developer
- ii. Manufacturing
- iii. Service
- iv. Commercial

For investments to be eligible under the Free Zones Programme, the investment should satisfy the following conditions:

- i. Should be a limited liability company registered with the Registrar Generals' Department
- ii. It should be export-oriented.
- iii. Should add some value to products/services to be exported,
- iv. It should be environmentally friendly.

The application of a license to operate any of the above shall be submitted to the free zone board. The board will meet and consider the application. Response to the application will be made within 28 days from the date of receipt of the application. Once successful, the board will grant and issue the license to the enterprise.

Incentives

Section 28 of Act 504 stipulates the incentives guarantee for enterprises operating under the free zone enclave in Ghana. The incentives, as provided by the act, include the following:

- 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%.
- iii. A shareholder shall be exempted from the payment of withholding taxes on dividends arising out of free zone investments.

SHAREHOLDING STRUCTURE

The law allows a foreign investor to take and hold a maximum of 100% of shares in a free zone enterprise. Also, a foreign investor can partner with a local investor to incorporate a Joint Venture (JV) company to operate a free zone enterprise. The same incentive applies here that notwithstanding.

INVESTMENT GUARANTEE AND TRANSFER OF PROFITS

An enterprise operating under a free zone license in Ghana is guaranteed unconditional transfer through an authorized dealer bank in free convertible currency of

- i. dividends or net profits attributable to the investment,
- ii. payments in respect of loans servicing where a foreign loan has been obtained,
- iii. fees and charges in connection with a technology transfer agreement, and
- iv. the remittance of proceeds nets of the taxes and any other obligations, in the event of the sale or liquidation of the enterprise or interest attributable to the investment.

GUARANTEE AGAINST EXPROPRIATION

An enterprise in a free zone shall not be nationalized 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.

Further to the above, Act 504 provides that, 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:

- i. the payment of fair and adequate compensation, and
- ii. 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.
- iii. A compensation payable shall be paid without undue delay, and authorization for its repatriation in convertible currency, where applicable, shall be issued.

These safeguards in the law inherently secure the investment of an investor in Ghana.

DISPUTE SETTLEMENT

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. More importantly, 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 an 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.

It is essential to note that, wherein respect of a dispute, there is a disagreement between the licensee and the Government as to the method of dispute settlement to be adopted, the choice of the licensee shall prevail.

FOREIGN CURRENCY ACCOUNT

A free zone enterprise is permitted to operate a foreign currency account with banks in the Republic. However, the terms and conditions under which the accounts shall be operated shall be set out in the license granted under section 16. The Bank of Ghana shall be consulted by the Council on the terms and conditions referred to in subsection.

NOTES ON CONTRIBUTOR



Mr David Yaw Danquah is the founder and Managing Partner of Legalstone Solicitors LLP, a boutique law firm in Ghana with a concentration on Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, Real Estate and Construction Law, and Commercial Arbitration.

He heads the firm's practice areas of focusing are Corporate and Commercial, Mining and Infrastructure, Debt Recovery and Restructuring, and Commercial Arbitration.

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