

FREE-ZONE ENTERPRISE LAW - LAW NR.99/IV/93

CHAPTER I General Remarks

Article 1

The present law approves the regime (establishment) of free-zone enterprises.

Article 2

Legal Status of the Free-zone Enterprise

1. The legal status is accorded, in keeping with the terms of the present law, by the Minister of Planning.
2. All enterprises, producing or trading goods and services for export or sale to other free-zone enterprises installed in Cape Verde, can apply for this status.

Article 3 Definitions

Under this law,

- a) free-zone enterprise: a firm with the appropriate legal status
- b) establishment (physical set-up): all the elements belonging to the free-zone enterprise
- c) enterprise: a legally established proprietorship or partnership, national or foreign
- d) certificate: the document issued by the Minister conferring the legal status of the free-zone enterprise

CHAPTER II LEGAL STATUS

SECTION I

Article 4 Request

The request to become a free-zone enterprise should follow the model found in Annex 1 and be submitted in three copies, along with the enterprise's articles of incorporation and the certificate of the commercial registry, to the Minister via PROMEX (and the Commission for Approving Investments and Free-zone Enterprises).

Article 5
Response Time

1. The enterprises should receive an answer within 30 days from the date the request is submitted to PROMEX. No response in 30 days implies approval.
2. In exceptional cases, the Commission can request additional information, in which case the 30-day limit for responding will be suspended until the information is provided.

Article 6
Transmission

1. Upon receiving a request, PROMEX will quickly organize the project file for review by the Commission.
2. The Commission will forward to the Minister its opinion, along with the project file.

Article 7
Decision

1. The Minister will decide on the legal status of the enterprise, within the time as defined in article 5.
2. If the Minister disagrees with the opinion of the Commission, his decision must be substantiated (justified).
3. The Minister should communicate his decision to Promex immediately.

Article 8
Certificate of Free-zone Enterprise

1. The certificate designating the status of free-zone enterprise will be issued following the model found in Annex II of the present Law.
2. Copies of the certificate will be forwarded to:
 - a) General Direction of Taxes
 - b) General Direction of Customs
 - c) General Direction of the sector related to the project
 - d) General Direction of Commerce
 - e) Banco de Cabo Verde
 - f) General Direction of Work

Article 9
Additions

1. Subsequent modifications to the certificate (or any section thereof) must be approved, following the steps outlined in Articles 4 and 8.
2. The changes that have been authorized will be incorporated into the certificate.

SECTION II
BENEFITS

Article 10
Fiscal incentives

1. Free-zone enterprises are exempt from taxes on income, dividends, profits, for a period of ten years, starting from the first day of production.
2. After this period, the total taxes on profits cannot exceed 15% of net profit.
3. The free-zone enterprise is exempted from any indirect fiscal taxes, such as the stamp tax.

Article 11
Custom Incentives

1. The free-zone enterprise is exempted from all duties imposed by customs on the following inputs that are imported for direct use by the free-zone enterprise:
 - a) construction materials, including steel bars and the like for building and expanding physical structures
 - b) machinery, equipment, tools, machine and building accessories
 - c) equipment for transporting goods
 - d) fuel and oil used to generate power and desalinated water, except gas
2. Raw materials, ancillary items, and finished or semi-finished goods used only in production may be imported duty-free (??)
3. Export of goods produced by the free-zone enterprise or re-exportation of goods by the enterprise may be undertaken without the payment of custom duties.

Article 12
Freedom to Export and Import

1. No license is required for the free-zone enterprise to import goods, finished items, and raw materials, and there are no quotas or limits on quantities.

2. Ditto for exports.

Article 13
Foreign Currency Accounts

1. The free-zone enterprise can open and maintain active foreign currency accounts.
2. Deposits into these accounts can only be made from accounts in other countries, or from other foreign currency accounts held by the free-zone enterprise in Cape Verde.
3. The free-zone enterprise cannot make local payments in foreign currency, except for goods and services purchased from other free-zone enterprises.

Article 14
Notary and Registration

1. There are no registration or public notary fees for the registration of foreign companies, free-zone enterprises, or proprietorships which produce exclusively exports or products for sale to free-zone enterprises.
2. To be established and registered, these enterprises have to pay a flat fee of 40,000 CVE.

Article 15
Exemption from Declaring Capital

No declaration of capital contributions is necessary at the moment free-zone enterprises are established.

Article 16
Local Sales

Exceptionally, or under authorization of the Minister, the free-zone enterprise may sell part of its production on the local market, while observing the following conditions:

- a) the total volume of local sales cannot exceed 15% of the previous year's total production.
- b) the products sold locally must comply the regulations concerned with the payment of custom duties, fiscal taxes etc.

Article 17
Foreign Workers

1. Free-zone enterprises can hire foreign workers, as long as Capeverdean law is observed.
2. Foreign workers, hired to work in free-zone enterprises, have the following rights and guarantees:

- a) free transfer of income;
- b) the benefits and custom incentives included in decree-law 39/88 (28 May)

SECTION III Obligations/Responsibilities

The obligations/responsibilities of free-zone enterprises are:

- a) to start producing within the time-limit specified in the Certificate
- b) to develop and submit annual reports to the Minister and the Bank of Cape Verde
- c) to complete and submit to the Bank of Cape Verde the form found in Annex 3, accounting for each external investment within 30 days
- d) to complete monthly the forms found in Annexes 4, 5, 6 tracking imports and exports, and send the completed forms to Customs within the first seven days of each month.
- e) to communicate any increase in foreign investment capital to the Bank
- f) to keep in a warehouse, approved by Customs, all spare parts, raw materials, finished goods, semi-finished goods, ancillary items, and all other imported items, necessary for the product of the final product
- g) not to transfer any of these items out of the warehouse, except as envisioned by this law.
- h) not to make local payments from the foreign currency account, except as provided by A 13, section 3.
- i) to submit itself to inspections by customs
- j) to submit the warehouse to inspections by customs
- l) not to sell goods on the local market except as envisioned by the Certificate
- m) to prepare and submit for the approval of the DG of Customs, a list detailing all items to be imported duty-free during the coming year
- n) to submit for the approval of the DG of Customs, the planned rate of use of items imported duty-free for the production of goods
- o) to develop and maintain an inventory of items imported duty-free
- p) to develop and maintain an inventory of goods exported and sold on the local market
- q) to respect all Capeverdean laws (not in direct contradiction with this law).

Article 19
Transfer of Goods

1. Equipment imported duty-free cannot be transferred from their approved location without written authorization from customs.
2. Raw materials, finished goods, semi-finished goods and other inputs imported duty-free, as well as the products produced by the enterprises, cannot be transferred from their approved location without written authorization from customs, except when the transfer entails:
 - a) export or re-export
 - b) sale on local market
 - c) production
 - d) destruction, following the orders of the DG of Customs

CHAPTER III
CUSTOM INSPECTIONS

Article 20
Scope/Purpose

Without interfering with the jurisdiction of administrative, judicial, and policing entities, Customs is responsible for:

- a) approving and inspecting warehouses holding inputs and outputs.
- b) inspecting manufacturing plants
- c) authorizing the transfer of duty-free inputs out of the warehouse

Article 21
Inspections

1. Custom inspections of warehouses and manufacturing plants must be conducted in front of a representative of the free-zone enterprise.
2. The decision to inspect must be communicated in writing to the free-zone enterprise at least 48 hours in advance.

Article 22
Duty to Collaborate

The free-zone enterprise must cooperate with the inspection agent and permit inspection of all spaces and documents (i.e., books, files, registers) requested by the agent.

Article 23
Inspection Agents

1. Inspection agents will record all infractions, in keeping in with the written procedures found in all laws.
2. These agents can:
 - a) request assistance from the authority or public force to execute their work
 - b) enter freely all establishments and warehouses owned by the free-zone enterprise
 - c) gather samples, undertake site-inspections, expropriate illegal merchandise, set-up trusties, according to the terms of the law.

CHAPTER IV
PENALTIES FOR INFRACTIONS

Article 24
Sanctions/Penalties

Without interfering with other special provisions of the law, the free-zone enterprise that breaks the present law can be punished by:

- a) fines
- b) suspension of benefits (provided by this law) for a period of three years
- c) revocation of the free-zone enterprise status.

Article 25
Responsibility for Applying Sanctions

1. The Minister has the authority to apply the sanctions mentioned above.
2. The DG of Customs and Taxes are responsible for collecting fines.

Article 26
Formulation of Regulations

The sanctions envisioned by this law are ultimately established by the Government.

CHAPTER V
FINAL DISPOSITIONS

Article 27
External Investments

1. The investor owning or participating in the ownership of a free-zone enterprise, and whose investment respects all the requirements of the External Investment Law, can request the status of external investor by completing the form described in Article 4.

Article 28
Re-investments in Free-zone Enterprises

1. The establishment of a free-zone enterprise, created through direct investment, or resulting from a buy-out/take-over that covers more than 50% of its real value, will enjoy the benefits presented by this law.

2. These benefits do not require the authorization of the Minister, as normally envisioned by this law.

Article 29

Existing enterprises can request free-zone-enterprise status and associated benefits, but will lose their current set of benefits.

Article 30
Execution

The Government covering Planning, Finance, Tourism, Industry, and Commerce guarantee execution of those laws.

Article 30
Entry into Force