

CHAPTER 373

THE EXPORT PROCESSING ZONES ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 373

THE EXPORT PROCESSING ZONES ACT

An Act to make provisions for establishment, development and management of the Export Processing Zones; for the creation of international competitiveness for export growth and to provide for related matters.

[1st July, 2002]

[G.N. No. 316 of 2002]

Act No. 11 of 2002

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh373s1]1. Short title and application

(1) This Act may be cited as the Export Processing Zones Act.

(2) [Omitted: Commencement.]

(3) This Act shall apply to Mainland Tanzania.

[PCh373s2]2. Interpretation

In this Act, unless the context requires otherwise—

"Act" means the Export Processing Zones Act *;

"Agent" in relation to an area of land established or declared to be Export Processing Zone, means the National Development Corporation established by the NDC (Establishment) Order *;

"Commissioner-General" means the Commissioner-General of the Tanzania Revenue Authority as defined under the Tanzania Revenue Authority Act *;

"Council" means a Council established under section 14(1) of the Act;

"customs territory" means the area in the United Republic of Tanzania which is not within an area declared to be an Export Processing Zone;

"Export Processing Zone" means an area of land which has been so established or so declared in accordance with section 3(1) of the Act;

"foreign market" means any market other than those located in the customs territory;

"investor" means a company incorporated in the United Republic which makes application for, and is licensed by the Agent to manufacture and export industrial products from the Export Processing Zones to foreign markets and includes a person who provides infrastructure necessary for development of an area established or declared to be the Export Processing Zone;

"joint venture" means an association whether incorporated or unincorporated, between a foreign investor and a local co-operative or parastatal organisation, a foreign investor and a local private investor, a domestic private investor and a local parastatal and co-operative organisation, a foreign investor and another foreign investor, for purposes of making an investment jointly in an Export Processing Zone;

"licence" means an official permit granted by the Agent upon application by an investor to conduct business transactions within an Export Processing Zone;

"manufacture" means any operation or process to change the form of any material for value of use and includes assembling, processing, packaging and re-packaging;

"Minister" means the Minister responsible for industries;

"single factory" means an industrial estate which may be granted an Export Processing Zone status but which is not located in an Export Processing Zone estate;

"tax relief period" means the period specified in the licence during which an investor may not be required to pay tax and duties in relation to any business transaction carried by him.

PART II

ESTABLISHMENT OR DECLARATION OF EXPORT PROCESSING ZONES (ss 3-4)

[PCh373s3]3. Establishment or declaration of EPZ

(1) The Minister may, upon the advice of the Council and in consultation with relevant authorities and on the recommendation of the Agent, by notice published in the Gazette—

- (a) establish or declare any area of land to be an Export Processing Zone; and
- (b) determine the location, extent, and physical characteristics or boundaries of an Export Processing Zone contemplated in paragraph (a).

(2) Where the Minister has consulted relevant authorities pursuant to subsection (1) and the latter have, within a period of thirty days, not responded or given reason why any such area of land should not be established or declared to be the Export Processing Zone, it shall be presumed that such authorities have consented to the establishment or declaration of Export Processing Zone in the area of land in question.

(3) The Export Processing Zone established or declared as such may consist of a developed, partly developed or underdeveloped area of land or may comprise of a single factory unit or group of factory units.

[PCh373s4]4. Objects and purposes of establishment of Export Processing Zone

The objects and purposes for which an Export Processing Zone may be established or declared are—

- (a) to attract and promote investment for export-led industrialisation with a view to diversifying and facilitating Tanzania's exports and promoting international competitiveness;
- (b) to create and expand foreign exchange earnings;
- (c) to create and increase employment and the development of skilled labour;
- (d) to attract and encourage transfer of new technology;
- (e) to foster linkages of the local economy with the international market;
- (f) to promote processing of local raw materials for export.

PART III

LICENSING (ss 5-11)

[PCh373s5]5. Restriction on entering into, residing in, etc., the Export Processing Zones

(1) No person shall—

- (a) unless he is the holder of a licence granted by the Agent—

(i) conduct any business or undertake a retail trade in an Export Processing Zone in respect of any goods manufactured in, or imported into, such Export Processing Zone; or

(ii) remove any goods manufactured in an Export Processing Zone for any purpose other than conveyance to another Export Processing Zone or for export into a foreign market or for purposes of processing such goods only; or

(iii) use any goods manufactured in an Export Processing Zone for consumption in such Export Processing Zone or in any other Export Processing Zone; or

(b) unless authorised in writing by the Agent—

(i) subject to the provisions of subsection (2), enter into an Export Processing Zone; or

(ii) reside in an Export Processing Zone.

(2) The provisions of paragraph (b)(i) shall not apply to or in respect of—

(i) members of the Police Force; or

(ii) members of the public service; including customs officers or officers of the local government authorities; or

(iii) any person employed by an investor or an institution or company charged or authorised by law to supply any public utility,
acting in the course of their respective duties and functions.

(3) The Agent may, by notice in writing addressed to the Investor, or any person who is in an Export Processing Zone—

(a) impose conditions relating to the regulation, restriction or prohibition of entry of goods or categories of goods, into an Export Processing Zone;

(b) order such investor or person in an Export Processing Zone to, within a period of time prescribed in the notice, which shall not be less than fourteen days—

(i) remove from the Export Processing Zone any article, item or thing; or

(ii) discontinue any activity or operation in such Export Processing Zone, as the Agent may specify in such notice.

(4) An addressee who receives a notice in accordance with the preceding subsection may, within seven days after receipt of such notice, make written representations to the Agent relating to any condition imposed by, or order contained in, such notice.

(5) Any person who contravenes the provision of subsection (1) or fails to comply with a notice issued pursuant to subsection (4) commits an offence and is liable on conviction—

(a) if such a person is a natural person, to a fine not exceeding fifteen million shillings or to imprisonment for a term not exceeding four years or to both;

(b) if such a person is not a natural person, to a fine not exceeding fifty million shillings.

[PCh373s6]6. Agent to issue licence

(1) The Agent shall be responsible for the issuance of a licence to any person who wishes to carry on business or activity in an Export Processing Zone.

(2) The licence issued pursuant to subsection (1) shall operate as if it were a licence issued by competent authorities under the Business Licensing Act * and the National Industries (Licensing and Registration) Act *.

(3) For the purposes of this section, the Agent shall consult the relevant authorities responsible for administration of the Business Licensing Act * and the National Industries (Licensing and Registration) Act * with a view to have a co-ordinated record of persons or company carrying on business in Tanzania.

[PCh373s7]7. Cancellation and suspension of a licence

(1) The Agent may, after issuing a thirty days written notice to the holder of the licence, cancel or suspend a licence if it is satisfied that the holder—

(a) without reasonable cause stated in writing, fails to establish the business or activity for which a licence was granted, within the time stipulated in a licence or any period which may be prescribed by the Agent; or

(b) suspends its activities in an Export Processing Zone for a period of more than six months without the prior consent of, or notification to, the Agent;

(c) without reasonable cause stated in writing, fails to comply with the terms of a licence or the provisions of this Part or any regulation or, upon request of extension of time made

to the Agent and accepted by the licensee, fails to continue with the business for such period of time as may be prescribed in a licence or by the Agent in a notice to the holder of a licence.

(2) The Agent shall cancel the licence issued to the investor for carrying on a business or activity in an Export Processing Zone where such a licence holder has—

(a) failed to pay tax or evaded payment of tax in respect of any transaction eligible for taxation; or

(b) failed to comply with any of the provisions of this Act or of any regulation made under this Act or the condition subject to which such certificate was issued; or

(c) assigned to another person a licence without obtaining the prior approval of the Agent; or

(d) obtained such licence on the basis of fraud or deliberate submission of false or misleading information or statements.

(3) The holder of a licence may, within twenty-one days after receipt of the notice in terms of subsection (1), make written representations to the Agent, and the Agent shall take into consideration of such representation when deliberating on whether or not to cancel or suspend a licence.

[PCh373s8]8. No variation of a licence

(1) The Agent shall not vary a licence and conditions attached to it, except where the holder has requested the Agent in writing to do so and such variation is necessary for purposes of causing the holder to better carry out the business or activity for which such a licence was issued.

(2) Where variation of a licence relates to extension of the tax relief period, such variation shall not extend the tax relief period originally granted to an investor.

[PCh373s9]9. Appeal against a decision of the Agent

(1) Any person who is aggrieved by a decision of the Agent to reject an application for a licence, cancel or suspend a licence may appeal to the Minister who may confirm, vary or set aside the decision of the Agent.

(2) A person who is dissatisfied with the decision of the Minister made in pursuant to subsection (1) may, within thirty days from the date on which the decision of the Minister was made, appeal to the High Court.

[PCh373s10]10. Prohibition of other activities

(1) No person shall, during the tax relief period, carry on any trade or business other than the trade or business in relation to which a licence was granted.

(2) Without prejudice to subsection (1), no person shall carry on the business of retail sales of articles produced or assembled in an Export Processing Zone except as may be determined and authorised by the Agent.

[PCh373s11]11. Agent to determine certain goods or articles to be processed in Export Processing Zones

(1) The Agent shall determine the rightful products to be processed, produced or the type of services to be supplied in the Export Processing Zones.

(2) No goods or articles specified or referred to in this subsection shall, subject to the provisions of subsection (3), be manufactured, processed, produced or supplied and no such goods or articles shall be brought into, or be allowed to remain in an Export Processing Zone—

(a) firearms or ammunition, or other war materials as provided in the Arms and Ammunitions Act *;

(b) dangerous explosives and other hazardous substances;

(c) drugs and narcotics.

(3) The provisions of subsection (2) (a) shall not apply to the members of the Police Force, Tanzania People's Defence Forces or officials of the Tanzania Revenue Authority or security guards employed in the area of an Export Processing Zone when they are in the execution of their duties.

PART IV

DEVELOPMENT AND MANAGEMENT OF EXPORT PROCESSING ZONES (ss 12-14)

[PCh373s12]12. NDC to be the Agent of the Government

The National Development Corporation shall be an Agent of the Government and as such shall be responsible for initiating, developing and managing the operations of the Export Processing Zones in Tanzania and for that purpose shall carry out duties and perform functions as stipulated under section 13 of this Act.

[PCh373s13]13. Functions and powers of the Agent

(1) For the purposes of initiating, developing and managing operations of the Export Processing Zones, the Agent may cause to be made available—

(a) land acquired from the Government or private land and buildings erected thereon for industrial and commercial purposes and the Agent may let or sublet such buildings or any other such land, to investors;

(b) basic infrastructure for the purposes of operations in the Export Processing Zones;

(c) streets and public places within the Export Processing Zones;

(d) the supply of water for human consumption and for business or industrial purposes;

(e) a system of sewerage, drainage and removal of refuse or waste for the benefit of the Export Processing Zones;

(f) the supply of electricity or gas to the Export Processing Zones;

(g) ambulance and fire brigade services in the Export Processing Zones;

(h) national and international programmes for the appropriate promotion of the Export Processing Zones;

(i) any other public utility as may be necessary for the betterment of operators and investors within the Export Processing Zones or consumers of products or services from the Export Processing Zones;

(j) personnel, training, security and surveillance, property and equipment maintenance, restaurants and food services as well as providing commercial information for the benefit of investors in the Export Processing Zones.

(2) In discharging the duties and performing the functions referred to in subsection (1), the Agent shall have powers to—

(a) subcontract any person to execute any duty or perform any function which the Agent has in terms of subsection (1), and in particular, may license private investors to develop the Export Processing Zones infrastructure;

(b) impose levies or charges for services rendered or facilities provided in the Export Processing Zones.

(3) The Agent may, in discharging the powers and duties conferred by this Act, provide such other services, perform such other duties and functions and exercise such powers as may be necessary to attain the spirit of this Act.

[PCh373s14]14. The Council, role of Minister and Managing Director regarding Export Processing Zones

(1) There shall be a Council of the Export Processing Zones composed of the following persons:

- (a) the Minister responsible for industries;
- (b) the Minister responsible for finance;
- (c) the Minister responsible for lands;
- (d) the Attorney-General;
- (e) the Governor of the Bank of Tanzania;
- (f) the Managing Director of the National Development Corporation who shall be the Secretary.

(2) The Council shall be overall co-ordinator of the plans and programmes relating to the Export Processing Zones and shall, in that capacity, be responsible for advising the Minister in terms of sections 3 and 15(4) and to give general policy directions in relation to the development and operations of the Export Processing Zones.

(3) The Managing Director shall be the principal supervisor of development and operations of the Export Processing Zones and shall be responsible for determining the structure and staffing pattern required for the purposes of discharging the functions of the Agent as stipulated under this Act.

(4) The Agent may receive recommendations from the Export Processing Zone stakeholders on any matter related to the production, development or otherwise affecting the

carrying on of the business in such area and the Agent may act on such recommendations.

PART V

INVESTMENT INCENTIVES (ss 15-18)

[PCh373s15]15. Incentives granted for investments in the Export Processing Zones

(1) An investor in the Export Processing Zones shall be entitled to the following incentives—

(a) exemption from foreign exchange control or restrictions on operations carried on in an Export Processing Zone;

(b) exemption from payment of corporate tax for an initial period of ten years and thereafter a corporate tax shall be charged at the rate of not more than twenty-five per centum;

(c) exemption from payment of withholding tax on dividends and interest for the first ten years;

(d) remission of customs duty, value added tax and any other tax payable in respect of goods purchased for use as raw materials, equipment, machinery including all good and services directly related to the manufacturing in the Export Processing Zones but shall not include motor vehicles, spare parts and consumables;

(e) exemption from payment of all taxes and levies imposed by local government authorities for goods and services produced or purchased in the Export Processing Zones;

- (f) exemption from pre-shipment inspection requirements;
- (g) accessibility to high quality infrastructure;
- (h) on-site customs inspection of goods in lieu of off-port inspection;
- (i) provision of temporary visas at the point of entry to key technical, management, and training staff for a maximum period of thirty days; thereafter the provisions of the Immigration Act * shall apply.

(2) The provisions of paragraph (e) of subsection (1) shall not apply in relation to the goods manufactured and sold or otherwise off-loaded in the customs territory.

(3) The Agent may, subject to such conditions relating to the grant of investment incentives, recommend to the Minister, variation, addition, alteration or general amendments to the types of investment incentives to be granted to the persons who are doing business in the Export Processing Zones.

(4) Where the Minister is satisfied that variation, addition, alteration or general amendments to the types of investment incentives be made, he shall submit proposals for endorsement by the Council before forwarding such proposals to the Minister responsible for finance who shall proceed to make the variation, addition, alteration or general amendments as may be necessary.

[PCh373s16]16. Off-loading into the customs territory

(1) The investor shall be allowed to sell up to thirty percent of total production of goods produced in the Export Processing Zone into the customs territory.

(2) The Agent may, depending on the nature of the industry or goods and market circumstances, authorise an investor to sell in the customs territory the amount exceeding that prescribed under subregulation (1).

(3) All goods off-loaded for sale into the customs territory shall be liable to all applicable duties and taxes.

[PCh373s17]17. Work Permits for technical staff

(1) The Government shall provide work permits for management and technical staff for skills that are not locally available, the number of which shall be determined by the Agent after consultation with the Ministry responsible for Labour.

(2) Subject to the provisions of subsection (1), the Agent shall make recommendations to the Government with a view to exempt from payment of training levy, an investor who has trained local employees, the quantum of which shall be fifty percent of the said training levy.

[PCh373s18]18. Agent may enter into contractual agreement

(1) The Agent may enter into a contractual agreement not inconsistent with this Act, with an investor on the grant of such investment incentives and the conduct of business within the Export Processing Zones.

(2) The contractual agreement entered into pursuant to subsection (1) may contain provisions binding on the United Republic in relation to a special licence or business transactions that may be conducted under a special licence–

(a) which guarantee special provisions for the payment of taxes, fees and other fiscal import;

(b) relating to the circumstances or the manner in which the Agent may exercise any discretion conferred on it by this Act or regulations made under this Act;

(c) relating to environmental matters, including matters which are project specific and not covered by any regulations of general application, provisions intended to define the scope and, as may be appropriate in any particular case, limit the extent of the obligations or liabilities of the holder of a special licence.

(3) Where this Act or regulations confer on the Minister or the Agent a discretion to do anything, the Minister or, as the case may be, the Agent, shall exercise such discretion subject to and in accordance with relevant stipulations contained in the contractual agreement entered into pursuant to the provisions of this section.

(4) The Agent shall refer the proposed contractual agreement to the Minister for purposes of obtaining approval in relation to the business transactions or project which the investor proposes to enter into.

PART VI

APPLICATION AND DISAPPLICATION OF OTHER LAWS (ss 19-22)

[PCh373s19]19. Disapplication

[Disapplication of the Tanzania Investment Act.]

[PCh373s20]20. Exemption of the Stamp Duty Act

No instrument executed in or outside an Export Processing Zone which relates to the transfer, hypothecation or lease of any movable or immovable property and no any act to be performed or done in such an Export Processing Zone, or any document, certificate, instrument, report or record relating to any activity, action, operation, enterprise, project, undertaking or venture including—

- (a) a mortgage bond;
- (b) customs and excise documents;
- (c) a hire purchase agreement or financial lease;
- (d) an agreement of partnership;
- (e) power of attorney;
- (f) a deed of transfer;
- (g) bills of exchange; or
- (h) promissory notes,

shall be subject to any duty imposed under the Stamp Duty Act *.

[PCh373s21]21. Application of Town and Country Planning Act

For the purposes of the Town and Country Planning Act and the rules relating to buildings in the Export Processing Zones, a reference to a local government authority in any provision of those laws with regards to planning consent and building permit, shall be construed as a reference to the Agent.

[PCh373s22]22. Application of labour laws

The existing labour laws applicable in the United Republic shall apply mutatis mutandis in the Export Processing Zones.

PART VII

ACQUISITION, COMPENSATION AND DISPUTES SETTLEMENT (ss 23-26)

[PCh373s23]23. Acquisition and compensation

(1) No interest in or right over any property within the Export Processing Zones may be acquired by the Government except in accordance with the Constitution of the United Republic * and the Land Acquisition Act *.

(2) Where any property is acquired in accordance with subsection (1), the Government shall, subject to the provisions of section 25, pay the owner of such property just and prompt compensation in a freely convertible currency.

[PCh373s24]24. Settlement of disputes

(1) If a person to whom the Export Processing Zone licence is to be issued pursuant to this Act so elects, a licence concerned may provide that any dispute between the holder of such licence and the Agent in respect of–

(a) any issue relating to the amount of, or any other matter in connection with any compensation payable in case of acquisition as provided under section 23; or

(b) the validity or continued validity of such licence; or

(c) any other dispute arising under this Act, shall be settled by arbitration–

(i) in accordance with the rules and procedures for arbitration of the International Centre for Settlement of Investment Disputes; or

(ii) within the framework of any bilateral or multilateral agreement on investment protection to which the Government of the United Republic and the country in which the investor is a national are signatories; or

(iii) in accordance with the rules and procedures for arbitration of the International Chamber of Commerce; or

(iv) in accordance with any other international machinery for the settlement of investment disputes by the parties.

(2) A licence referred to in subsection (1) which makes provision for arbitration shall constitute the consent of the holder of a licence and the Government to submit to arbitration.

(3) Any award in any arbitration contemplated in this section shall be final and binding on the Government and the holder of the licence, and shall be enforceable, in the case of a foreign award, in accordance with the Convention on The Recognition and Enforcement of Foreign Arbitral Awards.

[PCh373s25]25. Non-limitation for settlement of disputes

Nothing in section 24 shall be construed—

(a) in the case where a licence referred to in subsection (1) of section 24 does not make provision for the settlement of disputes, as restricting or limiting the right of a holder of such licence to any other remedy available; or

(b) in the case where a licence referred to in subsection (1) of section 24 does make provision for settlement of disputes, as precluding a holder of such licence or the Agent from entering into an agreement providing that any particular dispute specified or contemplated in such agreement shall not be settled otherwise than as provided in such licence.

[PCh373s26]26. Minister may make Regulations

The Minister may, in consultation with the Agent, make regulations generally for the better carrying out of the purposes of this Act.

PART VIII

OFFENCES (ss 27-29)

[PCh373s27]27. Offences relating to licences and foreign currency

Any person who—

(a) in or in connection with an application for granting of a licence; or

(b) for purposes of obtaining or retaining any foreign currency, makes any false statement which he or she knows to be false or have reason to believe not to be true, or knowingly furnishes any false information,

commits an offence and is liable on conviction to a fine not exceeding fifteen million shillings or to imprisonment for a term not exceeding four years or to both.

[PCh373s28]28. Offence for trans-shipment of products etc.

(1) No person shall trans-ship any products to any other country purporting that such products were produced or manufactured in an Export Processing Zone for purposes of gaining any advantage accorded to Tanzania in terms of a trade quota under any bilateral, multilateral or regional agreement or protocol.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to—

(a) if such a person is a natural person, to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or to both;

(b) if such a person is not a natural person, to a fine not exceeding one billion shillings, closure and forfeiture of his enterprise or business.

[PCh373s29]29. Offences for manufacture, processing, etc. of prohibited goods or articles

(1) Any person who commits an offence against subsection (1) of section 11 shall be liable on conviction to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding fifteen years.

(2) The trial Court may, in addition to a sentence imposed pursuant to subsection (1), order forfeiture to the Government of the goods or articles with respect to which an offence was committed.