LAW 99 / IV/ 93

31 December 1993

(FREE ENTERPRISE LAW)

By mandate of the People, the National Assembly decrees, under the authority conferred upon by paragraph b) of Article 186 of the Constitution of the Republic to enact the following:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of this law

The present law encompasses the matters related to the establishment and functioning of the Free-zone enterprises.

Article 2

Legal Status of the Free-zone Enterprise

1. The legal statute of the Free-zone Enterprise are acquired by virtue of law under the terms of the present organic law19.o 8f8epT7l.17 0 TD 0dTD 0dTD 0b1r6E3 w [(re

For the sake of understanding the meaning, in each case, the following terms are used in this law :

a) free-zone enterprise signifies a firm with the appropriate legal status ;

b) physically, set-up establishment shall mean all the elements belonging to the free-zone enterprise ;

c) enterprise shall refer to a legally established national or foreign proprietorship or partnership ;

d) certificate shall mean the document issued by the Minister, conferring the legal status of the free-zone enterprise .

CHAPTER II

LEGAL STATUS

SECTION I

Application and its procedure

Article 4

Form of application

The application to become a legally regulated free-zone enterprise, must be submitted in a formal request together with a statement containing the model displayed as Annex I in triplicate, the a copy of its in corporation documents and its corresponding commercial registration to the Minister via PROMEX, and the Committee for the Approval of Investments and Free-zone Enterprises .

Article 5

Counting deadline

1. The enterprise that has applied for the above stated shall receive an answer within a thirty (30) calendar days counted from the date of submission of the request is to PROMEX. At the absence of any notification within the agreed deadline, to the person concerned, the request shall gain approval .

2. In exceptional cases, the Commission for the Evaluation of External Investment and Free-zone enterprises, advisory bodies, thereto designated as CAIEF may request additional complementary information, as foreseen in this article, and the (thirty) 30-day deadline shall be suspended until the information is provided, in which case it shall be counted from the date of the service-rendering activities by the investor or his mandatory agent of that information.

Article 6

Transmission

1. Upon receiving a request, PROMEX shall immediately handle in the project in triplicate to the applied enterprise. This shall serve as receipt, and shall be delivered to the CAIEF together with the assessment and the file record for review by the Commission.

2. The Commission will forward to the Minister its opinion, along with the whole project file.

Article 7

Decision

1. The Minister shall decide on the empowerment of the legal status of the free-zone enterprise, within the time limits stipulated in the foregoing Article 5.

2. Upon discrepancies over opinions, the decision of the Commission shall be substantiated, on the basis of the underlying foundations for that decision.

3. The PROMEX shall communicate the decision of the Minister to the enterprise, immediately.

Article 8

Free-zone Enterprise Certificate

1. In the case of a positive response, the certificate designating the status of free-zone enterprise shall be issued in accordance with the model provided in Annex II of the present law, which forms an integral part of it

. The following entities shall be provided with Copies of the certificate :

a) General Directorate of Internal Tax Revenues ;

b) General Directorate of Customs ;

c) General Directorate of the Governmental Department in charge of the project ;

d) General Directorate of Trade ;

e) Central Bank ;

f) General Directorate of Labor ,

Article 9

Registration procedures

1. In compliance with the provisions of Articles 4 and 8, and subsequent adaptations, all modifications to the certificate , or any section thereof, must be approved.

2. The modifications that have been authorized for, shall form an integral part of the registration certificate .

SECTION II

EXEMPTIONS AND INCENTIVES

Article 10

Fiscal incentives

1. The free- zone enterprise shall be fully exempted from all fiscal obligations, taxes on income, dividends and profits, for the first ten-year period, counting from the initial date of the production activity .

2. Exemption shall also be extended to the dividends and profit taxations shared by the shareholders of the free-zone enterprise, during the first ten-year period, counting from the initial date of production activity of the enterprise .

3. After the period of exemption elapses, the total taxes on profits shall not exceed 15% of net profit.

4. The free-zone enterprise is exempted from any indirect fiscal taxes, namely the stamp tax.

Article 11

Custom facilities

1. The free-zone enterprises shall not be encumbered by tariffs or other customs duties on the following inputs that are imported for the indispensable use by the free-zone enterprise, including :

a) construction materials, including steel bars for the installation, expansion or building up of their physical structures ;

b) machinery, equipment, accessories, machine and building accessories, and fitting spare parts for their assembly ;

c) equipment for loading and unloading of goods, for the exclusive use of the enterprise and their production activity ;

d) fuel and oil lubricator which shall be used to generate power and desalinated water, with the exception of gas.

2. the raw materials, and related materials, assembly, i. e. the manufacturing of finished or semi-finished goods used only in production, may be imported in a duty-free regime .

3. The export of goods produced by the free-zone enterprise or re-exportation of goods by the enterprise may be undertaken at the exemption of payment of all custom duties.

Article 12

Freedom of Import and Export operations

1. No import license is required for the free-zone enterprise to import goods, finished goods and raw materials. They are not subject to quotas or limits on quantities.

2. The provisions of the foregoing Article shall apply to the export operations of the free zone enterprises.

Article 13

Foreign Currency Accounts

1. The free-zone enterprise may open and undertake operations of foreign currency accounts, necessary for their functioning.

2. Deposits into these accounts may 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 perform local payments in foreign currency, except for goods and services purchased from other free-zone enterprises.

Article 14

Exemption from Notary and Registration duties

1. As foreseen in the law, and following

The establishment of the enterprises referred in nº 2 of Article 2, does not require any evidence of declaration of capital contribution 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 goods or services production into the local market, by observing the following :

a) the total volume of local sales shall not exceed 15% of the previous year's total production of the enterprise ;

b) the products referred to in the preceding paragraph, sold locally, must comply with the regulations regarding the payment of custom duties and fiscal taxes, in accordance with the endorsed rules of this article.

Article 17

Foreign labor regulation

1. Free-zone enterprises may directly hire foreign citizens, as long as the Cape-verdean rules governing the labor force are observed .

2. Foreign workers, hired within the framework of free-zone enterprises, shall enjoy the following rights and obligations:

a) to freely transfer abroad, their net profits or dividends which they obtain from the free zone enterprise activity;

b) to transfer the benefits and custom incentives included in Decree-law 39 / 88 of 28 May.

SECTION III

OBLIGATIONS

Article 18

Responsibilities

The obligations and responsibilities of free-zone enterprises can be stated as follows :

a) to start up their production activity within the time-limit stipulated in the Certificate ;

b) to elaborate and submit annual reports to the Minister and the Central Bank ;

c) to fill in the form in Annex III of this organic law, and submit it to the Central Bank, as an accounting for each external investment participation , within (thirty) 30 days ;

d) to fill in the for in Annexes IV, V and VI, on monthly basis, up until the seventh day of each month, by tracking both imports and exports, and sending the completed forms to the Customs;

e) Any increase in foreign investment capital shall be communicated to the Central Bank ;

f) to keep in warehouse and stock centers , recognized by the Customs, all spare parts, raw materials, finished and semi-finished goods, ancillary items, and all other imported items, necessary for the production and import under the customs regime of exemption or suspension, as well as goods and services from the final product ;

g) not to transfer any of the above stated goods, raw materials and other product items out of the customs recognized warehouses, except for the cases foreseen in this law ;

h) not to perform local payments from the foreign currency account, save for the provision stipulated in section 3 of Article 13 ;

i) to submit itself to the customs inspections ;

j) Gain approval from the Customs services and collaborate with the Customs inspection to their establishment centers, warehouses for the products submitted to such regime, as well as their manufactured products ;

k) not to sell goods on the local market , which are not listed in the Certificate or stipulated by the present law ;

l) For reasons related to annual imports, a detailed list of the raw materials, manufactured products and semi-manufactured products, accessories and other products, which are subject to the duty-free regime, shall be competed and submitted for the approval of the General Customs Directorate ;

m) to 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 elaborate and keep the inventory of goods, raw ,materials and goods imported under the requested regime ;

o) to elaborate and maintain an inventory of goods exported and sold on the local market ;

p) to be in full compliance with the stipulations of the law, especially those applied to the enterprises in general that are in conformity with the present law.

Article 19

Transfer of Merchandises

1. Equipment imported duty-free goods cannot be transferred from their approved place of location without a written Customs authorization for that purpose ;

2. Raw materials, finished goods, semi-finished goods, accessories and other imported duty-free goods, as well as the products manufactures by the enterprises, cannot be transferred from their approved place of location without a written Customs authorization, except in cases where the transfer operation comprises :

a) export or re-export ;

b) sale on the local market, following the provisions of the present law ;

c) execution of the manufacturing process ;

d) destruction, in conformity with the regulations stipulated by the General Customs Director .

CHAPTER III