

LAW N° 2011 - 018
RELATING TO THE INDUSTRIAL FREE ZONE STATUTE

The National Assembly deliberated and adopted;
The President of the Republic enacts the law set out below:

CHAPTER I - GENERAL PROVISIONS

Article 1. This law establishes the Industrial Free Zone Status, hereinafter referred to as "free zone".

The objectives of the free zone are to:

- promote economic and industrial development;
- promote exports and create jobs;
- promote the use of local raw materials;
- contribute in improving the business climate in Togo;
- promote Togo as an investment destination.

Article 2. For the purposes of this law,

- **zone developer** shall mean a private, public or parastatal entity, which developed and equipped a plot of land he owns or hired, and who operates the said land as a free zone with the authorisation of the Minister responsible for the free zone;
- **customs duty and tax** shall mean all duties and taxes collected at a customs barrier in accordance with the customs tariffs in force;
- **approved business** shall mean business which has been granted free zone status;
- **extension of approval** shall mean the amendment of an approval by adding new activities to the ones that were initially registered;
- **free zone status** shall mean all the rights and obligations granted to free zone

companies, tax-free corporations, zone developers and service companies duly approved in accordance with this law;

- **free zones** shall mean a physically demarcated, fenced, landscaped area which may contain one or more companies approved under the Free Zone Status.

Article 3. For the purpose of granting benefits to free zone companies by zone of establishment, the Togolese territory is divided into five decentralised economic activity zones:

- zone I: Maritime region;
- zone II: Plateau region;
- zone III: Central region;
- zone IV : Kara region;
- zone V: Savannah region.

The following are considered to be located in an area: an industrial company whose production plant is located in that area or service companies with at least 80% of their staff working in that area under the approved investment programme.

CHAPTER II - ADMINISTRATION OF THE FREE ZONE STATUS

Article 4. The administration of the free zone status is assigned to a mixed economy company, which operates under the technical supervision of the Minister responsible for the free zone. The said mixed economy company shall be referred to as the "free zone authority," hereinafter named SAZOF.

The composition of the share capital, the powers and the operation of SAZOF shall be determined by decree.

Article 5. The financial resources of SAZOF are:

- annual fees collected from approved free zone companies;
- resources from real estate transactions;
- income from fees collected for services provided within its remit;
- state subsidies;

- gifts and legacies;
- all other legal resources.
- the annual fees collected from free zone companies.

CHAPTER III - FREE ZONE COMPANY REGIME

Section 1: Eligibility conditions

Article 6. Companies falling into one or more of the following categories may be granted free zone status:

- domestic labour-intensive companies;
- companies focused on the use of local raw materials; in particular agro-industrial companies, companies processing mineral products;
- hi-tech companies, especially IT, electronic, and telecommunications equipment assembly lines;
- companies engaged in international subcontracting;
- companies producing inputs for the above-listed companies;
- service companies, in particular Holding companies, industrial maintenance companies, support services, export-oriented companies, or whose activity complements and facilitates the activities of the approved companies, with the exception of services subject to authorisation or those likely to jeopardise national security;
- technopoles focused on research, technological innovation, and export-oriented.

This status shall also be granted to zone developers.

Article 7. Mining companies, cotton ginning companies, international trading and brokerage companies and telecommunications companies are excluded from the benefits granted by this Status.

Also excluded are storage, packaging and repackaging companies, except for

agricultural input storage and packaging companies.

Article 8. To be eligible for free zone status, the companies referred to in Article 6 above must meet the following conditions:

They must:

- be engaged in the production of goods or services;
- guarantee the export of their entire production, subject to the provisions of Article 28 subparagraph 1 of this law;
- reserve permanent jobs for nationals as a matter of priority

Article 9. An industrial or service company initially established in the customs territory, may apply for free zone status if, during the past two years, it has made at least 65% of its sales for export, subject to the provisions of Article 8 of this law.

Section 2: Obligations of approved companies

Article 10. Provisionally approved free zone companies shall be incorporated or registered in the Togolese Republic and shall operate an accounting system which will enable them to comply with legal provisions and regulations as well as the existing business practices.

All these formalities must be accomplished before the authorisation is approved.

Article 11. Companies approved as free zone shall have a period of six (06) months to start their installation works.

However, SAZOF may extend this period based on convincing evidence of progress in the construction of the plant, or any other formalities that justify the establishment of the company.

Refusal to extend this time limit shall result in the withdrawal of the approval.

Article 12. SAZOF shall collect an annual fee from each approved free zone company.

The amount of this fee shall be set by the Board of Directors of SAZOF.

Article 13. Approved free zone companies shall also be subject to the payment of a monthly contribution on account of the customs administration.

The amount of the said contribution shall be determined by a joint decree by the Minister responsible for finance and the Minister responsible for the free zone.

Article 14. Zone developers and approved free zone companies shall be required to comply with the environmental protection rules in force.

In particular, they shall be required to carry out an environmental impact study and environmental audits as prescribed by the ministry responsible for the environment.

Zone developers and approved companies shall be required to comply with the technical prescriptions contained in the specifications set by the SAZOF.

Article 15. Free zone companies shall be subject to the obligations laid down by the General Tax Code with regard to declaration and control.

Section 3: Approval procedures

Article 16. Any company applying for free zone status shall submit an application to SAZOF.

Article 17. The Minister in charge of the free zone shall issue a provisional approval to the applicant, within thirty (30) working days from the date of submission of the complete application file for approval, after a background check on the promoter.

The final approval, known as "export company certificate", shall be issued by order of the Minister responsible for the free zone based on a report from the SAZOF.

The conditions for granting the final approval shall be specified by the implementing provisions of this law.

Article 18. The extension of approval shall be specified by the implementing provisions of this law.

Article 19. The conditions and modalities for withdrawing an approval shall be specified by the implementing provisions of this law.

Section 4: Nature of benefits

Article 20. Approved free zone companies shall enjoy the following customs benefits:

- exemption from all customs duties and taxes, on equipment, including office furniture, spare parts, raw materials, semi-finished products and consumables necessary for the establishment and the operation of the approved company;
- 50% reduction in customs duties and taxes on commercial vehicles, as defined in the implementing decree;

- exemption from all customs duties and taxes when exporting goods manufactured in the free zone.

Article 21. The following companies shall enjoy the following tax benefits as from their date they are granted aprovisional approval:

a) corporate income tax (CIT) or flat rate minimum tax (MIT)

- stabilisation of corporate income tax at the rate of 0% during the first five years;
- payment of corporation income tax at the rate of 8% on the taxable profit from the 6th to the 10th year or payment of the corresponding minimum flat-rate tax;
- payment of corporate tax at the rate of 10% on the taxable profit from the 11th to the 20th year or payment of the corresponding minimum flat-rate tax;
- payment of corporation tax at the rate of 20% on the taxable profit from the 21st year onwards or payment of the corresponding minimum flat-rate tax.

b) Tax on dividends or income tax on capital assets (IRCM)

- exemption from dividend tax during the first 5 years;
- payment of 50% of the amount of this tax calculated under conditions of ordinary law from the 6th to the 10th year;
- ordinary law shall apply from the 11th year onwards.

c) Payroll tax (TS)

- stabilisation of the payroll tax at the reduced rate of 2% during the lifetime of the free zone company, subject to the provisions of Article 22 of this law.

d) Business tax (TP)

- exemption from business tax for the first 5 years;
- payment of this tax at the rate of 5% of the tax amount calculated under ordinary law from the 6th to the 20th year;
- payment of this tax at the rate of 15% of the tax amount calculated under ordinary law from the 21st year onwards;

e) Property tax (TF)

- exemption from property tax during the first 5 years;
- payment of this tax at the rate of 5% of the tax amount calculated under ordinary law from the 6th to the 20th year;
- payment of this tax at the rate of 15% of the tax amount calculated under ordinary law from the 21st year onwards;

f) Value added tax (VAT)

- exemption from value added tax on works and services carried out on behalf of the free zone company.

Article 22. Approved companies established in zone II to V, as defined in Article 3, shall be granted the following benefits in respect of the decentralisation incentive arrangement:

- stabilisation of the tax on salaries at the rate of 1% during the first seven years, for zone II companies;
- stabilisation of the payroll tax at the rate of 1% during the first 10 years, for zone III, IV, and V companies;
- exemption from corporate tax or the minimum flat-rate tax during the first 10 years for zone II and III companies. The provisions of Article 21 shall apply from the 11th year onwards;
- exemption from corporate tax or the minimum flat-rate tax during the first 15 years for zone IV and V companies. The provisions of Article 21 shall apply from the 16th year onwards;

Article 23. Free zone companies are exempted from all duties, taxes and charges that are not specifically referred to in Articles 20, 21 and 22 above.

Article 24. Free zone companies:

- shall be free to set prices, margins and rents for transactions between free zone companies or between them and foreign markets;
- shall have the freedom to produce energy for their own exclusive consumption after prior authorisation by the Minister in charge of energy;

- may acquire their own telecommunications network, including satellite earth stations and microwave systems for their own exclusive use, in compliance with the telecommunications legislation and national security requirements and with the authorisation of the Minister concerned;
- may procure goods and services from the companies or corporations of their choice;
- shall benefit from preferential tariff on port services, telecommunications, electricity, and water.

Article 25. Once the Minister responsible for the free zone grants the provisional approval, the approved company shall enjoy all the benefits provided for by this law.

CHAPTER IV –CUSTOMS REGIME APPLICABLE TO IMPORT AND EXPORT GOODS

Article 26. Import and export operations are carried out under the supervision of the customs administration. Goods bound for free zone companies shall be directly and immediately conveyed to the free zones for on-site customs clearance at a one-stop-shop.

Article 27. Goods of all kinds may be admitted to free zones subject to justified prohibitions, in particular for reasons of public morality, public order, public security, human and animal life and health protection, and for preservation of the ecosystem and intellectual property rights.

Article 28. The sale in the customs territory of goods produced and services provided by approved free zone companies may be authorised by SAZOF up to 30% of the actual production recorded by the customs department. In this case, customs duties and taxes are due on the product released for consumption, regardless of the origin of the raw materials used, in accordance with the customs tariff in force.

For sales in the customs territory, the approved company is required to contact one or more companies duly established in the customs territory. These companies are subject to ordinary law.

Article 29. Sales to free zone companies by companies established in the customs territory, shall be considered as exports under the customs regulations.

CHAPTER V - EMPLOYMENT REGIME

Article 30. The provisions of the Labour Code shall apply to the approved free zone companies.

Article 31. Approved companies must ensure that continuous training is provided to their workers with a view to upgrading their professional qualifications.

Implementing regulations shall specify the requirements and arrangements for vocational training.

Approved companies must also provide for the needs of further training programmes and in-service training in schools or training institutes.

The terms and conditions of those further training programmes shall be specified by the implementing regulations of this law.

Article 32. Where qualifications are equal, Togolese nationals are given priority to employment.

The conditions for the implementation of this provision shall be specified in the implementing regulations.

CHAPTER VI - SECURITY AND ACCESS TO THE FREE ZONE

Article 33. Police and law enforcement tasks shall be carried out by public security forces and agents of the security service of authorised companies, in accordance with the laws and regulations in force.

Article 34. No one shall be allowed to reside in a free zone. However, at the request of the applicants, SAZOF may grant a special exemption for duty rooms in the companies.

Implementing regulations shall specify the requirements of such spaces, which shall in no case be similar to a residential building.

CHAPTER VII - SANCTIONS

Article 35. Without prejudice to the legal provisions in force in Togo, any infringement of the provisions of Articles 10, 12, 13, 14, 26, 27, 28, 31 and 34 of this law shall be subject to a formal notice served on the company, followed, where appropriate, by the withdrawal of the approval.

Without prejudice to the legal provisions in force, any false declaration for the purposes of benefiting from the provisions of this law shall be sanctioned by the withdrawal of the approval.

Any failure to comply with the provisions of Article 15 shall be sanctioned, in accordance with the General Tax Code.

CHAPTER VIII –DISPUTE SETTLEMENT

Article 36. Any contract-related dispute that may arise between approved companies or between approved companies and SAZOF or between approved companies and economic operators in the customs territory shall be settled out of court.

Failing this, the dispute shall be settled by the court with territorial jurisdiction or through arbitration in accordance with the Uniform Act of the Organization for the Harmonization of Business Law in Africa (OHADA) on arbitration.

The parties may also submit the dispute to arbitration by the International Centre for Settlement of Investment Disputes (ICSID) or to arbitration by the Paris International Chamber of Commerce.

CHAPTER IX - FINAL PROVISIONS

Article 37. Implementing regulations shall specify, as and when necessary, the provisions of this law.

Article 38. The tax-related provisions contained in this law cannot be modified by the General Tax Code.

Article 39. All previous provisions contrary to this law are hereby repealed.

Article 40. This law shall be executed as a State law.

Done in Lomé, on 24 June 2011

Signed and stamped (illegible) by:

THE PRESIDENT OF THE REPUBLIC
Faure Essozimna GNASSINGBE

Signed (illegible) by: **THE PRIME MINISTER**
Gilbert Fossoun HOUNGBO

WITH COPIES TO THE PERMANENT SECRETARY
AT THE PRESIDENCY OF THE TOGOLESE REPUBLIC

Signed and stamped (illegible) by:

KwesiSéléagodji AHOOMEY-ZUNU