

**EXPORT PROCESSING ZONES
ACT**

No. 11 OF 1995

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

SECTION

1. Short title and commencement
2. Interpretation

**PART II - ESTABLISHMENT OF EXPORT PROCESSING ZONES
APPRAISAL COMMITTEE**

3. Establishment of the Export Processing Zones Appraisal Committee.
4. Tenure of office of members of the Committee
5. Allowances of members of the Committee
6. Meetings of the Committee
7. Functions of the Committee

**PART III - DECLARATION OF EXPORT PROCESSING ZONES AND
EXPORT PRODUCTS**

8. Declaration of Export Processing Zones
19. Declaration of Export products
10. Issuance of certificates
11. Amendment of certificate
12. Revocation of certificate
13. Register of certificate

**PART IV - RESTRICTION OF CARRYING ON BUSINESS IN EXPORT
PROCESSING ZONES**

14. Restrictions on carrying business, etc., in Export Processing Zones
15. Restriction on trading

PART V - DUTY

16. Duty relief
17. Removal of goods from bonded factory

18. Payment of duty

PART VI - MISCELLANEOUS

19. Enforcement officers
20. Removal of goods from bonded factory
21. Regulations

An Act to provide for the establishment, operation and administration of Export Processing Zones, and for matters ancillary thereto or connected therewith

ENACTED by the Parliament of Malawi as follows -

PART I - PRELIMINARY

1. (*Short title and commencement*). This Act may cited as the Export Processing Zones Act, 1995, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

2. (*Interpretation*). In this Act, unless the context otherwise requires -

"adequate security" means security which has been accepted as adequate by the Controller pursuant to section 16;

"bonded factory" means a factory situate in an export processing zone;

"certificate" means an export enterprise certificate issued under section 10;

"Committee" means the Export Processing Zones Appraisal Committee established under section 3;

"Controller" means the Controller of Customs and Excise;

"duty" has the same meaning as in section 2 of the Customs and Excise Act;

"enforcement officer" means a customs and excise officer, or an officer designated in writing by the Minister as an enforcement officer for the purposes of this Act pursuant to section 19;

"export" has the same meaning as in section 2 of the Customs and Excise Act;

"export enterprise" means a company in respect of which a certificate is in force;

"export processing zone" means any area or building declared to be an export processing zone under section 8;

"export product" means a product or produce declared to be an export product under section 9;

"import" has the same meaning as in section 2 of the Customs and Excise Act;

"manufacture" has the same meaning as in section 2 of the Customs and Excise Act;

"production day" means the day on which an export enterprise commences, or is deemed to commence, its operations;

"scheduled equipment" means the capital equipment, machinery and spare parts required by an export enterprise for equipping and operating a bonded factory;

"scheduled materials" means the materials, components, substances, matters or other things required by an export enterprise for the manufacture of export products.

PART II - ESTABLISHMENT OF EXPORT PROCESSING ZONES APPRAISAL COMMITTEE

3. (1) (*Establishment of Export Processing Zones Appraisal Committee*). There is hereby established a committee to be known as the Export Processing Zones Appraisal Committee (in this Act otherwise known as the "Committee") consisting of -
- a) the Secretary for Commerce and Industry who shall be designated by the Minister as Chairman.
 - b) The following ex-officio members -

EXPORT PROCESSING ZONES ACT (1995)

- (i) the Secretary to the Treasury, or his designated representative;
 - (ii) the Secretary for Economic Planning and Development, or designated representative;
 - (iii) the Secretary for Agriculture and Livestock Development, or his designated representative;
 - (iv) the secretary for Labour and Manpower Development, or his designated representative;
 - (v) the Controller of Customs and Excise, or his designated representative;
 - (vi) the Controller of Immigration Services, or his designated representative;
-
- (c) the General Manager of the Malawi Investment Promotion Agency;
 - (d) the General Manager of the Malawi Export Promotion Council;
 - (e) one member representing the private sector in Malawi nominated by the Confederation of the Malawi Chambers of Commerce and Industry and appointed by the Minister; and
 - (f) one member representing the Reserve Bank of Malawi nominated by the Governor of the Reserve Bank of Malawi and appointed by the Minister.
-
- (2) A representative of an *ex officio* member referred to in subsection 1 (b) shall be designated by, or on behalf of the *ex officio* member, by a notice in writing to the Chairman of the Committee, and when so designated such representative shall not attend to the business of the Committee by representation.
-
- (3) The Committee may, in its discretion, at any time and for any period invite any person, and the Minister may in like manner nominate any person in the public service, to attend any meeting of the Committee and to participate in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.
-
4. (*Tenure of office of members of the Committee*) A member of the Committee, other than an *ex officio* member -
- (a) shall hold office for two years from the effective date of his appointment, and shall be eligible for re-appointment;
 - (b) may resign his office by giving one month's notice in writing to the Minister.

EXPORT PROCESSING ZONES ACT (1995)

5. (Allowances of members of the Committee) A member of the Committee, other than an ex officio member, shall be paid such allowances as the Minister may determine.
6. (1) The Committee shall hold its ordinary meetings at least six times a year. (*meeting of the Committee*)
- (2) An extraordinary meeting of the Committee -
- (a) may be convened by the Chairman at any time;
- (b) shall be convened by the Chairman within fourteen days of receipt by him of a request in writing signed by any two members of the Committee, and specifying the purpose for which an extraordinary meeting of the Committee is to be convened.
- (3) At any meeting of the Committee -
- (a) the quorum necessary for the dispatch of business shall be formed by any six members;
- (b) the Chairman, or in his absence the member elected by members present and forming the quorum, shall preside;
- (c) the decision on any subject shall be that of the majority of members present and voting and, in the event of a tie in the votes, the person presiding shall have a casting vote in addition to his deliberative vote;
- (d) a member who is aware that he has a personal, proprietary or pecuniary interest in any matter which is to or is being considered by the Committee shall declare the interest to the Chairman or other person presiding, and shall not be entitled to participate in the deliberations of the Committee or to vote on that matter; and
- (e) a member who is unable to attend the meeting may submit to the Committee but shall not be entitled to have his vote registered on any matter considered at that meeting.
7. (1) (*Functions of the Committee*) The Committee shall be responsible for appraising and reviewing applications for the establishment and operation

of export processing zones and the production or manufacture of export products, and making appropriate recommendations to the Minister.

- (2) In making recommendations to the Minister regarding any application, the Committee shall have regard to the following considerations -
- (a) labour intensive activities of the project and its propensity to contribute to employment;
 - (b) use of advanced technology;
 - (c) utilisation of local raw materials;
 - (d) export-oriented activities other than the production for export of tobacco, tea, coffee, and sugar;
 - (e) the availability of sufficient warehouses for storage of raw materials and export products;
 - (f) documentary evidence of export markets for the export products.

**PART III - DECLARATION OF EXPORT PROCESSING ZONES
AND EXPORT PRODUCTS**

8. (*Declaration of export processing zones*) The Minister may, on the recommendations of the Committee, for the purpose of attracting, promoting or increasing the manufacture of export products or with the object of promoting economic development generally, by notice published in the *Gazette*, declare -
- (a) any area of land on which a factory has been or is being or is likely to be built;
 - (b) any factory;
 - (c) any area of land which immediately surrounds a factory or the plot on which a factory is being or is likely to be built, to be an export processing zone.

- (9) (Declaration of export products) Where, upon application by a company in the prescribed form, the Minister considers it expedient in the economic interest of Malawi so to do, he may, on the recommendation of the Committee, by notice published in the *Gazette*, declare -
- (a) any manufactured article, substance or other item intended for export, other than tobacco, tea, coffee or sugar; or
 - (b) any service to be an export product.
10. (Issuance of certificates). (1) Where, upon application by a company which manufactures or provides, or proposes to manufacture or provide, an export product, the Minister, on the recommendation of the Committee, considers it expedient in the economic interest of Malawi so to do, he may -
- (a) upon payment of the prescribe fees, issues to that company an export enterprise certificate, subject to such terms and conditions as he thinks fit to impose; and
 - (b) by notice published in the *Gazette*, declare the company to be an export enterprise for so long as the certificate remains in force.
- (2) Every application made pursuant to subsection (1) shall be in the prescribed form and be accompanied by the prescribed fee.
- (3) Where an application has been made pursuant to subsection (1), the Minister shall communicate his decision within forty-five days from the date of receipt of the application.
- (4) A certificate shall be in the prescribed form and shall specify -
- (a) the production day of the export enterprise;
 - (b) the export product which the export enterprise is or will be manufacturing;
 - (c) the scheduled materials required by the export enterprise for equipping and operating the enterprise

- (d) the scheduled materials required by the export enterprise the manufacture of export products;
 - (e) that company exports enterprise shall be domiciled in Malawi;
 - (f) such other term or condition as the Minister may deem appropriate.
- (2) A certificate shall be valid for a period of five years and may thereafter be renewed for successive periods of two years.
11. (amendment of certificate) (1) Subject to subsection (2), the Minister may, by notice in writing addressed to the export enterprise, at any time amend any certificate or any condition attached to a certificate.
- (2) No amendment shall be made to a certificate so as to place an export enterprise in a less favourable position than it was prior to the amendment of the certificate.
 - (3) Where the Minister amends a certificate by substituting for the production day specified another earlier or later production day, this Act shall have effect in relation to that certificate as if the production day so specified had been originally specified.
- (12) (Revocation of certificate) (1) Where the Minister is satisfied that an export enterprise has contravene this Act or any condition attached to a certificate, he may, by notice in writing, require the export enterprise, within thirty days from the date of the service of the notice, to show cause why the certificate should no be revoked, and where the Minister is satisfied that having regard to all the circumstances the certificate should be revoked, he shall do so.
- (2) Where a certificate is revoked under subsection (1), the Minister shall specify the date from which the revocation shall become operative and this Act shall from that date cease to have effect in relation to the certificate so revoked.
- (13) (Register of certificates) Every certificate issued under this Act shall be recorded in a Register in the prescribe form.

PART IV : RESTRICTION ON CARRYING ON BUSINESS IN EXPORT PROCESSING ZONES

14. (Restrictions on carrying on business in export processing zones) No Person shall carry on, in an export processing zone, any trade, business or manufacturing, unless there is in relation to such trade, business or manufacturing a certificate authorising the carrying on of such trade, business or manufacturing.
15. (Restrictions on trading) No export enterprise shall carry on any trade or business other than specified in its certificate.

PART V : DUTY

16. (Duty Relief) (1) Where an export enterprise imports or purchases any dutiable goods to be used in a bonded factory or export processing zone, no duty shall be paid on the goods if the goods are transported directly to a bonded factory or export processing zone and placed there under such conditions as the Controller may impose.
- (2) The Controller may require an export enterprise to enter into a bond in the prescribed form, in such amount as he may determine, whereby the export enterprise undertakes to obtain, receive, keep, use or dispose of scheduled equipment or scheduled materials only in accordance with conditions specified in its certificate or this Act, or the Customs and Excise Act. (Cap. 42.01)
17. (Removal of goods from a bonded factory) (1) No scheduled equipment shall be removed from a bonded factory or an export processing zone, except with the written authorisation of the Controller.
- (2) No scheduled materials or export products shall be removed from a bonded factory or an export processing zone except -
- (a) for the purpose of being exposed;
- (b) for transfer to another bonded factory or export processing zone; with the permission and according to the directions of the Controller;

- (c) for consumption in Malawi with the approval of the Minister and subject to the payment of the appropriate duty;
 - (d) for destruction in such manner as the Controller may direct.
- (2) Any person who, without lawful authority or reasonable excuse -
- (a) removes any scheduled equipment, scheduled materials or export product from a bonded factory;
 - (b) is found in possession of any scheduled equipment, scheduled materials or export product outside a bonded factory or export processing zone, shall be guilty of an offence.

18. (Payment of duty) (1) Where there is any bonded factory a deficiency in the quantity of dutiable scheduled equipment or scheduled materials which ought to be found there, the export enterprise shall, without prejudice to any other proceedings under this Act or any other written law, be liable to pay to the Controller the duty leviable on the goods not satisfactorily accounted for.

- (2) Where the Controller is satisfied that the deficiency has been caused by reasonable wastage or unavoidable breakage, leakage or other accident, he may remit the whole or any part of the duty leviable on the goods found deficient.
- (3) The Controller shall, by notice in writing, require an export enterprise to pay any duty under this section and the duty shall be paid within thirty days of the issue of the notice.

PART VI - MISCELLANEOUS

- 19.** (1) The Minister may, by notice published in the *Gazette*, designate any public officer or class of public officers to be enforcement officers for the purposes of this Act.

EXPORT PROCESSING ZONES ACT (1995)

- (2) Any enforcement officer may, at all reasonable and, if so required, on showing proof of this identity, enter any export processing or bonded factory for the purpose of ensuring that the provisions of this Act are being complied with.
- (3) Any enforcement officer may require an export enterprise or any person who is director, secretary or other officer of an export enterprise to furnish him with any information concerning the business or activities of the export enterprise.
- (4) Any person who wilfully obstructs or hinders an enforcement officer acting in the exercise of his functions under section or, without reasonable excuse, fails or refuses to give to an enforcement officer any information required of him under this section shall be guilty of an offence.

20 (offences and penalties) Any person who -

- (a) in any application, declaration or statement made for the purposes of this Act, makes a statement which is false or misleading in any material particular;
- (b) Keeps any record or account relating to an export enterprise which is false or misleading; or
- (c) Otherwise contravenes any provision of this act, shall be guilty of an offence and shall on conviction be liable to a fine of ten thousand Kwacha and imprisonment for five years.

21. (Regulations) The Minister may make regulations for carrying the purposes and provisions of the Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

Passed in Parliament this nineteenth day of July, one thousand, nine hundred and ninety-five.

R.L. GONDWE - Clerk of Parliament