

16 Annex - Taxation

107. LAW ON FREE ZONES

Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree Promulgating the Law on Free Zones

(Official Gazette of the Republic of Montenegro 42/04 of 22 June 2004; Official Gazette of Montenegro 11/07 of 13 December 2007, 76/08 of 12 December 2008)

I hereby promulgate the Law on Free Zones passed by the Parliament of the Republic of Montenegro at the third sitting of the first ordinary session in 2004 on 16 June 2004.

No 01-868/2
Podgorica, 18 June 2004

President of the Republic of Montenegro
Filip Vujanovic

LAW ON FREE ZONES

I GENERAL PROVISIONS

Scope of the law

Article 1

This Law governs establishment of free zones (hereinafter referred to as the “zone”) and free warehouses (hereinafter referred to as the “warehouses”), their management, conditions for performing business activities in zones and warehouses, as well as conditions for cessation of operations in the zone and the warehouse.

Definitions of the zone and of the warehouse

Article 2

The zone and the warehouse represent parts of the customs territory of Montenegro where business activities are performed under special conditions governed by this Law.

The zone and the warehouse must be adequately fenced and managed in a manner allowing goods, vehicles and persons to enter into or exit from the zone and warehouse only through strictly determined entries and exits.

The zone and the warehouse must be visibly marked both on entries into and exits from the zone and warehouse.

The fence, entries and exits shall be secured and also lit up at night times.

Conditions for operations of customs services must be provided in the zone.

Founders of the zone and the warehouse

Article 3

The zone or the warehouse may be founded by one or more domestic or foreign legal and natural persons.

User of the zone and the warehouse

Article 4

The zone or the warehouse user shall be a domestic or foreign legal or natural person performing business activities in the territory of the zone or warehouse.

Business activities in the zone and the warehouse

Article 5

All types of business activities may be conducted in the zone and the warehouse, except those endangering the environment, human health, material goods and the country's security, in accordance with the Law.

Sub-zones

Article 6

A zone may have its separate parts – sub-zones.

The conditions concerning the customs surveillance referred to in Article 2 of this Law shall also apply to the sub-zone.

II ESTABLISHMENT AND BEGINNING OF OPERATION OF THE ZONE AND THE WAREHOUSE

Competence

Article 7

The zone and the warehouse shall be established upon prior approval of the Government of Montenegro (hereinafter referred to as the "Government") and upon proposal of the state administration body competent for foreign trade matters (hereinafter referred to as the "Ministry").

Location of establishment of the zone and the warehouse

Article 8

The zone and the warehouse may be founded in the area of or in the vicinity of the seaport or airport, as well as in other suitable locations.

Conditions for establishment of the zone and the warehouse

Article 9

The zone and the warehouse shall be founded if considered to be economically justified and if physical requirements (spatial, infrastructural, etc.) have been or will be met, upon the previously obtained opinion of the competent state administration bodies.

Establishment of the zone and the warehouse shall be considered economically justified if it can be realistically expected to produce significant effects in terms of export, employment, transfer of modern technologies, economic restructuring, etc.

Act on establishing the zone and the warehouse and the founders' contract

Article 10

The founder shall pass the act on establishing the zone and the warehouse, containing in particular the following: name(s) of the founder(s), name and seat of the zone or the warehouse, location of establishment and area to be covered, management entity and activities to be performed.

If the zone or the warehouse has several founders, their mutual rights and obligations shall be regulated by a contract.

Request for approval for establishment of the zone and the warehouse

Article 11

The founder shall submit a request for approval for establishment of the zone or the warehouse to the Ministry.

The following shall be enclosed to the application referred to in paragraph 1 of this Article:

- 1) act on establishing the zone and the warehouse;
- 2) study on the economic justification for establishment of the zone or the warehouse of interest to the state;
- 3) proof that at least one of the founders has the property right over the land to be covered by the future zone or warehouse, or the right to use it on some other grounds as well as to use it in accordance with the purpose determined in the spatial planning documentation.

The contents of the study referred to in paragraph 2, item 2 of this Article shall be defined by the Government.

The Government shall pass a decision upon the request referred to in paragraph 1 of this Article within 60 days.

The decision on the Government's approval referred to in paragraph 4 of this Article shall be published in the Official Gazette of the Republic of Montenegro.

The approval shall be repealed if the zone or the warehouse fails to become operational within a year from the day of its granting.

In duly justified cases, the deadline referred to in paragraph 6 of this Article may be extended, in accordance with general regulations.

The Ministry shall keep records on acts on establishing the zones and warehouses, as well as on contracts referred to in Article 10, paragraph 2 and their founders.

The founders shall be obliged to inform the Ministry on any change of their status within 15 days from the day the change occurred.

Beginning of operation in the zone and the warehouse

Article 12

The founder shall submit to the Customs Administration of Montenegro (hereinafter referred to as the "Customs Administration") the request for issuing a decision on putting the zone or the warehouse into operation.

The zone or the warehouse shall become operational following the receipt of the decision issued by the Customs Administration.

The Customs Administration shall issue the decision referred to in paragraph 1 of this Article within 30 days from the day the request referred to in paragraph 1 of this Article was submitted.

The Customs Administration shall issue the decision on putting the zone or the warehouse into operation if the conditions for conducting customs surveillance in its territory, referred to in the Article 2 of this Law, have been met.

Reporting on operations in the zone and the warehouse

Article 13

Upon the request of the Ministry, the founder of the zone or the warehouse shall submit a report on operations in the zone or in the warehouse to the Government, at least once a year, not later than 31 March of the current year for the previous year.

The contents of the report referred to in paragraph 1 of this Article shall be defined by the Government.

Establishment and beginning of operation in the sub-zone

Article 14

The provisions of this Law governing the establishment and beginning of operation in the zone shall be applied to the extension of the zone or establishment of the sub-zone.

III MANAGEMENT OF THE ZONE AND THE WAREHOUSE

Zone and warehouse operator

Article 15

The zone or the warehouse shall be managed by an entity states in the act on establishing (hereinafter referred to as the "operator").

The operator may be any domestic or foreign legal or natural person.

In addition to managing the zone, the operator may at the same time act as its user, which shall be defined in the contract with the founder.

Zone and warehouse management activities

Article 16

Management of the zone and the warehouse shall include the following activities:

- 1) determining general rules of operations in the zone and the warehouse as well as the zone and warehouse tariffs;
- 2) deciding on requests for conducting business activities in the zone and the warehouse, and conclusion of contracts with the users;
- 3) regulating and ensuring internal order in the zone and warehouse, including the entry and exit regime;
- 4) creating conditions for unhindered conducting of customs surveillance, inspection supervision and other types of control;
- 5) defining and implementing the measures for environment protection in accordance with regulations;
- 6) execution of competences related to urban planning in accordance with regulations;
- 7) other activities specified by general rules of the zone.

The operator shall sign a contract with the user and submit it to the Customs Administration.

In case the operator is changed, rights and obligations defined in the contract referred to in paragraph 2 of this Article shall remain in force.

Obligations of the operator towards the user

Article 17

The operator shall enable users to perform their activities under the conditions defined by this Law, by the zone's acts and by the contract, respecting the principle of equality.

IV SPECIAL CONDITIONS FOR BUSINESS ACTIVITIES IN THE ZONE AND THE WAREHOUSE

Treatment of goods in the zone and the warehouse

Article 18

The goods entered into the zone and the warehouse and consumed or used in accordance with this Law, shall not be subject to customs duties, customs charges and value added tax.

The goods referred to in paragraph 1 of this Article may remain in the zone or the warehouse for an indefinite period.

Provisions of paragraph 1 of this Article shall be applied regardless of the type of goods imported and their purpose in the zone and the warehouse, including the goods imported by the operator and the user and intended for construction and maintenance of facilities, infrastructure and equipment in the zone or the warehouse, and, generally, for creation of conditions for functioning and development of the zone and the warehouse.

Obligations of users concerning customs surveillance and record keeping

Article 19

The user shall enable implementation of the customs surveillance measures and keep prescribed records of the goods entering and exiting the zone and the warehouse.

Free foreign trade regime

Article 20

Licenses or other possible restrictions on foreign trade shall not apply to goods imported from abroad into the zone and the warehouse neither to export of those goods to abroad.

Dispatching of goods from the zone and the warehouse to the other parts of the territory of Montenegro

Article 21

Any goods dispatched from the zone and the warehouse to the rest of the territory of Montenegro, for the purpose of their placing on the market, shall be subject to payment of import duty and value added tax, as well as to any restrictive or protective measures provided for under the law governing foreign trade.

The value of domestic raw materials or domestic components of the goods referred to in paragraph 1 of this Article shall not be calculated into the customs value.

The goods referred to in paragraph 1 of this Article must be declared to the competent customs office.

Temporary taking of the goods into and out of the zone

Article 22

The goods may be temporarily taken out of the zone and the warehouse to other parts of the territory of Montenegro, or taken into the zone and the warehouse from other parts of the territory of Montenegro, for the purposes of refinement (processing, finishing or treatment), installation, testing, attestation, repair, marketing presentation, etc.

The goods temporarily taken out of or taken into the zone, as referred to in paragraph 1 of this Article, shall be reported to the competent customs office.

The goods that are temporarily taken out of the zone and the warehouse shall be returned into the zone and the warehouse or exported abroad within the period required to complete the operations referred to in paragraph 1 of this Article, and not later than a year from the day they are taken out of the zone and the warehouse.

Article 23

Deleted. (Official Gazette of Montenegro 76/08)

Payments in the zone and the warehouse

Article 24

Payment transactions with abroad as well as their mutual payment transactions, the users shall carry out in a free and agreed manner and within the agreed terms, through a bank in the zone or other bank with the seat in Montenegro.

Establishment, issuance and taking of operational licenses, organisation, status changes, functioning, managing, administration and control over operations of banks established and operating in the zone shall be subject to the Law on Banks.

Payment transactions in the zone and the warehouse may be effected in the agreed currency.

The provision of paragraph 1 of this Article shall be also applied to payment transactions between users and operators.

Credit relations

Article 25

For the purpose of conducting business activities in the zone and the warehouse or creating conditions for those activities, the users and operators may raise loans from abroad or grant loans for such purposes, freely and without any limitations that may be imposed by general regulations.

In case that the user or operator is under state ownership over 51%, loans shall be raised in accordance with the law.

Employment contract and collective contracts

Article 26

Rights and obligations of employees in the zone and the warehouse and the procedure for their exercise shall be regulated by the employment contract, in accordance with the law and the collective agreement.

Free bargaining of wages

Article 27

The employers (users and operator) and the employees in the zone and the warehouse may freely bargain over the wage rates and the manner of their payment.

Employment of foreign nationals

Article 28

Employment and work of foreign nationals for a user shall be subject to provisions of the law governing employment and work of foreign nationals in Montenegro.

Employment office in the zone

Article 29

A separate employment office may be founded for the territory of the zone and the warehouse.

Lease of the land and facilities and construction in the zone and the warehouse

Article 30

The users shall use the land and facilities in the zone and the warehouse based on the contract concluded with the operator.

On the leased land, for the purpose of performing business activities, the user may build temporary or permanent facilities under their ownership, or buy such facilities from the operator or another user.

Exemption from reciprocity

Article 31

The user of the zone and warehouse – a foreign person may acquire the ownership right over a facility in the zone for conducting business activities, regardless of the reciprocity principle.

Authorisations of the operator related to urban planning

Article 32

Through the competent authorities at the Republic and local self-government level, the operator shall provide spatial and urban plans for the territory of the zone and warehouse, urban and technical requirements, decision on location, building permit and use permit, and perform other necessary activities with regard to planning and using the territory of the zone and warehouse and building of facilities therein.

Functions of the competent ministry

Article 33

The Republic authority competent for urban planning matters shall supervise legality in implementation of the operator's authorisations referred to in Article 32 of this Law.

Free investment of capital and transfer of profit

Article 34

Investment of capital in the territory of the zone and the warehouse, as well as transfer of profits and stakes, shall be free.

Ownership over banks and insurance companies

Article 35

Banks and other financial organisations and insurance companies with a seat in the zone and warehouse may be entirely under the ownership of a foreign person, in accordance with the law.

Exemptions from nationalisation and expropriation

Article 36

Property of the operator and the user may not be subject to nationalisation or expropriation.

V CESSATION OF OPERATIONS IN THE ZONE AND THE WAREHOUSE

Conditions for cessation of operations in the zone and the warehouse

Article 37

If, in the course of the operation of the zone and warehouse, it is proved that the requirements stipulated by this Law as regards its establishment have ceased to exist permanently, the Government may, upon the Ministry's proposal, cancel the approval for establishment of the zone and warehouse, after obtaining the opinions of other ministries, founders and operators.

The decision on cancellation of the approval referred to in paragraph 1 of this Article shall be published in the Official Gazette of Montenegro.

In the decision on cancellation of the approval for establishment of the zone and warehouse, the Government shall define the deadline within which the zone shall cease its operations, which may not be shorter than six months or longer than a year after enactment of the decision.

Within six months after expiry of the deadline referred to in paragraph 3 of this Article, foreign goods in the zone or warehouse must be cleared through customs or returned abroad.

In case the zone or the warehouse ceases its operation, the user shall retain the ownership right over the goods and rights imported or taken into the zone or the warehouse, and may continue its business activities, in accordance with the general regulations.

VI PENALTY PROVISIONS

Operator's offences

Article 38

The operator shall be liable to a fine ranging from 20 to 100 minimum wages in Montenegro for the following offences:

- 1) if enabling conduction of business activities in the zone or warehouse endangering the environment, human health, material goods and the country's security (Article 5);
- 2) if the zone or warehouse becomes operational prior to obtaining the decision on putting the zone or warehouse into operation (Article 12);
- 3) if failing to stipulate general rules of operations in the zone or warehouse (Article 16);

- 4) if enabling conduction of activities in the zone or warehouse contrary to the law and general rules.

For offences referred to in paragraph 1 of this Article, the responsible person in the operator shall be liable to a fine ranging from 2 to 10 minimum wages in Montenegro.

Users' offences

Article 39

The user shall be liable to a fine ranging from 10 to 50 minimum wages in Montenegro for the following offences:

- 1) if failing to enable customs authorities to perform customs surveillance measures or failing to keep, or keep in an orderly manner, the records on goods in the zone or warehouse (Article 19);
- 2) if placing the goods from the zone or warehouse in the market in the rest of the territory of Montenegro without reporting it to the competent customs office (Article 21);
- 3) if temporarily taking the goods out of the zone or warehouse without previously reporting it to the competent customs office, or failing to return such goods within the stipulated deadline (Article 22).

For offences referred to in paragraph 1 of this Article, the responsible person in the user shall be liable to a fine ranging from 1 to 5 minimum wages in Montenegro.

Competences

Article 40

An authorised person in the competent ministry shall conduct the first-instance procedure for offences referred to in Article 38 of this Law.

The competent customs office shall conduct the first-instance procedure for offences referred to in Article 39 of this Law.

VII TRANSITIONAL AND FINAL PROVISIONS

Adjustment of operations of the existing zones

Article 41

Zones and warehouses established prior to entry into force of this Law shall continue its operations in accordance with this Law.

Repealing of other regulations

Article 42

The Law on Free Zones (Official Gazette of the Federal Republic of Yugoslavia 81/94) shall be repealed on the day of entry into force of this Law.

Entry into force

Article 43

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.