

FREE ZONES

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 84/1992 on the regime of free zones, published in the Official Gazette no. 182/30th of July 1992
- Order no. 1431/2002 of the Ministry of public works, transportation and residence for the approval of the instructions on granting the working licenses and of the permits of access in free zones, published in the Official Gazette no. 879/6th of December 2002

I. Scope of the legal provisions on free zones

Law no. 84/1992 on the regime of free zones provides for the possibility of the establishment of the regime in a free zone in the maritime and river ports, alongside the Danube-Black Sea channel, other navigable channels and in the neighboring of border checkpoints for the purpose of promoting of international exchanges and of attracting of foreign capital for the introduction of new technologies, as well as for the increasing of the possibilities of using the national economic resources.

Free zones are integrant part of the Romanian territory and the national legislation applies here. Customs surveillance is only performed at the borders of such free zones. Free zones must be precisely demarcated and enclosed. Customs and frontier guard bodies perform the control of the access to free zones. Any means of transportation, commodities and other goods are admitted without restrictions to the free zones, regardless of the country they travel from, their origin or destination.

Goods prohibited for import on the Romanian territory either by law or by international agreements Romania is part of, are not admitted in free zones.

II. Establishment of free zones

Establishment and territorial demarcation of free zones, of appropriate customs and frontier guard units are made by government decision, upon the proposal of the interested ministries and of the local public administration authorities. By government decision of establishment, the regulations of organizing and operating of free zones, exploitation, management and control regime, the way of levying of fees and tariffs as well as the means necessary for the customs and frontier surveillance are approved.

III. Activities allowed in free zones

The following activities may be performed in free zones:

- handling, storage, sorting, manufacturing, measuring, marking, conditioning, processing, assembling, testing, auctioning, sale and purchase, repairing and disassembling of commodities;
- organization of exhibitions;
- stock, financial and banking transactions;
- transportations and internal and international dispatching;
- leasing or concession of buildings, storage spaces and of the non-fitted spaces to allow for the building of economic facilities or hotels;
- qualitative and quantitative control of commodities;
- charter;
- agency, catering of vessels and other means of transportation;
- performing of services;
- other activities specific to free zones.

These activities may be performed by natural or legal persons only on the basis of licenses issued by the administration of free zones.

1. Working license

The working license in free zone is the document on the basis of which the free zone administration allows for an economic entity, Romanian or foreign natural or legal person, hereinafter referred to as **user** or **third party user** to perform activities on the basis of the concluded contracts.

The user represents the economic entity having contractual relations, directly with the administration of free zone.

Third party user is the economic entity having contractual relations, in subsidiary, with the administration of the free zone, having mainly contractual relations with the user.

Contracts are concluded by the Regies Autonomes “Free Zone Administration” with the users or by the users with third parties.

Contracts concluded may be of concession, leasing, association or performing of services. Orders confirmed, offers confirmed, mandates given and other similar documents are considered contracts of performing of services as well.

1.1 Procedure of the issuing of the working license

For the obtaining of the working license, the users or the third party users address an application for this purpose to the administration of the free zone, which is the only competent body to issued working license. Working licenses are issued on the basis of the documents established by the Board of Directors of the Regies Autonomes “Administration of Free Zones”, with the approval of the General Department Agency of Free Zones within the Ministry of Transportations, Constructions and Tourism.

Working licenses are going to be issued only after the presentation, by the users, of the approvals necessary for the respective activity, obtained from the qualified bodies for this purpose. The presentation of such documents is compulsory if, by normative documents, the obligation of obtaining such permits, approvals, authorizations from certain state authorities for the activity that the applicant intends to perform in free zones is expressly stipulated.

Working license shall be issued for each of the activities that are to be performed in the free zone, within maximum 10 working days from the date of the request.

In case of losing the working license, the users will be issued with a new working license (duplicate) upon his request, registering this in the registry of recording of all the working licenses. For the purpose of issuing of a new license, the applicant shall have to publish the announcement of loosing in a paper with a wide circulation. For a new working license, the applicant shall pay the tariff for the issuing of the working license.

If, within the validity period of the working license, changes intervene regarding the name of the user or of the third party user, proved with legally drawn up documents, a new license form shall be issued for the user or, as the case may be, for the third party user, until the expiring of the validity period.

1.2 Validity period of the working license

Working licenses shall be issued for a period of one month, 3 months, 6 months, 12 months, as the case may be, and may be renewed, upon request, against a fee.

1.3 Transferability of the working licenses

The granted working licenses are not transferable from one user to another or from a user to a third party user and cannot be jointly used by many users or/and third party users.

1.4 Fees and tariffs paid for the issuing of the working license

The counter value of the working license shall be established by each administration, according to the international usages and with the complying with the legal provisions in force.

The economic and social value of the activities that are going to be performed shall be taken into account in the substation of such fees.

The user shall pay for the tariff of the working license, as well as the tariff afferent to the services performed by the free zone administration for the issuing of the working license. The tariffs of the working licenses shall have the same values for identical activities.

1.5 Refusal of the issuing of the working license

If the applicant does not submit the authorizations and permits compulsory for the performing of the respective activity, has financial or contractual obligations non-honored in time to the free zone administration or requests a license for prohibited actions through the applicable legislation, the free zone administration may reject the issuing of the working license, for one or more activities proposed by the applicant. Under these circumstances, the applicant may file a **complaint**. The solving of the complaint is made within the terms and procedure established by the Law of administrative contentious no. 29/1990, thus:

- within 30 days from the date of the communication of the refusal by the issuing body, the Board of Directors of the Regies Autonomes “Free Zone Administration” has the obligation of solving it within 30 days from its registration;
- within 10 days from the communication of the decision of the Regies Autonomes “Free Zone Administration...” to the Ministry of Transportations, Constructions and Tourism – the General Department the Agency of Free Zones, has the

obligation of solving it within maximum 10 days from the reception;

- within 30 days from the date when the solution was communicated by the General Department Agency of Free Zones, at the competent court.

1.6 Waiver by a user to one or many activities for which he has the license

If the user waives to one or more activities for which he has received a working license, he has the obligation of notifying in writing the intention to the administration of free zones 15 working days before the waiver of the respective activity.

In this event, the administration shall immediately withdraw the working license granted for that activity, without the repayment of its counter value, regardless of the period remained non-executed.

1.7 Withdrawal or cancellation of the working license

If the applicant does not submit the authorizations and permits compulsory for the performing of the respective activity, has a financial or contractual obligation non-honored in time to the free zone administration or request a license for prohibited actions through the applicable legislation, the free zone administration has the right to withdraw the working license or to cancel it. The withdrawal or the cancellation of the working license shall be made without the repayment of its counter value, regardless of the period remained non-executed.

The user may file a complaint against the decision of withdrawal or cancellation of the working license. The term within this complaint may be filed is of 30 days from the communication. The complaint is filed with the Board of Directors of the Regies Autonomes “Administration of Free Zone...”. The solving of the complaint is going to be made within the term and with the procedure established by the Law no. 29/1990.

2. Access permit

This is the document on the basis of which the access of persons, means of transportation and of equipments is allowed inside the free zone. The access permit is issued by the administration of free zone and against the payment of the afferent tariffs.

Categories of permits and the conditions of their granting are established by the Regulations of use of the free zone, approved by the Board of Directors of the Regies Autonomes “Administration of Free

Zone...” and approved by the General Department the Agency of Free Zones.

IV. Incentives

The lawmaker provided for certain incentives for natural or legal persons that want to perform a certain activity in the free zones.

1. Land and constructions in free zones may be granted or rented by the Romanian or foreign natural or legal persons. The term of concession may be of maximum 50 years and is established by taking into account the value of investment or the specific of the activity.
2. Customs taxes and duties exemption for means of transportation, commodities and other goods brought from abroad or destined to other countries which are introduced into or taken out of free zones;
3. Romanian materials and accessories entering the free zones and used in manufacturing are customs duties exempted, given the accomplishment of export formalities;
4. Upon liquidation or restriction of the activities performed in the free zone, foreign natural or legal persons may transfer abroad the capital and the profit, given the payment of all the obligations toward the Romanian state and the contractual partners;
5. Romanian goods used for construction, repair and maintenance of objectives inside the free zones territory are exempted from customs duties;
6. Goods from a free zone may be transported to another free zone without payment of customs duties. These goods may be transited on the Romanian customs territory, subject to compliance with the legal provisions;
7. Specific activities performed in the free zones by the persons authorized for this purpose are exempted from the value added tax;
8. Means of transportation, commodities and other goods from abroad introduced directly into the free zones, are exempted from the value added tax.

According to fiscal code, taxpayers developing activities in the free zone on the basis of a license and that until the 1st of July 2002 have made investments in the free zone, in depreciable tangible assets used in the

processing industry, in the amount of at least USD 1,000,000, benefit from the exempt from the payment of the profit tax, further on, until the 30th of June 2007. These legal provisions cease to be enforceable if changes occur in the structure of the taxpayer's shareholders. For the meaning of the present paragraph, modification of shareholders in the case of the listed companies is considered to be a modification of shareholders, in a proportion exceeding 25 per cent of shares, during one calendar year.

Subject to previously mentioned exception, the taxpayers gaining incomes from activities developed on the basis of a license in a free zone are obliged to pay profit tax in a quota of 5 per cent for the taxable profit corresponding to these incomes, until the 31st of December 2004.

V. Financial operations

All the financial obligations connected with the activities performed in the free zones are made in free convertible currency accepted by the National Bank of Romania.

Financial transactions performed while building constructions and objectives in free zones may also be performed in lei.

Financial resources of the administrations of the free zones are deriving from:

- fees for the performing of activities licenses;
- incomes from the enforcing of the concession and rental tariffs;
- other incomes.

The level of the tariffs for concessions and rentals is established through contracts concluded between the administrations of free zones and Romanian or foreign natural or legal persons, performing activities in the free zones.

Expropriation, requisitioning or taking of other measures with similar effects upon the investments made in the free zones shall only be made in case of public interest, subject to the compliance with the legal provisions and the payment of damages corresponding to the value of investment that has to be prompt, adequate and effective.

Buildings inside the free zones cannot be used as dwellings. Thus, for the personnel working inside the free zones, only spaces for the performing of the activity of guarding, canteens and restaurants may be established.

Goods manufactured in the free zones, entering the Romanian customs territory are subject to customs duties.

Means of transportations, commodities and other goods entering, which are or are taken out the free zones, as well as the activities performed in these zones are subject to sanitary, phyto-sanitary, sanitary-veterinary and environment protection, as the case may be.

VI. Contraventions

Law no. 84/1992 provides for that the following deeds are contraventions, if they are not performed in such a way in which they may be considered offences, according to the criminal law:

- entering the free zones without the approval of the administration or without the permits issued by the administrations of free zones or by other bodies certified by law;
- introducing inside the free zones of goods unaccompanied by documents;
- performing of other activities than the ones provided in the issued licenses;
- performing of other activities than those stipulated in the decision of establishment of the free zone.

The stipulated contraventions are sanctioned with a fine, whose quantum varies from 250 USD to 20,000 USD and the ceasing of the respective goods.

Within 15 days from the date of the communication of the minutes of establishment of the contravention, one may file a complaint against it. The complaint is filed with the administration of the free zone and is solved by the law court in whose jurisdiction the contravention has been performed.