

**REPUBLIC OF MADAGACAR**  
**Tanindrazana - Fahafahana – Fandrosoana**  
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**PRESIDENT' S OFFICE OF THE REPUBLIC**

**LAW N° 2007- 037 of 14 JANUARY 2008**  
**On Free Zones and Enterprises in Madagascar.**

**RECITALS**

The Republic of Madagascar would like to draw investors and make the private sector into the main engine of its development. Relying on the reference documents that are the « Madagascar Naturally» Vision and the Madagascar Action Plan (MAP), the Government defined among its central priorities the pursuit of a strong economic growth based on the development of a strong and competitive private sector.

Putting in place an incentive environment for all investment activities in Madagascar gave rise to the development of the Law on Investments in Madagascar, the objective of which is to adapt and boost rapidly the local economic fabric so that it is in line with a particularly competitive international economic context.

The free zone sector which has developed since the enforcement of Law n° 89-027 of 29 December 1989 has been and remains a resource and employment generating sector. It must, however, face many challenges.

It appeared that this regulation had to be subject to several adaptations to remain a system enabling the creation and development of productive investments.

Such adaptations are essentially geared to streamlining the customs and tax procedures which provide the framework at the administrative level for tax, customs, and financial provisions for eligible enterprises.

The measures which have thus been retained result from both keeping the system attractiveness without adding incentive measures and streamlining administrative constraints, namely customs ones, which have accumulated since the enforcement of Law n° 89-027 of 29 December 1989.

These measures are the following:

- Suppression of the authorization procedure which was replaced by a system of statement to the Economic Development Board of Madagascar (EDBM),
- Liberalization of operations achieved to and from free enterprises and enterprises ruled by the ordinary law existing in Madagascar,
- Securing the mechanism for repaying VAT credit to free enterprises,
- Clarification of the principle of tax stability and of the limiting character of the tax system for free enterprises,
- Clarification of the principle of absence of quota in employing foreign labor,
- Gradual harmonization of the free zone system and the ordinary law system, and adoption of a new law on exports,

For practical reasons, the structure of Law n° 89-027 has been kept and, beyond the principles mentioned supra, some of these articles were modified in a prospect of streamlining and clarification.

Such is the object of the present Law.

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**On Free Zones and Enterprises in Madagascar.**

The Senate and the National Assembly adopted in their respective session dated 04 December 2007 and 19 December 2007.

**THE PRESIDENT OF THE REPUBLIC,**

Considering the Constitution;  
Considering Decision n°03-HCC/D3 of 09 January 2008 by the High Constitutional Court;

Promulgates the law, the tenor of which follows:

**Article 1 – General Provisions**

There is instituted in Madagascar the Free Zone and Enterprise System, defined through the provisions of the present Law.

This system applies to the investments achieved by national or foreign developers, or both, in export oriented activities and according to the categories mentioned in Articles 2.2 and 2.3 herein after.

**Article 2 – Definitions**

For the purpose of the present Law:

2.1 – What is understood by export is selling goods and services originating from or coming from Madagascar abroad or to Free Zones and Enterprises.

2.2- Free Zone is any materially delineated area inside which several Free Enterprises are grouped together

2.3 - Free Enterprises are export oriented enterprises and consist of three categories:

1. Industrial Processing Industries;
2. Service Providing Enterprises;
3. Basic Intensive Production Enterprises.

2.4 - The conditions for materializing a Free Zone and Enterprise are set by regulation.

**Article 3 – Eligibility**

3.1 – The attestation of a Free Zone and Enterprise is issued by Economic Development Board of Madagascar (EDBM), which is autonomous body acting on behalf of the Malagasy State and is in charge of approving investment projects as well as promoting and developing investments in Madagascar.

3.2 – Any enterprise desiring to benefit from the Free Zone and Enterprise System must address its application to EDBM, and such application must be supported by a file including the duly filled out forms established by EDBM.

3.3 – In order to benefit from the Free Zone and Enterprise System:

- A Free Zone must group together several free enterprises inside it. In that respect, it provides the management and promotion of the zone to be operated.
- An Industrial Processing Enterprise or a Basic Intensive Production Enterprise must devote their production to export and/ or to the needs of Free Zones and Enterprises;
- A Service Providing Enterprise must devote its activities to export and/ or to the needs of Free Zones and Enterprises.

The list of activity sectors that are not eligible to the Free Zone and Enterprise System is set by a Decree.

3.4 – Issuing the Free Zone and Enterprise Attestation by EDBM entails the application of the Free Zone and Enterprise System defined by the present Law.

The Attestation of Free Zone and Enterprise is issued following a simple examination of whether the submitted project fulfils the eligibility conditions defined by the present Law. It must be issued within a maximum period of twenty (20) days as of the application filing date.

In case of refused issuance of the Attestation, the applicant may file recourse higher on the hierarchy to EDBM Board of Directors

3.5 –Enterprises admitted to the Free Zone and Enterprise System may no longer claim to the provisions defined by another exception investment system in force in Madagascar.

3.6 – The respective functions of each enterprise category defined in Article 2.3 remain distinct and may not be cumulated by one and same moral entity.

However, the case is authorized when service providing activities are part and parcel of the Free Zone and Enterprise and work only exclusively for such enterprise.

3.7 – Any enterprise, whether it benefits or not from a special system by virtue of a particular convention passed with the State or from another specific investment system, subject to fulfilling the conditions set by the present Law, may at any time request to benefit from the Free Zone and Enterprise System.

Benefit from the Free Zone and Enterprise System supersedes that of systems granted previously without it being able to come up with granting benefits with retroactive effect, to extend the previously granted tax exemption period, to cumulate profits, or to renew the profits that have been secured for the same investments.

3.8 – In case of failure to all or part of the obligations that are laid out through the present Law and its application instruments, enterprises benefiting from the Free Zone and Enterprise System will receive an injunction to meet the measures required for regularizing its status.

Failing regularization within a period of six (6) months, withdrawal from the Free Zone and Enterprise System is pronounced upon decision by EDBM Board of Directors, without the enterprise being allowed to claim to indemnification.

#### **Article 4 – Borrowings – Foreign Currencies – Bank Accounts – Transfers- Financial Statements**

4. 1 – Any Free Zone and Enterprise, under their entire responsibility, may enter into borrowings in foreign currencies abroad, loans in local currency in Madagascar.

4.2 – Any Free Zone and Enterprise is authorized to open bank accounts abroad and bank accounts in foreign currencies with local banks and may acquire foreign currencies in Madagascar regarding operations related to their activity

Free enterprises are subject to the obligation of repatriating their export revenues within a period set in the application instruments of the present Law.

Under the provisions of the present Law, the deposit bank is obliged at any time to provide its client with available foreign currencies deposited by the latter.

4.3 – Any manual exchange operation for purchase or sale of foreign currencies against local currency remains subject to the regulation in force.

4.4 – The financial statements of Free Zones will be established according to the standards of the Accounting Chart in force in Madagascar.

The first accounting year shall not exceed eighteen (18) months; the other accounting years run from 1 January to 31 December of the same year or from 1 July to 30 June of the following year.

Financial statements shall be handed over within four months following the closing of the year to the involved administrations with a copy to EDBM.

4.5 – In case of closing down, subject to integral settlement of debts contracted on the national territory, the State ensures and guarantees the freedom of transfer of funds possibly released.

## **Article 5 – Social Legislation**

5.1 – Any freedom is granted to Free Enterprises regarding the management of their staff under the Labor Code and the Social Contingency Code, as well as the particular provisions of the present Law.

5.2- Free Enterprises are responsible for determining the number of specialized expatriate wage earners that they need.

A visa for professional resident, valid for the period of their work contract is granted to expatriate staff of Free Enterprises, according to the modalities set by the regulation in force.

Work contracts for expatriate wage earners in Free Enterprises may derogate from some provisions of the Labor Code in accordance with Article 17 of Law n°2007-036 on investments in Madagascar.

5.3 – Regarding foreign partners or stockholders, whether they are in minority or in majority, holding a social mandate as a Director, a Chief Executive Officer, a Chairperson of the Board of Directors or as a Manager of a Free Enterprise, the Free Enterprise Attestation will entitle them, for themselves and for members of their legitimate family, to benefit from being granted with a professional resident visa.

5.4 – Any Free enterprise is obliged to pay to concerned organizations the social contributions prescribed by the Labor Code and the Social Contingency Code.

No discriminatory measure regarding the rates or schedules of contributions may be applied to expatriate staff. Nevertheless, they may upon their request be exempted from them and no longer benefit from the rights and benefits coming from the payment of such contributions upon presentation of evidence of real payment of contributions payable to the foreign social security body to which they are affiliated.

5.5 – The State ensures and guarantees the freedom of transferring salaries really received in Madagascar by expatriates working in Free Enterprises.

5.6 – The Labor Code provisions are applicable to Free Enterprises regarding everything that is not contrary to the particular provisions of the present Law and the application instruments of the present Law.

The Labor Code provisions on night work for women and namely Article 85 of Labor Code or any other legislative or regulatory provision that would substitute to it are not applicable to Free Enterprises.

Within the limit of five (05) hours per week and per worker, Free Enterprises may freely resort to extra hours upon a simple statement filed or transmitted to the territorially competent Inspection of Labor. Beyond the first five extra hours and within the maximum number limit of extra hours prescribed by work regulation, authorization by Labor Inspection, except for major objection because of public order, will indeed be required. Absence of response on the part of Labor Inspection within a period of three work days means authorization.

## **Article 6 –Taxation on Enterprises and on Expatriates**

Free Zones and Enterprises benefit from the following tax system:

### 6.1 – Corporate Tax/ Taxes on Corporate Profits (IBS)

Free Zones and Enterprises are subject to Corporate Tax that is set at the rate of ten percent (10%) and to the Collection Minimum **at the rate of five for one thousand (5 %).**

Free Zones benefit from Corporate Tax exemption and from the Collection Minimum for the first fifteen (15) years as of the year during which operation really started.

Free Industrial Processing Enterprises, as well as Free Basic Intensive Production Enterprises benefit from the same exemptions for the first five (5) years as of the year during which operation really started.

Free Service Providing Enterprises benefit from the same exemptions for the first two (2) years as of the year during which operation really started.

In order to take account of the industrial fine tuning and that of professional training, the starting date of real operation is the date that falls twelve months following the date of issuance of the Free Zone and Enterprise Attestation. Prior to such date, the Free Enterprise and Zone benefit from the above mentioned exemption.

### 6.2 – Tax Reduction for Investment

Investments in amortizable goods achieved after the Corporate Tax exemption period entitle to Corporate Tax reductions equal to the tax corresponding to seventy-five percent (75%) of the amount of new investments .

Unused entitlements to tax reductions may be carried forward until checking of accounts without period limitation.

### 6. 3 – Tax on wage incomes and related taxes

The amount of tax on wage income for expatriates working in Free Enterprises may not exceed thirty percent (30%) of the taxable base, or any other more favorable rate that would be instituted under the taxation rules according to the ordinary law.

#### 6.4 – Flat Tax on Transfers

Sum transfers to abroad by Free Enterprises and Zones as payment for goods and services purchases from foreign enterprises that do not have any institution in Madagascar are not subject to Flat Tax on Transfers or to any other tax levy.

#### 6.5 – Registration Fees

Deeds concluded by Free Zones, when they are subject to registration formality, are recorded free of charge.

#### 6.6 – Value Added Tax

Imports achieved by Free Zones and Enterprises are not subject to VAT.

Sales or service provisions made by Free Zones on the national territory are subject to VAT at the rate imposed by the ordinary law.

Goods and services exports by Free Enterprises, as well as goods and services sales to other Free Zones are subject to VAT at the rate of zero percent (0%).

Goods and services sales made by local enterprises ruled by ordinary law to the benefit of Free Zones are subject to VAT at the rate set in ordinary legislation. Such VAT is deductible for Free Enterprises, whatever the nature of goods or services consumed on condition that it is related to taxable operations.

Free Enterprises or Zones are authorized to secure repayment of VAT credit resulting from the VAT surplus deductible on collected VAT. Such VAT credit is repayable by the State upon simple request filed with VAT return indicating the above mentioned credit.

VAT credit repayment must be carried out within sixty (60) days as of reception of the request by the General Tax Directorate.

VAT credit granted for repayment may be used by the Tax Administration as settlement of taxes provided for in the present Law in the conditions that will be set through a Decision by the Minister in charge of Tax Regulation.

#### 6.7 – Base and Liquidation Rules

Except for the specific provisions prescribed by the present Law, the base and liquidation rules, fees, and taxes set by the General Tax Code remain applicable to Free Zones and Enterprises.

#### 6.8 – Restrictive Character of Tax System – Guarantee for Stability

The State guarantees the restrictive character and stability of the tax system such as defined by the present Law.

As a consequence, the tax system for Free Zones and Enterprises restricts and excludes any taxation, duty of tax of whatever nature they are and that would not be provided for in the present Law.

No other measure that would tend to aggravate the tax charges provided for by the previous provisions or to institute a discriminatory treatment among enterprises of same category may be applied to Free Enterprises.

Free Enterprises benefit from more favorable provisions that the State may enact regarding the taxations mentioned in the present Law or that it may grant to other Free Enterprises operating in the same activity sector.

## **Article 7 – On Customs**

In case of need, the customs procedures specific to Free Zones and Enterprises may be enacted through a regulation in consultation with EDBM.

7.1 – In the conditions stipulated by the International Conventions to which the State adhered, goods in Free Zones and Enterprises benefit from preferential trade systems granted to Madagascar.

7.2 – Construction materials and accessories, site rolling stock, vehicles for goods transportation, plant equipment, raw materials, semi-finished products (packaging, spare parts, didactic materials, furniture, computing and office automation materials, as well as office supplies, for the preparation, development, and operating of Free Zones and Enterprises will be exempted from customs duty and any import tax.

Free Zones and Enterprises working in remote areas that are not covered by public electricity network benefit from tariff excluding any tax and duty for fuels and lubricants used for producing energetic means indispensable to their operating.

Clearance for such goods is carried out in a definite way. Consequently their detention period is not limited.

7.3 – Goods and services exported abroad by Free Zones and Enterprises are exempted from any export duty and tax.

Export occurs according to a streamlined procedure which shall not give rise to checking accounts in clearance operations that are related or not to related or accessory import operations carried out by Free Zones or Enterprises.

Customs services upon request by importers grant the visa justifying the origin of such goods and services, in accordance with the national law governing the matter and with the stipulations in the International Conventions to which Madagascar adhered.

7.4 – Sale of productions, rejects, and waste, materials and equipment from Free Zones and Enterprises over the national territory:

- a. Within the annual limitation of five percent (5%) of their really exported production, free Zones and Enterprises are free to sell their products and services over the national territory
- b. Sale of manufacturing rejects and wastes is free.
- c. Sale of their totally amortized materials and equipment, in accordance with the rules in the accounting chart in force, is free.
- d. Sale of their materials and equipment that are in part amortized is free. Sale is carried out including any import tax and duty, based on residual value in accordance with the rules in the accounting chart in force.

The sales mentioned in paragraphs a, b, and c, above will not give rise to any payment of customs duty and import tax.

The sales mentioned in paragraphs a, b, c, and d above are subject to VAT application. They shall be subject to a streamlined quarterly overall statement that will be forwarded to the Customs Administration, with a copy to EDBM.

7.5 – Sales of goods and services among Free Enterprises are free and will be considered as export operations. They will give rise to no customs formality other than the filing of a streamlined quarterly statement mentioning the kind of goods and services that were sold, the amount of the sale, and the identity of the purchaser.

7.6 – Goods and services provided by Enterprises ruled by Ordinary Law to Free Enterprises will give rise to application of no particular customs formality.

However, the customs systems for temporary admission, industrial warehousing, of drawback, in such a case, may be applicable to the Enterprises ruled by Ordinary Law:

- a. for site materials and equipment, spare parts, construction materials, and accessories that are exclusively for developing the site and constructing the buildings for Free Zones and Enterprises;
- b. for inputs, raw materials, semi-manufactured or manufactured goods serving for manufacturing, packaging, processing, wrapping, and conserving their products to be sold to Free Zones and Enterprises.

In such a case, and for the needs of checking such suspension systems, sales of goods and services to Free Zones and Enterprises are considered exports.

## **Article 8 - Controls**

Free Zones and Enterprises are subject to the administrative control meant for checking the compliance of their activities with the provisions of the present Law.

They are subject namely to control and surveillance measures implemented by the involved Administrations.

## **Article 9 – Overall Obligations**

Any enterprise benefiting from the system of Free Zones and Enterprises will be obliged to respect public order, the rules of hygiene and sanitation, to protect the environment and, overall, to comply with the laws and regulations in force over the national territory.

Local governments will take the measures useful for facilitating the observance of obligations mentioned in the previous paragraph with regard to hygiene and sanitation, as well as protection of the environment.

Enterprises enjoying the system of Free Zones and Enterprises will take the provisions required to comply with Article 7 of Law n°2007-036 on investments in Madagascar.

## **Article 10 – Dispute Settlement**

Disputes between national investors and the State related to the construing or the application of the present law are subject to the Malagasy competent jurisdictions, unless the parties have agreed or agree to resort to another dispute settlement mode.

Disputes between foreign investors and the State related to the construing or the application of the present law are ruled in compliance with a resulting jurisdictional or arbitration procedure:

- By Agreements or treaties related to the protection of investments concluded between the Malagasy State and the State to which the involved foreign investor is a citizen or, failing this,
- By the International Convention for settlement of disputes related to investments between States and other States citizens ratified by Law n° 66-011 of 5<sup>th</sup> July 1966.

However, if foreign investors apply for the procedure, in lieu and stead of the above mentioned arbitration procedure, they may freely choose to submit to the Malagasy competent jurisdictions the disputes opposing them to the State.

### **Article 11: Transitional Provisions**

Until the adoption of the specific regulatory instruments, the regulatory instruments taken in application of Law n° 89-027 such as modified by Law n° 91-020 remain applicable in their provisions that are not contrary to the present Law.

### **Article 12 – Final Provisions**

12.1 – Any previous provision contrary to the present Law will be and remain abrogated, namely Law n°89-027 of 29 December 1989 on the Free Zone System that was modified and supplemented by Law n°91-020 of 12 august 1991, Decree n°92-809 of 9 December 1992 on the application of Law n°89-027 of 29 December 1989 related to Export Processing Zone System in Madagascar, and the subsequent laws.

12.2 –The enterprises that were previously admitted to the Free Zone System through the application of Law n° 89-027 on the Free Zone System are de facto subject to the Free Zone and Enterprise System provided for in the present Law.

12.3 – Regulatory instruments will, in case of need, determine the modalities for applying the present Law.

12.4 – The present Law will be enforced after its promulgation by the President of the Republic and as soon as it is published through radio or television broadcast or posting or any publication mode, irrespective of its insertion into the Gazette of the Republic. It will be executed as a Law of the State.

Antananarivo, on 14th January 2008

**The President of the Republic  
Marc RAVALOMANANA**