

SEPTEMBER 2005 LEGAL ALERT: **TINAPA & FREE TRADE ZONES IN NIGERIA.**

LEGAL & BUSINESS ADVANTAGES OF FREE TRADE ZONES IN NIGERIA.

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REACTIONS TO LAST LEGAL ALERT ? New Procedures for Governor's Consent to Land Transfers.

Our Legal Alert on the new procedures for obtaining Governor's consent in Lagos State was widely well received. We cannot for now give "guarantees" on its implication though we continue to monitor its application and would advise you in subsequent Legal Alerts on the efficacy of its implementation.

Other comments on this Alert related to our motivational quote for last month. An example is a response from our friend, who is also a Professor in Tax Law. He noted that the best business to engage in is that which is a hobby, i.e. activity in which you derive the most satisfaction. We agree ABSOLUTELY provided that such an activity/business is not MANAGED in the same way most hobbies are managed. Elementary business books recommend that you should only enter into a business that you understand, enjoy and in which you have and would continue to acquire the best management skills; this is necessary for that business to succeed and survive the good and challenging times.

LEGAL & BUSINESS NEWS.

The National Pension Commission has given an Approval-in-Principle to Shell Trustees (Nigeria) Limited (Shell Trustees) to continue its legal existence and operations as a Closed Pension Fund Administrator (CPFA) under the new Pension Reform Act, 2004. Shell Trustees will be the first CPFA to be given this approval which is subject to satisfactory due diligence and eventual issuance of a statutory licence.

Also, the importance of the National Health Insurance Scheme, which commenced effectively last month, cannot be over-emphasised especially now that the United Nations has again reduced the life expectancy of males in Nigeria from 51 years 6 months to 43 months 6 months. For females,

the marginal increase is usually not more than three years above the figures for males. We would in our subsequent Legal Alert provide you with a synopsis of what the National Health Insurance Scheme is all about and why you should embrace the scheme itself or select some other health management regime.

SEPTEMBER 2005 LEGAL ALERT: NIGERIA EXPORT PROCESSING ZONES LAW, CAP 107, 1992 (AS AMENDED).

Acknowledgements.

At the last Annual Tax Conference in Abuja, Nigeria, one of the most simulating papers presented was by Mr. Adesina Agbolajie, Managing Director/Chief Executive Officer, Nigeria Export Processing Zones Authority. We thank Mr. Adesina Agbolajie for permitting us to use some sections of his paper, "Economics of Free Trade Zone" for this Legal Alert. Other sources include the Nigeria Export Processing Zone Authority Act, No. 63 of 1992 (as amended), the official website for Tinapa, www.tinapa.com which we encourage you to visit because of the beauty and huge business potentials of this Free Trade Zone.

However, the views expressed herein are absolutely that of our Law Firm.

Introduction to Export Processing & Free Trade Zones.

Nigeria's over dependence on oil as its primary foreign exchange earner with the fact that oil is an exhaustible resource has required the diversifying of Nigeria's economy to other sources of revenue which have competitive appeal to the international market. The establishment of export processing or free trade zones is one of such initiatives.

Export Processing Zones (EPZs) began in Nigeria as duty-free activity centres designed to attract and sustain foreign manufacture and export of goods and services. This was expanded to Free Trade Zones (FTZs) to meet a more liberalised economic development along the lines dictated by the World Trade Organisation (WTO), General Agreement on Trade and Tariffs (GATT) standards, etc.

There is no definitive definition of the term "Free Zone". Free Zones are also referred to as "customs zones", "free trade zones", "duty free zone", "enterprises zone", etc in some other jurisdiction.

Nigeria Export Processing Zones Authority.

The regulatory body for all Export Processing Zones, Free Trade Zones, etc in Nigeria is the Nigeria Export Processing Zones Authority (NEPZ). The Law giving legal backing to NEPZ as a statutory body is the Nigeria Export Processing Zones Act, Cap 107 (as amended) ("NEPZ Law").

A FTZ may be established, managed and operated by a public or a private or a combination of

public and private entities provided they obtain a license from NEPZ Authority and submit to NEPZ regulatory supervision. A license granted by NEPZ Authority constitutes company registration for the purposes of doing business in the designated free trade zone; registration at the Corporate Affairs Commission is, as a result, not required where the venture is registered with NEPZ.

One of the primary appeals, to both foreign and local investors, to establishing their businesses in a FTZ can be found in Section 8 of the NEPZ Law which expressly exempts all approved enterprises operating within a FTZ from paying any Federal, State or Local Government taxes, levies and rates.

Other provisions of the NEPZ Law that are necessary to be highlighted to enable you appreciate its benefits include:

- A. Goods and services sold or supplied within a FTZ can be paid for in foreign currency with free repatriation to the country of origin of the entrepreneur.
- B. Any capital consumer goods, etc imported into a FTZ for the purposes of doing business within the Zone are exempted from paying any custom duty.
- C. The pre-import or pre-export inspection schemes in Nigeria do not apply to goods imported or exported into or from a FTZ.
- D. Unless the prior consent of the NEPZ Authority is obtained, non-essential retail trade is not permitted in any of the Free Trade Zones. Equally, the entry and residence of all persons into the Zones must be with the prior permission of the NEPZ Authority.
- E. The NEPZ Law expressly prohibits the importation, storage, etc of ammunition and other dangerous explosives in FTZs. Exemptions from this rule are all security apparatus required in the FTZs.

INCENTIVES FOR INVESTING IN FTZS.

The NEPZ Law provides for many incentives to investors investing in any of the FZTs. These incentives, some of which we have already stated above, include:-

- (a) Exemption from federal, state and local government taxes, levies, duties and foreign exchange regulations.
- (b) Free repatriation of foreign capital invested in the FTZs at any time with capital appreciation on the investment.
- (c) Free remittance of profits and dividends earned in the FTZs.
- (d) No import or export license is required for activities restricted to the FTZs.
- (e) Rent free land at construction stage is provided to the enterprise in the FTZ. Thereafter, rent is determined by the NEPZ Authority.

- (f) 100% foreign ownership of all manner of business is allowed in the FTZs.
- (g) Free engagement of expatriate managers and other personnel in the FTZs.
- (h) Free trade relationship between the investors and their personnel as no strike or lock out is permitted for a period of ten years following the commencement of operations in the FTZs.
- (i) Also, all disputes arising within the Zone between the government and an enterprise are resolved by the Authority in an expeditious and equitable manner.
- (j) Preferential tariffs for made-in-Nigeria goods by some economic blocks like the European Union (EU).
- (k) Legal Guarantees and protection of foreign investments, both in the FTZs and within Nigeria, from nationalisation, expropriation and compulsory purchase by the Nigerian government. Also see the Nigeria Investment Promotion Act.

DISINCENTIVES TO INVESTING IN EPZS IN NIGERIA.

1. With an estimated population of over 120 million people, goods manufactured within FTZs in Nigeria cannot directly enter into the Nigerian Market without customs and other licensing, clearance requirements. This is in contrast with other similar goods which are much cheaper because they are allegedly illegally smuggled through the national borders without the payment of the same duties and taxes.
2. Frequent changes in the list of goods banned from importation into Nigeria. This inhibits investment planning and restricts the number of goods that can be manufactured and imported into Nigeria from the FTZs.
3. Non harmonisation of various legislations' on the incentives that accrue to enterprises situated at the FTZs.
4. Following from 3 above is the non resolution of conflicts between NEPZ Authority and the Federal Board of Inland Revenue (FBIR) on goods liable to payment of duty and those that are not liable to duty payment.
5. Insufficient enlightenment and promotion, both to the local and international business communities, of the benefits derived from doing business in the FTZs.

Conclusion on FTZs.

The advantages of FTZs can be captured when we imagine the millions of foreign exchange spent by Nigerians who regularly visit other FTZs like the one in Dubai for trade and leisure. Should the public/private sector partnership succeed in Tinapa and other FTZs in Nigeria, it is expected that more than half of these spending, by both Nigerians and other people from sub-Saharan Africa, would be to the benefit of the Nigerian economy.

However, the need to update the legislation regulating Free Trade Zones in Nigeria cannot be over

emphasised. The Nigerian Government must, as a crucial part of its economic reforms, again review the economic advantages and disadvantages of these Zones to the Nigerian economy vis-à-vis modern global practices, rules and regulations of doing business.

Also, NEPZ needs to publicly promote and market the businesses in the Zones with the attendant benefits to other enterprises coming to join any of the FTZs in the country. Many entrepreneurs, including the ones relocating their businesses to neighbouring West African states, are not aware of FTZs and what benefits they provide to their businesses.

MOTIVATIONAL QUOTE.

Our Motivational Quote for this month is a reminder of the old saying: "Prevention is better than cure". Clients continue to fall into the error of seeking legal assistance after a problem has matured whereas early prevention, referral and cure is cheaper.

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