RM Official Gazette, No. 42/04

THE LAW ON FREE ZONE

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 and conditions for performance of business activities.

The Definitions of the Zone and the Warehouse

Article 2

The zone and the warehouse are parts of the customs territory of the republic of Montenegro (hereinafter referred to as: "the Republic") where business activities are carried out under special conditions governed by this Law.

The zone and the warehouse must be adequately fenced and managed in a manner that goods, vehicles and persons in the zone and warehouse enter or get out only through determined entries and exits.

The zone and the warehouse must be visibly marked as such, both on entries and exits from the shore and from the sea-bank.

The fence, entries and exist have to be secures and also lit at nighttime.

The conditions for the Customs service activities must be provided for in the zone.

The Founders of the Zone and the Warehouse

Article 3

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

The User of the Zone and the Warehouse

Article 4

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

Business Activities in the Zone and the Warehouse

Article 5

All business activities may be conducted in the zone and the warehouse, except those presenting hazard to the environment, human health, material goods and the country's safety, in accordance with the Law.

Sub-zones

Article 6

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

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

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

The Competence

Article 7

The Government of the Republic of Montenegro (hereinafter referred to as: “the Government”) decides on the founding of the zone and the warehouse, subject the proposal by the Ministry for International Economic Relations and European Integrations (hereinafter referred to as: “the Ministry”).

The 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.

ALTERNATIVE:

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 in accordance with the space an urban plans which enactment fall into competence of the Republic.

The conditions for establishment of Zone and Warehouse

Article 9

The zone and warehouse are founded if that is economically justified, and if other physical requirements (spatial, infrastructural, etc) have been met or will be met, subject to previously issued opinion by the competent state authorities.

The founding of the Zone and the Warehouse is economically justified if it can be realistically expected that it will achieve significant results concerning exportation, employment, modern technologies transfer, economic restructuring, etc.

Articles of Incorporation of the Zone and the Warehouse and Founder’s Contract

Article 10

The Founder passes the Articles of Incorporation of the Zone, and warehouse, which will contain particularly the name(s) of the founder(s), the name and the seat of the zone and warehouse, the location of establishment and the area it covers, the subject who will manage it, and activities that will be performed.

If the zone and the warehouse have several founders, their mutual rights and obligations will be regulated by the contract.

Request for Approval for the establishment of the Zone and the Warehouse

Article 11

The founder submits to the Ministry, the request for approval for the founding of the zone or the warehouse.

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

1. Articles of Incorporation of the zone or the warehouse;
2. Study on the economic justification of the founding of the zone or warehouse;
3. Proof that at least one of the founders has the right of property of the land to be covered by the future zone or warehouse, or the right to use it on some other grounds;

The content of the elaborate referred to in paragraph 2, item 2 of this Article shall be prescribed by the Government.

The Government shall issue decision referred to in paragraph 1 of this Article within 30 days.

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

The approval will cease to be in effect if the zone or warehouse fails to start operating within a year from the date when approval was granted.

The time limit referred to in paragraph 6 of this Article may be extended for justified reasons, in accordance with general regulations.

The Ministry shall keep in register articles of Incorporation of the Zone and warehouse, contracts referred to in Article 10, paragraph 2, as well and their founders.

The founders are obliged to report the change of their status within the 15 days from the day of change.

The beginning of operation in the Zone and the Warehouse

Article 12

The Founder will submit to the Customs Administration of Montenegro (hereinafter referred to as: "the Customs Administration") the request for the act on the beginning of the activities in the Zone or Warehouse.

The zone or the warehouse start their activities following the receipt of the act by the Customs Administration.

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

The Customs Administration issues the act on the beginning of the activities in the Zone or warehouse if the requirements for conducting customs surveillance in its area, specified in Article 2 of this Law, have been met.

Reporting about Operations in the Zone and the Warehouse

Article 13

The founder of the zone or the warehouse is obliged to submit to the Government latest by March 31 of current year, and at least on annual basis, Report about Operation of the zone or the warehouse for previous year, subject to the request from the Ministry.

The content of the Report referred to in paragraph 1 of this Article shall be prescribed by the Government.

The establishment and beginning of Sub-zone Operations

Article 14

The provisions of this Law governing the founding and the beginning of operations in the zone are applied *mutatis mutandis* to the expansion of the zone or the founding of the sub-zone as well.

III. MANAGEMENT OF THE ZONE AND THE WAREHOUSE

The Zone and the Warehouse Operator

Article 15

The zone or the warehouse is managed by the entity specified in the Articles of Incorporation (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 is defined in the contract with the Founder.

The Zone and the Warehouse Management Activities

Article 16

The zone and the warehouse management includes the following activities:

1. prescribing general business rules in the zone and warehouse and zone and warehouse tariffs;
2. deciding on requests for conducting business activities in the zone and warehouse, including signing of contracts with the users;
3. prescribing and ensuring internal order in the zone and warehouse, including the entry and exit regimes;
4. creating conditions for normal conducting of customs surveillance, inspection supervision and other;
5. defining and implementing the environment protection measures in accordance with regulations;
6. execution of competences related to urban planning in accordance with regulations;
7. other activities specified by general rules in zone and warehouse

The Operator signs contract with the User and submits it to the Customs Administration.

In case that Operator is changed, the rights and obligations determined in contract referred to in paragraph 2 of this Article, stay into force.

Obligations of the Operator towards the Users

Article 17

The operator is obliged to enable to users performance of their operations under the conditions specified by this Law, the Zone acts and the contract, observing the equality principle.

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 warehouse and consumed or used in accordance with this Law, are not subject to customs duties, customs charges, and the VAT.

The goods referred to in paragraph 1 of this Article may remain in the zone or the warehouse indefinitely.

The provision referred to in paragraph 1 of this Article will be applied regardless of the type of goods imported and the purpose thereof in the zone and the warehouse, including the goods imported by Operator and User and intended for construction and maintenance of facilities, infrastructure and equipment in the zone or warehouse, and, generally, for creating the conditions for functioning and development of the zone and warehouse.

Obligations of the Users concerning Customs Supervision and Record Keeping

Article 19

The User is obliged to enable the implementation of the customs supervision measures and to keep prescribed records of the goods entering and exiting the zone and the warehouse.

Free Foreign Trade Regime

Article 20

The quotas, licenses or other possible restrictions on foreign trade will not apply to goods imported from abroad into the zone and warehouse nor to the goods for export to abroad.

Referring the Goods from the Zone and the Warehouse to the Other Parts of the Territory of the Republic

Article 21

The goods from the zone and warehouse being referred to other parts of the territory of the Republic in order to be placed into circulation will be subject to customs duties, customs charges and the VAT, and application of possible import restrictions.

The customs duties and customs charges shall not be paid for the domestic component (raw materials, workforce, etc) in the goods referred to in paragraph 1 of this Article.

The goods referred to in paragraph 1 of this Article, where the domestic component exceeds 50%, shall not be subject to restrictions related to the foreign trade regime.

The goods referred to in paragraph 1 of this Article must be registered to the competent Customs Office.

Temporary Entry and Taking Out of the Goods

Article 22

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

The goods that are temporarily taken out of or taken in as referred to in paragraph 1 of this Article will be registered in 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 term 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.

Tax Relief's

Article 23

The User and the Operator will not be liable to pay profit tax and the real estate tax.

Payments in the Zone and the Warehouse

Article 24

The payment operations with abroad, and their mutual payment operations, the Users will carry out freely, in accordance with the agreed manner and within the agreed terms, through a bank in the zone or other bank with the seat in the Republic.

The payment operations in the zone and warehouse may be effected in the agreed currency.

The provision of paragraph 1 of this Article shall be also applied to payment operations between the Users and the Operator.

Credit relations

Article 25

For the purpose of conducting business in the zone, the Users and Operators may draw loans from abroad, create conditions to do so, or grant loans for such purposes, freely and without any limitations that may be provided by general regulations.

In case that User and Operator owns state ownership more than 51%, drawing of loans has to be in accordance with the law.

Employment Contract and Collective Contracts

Article 26

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

Free Negotiation of Wages

Article 27

The employers (Users and Operator) and the employees in the zone and warehouse may freely negotiate the level of salaries and the manner in which the salaries are paid.

Minimum Percent of Domestic Manpower with the User.

Article 28

Out of the total number of employees with an individual User, not more than 10% may be foreign citizens.

Employment Bureau in the Zone

Article 29

A separate Employment Bureau may be founded for the territory of the zone and the warehouse.

Lease of the Land and Facilities, and Building within the Zone and the Warehouse

Article 30

The Users will use the land and facilities in the zone and warehouse based on the contract concluded with the Operator

On the leased land, for the purpose of performing the business, the User may build a temporary or permanent structure in his ownership, or buy such structure from the Operator or other User.

Exemption from Reciprocity

Article 31

The User of the zone and the warehouse – a foreign person, may acquire the ownership right in a facility in the zone for performance of business, regardless of the reciprocity principle.

Authorizations of the Operator related to urban planning

Article 32

The Operator will enact spatial and urban plans for the territory of the zone and warehouse, define the urban-technical requirements, issue acts 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 thereof.

Functions of the Competent Ministry

Article 33

The republican authority competent for urban planning affairs shall supervise lawfulness in the implementation of the Operator's authorizations referred to in Article 32 of this Law.

Free Investment of Capital and Transfer of Profits

Article 34

The capital investments in the territory of the zone and warehouse, and transfer of profits and stakes, are free.

Ownership over Banks and Insurance Companies

Article 35

The banks and other financial organizations and insurance companies with a seat in the zone and warehouse may be entirely in the ownership of a foreign person, in accordance with the law.

Exemptions from Nationalization and Expropriation

Article 36

Property of the Operator and the User may not be subject to nationalization or expropriation.

V CONDITIONS FOR 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 regarding its setting up have ceased to exist, the Government may cancel the approval for setting up the zone and the warehouse, at the proposal of the Ministry and after obtaining the opinions of other ministries, the Founders and the Operators.

The Decision on cancellation referred to in paragraph 1 of this Article, shall be published in the Official Gazette of the Republic of Montenegro.

In the Decision on cancellation of the approval for setting up the zone and the warehouse, the Government will define the term within which the zone will cease its operation, 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 term referred to in paragraph 3 of this Article, foreign goods in the zone or warehouse must be cleared and returned abroad.

In case the zone or warehouse ceases its operation, the User will retain the ownership right on the articles and the rights he has imported, or taken into the Zone or warehouse, and may continue his business in accordance with the general regulations.

VI PENAL PROVISIONS

Operator’s Offences

Article 38

The Operator will be fined with amount ranging from twenty to one hundred minimal wages in the Republic in the following events:

1. if enabling in the zone or warehouse conduction of the activities that present hazard to the environment, human health, material goods and the country's safety (Article 5);
2. if the zone or warehouse begins its operation before obtaining the act on beginning of operation (Article 12);
3. if failing to stipulate general rules for doing business in the zone or warehouse (Article 16);
4. if enabling carrying out the activities in the zone or warehouse in violation of the law and general rules.

In the events referred to in paragraph 1 of this Article, the responsible person of the Operator will be fined with amount ranging from two to ten minimal wages in the Republic.

Users' Offences

Article 39

The User will be fined with amount ranging from ten to fifty minimal wages in the Republic in the following events:

1. if failing to provide access to customs authorities for implementation of customs surveillance measures or failing to keep, or keep in orderly manner, the records on the goods in the zone or warehouse (Article 19);
2. if placing the goods from the zone or warehouse in the market in other parts of the territory of the Republic without registering with the competent Customs Office (Article 21);
3. if temporarily taking out the goods from the zone without previously registering with the competent Customs Office, or failing to return such goods within the stipulated term (Article 22);

In the events referred to in paragraph 1 of this Article, the responsible person of the User will be fined with amount ranging from one to five minimal wages in the Republic.

Competences

Article 40

The authorized person in the competent ministry shall handle the first-instance procedure relating to the offences referred to in Article 38 of this Law.

The competent Customs Office will handle the first-instance procedure relating to the offences referred to in Article 39 of this Law.

VII TRANSITIONAL AND FINAL PROVISIONS

Guaranteed Application of this Law

Article 41

The rights of the Founder, Operator and Users as stipulated by this Law may not be reduced by any other law or regulation.

Cessation of Other Regulations

Article 42

The zones and warehouses founded by the date this Law come into force, shall keep their operations in accordance with this Law.

On the day this Law comes into effect, the Law on Free Zones (FRY OG No. 81/94), shall cease to apply.

Coming into Force

Article 43

This Law shall come into force eight days after its publication in the Official Gazette of RM.