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### 1. What is a Free Trade Zone (FTZ)?

An FTZ is a designated location in a geographical area where enterprises can operate without trade barriers, bureaucratic bottlenecks and customs interference in order to attract new businesses and foreign participation. Goods may be landed, handled, manufactured or reconfigured and re-exported without the intervention of the customs authorities in an FTZ. Goods or services become subjected to customs duties only when they are moved to consumers outside the FTZ but within the country in which the FTZ is located (the customs territory).

The *Investment Procedures, Regulations and Operational Guidelines For Free Zones in Nigeria 2004 (IPROG2004)* issued pursuant to **section 10 (4) Nigeria Export Processing Zones Act (NEPZ Act)** defines FTZ as export processing zones created under the **NEPZ Act**.

### 2. When was FTZ introduced in Nigeria?

In 1991 the Federal Government (FG) of Nigeria joined other countries who were already operating FTZs by taking the first step of establishing the Nigeria Export Processing Zone Authority (NEPZA or the Authority), vide the **NEPZ Act**. However, it took nine (9) years after establishing NEPZA before the first EPZ in Calabar commenced operations in 2001.<sup>2</sup>

### 3. Who Designates an Area as a FTZ?

The President may from time to time, by order, upon the recommendation of the Authority designate an area as he thinks fit, to be an EPZ. The **Oil and Gas Export Free Zone Act (OGEFZA)**<sup>3</sup> which establishes the Oil and Gas Export Free Zone Authority has similar provisions.<sup>4</sup> **Section 1 NEPZ Act** provides that “the President may from time, by order, upon the recommendation of the Nigeria Export Processing Zones Authority

THERE ARE  
CURRENTLY  
THIRTY-THREE  
FREE TRADE  
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NIGERIA.



<sup>1</sup> Cap N107, LFN 2004. Originally enacted as NEPZ Decree 63 of 1992.

<sup>2</sup> Nats Agbo, 'Nigeria: Understanding Nigeria's Free Trade Zone Scheme' The Guardian, September 7<sup>th</sup> 2016: <https://allafrica.com/stories/201609071272.html>, accessed on 12<sup>th</sup> December 2018.

<sup>3</sup> Cap. O5, LFN 2004.

<sup>4</sup> Section 1 OGFEZA provides that the President designates the Onne/Ikporiri area of Rivers State as a FTZ.





established under this Act, designate such area as he thinks fit to be an export processing zone.”

#### 4. What is the Regulatory Regime for FTZs in Nigeria?

The two primary legislations are: **NEPZ Act** and **OGEFZA**. The related subsidiary legislation include **Free Zones (Monitoring and Regulations) Order 2014**, **Free Zones (Tariffs and Other Chargers) Order**, **IPROG2004**, **OGEFZ Regulations (2003)**, **Central Bank of Nigeria Guidelines for Banking Operations in the Free Zones in Nigeria, 2016**. Generally each FTZ also has its regulations for example: Lagos FTZ: **Lagos Free Trade Zone Regulation 2016**, Tinapa FTZ: **Tinapa Free Zone and Resort Regulations, 2009**. These legislation displace generally applicable Nigerian fiscal provisions, unless as otherwise transactionally applicable.

#### 5. Who Can Operate in a FTZ?

A public, private or a combination of public and private entities under the supervision of and with the approval of the Authority may operate in a FTZ. In other words, before an enterprise can operate in a FTZ they must be registered and obtain an operating licence from the Authority.<sup>5</sup> This accords such enterprise the status of “an Approved Enterprise” - an enterprise that has applied to the Authority and has obtained the licence to carry out an approved activity in the FTZ. Thus, only Approved Enterprises can operate in the FTZs.

#### 6. What was the Policy Rationale for FTZ Regime in Nigeria?

The policy underpinnings for Nigerian FTZs include: attract foreign direct investment, generate employment, enhance

trade and industrialization, promote exports, enhance foreign exchange earnings, encourage transfer of technical know-how to Nigerians and contribute to the economic growth and development of Nigeria, facilitate and expand international trade, attract offshore activity and encourage retention of domestic activity, assist state/local economic development efforts.<sup>6</sup>

In April 2012, the then Managing Director of NEPZA stated that over US\$13.6 billion investment has been attracted into various FTZs since inception. Host communities are tapping into the benefits of FTZ. Onne, host community of the OGEFZ for instance, developed from a sleepy fishing village to a semi-urban centre.<sup>7</sup>

#### 7. How Do I Get the Licence to Operate in a FTZ?

Any enterprise which proposes to undertake an approved activity within an FTZ can apply to the Authority in writing for permission and submit all necessary documents and information in support of its application as the Authority may require.

The Authority may then grant a licence for any of the approved activity to an individual or business concern whether or not the business is incorporated in the customs territory (CT).<sup>8</sup>

<sup>5</sup> Part 4, Para 2 IPROG2004.

<sup>6</sup> “Since 1991 when the Federal Government established the EPZ Act followed by the Calabar site of the FTZ Nigeria has been seen to add a major policy package to make the economy more attractive to foreign investors. FTZ are economic legation for FDIs to operate free from the Nigeria tax laws, levies, duties and foreign exchange regulations.” Dr. Jonathan Aremu; *Attracting and Negotiating Foreign Direct Investment with Transnational Corporations in Nigeria* (2005), [https://www.templars-law.com/wp-content/uploads/2015/05/citn\\_presentation.pdf](https://www.templars-law.com/wp-content/uploads/2015/05/citn_presentation.pdf).

<sup>7</sup> Nats Onoja Agbo; *Whither Nigeria's Free Trade Zone Scheme?* *The Nation*, August 13<sup>th</sup> 2016; <http://thenationonlineng.net/whither-nigerias-free-trade-zone-scheme/>, accessed January 25<sup>th</sup>, 2019.

<sup>8</sup> Section 9 NEPZA.

### 8. What Criteria Does the Authority Consider in Licensing Approved Enterprises to Operate in a FTZ?

In determining eligibility for a Licence, the Authority may consider the following, that: the proposed activities of the applicant are in consonance with the FTZ approved activities; the proposed activities will add value to and be consistent with, the development programme for the FTZ; the applicants shall comply with the provisions of the **NEPZA/OGEFZA** and applicable Rules and Regulations that may be put in place by the Authority/Zone management from time to time; the technical, financial and managerial capabilities of the applicant; the applicant's experience and



track record; the level of foreign direct investment proposed by the applicant, and for FTZ developers, evidence of title to a suitable land area free of encumbrances for the intended purpose.

### 9. What is a CT?

This is the place outside the FTZ where (the nationally) applicable provisions on duties, levies, rates and taxes attach to transactions. According to **IPROG2004**, CT are “areas in Nigeria where there is no exemption for payment of customs duties on imports, company income tax etc”.<sup>9</sup>

### 10. What is the Difference between a CT and a FTZ?

Entities operating in the CT are subjected to duties, levies, rates and taxes while entities operating in the FTZ are exempt from all taxes applicable in the CT. In essence, the entire country save the designated FTZs is a CT.

### 11. Do I have to Register my Business in the CT Before I will be Granted License to Operate in a FTZ?

The Authority may grant a licence for any approved activity in a FTZ to an individual or business concern whether or not the business is incorporated in the CT. The grant of a license by the Authority shall constitute registration for the purposes of company registration within the FTZ. Local

incorporation is not necessary for entities operating within the FTZ.

### 12. Does a Licensed Company Operating within a FTZ have to inform the Authority of its Share Structure?

A licensed company operating within a FTZ and undertaking

an approved activity is to notify the Authority of any purchase, assignment or transfer of shares in the company, except where the company's shares are quoted and are freely transferable on any international Stock Exchange.

### 13. Will an Approved Enterprise in a FTZ be Liable to Tax or other Duties if it Supplies Goods and Services to the CT?

Where an approved enterprise operating within the FTZ supplies goods and services to customers within the CT the normal rules and regulations applicable to importation of goods and services into Nigeria and repatriation of the proceeds of sales and services shall apply.<sup>10</sup>

<sup>9</sup> Part 7, Para (16)F IPROG2004.

<sup>10</sup> Section 11(1) NEPZ Act.





**14. Can I Charge in Foreign Currency if I Supply Goods and Services to the CT?**

Yes, approved enterprises will be entitled to receive payment for such goods and services in foreign currency because such trade would be deemed as 'export'.

**15. What Happens if a Vendor Within the CT Supplies Goods or Services to a FTZ?**

Where a person within the CT supplies goods and services to an approved enterprise within a FTZ, the person shall be entitled to receive payment for such goods or services in foreign currency and the rules and regulations applicable to export from Nigeria and the repatriation of proceeds from sales or services shall apply.<sup>11</sup>

**16. Is Importation of Materials Into a FTZ for Approved Activities Subject to Duties and Taxes?**

Any approved enterprise is entitled to import into a FTZ free of customs duty: VAT and other

taxes any capital goods; consumer goods; raw materials; components or articles intended to be used for the purposes of and in connection with an approved activity. Including any article for the construction, alteration, reconstruction, extension or repair of premises in a FTZ or for equipping such premises.<sup>12</sup> However, if the goods eventually find their way to CT or are used to produce goods for the CT, import duty liability that was not paid before will re-attach.

**17. Are there Restrictions to the Goods that can be Imported into the FTZ?**

Yes. Firearms and ammunition, other than by members of the security services or security agencies employed to work in a FTZ in the course of their duties or by such other persons as may be authorised by the Authority; dangerous explosives, without prior approval of the Authority; petrol, inflammable materials, hazardous cargoes or oil fuels, other than in such quantities and on such terms and conditions as may be prescribed by the Authority; and on goods which the

Authority by Order has imposed specific or absolute prohibition on their importation are not be allowed into a FTZ.

**18. What are the Approved Activities in a FTZ?**

Manufacturing of goods for export, warehousing freight forwarding and customs clearance, handling of duty free goods (transshipment, sorting, marketing, packaging, etc.), banking, stock exchange and other financial services; insurance and re-insurance, import of goods for special services, exhibitions and publicity, International Commercial Arbitration Services Activities relating to integrated zones, and other activities deemed appropriate by the Authority.

**19. Are Retail Trade Activities Permitted in a FTZ?**

No retail trade will be allowed within a FTZ without the prior approval of the Authority and such retail activity may be subject to such terms and conditions as may be imposed, from time to time, by the Authority.<sup>13</sup>

<sup>11</sup> Section 11(2) NEPZ Act.

<sup>12</sup> Section 12(1) NEPZ Act.

<sup>13</sup> Part 2, Para 5 IPROG 2004.

## 20. Can a Foreign Investor Operate in a FTZ?

Foreign investors are free to operate in FTZs and 100% foreign ownership is permitted for Approved Enterprises in an FTZ. Where a foreign investor chooses to register in a FTZ as an enterprise, the licences issued by NEPZA are only valid within the FTZ and, as a result, holders of such licences that wish to carry on business in the CT are required to comply with the applicable laws.

## 21. Are there Functional FTZs in Nigeria?

There are currently thirty-three (33) FTZs in Nigeria.<sup>14</sup> The functional and active FTZs in Nigeria include: Airline Services FTZ, Ladol FTZ, Lagos FTZ, Lekki FTZ,<sup>15</sup> Nigeria Aviation Handling Company (NAHCO), Nigeria International Commerce City (Eko Atlantic), Snake Island Integrated Free Zone in **Lagos State**,<sup>16</sup> Sebare Farms FTZ in **Adamawa State**, Alscon FTZ in **Akwa Ibom**, Calabar FTZ in **Cross River**, Maigatari Border Free Zone in **Jigawa State**, Kano FTZ in **Kano State**, Ogun Guangdong Free Trade Zone in **Ogun State** and Onne OGEFZ in **River State**.<sup>17</sup>

## 22. What are the Incentives and Facilities Available in a FTZ?

Approved enterprises operating within a FTZ are entitled to numerous incentives not generally available in the CT including: exemption from all

Federal, State and Local Government taxes, levies and rates; free importation in the FTZ, exemption from customs duty on capital and consumer goods, raw materials, components and articles intended to be used for purposes of and in connection with an approved activity; exempt from duties and foreign exchange regulations; unrestricted offshore repatriation of foreign capital and returns on investment; allowed 100% foreign or local ownership of factory; exempt from import or export license; access to favourable quotas on certain products exported to the European Union (EU) and United States.<sup>18</sup>

Enterprises operating in the FTZ also have access to supply of skilled labour at very competitive rates due to their location and proximity to major markets in Africa, Europe and America. Furthermore, the **Authority's Regulations** have also liberalised the investment procedures and approval process in FTZs, thereby obviating bureaucratic bottlenecks that can accompany regulatory procedures and approvals in Nigeria. For instance, an application to undertake an approved activity must be considered within five (5) working days of its acknowledgment and the applicant must be notified of approval or otherwise.<sup>19</sup>

## 23. Is a FTZ Status More Beneficial to a Foreign or Nigerian Owned Establishment Operating in a FTZ?

No, the benefit of FTZ is determined by the firm's operations, not its ownership. If an enterprise owned by a Nigerian and a foreign owned enterprise have identical trade operations, the potential benefit of operating in a FTZ will be identical to both entities.

## 24. If FTZs are so good, why is Nigeria yet to feel any Significant Impact?

It is fair to state the FTZ scheme is yet to achieve its intended purpose.<sup>20</sup> The aim was for the FTZ scheme to attract foreign direct investment, generate employment, enhance trade and industrialization, encourage technology transfer to Nigerians and generally contribute to national economic growth and development. Several challenges facing the Nigerian FTZ scheme including lack of infrastructure, power supply, poor road networks and logistic bottlenecks, among others had made the FTZs unattractive to investors. This has resulted in the scheme not delivering investments at the expected level.



<sup>14</sup> 'Free Zones' Footprint in Nigeria' <http://www.nepza.gov.ng/index.php/free-zone/active-free-zones>.

<sup>15</sup> Some major project sites are FTZs such as the Lekki Deep Sea Port and the Dangote Refinery Project.

<sup>16</sup> Lagos State seems to have the highest number of FTZs.

<sup>17</sup> 'Free Zones' Footprint in Nigeria' (supra).

<sup>18</sup> Section 18 NEPZA Act.

<sup>19</sup> Part 1, Para 4 IPROG2004.

<sup>20</sup> Chidi Nzerem and Oche Obi; 'A Review of Nigeria's Free Trade Zone Scheme' (2015, Kachifo Limited). In their analysis of key data on the impact of Nigeria's FTZ Scheme covering 1996 to 2012, the authors noted that the overall performance fell below expectations. On foreign direct investment, for instance, the book highlights conflicting figures: "whereas the Ministerial Committee for the Reform of Free Trade/Export Processing Zones claims an annual average of \$200 million foreign direct investment inflow into the country, the International Labour Organization, ILO, claims that only \$1.2 million trickled into the country in 2007."



## 25. Can I Lose my License to Operate in a FTZ?

Yes, an Approved Enterprise can lose its license to operate in a FTZ for several reasons. For example, where an Approved Enterprise that has secured a lease of land fails to commence development and operations within three (3) and eighteen (18) months respectively after executing the lease agreement or such other extension as the Authority may grant, the license of the approved enterprise shall be revoked forthwith.<sup>21</sup>

Also, the Authority may revoke a Licence if a Licensee fails to comply with the provisions of the **NEPZA, Regulations and Circulars** issued by the Authority from time to time. The Authority may also revoke a Licence if the Licensee is in breach of any of its obligations under any lease agreement to which the Licensee is a party or is in breach of any conditions attached to any Licence held by the Licensee.

## 26. Can I Exit a FTZ?

Yes. In the event that an investor wishes to disinvest for any reason, the Authority shall take over the building occupied by the investor on negotiated and agreed cost and payment terms on mutually agreed by both parties.<sup>22</sup>

## 27. What is the Validity Period of Licenses and How Can I Renew My License?

A Licence will be valid until the end of the year of issue (i.e. 31<sup>st</sup> December). At the end of this period, the Licence will be renewable on: payment of the Licence renewal Fee; production of any other documents, returns or information

which the Authority; payment of all outstanding amounts (if any) due to the Authority.<sup>23</sup>

## 28. How are Disputes within an FTZ Managed?

Where any dispute arises between two or more Licensees in an FTZ which cannot be amicably settled by the parties, the matter shall be referred by either of the parties to the Authority for settlement and the decision of the Authority shall be communicated to both parties accordingly.<sup>24</sup> The decision of the Authority can be appealed, in cases involving litigation in the FTZ, the appropriate law in the CT shall apply.

Where any dispute arises between a Licensee and any other Government Agency or Department in the FTZ, the matter shall be referred to the Authority by either of the parties concerned and the Authority shall represent the Licensee in all negotiations, Arbitration, settlement and reconciliation of the same. In this respect, the **Arbitration and Conciliation Act**<sup>25</sup> shall apply.

The **Nigerian Investment Promotion Commission Act (NIPCA)**<sup>26</sup> also provides that a dispute between a foreign investor and any Government of the Federation which is

not amicably settled through mutual discussions, can be submitted: (a) at the option of the aggrieved party to arbitration, within the framework of any bilateral or multilateral agreement on investment protection to which the FG and the country of which the investor is a national are parties; or (b) in



<sup>21</sup> Part 1, Para 14 IPROG2004.

<sup>22</sup> Part 1, Para 21 IPROG2004.

<sup>23</sup> Part 4, Para 6 IPROG2004.

<sup>24</sup> Part 2, Para 24 IPROG2004.

<sup>25</sup> Cap A18 LFN 2004.

<sup>26</sup> Cap N117 LFN 2004.



accordance with any other national or international machinery for the settlement of investment disputes agreed on by the parties. In respect of any dispute, where there is disagreement between the investor and the FG as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment Disputes Rules shall apply. This method of dispute resolution provided by in the **NIPCA** may be exploded by a foreign investor operating in the FTZ.

Where any dispute arises between any Licensee and their employees, which cannot be amicably settled between the parties, the matter shall be referred to the Authority, which shall take all necessary, steps to reach settlement between the parties.

It is important to note that the mere fact that an Approved Enterprise institutes an action against the Authority does not automatically invoke the jurisdiction on the Federal High Court. If the subject matter is based on a simple contract, the State High Court would still have jurisdiction: **Oil and Gas Export Free Zone Authority v. Osanakpo**<sup>27</sup>

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27. (2009) LPELR-8504(CA).