A 635

MALTA FREE ZONES ACT, 2019

ARRANGEMENT OF THE ACT

		Articles
Part I	Preliminary Provisions	1 - 2
Part II	Free Zones	3 - 4
Part III	Free Zones Authority	5 - 8
Part IV	Authorised Undertakings and Permitted Activities	9 - 13
Part V	Power to make Regulations and to issue Guidelines	14 - 16
Part VI	General Provisions	17 - 18

A 636

I assent.

(L.S.) **GEORGE VELLA**
President

31st May, 2019

ACT No. XV of 2019

AN ACT to provide for the regulation and administration of the affairs of Free Zones in Malta with a view to fostering economic development and the generation of employment in Malta and the determination and regulation of undertakings authorised to carry on activities within any Free Zone, without prejudice to the applicable provisions of the Import Duties Act and of the Union Customs Code.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

PART I

Preliminary Provisions

Short title.

1. The short title of this Act is the Malta Free Zones Act, 2019.

2. (1) In this Act unless the contents otherwise requires: Interpretation.

"Commissioner" means the Commissioner for Revenue, and includes any other person having an express or implied authority to act for the said Commissioner in carrying out the provisions of this Act;

"determined undertaking" means an undertaking determined as authorised to operate within a Free Zone under article 9;

"Free Zone" means an area in Malta designated as a Free Zone in accordance with the provisions of article 3 and referred to in any Schedule to this Act;

"guidelines" means any set of rules issued by the Authority from time to time for the further implementation of the provisions of this Act and of any regulations issued hereunder;

"Minister" means the Minister responsible for Malta Enterprise;

"State Aid Monitoring Board" means the Board established under article 57 of the Business Promotion Act; Cap. 325.

"undertaking" means any individual or body of persons, whether having a distinct legal personality or not, who or which carries on any form of enterprise including the exercise of any trade or business, profession or vocation and includes any association or other body of persons which promotes or supports the goals and objectives of such undertakings;

"Union Customs Code" means the Union Customs Code adopted on 9th October 2013 as Regulation (EU) No. 952/2013 of the European Parliament and of the Council as amended by Regulation 2016/2339 and as may be further amended from time to time, as well as any other delegated legislation issued to supplement such legislation.

(2) Any reference in this Act to any law or provision thereof, shall be construed as a reference to that law or provision as from time to time in force and shall include a reference to any enactment replacing such law or provision (including the imposition of any taxes whatsoever analogous to or in substitution to those contained in such enactments or provisions) and to any subsidiary legislation made thereunder.

(3) Words and expressions used in this Act with reference to another law shall, so far as necessary to give effect to this Act, and consistently with the provisions thereof, have the same meaning as

they have in the law with reference to which they are used in this Act.

(4) In this Act and in any regulations made thereunder, if there is any conflict between the English and Maltese texts, the English text shall prevail.

PART II

Free Zones

Declaration of Free Zones.

Cap. 337

3. (1) The areas or parts of Malta designated by the Minister responsible for Customs as Free Zones shall, for all intents and purposes of this Act and of any other law, be designated for use as Free Zones in terms of the applicable provisions of the Import Duties Act and of the Union Customs Code or any substituting or supplementing legislation as may be applicable from time to time:

Provided that the provisions of this Act shall not apply to any area of Malta designated by the Minister responsible for Customs as a Free Zone and which is specifically governed by any other enactment.

Cap. 337

(2) The applicable provisions of the Import Duties Act and of the Union Customs Code or any substituting or supplementing legislation as may be applicable from time to time shall govern the operation of any Free Zone and the activities that are carried out therein.

Exemption from certain legislation. Cap. 573.

4. Except as otherwise provided in this Act, the provisions of the Government Lands Act shall not apply to any land as defined in article 2 of the said Act when such land is situated within a Free Zone.

PART III

Free Zones Authority

Free Zones Authority. Cap. 337.

5. (1) Without prejudice to the authority vested in the Commissioner in terms of sub-article (2), and in terms of the Import Duties Act, any legal person from time to time designated to act as such by the Minister shall constitute the Free Zones Authority, hereinafter in this Act referred to as "the Authority", until such time as such authorisation is revoked by the Minister.

Cap. 337.

(2) The Commissioner shall be vested with all powers conferred thereon in terms of the Import Duties Act, including among others:

(a) supervision of the perimeter of each Free Zone and

the entry and exit points thereof;

(b) control and supervision over persons, goods and means of transport entering or leaving each Free Zone;

(c) approval and supervision of the construction of any building in any Free Zone;

(d) the right to be presented with goods brought into a Free Zone and the authority to subject such goods to the prescribed customs formalities, where so required in terms of the Union Customs Code;

(e) establishment of customs status as Union goods when goods enter a Free Zone, when they have undergone processing operations within a Free Zone or when they have been released to free circulation in a Free Zone;

(f) any other functions of control and supervision vested in the customs authorities of member states of the European Union in the context of Free Zones in terms of the Customs legislation of the European Union.

(3) It shall be the duty and function of the Authority:

(a) to administer the affairs of each Free Zone with a view to fostering economic development and the generation of employment in Malta;

(b) to authorise and regulate undertakings authorised to carry on activities within any Free Zone, and to determine the activities which such undertakings shall be allowed to carry on within any Free Zone;

(c) to provide and manage land, sites, premises, services and facilities for undertakings authorised to carry on activities within any Free Zone;

(d) to liaise with all Ministries and departments of Government and all bodies and other authorities established by law in the carrying out of its functions and responsibilities in terms of law;

(e) to advise Government on all matters relating to Free Zones;

(f) to issue guidelines to supplement the provisions of this Act and of any regulations made thereunder;

(g) to do all such other acts as may be necessary or conducive to the attainment of any or all of the said objectives.

(4) Without prejudice to the generality of the provisions of sub-article (3), the Minister may vest the Authority with such other supervisory and executive powers, and may impose on the Authority such conditions, obligations and restrictions as to him may seem necessary for the proper and fruitful establishment, development, maintenance, operation, management, control and conservation of Free Zones.

Powers of the Authority.

6. Without prejudice to the generality of the powers conferred upon the Authority by this Act, the Authority may:

(a) do all such acts as may be necessary or conducive to the attainment of the objectives, duties and obligations thereof;

(b) enter into discussions and agreements with undertakings that seek to be authorised to operate within a Free Zone, in accordance with the provisions of article 5;

(c) acquire, sell or otherwise dispose of, or allocate by title of lease, concession or other title valid at law, or otherwise make available for use, areas, spaces, warehouses, factories, wharves, and any other property, facility or structure which may be available in the territory designated as a Free Zone, as well as plant, machinery and equipment as the case may be, on such terms and subject to such conditions as the Authority determines appropriate, so however that, in all cases, such terms and conditions shall be established in accordance with market rates:

Provided that the Authority may, with the approval of the Minister, create servitudes and other similar rights over areas comprised within a Free Zone in favour of any land outside the Free Zone whenever such rights are required for the proper use of such land;

(d) manage and develop land, carry out works thereon and maintain works or assist in their maintenance;

(e) authorise the carrying on of any activity within a Free Zone;

(f) impose restrictions or prohibitions on the activities that may be carried out by authorised undertakings, having regard among others to the nature of the particular goods or services, the requirements of customs supervision or security

and safety considerations;

(g) exercise, perform, and discharge all such powers, duties and functions as are by or under this Act vested in or assigned or delegated to the Authority in respect of a Free Zone and which are not reserved for the Commissioner in terms of the Import Duties Act and the Union Customs Code; Cap. 337.

(h) determine the rents, charges, dues and other levies to be paid in or in connection with any aspect of any Free Zone or the services and facilities made available thereunder, which dues and levies shall be established in accordance with market rates, including, among others, fees relative to the authorisation of undertakings to operate within a Free Zone;

(i) issue and publish guidelines from time to time to make rules on any matter falling within its authority in terms of this Act or any regulations issued thereunder, and not reserved for the Commissioner in terms of the Import Duties Act and the Union Customs Code; Cap. 337.

(j) do all such other acts as are incidental to or consequential upon the exercise, performance and discharge of its powers, duties, and functions under this Act.

Accountability of the Authority.

7. (1) The Authority shall, not later than six months after the end of each calendar year, make and transmit to the Minister a report dealing generally with the activities thereof during the previous year and containing such information relating to the proceedings and policy of the Authority as the Minister may, from time to time, require. The Minister shall cause a copy of every such report to be laid on the Table of the House of Representatives as soon as practicable.

(2) The Authority shall afford to the Minister and to the Minister responsible for finance, full facilities for obtaining information with respect to its property and activities, and shall furnish them with returns, accounts and other information with respect thereto, and afford them facilities for the verification of the information so furnished in such manner and at such times as the Minister may request.

(3) The Authority shall furnish to the Commissioner such information and documentation as may be reasonably requested by the Commissioner in carrying out his functions, duties and responsibilities in terms of the Import Duties Act and the Union Customs Code. Cap. 337.

Provision of industrial buildings, structures, land, etc.

8. Where the Authority is satisfied that, in the case of an undertaking determined as authorised to operate in a Free Zone, it would be consistent with the aims and objectives of the policy under which that Free Zone was constituted to do so, the Authority may provide for the undertaking, industrial buildings, structures and land owned directly or indirectly by the Government in a Free Zone, including, on such terms as may be agreed, industrial buildings and structures constructed or altered according to the requirements of the relative undertaking and this for a term which shall not extend beyond the term of the determination (original or extended) issued to the undertaking authorising it to carry on activities within the particular Free Zone. The provision of such buildings, structures and land shall take place subject to such charges as the Authority may determine, so however that in all cases such charges shall be established in accordance with market rates.

PART IV

Authorised Undertakings and Permitted Activities

Authorised undertakings and activities permitted to be carried out within a Free Zone.

9. (1) Undertakings shall only carry out in a Free Zone a trade or business being principally -

(a) the production or manufacturing of any goods, materials, commodities, equipment, plant or machinery;

(b) the assembly, testing, repair and, or maintenance of any goods, materials, commodities, equipment, plant or machinery;

(c) the labelling, packaging, sorting, dividing, warehousing, storage, exhibition, assembly and related activities of or relative to any goods, materials, commodities, equipment, plant or machinery, including where such goods are acquired in bulk and are to be processed within a Free Zone in preparation for their eventual sale or distribution;

(d) any activity involving the provision of services relative to or concerning logistics as may be approved by the Authority;

(e) the carrying out of any activities as may be approved by the Authority during such time as goods are being held in a Free Zone or in preparation for their eventual transhipment;

(f) any activity concerned solely with the conduct of a Free Zone including, but not limited to, stevedoring, wharfage, operation of terminals and container handling;

(g) the rendering of services analogous or complementary to the activities referred to in the above paragraphs; and

(h) the carrying out of such industrial, commercial or service activity as may be prescribed by the Authority through guidelines issued thereby; and the status as an authorised undertaking shall be evidenced by the issue of a document for this purpose. The granting of the status of authorised undertaking to any undertaking shall be notified by the Authority to the Commissioner as soon as such status is approved and in any case prior to commencement of operations by the authorised undertaking.

(2) No undertaking shall be granted an authorisation contemplated by this Act unless its activities are, in the opinion of the Authority, wholly or mainly carried on or exercised within a Free Zone.

(3) For the purpose of sub-article (2), the following activities carried on or exercised outside a Free Zone by an authorised undertaking shall not be deemed to infringe the rule therein set out:

(a) the management and administration of an undertaking, its trade, business or property and the holding thereof;

(b) the execution of instruments, transactions, negotiations or agreements relative to an undertaking's trade or business;

(c) the transit of goods or their commodities to and from a Free Zone.

Undertaking ceasing to be an authorised undertaking for illegal activities.

10. (1) The Authority shall revoke the determination of any undertaking authorised to operate therein, which carries on any activity, or has income accruing to it or derived by it, which consists of, or originates from any transaction, operation or other activity which is a criminal offence under the laws of Malta, or would be such an offence if carried out in Malta, or has received or has in its possession or control money or other property the receipt, ownership, possession or control of which is, or would be, such an offence as aforesaid.

(2) Without prejudice to the application of any other law on the subject, all income, money or other property as is referred to in sub-article (1) shall be liable to seizure and shall be forfeited in favour of the Government and become its property absolutely.

Goods in Free Zones.

11. Subject to the provisions of the Union Customs Code, in issuing determinations for operations in a Free Zone, the Authority shall:

(a) have power to impose such prohibitions or restrictions on grounds of public interest, public morality, public policy or public security, the protection of human, animal or plant health and life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial or commercial property;

(b) have power to require that goods which are dangerous or likely to spoil other goods or which, for any other reason whatsoever, require special facilities, be placed in premises specially equipped to receive them.

Reserved operations in Free Zones.

12. (1) No determination shall be issued to any undertaking if the applicant undertaking is, in the opinion of the Authority, engaged in any operations connected with such commodities as the Authority may from time to time determine through the issue of guidelines.

(2) No determination shall be issued to any undertaking unless the said undertaking is occupying, under any title valid at law, or is being allowed by the Authority to make use of immovable property in a Free Zone whether on its own or in conjunction with other authorised undertakings.

(3) The Authority may, with the concurrence of the Commissioner, permit any person whomsoever to have access to and operate in a Free Zone, even if such person cannot, for any reason whatsoever, be an authorised undertaking if, in the opinion of the Authority it would be useful, necessary or conducive to the better development or functioning of a Free Zone that such person be granted such access and be allowed to operate in the Free Zone.

Certificates and fees.

13. The Authority may from time to time release certificates as it may deem appropriate attesting that an undertaking, or an undertaking in the process of formation, is, or will be, a determined undertaking within a Free Zone, and such certificate shall be conclusive evidence for all purposes of this Act, and for all related, corollary or ancillary matters, to the effect that the said undertaking is, or will be, so authorised.

PART V

Power to make Regulations and to issue Guidelines

Power to make regulations. Cap. 337.

14. (1) Without prejudice to the applicable provisions of the Import Duties Act and of the Union Customs Code and of any rights of the Minister responsible for Customs and of the Commissioner thereunder, in order to achieve the purposes of this Act, the Minister may, in terms of this Act, make regulations to give effect to the provisions hereof and, without prejudice to the generality of the foregoing, such regulations may include provisions with respect to:

(a) the establishment of policies for implementation by the Authority as to the undertakings eligible to be authorised to carry out activities within a Free Zone, to benefit from any incentives and other arrangements, the types of incentives, the range of support and other related matters;

(b) the introduction of measures of a fiscal nature;

(c) the introduction of such other support measures as are considered appropriate and subject to such conditions as the Minister may deem fit, which measures may include, but shall not be limited to, the measures provided for in article 4(3);

(d) the making of such provisions relative to the structure, management, functions, powers, duties, accountability, operations or any other matter as he may deem fit, relative to the Authority, to any person designated to act as such as well as its personnel, assets, liabilities or otherwise;

(e) the definition and interpretation of terms and concepts to be used in regulations and guidelines;

(f) the deletion or the transposition of any provisions in the relevant legislation into regulations with such modifications as the Minister may consider appropriate or necessary.

(2) Where the Minister proposes to make or modify regulations in accordance with the provisions of this Act and those regulations provide that an undertaking may benefit from any measures of a fiscal nature as set out in sub-article (1), the power of the Minister to make such regulations shall only be exercised with the concurrence of the Minister responsible for finance.

(3) Where the Minister proposes to make or modify regulations which provide for the granting of any assistance, a copy of such proposed regulations shall be forwarded to the State Aid

Monitoring Board which shall communicate its opinions on the proposed assistance in accordance with applicable law.

Power to issue guidelines.

15. (1) For the better carrying out of the provisions of this Act, the Authority may, in furtherance of any of its functions and powers, from time to time:

(a) issue and publish guidelines to establish *inter alia*:

(i) the terms and conditions of any arrangements, incentives or schemes including the determination of rules for the eligibility of undertakings to any benefits and incentives under any such schemes and all matters related and ancillary thereto;

(ii) the applicability of such schemes to particular projects or undertakings; and

(iii) any additional requirements and conditions in relation to activities of undertakings, the conduct of their business, their responsibilities to the Authority, reporting requirements to the Authority, financial resources and related requirements, and any other matters as the Authority may consider appropriate;

(b) pursuant to a delegation by the Minister by means of a relevant regulation, transpose any provisions in the relevant legislation into guidelines with such modifications as the Minister or the Authority, as the case may be, may consider appropriate or necessary.

(2) Guidelines shall be binding on all authorised undertakings and on other persons as may be specified therein in accordance with their terms.

(3) Where any guidelines deal with measures of a fiscal nature, the concurrence of the Minister responsible for finance shall also be required.

(4) Except for any new guidelines or amendments to the guidelines which are purely administrative in nature, and are expressly declared to be so by the Authority, which come into force immediately upon the posting thereof on the official website of the Authority, amendments to existing guidelines shall come into force on the lapse of fifteen days after they are posted on the official website of the Authority or on such later date as may be stated therein:

Provided that an amendment to any guidelines may not reduce, withdraw or cancel any benefit previously granted except in accordance with the terms of this Act or a regulation in terms of which it is issued.

(5) Where the Authority proposes to issue or amend guidelines, which provide for the granting of any new or increased assistance, a copy of such proposed guidelines or amendments thereto as the case may be, shall be forwarded to the State Aid Monitoring Board, which shall communicate its opinions on the proposed assistance in accordance with applicable law.

Various miscellaneous provisions. Cap. 123.

16. (1) Notwithstanding any provisions of the Income Tax Act or of any other law, incentives, benefits and grants in terms of schemes that may be made applicable by the Authority to give effect to this Act, shall be exempt from tax in the hands of the relevant beneficiary, provided that such aid does not take the form of income substitution.

(2) The Minister may make regulations to lay down the conditions relating to accounting, record keeping and reporting to the Authority for the enjoyment of the incentives, benefits and grants laid down in sub-article (1).

(3) Where any benefit provided by this Act or by regulations made thereunder is due to a partnership or other undertaking and, in accordance with the Income Tax Act or any other applicable law, the partners or members thereof and not the partnership or undertaking itself are assessable to tax on any income of such partnership or undertaking, any benefit provided in terms of this Act to a partnership or undertaking shall be due to the partners or members of any such partnership or undertaking. Cap. 123.

PART VI

General Provisions

Supremacy of European Union legislation.

17. The provisions of this Act and of any regulations or guidelines issued thereunder shall be interpreted in the light of applicable European Union legislation regulating State Aid and related matters and no person shall receive any benefit in terms of this Act and of any regulations or guidelines issued thereunder which exceeds those allowed in terms of such European Union legislation.

Applicability of certain provisions of the Malta Enterprise Act. Cap. 463.

18. The provisions of articles 28 to 37, both inclusive, of the Malta Enterprise Act shall apply *mutatis mutandis* in the context of the provisions of this Act, so however that references in those articles to "the Corporation" shall be interpreted in the context of this Act as

being references to "the Authority".

Passed by the House of Representatives at Sitting No. 229 of the 29th May, 2019.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

VERŻJONI ELETTRONIKA

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.44