

OFFSHORE EXPORT COMPANIES



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The National Assembly having debated and passed in session on Thursday, the 21st of December 1995;

Be it enacted by the President of the Republic the following:

TITLE ONE – GENERAL PROVISIONS

Article One: The present Law establishes the status of offshore export companies.

This status applies to industrial and agricultural companies which produce goods solely for export.

An offshore export company may be established in any location on the national territory.

Offshore export companies may amalgamate for the purposes of private management of their locations

The capital of an offshore export company may be held entirely or in part by Senegalese or foreign investors.

Article 2: The status of offshore export company is established for a period of twenty-five years renewable, beginning on the date of the application of the present Law.

TITLE II – CORPORATE REGULATORY REGIMES

Article 3: Approval of applications for the status of offshore export company is granted through the procedures provided for in the implementing order of the present Law. Approvals shall be published in the Official Gazette.

Article 4: In the framework of the regulation of foreign trade and exchange in effect in Senegal, the Government agrees to guarantee:

1. The granting of authorisations to offshore export companies allowing them, for the purposes of their operation, to transfer to countries outside the franc area, all sums necessary for the implementation of their investment and for their commercial and financial transactions.
2. The granting of authorisations to their employees, partners, shareholders and foreign lenders allowing transfers to countries outside the franc area in compliance with exchange control regulations.

Article 5: No measures of a discriminatory nature as compared to those applied to companies without offshore status may be applied to offshore export companies.



Article 6: Offshore export companies may freely hire Senegalese or expatriate personnel.

In the event of the necessity of stopping operations due to economic or accidental causes, such as machine failure, engine stoppage, a natural disaster, bad weather, shortages of raw materials, equipment or means of transportation, the employer may, after consulting labour representatives, determine the collective interruption of the work of all or part of the personnel.

Article 7: Offshore export companies are subject to the following tax system:

- Exemption from tax on gains from securities deducted by the company from distributed dividends;
- Exemption from labour tax paid by the companies and in particular from employer-paid premiums;
- Exemption from registration fees and stamp taxes and in particular those paid when incorporating offshore export companies or modifying their articles of incorporation;
- Exemption from trade tax, from land taxes on developed land, and from licensing tax;
- Income shall be tax levied at a rate of 15%.

However, offshore export companies which hold claims or concessions remain subject to royalties and fees levied on the use of geological, mining, maritime or forestry estates.

Article 8: For the period of time set out in Article 2, offshore export companies shall not be subject to subsequent legislative, regulatory or other provisions which would have negative effects on those ensuing from their status under the present law and the texts enacted for its implementation at the time of the approval of the company.

TITLE III – REGIMES APPLYING TO GOODS

Article 9: Capital goods, equipment, raw materials and finished or semi-finished products shall be imported or exported by offshore export companies free of duty and taxes and free of customs stamps. They may be transferred, sold or rented to other offshore companies upon authorisation from the Customs Department.

The goods manufactured by these same companies shall be exported to foreign countries free of duties and taxes.

Article 10: The period of stay of goods imported by offshore export companies is unlimited.

Article 11: The import or export of goods is based on a detailed declaration and is placed under the general supervision of the Customs Department. Customs inspection may take place on the premises of the offshore export company itself.

Article 12: Goods of all kinds are allowable for offshore export companies subject to compliance with prohibitions or restrictions for reasons such as protecting morality, the keeping of the peace, public security, and protection of the health or life of persons or animals.



Article 13: Offshore export companies may ask the Customs Department to issue a certificate of origin for the goods they export. In that case, they must provide the necessary supporting documents for the establishment of the certificates required.

Article 14: In special cases, an offshore export company may be authorised to sell part of its annual production on the local market in the proportions and in the manner set out by the implementing order.

Duties, taxes and levies shall be due on the materials used to manufacture these goods according to their origin and based on the customs value of the aforementioned materials, save and except on those goods to which specific tax laws apply.

In addition, applicable domestic taxes due under the terms of ordinary law shall also be levied when goods are sold on the local market.

Article 15: Local purchases of offshore export companies shall be free of all domestic taxes and duties.

Article 16: Flag restrictions on air or sea carriers do not apply to offshore export companies.

TITLE IV – SETTLEMENT OF DISPUTES

Article 17: In the event of failure to comply with the export obligations specified by an order, the Administration may withdraw one or more of the privileges described in the present Law.

In the event of serious fraud, an order may be made to suspend or withdraw offshore status.

Article 18: Disputes between an offshore export company and the Senegalese Administration arising from the interpretation or application of the present Law shall be settled by the competent courts in keeping with the laws and regulations of the Republic.

However, disputes between foreign persons or corporations and the Republic of Senegal regarding the application of the present Law shall be settled according to a conciliation and arbitration proceeding arising from:

- Either the rules established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States drawn up by the International Centre for Settlement of Investment Disputes (ICSID), an institution affiliated with the World Bank; in that event, the Senegalese state agrees to consider the nationality requirement laid down by Article 25 of the aforementioned Convention to be met;
- Or the agreements and treaties with regard to the protection of investments signed between the Republic of Senegal and the state of which the person or corporation is a national;



- Or any other arbitration rules adopted by mutual consent of both parties.

TITLE V – TRANSITIONAL PROVISIONS

Article 19: Manufacturing companies established in the Industrial Free Zone in Dakar may opt for the present status. In the event that they do not, they shall retain all privileges in consideration of the agreements regarding their establishment in the abovementioned Zone.

TITLE V – FINAL PROVISIONS

Article 20: Are hereby repealed Law 19.30 of 12th April 1991 on the Status of Free Areas as well as any clauses contrary to the present Law.

The present law shall be enforced as a law of the state.

29th of December 1995

Abdou Diouf