

Timber Resources Management Act 617 (Amendment) Act, 2002

1. Section 4 of Act 547 amended
2. Section 6A and 6B inserted in Act 547
3. Insertion of sections 14A to 14J in Act 547
4. Section 17 of Act 547 amended
5. Section 18 of Act 547 amended
6. Section 20 of Act 547 amended

THE SIX HUNDRED AND SEVENTEENTH ACT OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

THE TIMBER RESOURCES MANAGEMENT (AMENDMENT)ACT 2002

AN ACT to amend the Timber Resources Management Act 1997 (Act 547) to exclude from its application land with private forest plantation; to provide for the maximum duration, and maximum limit of area, of timber rights; to provide for incentives and benefits applicable to investors in forestry and wildlife and to provide for matters related to these.

DATE OF ASSENT: 8TH April 2002

BE IT ENACTED BY Parliament as follows:

Section 4 of Act 547 amended

1. The Timber Resources Management Act 1997 (547) referred to in this Act as the "principal enactment" is amended in section 4 as follows:

(a) the substitution for subsection (2) of the following:

"(2) No timber rights shall be granted in respect of-

(a) land subject to alienation holding; or

(b) land with farms

without the written authorization of the individual, group or owners concerned:'

(b) by the insertion after subsection (2) of the following new subsection:

"(3) No timber rights shall be granted in respect of-

(a) land with private forest plantation; or

(b) land with any timber grown or owned by any individual or group of individuals"

Section 6A and 6B inserted in Act 547

2. The principal enactment is amended by the insertion after section 6 of the following new sections:

"Duration and area of timber right

6A. (1) Subject to subsection (4), timber rights shall not be granted for a period exceeding 40 years.

(2) Subject to subsection (4), the size of the area in respect of which timber rights may be granted shall not exceed 125 square kilometers in respect of any particular grant of timber rights at a time.

(3) Subject to subsection (4), a small, medium or large scale timber operator as categorized in Schedule 1 to the Timber Resource Management Regulations 1998 (L.I.1649), shall not be granted an area that exceeds 200, 300 or 500 square kilometers area holding respectively, and accordingly a holder with the respective maximum holding does not qualify to be granted any further timber rights.

(4) The Minister may on the recommendation of the Commission and with the approval of Parliament by resolution permit grant of timber rights that exceed the limits specified in subsections (1), (2) and (3).

(5) The duration and limits of timber rights specified in subsections (1), (2) and (3) shall not apply to timber leases granted before the coming into force of the Timber Resources Management Act, 1997 (Act 547) and Timber Resources Management Regulations, 1998 (L.I.1649).

Disqualification for involvement in illegal timber operations

6B. Where a holder of timber rights who seeks to be granted further timber rights has been convicted of or admits to 2 illegal transactions or operation in the industry, in the 2 years immediately preceding the application, the application shall not be granted."

Insertion of section 14A to 14J in Act 547

3. The principal enactment is amended by the insertion after section 14 of the following new sections:

"Benefits and incentives for investors

14.A. A person who invests in any forestry or wildlife enterprise (hereafter referred to in this Act as "an investor") is entitled to such benefits and incentives as are applicable to its enterprise under the Internal Revenue Act, 2000 (Act 592) and under Chapters 82, 84, 85 and 98 of the Customs Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Law, 1993 (P.N.D.C.L. 330) and any other enactment for the time being in force.

Exemption of non-zero-rated items

14B. An investor who desires the benefit and incentives provided under section 14A, but whose plant, machinery, equipment or parts of machinery are not zero-rated under the Customs Harmonised Commodity and Tariff Code scheduled to the Customs Excise and Preventive Service Law, 1993 (P.N.D.C.L. 330), may submit an application for exemption of import duties, VAT or excise duties on the plant, machinery, equipment or parts thereof to the Commission which shall submit it to the appropriate tax authority with its endorsement or otherwise.

Incentives for special investment

14C. For the purpose of promoting strategic or major investments in the forestry and wildlife sector, the Minister may, on the recommendation of the Commission and in consultation with such other state agencies as the Minister may determine, negotiate specific incentives in addition to the incentives provided in section 14A for such period as may be specified in the relevant timber utilization contract.

Investment guarantees, transfer of capital, profit and dividends

14D. An investor shall be guaranteed unconditional transferability through any authorised dealer bank in freely convertible currency of

- (a) dividends or net profits attributable to the investment;
- (b) payments in respect of loan servicing where foreign loan has been obtained
- (c) fees and charges in respect of any technology transfer agreement of which the Commission has been informed; and
- (d) the remittance of proceeds, net of all taxes and other obligations, in the event of sales or liquidation of the operations of the investor or any interest attributable to the investment.

Guarantees against expropriation

14E. (1) Subject to subsections (2) and (3)

- (a) the operations of an investor shall not be nationalized or expropriated by Government; and
- (b) no person who owns, whether wholly or in part, the capital of any forestry or wildlife investment shall be compelled by law to cede the interest in the capital to any other person.

(2) There shall not be any acquisition of the operations of an investor by the State unless the acquisition is in the national interest or for a public purpose and under a law which makes provision for

- (a) payment of fair and adequate compensation; and
- (b) a right of access to the High Court for the determination of the investor's interest or right and the amount of the compensation to which the investor is entitled.

(3) Any compensation payable under this section shall be paid without undue delay and authorisation for its repatriation in convertible currency, where applicable, shall be issued.

Dispute settlement procedures

14F. (1) where a dispute arises between an investor and Government all efforts shall be made through mutual discussion to reach an amicable settlement.

(2) Any dispute between an investor and Government which is not amicably settled through mutual discussions may be submitted at the option of the aggrieved party to arbitration as follows:

- (a) in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law;
- (b) in the case of a foreign investor, within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or
- (c) in accordance with any other national or international machinery for the settlement of investment dispute agreed to by the parties.

(3) Where in respect of any dispute, there is disagreement between the investor and the Government as to the method of dispute settlement to be adopted, the choice of the investor shall prevail.

Immigration quota

14G (1) An investor with a paid-up capital of US\$10,000.00 but less than US\$100,000.00 or its equivalent in cedis, is entitled to an initial automatic maximum immigrant quota of one person.

(2) An investor with a paid-up of US\$100,000.00 but less than US \$500,000.00 or its equivalent in cedis is entitled to an initial automatic maximum immigrant quota of two persons.

(3) An investor with a paid-up capital of US\$500,000.00 or more or its equivalent in cedis is entitled to an initial automatic maximum immigrant quota for four persons.

(4) Except as provided in subsections (1), (2) and (3), any application for immigrant quota by an investor shall be submitted to the Commission.

(5) An application submitted under this section shall be submitted by the Commission to the Immigration Service, which shall deal with it in consultation with the Commission.

Assistance to an investor

14H. The Commission shall provide an investor such assistance and guidance as the investor may require and shall act as liaison between the investor and relevant government departments, agencies and other public authorities.

Personal remittances

14I. There shall be provided to expatriate personnel employed or engaged in an investment in forestry or wildlife, banking facilities through authorised dealer banks for making remittances abroad except that the remittances shall not exceed the total official wage of the expatriate personnel.

Technology transfer agreement

14J (1) An investor may enter into such technology transfer agreement as the investor considers appropriate for its operation.

(2) A technology transfer agreement entered into under subsection (1) shall be registered with the Commission.

(3) A technology transfer agreement shall be governed by any Regulations for the time being in force relating to such agreements."

Section 17 of Act 547 amended

4. The principal enactment is amended in section 17(2) as follows:

(a) in paragraph (b), by the repeal of "or causes to be operated"; and

(b) by the insertion of "or" after paragraph (e) and inserting a new paragraph (f) as follows:

" (f) is the owner of a vehicle or not being the owner causes to be operated a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act;"

Section 18 of Act 547 amended

5. The principal enactment is amended by the renumbering of section 18 as "18(1)" and the insertion of a new subsection (2) as follows

"(2) An instrument made under subsection (1) may provide for breach of any provision therein, a penalty of not less than 250 penalty units and not exceeding 1000 penalty units or imprisonment for a term not exceeding 2 years or both; and for a fine of not less than 1000 penalty units for a second and any subsequent offence under the instrument."

Section 20 of Act 547

6. The principal enactment is amended in section 20 by renumbering the section as "20(1)" and the insertion of a new subsection (2) as follows:

"(2) The expression "timber utilization contract" shall apply with such modification as may be necessary, to a certificate of purchase, a permit or any other authorisation for timber rights approved by the Minister on the recommendation of the Commission."

Consequential amendment

7. The Forestry Commission Act 1999 (Act 571) is amended by the insertion after section 2(2) of the following subsection:

"(3) An application to invest in a project that involves forest or wildlife shall be submitted to the Commission for assessment and recommendations to the Minister."

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