

Decree Law n°. 108/89
of 30 December 1989
(Industrial Activity Statute)

The Industrial Development Law, approved by the National Parliament in July 1989, identified the need to create an Industrial Statute which, regulating industrial activity, would define ‘namely the access and exercise conditions of the industry, the incentives to industrial activity, the supervision of the rules regulating its enforcement and the sanctions resulting from its violation’, as well as ‘simplified and timely administrative procedures regarding industrial activity’.

In accordance with the legislative authorization granted by article 45 of Law No.50/III/89, of July 13;

Using the power vested by paragraph f) of number 11 of article 75 of the Constitution, the Government decrees the following:

TITLE I

Introductory conditions

Article 1
Objective

The present law establishes the Industrial Statute, below designated by Statute.

Article 2
Scope of application

The Statute defines the general and common rules applicable to all industrial activity.

Article 3
Definitions

For the purposes of the Statute, is herein considered:

1. Industrial activity - the economic activity as classified by decree;
2. Industrial facility - the set of material elements affected to the operation, at the same place or by the same enterprise, of a particular industrial activity;
3. Free-zone facility - an industrial facility whose production is exclusively intended for export, independently of its location;
4. Industrial enterprise - an individual or collective person organized according to the law to operate, exclusively or not, an industrial activity;
5. Free-zone enterprise - an enterprise that produces and sells exclusively for export, independently of its location;
6. Industrial project - a set of activities aiming at:
 - a) New facility set-up;

- b) Substantial change, through enlargement or renewal, of an existing facility;
- 7. Promoter - singular or collective persons that, isolated or in partnership, declare the intention to establish an industrial project;
- 8. Convention of establishment - a written contract celebrated between the Government and an industrial enterprise, according to art. 24 of Law No. 50/III/89, of July 13.

TITLE II

Industrial Statute

CHAPTER I

Access and operating conditions

Article 4 Access to industry

The access to and the operation of industrial activity are free, according to the law and the present Statute, for all singular or collective persons, national or foreign.

SECTION I Prior declaration.

Article 5 Obligation of the project's prior declaration

1. Industrial projects must be previously declared to the competent office at the Ministry of Industry.
2. Small industrial projects are exempt from the declaration.
3. For the effect of number 2 above, are considered small industrial projects those whose size is inferior to the benchmark of importance established by order of the Ministry of Industry, based on criteria such as the investment volume, the production capacity, the number of employees and other considered adequate to characterize its minor economic impact.

Article 6 Declaration procedures

1. The declaration is made by means of addressing appropriate forms to the Ministry of Industry.
2. The competent office at the Ministry of Industry, after verifying the observance of the instructions given on the forms, will issue a receipt, proving the acceptance of the declaration.

Article 7 Right to oppose

1. The minister of Industry can oppose the establishment of an industrial project based on:
 - a) violation of the fundamental principles of public order in Cabo Verde;
 - b) clear violation of the law or of the principles and objectives of the economic policies established in the National Development Plan and in the Industrial Development Law;

- c) danger to national security, to public health or to ecological balance;
 - d) violation of international commitments of Cabo Verde;
 - e) evident and confirmed unreliability of the promoter.
2. The right to oppose prescribes within 30 days from the date of the receipt referred to in number 2 of article 6 and must be exercised by means of written notification to the promoter.
 3. The prescription may be interrupted if the Minister of Industry proposes in writing, to the promoter, the negotiation of a Convention of Establishment. The prescription becomes valid again if, within 60 days of the Ministerial proposal, the negotiations are not concluded.
 4. If a non-opposition decision is not made before the prescription time runs off, the same must be communicated to the promoter in writing.

Article 8

Effect of opposition

The opposition by the Minister of Industry implies prohibition of project's implementation. The promoter enjoys however the usual right of appeal.

Article 9

Effect of the non-opposition

1. The non-opposition confers legitimacy to advance with procedures for the project's implementation and its registration.
2. The non-opposition can be proved by presentation of a receipt or by any other legal and reliable means, namely a certificate issued or the record made on the delivery receipt by the competent office of the Ministry of Industry.

Article 10

Nullification of the prior declaration

1. The legitimacy conferred in number 1 of article 9 is automatically null within one year, if within that time frame the promoter did not request the project's record at the industrial registry. The legitimacy may be conferred, however, when there are meaningful reasons against delays in registering the project, timely presented to the Ministry of Industry.
2. The nullification referred to in number 1 above implies the prohibition of the project's implementation.

SECTION II

Registry

Article 11

Registration requirement

All industrial enterprises must be registered at the office of the Industrial Register, located at the Ministry of Industry.

Article 12

Registration procedure

1. Registration is made on appropriate form, properly completed by the interested company.

2. A receipt will be issued upon registration.

Article 13

Records

1. At the registration act are recorded, by request of the interested enterprise:
 - a) Industrial projects which had a non-opposition decision, according to article 7;
 - b) Industrial projects non subject to prior declaration, as established by number 2 of article 5;
 - c) The acts of alienation, operation or rental of an industrial facility and, in general, any situation that imply property transfer or operation of an industrial facility;
 - d) Any change of data included in the registration files;
 - e) All that is determined by law or regulation.
2. During registration are officially recorded:
 - a) Conventions of establishment celebrated by the enterprise;
 - b) Approval of the industrial facility by previous inspection, as established by article 21;
 - c) All updated information concerning the project;
 - d) Suspension of the registration, according to article 16 below;
 - e) All that is considered of interest by the Ministry of Industry.

Article 14

Cancellation of the records

1. Except in cases of justifiable reasons, timely presented to the Ministry of Industry, the records mentioned in paragraphs a) and b) of number 1 of the previous article are cancelled if, within a year after the record procedure, the promoter does not take the necessary steps to implement the project.
2. The cancellation as established in number 1 above implies the prohibition of the project's implementation.

Article 15

Updating Information

1. Registration is updated annually.
2. For the purposes of number 1, registered companies will provide an updated application form to the Industrial Register, until January 31 of each year.
3. Registration may also be updated, by request from the company, whenever there is any change on its contents.

Article 16

Registration suspension

Registration is suspended whenever the terms of number 2 of article 15 are not fulfilled and until reception of the updated form at the Industrial Register.

Article 17 Registration cancellation

1. The registration will be cancelled in case of:
 - a) Extinction of the enterprise;
 - b) Unjustified suspension of the activity for a period over one year;
 - c) Other reasons foreseen by law.

Article 18 Publication

1. Registration and the procedure mentioned in articles 11 and 13 may be published on the *Official Bulletin* (Boletim Oficial), by request from the company and at its own expense.
2. The records mentioned in paragraph a) and c) of number 1 of article 13 and in paragraphs a), b) and d) of number 2 of the same article, as well as the cancellation of the registration, are communicated by the Industrial Register, in writing, to the authorities in charge of foreign trade, treasury, customs, banking and municipality.

Article 19 Proof

1. Proof of registration is made by presentation of the *Official Report* where it is published or by a certified copy issued by the Industrial Register.
2. The document mentioned in the second part of number 1 is valid up to one civil year from date of issue, but it may be revalidated by the Industrial Register, if data in the application form is unchanged.

Article 20 Regulation

The Minister of Industry will regulate, by decree, the Industrial Register.

SECTION III Inspection

Article 21 Submission to site Inspection

1. To verify the security and hygiene conditions and the fulfilment of the required technical rules, are subject to inspection:
 - a) Industrial facilities in start-up phase;
 - b) Industrial facilities that were substantially expanded or renovated;

- c) Industrial facilities that moved to other location;
 - d) Industrial facilities that reopened after more than one year of operations suspension.
2. Site inspections are made, in accordance with regulations, within 30 days from the day the request is delivered to the responsible authorities.
 3. The approval after inspection is immediately and officially recorded on the file of the enterprise at the Industrial Register.
 4. Whenever the inspection is not made within the time frame established in number 2 above, for reasons non-imputable to the company, the facility can start up immediately, as long as the responsible authorities have not issued an unfavorable opinion.

Article 22

Sanctions

In case of violation of the established in article 21, the responsible authorities at the Ministry of Industry may order the immediate shut down of the facility and the sealing of its equipment, until the approval is issued after site inspection.

Article 23

Other inspections

Whenever it is found to be suitable, the responsible authorities at the Ministry of Industry may determine that further inspections be made, according to the regulations.

Article 24

Regulation

The Government will regulate, by decree, the principles established at the present section.

SECTION IV

Foreign currency transfer regime for industrial states

Article 25

General principle

In order to simplify procedures, foreign currency transfer for industrial states will be regulated by the Central Bank, without prejudice of the minimum required control.

Article 26

Accounts in foreign currency

1. Industrial companies that export part of their production enjoy free access to foreign currency accounts.
2. The accounts referred in number 1 above can only be operated in credit from foreign transfers.
3. Industrial companies that operate foreign currency accounts can only acquire foreign currency at the Central Bank, according to the existing rules regarding foreign exchange operations, when the balance of those accounts is null or not enough to cover the requested operations.
4. Opening and operating the accounts referred to in number 1 above will be regulated by the Central Bank.

SECTION V
Foreign workers

Article 27
Foreign workers

1. Industrial enterprises may hire foreign workers as long as the number does not exceed 10% of its total needs.
2. In special cases, companies may be given the permission to hire a greater percentage of foreign workers, as long approval is given by the Minister of Health, Labor and Social Affairs, once heard the Minister of Industry.
3. Foreign workers benefit from the following rights and warranties:
 - a) Repatriation of 70% of the income earned in national currency;
 - b) Repatriation of 100% of the income earned during vacation periods abroad;
 - c) Exemption from customs duties, consumption tax and service taxes in all personal goods, according to the needs of their families;
 - d) The right to import, under a temporary import regime, a motor vehicle or a motorcycle for personal transportation.
4. The rights mentioned in paragraphs c) and d) of number 3 above will be exercised in the same conditions established by law for foreign citizens working in the country under international cooperation agreements.
5. For the purposes of the established in number 3 above, Capeverdean emigrants, non residents in the country at the moment of their recruitment may be given the same treatment foreseen for foreign workers, in conditions to be defined by Government decree.

CHAPTER II

Incentives to industrial activity

SECTION I
General conditions

Article 28
Access Conditions

1. The incentives established in the Statute and in other applicable legislation are only granted to registered companies or to projects registered at the Industrial Register.
2. The recognition of the right to the incentives foreseen in this Statute and in other industrial legislation depends on a justified demand by the interested enterprise, which is requested in a form of standard model.

Article 29
Enterprises with mixed activities

When an enterprise devotes itself simultaneously to an industrial and other activities, the incentives established by this Statute and in other industrial legislation applies only to the industrial activity.

SECTION II

Imports and exports

Article 30

Non-restriction)

The import of equipment goods, raw-materials and subsidiaries, spare parts, finished or non-finished products and other materials necessary to the establishment of an industrial activity or to the regular operation of industrial facilities can not be subject to quantitative restrictions, except in extraordinary circumstances of manifest insufficiency of foreign currency for overseas payments.

Article 31

Importer Status

Industrial enterprises will be registered as importers of relevant merchandise categories, according to article 30, through a simple proof of the project registration at the Industrial Register.

Article 32

Import of goods

1. Direct import by industrial enterprises of the goods mentioned in article 30, when made without foreign currency disbursement for the country, is permitted without any prior authorization, except the required customs procedures for clearance.
2. The procedure referred to in article 30, when made with foreign currency expenses for the country, will be regulated by the Government, prevailing the need for maximum simplicity and celerity, as well as control.

SECTION III

Customs incentives

Article 33

Customs regime for industrial interpost)

1. Free-Zone Companies that fulfil the conditions established by law benefit from the custom regime of industrial interpost, with no formality other than the verification of those conditions by the customs authorities.
2. Industrial facilities that regularly export part of their production may be authorized, in accordance to customs regulations, to operate under industrial interpost regime.

Article 34

Customs incentives to production

1. Industrial companies are exempted from tariffs, consumption tax and service taxes, when they import the following goods, if those are to be used exclusively in the registered industrial projects:
 - a) Construction materials including metallic structures to start up, installation, expansion or renewal of industrial facilities;
 - b) Machines, apparatus, instruments and utensils, as well as respective accessories and parts for buildings, and factory equipment for industrial facilities;
 - c) The items mentioned in paragraph b) when they are intended for the initial set-up of administrative or social equipment of industrial facilities;
 - d) Cargo and transportation equipment for the exclusive use of the industrial facilities, necessary to the development of their operations.
2. Industrial enterprises are also granted exemption and reduction of customs duties, consumption and service taxes whenever they import raw-materials, finished goods, semi finished goods, and other materials to be used exclusively in the production or to be incorporated into products, in the following conditions:
 - a) exemption during the start up phase and the first two years starting from the date of project approval;
 - b) 75%, 50% and 25% reduction, respectively, during the third, forth and fifth subsequent years.
3. Fuel, lubricants, excepting gasoline, are exempted from customs duties, consumption and service taxes, whenever they are used to produce electric power or to desalinated water for the facility's consumption.

Article 35

Export customs incentives

1. Exports and re-exports of industrial products are not subject to any prior authorization and are free from customs duties and consumption and service taxes.
2. Raw materials and subsidiaries, materials, finished or non-finished goods, fuel, lubricants, excepting gasoline, are exempted from customs duties, consumption and service taxes, whenever they are used in production of goods for export.
3. Direct imports by industrial enterprises of the items mentioned in number 1 above, will be made, in preference, under the customs suspensive regime for industrial interpost.
4. Customs duties, consumption and service taxes eventually charged on the imports mentioned in number 1, which were later incorporated into goods for export, must be reimbursed, as long as requested within 120 days from the date of export.

Article 36

Reimbursement of customs charges

Industrial enterprises that acquire in the domestic market goods that would normally benefit from exemption or reduction of customs duties when imported directly, are entitled to reimbursement of the corresponding amounts included in the acquisition price, as long as the reimbursement is requested within 120 days from the acquisition date.

Article 37

Limits to customs incentives

1. Fiscal benefits of customs nature established in the present section are not exempt from payment of the stamp tax and of rates and fees owed for services rendered.
2. Fiscal benefits of customs nature foreseen in the present section can only be granted for imported goods that are not produced in the country in similar conditions of price, quality and time of delivery.

Article 38

Limits to disposal of imported goods

Transaction in the domestic market of imported goods that were granted fiscal benefits of customs nature and which were not incorporated into production as they were intended for, within 5 years from import date, is subject to authorization from the General Director of Customs. Once authorized, those goods are subject to payment of all duties and other fees and taxes calculated according to customs value at the date of the transaction, as long as the goods are not transacted with entities, which, by law, are granted the same exemption regime.

Article 39

Responsibility in regard to customs incentives

1. Industrial enterprises must keep updated, for a period of five years, inventories and records, recognized by the customs authorities, of all goods imported under customs exemptions, as well of the usage that had been given to them, under the penalty of not benefiting from the incentives established in the Statute and other industrial legislation.
2. Industrial enterprises shall also collaborate with inspection agents in the verification of the inventories and records mentioned in the previous number, namely easing the access to those records and inventories, and providing all the necessary information, whenever requested.

Article 40

Fraud or deviation

Fraud committed with the intent to benefit from the fiscal incentives of customs nature foreseen in the Statute or other industrial legislation, as well as misuse of goods benefiting from incentives in purposes other than the ones for which the incentives were granted, constitute a deviation of duties.

SECTION V

Tax incentives

Article 41

General tax incentives

1. Industrial enterprises benefit from the following incentives in regard to tax on business profits and to complementary tax:
 - a) Exemption from tax on profits during the first 3 years of operation;
 - b) Tax deduction for profits reinvested in the same or different industrial activity;
 - c) Tax deduction for expenses incurred in training the local work force.
2. The amounts invested by individuals in industrial enterprises are deducted from the respective taxable income in regard to next year complementary tax, up to the limit of 70% of it.

Article 42
Tax incentives to exports

1. Industrial enterprises benefit also from the following reductions in regard to owed tax on profits and to complementary tax, according to the law and regulations, for each new registered industrial activity:
 - a) During a period of seven years from the term limit of the exemption foreseen in paragraph a) of article 41, the reported taxes undergo a percentile reduction equal to the percentage of the FOB value of the exports over the total sales made by the company;
 - b) After the period established in the previous paragraph, the percentile reduction of the reported taxes will be calculated by the formula $70 \times (VE/VT)$, where VE represents the FOB value of the exports and VT represents the total sales.
2. For the purpose of the established in number 1, are considered exports:
 - a) Sale of goods to free-zone companies;
 - b) Sale to other enterprises of goods surely intended for export or for incorporation into goods for export.

Article 43
Responsibility for good book-keeping

Industrial enterprises must have an organized book-keeping system in accordance to the law so that to allow easy corroboration of the generated profits by each industrial project, under penalty of non benefiting from the tax incentives established in the Statute and in the remaining industrial legislation.

SECTION V
Other incentives

Article 44
Regional incentives

Industrial facilities located out of urban areas in Praia, S. Vicente and Sal benefit also from the following incentives:

- a) The exemption period foreseen in article 34, 2 a) is increased in two years, and the reductions foreseen in the respective paragraph b) start to count from its end;
- b) The exemption reported in article 34, 1 d) also covers vehicles for collective transportation of for respective workers;
- c) The period of exemption reported in article 41, 1 a) is increased in two years, and the reductions foreseen in article 40 start to count from its end.

Article 45
New industries

The exemption periods foreseen in articles 34, 2 a), 41, 1 a) and 44, a) and c) are increased in one year when the facilities are intended for the exclusive production of goods for the first time manufactured in the country.

CHAPTER III

Special regime for Free-Zone Enterprises

Article 46

Regime

Free-Zone Enterprises are governed by the common rules applicable to industrial enterprises, in general, and by the rules of the present chapter.

Article 47

Special registration

Free-Zone Enterprises are registered in a special division of the Industrial Register.

Article 48

Right to import

Free-Zone Enterprises can freely import all the goods referred to in article 30. They are subject only to the presentation of the declaration mentioned in number 1 of article 32.

Article 49

Special tax incentives

Free-Zone Enterprises benefit from all the incentives granted to industrial enterprises in general and also the following:

- a) Exemption from corporate and complementary taxes on profits for 10 years, starting from the date of their registration at the Industrial Register;
- b) After the exemption period mentioned in the previous paragraph, the combined tax rate will be no more than 15%.

Article 50

Currency exchange regime

Free-Zone Enterprises are exempted from authorization to transfer funds abroad, and are granted free access to foreign currency accounts.

Article 51

Operating costs

Free-Zone Enterprises must pay all their expenditures and operating costs in Cape-Verdean escudos, through a bank account which can be credited only in foreign currency from abroad or from other foreign accounts in Cabo Verde, as established in article 50.

Article 52

Sales in the domestic market

1. Free-Zone Enterprises are authorized to sale up to 5% of their output in the domestic market, through authorization of the General Directorate of Commerce.

2. Through order from the Minister that superintends the Commerce, free-zone enterprises may be authorized to sell in the domestic market a greater percentage of its production, as long as the transaction is considered to be of interest to the country.
3. The order mentioned in the previous number will list the goods and respective quantities for each authorized transaction, as well as the terms under which it will operate.
4. The transactions referred to in the previous numbers 1 and 2 are subject to the payment of all customs duties, according to the law.

CHAPTER IV

Control and penalty

Article 53

Control

1. Without prejudice of the competencies attributed to other services and entities in their specific domains, the General Directorate of Industry shall enforce the respect for the rules that regulate industrial activity.
2. For the purpose of the established in number 1, the General Directorate of Industry and its representatives can, in any moment, request from industrial enterprises any information and elements considered necessary.
3. Administrative and police authorities shall give all the necessary support to the controlling process.

Article 54

Penalties

1. Violation of the imperative legal rules that govern industrial activity is punished with a fine from 50 to 500 thousand Cape-Verdean escudos, if another greater sanction is not foreseen in the law.
2. The minimum and maximum limits set in number 1 will be doubled in case of relapse.
3. Cumulatively, it will be declared as loss in favor of the State all goods, values, rights and benefits obtained or acquired by means of the violation.

Article 55

Graduation

The fines foreseen in the previous article will be graduated in function of the nature of the violation, of the prejudice or risk derived from it, of the degree of guilt and violator's records and of his/her economic situation.

Article 56

Competence for penalty application

The competence for penalty application resulting from violation of the rules governing industrial activity belongs to the Minister of Industry. By order published in the *Official Journal*, the Minister may delegate the power, fully or in part, to the Director General of Industry, to the Regional Director of or to Regional Government Representatives.

Article 57
Legal action for violation

1. In the event of a violation, the officers or competent agents shall bring an action of notice according to the common penal code procedure, which will be immediately sent to the Directorate General of Industry.
2. In case of a simple violation, the Directorate General of Industry will notify the offender, by means of a registered letter, to defend itself if willing, within 15 days.
3. Once the offender's terms of defense is received or the term period expires, the file containing the instructor's judgment shall be delivered to the competent authorities, according to article 56.
4. In case of a crime, the General Directorate of Industry shall send the action of notice to the Public Attorney's Office, together with all relevant complementary information.

Article 58
Joint liability

The board of directors, managers, directors or management executives from the company are jointly liable for the payment of fines charged to the company, whenever they have ordered the violation or have taken part on it, or have sanctioned it, or by means of a presumably deliberated action have allowed its occurrence.

Article 59
Compulsory fine collection

The compulsory fine collection charged according to the present law will be performed through the Fiscal Court.

CHAPTER V
Miscellaneous, transitory and final conditions

Article 60
Taxation according to real profit

Industrial enterprises are levied on the base of real profits earned, shown by their respective book-keeping records, organized according to the law.

Article 61
Technical assistance and technology transfer contracts

1. Contracts for technology transfer and technical assistance require the validation from the Minister of Industry, under the penalty of being void.
2. Contracts validation implies the authorization for import of goods or services and for export of foreign currency, when implied within the contract.
3. The Government will regulate the established in the present article.

Article 62
Regulation

1. Except when regulated differently, the Minister of Industry has the power to establish by decree the regulatory norms needed to execute the present law.
2. Are excluded from the established in the previous number 1 the regulatory norms regarding the fiscal and customs incentives, which will be established by decree of the Ministry of Finance, once heard the Minister of Industry.
3. The regulation mentioned in the present article must be published within 120 days from the date of publication of the present law.

Article 63

Existing enterprises

1. Within 120 days from the date this law becomes enforceable, industrial enterprises already in operation must register their facility at the Industrial Register.
2. The application of the incentives system foreseen by this statute to enterprises already in operation will be established by order of the Minister of Finances, once heard the Minister of Industry. Account shall be taken as regards to specific existing situations.

Article 64

Revocation

1. It is abolished the industrial conditioning regime.
2. Are revoked, namely, the Decree-Laws No. 46666, of November 24, 1965; No.48 581, of September 16, 1968; and No. 122/70, of March 20; article 3 a), b) and c) and the paragraphs 2 and 5 of the Decree-Law No. 41024, of February 28, 1957; as well as Provincial Decree No.7924, of July 29, 1967.
3. Are specially suppressed, in regards to matters regulated by the present statute:
 - a) Articles 7, 18 and 21 of Decree No. 27/84, of March 24;
 - b) Decree-Law No.183/70, of April 28, published in the *Official Bulletin* No. 30, of July 25, 1970.

Article 65

Resolution of doubts

Doubts that may arise during application and execution of the present law will be settled, with binding character to the whole Administration, by order of the Council of Ministers, by proposal of the Minister of Industry.

Article 66

Enforcement

The present law starts being enforced within 120 days of its publication.

Seen and approved by the Council of Ministers.

Pedro Pires - Osvaldo Lopes da Silva - Adão Rocha - Arnaldo França

Promulgated in December 27, 1989.

To be published.

The President of the Republic, ARISTIDES MARIA PEREIRA.

To be presented to the Parliament.

NOTES

1. Articles 26, 35 and 42, as well as Chapter III of Title II of the present law have been revoked. Those matters, relating to export incentives, are now regulated by the Free-Zone Regime and by the Regime of Incentives to Export and Re-export.
2. Law No.91/V/98, of December 31, 1998 (which approves the State Budget for year 1999), introduces a number 4 to Article 39 of the present law, which reads:

“ Exemptions from customs tariffs, consumption tax and service fees granted to imports of machines and equipment by civil construction companies will only apply if such items are intended for initial set up.”