

ACT 547

TIMBER RESOURCE MANAGEMENT ACT, 1998

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ACT 547

TIMBER RESOURCE MANAGEMENT ACT, 19981

AN ACT to provide for the grant of timber rights in a manner that secures the sustainable management and utilisation of the timber resources of Ghana and to provide for related purposes.

*Timber Rights***1. Prohibition from harvesting timber without timber utilisation contract**

A person shall not harvest timber from a land to which section 4 applies unless that person holds timber rights in the form of a timber utilisation contract entered into under this Act in respect of the area of land concerned.

2. Qualification for timber utilisation contract

A timber utilisation contract shall not be entered into with a person under this Act unless that person is a body incorporated under the Companies Act, 1963 (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152).

3. Application for timber rights

(1) The procedure for an application for timber rights shall be as prescribed by the Regulations.

(2) Without prejudice to subsection (1), an application for timber rights shall be made in writing to the Forestry Commission which shall immediately refer the application to the Timber Rights Evaluation Committee established under section 5.

(3) The application shall be accompanied with

- (a) a harvesting plan prepared in accordance with sustainable management of timber resources,
- (b) an assessment of the likely environmental effect and proposed programme to redress the effect,
- (c) evidence of the financial ability of the applicant to operate the area of land subject to the contract,
- (d) evidence of the capability of the applicant to operate the area of land subject to the contract,

1. The Act was assented to on 10th March 1998 and notified in the *Gazette* on 18th March, 1998.

- (e) proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations, and
- (f) any other relevant information or documents that the Commission may request.

4. Land subject to timber rights

- (1) Timber rights may be granted under a timber utilisation contract in respect of
 - (a) lands previously subject to timber rights which have expired and are suitable for re-allocation;
 - (b) unallocated public or stool lands suitable for timber operations in timber production areas; and
 - (c) alienation holdings.
- (2) A timber right shall not be granted without the written authorisation of the individual, group or owners concerned, in respect of,
 - (a) land subject to alienation holding, or
 - (b) lands with farms.²
- (3) A timber right shall not be granted in respect of
 - (a) land with private forest plantation, or
 - (b) land with timber grown or owned by an individual or group of three individuals.³

5. Establishment of Timber Rights Evaluation Committee

- (1) There is hereby established a Timber Rights Evaluation Committee which shall be a committee of the Commission and shall be composed of
 - (a) the Executive Director of the Forests Division or a representative who shall not be below the rank of a Deputy Executive Director,
 - (b) the Planning Officer of the Forests Division,
 - (c) the Chief Administrator of the Commission,
 - (d) the Administrator of Stool Lands,
 - (e) the representative of the Lands Commission on the Forestry Commission,
 - (f) one representative of the Ghana Institute of Professional Foresters, and
 - (g) one other person appointed by the Minister.
- (2) The Executive Director of the Forests Division or the representative shall be the chairman of the Committee.
- (3) The Evaluation Committee shall regulate the procedure at its meetings.

2. Amended by section I of the Timber Resources Management (Amendment) Act, 2002 (Act 617).

3. Inserted by section I of the Timber Resources Management (Amendment) Act, 2002 (Act 617).

6. Functions of the Evaluation Committee

- (I) The functions of the Evaluation Committee are
- (a) to evaluate applications for timber utilisation contracts in accordance with qualifications and criteria provided by the Regulations, and
 - (b) to rank the qualified applicants on merit through a competitive procedure prescribed by the Regulations.
- (2) For the purpose of subsection (I), the Evaluation Committee may in respect of an evaluation,
- (a) request for the relevant documents and information, and
 - (b) co-opt the persons who the Committee considers necessary to co-opt.
- (3) The Evaluation Committee shall submit the evaluation reports together with its recommendations to the Commission within forty-two days of receipt of the application.

6A. Duration and area of timber right⁴

- (I) Subject to subsection (4),
- (a) timber rights shall not be granted for a period exceeding forty years;
 - (b) the size of the area in respect of which timber rights may be granted shall not exceed 125 square kilometers in respect of a particular grant of timber rights at a time;
 - (c) a small, medium or large scale timber operator as categorised in the First
 - Schedule 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.
- (2) The Minister may, on the recommendation of the Commission and with the approval of Parliament by resolution, permit the grant of timber rights that exceed the limits specified in subsection (I).
- (3) The duration and limits of timber rights specified in subsection (I) shall not apply to timber leases granted before the coming into force of the Timber Resources Management Act, 1997 (Act 547) and the Timber Resources Management Regulations, 1998 (L.I. 1649).

6B. Disqualification for involvement in illegal timber operations

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

4. Sections 6A and 6B inserted by section 2 of the Timber Resources (Management) (Amendment) Act, 2002 (Act 617).

7. Grant of timber rights

(1) The Commission shall within thirty days of receipt of the valuation report submit the report and its recommendations on it to the Minister.

(2) The Minister shall, on the basis of the recommendations of the Commission, grant the timber rights and shall for that purpose enter into a timber utilisation contract on behalf of the President with the successful applicant.

Timber Contracts

8. Terms of contract

A timber utilisation contract entered into under this Act is subject to the terms and conditions specified in it including

- (a) the limitation of the area of land to which the contract relates,
- (b) the period of operation of the contract,
- (c) an undertaking by the holder of the contract to adhere to any of the prescriptions laid down by the Forests Division,
- (d) an undertaking by the holder to execute a reforestation plan during the period of the contract to the satisfaction of the Executive Director of the Forests Division,
- (e) provisions for prompt payment of rents, royalties, compensation and the management and service charges prescribed by law,
- (f) annual rent payable to the landlord or owner of the area of land relevant to the grant,
- (g) the periodic review of the operations of the holder by the Forests Division,
- (h) the submission to the Forests Division of a contract area plan every five years, prepared by a professional forester in accordance with the Logging Manual, and
- (i) grounds for suspension or termination.

9. Ratification by Parliament

(1) Timber utilisation contracts entered into by the Minister on behalf of the President are subject to ratification by Parliament.

(2) Parliament may on the recommendation of the Forestry Commission and on the conditions that Parliament prescribes, authorise any other agency of government to approve timber utilisation contracts.

10. Logging Manual

The Forestry Services Division of the Forestry Commission shall prepare, in consultation with the Forestry Commission, a Logging Manual for the purposes of this Act and the Regulations.

11. Survey

A timber utilisation contract shall not be entered into under this Act unless the relevant land has been surveyed in accordance with the Survey Act, 1962 (Act 127).

12. Management of timber operation

(1) A timber utilisation contract shall not be entered into with a person under this Act unless that person has the ability to have at all times a manager who is a professional forester in charge of the timber operations and related activities.

(2) The holder shall notify the Executive Director of the Forests Division in writing of every appointment of a manager and the change of a manager.

*Royalties***13. Payment of royalties, charges and other fees**

(1) There shall be paid in respect of timber operations approved under this Act the royalties, annual rent, fees and charges that the Minister, on the advice of the Commission, may by legislative instrument prescribe.

(2) A holder who fails to pay the moneys payable under subsection (1) is liable to have that holder's contract terminated.

14. Payment in respect of stool lands

(1) Receipts obtained by virtue of section 13 (1) in respect of timber on stool land shall be disbursed as provided for by law.

(2) Receipts obtained in respect of land other than public and stool land shall be dealt with as shall be agreed on with the owners of the land and the Forests Division.

*Benefits and Incentives***14A. Benefits and incentives for investors⁵**

A person who invests in a forestry or wildlife enterprise is entitled to the benefits and incentives that 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.

14B. Exemption of no-zero-rated items

An investor who desires the benefits and incentives provided under section 14A, but whose plant, machinery, equipment or parts of machinery are not zero-rated under the Custom Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Act, 19936 may submit an application for exemption of import duties, Value Added Tax or excise duties on the plant machinery equipment or its parts to the Commission which shall submit it to the appropriate tax authority with its endorsement or otherwise.

5. Sections 14A to 14J inserted by section 3 of the Timber Resources (Management) (Amendment) Act, 2002 (Act 617).

6. P.N.D.C.L. 330.

14C. Incentives for special investment

For the purpose of promoting strategic or major investments in the forestry and wild-life sector, the Minister may, on the recommendation of the Commission and in consultation with any other state agencies that the Minister may determine, negotiate specific incentives in addition to the incentives provided in section 14A for the period specified in the relevant timber utilisation contract.

14D. Investment guarantees, transfer of capital, profits and dividends

An investor shall be guaranteed unconditional transferability through an authorised dealer bank in a freely convertible currency of

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

14E. Guarantees against expropriation

(1) Subject to subsections (2) and (3),

- (a) the operation of an investor shall not be nationalised or expropriated by the Government; and
- (b) a person who owns, whether wholly or in part, the capital of a forestry or wildlife investment shall not be compelled by law to cede the interest in the capital to any other person.

(2) The operation of an investor shall not be approved by the Republic 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 compensation to which the investor is entitled.

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

14F. Dispute settlement procedures

(1) Where a dispute arises between an investor and the Government efforts shall be made through mutual discussion to reach an amicable settlement.

(2) A dispute between an investor and the Government which is not amicably settled through mutual discussion may be submitted at the option of the aggrieved party to arbitration,

- (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 a bilateral or multi-lateral 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 agreed to by the parties.

(3) Where in respect of a 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.

14G. Immigration quota

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

(2) An investor with a paid-up capital 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 automatic maximum immigrant quota of four persons.

(4) Except as provided in subsections (1), (2) and (3), an 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.

14H. Assistance to an investor

The Commission shall provide an investor with the assistance and guidance required by the investor and shall act as liaison between the investor and the relevant government departments, agencies and any other public authorities.

14I. Personal remittances

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

14J. Technology transfer agreement

(1) An investor may enter into the technology transfer agreement that 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 the Regulations relating to that type of agreement to be dealt with as shall be agreed on with the owners of the land and the Forests Division.

Miscellaneous

15. Suspension and termination of timber utilisation contracts

(I) The Minister, acting on the recommendations of the Commission, may suspend or terminate, as is appropriate in the circumstances of the case, a timber utilisation contract where

- (a) the holder has breached any of the terms or conditions of the contract; or
- (b) the holder has lost the ability, financially or otherwise to manage the timber resources efficiently; or
- (c) the area of the land subject to the contract or a part of it is under review to determine its suitability for the operations; or
- (d) the area of land subject to the contract or a part of it is no longer suitable for the operation under a timber utilisation contract; or
- (e) a review of operations by the Forests Division determines that there are enough grounds for termination of the contract; or
- (f) the holder is charged with or convicted of an offence under this Act or of a forest offence.

(2) The holder of the contract terminated under subsection (I), (c), (d) and (e) is entitled to replacement.

(3) On the suspension or termination of a timber utilisation contract under this section the right of the holder shall cease but without prejudice to a right of action or remedy of the Government or a person in respect of a prior breach, non-performance or non-observance of a condition on the part of the holder.

(3) A holder of a timber utilisation contract whose timber rights are suspended under subsection (1) may, after rectifying the breach or if the reasons for the suspension are redressed, petition the Commission which shall make recommendations to the Minister on the merits or otherwise of removing the suspension.

16. Transfer of timber rights

(1) A right over or an interest in timber granted under a timber utilisation contract shall not be transferred or assigned without the written consent of the Minister given on the recommendation of the Commission and the consent to assign or transfer shall not be unreasonably withheld or delayed.

(2) An application for a transfer shall be evaluated by the Evaluation Committee.

(3) A holder who transfers or assigns timber rights under a timber utilisation contract contrary to subsection (1), commits an offence and is liable on summary conviction to a fine of not less than 300% of the annual rent payable.

17. Offences

(I) A person charged with the management or protection of a forest resource by virtue of employment in an institution of government who

- (a) by an act or omission in the performance of functions facilitates the breach of a provision of this Act, or

(b) condones or connives with any other person in breach of a provision of this Act, commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not exceeding two years without the option of a fine.

(2) A person who

- (a) harvests timber to which this Act applies without a valid timber utilisation contract, or
- (b) operates a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act, or
- (c) offers for sale, sells or buys timber harvested in contravention of this Act, or
- (d) stocks timber harvested in contravention of this Act, or
- (e) carries, hauls or evacuates by non-mechanical means a timber harvested in contravention of this Act, or
- (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, commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not exceeding two years.?

(3) Where a person is convicted under subsection (2) the Court shall order the confiscation to the Republic of the tool, equipment and machinery involved in the commission of the offence; and the Court shall order to be confiscated and sold the timber harvested in the commission of the offence.

(4) Despite the right of the Court to sentence a person convicted under subsection (2) to imprisonment, the Court may, in lieu of sentence of imprisonment, impose in respect of the offences specified in

- (a) subsection (2) (a) or (b), a penalty in the sum of 1000% of the market value of the timber involved in the commission of the offence; or
- (b) subsection (2) (c) or (d), a penalty in the sum of 500% of the market value of the timber involved in the commission of the offence; or
- (c) subsection (2) (e), a penalty in the sum of 100% of the market value of the timber involved in the commission of the offence.

18. Regulations

(1) The Minister on the recommendations of the Forestry Commission may, by legislative instrument, make Regulations

- (a) prescribing procedure for the identification of lands suitable for grant of timber rights;
- (b) prescribing the procedure for application, processing and grant of timber rights;

7. Amended by section 4 of the Timber Resources (Management) Act. 2002 (Act 617).

- (c) on the terms and conditions for timber rights;
- (d) in respect of the Logging Manual to ensure proper harvesting and yield;
- (e) prescribing the rate of royalties, fees, management service charges and other charges payable in respect of timber;
- (f) criteria for categorising timber operations in terms of the scale of operations;
- (g) on procedure for salvage and disposal of abandoned timber or seized timber produce;
- (h) specifying the proportion of timber originating from timber utilisation contracts to be made available to the domestic and export market;
- (i) on approved hours for timber harvesting and for conveyance of harvested timber;
- (j) on registration and operation of chainsaws and chainsaw operators on land to which this Act applies;
- (k) prescribing species of trees considered "depleted", "threatened", "endangered" or "economically extinct" and specifying the conditions under which they may be felled;
- (l) prescribing conditions for harvesting trees for domestic or social purposes; and
- (m) generally for the purpose of giving effect to this Act.

(2) An instrument made under subsection (1) may provide for breach of a provision of the Regulations, a penalty of not less than two hundred and fifty penalty units and not exceeding one thousand penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment, and to a fine of not less than one thousand penalty units for a second or a continued offence under the instrument⁸

19. Savings and transitional provisions

(1) A timber right, concession or lease granted under an enactment and valid immediately before the commencement of this Act shall continue in force for a period not exceeding six months from the date of the coming into force of this Act.

(2) Within six months from the coming into force of this Act, the holder of that timber right, concession or lease, may apply for a timber utilisation contract.

(3) On the application made under subsection (2), the Evaluation Committee shall evaluate the application and shall submit its report and recommendation to the Commission in accordance with this Act and the Regulations and the contract shall be made to take effect after the expiry of six months.

(4) The Commission shall, on the receipt of the Evaluation Committee's report under subsection (3), recommend to the Minister the entry of a timber utilisation contract with the holder of the timber right, concession or lease.

(5) The Minister shall, on the basis of the recommendation under subsection (4), enter into a timber utilisation contract with the holder of the timber right, concession or lease.

8. inserted by section 5 of the Timber Resources (Management) (Amendment) Act, 2002 (Act 617).

20. Interpretation

(I) In this Act, unless the context otherwise requires,

"alienation holding" means a land acquired by a person through an outright sale of the land by the owner;

"annual rent" means the fee levied or paid per hectare per annum to the owner or landlord for the exercise of timber rights on the piece of land as specified in the contract;

"contract" means a timber utilisation contract entered into under this Act;

"Commission" means the Forestry Commission established under Act 453;

"Evaluation Committee" means the Timber Rights Evaluation Committee established under section 5;

"Forests Division" means the Forests Division of the Forestry Commission;

"forest offence" means an offence provided for by law in respect of a forest, timber, trees or forest produce;

"forest produce" includes

- (a) timber, charcoal, rubber, wood, oil, peat, resin and natural varnish,
- (b) trees and leaves, flowers and fruit, and any other parts and produce of trees not herein mentioned,
- (c) plants not being trees, including grass, creepers, reeds and moss and all parts and produce of such plants, and
- (d) wild animals and skins, tusks, horns, bones, silk, honey, and wax and the parts and produce of wild animals;

"functions" includes powers and duties;

"harvest" means to fell, cut, collect or otherwise dispose of timber from land to which this Act applies;

"harvesting plan" means the schedule of planned felling and harvesting operations for an area to which the contract relates prepared by the holder of the contract for a period of five years in accordance with the Logging Manual;

"holder" means a person to whom timber rights is granted under this Act;

"investor" means a person who invests in a forest or wildlife enterprise;

"Logging Manual" means a set of rules intended to guide the activities of persons who harvest timber in the forest;

"Minister" means the Minister responsible for Forestry;

"public land" includes land which immediately before the coming into force of the 1992 Constitution, was vested in the Government on behalf of, and in trust for the people of Ghana, for the public service of Ghana and a land acquired in the public interest for the purpose of the Government before or after that date;

"Regulations" means the Regulations made under this Act;

"stool land" includes an land or an interest in, or a right over land controlled by a stool or skin, the head of a particular community or group for the benefit of the subjects of that stool, the members of that community or group;

"timber" includes standing, fallen and felled trees, wood for industrial purposes, logs and sawn wood;

"timber rights" means the right to harvest trees and extract timber from a specified area of land under a timber utilisation contract;

"timber utilisation contract" means a written agreement that specifies the terms of timber rights granted in respect of an area of land for a fixed period of time.

(2) The expression "timber utilisation contract" shall apply with the modifications that are necessary, to a certificate of purchase, a permit for any other authorisation for timber rights approved by the Minister on the recommendation of the Commission.⁹

21. Modification of certain Acts

The Concessions Act ¹⁰ and the Forests Act II , shall apply with the modification that are necessary to give effect to this Act.

22. Repeals

(1) The Concessions Act, 1962 (Act 124) other than sections I and 16 is hereby repealed.

• (2) Sections I and 16 of the Concessions Act, 1962 (Act 124) shall apply with the modifications that are necessary to give effect to this Act.

(3) Despite the repeal under subsection (1) of this section Regulations made under that Act and in force at the commencement of this Act shall, subject to this Act, continue in force until revoked or otherwise dealt with.

(4) The following instruments are hereby revoked:

the Timber Leases and Licences Regulations, 1962 (L.I. 229);

the Timber Leases and Licences (Amendment) Regulations, 1963 (L.I. 282); and

the Timber Leases and Licences (Amendment) Regulations,] 979 (L.I. 1215).

9. Amended by section 6 of the Timber Resources (Management) (Amendment) Act, 2002 (Act 617).

10. Cap. 136 of the 1951 Edition of the Laws of the Gold Coast.

11. Cap. 157 of the 1951 Edition of the Laws of the Gold Coast.