

TIMBER RESOURCES MANAGEMENT ACT, 1997 (ACT 547)

As amended by

FORESTRY COMMISSION ACT, 1999 (ACT 571).1

TIMBER RESOURCES MANAGEMENT (AMENDMENT) ACT, 2002 (ACT 617).2

ARRANGEMENT OF SECTIONS

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REPUBLIC OF GHANA

**THE FIVE HUNDRED AND FORTY-SEVENTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
THE TIMBER RESOURCES MANAGEMENT ACT, 1997**

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

DATE OF ASSENT: 17TH MARCH, 1998

BE IT ENACTED BY Parliament as follows—

Section 1—Prohibition from Harvesting Timber without Timber Utilization Contract.

No person shall harvest timber from any land to which section 4 of this Act applies unless he holds timber rights in the form of a timber utilization contract entered into under this Act in respect of the area of land concerned.

Section 2—Qualification for Timber Utilization Contract.

No timber utilization contract shall be entered into with any person under this Act unless the person is a body incorporated under the Companies Code, 1963, (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152).

Section 3—Application for Timber Rights

(1) Procedure for application for timber rights shall be as prescribed by regulations made under this Act.

(2) Without prejudice to subsection (1) of this section 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 of this Act.

(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 any such effects;
- (c) evidence of the financial ability of the applicant to operate the area of land subject to his contract;
- (d) evidence of the capability of the applicant to operate the area of land subject to his contract;
- (e) proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations; and
- (f) such other relevant information or documents as the Commission may request.

Section 4—Land Subject to Timber Rights.

- (1) Timber rights may be granted under a timber utilization 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) 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.[As substituted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.1(a).]

- (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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.1(b).]

Section 5—Establishment of Timber Rights Evaluation Committee and its Functions.

- (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 Chief Executive of the Commission or his representative who shall not be below the rank of a Director;
- (b) the Executive Director, Forest Services Division;
- (c) [Repealed by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].
- (d) the Administrator of Stool Lands;
- (e) the Executive Secretary, Lands Commission;
- (f) a representative of the Ghana Institute of Professional Foresters; and

- (g) one other person appointed by the Minister.
- (2) The Chief Executive or his representative shall be the Chairman of the Committee.
- (3) The Evaluation Committee shall regulate the procedure at its meetings.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

Section 6—Functions of the Evaluation Committee.

- (1) The functions of the Evaluation Committee are—
 - (a) to evaluate applications for timber utilization contracts in accordance with qualifications and criteria provided by regulations made under this Act; and
 - (b) to rank the qualified applicants on merit through a competitive procedure prescribed by regulation under this Act.
- (2) For the purpose of subsection (1) of this section the Evaluation Committee may in respect of any evaluation—
 - (a) request for such relevant documents and information;
 - (b) co-opt such persons as it considers necessary.
- (3) The Evaluation Committee shall submit all evaluation reports together with recommendations thereon to the Commission within 42 days of receipt of the application.

Section 6A—Duration and Area of Timber right.

- (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 the Timber Resources Management Regulations, 1998 (L.I 1649).[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.2]

Section 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 2 illegal transactions or operation in the industry, in the 2 years

immediately preceding the application, the application shall not be granted.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.2]

Section 7—Grant of Timber Rights.

(1) The Commission shall within 30 days of receipt of the evaluation 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 utilization contract on behalf of the President with the successful applicant.

Section 8—Terms of Contract.

A timber utilization contract entered into under this Act shall be subject to such terms and conditions as shall be 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 prescriptions laid down by the Commission;

(d) an undertaking by the holder to execute a reforestation plan during the period of the contract to the satisfaction of the Chief Executive;

(e) provisions for prompt payment of rents, royalties, compensation and such management and service charges as 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 Commission;

(h) the submission to the Commission 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.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

Section 9—Ratification by Parliament.

(1) Timber utilization contracts entered into by the Minister on behalf of the President shall be subject to ratification by Parliament.

(2) Parliament may upon the recommendation of the Forestry Commission and upon such conditions as Parliament may prescribe, authorise any other agency of government to approve timber utilization contracts.

Section 10—Logging Manual.

There shall be prepared by the Commission in consultation with the Forestry Commission a Logging Manual for the purposes of this Act and regulations made under this Act.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

Section 11—Survey.

No timber utilization contract shall be entered into under this Act unless the relevant land has been surveyed in accordance with the Survey Act, 1962 (Act 127).

Section 12—Management of Timber Operation.

(1) No timber utilization contract shall be entered into with any person under this Act unless the person has the ability to have at all times a manager who shall be a professional forester in charge of the timber operations and related activities.

(2) The holder shall notify the Chief Executive in writing of every appointment of a manager and the change of a manager.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

Section 13—Payment of Royalties, Charges and Other Fees.

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

(2) A holder who fails to pay any monies payable under subsection (1) of this section is liable to have his contract terminated.

Section 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) Receipt obtained in respect of land other than public and stool land shall be dealt with as shall be agreed upon with the owners of the land and the Commission.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

Section 14A—Benefits and incentives for investors.

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 692) 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 (PNDCL 330) and any other enactment for the time being in force.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14B—Exemption of non-zero-rated items

An investor who desires the benefits and incentives provided under section 14A, but whose plant, machinery, equipment or parts of machinery and not zero-rated under the Customs Harmonised Commodity and Tariff Code scheduled to the Customs, Excise and Preventive Service Law, 1993 (PNDCL 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. [As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14C—Incentives for special investment.

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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

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

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 sale or liquidation of the operations of the investor or any interest attributable to the investment.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14E—Guarantees against expropriation.

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

- (a) the operations of an investor shall not be nationalised 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 provisions 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 he 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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14F—Dispute settlement procedures.

(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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14G—Immigration quota.

(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 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 initial automatic maximum immigrant quota of 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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14H—Assistance to an investor.

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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14I—Personal Remittances.

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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 14J—Technology transfer agreement.

(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.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.3]

Section 15—Suspension and Termination of Timber Utilization Contracts.

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

(e) a review of operations by the Commission 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.[As amended by the Forestry Commission Act, 1999 (Act 571), sch. to s.35(2)].

(2) The holder of the contract terminated under section 15 (1), (c), (d) and (e) shall be entitled to replacement.

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

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

Section 16—Transfer of Timber Rights.

(1) No rights over or interest in timber granted under a timber utilization contract shall 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 such a transfer shall be evaluated by the Evaluation Committee.

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

Section 17—Offences.

(1) Any person charged with the management or protection of a forest resource by virtue of his employment in any institution of government who—

(a) By any act or omission in the performance of his duties facilitates the breach of any 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 6 months and not exceeding two years without the option of a fine.

(2) Any person who—

(a) harvests timber to which this Act applies without a valid timber utilization contract; or

(b) operates a vehicle to carry, haul, evacuate or transport timber harvested in contravention of this Act; or [As amended by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.4(a)]

(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 any timber harvested in contravention of this Act, commits an offence and is liable on summary conviction to imprisonment for a term of not less than 6 months and not exceeding 2 years.

(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. [As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.4(b)]

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

(4) Notwithstanding the right of the court to sentence a person convicted under subsection (2) of this section 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.

Section 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;
 - (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 categorizing timber operations in terms of 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 utilization 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 the provisions of this Act.
- (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. [As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.5]

Section 19—Savings and Transitional Provisions.

- (1) Any timber right, concession or lease granted under any enactment and valid immediately before the commencement of this Act shall continue in force for a period not exceeding 6 months from the date of the coming into force of this Act.
- (2) Within 6 months from the coming into force of this Act, the holder of any such timber right, concession or lease, may apply for a timber utilization 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 regulations made under it and the contract shall be made to take effect after the expiry of 6 months.
- (4) The Commission shall on the receipt of the Evaluation Committee's report under subsection (3) recommend the entry of a timber utilization contract with the holder of the timber right, concession or lease to the Minister.

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

Section 20—Interpretation.

(1) In this Act unless the context otherwise requires—

"alienation holding" means any 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 his piece of land as specified in the contract;

"contract" means a timber utilization 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 of this Act;

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

"forest produce" includes the following—

(a) timber, charcoal, rubber, wood, oil, peat, resin and natural varnish;

(b) trees and leaves, flowers and fruit, and all 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;

(d) wild animals and skins, tusks, horns, bones, silk, honey, and wax and all parts and produce of wild animals;

"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 5 years in accordance with the Logging Manual;

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

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

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

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

"timber utilization 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;

"stool land" includes any land or interest in, or right over any 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.

(2) The expression "timber utilization contract" shall apply with such modification as may be necessary, to be certificate of purchase, a permit or any other authorisation for timber rights approved by the Minister on the recommendation of the Commission.[As inserted by the Timber Resources Management (Amendment) Act, 2002 (Act 617), s.6]

Section 21—Modification of Cap 136 and 157.

The Concessions Ordinance, Cap 136 and the Forests Ordinance, Cap 157 shall apply with such modification as may be necessary to give effect to the provisions of this Act.

Section 22—Repeals.

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

(2) Sections 1 and 16 of Act 124 shall apply with modifications as may be necessary to give effect to the provisions of this Act.

(3) Notwithstanding the repeal under subsection (1) of this section any regulations made thereunder 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—

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

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

Timber Leases and Licences (Amendment) Regulations, 1979 (L.I. 1215).

Date of Gazette Notification: 18th March, 1998.