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## GENERAL NOTICES

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### NOTICE 45 OF 2012

#### DEPARTMENT OF TRADE AND INDUSTRY

I, Dr Rob Davies, Minister of Trade and Industry, hereby:

- (a) Issue for public comment, the SPECIAL ECONOMIC ZONES POLICY and SPECIAL ECONOMIC ZONES BILL, and
- (b) Invite interested persons and the public to submit comments on the Bill within 60 days of this publication.

Interested parties are requested to forward their comments in writing for the attention of Ms Antoinette Baepi or Mr Maoto Molefane , at the following address (es)

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Dr ROB DAVIES, MP

MINISTER OF TRADE AND INDUSTRY

16 / 1 / 2012



the dti

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Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

# **POLICY ON THE DEVELOPMENT OF SPECIAL ECONOMIC ZONES IN SOUTH AFRICA**

## **2012**

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## ACRONYMS

|                |   |
|----------------|---|
| <b>ASGISA:</b> | <b>Accelerated Shared Growth Initiative of South Africa</b> |
| <b>AIS:</b>    | <b>Automotive Investment Scheme</b>                         |
| <b>CIP:</b>    | <b>Critical Infrastructure Programme</b>                    |
| <b>DFIs:</b>   | <b>Development Finance Institutions</b>                     |
| <b>EMIA:</b>   | <b>Export Marketing and Investment Assistance</b>           |
| <b>EPZs:</b>   | <b>Export Processing Zones</b>                              |
| <b>FTZs:</b>   | <b>Free Trade Zones</b>                                     |
| <b>GEAR:</b>   | <b>Growth, Employment and Redistribution</b>                |
| <b>IDZ:</b>    | <b>Industrial Development Zone</b>                          |
| <b>IMS:</b>    | <b>Integrated Manufacturing Strategy</b>                    |
| <b>IPAP:</b>   | <b>Industrial Policy Action Plan</b>                        |
| <b>ISRDP:</b>  | <b>Integrated Sustainable Rural Development Programme</b>   |
| <b>MERS:</b>   | <b>Microeconomic Reform Strategy</b>                        |
| <b>NES:</b>    | <b>National Export Strategy</b>                             |
| <b>NGP:</b>    | <b>National Growth Path</b>                                 |
| <b>NIF:</b>    | <b>National Investment Framework</b>                        |
| <b>NIPF:</b>   | <b>National Industrial Policy Framework</b>                 |
| <b>NSDP:</b>   | <b>National Spatial Development Perspective</b>             |
| <b>SEZs:</b>   | <b>Special Economic Zones</b>                               |
| <b>SSAS:</b>   | <b>Sector Specific Assistance Scheme</b>                    |
| <b>URP:</b>    | <b>Urban Renewal Programme</b>                              |

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## **Foreword by the Minister of Trade and Industry**

In line with the Industrial Policy Action Plan and the New Growth Path, the Department of Trade and Industry (**the dti**) aims to continue fostering its efforts to create employment and economic growth by establishing a strong industrial base in South Africa.

The Special Economic Zones (SEZs) programme is one of the most critical instruments that can be used to advance government's strategic objectives of industrialisation, regional development and job creation. Moreover, the programme can assist in improving the attractiveness of South Africa as a destination for foreign direct investment.

With the introduction of a much broader SEZ programme, more areas of strategic economic potential can be leveraged to attract foreign direct investment. The most pertinent outcome envisaged by the SEZ programme is the expansion of the manufacturing sector and the creation of additional industrial hubs to regionally diversify the national industrial base.

We are confident that the new SEZ Policy will be of benefit to industrialisation and significant to government for achieving its programmes' goals of economic growth, development and employment creation.

I wish to thank all those, whose hard work has contributed to the challenging task of ensuring and securing the progress registered over time particularly for the development of the SEZ policy. Most importantly, I encourage all concerned to redouble their efforts and continue to work together until the realisation of the country's industrial development agenda.

**Dr Rob Davies, MP**  
**Minister: Trade and Industry**

## **Executive Summary**

A Special Economic Zone (SEZ) is defined as “a geographically designated areas of a country set aside for specifically targeted economic activities, which are then supported through special arrangements (which may include laws) and support systems to promote industrial development”. The SEZ programme is a tool that is used by many economies to promote trade, economic growth and industrialisation.

In an effort to reposition itself in the world economy, the South African government established the Industrial Development Zone Programme (IDZ) in 2000. The programme’s main focus was to attract foreign direct investment and export of value-added commodities. The main limitation of the programme was that the IDZs could only be designated adjacent to a sea port or international airport, and that excluded other regions in the country which had industrial potential but did not meet the IDZ criteria. This limitation has provided the rationale for a more inclusive industrial facilitation model in the form of the Special Economic Zone programme which will utilise a wide range of instruments.

### **Rationale for the Review of the Industrial Development Zone Programme**

The review of the IDZ programme, that began in 2007, was brought about by the developments in national economic policies and strategies such as the Industrial Policy Framework and the New Growth Path; as well as developments in the global economic environment such as the formation of BRICS. The achievements of the existing IDZs are acknowledged, however, the government has felt that more could be achieved if the challenges identified within the existing IDZs could effectively be addressed. Challenges such as, lack of coordinated planning arrangements; insufficient guidance related to governance arrangements; dependence on government funding; lack of targeted investment promotion measures; and inadequate coordination across government agencies have been identified as the key constraints to the success of the programme.

## **Importance of Special Economic Zones in South Africa**

The SEZ Policy is being introduced to provide a clear policy framework with respect to the development, operations and management of SEZs including addressing challenges of the current IDZ programme. The purpose of the SEZ programme therefore is to:

- expand the strategic focus to cover diverse regional development needs and contexts, and improve the design deficiencies of the IDZ Programme
- provide a clear predictable and systemic planning framework for the development of a wider array of SEZs to support industrial policy objectives and the New Growth Path (NGP)
- clarify and strengthen governance arrangements; expand the range and quality of support measures beyond provision of infrastructure; provide a framework for a predictable financing framework to enable long-term planning; and
- provide for predictable financing arrangements that enable long-term planning.

## **Implementation of the SEZ Programme**

The implementation of the SEZ programme will be in conjunction with other relevant departments and agencies in order to develop and implement a wide-ranging SEZ Programme. The SEZ programme aims to provide comprehensive and coherent marketing, capacity development and skills development strategies, sustainable infrastructure development, integrated logistics systems, technology, research and developmental measures that promote sustainable technological innovation and improved quality and productive programmes.

SEZs are therefore strategic and effective instruments for the achievement of national and regional industrial development policy objectives. As such they will require coherent and coordinated cooperation from various stakeholders.

## SECTION 1: Introduction

### 1.1 Background

#### 1.1.1 About Special Economic Zones

- (i) Special Economic Zones (SEZs) are geographically designated areas of a country set aside for specifically targeted economic activities, which are then supported through special arrangements (which may include laws) and support systems that are often different from those that apply in the rest of the country. Furthermore, an SEZ is an economic development tool to promote rapid economic growth by using incentive packages to attract targeted investments and technology. The zones act as a magnet for investment in desirable activities in specially designated areas by providing quality infrastructure complemented by an attractive incentives package, business support services, cluster development and minimal red tape.
- (ii) Although these zones evolved out of the era of export oriented industrialisation strategies of the 1960s, SEZs are now used for various purposes that range from export promotion, enterprise development, urban renewal, rural development, and domestic or regional production.
- (iii) SEZs require the development and application of special economic systems, policies and support measures that are responsive to the strategic intents and needs of the host region, investors, and other key stakeholders.
- (iv) There are many categories of SEZs, and often different countries and regions use different names or terminology to refer to the same thing. However, the strategic policy intentions are more important than the terminology used in the design and implementation of SEZ programmes. The categories include the following:

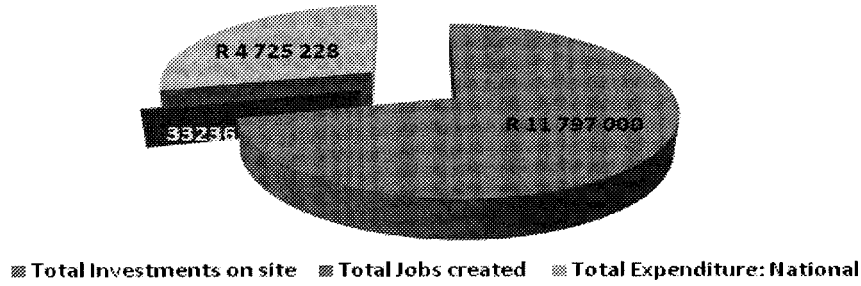
- **A free port** is an area adjacent to a port of entry (seaport and/or airport) where imported goods may be unloaded for immediate transshipment or stored, repacked, sorted or processed without being subject to customs import procedures. Movements of these imported goods from the free port to a non free trade area in the country are subject to import duties.
- **Free trade zones** mean part of the territory of a state where any goods introduced are generally regarded, insofar as import duty and taxes are concerned, as being outside the customs territory and are not subject to the usual customs control.
- **Industrial parks** are facilities (buildings) that are set aside for production and business services to attract new businesses by providing integrated infrastructure in one location and providing localised environmental controls that are specific to the needs of an industrial area.
- **Science and technology parks** consist of infrastructure for the establishment and development of knowledge-based companies based in a location formally linked (and usually physically close) to a centre of technological excellence, usually a university. It normally incorporates business management and other services, and a technology link to the centre of technological excellence.
- **Sector development zones** focus on the development of specific sectors or industries such as agriculture, ICT, BPO, etc; through the facilitation of general or specific industrial infrastructure, technical workforce and business support services.
- **Spatial development corridors** connect two or more economic nodes through transportation networks, and accommodate various economic activities along the corridors.

- **Industrial development zone** is a purpose-built industrial estate linked to an airport or sea port that leverages domestic and foreign fixed direct investments in value-added and export-oriented manufacturing industries and services.

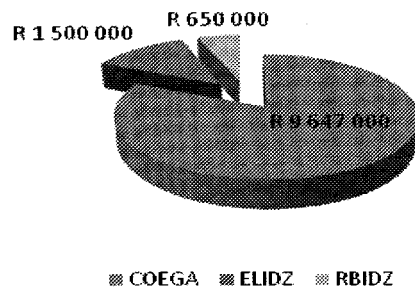
### 1.1.2 Post-1994 history of Special Economic Zones in South Africa

- (i) One of the economic development challenges that confronted the democratic government immediately after 1994 was to raise the levels of domestic and foreign direct investments in order to accelerate growth, employment and inclusion. Towards this end, the government introduced the Industrial Development Zones (IDZ) programme in 2000.
- (ii) The purpose of the IDZ programme was to contribute to the acceleration of economic growth and employment generation through the promotion of export oriented manufacturing and services industries. The key performance areas of the programme were, therefore, increased investments, exports and employment in the targeted industries and products.
- (iii) Between 2001 and 2010 only four IDZs were designated, namely Coega (2001), OR Tambo International Airport (2002), East London (2002) and Richards Bay (2002). Only three are operational and all are located along the eastern coastal belt, while the OR Tambo International Airport is the only inland IDZ and is not yet operational. Accordingly, all four operators were issued with IDZ Operator Permits by **the dti** as follows: East London IDZ Company (2007), Coega Development Corporation (2007), Richards Bay IDZ Company (2009) and OR Tambo IDZ (2010).
- (iv) From 2002 to 2010, a total of 40 investors were attracted into the IDZs with more than R11.8 billion investments generated and more than 33 thousand jobs created. This is below expectations; however jobs created through backward and forward linkages which might be huge were not estimated in this report

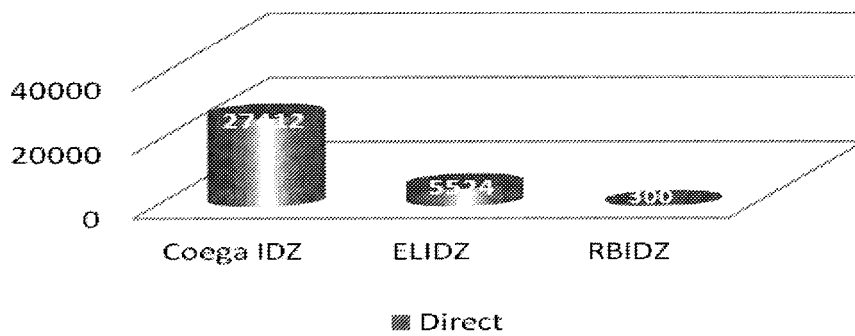
**Fig. 1: IDZ: Total Investments, Jobs & Expenditure (2000 - 2011)**



**Fig. 2: Value of Investments (R'000) operational by IDZ (2001-2011)**



**Fig. 3: IDZ Job Creation (2000-2011)**



## 1.2 Status quo of Industrial Development Zones in South Africa

1.2.1 The use of SEZs in South Africa has generally focused on IDZs with less focus on other forms of special economic zones.

1.2.2 Four IDZs have been designated to date, namely Coega, OR Tambo International Airport, East London and Richards Bay. Only the OR Tambo International is yet to be operational.

### (i) Coega IDZ

- The Coega IDZ was designated in 2001, covers a land area of 11 500ha and is wholly owned by the Eastern Cape Province through the Eastern Cape Development Corporation (ECDC).
- The Coega IDZ is operated by the Coega Development Corporation (Pty) Ltd.
- The IDZ has cumulatively received R3.6 billion from **the dti** and R1.1 billion from the provincial government by the end of the 2010/11 financial year.
- Coega IDZ has 12 on site investors and has created 27 412 direct jobs, the majority of which are construction jobs.

### (ii) East London IDZ

- The East London IDZ (ELIDZ) was designated in 2002 covering a land area of 420ha. It is operated by the East London IDZ (Pty) Ltd which is co-owned by the Eastern Cape Province (76% shareholding) through the

Eastern Cape Development Corporation and the Buffalo City Municipality (24%).

- The ELIDZ has cumulatively received R1.1 billion from **the dti** and R1.12 billion from the Eastern Cape Province up to the end of the 2010/11 financial year.
- The achievements of the ELIDZ include 23 on-site investors with investments estimated at R1.5 billion and an estimated total of 5 524 direct jobs (including construction jobs) created.
- The automotive sector is the most developed in the IDZ and constitute about 90% of all economic activities.

(iii) **Richards Bay IDZ**

- The Richards Bay IDZ was designated in 2002. It covers a land area of 350ha and is operated by the Richards Bay IDZ (Pty) Ltd.
- It is co-owned by the uMhlathuze District Municipality (40%) and the KwaZulu-Natal Government (60%) through Ithala Development Finance Corporation.
- The Richards Bay IDZ has cumulatively received R88.4 million from **the dti** and R205.7 million from the province as at the end of the 2010/11 financial year.
- Prioritised industrial sectors in the IDZ include aluminium, furniture, titanium, dry dock (ship repair), and the synthetic wood cluster.
- There is currently one investor on site with an investment value of R650m.

### 1.3 Rationale for the review of the Industrial Development Zones Programme

1.3.1 The review of the IDZs Programme began in 2007 and was informed by a number of factors including the following:

- (i) **Developments in national economic policies and strategies:** Some of the changes in key economic policies and strategies post the introduction of the IDZ programme include the introduction of the National Industrial Policy Framework which outlined key policy ambitions, the Accelerated and Shared Growth Initiative for South Africa, and the recently introduced New Growth Path as well as the National Development Plan. SEZs will be a useful tool to support the implementation of the Industrial Policy Action Plan and the promotion of beneficiation and regional development.
  
- (ii) **Developments in the global economic environment:** Since the introduction of the programme, the global economy has experienced drastic changes including increased competition for foreign direct investment, a shift in global economic power balance from the west to the east, shifts in geo-political arrangements including the formation of BRICS and other groupings. These and other developments have resulted in, amongst others, emergence of new sources of foreign direct investment, new global economic power relations, and new markets. These have a fundamental impact on how countries compete for foreign direct investment and trade opportunities. In addition, there is a new trend where foreign direct investment is locked in certain international networks. Those within these networks are likely to reap the benefits of FDI while those outside those networks are not likely to benefit. Groupings such as BRICS can assist the country in attracting much desired investments and SEZs can be useful instruments in that regard.

- (iii) **Lessons learnt in the implementation of Industrial Development Zones:** The implementation of the IDZ programme provided valuable experience and lessons for government need to be factored into other efforts to attract foreign and domestic direct investment. The lessons learnt include the following:
- Economic literature shows that SEZs are the key tools used in all of the fastest growing economies including China, India, Brazil, and others; to accelerate the development of targeted industries and attract desired foreign and domestic direct investment.
  - Leadership and effective implementation may be more important than even a good policy or strategy.
  - Coordination across all tiers of government and public entities is necessary to speed up implementation.
  - A SEZ is a tool for economic development and not an end in itself. It is therefore important to focus on the goal of economic or industrial development rather than just the tool.
  - The potential benefits of SEZs are not automatic but depend on whether the necessary conditions are created for their success. These conditions include strong political and technical leadership, commitment over the long-term, integrated development planning, sufficient resourcing, etc.
  - SEZs tend to work where the strategic investment opportunities and desired industrial capabilities are clear.
  - SEZs are not necessarily permanent but are used as a development tool until an area has achieved industrial sustainability.
- (iv) **Modest performance of the programme:** When compared with programmes in countries such as China, Korea, India, Malaysia and others, the performance of South Africa's IDZ programme is fundamentally modest and falls short of the expectations of all stakeholders, and requires revamping.

## 1.4 Challenges with regard to the current IDZs Programme

### 1.4.1 Design

(i) The critical design weaknesses of the current IDZ Programme relates to the following areas:

- The programme focused exclusively on only one type of an SEZ, i.e. the IDZ, to the exclusion of the other types of SEZs. The possible benefits of the other types of SEZs were therefore not harnessed.
- The programme was designed in such a way that only a few regions, those with access to an international airport or sea port, could qualify for support. Some regions, therefore, could not receive support under this programme irrespective of their economic development needs, opportunities or challenges. As an example, Gauteng could receive support under the programme, while Limpopo could not. On the other hand, East London could receive support, while the under-developed region of Mthatha could not receive any support.

### 1.4.2 Nature of support

(i) International experience shows that successful SEZ programmes tend to focus on the provision of holistic and comprehensive packages of business development support which include infrastructure, skills development, technology, research and development, market support, finance, market access, logistics, and incubation programmes.

- (ii) There is also too much focus on in-zone activities and enterprises, and little attention is paid to out-of-zone activities, even those critical for the success of in-zone enterprises and sustainability of the zone. IDZs were established to support the development of export oriented industries. Industrial development requires that not only the zone but the host region be able to support the long term development of those industries.

#### 1.4.3 Ad-hoc planning arrangements

- (i) IDZs are key tools for economic development and need to be integrated into key strategies at national, provincial and regional levels.
- (ii) The local IDZs also need to develop in a coordinated way so that they do not compete among themselves but jointly compete against IDZs in other parts of the world. This requires alignment and harmonisation of strategic plans.
- (iii) The current regulatory framework is not sufficient to guide the long-term planning in IDZs to coordinate and harmonise their plans and facilitate integration into key national, provincial and regional strategies.

#### 1.4.4 Governance arrangements

- (i) The development of IDZs requires the participation of all tiers of government. These stakeholders have different roles to play and these roles have to be clearly defined and delineated.
- (ii) The current regulatory framework does not provide sufficient guidance with regard to governance arrangements of an IDZ. The result is that there is often insufficient or timely oversight of the strategic plans and operations of IDZs.

#### 1.4.5 Financing arrangements

- (i) All existing IDZs rely fully on state funding for both operational and capital expenditure. However, the provision of financial resources has been on an *ad hoc* basis and dependent on the availability of additional funds in the successive MTEF fiscal framework of national and provincial governments.
- (ii) The current financing arrangements for IDZs tend to be short-term and do not provide certainty for the long-term, thus making it difficult to develop long-term plans. Furthermore, the current funding model does not provide a role for Development Finance Institutions (DFI) funding, thus making funding arrangements very inflexible and somewhat inadequate.

#### 1.4.6 Targeted investments

- (i) Currently investment promotion for IDZs is done independently by individual IDZs and there is no structured coordination between the IDZ operators and **the dti**.
- (ii) The current IDZ programme lacks a unique value proposition and there are different messages given to the investment community. There is therefore a need to develop a single strategy and message for investment promotion for the zones.

#### 1.4.7 Inadequate coordination across government agencies

- (i) Effective operation of IDZs depends on the provision of services from various government departments and agencies. Inadequate participation of government departments and public entities in general resulted in less than optimal servicing of these zones.

- (ii) For the few government departments and agencies which participated in the implementation of the programme, inadequate coordination remains a challenge. Also key to the implementation is that fiscal and financial incentives alone are not sufficient. It is therefore important that the non-financial incentives be provided in an effective and efficient manner.

## **SECTION 2: Key Elements of the Special Economic Zones Policy**

### **2.1 Purpose of the policy**

The Special Economic Zones Policy is introduced to provide a clear policy framework with respect to the development, operations and management of SEZs including the following challenges of the current programme:

- Expanding the strategic focus to cover diverse regional development needs and contexts, and improve the design deficiencies of the IDZs programme;
- Providing a clear, predictable and systematic planning framework for the development of a wide array of SEZs to support implementation of the Industrial Policy Action Plan, regional industrial development strategies and the New Growth Path (NGP);
- Clarifying and strengthening governance arrangements for the management of SEZs;
- Expanding the range and quality of support measures beyond the provision of infrastructure, including both in-zone and out-of-zone support measures;
- Developing and implementing a predictable financing framework to enable long-term planning, and;
- Developing and implementing a comprehensive programme to support the development of SEZs.

## 2.2 Objectives

2.2.1 **General objective:** The general objective of SEZs is to support and accelerate industrial development in the targeted regions by the provision of special measures needed to develop targeted industrial capabilities and attract targeted foreign and domestic direct investment.

2.2.2 **Specific objectives:**

- (i) Support the development of targeted industrial capabilities and foreign and direct investments in support of the IPAP, regional development strategies, and the NGP.
- (ii) Develop world-class industrial infrastructure in line with the requirements of the targeted industries and investments.
- (iii) Promote beneficiation and value addition of the country's mineral and agricultural resources.
- (iv) Contribute to the creation of jobs and increase exports of beneficiated commodities in the targeted regions.

## 2.3 Redesign and expansion of the Industrial Development Zones Programme

2.3.1 The IDZ Programme is being redesigned and expanded into the Special Economic Zones programme in order to enable the development of diverse types of SEZs in accordance with the changing national economic development priorities as well as regional development needs and contexts.

2.3.2 The Minister of Trade and Industry (based on the Board's recommendations) shall determine the categories of SEZs to be supported as well as the type of support to be provided in consultation with other affected Ministries. This is necessary to ensure an orderly development of SEZs.

## 2.4 Special Economic Zones Strategy

2.4.1 In order to promote a clear, predictable and systematic planning framework for the development of a wide array of SEZs, the Minister shall, every five years review the SEZ Policy and every four years, review the SEZ Strategy that shall outline the desired approach to the development of special economic zones during that period.

2.4.2 The SEZ Strategy shall be a guide to both existing and planned SEZs on the national and regional priorities.

2.4.3 As far as possible, measures shall be taken to minimise negative competition and promote complementarity and cooperation among local SEZs.

## 2.5 Integrated and holistic support

2.5.1 Measures shall be put in place to ensure that support for the development of SEZs is holistic, focuses beyond just the provision of world-class infrastructure and to include but not limited to the development and implementation of medium to long-term skills strategies, business incubation, technology, research and development, investment promotion, environmental protection, access to markets, and logistics.

2.5.2 Where the designated zone is only a small part of an area or region, support for the development of the zone should be comprehensive to include in-zone and out-of-zone measures.

## 2.6 Governance of Special Economic Zones

2.6.1 Effective governance of SEZs is necessary to ensure:

- (i) Effective guidance for the development and implementation of strategic and operational plans
- (ii) Transparency and accountability in the use of public resources
- (iii) Responsible execution of mandates at all levels and phases
- (iv) Clarity with respect to the roles of the different role players
- (v) Promotion of coordination across all tiers of government, as well as cooperation among all critical agencies.

2.6.2 The following provisions are made with regard to governance:

- (i) **Ownership:** Provision is made only for public entities such as national government departments, provinces and municipalities to apply for the establishment and development of SEZs.
- (ii) **Operator:** The developer of an SEZ can appoint any public or private entity as the operator of the SEZ.
- (iii) **Oversight and accountability:** The Provincial Member of the Executive Council responsible for economic development or the relevant Executive Mayor shall assume oversight and accountability for the operations of the relevant SEZ.

- (iv) **Coordination across the spheres:** Measures shall be taken to promote effective participation of all three tiers of government, including public entities in the development and operations of SEZs.

## 2.7 Institutional arrangements

### 2.7.1 Special Economic Zones (SEZ) Board

- (i) A SEZ Board shall be established to:
- Advise the Minister on policy, strategy and programmes to support the development of SEZs, and other matters incidental thereto
  - Consider and recommend applications for designation of SEZs to the Minister
  - Advise the Minister on the progress of the special economic zones
  - Undertake such tasks as the Minister may request the Board.
- (ii) The Board composition should include representatives of key departments and agencies, as well as other independent representatives. It will be important that parastatals such as ESKOM and Transnet, who are critical to economic development planning, be part of the Board.
- (iii) The Minister shall appoint the Board, its Chairperson and determine terms of appointment and the remuneration for all Board members.

### 2.7.2 Operating entities

- (i) The owner of a SEZ may establish or appoint, through a service contract, an operating private or public entity which shall take full responsibility for the following within the framework of the SEZ Strategy:

- Development and execution of the strategic and operational plans of the zone
  - Development of a world-class infrastructure appropriate to meet the needs of the targeted industries, enterprises and investments
  - Promotion of the zone to international and domestic investors
  - Provision of services to enterprises and entities operating within the zone
  - Monitoring and reporting on the strategic and operational plan of the zone and other activities within the zone
  - Facilitation of investments and business registration and other operational permits in conjunction with **the dti** and other relevant government agencies
  - Cooperation with other zones to ensure minimal competition among domestic zones and support integration of regional and national value chains.
- (ii) The process and other conditions for the appointment and operations of SEZ operators shall be regulated.

### 2.7.3 One-Stop-Shop

- (i) Enterprises locating within a SEZ bring strategic investments for which government is willing to provide special support measures.
- (ii) One of the special support measures for enterprises in SEZs is the provision of a one-stop-shop to ensure the effective and speedy facilitation and issuing of all registration certificates and permits required for operations.

#### 2.7.4 The Department of Trade and Industry

- (i) **the dti** shall be responsible for coordinating all implementation requirements for the SEZ policy including:
- Acting as a secretariat for the SEZ Board
  - Developing policies, strategies and programmes on SEZs
  - Facilitating and coordinating all government services required for the development of SEZs and smooth operation of enterprises and investment projects in the zones, and
  - Providing technical support and assistance to developers and operators of SEZs.

## 2.8 Financing Special Economic Zones

2.8.1 Special economic zones are expensive to develop and require significant resources. A predictable financing framework is required to facilitate long-term planning.

2.8.2 The following financing instruments are proposed:

- (i) **Special Economic Zones Fund:** To be established by the Minister of Trade and Industry in consultation with the Minister of Finance. The fund shall be used to finance approved site servicing, bulk infrastructure provision and business development of the SEZs, such as feasibility studies, general research, and etcetera.

- (ii) **Development Finance Institutions (DFIs):** Provision may be made for DFIs to play a major role in funding SEZ projects.

## 2.9 SEZ Incentives

2.9.1 SEZ incentives shall apply to Greenfield investments locating in the SEZs as well as expansions to Brownfield investments within the SEZs. The use of incentive packages is a common international practice in attracting foreign or domestic direct investment. The following provisions are made with regard to the use of incentives within the framework of the SEZ Programme:

- (i) The Minister of Trade and Industry may provide a package of incentives as a way of improving the investment attractiveness of all or individual SEZs in the country.
- (ii) Relevant provinces and municipalities may consider additional incentives for enterprises locating within their SEZs.
- (iii) Individual special economic zones may consider additional incentives for enterprises locating within those zones.
- (iv) Measures shall be put in place to ensure the sharing of information and coordination across the spheres of government and across zones and also to avoid the race to the bottom and double dipping by investors.

## SECTION 3: Implementation of the Special Economic Zones Programme

- 3.1 In order to ensure effective implementation of the Special Economic Zones Policy, **the dti** shall, in conjunction with other relevant departments and agencies, develop and implement a comprehensive SEZ programme that includes the following:
- (i) **Marketing:** A national marketing strategy is required to promote all the zones internationally and domestically in order to attract the desired investments.
  - (ii) **Capacity development:** A capacity building programme is required to ensure that relevant government officials across the three tiers of government as well as senior executives of SEZs have the necessary skills and competencies.
  - (iii) **Skills strategies:** Regional skills strategies have to be developed and implemented to support the short, medium and long-term skills needs of enterprises and industries within the zones and in the host regions.
  - (iv) **Infrastructure:** The key requirement for SEZs is the provision of appropriate and world-class industrial infrastructure.
  - (v) **Logistics:** Effective and efficient logistics are the life-blood of any trade and are key to industrial development.
  - (vi) **Business incubation:** Incubation programmes are critical for nurturing domestic entrepreneurs and enterprises and facilitate their integration into the key value chains in the zones and regions.
  - (vii) **Environmental protection:** Sustainable industrial development requires that appropriate measures be taken to ensure that industrialisation takes place without the destruction of the environment.

- (viii) **Technology, research and development:** Measures to facilitate on-going technological innovation and access to appropriate technologies for emerging enterprises.
- (ix) **Quality and productivity:** Continuous quality and productivity improvement programmes are necessary to ensure that SEZ enterprises can compete globally.
- 3.2 The programme is intended to provide key government services that are necessary to sustain the targeted industries and also to support the enterprises and investors in the zone and surrounding region.
- 3.3 Government support to each SEZ shall be provided until the zone is self-sustaining.

## SECTION 4: Conclusion

- 4.1 Industrial development in South Africa is a top priority as it holds the key to economic prosperity and success. The country needs to create and sustain economic opportunities in all its regions, especially the under-developed regions, develop much needed regional development platforms, create jobs for a growing population, and improve the general living standards of its citizens.
- 4.2 SEZs can be useful instruments to support national and regional industrial development policy objectives, but they require:
- (i) Strong coordination at all levels of government
  - (ii) Adequate financial and technical resources
  - (iii) Clearly targeted industrial capabilities and investments.
- 4.3 The new policy provides for a comprehensive menu of SEZs that can be used in the various regional contexts.

END

**NOTICE 46 OF 2012**

REPUBLIC OF SOUTH AFRICA

5

**SPECIAL ECONOMIC ZONES BILL, 2011**

**[DRAFT FOR DISCUSSION PURPOSES ONLY]**

10

15

(MINISTER OF TRADE AND INDUSTRY)

20

**BILL**

25

**To provide for the designation, development, promotion, operation and management of Special Economic Zones; to provide for the establishment of the Special Economic Zones Board; to regulate the application and issuing of Special Economic Zones operator permits; to provide for the establishment of the Special Economic Zones Fund; and to provide for matters incidental thereto.**

30

**Be it enacted by the Parliament of the Republic of South Africa, as follows:**

## SPECIAL ECONOMIC ZONES BILL, 2011

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## CHAPTER ONE : INTERPRETATION, OBJECTIVES AND APPLICATION

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## CHAPTER ONE

## INTERPRETATION, OBJECTIVES AND APPLICATION

## 1. Definitions

In this Act, unless the context indicates otherwise –

5 “**company**” means a juristic person incorporated and registered in terms of the Companies Act, 2008 (Act No. 71 of 2008);

“**customs controlled area**” means a Customs Controlled Area or CCA as defined in section 21A(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“**Department**” means the Department of Trade and Industry;

10 “**Director-General**” means the Director-General of the Department of Trade and Industry or his or her authorized representative;

“**Minister**” means the Minister responsible for trade and industry;

“**municipal entity**” means a municipal entity defined in section 1 of the Municipal Systems Act, 2000 (Act 32 of 2000);

15 “**prescribed**” means prescribed by regulation made in terms of this Act;

“**public entity**” means a public entity as defined in section 1 and listed in schedules 2 and 3 of the Public Finance Management Act, 1999 (Act 1 of 1999);

20 “**public private partnership**” means a public private partnership as contemplated in regulation 16 of the National Treasury Regulations under the Public Finance Management Act, 1999 (Act 1 of 1999) or section 120 of the Municipal Finance Management Act, 2003 (Act 56 of 2003);

“**Special Economic Zone**” means a geographically defined area with an industrial, economic sector or regional focus designated in terms of section 20;

## SPECIAL ECONOMIC ZONES BILL, 2011

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“**Special Economic Zones Board**” means the Board established in terms of section 4 of this Act;

“**Special Economic Zone operator**” means the holder of a Special Economic Zone operator permit issued in terms of section 25 of this Act; and

5 “**this Act**” means the Special Economic Zones Act, 2011 and includes any regulations made in terms of this Act.

## 2. **Objects of Act**

The objects of this Act are -

- 10 (a) to provide for the determination of Special Economic Zones policy and strategy;
- (b) to provide for the designation, development, promotion, operation and management of Special Economic Zones;
- (c) to provide for the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
- 15 (d) to provide for regulatory measures and tax and business incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and
- 20 (e) to provide for simplified procedures for the development and operation of Special Economic Zones and for setting up and conducting business in Special Economic Zones by providing a single window clearance facility that delivers the required government services to businesses operating in Special Economic Zones.

## 3. **Application of Act**

25 This Act applies to Special Economic Zones established in the Republic in terms of this Act.

**CHAPTER TWO****SPECIAL ECONOMIC ZONES BOARD****4. Establishment of Special Economic Zones Board**

- (1) The Special Economic Zones Board is hereby established as a non-executive Board.
- 5 (2) The Minister appoints the members of the Board which consists of -
- (a) a chairperson designated by the Minister;
  - (b) one representatives of the Department;
  - (c) one representative of South African Revenue Services;
  - (d) one representative of the National Treasury;
  - 10 (e) one representative of the Department responsible for economic development;
  - (f) one representative of Transnet SOC Limited;
  - (g) one representative of Eskom SOC Limited;
  - (h) one representative of the National Planning Commission; and
  - 15 (i) five independent experts appointed on the basis of their knowledge, experience and expertise relevant to Special Economic Zones including expertise and experience in the fields of project finance, financial management, project and risk management, international trade, development economics, law and environmental management.
- 20 (3) For purposes of appointing the independent members of the Board contemplated in subsection (2)(i), the Minister must by notice in the *Gazette* and in two newspapers published and circulating nationally, invite nominations for membership of the Board.
- (4) The notice contemplated in subsection (3) must specify a period of at least 30 days for nominations to be submitted to the Minister.

## SPECIAL ECONOMIC ZONES BILL, 2011

## CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD

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(5) The Minister must-

- 5
- (a) appoint the members of the Board contemplated in subsection (2)(i) from nominations submitted in response to the notice;
  - (b) strive to ensure that the composition of the Board is broadly representative, with due regard to race, gender and regional representation; and
  - (c) publish the names of persons appointed as members of the Board and the dates of commencement of their terms of office in the publications contemplated in subsection (3).

10 (6) Should a member appointed in subsection (2)(b) to (h) be unable to attend a meeting of the Board, an alternate representative of the organisations listed in subsection (2)(b) to (h) may attend a Board meeting, in place of that member.

**5. Terms of office of Board members**

(1) The members of the Board-

- 15
- (a) hold office for a period of 5 years from the date of their appointment by the Minister; and
  - (b) are eligible for reappointment on expiry of their term of office, but may not serve more than 2 consecutive terms of office.

(2) Despite subsection (1), the Minister may by notice in the *Gazette* extend the period of office of all members of the Board for a maximum period of 12 months.

20 **6. Disqualifications from membership of Board**

A person may not be appointed as a member of the Board if that person-

- (a) is an un-rehabilitated insolvent;
- (b) has been declared by a court to be mentally ill;

- 5 (c) has been convicted of an offence in the Republic or elsewhere, other than an offence committed prior to 27 April 1994 associated with a political objective, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both;
- (d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or
- (e) is otherwise disqualified in terms of the Companies Act, 2008 (Act 71 of 2008).

10 **7. Vacation of office and filling of vacancies on the Board**

- (1) A member of the Board must vacate office if the member-
- (a) resigns in writing addressed and delivered to the Minister;
- (b) ceases to qualify for appointment to the Board in terms of section 6;
- (c) is removed from office by the Minister-
- 15 (i) in the public interest and for just cause;
- (ii) after consulting the Board; and
- (iii) after a fair hearing.
- (2) Every vacancy on the Board arising from the death of a member or from circumstances referred to in subsection (1) must, within 3 months of the vacancy occurring, be filled for the unexpired portion of that member's term of office by a
- 20 suitable person appointed by the Minister in terms of this Act.

**8. Functions of Board**

- (1) The Board must advise the Minister on policy and strategy to promote, develop, operate and manage Special Economic Zones.

## SPECIAL ECONOMIC ZONES BILL, 2011

## CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD

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## (2) The Board -

- 5 (a) must consider applications for designation as a Special Economic Zone and recommend to the Minister whether or not to approve the application;
- (b) must consider applications for a Special Economic Zone operator permit and recommend to the Minister whether or not to approve the application;
- (c) must consider applications for the transfer of a Special Economic Zone operator permit and recommend to the Minister whether or not to approve the application;
- 10 (d) must liaise with designated Special Economic Zone operators on the development and implementation of strategic plans;
- (e) must report to the Minister in the prescribed manner on progress relating to the development of Special Economic Zones, both collectively and individually;
- (f) may conduct investigations on any matter arising out of the application of this Act; and
- 15 (g) may perform such other functions consistent with the objectives of the Act as determined by the Minister.

**9. Fiduciary duties of Board members**

## A member of the Board -

- 20 (a) must comply with the code of conduct and disclosure obligations contemplated in section 10;
- (b) may not act in a way that is inconsistent with the functions of the Board in terms of this Act; and
- (c) may not use the position or privileges of, or confidential information obtained as, a member of the Board for personal gain or to improperly benefit another person.
- 25

**10. Code of good conduct and disclosure of interests by Board members**

(1) The Minister must approve a code of conduct for the members of the Board.

(2) The members of the Board-

(a) must make full disclosure to the Board of any conflict of interest including any potential conflict of interest;

(b) may not vote, attend or participate in any proceedings of the Board in relation to any matter before the Board in respect of which they have a conflict or potential conflict of interest; and

(c) must comply with any decision of the Board as to whether they are entitled to participate in any particular proceedings of the Board.

(3) For the purposes of this section a member has a conflict of interest if-

(a) the member, or a family member, partner or business associate of the member is applying for, or has a financial or other interest in an entity that is involved with a Special Economic Zone; or

(b) the member has any other interest that may preclude, or may reasonably be perceived as precluding the member from performing the functions of a member of the Board in a fair, unbiased and proper manner.

(4) Any disclosure in terms of subsection (2)(a) and any decision of the Board in terms of subsection (2)(c) must be recorded in the minutes of the Board.

**11. Remuneration of members of Board and committees**

A member of the Board or a member of any committee of the Board who is not in the full time employment of the State, may be paid such remuneration and allowances as determined by the Minister with the approval of the Minister of Finance.

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**SPECIAL ECONOMIC ZONES BILL, 2011**

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**CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD**  
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**12. Meetings of Board**

- (1) The Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Board.
- (2) The chairperson of the Board-
  - 5 (a) may convene special meetings of the Board; and
  - (b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of Board members.
- (3) The request referred to in subsection (2)(b) must clearly state the reason for the request and only those matters may be discussed at the special meeting.
- 10 (4) The Minister may request that a meeting of the Board be convened at any time, should the need arise.
- (5) If the chairperson is not present at a meeting of the Board, the members present must appoint another member to preside at the meeting.
- (6) At any meeting, a majority of the members of the Board constitutes a quorum.
- 15 (7) A decision of the majority of members present at any quorate meeting constitutes a decision of the Board and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to a deliberative vote.
- (8) Minutes of the proceedings of every meeting of the Board must be-
  - (a) recorded and kept in a manner that cannot be altered or tampered with; and
  - 20 (b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson.
- (9) The Board may-
  - 25 (a) permit members to participate in a particular meeting by telephone or via audio-visual technology and any member who participates in this manner is regarded as being present at the meeting; and

(b) invite any person to attend a meeting for the purpose of advising or informing the Board on any matter.

(10) The Board may by resolution make rules to further regulate its proceedings.

### 13. Resolution of Board without meeting

5 (1) The Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in a manner and in accordance with a procedure determined by the Board.

(2) A resolution in terms of subsection (1)-

(a) has the same status as if it was adopted at a meeting; and

10 (b) must be regarded as having been adopted on a day determined in accordance with the procedure contemplated in subsection (1).

### 14. Committees of Board

15 (1) The Board may establish committees to assist the Board in the performance of its functions and may determine their composition, terms of reference, procedures and duration.

(2) The Board may appoint suitably qualified persons to serve on a committee, including persons in the full-time employment of the State.

(3) A committee must be chaired by a member of the Board.

### 15. Secretariat of Board

20 The Director-General must –

(a) establish a dedicated secretariat in the Department to support and facilitate the functions of the Board; and

(b) provide the secretariat with the personnel and financial resources necessary for the effective performance of its functions.

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**SPECIAL ECONOMIC ZONES BILL, 2011**

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CHAPTER THREE : SPECIAL ECONOMIC ZONES POLICY AND STRATEGY  
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**CHAPTER THREE****SPECIAL ECONOMIC ZONES POLICY AND STRATEGY****16. Special Economic Zones policy**

- 5
- (1) The Minister must determine policy for the designation, development, promotion, operation and management of Special Economic Zones after considering the advice of the Special Economic Zones Board.
  - (2) The Special Economic Zones Board must monitor the implementation of the policy and report to the Minister on an annual basis.
  - (3) The Minister must review the policy every 5 years.

10

**17. Special Economic Zones strategy**

- (1) The Minister must determine a Special Economic Zone strategy after considering the advice of the Special Economic Zones Board.
- (2) The Special Economic Zones strategy must address the strategic designation of Special Economic Zones and industrial clustering that will best support industrialisation and economic growth strategies.  
15
- (3) The Special Economic Zones Board must monitor the implementation of the Special Economic Zones strategy and report to the Minister on an annual basis.
- (4) The Minister must review the Special Economic Zones strategy every 4 years.

**CHAPTER FOUR**

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**FINANCING AND INCENTIVES****18. Special Economic Zones Fund**

- (1) The Minister must, with the approval of the Minister of Finance, establish a Special Economic Zones Fund to support the promotion and development of Special Economic Zones.

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**SPECIAL ECONOMIC ZONES BILL, 2011****CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES****s19  
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- (2) The Minister must, with the approval of the Minister of Finance, make regulations regarding the administration, management and criteria for distribution of the Fund.

**19. Incentives**

- (1) The Minister may determine and implement incentives for Special Economic Zone operators and businesses operating within Special Economic Zones.
- (2) The Minister may, with the approval of the Minister of any relevant government department, design and administer regulatory or other incentives or support programmes necessary to support the development and operations of Special Economic Zones.

**CHAPTER FIVE****DESIGNATION OF SPECIAL ECONOMIC ZONES****20. Designation of Special Economic Zones**

- (1) The Minister may, after considering the recommendation of the Special Economic Zones Board, designate an area suitable for the development of a Special Economic Zone with, or without, conditions by notice in the *Gazette*.
- (2) The Minister may initiate an application to designate an area suitable for development of a Special Economic Zone in pursuance of strategic national interests.
- (3) The Minister may determine different categories of Special Economic Zones.
- (4) The Minister may prescribe-
- (a) criteria and guidelines for the designation, development, operation and management for each category of Special Economic Zones; and
- (b) any conditions that may be imposed on the designation of a Special Economic Zone.

## SPECIAL ECONOMIC ZONES BILL, 2011

## CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

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**21. Applications for designation**

- 5 (1) National government, a provincial government, a municipality, a public entity, a municipal entity or a public private partnership acting alone or jointly, may apply to the Minister in the prescribed form and manner, for a specified area to be designated as a Special Economic Zone.
- (2) In its application, the applicant must demonstrate that the designation of the area as a Special Economic Zone will further government's industrial development objectives and specify the extent to which the designation will:
- 10 (a) facilitate the creation of an industrial complex having strategic economic advantage;
- (b) provide the location for the establishment of strategic investments;
- (c) enable the exploitation and beneficiation of raw materials;
- (d) take advantage of existing industrial and technological capacity, promote integration with local industry and increase value-added production;
- 15 (e) promote regional integration;
- (f) an applicant owns or controls the area to be considered for designation as a Special Economic Zone;
- (g) create employment and other economic and social benefits in the region in which it is located and promote skills transfer;
- 20 (h) be consistent with any applicable national policies and laws; and
- (i) comply with any other prescribed criteria.
- (3) An application for designation must be accompanied by an application for a Special Economic Zone operator permit by the entity intended to operate the proposed Special Economic Zone.
- 25 (4) The Special Economic Zones Board must -

## SPECIAL ECONOMIC ZONES BILL, 2011

## CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

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- (a) consider the application for designation as a Special Economic Zone;
- (b) recommend to the Minister whether to designate an area as a Special Economic Zone.
- (5) The Special Economic Zones Board may request further information and documents from the applicant for purposes of considering the application.

**22. Taking over administration of Special Economic Zones**

- (1) The Minister may, after consultation with the Special Economic Zones Board and the Special Economic Zone concerned, appoint an administrator to take over the administration or perform the functions of a Special Economic Zone if -

- (a) the Special Economic Zone has failed to comply with a condition or conditions issued by the Minister in terms of section 20(1);
- (b) the Special Economic Zone fails or is unable to perform its functions; or
- (c) there is mismanagement of its finances.

- (2) The Minister must publish a notice in the *Gazette* appointing an administrator and in that notice the Minister must determine the powers and duties of the administrator.

- (3) The Minister may act in terms of subsection (1) without consulting the Special Economic Zones Board and the Special Economic Zone concerned if there is financial mismanagement of the Special Economic Zone and the delay caused by the consultation would be detrimental to the functioning of the Special Economic Zone.

**23. Suspension or withdrawal of designation**

- (1) Notwithstanding the provisions of section 22, the Minister may, after considering the recommendation of the Special Economic Zones Board and by notice in the *Gazette*, suspend or withdraw any designation of an area as a Special Economic Zone which does not further government's industrial development objectives, on such terms and conditions as the Minister may determine.

## SPECIAL ECONOMIC ZONES BILL, 2011

## CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

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- (2) Nothing contained in this Act prevents the Minister from re-designating an area whose designation as a Special Economic Zone has been withdrawn.
- (3) The lawful activities of any business located within a Special Economic Zone is not affected by the suspension or withdrawal of the designation of that Special Economic Zone in terms of this section, if the business -
- (a) has entered into a written agreement with the Special Economic Zone operator of the Special Economic Zone; or
- (b) is situated in the custom controlled area of the Special Economic Zone and has been authorised by any registration or licence issued in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964).

**24. Governance and management of Special Economic Zone**

- (1) Upon designation as a Special Economic Zone, the applicant must-
- (a) in the case of a national or provincial government or a public entity establish the Special Economic Zone as a national government business enterprise or a provincial government business enterprise as contemplated in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999);
- (b) in the case of a municipality or municipal entity establish the Special Economic Zone as a municipal entity as contemplated in section 1 of the Municipal Systems Act, 2000 (Act 32 of 2000); or
- (c) in the case of a public private partnership, establish the Special Economic Zone as a company.
- (2) A Special Economic Zone must appoint a Board responsible for the efficient governance and management of the business and affairs of the Special Economic Zone.
- (3) The Board of a Special Economic Zone must manage the Special Economic Zone in accordance with-

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**SPECIAL ECONOMIC ZONES BILL, 2011**

## CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

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- (a) the Public Finance Management Act, 1999 (Act 1 of 1999) if the Special Economic Zone is a national government or provincial government business enterprise;
- 5 (b) the Municipal Systems Act, 2000 (Act 32 of 2000) and the Municipal Finance Management Act, 2003 (Act 56 of 2003) if the Special Economic Zone is a municipal entity; or
- (c) if the Special Economic Zone is a public private partnership-
- (i) at national or provincial government level, in accordance with regulation 16 of the National Treasury Regulations under the Public Finance Management Act, 1999 (Act 1 of 1999); or
- 10 (ii) at municipal level, in accordance with the provisions of section 120 of the Municipal Finance Management Act, 2003 (Act 56 of 2003).

**25. Strategic plan of Special Economic Zone**

- 15 (1) Each Special Economic Zone must develop and implement a strategic plan within the framework of the Special Economic Zones strategy to achieve the mandate, perform the functions and comply with the conditions for that Special Economic Zone.
- (2) The strategic plan must be reviewed on an annual basis and submitted to the Minister at least 3 months before the end of each financial year or at a later date determined by the Minister.
- 20 (3) The designated Special Economic Zone must provide the Minister with such information and documentation as the Minister may reasonably require in connection with the affairs the Special Economic Zone.

**26. Business and financial plan of Special Economic Zone**

- 25 A designated Special Economic Zone must, at least 3 months before the end of each financial year or at a later date determined by the Minister, submit to the Minister for approval a business and financial plan -

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**SPECIAL ECONOMIC ZONES BILL, 2011**

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**CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES**

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- (a) containing a projection of the revenue and expenditure of the Special Economic Zone in respect of the ensuing financial year; and
- (b) covering the affairs of the Special Economic Zone for each of the 3 immediately following financial years.

**5 27. Reporting and financial statements of Special Economic Zone****(1) A designated Special Economic Zone must-**

- (a) keep full and proper records of its financial year;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice;
- 10 (c) submit those financial statements within 3 months after the end of the financial year to the Auditor-General for auditing;
- (d) submit within 5 months of the end of the financial year to the Minister-
  - (i) an annual report on the activities of the Special Economic Zone during that financial year;
  - 15 (ii) audited financial statements of the Special Economic Zone for that financial year; and
  - (iii) the report of the Auditor-General on those statements.

**(2) The annual report and financial statements referred to in subsection (1) must-**

- 20 (a) fairly present the state of affairs of the Special Economic Zone and its performance against predetermined objectives for the financial year concerned;
- (b) include particulars of-

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- (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
  - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
  - (iii) any losses recovered or written off;
  - (iv) any other matter that may be prescribed.

**CHAPTER SIX****SPECIAL ECONOMIC ZONE OPERATOR PERMIT**

10 **28. Special Economic Zone operator permit**

A Special Economic Zone may only be developed and operated by a person who holds a Special Economic Zone operator permit.

**29. Application for Special Economic Zone operator permit**

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- (1) Any person who wishes to develop or operate a Special Economic Zone must apply to the Minister for a Special Economic Zone operator permit in the form and manner prescribed.
  - (2) The Minister may, after considering the recommendation of the Special Economic Zones Board, issue a person with a Special Economic Zone operator permit with or without conditions.
  - 20 (3) Upon receipt of the application for a Special Economic Zone operator permit, the Special Economic Zones Board may -
    - (a) require an applicant to supply additional information necessary to consider the application;
    - 25 (b) request an applicant to appear before it for the purposes of making oral enquiry at the applicant's expense; and

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(c) require any interested party, including an organ of state, affected by such application to comment on the application in writing.

(4) The Minister may make regulations regarding —

(a) the procedure and time periods applicable to applications for Special Economic Zone operator permits; and

(b) the information that must be provided in any application for a Special Economic Zone operator permit.

**30. Requirements for applications for Special Economic Zone operator permits**

(1) An applicant for a Special Economic Zone operator permit must-

(a) be a South African registered company, registered specifically for the development and operation of a Special Economic Zone;

(b) have sufficient capital and expertise for the development, management, administration and operations of a Special Economic Zone;

(c) submit to the Minister a comprehensive feasibility study;

(d) indicate its ownership structure through the submission of a shareholders' agreement, indicating shareholding, percentages of shareholding, requirements for transfer of shares and requirements for the distribution of assets upon liquidation or deregistration;

(e) supply all required information in the prescribed form and manner; and

(f) comply with such other criteria and required procedures as determined by the Minister from time to time.

(2) The Minister may make regulations regarding —

(a) further criteria for applications for a Special Economic Zone operator permits; and

- 5
- (b) any other matter to facilitate the issuing of Special Economic Zone operator permits;
  - (c) any conditions that may be imposed on a Special Economic Zone operator permit including conditions relating to businesses that may operate in the Special Economic Zone; and
  - (d) any measure to promote the effective monitoring of the conditions contained in a Special Economic Zone operator permit.

### 31. Functions of Special Economic Zone operator

The Special Economic Zone operator must-

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- (a) develop and implement a strategic plan for the Special Economic Zone within the framework of the Special Economic Zones strategy;
  - (b) make improvements to the Special Economic Zone site and its facilities according to the plans approved by the Minister and other relevant authorities;
  - (c) provide or facilitate provision of infrastructure and other services required for the Special Economic Zone to achieve its strategic and operational goals;
  - (d) provide adequate enclosures to segregate the zone area from any applicable customs territory for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving the zone;
  - (e) provide adequate security on the site, offices and all facilities of the zone;
  - (f) adopt rules and regulations for businesses within the zone in order to promote its safe and efficient operation;
  - (g) maintain adequate and proper accounts and other records in relation to its business and report in the prescribed manner or as required on zone activities, performance and development to the Minister, South African Revenue
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- 20
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## CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT

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Services, the South African Reserve Bank, Statistics South Africa or other relevant authorities;

(h) promote the relevant Special Economic Zone as a foreign and domestic direct investment destination;

5 (i) undertake any other activity within the scope of this Act to promote the effective functioning of the Special Economic Zone; and

(j) facilitate a single window clearance facility that delivers the required government services to businesses operating in the Special Economic Zone in order to provide simplified procedures for the development, and operation of the Special Economic Zone and for setting up and conducting business in the Special Economic Zone.

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**32. Special Economic Zone operator permit**

A Special Economic Zone operator permit must -

(a) stipulate the duties, terms and conditions for the development and operation of the Special Economic Zone by the Special Economic Zone operator, including-

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(i) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within the Special Economic Zone;

(ii) the security measures that the Special Economic Zone operator must install and maintain in or around the customs controlled area;

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(iii) the facilities that the Special Economic Zone operator must provide to enable the Special Economic Zones Board to exercise its functions within the Special Economic Zone;

(iv) the duration of the Special Economic Zone operator permit;

(v) the date by which the Special Economic Zone operator must exercise any option to buy or lease land in the Special Economic Zone;

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(vi) the construction timetable and milestone schedule; and

(b) stipulate any special requirements or conditions that the Minister may impose upon the Special Economic Zone operator.

**33. Suspension or withdrawal of Special Economic Zone operator permit**

5 (1) The Minister may withdraw or suspend a Special Economic Zone operator permit if the Special Economic Zone operator —

(a) fails to comply with the duties, terms and conditions of the Special Economic Zone operator permit;

(b) contravenes the provisions of this Act or any law of the Republic;

10 (c) contravenes or fails to comply with the customs and excise rules and procedures that are applicable it and the Commissioner of the South African Revenue Services notifies the Minister accordingly; or

(d) requests the Minister to withdraw the Special Economic Zone operator permit.

15 (2) Before suspending or withdrawing a Special Economic Zone operator permit, the Minister must -

(a) inform the affected Special Economic Zone operator of the intention to withdraw or suspend a Special Economic Zone operator permit and the reasons for withdrawing or suspending the Special Economic Zone operator permit; and

20 (b) give the affected Special Economic Zone operator 30 days to make representations to the Minister.

(3) The Minister may make regulations regarding —

(a) the procedure to suspend or withdraw a Special Economic Zone operator permit; and

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- (b) any other matter that would ensure the effective suspension or withdrawal of the Special Economic Zone operator permit.

**34. Transfer of Special Economic Zone operator permit**

- 5 (1) A Special Economic Zone operator may transfer its interest in a Special Economic Zone to another company, provided that such other company —
- (a) applies to the Minister for a transfer in terms of the provisions of this section; and
- (b) satisfies the requirements to be issued with a Special Economic Zone operator permit in terms of this Chapter.
- 10 (2) The transferee must in its application clearly stipulate any changes to the original development, business and operating plan of the Special Economic Zone.
- (3) The Minister may, after recommendation from the Special Economic Zone Board, agree to the transfer the interest in a Special Economic Zone from one Special Economic Zone operator to another.
- 15 (4) Upon transfer of the interest in the Special Economic Zone to another Special Economic Zone operator, the new Special Economic Zone operator must comply with all the obligations placed on a Special Economic Zone operator in terms of this Act, and it will have all the rights and obligations conferred on a Special Economic Zone operator in terms of this Act and the Special Economic Zone operator permit.
- 20 (5) The Minister may make regulations to prescribe—
- (a) the procedure to transfer an Special Economic Zone operator permit; and
- (b) any other matter that would ensure the effective transfer of an Special Economic operator permit.

**CHAPTER SEVEN****GENERAL PROVISIONS****35. Transitional provisions and savings**

- 5 (1) In this section “IDZ Regulations” means the Industrial Development Zone Programme Regulations published under Government Notice R1224 in Government Gazette 21803 of 1 December 2000 as amended.
- (2) Any designation of an industrial development zone under the IDZ Regulations which is in force at the commencement of this Act, remains in force and must be regarded as a designation of a special economic zone under this Act.
- 10 (3) Any IDZ operator permit issued under the IDZ Regulations which is in force at the commencement of this Act, remains in force and must be regarded as a special economic zone operator permit issued under this Act.
- 15 (4) Any application for the designation of an industrial development zone or for the issuing of a special economic zone operator permit made under the IDZ Regulations which is not finalised on commencement of this Act, must be continued and dealt with as an application for the designation of a special economic zone or an application for a special economic zone operator permit as the case may be under this Act.

**36. Guidelines**

- 20 (1) The Minister may, after consultation with the Special Economic Zones Board, issue guidelines regarding any matter in respect of which the Minister deems it necessary or expedient in order to achieve the objects of this Act.
- (2) The guidelines-
- (a) may not be inconsistent with the provisions of this Act;
- 25 (b) must be published in the *Gazette*; and

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(c) are not binding on the Minister.

**37. Regulations**

- 5 (1) The Minister may, after consultation with the Special Economic Zones Board, make regulations, not inconsistent with the provisions of this Act, regarding any matter which in terms of this Act is required or permitted to be prescribed and, generally, regarding any matter in respect of which the Minister deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) Before making regulations under this Act, the Minister must-
- 10 (a) publish the draft regulations in the *Gazette*;
- (b) grant the public a period of at least 30 days to make written representations to the Minister on the proposed regulations; and
- (c) consider any such written representations received.

**38. Short title and commencement**

15 This Act is called the Special Economic Zones Act, 2011 and comes into operation on a date determined by the President by proclamation in the *Gazette*.







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