

DEPARTMENT OF TRADE AND INDUSTRY

NO. R. 664

14 JULY 2017

**REGULATIONS MADE IN TERMS OF SECTION 25 (7) OF THE SPECIAL
ECONOMIC ZONES ACT, 2014 10 (ACT NO. 16 OF 2014)**

By virtue of the powers vested in me in terms of the Special Economic Zones Act No. 16 of 2014 ("SEZ Act"), I, Dr Rob Davies, Minister of Trade and Industry, hereby give notice that the draft Special Economic Zones Governance and Management Regulations, made in terms of section 25 (7) of the SEZ Act, is now available for public comment.

Members of the public must submit their comments or objections to the Regulations within 30 days from the date of publication of this notice.

Comments may be sent to:

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Dr Rob Davies, MP
Minister of Trade and Industry

13 June 2017

GOVERNMENT GAZETTE, DD/MM/YYYY

No. xx

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DRAFT FOR DISCUSSION PURPOSES ONLY

As at 11 May 2017

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REGULATIONS IN TERMS OF THE SPECIAL ECONOMIC ZONES ACT, 2014

Interpretation

1. Interpretation

(1) In these Regulations, unless the context indicates otherwise-

(a) “**the Act**” means the Special Economic Zones Act, 16 of 2014.

(b) “**Board**” means a Special Economic Zone Board appointed by a licensee in terms of section 25(5) of the Act.

(2) A word or expression that is defined in the Act bears the same meaning in these Regulations as in the Act, unless the context indicates otherwise.

2. Governance and management of a Special Economic Zone

(1) A Special Economic Zone Board appointed in terms of section 25(5) of the Special Economic Zones Act, 2014 must comply with the governance principles set out in herein.

3. Membership of the Special Economic Zone Board

(1) The Licensee must appoint not less than three and not more than (ten) 10 persons with diverse skills, knowledge, experience and expertise relevant to Special Economic Zones, as members of the Board.

(2) One of the members of the Board of the Special Economic Zones referred to in sub-regulation (1) must be a representative of the Department.

(3) The composition of the Board must be broadly representative, with due regard to race, gender and regional representation, experience and expertise.

(4) The Licensee must appoint a chairperson of the Board from one of the members of the Board.

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4. Terms of office of Board members

(1) A member of the Board:

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- (a) holds office for a period of five (5) years from the date of appointment as a member; and
 - (b) on expiry of term of office, is eligible for reappointment for only one additional term of office.

(2) No more than fifty person percent (50%) of the members of the Board may be reappointed for an additional term in terms of sub-regulation (1)(b).

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5. Disqualification from membership of Board

(1) A person may not be appointed as a member of the Board if that person—

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- (a) is an un-rehabilitated insolvent;
 - (b) has been declared by a High Court with jurisdiction to be mentally ill;
 - (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 a fine and imprisonment;
 - (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 section 69 of the Companies Act, No 71 of 2008.
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6. Vacation of office and filling of vacancies on Board

(1) A member of the Board vacates office if the member—

(a) resigns in writing;

(b) ceases to qualify for appointment to the Board in terms of Regulation 5;

5 (c) is removed from office by the Licensee —

(i) for just cause;

(ii) after consulting the Board; and

(iii) after a fair hearing.

10 (d) A vacancy arising from the death of a member or from circumstances referred to in sub-regulation 1 above must, within three months of the vacancy occurring, be filled for the unexpired portion of that member's term of office by a suitable person appointed by the Licensee.

7. Board role and responsibilities

(1) The Board must:

15 (a) manage the business and affairs of the company and has the authority to exercise all the powers and perform any of the functions of the Special Economic Zone.

(b) develop and implement and review the a strategic plan for the Special Economic Zone as contemplated in section 26 of the Act,

20 (c) develop and implement and review a business and financial plan for the Special Economic Zone as contemplated in section 27 of the Act;

(d) submit the strategic plan to Minister as contemplated in section 26 of the Act

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(e) submit such other information and documentation that Minister may reasonably require in connection to the affairs of that Special Economic Zone entity;

5 (f) provide effective corporate governance that includes managing the relationships between the management of the Special Economic Zone, and other relevant stakeholders;

8. Fiduciary duties of Board members

(1) A member of the Board—

10 (a) must act honestly, in good faith and in best interest of the Special Economic Zone;

(b) has a duty of care, and diligence in fulfilling his/her functions and exercising the his/her powers as a member of the Board;

(c) must not act in a way that is inconsistent with the functions of the Board in terms of this Act;

15 (d) must not use the position or privilege or confidential information obtained as a member of the Board for personal gain or to improperly benefit another person;

20 (2) Confidential information received by a member of the Board in the course of performing his or her functions or exercising his or her duties remains the property of the Special Economic Zone and no member of the Board shall be entitled to disclose confidential information, except where required to do so in terms of a law, without the prior written consent of the Board.

9. Disclosure of interest by Board member

(1) A member 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 or not they are entitled to participate in any particular proceedings of the Board.
- (2) For the purposes of this section, a member has a conflict of interest if the member, or a family member, partner or business associate of the member—
- (a) is applying for: a license to develop, operate and manage the Special Economic Zone, a Special Economic Zone operator permit, the transfer of an operator permit or location of a new investor in the Special Economic Zone; or
- (b) has a financial or other interest in an entity that is involved with the Special Economic Zone; or
- (c) 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.
- (3) Any disclosure in terms of sub-regulation 9 and any decision of the Board in terms of sub-regulation (1)(c) must be recorded in the minutes of the Board.
- (4) For the purposes of this section, “**family member**”, in relation to a member of the Board, means his or her parent, sibling, child, including an adopted child, or spouse, and includes a person living with that member as if they were married to each other, and any person separated from the member by no more than two degrees of natural or adopted consanguinity or affinity.

10. 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.

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- (2) The chairperson of the Board—
- (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.
- 5 (3) The request referred to in sub-regulation (2)(b) must clearly state the reason for the request and only a stated matter may be discussed at the special meeting in question.
- (4) The Licensee may request that a meeting of the Board be convened at any time, should the need arise.
- 10 (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.
- (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.
- 15 (8) Minutes of the proceedings of every meeting of the Board must be—
- (a) recorded and must be kept in a manner that cannot be altered or tampered with; and
 - (b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson.
- 20 (9) The Board may—
- (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 meetings.

11. 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.

12. Committees of Board

10 (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.

15 (3) Any committee established in terms of subsection (1) must be chaired by a member of the Board.

(4) The Board must establish:

(a) an Audit Committee; and

(b) a Remuneration Committee.

13. Expenditure, remuneration and allowances paid to members of Board and committees

20 (1) 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 Board, on recommendation of the Remuneration Committee.

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14. Dissolution of the Board

- (1) The Licensee may, after consultation with the Board, dissolve the Board on any reasonable ground.
- (2) Within 30 days of the dissolution of the Board, the Licensee must appoint an interim Board consisting of at least four persons contemplated in regulation 3 (1) and (2).
- (3) The interim Board assumes, and must perform, the functions of the Board in terms of the Act and these Regulations.
- (4) The Licensee must, within six months of the appointment of the interim Board, appoint the members of the newly constituted Board.

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