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THE PRESIDENCY

No. 388

19 May 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 16 of 2014: Special Economic Zones Act, 2014



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President)
(Assented to 16 May 2014)

ACT

To provide for the designation, promotion, development, operation and management of Special Economic Zones; to provide for the establishment, appointment of members and functioning of the Special Economic Zones Advisory Board; to provide for the establishment of the Special Economic Zones Fund; to regulate the application, issuing, suspension, withdrawal and transfer of Special Economic Zones operator permits; to provide for functions of the Special Economic Zones operator; to provide for transitional arrangements; and to provide for matters connected therewith.

PREAMBLE

WHEREAS South African policies for economic growth and development recognise that responding to challenging global and domestic economic conditions demand a focus on new sources of competitiveness that lie in innovation and productivity, with an entrenched base in skills, infrastructure and efficient, responsive state action;

AND RECOGNISING that measures must be implemented to enhance domestic and regional demand, increase foreign direct investment and extend export promotion strategically to rapidly growing economies, while at the same time strengthening the South African industrial base and promoting a labour-absorbing industrialisation path;

AND REALISING the impact of Special Economic Zones in driving industrial and economic growth, the Government has identified Special Economic Zones as a mechanism that will contribute towards the realisation of these economic growth and development goals and is committed to support and facilitate the designation, regulation and development of Special Economic Zones in South Africa;

AND SINCE Special Economic Zones will be designated areas to promote targeted economic activities, supported through special arrangements and support systems including incentives, business support services, streamlined approval processes and infrastructure,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS, OBJECTS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—	20
“ Advisory Board ” means the Special Economic Zones Advisory Board established by section 7;	
“ company ” means a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);	
“ Department ” means the Department of Trade and Industry;	25
“ Director-General ” means the Director-General of the Department or his or her authorised representative;	
“ industrial development zone ” means a purpose built industrial estate that leverages domestic and foreign fixed direct investment in value-added and export-oriented manufacturing industries and services;	30
“ licensee ” means the holder of a Special Economic Zone licence issued in terms of section 23(6);	
“ Minister ” means the Minister responsible for trade and industry;	
“ municipal entity ” means a municipal entity as defined in section 1 of the Municipal Systems Act;	35
“ Municipal Finance Management Act ” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);	
“ Municipal Systems Act ” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);	
“ operator ” means the holder of a Special Economic Zone operator permit issued in terms of section 32(4);	40
“ operator permit ” means an operator permit issued in terms of section 32(4);	
“ prescribed ” means prescribed by regulation made in terms of section 41;	
“ public entity ” means a public entity as defined in section 1 of the Public Finance Management Act and listed in Schedules 2 and 3 to that Act;	45
“ Public Finance Management Act ” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);	
“ public-private partnership ” means a public-private partnership contemplated in regulation 16 of the Treasury Regulations issued in terms of the Public Finance Management Act or section 120 of the Municipal Finance Management Act and any regulations issued in terms of the last-mentioned Act;	50

- “**Special Economic Zone**” means an area designated as the Special Economic Zone in terms of section 23(6);
“**Special Economic Zone Board**” means the board of directors of an individual Special Economic Zone entity appointed in terms of section 25(5);
“**this Act**” includes any regulation made in terms of section 41; 5
“**value adding**” or “**value added**” includes the enhancement of, packaging or re-packaging of and beneficiation added to a product before the product is offered to the end-user.

Objects of Act

2. The objects of this Act are to provide for— 10
(a) the determination of Special Economic Zones policy and strategy;
(b) the establishment of the Advisory Board;
(c) the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
(d) the designation, promotion, development, operation and management of 15
Special Economic Zones;
(e) regulatory measures and incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and
(f) the establishment of a single point of contact or one stop shop that delivers the required government services to businesses operating in Special Economic 20
Zones in order to lodge applications to various government authorities and agencies and to receive information on regulatory requirements from such authorities and agencies.

Application of Act

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

CHAPTER 2

PURPOSE, POLICY AND STRATEGY OF SPECIAL ECONOMIC ZONES

Purpose of Special Economic Zones

4. (1) A Special Economic Zone is an economic development tool to promote national 30
economic growth and export by using support measures in order to attract targeted foreign and domestic investments and technology.
(2) The purpose of establishing Special Economic Zones includes—
(a) facilitating the creation of an industrial complex, having strategic national economic advantage for targeted investments and industries in the manufac- 35
turing sector and tradable services;
(b) developing infrastructure required to support the development of targeted industrial activities;
(c) attracting foreign and domestic direct investment;
(d) providing the location for the establishment of targeted investments; 40
(e) enabling the beneficiation of mineral and natural resources;
(f) taking advantage of existing industrial and technological capacity, promoting integration with local industry and increasing value-added production;
(g) promoting regional development;
(h) creating decent work and other economic and social benefits in the region in 45
which it is located, including the broadening of economic participation by

promoting small, micro and medium enterprises and co-operatives, and promoting skills and technology transfer; and

- (i) the generation of new and innovative economic activities.
- (3) For the purpose of this section—
- (a) “**regional development**” means linkages to, or integration with, the host province’s growth strategies, local economic development of the host municipality and any other relevant cross-provincial economic initiatives; and
 - (b) “**targeted investments**” includes investments in support of government’s economic and industrial development policies.

Special Economic Zones policy 10

5. The Minister may determine policy for the designation, promotion, development, operation and management of Special Economic Zones after consultation with the Advisory Board and may, when necessary, review such policy.

Special Economic Zones strategy

6. (1) The Minister must determine a Special Economic Zones strategy after consultation with the Advisory Board and may, when necessary, review such strategy. 15
- (2) The strategy contemplated in subsection (1) must address the designation of Special Economic Zones that will best support industrialisation and economic growth strategies.

CHAPTER 3 20

SPECIAL ECONOMIC ZONES ADVISORY BOARD

Establishment of Special Economic Zones Advisory Board

7. (1) The Special Economic Zones Advisory Board is hereby established.
- (2) The Minister must appoint not more than 15 persons as members of the Advisory Board, consisting of— 25
- (a) one representative of the Department;
 - (b) one representative of the South African Revenue Services;
 - (c) one representative of the National Treasury;
 - (d) one representative of the department responsible for public enterprises;
 - (e) one representative of Transnet SOC Limited; 30
 - (f) one representative of Eskom SOC Limited;
 - (g) one representative of the Industrial Development Corporation;
 - (h) three persons, each representing organised business, labour and civil society appointed on the basis of their knowledge and experience relevant to, and involvement in, Special Economic Zones; and 35
 - (i) five independent persons appointed on the basis of their knowledge, experience and expertise relevant to Special Economic Zones.
- (3) For the purposes of appointing the persons contemplated in subsection (2)(h) and (i), the Minister must, by notice in the *Gazette* and in two newspapers published and circulating nationally, invite nominations for membership of the Advisory Board. 40
- (4) The notice contemplated in subsection (3) must specify a period of at least 30 days for nominations to be submitted to the Minister.
- (5) The Minister must—
- (a) appoint the persons contemplated in subsection (2)(h) and (i) as members of the Advisory Board from nominations submitted in response to the notice; 45
 - (b) strive to ensure that the composition of the Advisory Board is broadly representative, with due regard to race, gender and regional representation, experience and expertise; and
 - (c) publish the names of persons appointed as members of the Advisory Board and the dates of commencement of their terms of office in the newspapers 50 contemplated in subsection (3).

(6) No person below the position of Director-General or, where appropriate, Deputy Director-General or an equivalent position may be appointed as a member of the Advisory Board in terms of subsection (2)(a) to (g).

(7) (a) The Minister must appoint an alternate member for each of the members contemplated in subsection (2)(a) to (h), to attend a meeting of the Advisory Board in the event that a member concerned is unable to attend the meeting. 5

(b) In case of a member contemplated in subsection (2)(a) to (g), the alternate member may not be below the position of Deputy Director-General or an equivalent position.

(8) The Minister must appoint a chairperson of the Advisory Board from one of the members contemplated in subsection (2)(i). 10

Terms of office of Advisory Board members

8. (1) Members of the Advisory Board contemplated in section 7(2)(h) and (i)—

(a) hold office for a period of five years from the date of their appointment by the Minister; and

(b) may be eligible for reappointment on expiry of their term of office for one additional term of office only. 15

(2) Members of the Advisory Board contemplated in section 7(2)(a) to (g) are appointed to office by virtue of their offices.

(3) Despite subsection (1), the Minister may by notice in the *Gazette* extend the period of office of such members of the Advisory Board for a maximum period of 12 months. 20

Disqualification from membership of Advisory Board

9. A person may not be a member of the Advisory Board if that person—

(a) is an unrehabilitated 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; 25

(d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or 30

(e) is otherwise disqualified in terms of section 69 of the Companies Act, 2008 (Act No.71 of 2008).

Vacation of office and filling of vacancies on Advisory Board

10. (1) A member of the Advisory Board vacates office if the member— 35

(a) resigns in writing to the Minister;

(b) ceases to qualify for membership of the Advisory Board in terms of section 9;

(c) is removed from office by the Minister—

(i) in the public interest and for just cause;

(ii) after consulting the Advisory Board; and 40

(iii) after a fair hearing.

(2) A vacancy arising from the death of a member or from circumstances referred to in subsection (1) 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 Minister in terms of a procedure contemplated in section 7, with the changes required by the context. 45

Functions of Advisory Board

- 11.** (1) The Advisory Board must—
- (a) advise the Minister on policy and strategy in order to promote, develop, operate and manage Special Economic Zones;
 - (b) monitor the implementation of the Special Economic Zones policy and strategy and report to the Minister on an annual basis on the implementation of such policy and strategy; 5
 - (c) consider an application for designation as a Special Economic Zone and recommend to the Minister whether or not to approve the application and grant a Special Economic Zone licence to the applicant; 10
 - (d) consider an application for an operator permit and recommend to the Minister whether or not to approve the application;
 - (e) consider an application for the transfer of an operator permit and recommend to the Minister whether or not to approve such application with or without any condition; 15
 - (f) liaise with a Special Economic Zone Board and an operator on the implementation of the Special Economic Zone strategic plans;
 - (g) report in the prescribed manner to the Minister on progress relating to the development of Special Economic Zones;
 - (h) advise the Minister on minimum norms and standards required for the provision of a one stop shop in a Special Economic Zone; 20
 - (i) advise the Minister on initiatives to market Special Economic Zones; and
 - (j) assess and review the success of Special Economic Zones in achieving the purpose referred to in section 4.
- (2) The Advisory Board may— 25
- (a) conduct investigations on any matter arising out of the application of this Act; and
 - (b) perform such other functions consistent with the objectives of the Act as determined by the Minister.

Fiduciary duties of Advisory Board members 30

- 12.** A member of the Advisory Board—
- (a) must comply with the code of conduct and disclosure obligations contemplated in section 13;
 - (b) may not act in a way that is inconsistent with the functions of the Advisory Board in terms of this Act; and 35
 - (c) may not use the position or privileges of, or confidential information obtained as, a member of the Advisory Board for personal gain or to improperly benefit another person.

Code of good conduct and disclosure of interests by Advisory Board members

- 13.** (1) The Minister must approve a code of conduct for the members of the Advisory Board. 40
- (2) Members of the Advisory Board—
- (a) must make full disclosure to the Advisory Board of any conflict of interest, including any potential conflict of interest;
 - (b) may not vote, attend or participate in any proceedings of the Advisory Board in relation to any matter before the Advisory Board in respect of which they have a conflict or potential conflict of interest; and 45
 - (c) must comply with any decision of the Advisory Board as to whether or not they are entitled to participate in any particular proceedings of the Advisory Board. 50
- (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—
 - (i) is applying for a license to develop, operate and manage a Special Economic Zone, a Special Economic Zone operator permit, or the transfer of an operator permit; or 55

- (ii) 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 Advisory Board in a fair, unbiased and proper manner. 5
- (4) Any disclosure in terms of subsection (2)(a) and any decision of the Advisory Board in terms of subsection (2)(c) must be recorded in the minutes of the Advisory Board.
- (5) For the purposes of this section, “**family member**”, in relation to a member of the Advisory 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 Advisory Board

14. (1) The Advisory Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Advisory Board. 15
- (2) The chairperson of the Advisory Board—
- (a) may convene special meetings of the Advisory Board; and
 - (b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of Advisory Board members. 20
- (3) The request referred to in subsection (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 Minister may request that a meeting of the Advisory Board be convened at any time, should the need arise.
- (5) If the chairperson is not present at a meeting of the Advisory Board, the members present must appoint another member to preside at the meeting. 25
- (6) At any meeting, a majority of the members of the Advisory Board constitutes a quorum.
- (7) A decision of the majority of members present at any quorate meeting constitutes a decision of the Advisory 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. 30
- (8) Minutes of the proceedings of every meeting of the Advisory 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 Advisory Board for consideration and, if adopted, signed by the chairperson. 35
- (9) The Advisory 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 40
 - (b) invite any person to attend a meeting for the purpose of advising or informing the Advisory Board on any matter.
- (10) The Advisory Board may, with the approval of the Minister, by resolution, make rules to further regulate its meetings.

Resolution of Advisory Board without meeting 45

15. (1) The Advisory 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 Advisory Board.
- (2) Section 14(8) applies with the changes required by the context in respect of subsection (1). 50

Committees of Advisory Board

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

(2) The Advisory Board may appoint suitably qualified persons to serve on a committee, including persons in the full-time employment of the State. 5

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

Secretariat of Advisory Board

17. The Director-General must— 10

(a) establish a dedicated secretariat in the Department to support and assist the Advisory Board in the performance of its functions in terms of this Act; and

(b) provide the secretariat with the human resources, financial and other resources necessary to enable the secretariat to effectively render the support and assistance contemplated in paragraph (a). 15

Expenditure, remuneration and allowances paid to members of Advisory Board and committees

18. (1) Expenditure incidental to the performance of the functions of the Advisory Board must be defrayed from money voted by Parliament as part of the appropriation of the Department. 20

(2) A member of the Advisory Board or a member of any committee of the Advisory 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 concurrence of the Minister of Finance.

Dissolution of Advisory Board 25

19. (1) The Minister may, after consultation with the Advisory Board, dissolve the Advisory Board on any reasonable ground.

(2) Within 30 days of the dissolution of the Advisory Board, the Minister must appoint an interim Advisory Board consisting of at least four persons contemplated in section 7(2)(a) to (g). 30

(3) The interim Advisory Board assumes, and must perform, the functions of the Advisory Board in terms of this Act.

(4) The Minister must, within six months of the appointment of the interim Advisory Board, appoint the members of the newly constituted Advisory Board.

CHAPTER 4 35**FINANCING AND SUPPORT MEASURES****Special Economic Zones Fund**

20. (1) The Minister may, with the concurrence of the Minister of Finance, from money voted by Parliament as part of the appropriation of the Department, establish a Special Economic Zones Fund to support the promotion and development of Special Economic Zones. 40

(2) The Minister may, with the concurrence of the Minister of Finance, make regulations regarding the additional source of money for the fund, and the administration, management and criteria for distribution of money from the Fund.

Support measures 45

21. (1) The Minister may determine and implement support measures, including incentive schemes, for operators and businesses operating within Special Economic Zones.

(2) The Minister may, with the concurrence of the Minister of any relevant government department, design and administer support measures or other support programmes necessary, including incentive schemes, to support the development and operation of different categories of Special Economic Zones. 50

(3) Nothing in this section precludes a municipality, provincial government or public entity from designing their own support measures and incentive schemes to support the development and operation of Special Economic Zones.

Implementation protocol

- 22.** (1) The Minister may, in terms of section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), enter into an implementation protocol with any organ of state that the Minister may deem appropriate, including—
- (a) the Minister responsible for environmental affairs;
 - (b) the Minister responsible for home affairs;
 - (c) the Minister responsible for labour; or
 - (d) the Minister responsible for finance.
- (2) The implementation protocol may deal with—
- (a) implementation and operation of a one stop shop; or
 - (b) any other matter requiring the co-ordination of the functions of organs of state that may be appropriate or required for the proper regulation and development of Special Economic Zones.
- (3) The Minister must, in the annual report of the Department referred to in section 40(1)(d) of the Public Finance Management Act, include a report on the conclusion and implementation of the protocols contemplated in subsection (1), if any, and the implementation of one stop shops in Special Economic Zones.

CHAPTER 5

DESIGNATION OF SPECIAL ECONOMIC ZONES

Application for designation

- 23.** (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 form and manner prescribed 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 national government's industrial development objectives and must specify the extent to which the designation seeks to—
- (a) achieve the provisions of section 4(2);
 - (b) be consistent with any applicable national policies and laws; and
 - (c) comply with any other prescribed criteria.
- (3) The applicant must—
- (a) have sufficient access to financial resources and expertise for the development, operation, management and administration of a Special Economic Zone;
 - (b) submit to the Minister a comprehensive feasibility study;
 - (c) indicate the extent to which it owns or controls the area to be considered for designation as a Special Economic Zone; and
 - (d) in the case of a public-private partnership, 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.
- (4) The Advisory Board must—
- (a) consider the application; and
 - (b) recommend to the Minister whether or not the area is suited to be designated as a Special Economic Zone.
- (5) The Advisory Board may request further information and documents from the applicant for the purposes of considering the application.
- (6) The Minister, after considering the recommendation of the Advisory Board and after consultation with the Minister of Finance—
- (a) may designate an area as a Special Economic Zone by notice in the *Gazette* with or without conditions; and

- (b) must issue the applicant with a Special Economic Zone licence if the area is so designated.
- (7) Before designating an area as a Special Economic Zone, the Minister must—
 - (a) publish his or her intention to do so in the *Gazette* for public comments; and
 - (b) give the public 30 days to make written comments on his or her intention to designate. 5

Designation of Special Economic Zones

24. (1) Despite section 23, the Minister may, on his or her own accord, designate an area as a Special Economic Zone in pursuance of strategic national interests.
- (2) The Minister may prescribe different categories of Special Economic Zones, which may include— 10
- (a) a free port;
 - (b) a free trade zone;
 - (c) an industrial development zone; and
 - (d) a sector development zone. 15
- (3) The Minister may prescribe—
- (a) criteria and guidelines for the designation of each category of Special Economic Zones; and
 - (b) conditions that may be imposed on each category of Special Economic Zones.
- (4) The Minister may, after consultation with the Minister of Finance, prescribe the type of service and business that may be located in a Special Economic Zone in order to achieve the purpose of Special Economic Zones set out in section 4. 20
- (5) For the purposes of this section—
- (a) **“free port”** means a duty free area adjacent to a port of entry where imported goods may be unloaded for value-adding activities within the Special Economic Zone for storage, repackaging or processing, subject to customs procedures; 25
 - (b) **“free trade zone”** means a duty free area offering storage and distribution facilities for value-adding activities within the Special Economic Zone for subsequent export; 30
 - (c) **“port of entry”** means a place designated as a place of entry for the control of vessels, aircraft, trains, vehicles, goods and persons entering the Republic; and
 - (d) **“sector development zone”** means a zone focused on the development of a specific sector or industry through the facilitation of general or specific industrial infrastructure, incentives, technical and business services primarily for the export market. 35

Governance and management of Special Economic Zone

25. (1) Upon designation of an area as a Special Economic Zone, the licensee must—
- (a) establish an entity to manage the Special Economic Zone; and 40
 - (b) provide the entity with the resources and means necessary to manage and operate the Special Economic Zone, including the transfer of ownership or control of the land comprising the area designated as a Special Economic Zone.
- (2) In the case of a national or provincial government or a public entity licensee, the entity must be established as a national government business enterprise or a provincial government business enterprise contemplated in section 1 of the Public Finance Management Act. 45
- (3) In the case of a municipality or municipal entity licensee, the entity must be established as a municipal entity contemplated in section 1 of the Municipal Systems Act. 50

(4) In the case of a public-private partnership licensee, the entity must be established as a company.

(5) A licensee must appoint a Special Economic Zone Board which must be responsible for the efficient governance and management of the business affairs of that Special Economic Zone entity. 5

(6) The Special Economic Zone Board must manage that Special Economic Zone entity—

(a) in accordance with the Public Finance Management Act, if the licensee is national or provincial government or a public entity;

(b) in accordance with the Municipal Systems Act and the Municipal Finance Management Act, if the licensee is a municipality or municipal entity; or 10

(c) if the licensee is a public-private partnership—

(i) at national or provincial government level, in accordance with regulation 16 of the National Treasury Regulations issued under the Public Finance Management Act and the Companies Act, 2008 (Act No. 71 of 2008); or 15

(ii) at municipal level, in accordance with the provisions of section 120 of the Municipal Finance Management Act and any relevant regulations issued in terms of that Act.

(7) The Minister must make regulations regarding the governance principles that must be complied with when an entity is established as envisaged in subsections (2), (3) and (4) respectively, including— 20

(a) the constitution of Special Economic Zone Boards;

(b) the term of Office of Special Economic Zone Board members;

(c) codes of conduct for Special Economic Zone Boards; and

(d) disclosure of interest by Special Economic Zone Board members. 25

Strategic plan for Special Economic Zone

26. (1) The Special Economic Zone Board must develop and implement a strategic plan within the framework of the Special Economic Zones strategy contemplated in section 6 in order to achieve the mandate of, perform the functions of and comply with the conditions for that Special Economic Zone. 30

(2) The strategic plan contemplated in subsection (1) must be reviewed on an annual basis and submitted to the Minister at least three months before the end of each financial year or at a later date determined by the Minister.

(3) The Special Economic Zone Board must provide the Minister with such information and documentation as the Minister may reasonably require in connection with the affairs of that Special Economic Zone entity. 35

Business and financial plan of Special Economic Zone

27. A Special Economic Zone Board must, at least two 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— 40

(a) containing a projection of the revenue and expenditure of that Special Economic Zone entity in respect of the ensuing financial year; and

(b) covering the affairs of that Special Economic Zone entity for each of the two immediately following financial years.

Reporting and financial statements of Special Economic Zone 45

28. (1) A Special Economic Zone Board must—

(a) keep full and proper records of the financial affairs of the Special Economic Zone entity contemplated in section 25;

(b) prepare financial statements for each financial year in accordance with generally accepted accounting practice; 50

- (c) submit those financial statements within three months after the end of the financial year to the Auditor-General for auditing; and
- (d) submit within five months of the end of the financial year to the Minister—
 - (i) an annual report on the activities of that Special Economic Zone entity during that financial year; 5
 - (ii) audited financial statements of that Special Economic Zone entity for the previous 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—
 - (a) fairly present the state of affairs of that Special Economic Zone entity and its performance against predetermined objectives for the financial year concerned; and 10
 - (b) include particulars of—
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year concerned; 15
 - (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; and
 - (iv) any other matter that may be prescribed. 20

Taking over administration of Special Economic Zone

- 29.** (1) The Minister may, after consultation with the Advisory Board, the Special Economic Zone Board and the licensee concerned, appoint an administrator to take over the administration or to perform the functions of a Special Economic Zone Board if—
 - (a) the Special Economic Zone Board has failed to comply with any condition prescribed by the Minister in terms of section 24(3)(b); 25
 - (b) the Special Economic Zone Board fails or is unable to perform its functions; or
 - (c) there is mismanagement of the finances of that Special Economic Zone entity.
- (2) The Minister must publish a notice in the *Gazette* appointing an administrator and in that notice the Minister must determine the powers, duties and the term of appointment of the administrator. 30
- (3) The Minister may act in terms of subsection (1) without consulting the Advisory Board, the Special Economic Zone Board and the licensee concerned if there is financial mismanagement of that Special Economic Zone entity and the delay caused by the consultation would be detrimental to the functioning of that Special Economic Zone entity. 35
- (4) Where the Minister acts in terms of subsection (3), the Minister must review the appointment of the administrator within 90 days of the appointment and after consultation with the Advisory Board, the Special Economic Zone Board and the licensee concerned. 40
- (5) The costs associated with the appointment of the administrator in terms of this section will be for the Special Economic Zone entity concerned.

Withdrawal of designation

- 30.** (1) Notwithstanding section 29, the Minister may, after considering a recommendation of the Advisory Board and by notice in the *Gazette*, withdraw any designation of an area as a Special Economic Zone which does not further the purpose set out in section 4, on such terms and conditions as the Minister may determine. 45
- (2) Before withdrawing a designation in terms of subsection (1), the Minister must—
 - (a) inform the affected licensee, Special Economic Zone Board, operator and businesses located in the affected Special Economic Zone of the intention 50

to withdraw the designation and the reasons for the intended withdrawal;
and

- (b) give the affected licensee, Special Economic Zone Board, operator and businesses 30 days to submit written comments to the Minister.

(3) The lawful activities of any business located within a Special Economic Zone that has entered into a written agreement with the operator are not affected by the withdrawal of the designation of that Special Economic Zone in terms of this section. 5

(4) Nothing contained in this Act precludes the Minister from re-designating an area whose designation as a Special Economic Zone has been withdrawn.

CHAPTER 6

10

SPECIAL ECONOMIC ZONE OPERATOR

Special Economic Zone operator

31. (1) A Special Economic Zone Board must follow a fair, equitable, transparent, competitive and cost-effective procurement process, when appointing an operator to develop, operate and manage that Special Economic Zone on behalf of the Special Economic Zone Board. 15

(2) Notwithstanding subsection (1), only a Special Economic Zone entity established by a public-private partnership licensee may also develop, operate and manage the Special Economic Zone concerned.

Application for Special Economic Zone operator permit

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32. (1) A Special Economic Zone may only be developed, operated and managed by a person who holds a Special Economic Zone operator permit issued in terms of this section.

(2) Any person appointed by a Special Economic Zone Board to develop, operate and manage a Special Economic Zone in terms of section 31 must apply to the Minister for a Special Economic Zone operator permit in the form and manner prescribed. 25

(3) The Advisory Board—

- (a) must consider the application;
- (b) may require an applicant to supply additional information necessary to consider the application; 30
- (c) may request an applicant to appear before it for the purpose of making an oral submission at the applicant's expense;
- (d) may require any interested party, including an organ of state, affected by such application to comment on the application in writing; and
- (e) must recommend to the Minister whether or not the applicant is eligible for an operator permit. 35

(4) The Minister may, after considering the recommendation of the Advisory Board, issue a person with an operator permit, with or without conditions.

(5) The Minister may make regulations regarding—

- (a) the procedure and time periods applicable to applications for operator permits; 40
and
- (b) the information that must be provided in any application for an operator permit.

Requirements for application for Special Economic Zone operator permit

33. (1) An applicant for an operator permit must— 45

- (a) be a person appointed by a Special Economic Zone Board to develop, operate and manage that Special Economic Zone in terms of section 31;
- (b) be a person registered as a company in the Republic;
- (c) have sufficient financial resources and expertise to develop, operate and manage a Special Economic Zone; and 50
- (d) comply with such other criteria and requirements as may be prescribed.

- (2) The Minister may make regulations regarding—
- (a) additional criteria for applications for operator permits;
 - (b) any condition that may be imposed on operator permits, including conditions relating to businesses that may be operated in Special Economic Zones;
 - (c) any measure to promote the effective monitoring of the conditions contained in operator permits; and
 - (d) any other matter necessary to facilitate the issuing of an operator permit.

Special Economic Zone operator permit

34. (1) Before issuing an operator permit in terms of section 32(4), the Minister must, on the recommendation of the Advisory Board, be satisfied that the written agreement between the Special Economic Zone Board and the operator adequately provides for the duties, terms and conditions for the development, operation and management of that Special Economic Zone by the operator, including—

- (a) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within that Special Economic Zone;
- (b) the security measures that the operator must take and maintain in or around a customs controlled area defined in section 21A(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- (c) the facilities that the operator must provide in order to enable the Advisory Board or a Special Economic Zone Board, as the case may be, to exercise its functions within that Special Economic Zone; and
- (d) the construction timetable and milestone schedule for that Special Economic Zone.

(2) The Minister must determine the duration of an operator permit.

(3) The Minister may prescribe any other requirement or condition in respect of an operator permit.

Functions of Special Economic Zone operator

35. The operator must, on behalf of the Special Economic Zone Board—

- (a) implement the strategic plan for that Special Economic Zone within the framework of the Special Economic Zones strategy;
- (b) make improvements to that Special Economic Zone and its facilities according to the written agreement contemplated in section 34(1);
- (c) provide or facilitate provision of infrastructure and other services required for that Special Economic Zone to achieve its strategic and operational goals;
- (d) provide adequate demarcation of the Special Economic Zone from any applicable customs territory for the protection of revenue together with suitable provision for the movement of conveyances, vessels and goods entering or leaving that Special Economic Zone;
- (e) provide adequate security for all facilities in the Special Economic Zone;
- (f) adopt rules and regulations for businesses within the Special Economic Zone in order to promote their safe and efficient operation;
- (g) maintain adequate and proper accounts and other records in relation to its business and report in the manner prescribed or required on the activities, performance and development of the Special Economic Zone to the Minister and as required under any other legislation;
- (h) promote the Special Economic Zone as a foreign and domestic direct investment destination, in consultation with the Advisory Board;
- (i) recommend to the Special Economic Zone Board whether or not to approve an application by a business to locate within the Special Economic Zone in terms of section 38;
- (j) apply to the Minister for finance and support measures contemplated in section 21 in the form and manner prescribed;
- (k) facilitate a single point of contact or one stop shop 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

that Special Economic Zone and for setting up and conducting business in that Special Economic Zone; and

- (l) undertake any other activity within the scope of this Act to promote the effective functioning of the Special Economic Zone.

Suspension or withdrawal of Special Economic Zone operator permit 5

36. (1) The Minister may withdraw or suspend an operator permit if the operator—

- (a) fails to comply with the terms and conditions of the operator permit;
(b) contravenes any provision of this Act or any other law of the Republic;
(c) contravenes or fails to comply with the customs and excise rules and procedures that are applicable to that operator and the Commissioner of the South African Revenue Services notifies the Minister accordingly; or
(d) requests the Minister to withdraw the operator permit. 10

(2) Before suspending or withdrawing an operator permit in terms of subsection (1)(a), (b) or (c), the Minister must—

- (a) inform the affected operator of the intention to withdraw or suspend the operator permit and the reasons for the intended withdrawal or suspension; and
(b) give the affected operator 30 days to submit written comments to the Minister. 15

(3) The Minister must inform the Special Economic Zone Board in writing of the decision to suspend or withdraw an operator permit in terms of this section. 20

(4) The Minister may make regulations regarding—

- (a) the procedure to suspend or withdraw an operator permit; and
(b) any other matter necessary in order to ensure the effective suspension or withdrawal of an operator permit.

Transfer of Special Economic Zone operator permit 25

37. (1) An operator may, subject to section 31(1), transfer an operator permit to another person, if such other person—

- (a) applies to the Minister for a transfer in terms of the provisions of this section; and
(b) satisfies the requirements for an operator permit in terms of this Chapter. 30

(2) The transferee must in its application clearly stipulate any changes to the original development, business and operating plan of the Special Economic Zone in question.

(3) The Minister may, after considering the recommendations of the Advisory Board, transfer an operator permit from one operator to another.

(4) Upon the transfer of an operator permit, the new operator must comply with all the obligations placed on an operator in terms of this Act, and the new operator has all the rights and obligations conferred or imposed on the operator in terms of this Act and the operator permit in question. 35

(5) The Minister may make regulations regarding—

- (a) the procedure to transfer an operator permit; and
(b) any other matter necessary in order to ensure the effective transfer of an operator permit. 40

Application to locate in Special Economic Zone

38. (1) Any person who intends to conduct a business in a Special Economic Zone must apply to the Special Economic Zone Board, in the manner and form prescribed, to locate the business in the Special Economic Zone. 45

(2) In the application the applicant must—

- (a) provide information to show that the applicant conducts a business or renders a service prescribed by the Minister in terms of section 24(4);

- (b) indicate the extent to which the applicant's business achieves the purpose of Special Economic Zones set out in section 4; and
- (c) comply with any other criteria that the Minister may prescribe.

(3) The Special Economic Zone Board may, after considering the recommendations of the operator, approve the application of a business to locate within that Special Economic Zone, with or without conditions. 5

CHAPTER 7

GENERAL PROVISIONS

Transitional provisions and savings

39. (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. 10

(2) Any designation of an industrial development zone under the IDZ Regulations which is in force immediately before this Act comes into operation, remains in force and must be regarded as a designation of a Special Economic Zone under this Act. 15

(3) Any industrial development zone operator permit issued under the IDZ Regulations which is in force immediately before this Act comes into operation, remains in force and must be regarded as a Special Economic Zone operator permit issued under this Act.

(4) Any industrial development zone enterprise approved to be located in an industrial development zone under the IDZ Regulations before this Act comes into operation, must be regarded as a business approved to be located in a Special Economic Zone in terms of this Act: Provided that such a business must comply with the criteria in section 24(4) and section 38(3). 20

(5) Notwithstanding subsections (2), (3) and (4), any industrial development zone operator must ensure that the industrial development zone complies with the framework regulating Special Economic Zones in terms of this Act, within three years of commencement of this Act. 25

(6) Any application for the designation of an industrial development zone or for the issuing of an operator permit made under the IDZ Regulations which is not finalised immediately before this Act comes into operation, must be dealt with as an application for designation as a Special Economic Zone or an application for an operator permit, as the case may be, in terms of this Act. 30

Guidelines

40. (1) The Minister may, after consultation with the Advisory Board, issue guidelines regarding any matter in respect of which the Minister deems it necessary or expedient in order to achieve the objects or purpose of this Act. 35

(2) The guidelines—

- (a) may not be inconsistent with the provisions of this Act;
- (b) must be published in the *Gazette*; and 40
- (c) are not binding on the Minister.

Regulations

41. (1) The Minister may, after consultation with the Advisory Board, make regulations regarding—

- (a) any matter which in terms of this Act is required or permitted to be prescribed; 45
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before making any regulation contemplated in subsection (1), the Minister must— 50

- (a) publish the draft regulations in the *Gazette*;
- (b) grant the public a period of at least 30 days to submit written comments to the Minister on the draft regulations; and
- (c) consider the written comments contemplated in paragraph (b).

Short title and commencement

42. This Act is called the Special Economic Zones Act, 2014, and comes into operation on a date determined by the President by proclamation in the *Gazette*.