

GENERAL NOTICES

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)

the dti Campus
77 Meintjies Street
Sunnyside
Pretoria
0002

Or

Private Bag X84
Pretoria
0001

Enquiries: (012) 394 1226, or (012) 394 5026



Dr ROB DAVIES, MP

MINISTER OF TRADE AND INDUSTRY

16 / 1 / 2012

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

DRAFT 1: FOR DISCUSSION PURPOSES ONLY

SPECIAL ECONOMIC ZONES BILL, 2011

ARRANGEMENT OF SECTIONS

	CHAPTER ONE.....	4
5	INTERPRETATION, OBJECTIVES AND APPLICATION	4
	1. Definitions	4
	2. Objects of Act	5
	3. Application of Act	5
	CHAPTER TWO.....	6
10	SPECIAL ECONOMIC ZONES BOARD.....	6
	4. Establishment of Special Economic Zones Board	6
	5. Terms of office of Board members	7
	6. Disqualifications from membership of Board.....	7
	7. Vacation of office and filling of vacancies on the Board	8
15	8. Functions of Board.....	8
	9. Fiduciary duties of Board members	9
	10. Code of good conduct and disclosure of interests by Board members.....	10
	11. Remuneration of members of Board and committees.....	10
	12. Meetings of Board	11
20	13. Resolution of Board without meeting	12
	14. Committees of Board.....	12
	15. Secretariat of Board	12
	CHAPTER THREE	13
	SPECIAL ECONOMIC ZONES POLICY AND STRATEGY.....	13
25	16. Special Economic Zones policy	13
	17. Special Economic Zones strategy	13
	CHAPTER FOUR.....	13
	FINANCING AND INCENTIVES.....	13
	18. Special Economic Zones Fund	13
30	19. Incentives	14
	CHAPTER FIVE.....	14
	DESIGNATION OF SPECIAL ECONOMIC ZONES	14
	20. Designation of Special Economic Zones	14
	21. Applications for designation.....	15
35	22. Taking over administration of Special Economic Zones.....	16
	23. Suspension or withdrawal of designation.....	16

SPECIAL ECONOMIC ZONES BILL, 2011

DRAFT 1

	24. Governance and management of Special Economic Zone	17
	25. Strategic plan of Special Economic Zone	18
	26. Business and financial plan of Special Economic Zone	18
	27. Reporting and financial statements of Special Economic Zone	19
5	CHAPTER SIX.....	20
	SPECIAL ECONOMIC ZONE OPERATOR PERMIT.....	20
	28. Special Economic Zone operator permit	20
	29. Application for Special Economic Zone operator permit	20
	30. Requirements for applications for Special Economic Zone operator permits.....	21
10	31. Functions of Special Economic Zone operator	22
	32. Special Economic Zone operator permit	23
	33. Suspension or withdrawal of Special Economic Zone operator permit	24
	34. Transfer of Special Economic Zone operator permit.....	25
	CHAPTER SEVEN	26
15	GENERAL PROVISIONS.....	26
	35. Transitional provisions and savings	26
	36. Guidelines	26
	37. Regulations.....	27
	38. Short title and commencement	27

20

4

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER ONE : INTERPRETATION, OBJECTIVES AND APPLICATION
s1
DRAFT

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

CHAPTER ONE : INTERPRETATION, OBJECTIVES AND APPLICATION

s2-s3

DRAFT

“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.

6

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD

s4
DRAFT

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
s5-s6
DRAFT

(5) The Minister must-

- (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).

(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-

- (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.

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;

8

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD

s7

DRAFT

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.

20

(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 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

s9

DRAFT

(2) The Board -

- (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;
- (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
- (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 -

- (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.

10

SPECIAL ECONOMIC ZONES BILL, 2011**CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD****s10
DRAFT****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.

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD

s12

DRAFT

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-

(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

25

12

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER TWO : SPECIAL ECONOMIC ZONES BOARD
s13
DRAFT

- (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.

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER THREE : SPECIAL ECONOMIC ZONES POLICY AND STRATEGY
s16-s18
DRAFT

CHAPTER THREE

SPECIAL ECONOMIC ZONES POLICY AND STRATEGY

16. Special Economic Zones policy

- (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.

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.
- (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

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.

14

SPECIAL ECONOMIC ZONES BILL, 2011**CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES****s19
DRAFT**

- (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.

10

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.

20

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

s21

DRAFT

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 -

16

SPECIAL ECONOMIC ZONES BILL, 2011**CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES****s22
DRAFT**

- (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

s24

DRAFT

(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-

18

SPECIAL ECONOMIC ZONES BILL, 2011**CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES****s25
DRAFT**

5

10

- (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;
- (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
 - (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

20

- (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.
- (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 -

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER FIVE : DESIGNATION OF SPECIAL ECONOMIC ZONES

s27

DRAFT

- (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-

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

20

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT
s28
DRAFT

5

- (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

15

- (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 -

25

- (a) require an applicant to supply additional information necessary to consider the application;
- (b) request an applicant to appear before it for the purposes of making oral enquiry at the applicant's expense; and

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT

s30

DRAFT

(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

22

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT

s31

DRAFT

- 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-

- 10 (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;
- 15 (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;
- 20 (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;
- 25 (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

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT
s32
DRAFT

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.

10

32. Special Economic Zone operator permit

A Special Economic Zone operator permit must -

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

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

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

(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;

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

24

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT
s33
DRAFT

(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

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SIX : SPECIAL ECONOMIC ZONE OPERATOR PERMIT

s34

DRAFT

- (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.

26

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SEVEN : GENERAL PROVISIONS

s35
DRAFT

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

SPECIAL ECONOMIC ZONES BILL, 2011

CHAPTER SEVEN : GENERAL PROVISIONS

s37-s38

DRAFT

(c) are not binding on the Minister.

37. Regulations

(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-

(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

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*.