

Western Cape, South Africa

Saldanha Bay Industrial Development Zone Licencing Company Act, 2016

Act 1 of 2016

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Contents

- 1. Definitions 1
- 2. Status of Company 2
- 3. Objects of Company 2
- 4. Functions of Company 3
- 5. Board 3
- 6. Functions of Board 4
- 7. Board committees 4
- 8. Conditions of appointment 4
- 9. Chief executive officer 5
- 10. Functions of chief executive officer 5
- 11. Conditions of service of employees of Company 6
- 12. Funding and financial control 6
- 13. Delegation or assignment of powers or duties 6
- 14. Regulations 7
- 15. Short title and commencement 7

Western Cape South Africa

Saldanha Bay Industrial Development Zone Licencing Company Act, 2016 Act 1 of 2016

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Assented to on 31 March 2016

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ACT

(English text signed by the Premier)

To regulate the operation of the Saldanha Bay IDZ Licencing Company SOC Ltd; to provide for the shareholding of the Western Cape government in the Saldanha Bay IDZ Licencing Company SOC Ltd; to provide for the objects, functions and governance of the Saldanha Bay IDZ Licencing Company SOC Ltd; and to provide for matters incidental thereto.

WHEREAS the Western Cape Government is responsible for the creation of an enabling environment to promote sustainable economic activity and job creation in the Province;

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

AND WHEREAS statutory provision has been made for the designation of special economic zones to promote targeted economic activities and to provide infrastructure and a platform for the ease of doing business;

AND WHEREAS the Minister of Trade and Industry has, under [General Notice 1081 of 2013](#) in terms of the Manufacturing Development Act, 1993 ([Act 187 of 1993](#)), designated an Industrial Development Zone at Saldanha Bay and granted the operator permit to the Saldanha Bay IDZ Licencing Company SOC Ltd;

AND WHEREAS there is a need for provincial legislation to regulate the operation of the said Company,

BE IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape, as follows:—

1. Definitions

In this Act, unless the context indicates otherwise—

"**Board**" means the board of directors of the Company;

"**chairperson**" means the chairperson of the Board;

"**chief executive officer**" means the chief executive officer appointed in terms of [section 9](#);

"**committee**" means a committee referred to in [section 7](#);

"**Companies Act**" means the Companies Act, 2008 ([Act 71 of 2008](#));

"**director**" means a member of the Board;

"**distribution**" has the meaning given to it by the Companies Act;

"**Manufacturing Development Act**" means the Manufacturing Development Act, 1993 ([Act 187 of 1993](#));

"**municipality**" means the Saldanha Bay Municipality;

"**National Minister**" means the National Minister responsible for trade and industry;

"**Province**" means the Province of the Western Cape;

"**provincial government**" means the Western Cape government;

"**Provincial Minister**" means the Provincial Minister responsible for economic development in the Province;

"**Provincial Minister responsible for finance**" means the Provincial Minister responsible for finance in the Province;

"**Public Finance Management Act**" means the Public Finance Management Act, 1999 ([Act 1 of 1999](#)), including regulations issued in terms of that Act;

"**SBIDZ**" means the Saldanha Bay Industrial Development Zone designated at Saldanha Bay by the Minister of Trade and Industry by [General Notice 1081 of 2013](#) in terms of the Manufacturing Development Act;

"**Special Economic Zones Act**" means the Special Economic Zones Act, 2014 ([Act 16 of 2014](#));

"**Special Economic Zone**" means an area designated as a Special Economic Zone in terms of the Special Economic Zones Act;

"**the Company**" means Saldanha Bay IDZ Licencing Company SOC Ltd, incorporated in terms of the Companies Act under registration number 2012/035625/30;

"**this Act**" includes the regulations made under this Act.

2. Status of Company

- (1) The Company is subject to and regulated by—
 - (a) the Public Finance Management Act;
 - (b) this Act;
 - (c) the Companies Act and the Company's memorandum of incorporation in terms of the Companies Act;
 - (d) the Special Economic Zones Act; and
 - (e) the Manufacturing Development Act.
- (2) The provincial government is authorised to become a shareholder in the Company and to perform any acts that a shareholder may in law perform.

3. Objects of Company

The objects of the Company are to establish and fulfil the purpose of a Special Economic Zone within the greater Saldanha Bay area, including, but not limited to—

- (a) promoting, managing and marketing the SBIDZ;
- (b) providing internal infrastructure in the SBIDZ area;
- (c) facilitating the ease of doing business in the SBIDZ area; and
- (d) acquiring and leasing land incidental to the Company's business.

4. Functions of Company

- (1) The Company has the functions set out in subsection (2) and any other functions and responsibilities entrusted and assigned to it by or in terms of this Act or any other law.
- (2) The Company, through the Board, may do all that is necessary or expedient to attain the Company's objects, including the power to—
 - (a) finance, lease, purchase or otherwise acquire, let, sell, exchange, alienate, mortgage, burden with a servitude or confer any real right in immovable property;
 - (b) hire, purchase or otherwise acquire, hire out, sell, exchange, alienate, pledge or confer any other real right in movable property;
 - (c) negotiate or cooperate with any sphere of government or organ of state, or any board or person, in the Republic or elsewhere, with regard to any matter that is directly or indirectly aimed at achieving the objects of the Company;
 - (d) open and administer offices that are necessary or expedient for the effective and proper performance of the Company's functions;
 - (e) acquire insurance cover —
 - (i) for the Company against any loss, damage, risk or liability which it may suffer or incur;
 - (ii) for members of the Board and committees and employees of the Company in respect of bodily injury, disablement or death resulting solely and directly from an incident occurring when performing their functions as such members or employees;
 - (iii) for directors against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Companies Act;
 - (f) open and conduct banking accounts at a bank as defined in the Banks Act, 1990 ([Act 94 of 1990](#));
 - (g) employ and terminate the employment of persons;
 - (h) in consultation with the Provincial Minister and the Provincial Minister responsible for finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the employees of the Company, or have such fund or scheme administered by another person or body;
 - (i) pay all expenses in connection with the administration of the Company;
 - (j) establish, assist in establishing, finance, acquire or dispose of any interest in any company or association of persons if to do so would further the objects of the Company;
 - (k) plan and implement any project or enterprise that would enhance investment and trade in the SBIDZ; and
 - (l) apply for funding in terms of the Special Economic Zones Act.

5. Board

- (1) The Board consists of the directors appointed or elected in accordance with the Company's memorandum of incorporation in terms of the Companies Act.
- (2) Subject to the Companies Act, the Provincial Minister may after consultation with the National Minister remove a director on good cause shown.
- (3) The Provincial Minister must after consultation with the National Minister designate the chairperson and deputy chairperson for the Board.

- (4) The deputy chairperson must act as chairperson when the chairperson is absent or unable to act as chairperson.

6. Functions of Board

The Board —

- (a) is responsible for the governance, management and control of the Company's business affairs in terms of this Act and any other law;
- (b) is the accounting authority of the Company and must fulfil the fiduciary responsibilities as provided for in the Public Finance Management Act and the Companies Act;
- (c) must give effect to the Company's corporate plan as envisaged in section 52 of the Public Finance Management Act in order to achieve the objects of the Company;
- (d) takes decisions on behalf of the Company and gives effect to those decisions;
- (e) must develop and implement the strategic plan for the SBIDZ as envisaged in section 26 of the Special Economic Zones Act;
- (f) must notify the Provincial Minister and National Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Company;
- (g) must refer to the Provincial Minister any matter that may adversely affect the functioning of the Company;
- (h) must establish an effective competitive recruitment, training and retention system to enable the competent performance of its responsibilities and functions; and
- (i) may approve the application of a business to locate in the SBIDZ, with or without conditions.

7. Board committees

- (1) A committee envisaged in section 72 of the Companies Act must function in accordance with its terms of reference, determined by the Board.
- (2) A member of a committee holds office for the period, not exceeding three years, determined by the Board at the time of the member's appointment.
- (3) If the office of a member of a committee becomes vacant, the Board may appoint a person as a member of the committee for the unexpired portion of the term of office of the vacating member or for a longer term, not exceeding three years, determined by the Board at the time of the member's appointment.
- (4) A member of a committee whose term of office has expired is eligible for reappointment, but a person may not serve as a member of any committee for more than three terms, excluding any unexpired portion of a term referred to in subsection (3).
- (5) A committee must be chaired by a person designated by the Board.
- (6) The Board may at any time—
 - (a) remove a member from a committee; or
 - (b) dissolve a committee.

8. Conditions of appointment

- (1) The Provincial Minister must, in consultation with the Provincial Minister responsible for finance, determine the terms and conditions for the appointment of any director that is not in the employ of the public service or municipality or a public or municipal entity.

- (2) The Board must, subject to the Company's memorandum of incorporation and in consultation with the Provincial Minister responsible for finance, determine any remuneration, allowance and reimbursements that a director and a member of a committee who is not a director may receive.

9. Chief executive officer

- (1) The Board must—
 - (a) appoint a suitably qualified person as chief executive officer of the Company for a minimum of three years and a maximum of five years; and
 - (b) conclude a written performance agreement with the chief executive officer.
- (2) A chief executive officer is eligible for reappointment as chief executive officer of the Company at the expiry of his or her term of office.
- (3) The Board may, subject to any applicable employment and labour legislation, terminate the employment of the chief executive officer.
- (4) If the chief executive officer is absent or for any reason unable to perform his or her functions, or when the office of the chief executive officer is vacant, the Board must appoint another person to act as chief executive officer during such absence or inability or until a chief executive officer has been appointed in terms of subsection (1).
- (5) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer.
- (6) Despite subsection (1), the person serving as chief executive officer of the Company, on the date on which this Act comes into operation is regarded to be the duly appointed chief executive officer for the unexpired term of the employment agreement of that person with the Company.

10. Functions of chief executive officer

- (1) The chief executive officer—
 - (a) is the head of the administration of the Company;
 - (b) manages the day-to-day affairs of the Company in accordance with the business and financial plans of the Company, subject to the control and directions of the Board; and
 - (c) is accountable to the Board.
- (2) In addition to the functions assigned to the chief executive officer by the Board, the chief executive officer must—
 - (a) develop and lead, with the involvement of the Board, the long-term strategy and vision for the Company that will generate satisfactory levels of shareholder value and positive, reciprocal relations with the relevant shareholders;
 - (b) develop annual business and financial plans for the Company in accordance with the long-term strategy and vision contemplated in paragraph (a);
 - (c) strive continually to achieve the Company's financial and operating goals and objectives;
 - (d) ensure that the Company achieves its goals and performs its functions in terms of this Act and any other law;
 - (e) ensure that the Company complies with this Act and all other applicable laws, including the Public Finance Management Act and the Companies Act;
 - (f) formulate and oversee the implementation of major corporate policies;
 - (g) implement the decisions of the Board;

- (h) ensure that proper minutes are kept at all meetings of the Board and the committees; and
- (i) attend all meetings of the Board.

11. Conditions of service of employees of Company

The Board must determine the remuneration, other service benefits and conditions of service of the chief executive officer and the other employees of the Company.

12. Funding and financial control

- (1) The funds of the Company consist of—
 - (a) money appropriated by the Provincial Parliament, the National Parliament or the municipal council of the municipality for that purpose;
 - (b) operating income derived from the business of the Company; and
 - (c) money received by the Company from other sources.
- (2) The Board must ensure that the Companies Act and the Public Finance Management Act are duly complied with, in particular the provisions regarding financial management and control, the preparation and submission of annual budgets and corporate plans, the preparation of financial statements, audits and reporting.
- (3) The Board must manage and apply the Company's funds in the manner and for the purposes the Board considers appropriate, and for this purpose the Board may—
 - (a) establish legal or administrative structures that, in the opinion of the Board, are required;
 - (b) establish a reserve fund; and
 - (c) invest any funds or monies not immediately required for the Company's affairs, at the institutions and in the manner determined by the Board.
- (4) The Board may, subject to the Public Finance Management Act, borrow money on behalf of the Company, but such money may not be used to defray the Company's running expenses.
- (5) The Company must retain its income and may not make any distribution, unless—
 - (a) the Board, by resolution, has authorised the distribution; and
 - (b) the Provincial Minister, in consultation with the Provincial Minister responsible for finance, has approved the distribution.

13. Delegation or assignment of powers or duties

- (1) Subject to the Companies Act and section 56 of the Public Finance Management Act, the Board may in writing delegate or assign any of its powers or duties to—
 - (a) a director;
 - (b) a committee; or
 - (c) the chief executive officer, who may, in writing, further delegate that power or assign that duty.
- (2) A delegation or assignment of a power or duty under subsection (1) does not preclude the exercise of that power or the performance of that duty by the Board, a director, a committee or the chief executive officer, as the case may be.
- (3) The Board, a director, a committee or the chief executive officer, as the case may be, may, in writing, at any time amend or revoke any delegation or assignment and may, in writing, delegate or

assign its powers or duties, subject to limitations, directions or conditions determined by the Board, a director, a committee or the chief executive officer, as the case may be.

- (4) The Board may, in writing, amend or revoke any decision taken by virtue of a delegation or assignment in terms of subsection (1), subject to any rights that may have accrued and with due consideration to the Promotion of Administrative Justice Act, 2000 ([Act 3 of 2000](#)).

14. Regulations

- (1) The Provincial Minister may make regulations relating to any matter which the Provincial Minister deems necessary or expedient to prescribe for the achievement of the objects of the Company and this Act.
- (2) Regulations with financial implications must be made in consultation with the Provincial Minister responsible for finance.

15. Short title and commencement

This Act is called the Saldanha Bay Industrial Development Zone Licencing Company Act, 2016, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.