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GENERAL NOTICE

NOTICE 251 OF 2015

DEPARTMENT OF TRADE AND INDUSTRY

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

- (a) Issue for public comment, the following **SPECIAL ECONOMIC ZONES REGULATIONS**.
- (b) Invite interested persons and the public to submit comments within **30 days** from the date of this publication.

Interested parties are requested to forward their comments in writing for attention to Mr. Maoto Molefane at SEZinquiries@thedti.gov.za or forward comments to the following address:

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Sunnyside, Pretoria
0002



DR ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY

12 March 2015

GOVERNMENT NOTICE

No.R

2014

SPECIAL ECONOMIC ZONES REGULATIONS, 2014

Draft Regulations made in terms of the SPECIAL ECONOMIC ZONES Act, 2014
(Act 16 of 2014)

For Public Comment

(MINISTER OF TRADE AND INDUSTRY)

SPECIAL ECONOMIC ZONES REGULATIONS, 2014

The Minister of Trade and Industry has, under section 41 (1) of the Special Economic Zones, 2014 (Act 16 of 2014), made Regulations in this schedule

CHAPTER 1

INTERPRETATION AND DEFINITIONS (Reg1)

1. In these Regulations, any word or expression defined in the Special Economic Zoning Act, 2014, bears the same meaning as in the Act unless the context indicates otherwise:-

“Day”

means a calendar day, and when any number of days is prescribed for the doing of any act, the time period must be calculated by excluding the first day and including the last day, except if the last day falls on a Sunday or a public holiday, in which case the time period will expire on the day following the Sunday or public holiday;

“Exceptional site preparation”

means the preparation of-

- (a) a specialist infrastructure for the benefit of more than one business locating in that Special Economic Zone, limited to generic top structures with multi-purpose and shared services facilities that enhance the service capability and competitiveness of that Special Economic Zone; or
- (b) specialist infrastructure specific to a single business locating in that Special Economic Zone which may include infrastructure to provide access to sea water and infrastructure related to hazardous waste removal;

“Fund”

means the Special Economic Zones Fund established in terms of section 20 of the Act;

“Income Tax Act”

means the Income Tax Act, 58 of 1962, as amended;

“Physical infrastructure development”

includes land preparation, clearing and levelling of land, storm water drainage, connecting and accessing of roads, electrical sub-stations, storage treatment and pumping of water and sewerage, fencing, landfills, security, lighting, communications infrastructure, waste to energy co-generation and clean energy infrastructure;

“Site preparation”

means site preparation necessary to enable businesses to locate within the Special Economic Zone including, costs associated with enabling utility connections to bulk utility supply and providing road access to that Special Economic Zone;

“Department”

unless the context indicates otherwise, department means the Department of Trade and Industry;

“the Act”

means the Special Economic Zones Act, 2014 (Act 16 of 2014).

Regulations made in terms of the Special Economic Zones Act, 2014, as published in Government Gazette, as follows:-

CHAPTER 2

Administration and management of the Special Economic Zones Fund

- (1) The Special Economic Zones Fund shall –
 - (a) be controlled by the Minister; and
 - (b) administered by the Director General.

- (2) The Director General referred to in sub-regulation (1)(b) must establish an adjudication committee to:-
 - (a) consider applications for funding; and
 - (b) recommend to the Director General applications to be approved for funding.

- (4) The Special Economic Zones Fund must be administered and managed in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).

Distribution and use of funds from the Special Economic Zones Fund

- (5) The Special Economic Zones funds may be distributed for:-
 - (a) Special Economic Zones planning which comprise of a strategy to support the establishment and development of a Special Economic Zone;
 - (b) infrastructure development;
 - (c) cluster development; and
 - (d) initiatives identified in the Special Economic Zones policy referred to in section 5 of the Act.

- (6) The Special Economic Zones funds may be used for infrastructure development, wherein:-
 - (a) a licensee contemplated in section 23(6)(b) and the operator as contemplated in section 34 of the Act is, on application, granted monies from the Fund for:-

- (i) physical infrastructure development in a Special Economic Zone;
 - (ii) site preparation necessary to enable the establishment of business in the Special Economic Zone; and
 - (iii) exceptional site preparation in the Special Economic Zone.
- (7) The Special Economic Zones funds may be used for cluster development and performance improvement, wherein:-
 - (a) a licensee contemplated in section 23 and the operator as contemplated in section 34 of the Act is, on application, granted monies from the Fund for:-
 - (i) cluster development plan in a Special Economic Zone; and
 - (ii) cluster development facilitation and implementation in a Special Economic Zone.
- (8) The monies from the Fund may not be distributed for the following purposes:
 - (a) general infrastructure outside a Special Economic Zone;
 - (b) social and recreational infrastructure;
 - (c) residential infrastructure and office parks;
 - (d) operational costs;
 - (e) initiatives that may result in anti-competitive practices in contravention of the Competition Act, 1998 (Act 89 of 1998); and
 - (f) costs to re-locate an existing business within a Special Economic Zone.
- (9) All monies distributed from the Fund must be used to achieve the objects of the Act as contemplated in section 2 of the Act and for purposes of Special Economic Zones as contemplated in section 4 of the Act.
- (10) The offices contemplated in sub-regulation (1)(b) must monitor the implementation and use of funds distributed from the Fund and report to the Minister on how monies distributed from the Fund have been used on an annual basis.

Who may apply for funding support from the Special Economic Zones Fund

(11) Persons who may apply for funding from the Special Economic Zones Fund include the following:

- (a) an applicant contemplated in section 23(1) of the Act, who may receive grant monies from the Fund to conduct a Special Economic Zone planning;
- (b) a licensee contemplated in section 23(6) of the Act;
- (c) an operator appointed by a Public Private Partnership in terms of section 31(1) of the Act;
- (d) state owned operators; and
- (e) qualifying enterprises already located within the Special Economic Zones.

CHAPTER 3**Support measures for businesses located within a Special Economic Zone**

- (1) The businesses prescribed in section 24(4) of the Act that are located in a Special Economic Zone may qualify for tax relief including, but not limited to:-
- (a) reduced rate for corporate income tax;
 - (b) building allowance;
 - (b) employment tax incentive;
 - (c) available tax incentives in terms of the Income Tax Act, 1962 (Act 58 of 1962) and Employment Tax Incentive Act, 2013 (Act 26 of 2013);
 - (d) tax relief as applicable to businesses in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), and the Customs and Excise Act 1964 (Act 91 of 1964); and
 - (e) any other support measure applicable to qualifying businesses as may be determined from time to time.

Support measures for operators in a Special Economic Zone

- (2) Operators of a Special Economic Zone may qualify for tax relief including, but not limited to:-
- (a) building allowance;
 - (b) employment tax incentive; and
 - (c) any other support measure applicable to qualifying operators as may be determined from time to time, including:-
 - (i) compliance by an operator with this Act and criteria stipulated in other relevant legislation, including the Income Tax Act, 1962 (Act 58 of 1962) and the Employment Tax Incentive Act, 2013 (Act 26 of 2013), in order to qualify for support;
 - (ii) relief of an operator from tax in terms of the Value-Added Tax Act 1991 (Act 89 of 1991), the Customs and Excise Act, 1964 (Act 91 of 1964) and the Customs Duty Act 2014 (Act 30 of 2014); and

- (iii) any other support measures contemplated in sub-regulation (1)(c) applicable only to activities of the operator within the Special Economic Zone.

Application for designation of an area as a Special Economic Zone

- (3) National government, a provincial government, a municipality, a public entity, a municipal entity or a public-private partnership may apply to the Minister for a specified area to be designated as a Special Economic Zone.
- (4) An application for designation must be in writing and must comply with the requirements in section 23(2) and section 23(3) of the Act.
- (5) An applicant must:-
 - (a) address the matters as specified in the Schedule hereto when preparing a feasibility study required in terms of section 23(3)(b) of the Act; and
 - (b) submit an application addressed to the Chairperson of the Advisory Board:-
 - (i) at the street address of the head office of the Advisory Board; or
 - (ii) by registered post remitted to the Chairperson of the Advisory Board, at the postal address of the head office of the Advisory Board.
- (6) The Advisory Board:-
 - (a) must provide the applicant with a written acknowledgement of receipt of the application within five (5) days of receipt of application;
 - (b) must assess the application to determine whether the application is complete and must inform the applicant in writing of any outstanding information or documents required within thirty (30) days of receipt of the application;
 - (c) may request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary;
 - (d) may conduct such investigation in terms of the Act into any matter related to the application as may be deemed necessary in the circumstances; and

- (e) may conduct such inspection of the applicant or any other party related to the applicant as may be deemed necessary in the circumstances as contemplated in the Act.

- (7) The Advisory Board must consider the application and recommend to the Minister whether or not an area must be designated as a Special Economic Zone, within four (4) months of receipt of the application as contemplated in sub-regulation 0 above.

- (8) The Minister must, within two (2) months of receipt of the recommendation of the Advisory Board, as contemplated in sub-regulation 0 above, decide whether or not to designate an area as a Special Economic Zone as contemplated in section 23(6) of the Act.

- (9) If the Minister decides not to grant the application to designate a specified area as a Special Economic Zone, the Minister must:-
 - (a) inform the applicant of the decision in writing; and
 - (b) provide the applicant with reasons for the decision.

- (10) The unsuccessful applicant may submit a new application for a specified area to be designated as a Special Economic Zone as provided for in the Act and in the Guidelines of these Regulation.

Type of service and business that may locate in a Special Economic Zone

- (11) A service and business that may locate in a Special Economic Zone includes, a business:-
 - (a) conducting manufacturing activities operating in one of the sectors stipulated in a Special Economic Zone licence issued in terms of section 23(6)(b) of the Act.

- (b) performing an internationally tradable service operating in one of the sectors stipulated in a Special Economic Zone licence issued in terms of section 23(6)(b) of the Act.
 - (c) providing warehousing, distribution and logistic services, operating in one of the sectors stipulated in a Special Economic Zone licence issued in terms of section 23(6)(b) of the Act.
 - (d) applying to locate in a Special Economic Zone and able to demonstrate that:-
 - (i) it has the necessary resources, expertise and experience to operate the business; and
 - (ii) its location in a Special Economic Zone will not have a negative impact on employment in the Republic.
- (12) Existing businesses, currently located outside of the Special Economic Zone, will only be eligible to locate within a Special Economic Zone, if it can demonstrate that additional jobs and investment opportunities will be created.

Support measures for under-developed regions

- (13) The Minister may, after consultation with the Minister of Finance in terms of section 24(4) on the Act:-
- (a) designate a Special Economic Zone in under-developed regions;
 - (b) designate the town or its portion as a Special Economic Zone;
 - (c) establish support measures which are aimed at assisting under-developed regions provided that:-
 - (i) a long term economic and industrial development potential exists which satisfies the criteria set out in the Guidelines in these Regulations; and
 - (ii) it forms part of the national development strategy.

- (d) approve the application for development of a multiple or specialized industrial parks in the under-developed regions where:-
- (i) such application is made by any business entity;
 - (ii) the initiator of such industrial parks undertake the responsibilities for:-
 - (aa) the costs of the development;
 - (bb) the planning;
 - (cc) the management; and
 - (dd) the operations of the industrial parks.
 - (iii) it complies with the spatial plans and priorities of the under-developed region.
- (e) promote the development of prioritised industrial clusters and strategic sectors for the under-developed region;
- (f) put any conditions associated with the designation of a Special Economic Zone in an under-developed region; and
- (g) designate single enterprise zones with conditions, in the case of national strategic investments and Guidelines in these Regulations.

Governance and management of a Special Economic Zone

- (14) The licensee shall set up management structures and systems which shall comply with the following:
- (a) good corporate governance principles and practices;
 - (b) the Companies Act, 2008 (Act 71 of 2008);
 - (c) the Public Finance Management Act, 1999 (Act 1 of 1999);
 - (d) the Municipal Finance Management Act, 2000 (Act 32 of 2000); and
 - (e) any conditions set out in the licence.

Special Economic Zone operator permit

- (15) An application for a Special Economic Zone operator permit must be in writing and must be submitted by a business entity which is registered in the Republic.
- (16) The operator permit shall be valid and enforceable for the duration of the period as determined by the Minister, unless it is withdrawn, suspended in terms of section 36 of the Act or transferred in terms of section 37 of the Act.

Application to locate in a Special Economic Zone

- (17) An application to locate in a Special Economic Zone must be in writing and must be submitted to the Chairperson of the relevant Special Economic Zone Board, as follows:
- (a) at the street address of the head office of the Special Economic Zone Board;
or
 - (b) by registered post remitted to the Chairperson of the Special Economic Zone Board at the postal address of the head office of the Special Economic Zone Board; and
 - (c) must comply with the Act and the Guidelines in these Regulations.
- (18) Once the Special Economic Zone Board has approved a business to locate in the Special Economic Zone as contemplated in section 38(3) of the Act, the Special Economic Zone Board must:-
- (a) within one (1) month of granting such approval provide the Advisory Board with written confirmation that the approved business complies with section 24(4) of the Act and these Regulations.
- (19) The businesses approved to be located in the Special Economic Zone do not automatically qualify for support measures as contemplated in sub-regulation (1) above.

Arrangements for suspension or withdrawal of the operator permit

- (20) When the Minister suspends or withdraws the operator permit in terms of section 36(1), he or she must –
- (a) ensure that his or her decision to suspend or withdraw is clearly communicated in writing to the operator;
 - (b) put in place interim arrangements as may be required to ensure continuous progress in the Special Economic Zone;
 - (c) not allow the operator whose permit has been suspended or withdrawn to operate the Special Economic Zone; and

- (d) provide procedural Guidelines for suspension or withdrawal of the operator permit.

Arrangements for transfer of the operator permit

- (21) Before the operator permit is transferred in terms of section 37(1) of the Act -
 - (a) the licensee must follow the process of appointing the new operator as contemplated in section 31 of the Act; and
 - (b) the new operator, to whom the operator permit is transferred must meet the requirements contemplated in section 33 of the Act.

Conversion of industrial development zones

- 22. The person or government institution responsible or accountable for the management of an industrial development zone under or in terms of the IDZ regulations referred to in section 39(1) of the Act must ensure that application is made for a licence contemplated in section 23(6)(b) of the Act and that the provisions of section 25 of the Act are complied with within three years of commencement of the Act.”

SCHEDULE

COMPLIANCE OF THE FEASIBILITY STUDY WITH GUIDELINES

- 1. A feasibility study as contemplated in section 23(3)(b) of the Act must comply with the requirements in the guidelines which the Department shall make available, including the following:
 - (1) a statement of intent and executive summary;

-
- (2) general overview of the area where the Special Economic Zone is intended to be located including, information on and analysis of:
- (a) demographic profile of the population of the area and the impact thereof;
 - (b) socio-economic profile of the area including the rate of unemployment, education, health, human development profile and the impact thereof;
 - (c) economic profile of the area including, an analysis of existing enterprises by size and sector within the municipal boundaries of the proposed Special Economic Zone and the impact thereof; and
 - (d) availability of utilities and plans for future availability at municipal and provincial level.
- (3) Economic rationale for the application for designation of a Special Economic Zone including, information on and analysis of, amongst others –
- (a) Projected outputs and expected key outcomes of the Special Economic Zone.
 - (b) Projected economic impact of the Special Economic Zone on the local, district, provincial and national economies.
 - (c) Projected employment to be created during the various phases of the establishment of the Special Economic Zone, the sectors within which employment will be created and the nature of the employment which may be:
 - (i) permanent or temporary employment; or
 - (ii) direct or indirect employment.

- (d) Industrial activity targeted by the Special Economic Zone, the sectors and information on what the targeted industrial activities will create in the economy which includes, a demonstration on, amongst others, the –
- (i) extent of export of value-added products;
 - (ii) extent of import substitution;
 - (iii) beneficiation of raw materials and mineral resources;
 - (iv) skills training and transfer;
 - (v) innovation and intellectual property development including, the scope for new markets and manufacturing or distribution innovations;
 - (vi) alignment with existing initiatives on training, business development, retention and expansion and infrastructure upgrades; and
 - (vii) use of and impact on processing and manufacturing technologies.
- (e) Nature and maturity of manufacturing technology to be used by businesses intending to locate in the Special Economic Zone.
- (f) Localisation plan including:-
- (i) the impact on supplier development and potential to develop a cluster of enterprises to achieve commercial viability; and
 - (ii) projected procurement including, the use of local materials, technologies and labour.
- (g) Social impact of the proposed Special Economic Zone including, information on and analysis of, amongst others -
- (i) housing;
 - (ii) education;
 - (iii) health care;
 - (iv) access to public transportation;
 - (v) safety and security; and
 - (vi) availability of basic services.
- (h) Business plan for the Special Economic Zone including, information on and analysis of, amongst others -
- (i) Special Economic Zone strategy.

- (ii) Ownership structure of the Special Economic Zone including:-
 - (aa) a shareholders' agreement indicating the nature and extent of shareholding;
 - (bb) requirements for transfer of shares; and
 - (cc) requirements for the distribution of assets upon liquidation or deregistration.

- (iii) Comprehensive market analysis identifying the following in relation to the proposed Special Economic Zone:
 - (aa) strengths, weaknesses, opportunities, threats;
 - (bb) local and external clients;
 - (cc) potential markets and competitors;
 - (dd) future prospects; and
 - (ee) attractiveness to potential investors to locate in the Special Economic Zone.

- (iv) Special Economic Zone Operating Plan including, information on and analysis of amongst others -
 - (aa) how the applicant will develop, operate and maintain the Special Economic Zone;
 - (bb) identifying suppliers that will provide services necessary to operate the Special Economic Zone and the contractual arrangements that will be entered into with service providers;
 - (cc) facility management arrangements, identifying engineering and development alignment gaps and priorities in infrastructure located outside the Special Economic Zone in relation to infrastructure to be located within the Special Economic Zone; and

- (dd) providing plans for energy balancing, greenhouse gas abatement and clean energy generation including, the use of wind and solar power.

- (v) Special Economic Zone Business Attraction and Retention Plan identifying the businesses that the applicant has attracted to locate within the Special Economic Zone including, signed letters of intent from businesses to locate within the Special Economic Zone.

- (vi) Special Economic Zone Marketing Plan identifying, amongst others, how the applicant will market the Special Economic Zone in order to attract businesses to locate in the Special Economic Zone and source Foreign Direct Investment to the Special Economic Zone.

- (vii) Special Economic Zone Financial Plan including, information on and analysis of, amongst others -
 - (aa) projected total cost of the establishing the Special Economic Zone;
 - (bb) sources of funding to establish the Special Economic Zone;
 - (cc) projected ten (10) year income statement, balance sheet and cash flow statement for the Special Economic Zone;
 - (dd) projected return indicators on capital;
 - (ee) projected revenue and operational costs with breakeven projections for various scenarios;
 - (ff) access by the applicant to financial resources equal to at least 20% of the development cost of the proposed Special Economic Zone and supporting documents demonstrating access;
 - (gg) access by the applicant to financial resources to fund operational expenditure of the Special Economic Zone for five (5) years and supporting documents demonstrating access; and
 - (hh) the extent to which the applicant owns or controls the area to be considered for designation as a Special Economic Zone.

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- (viii) Special Economic Zone Physical Infrastructure Plan including, information on and analysis of, amongst others -
- (aa) physical master plan of the proposed Special Economic Zone including, its physical location, location and boundary of industries and services area, location and boundary of customs controlled area;
 - (bb) geotechnical study, a Basic Assessment Report and a detailed Scoping and Environmental Impact Assessment process, where necessary;
 - (cc) availability of natural resources and services;
 - (dd) availability and analysis of existing infrastructure to support Special Economic Zone development including, access to land, availability of municipal services, telecommunications services and utilities;
 - (ee) infrastructure development and construction plan within the Special Economic Zone; and
 - (ff) project management methodology to monitor and control development of physical infrastructure within the Special Economic Zone.
- (ix) Risk profile of the Special Economic Zone including, the level of the risk and remedial action available to mitigate the risk on, amongst others -
- (aa) operational risks;
 - (bb) financial risks;
 - (cc) market, environmental and regulatory risks;
 - (dd) utilities, quality, costs and continuity management risks; and
 - (ee) governance and institutional risks.
-

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