

REPUBLIC OF SOUTH AFRICA

SPECIAL ECONOMIC ZONES BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 36203 of 1 March 2013)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

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BILL

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 empower the Minister to establish 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—	10
	“ Board ” means the Special Economic Zones Advisory Board established by section 7;	
	“ company ” has the meaning ascribed to it in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);	
	“ Department ” means the Department of Trade and Industry;	15
	“ 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;	20
	“ licensee ” means the holder of a Special Economic Zone licence issued in terms of section 22(6);	
	“ Minister ” means the Minister responsible for trade and industry;	
	“ municipal entity ” has the meaning ascribed to it in section 1 of the Municipal Systems Act;	25
	“ 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 31(4);	30
	“ person ” includes a trust and foundation;	
	“ port of entry ” has the meaning ascribed to it in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002);	
	“ prescribed ” means prescribed by regulation made in terms of section 40;	35
	“ public entity ” has the meaning ascribed to it in section 1, and listed in Schedules 2 and 3 to, of the Public Finance Management Act;	
	“ 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;	40
	“ 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;	45
	“ Special Economic Zone ” means an area designated as the Special Economic Zone in terms of section 23;	
	“ Special Economic Zone Board ” means the board of directors of an individual special economic zone licensee appointed in terms of section 24(2);	50
	“ support measures ” includes any incentive or other support that may be provided by any sphere of government or organ of state;	
	“ targeted investments ” includes investments in support of government’s economic and industrial development policies;	
	“ this Act ” includes any regulation made in terms of section 40;	55
	“ value adding ” 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—
- (a) the determination of Special Economic Zones policy and strategy;
 - (b) the establishment of the Special Economic Zones Advisory Board;
 - (c) the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones; 5
 - (d) the designation, promotion, development, operation and management of Special Economic Zones;
 - (e) regulatory measures and incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and 10
 - (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 Zones in order to lodge applications to various government authorities and agencies and to receive information on regulatory requirements from such authorities and agencies. 15

Application of Act

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

CHAPTER 2

PURPOSE, POLICY AND STRATEGY OF SPECIAL ECONOMIC ZONES 20

Purpose of Special Economic Zones

4. (1) A Special Economic Zone is an economic development tool to promote 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— 25
- (a) facilitating the creation of an industrial complex, having strategic economic advantage for targeted investments and industries in the manufacturing sector and tradable services;
 - (b) developing infrastructure required to support the development of targeted industrial activities; 30
 - (c) attracting foreign and domestic direct investment;
 - (d) providing the location for the establishment of targeted investments;
 - (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; 35
 - (g) promoting regional development; and
 - (h) creating decent work and other economic and social benefits in the region in which it is located and promoting skills and technology transfer.

Special Economic Zones policy

5. The Minister may determine policy for the designation, promotion, development, operation and management of Special Economic Zones after consultation with the Board and may, when necessary, review such policy. 40

Special Economic Zones strategy

6. (1) The Minister must determine a Special Economic Zones strategy after consultation with the Board and may, when necessary, review such strategy. 45
- (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

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 Board, 5
consisting of—
- (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 economic development; 10
 - (e) one representative of the department responsible for public enterprises;
 - (f) one representative of Transnet SOC Limited;
 - (g) one representative of Eskom SOC Limited;
 - (h) one representative of the Development Bank of Southern Africa;
 - (i) one representative of the Industrial Development Corporation; 15
 - (j) 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
 - (k) three independent persons appointed on the basis of their knowledge,
experience and expertise relevant to Special Economic Zones. 20
- (3) For the purposes of appointing the persons contemplated in subsection (2)(j) and
(k), 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. 25
- (5) The Minister must—
- (a) appoint the persons contemplated in subsection (2)(j) and (k) as members of
the Board 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, experience and 30
expertise; 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 newspapers contemplated in
subsection (3).
- (6) No person below the position of Director-General or an equivalent position may 35
be appointed as a member of the Board in terms of subsection (2) (a) to (i).
- (7) (a) Should a member contemplated in subsection (2)(a) to (i) be appointed and
then be unable to attend a meeting of the Board, an alternate representative may attend
a Board meeting in place of that member.
- (b) Such alternate representative may not be below the position of Deputy-Director 40
General or an equivalent position.
- (8) The Minister must appoint a chairperson of the Board from one of the members
contemplated in subsection (2)(k).

Terms of office of Board members

8. (1) Members of the Board— 45
- (a) hold office for a period of five years from the date of their appointment by the
Minister; and
 - (b) are eligible for reappointment on expiry of their term of office for only one
additional term of office.
- (2) Despite subsection (1), the Minister may by notice in the *Gazette* extend the period 50
of office of all members of the Board for a maximum period of 12 months.

Disqualification from membership of Board

9. A person may not be appointed as a member of the Board if that person—
- (a) is an unrehabilitated insolvent;
 - (b) has been declared by a High Court with jurisdiction to be mentally ill; 55

- (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; 5
- (d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or
- (e) is otherwise disqualified in terms of section 69 of the Companies Act, 2008 (Act No.71 of 2008).

Vacation of office and filling of vacancies on Board 10

- 10.** (1) A member of the Board vacates office if the member—
- (a) resigns in writing to the Minister;
 - (b) ceases to qualify for appointment to the Board in terms of section 9;
 - (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.
- (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. 20

Functions of Board

- 11.** (1) The Board must—
- (a) advise the Minister on policy and strategy in order to promote, develop, operate and manage Special Economic Zones; 25
 - (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;
 - (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; 30
 - (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; 35
 - (f) liaise with licensees and operators 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; 40
 - (h) recommend to the Minister whether or not to approve the decision by an operator to locate a new investor in the Special Economic Zone;
 - (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. 45
- (2) The Board may—
- (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. 50

Fiduciary duties of Board members

- 12.** A member of the Board—
- (a) must comply with the code of conduct and disclosure obligations contemplated in section 13; 55
 - (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.

Code of good conduct and disclosure of interests by Board members

13. (1) The Minister must approve a code of conduct for the members of the Board. 5
 (2) 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 10
 (c) must comply with any decision of the Board as to whether or not they are entitled to participate in any particular proceedings of the Board.
 (3) For the purposes of this section, a member has a conflict of interest if— 15
 (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, Special Economic Zone operator permit, transfer of an operator permit or location of a new investor in the Special Economic Zone; or 20
 (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 Board in a fair, unbiased and proper manner. 25
 (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.
 (5) For the purposes of this section, “**family member**”, in relation to a member of the Board, means his or her parent, sibling, child, including an adopted child, or spouse, and includes a person living with that member as if they were married to each other, and any person separated from the member by no more than two degrees of natural or adopted consanguinity or affinity. 30

Meetings of Board

14. (1) The Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Board. 35
 (2) The chairperson of the Board—
 (a) may convene special meetings of the Board; and
 (b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of Board members.
 (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. 40
 (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. 45
 (6) At any meeting, a majority of the members of the Board constitutes a quorum.
 (7) A decision of the majority of members present at any quorate meeting constitutes a decision of the Board and, in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to a deliberative vote.
 (8) Minutes of the proceedings of every meeting of the Board must be— 50
 (a) recorded and must be kept in a manner that cannot be altered or tampered with; and
 (b) submitted to the next meeting of the Board for consideration and, if adopted, signed by the chairperson.
 (9) The Board may— 55
 (a) permit members to participate in a particular meeting by telephone or via audio-visual technology and any member who participates in this manner is regarded as being present at the meeting; and

- (b) invite any person to attend a meeting for the purpose of advising or informing the Board on any matter.

(10) The Board may, with the approval of the Minister, by resolution, make rules to further regulate its meetings.

Resolution of Board without meeting 5

15. (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) Section 14(8) applies with the changes required by the context in respect of subsection (1). 10

Committees of Board

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

(2) The Board may appoint suitably qualified persons to serve on a committee, including persons in the full-time employment of the State. 15

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

Secretariat of Board

17. The Director-General must— 20

(a) establish a dedicated secretariat in the Department to support and assist the 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). 25

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

18. (1) Expenditure incidental to the performance of the functions of the Board must be defrayed from money voted by Parliament as part of the appropriation of the Department. 30

(2) 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.

Dissolution of Board

19. (1) The Minister may, when necessary, after consultation with the Board, dissolve the Board or a committee of the Board, on any reasonable ground. 35

(2) On the dissolution of the Board or a committee of the Board contemplated in subsection (1), the Department or the Board, as the case may be, assumes and must perform the functions of the Board or the committee of the Board, as the case may be, in terms of this Act. 40

CHAPTER 4

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. 45

(2) The Minister may, with the concurrence of the Minister of Finance, make regulations regarding the additional source, administration, management and criteria for distribution of money from the Fund. 50

Support measures

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.

CHAPTER 5

DESIGNATION OF SPECIAL ECONOMIC ZONES 10

Application for designation

22. (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. 15

(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 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 20
- (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; 25
- (b) submit to the Minister a comprehensive feasibility study;
- (c) indicate the extent to which it owns and 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. 30

(4) The 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. 35

(5) The 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 Board—

- (a) may designate an area as a Special Economic Zone by notice in the *Gazette* with or without conditions; and 40
- (b) must issue the applicant with a Special Economic Zone licence if the area is so designated.

Designation of Special Economic Zones

23. (1) The Minister may, after considering the recommendation of the Board, designate a geographically defined area specified in the application contemplated in section 22, suitable for the development of a Special Economic Zone, with or without conditions, by notice in the *Gazette*. 45

(2) (a) Despite section 22, the Minister may, on his or her own accord, initiate the process for the designation of a geographically defined area suitable for development of a Special Economic Zone in pursuance of strategic national interests. 50

(b) Subsection (1) applies with the changes required by the context if the Minister designates a geographically defined area for the development of a Special Economic Zone.

(3) The Minister may prescribe different categories of Special Economic Zones, which may include— 55

- (a) a free port;
 - (b) a free trade zone;
 - (c) an industrial development zone; and
 - (d) a sector development zone.
- (4) The Minister may prescribe— 5
- (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.
- (5) The Minister may 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. 10
- (6) 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 subsequent transshipment, storage, repackaging or processing, subject to customs import procedures; 15
 - (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 transshipment or re-export; and
 - (c) **“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. 20

Governance and management of Special Economic Zone

24. (1) Upon designation of an area as a Special Economic Zone, the licensee must— 25
- (a) in the case of national or provincial government or a public entity, establish that Special Economic Zone as a national government business enterprise or a provincial government business enterprise contemplated in section 1 of the Public Finance Management Act;
 - (b) in the case of a municipality or municipal entity, establish that Special Economic Zone as a municipal entity contemplated in section 1 of the Municipal Systems Act; or 30
 - (c) in the case of a public-private partnership, establish that Special Economic Zone as a company.
- (2) A licensee must appoint a Special Economic Zone Board which must be responsible for the efficient governance and management of the business and affairs of that Special Economic Zone. 35
- (3) The Special Economic Zone Board must manage that Special Economic Zone—
- (a) in accordance with the Public Finance Management Act, if the licensee is national or provincial government or a public entity; 40
 - (b) in accordance with the Municipal Systems Act and the Municipal Finance Management Act, if the licensee is a municipal entity; or
 - (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 45
 - (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. 50

Strategic plan for Special Economic Zone

25. (1) A licensee 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.
- (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. 55

(3) The licensee 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.

Business and financial plan of Special Economic Zone

26. A licensee must, at least three 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— 5

- (a) containing a projection of the revenue and expenditure of that Special Economic Zone in respect of the ensuing financial year; and
- (b) covering the affairs of that Special Economic Zone for each of the three immediately following financial years. 10

Reporting and financial statements of Special Economic Zone

27. (1) A licensee must—

- (a) keep full and proper records of its financial affairs;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice; 15
- (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— 20
 - (i) an annual report on the activities of that Special Economic Zone during that financial year;
 - (ii) audited financial statements of that Special Economic Zone 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— 25

- (a) fairly present the state of affairs of that Special Economic Zone and its performance against predetermined objectives for the financial year concerned; and
- (b) include particulars of— 30
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year concerned;
 - (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 35
 - (iv) any other matter that may be prescribed.

Taking over administration of Special Economic Zone

28. (1) The Minister may, after consultation with the Board and the licensee concerned, appoint an administrator to take over the administration or to perform the functions of a licensee if— 40

- (a) the licensee has failed to comply with any condition prescribed by the Minister in terms of section 23(4)(b);
- (b) the licensee fails or is unable to perform its functions; or
- (c) there is mismanagement of the finances of that Special Economic Zone.

(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. 45

(3) The Minister may act in terms of subsection (1) without consulting the Board and the licensee concerned if there is financial mismanagement of that Special Economic Zone and the delay caused by the consultation would be detrimental to the functioning of that Special Economic Zone. 50

Suspension or withdrawal of designation

29. (1) Notwithstanding section 28, the Minister may, after considering a recommendation of the 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. 55

(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— 5

- (a) has entered into a written agreement with the operator; or
- (b) is situated in the custom controlled area of that 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).

CHAPTER 6 10

SPECIAL ECONOMIC ZONE OPERATOR

Special Economic Zone operator

30. A licensee must, following a fair, equitable, transparent, competitive and cost-effective procurement process, appoint an operator to develop, operate and manage that Special Economic Zone on behalf of the licensee. 15

Application for Special Economic Zone operator permit

31. (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 licensee to develop, operate and manage a Special Economic Zone in terms of section 30 must apply to the Minister for a Special Economic Zone operator permit (hereinafter referred to as an operator permit) in the form and manner prescribed. 20

(3) Upon receipt of the application for an operator permit, the Board may—

- (a) require an applicant to supply additional information necessary to consider the application; 25
- (b) request an applicant to appear before it for the purposes of making an oral submission at the applicant's expense; and
- (c) require any interested party, including an organ of state, affected by such application to comment on the application in writing. 30

(4) The Minister may, after considering the recommendation of the 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; and 35
- (b) the information that must be provided in any application for an operator permit.

Requirements for application for Special Economic Zone operator permit

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

- (a) be a person appointed by a licensee to develop, operate and manage that Special Economic Zone in terms of section 30; 40
- (b) be a person registered as a company in the Republic;
- (c) have sufficient capital and expertise to develop, operate and manage a Special Economic Zone; and
- (d) comply with such other criteria and requirements as may be prescribed. 45

(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 50
- (d) any other matter necessary to facilitate the issuing of an operator permit.

Special Economic Zone operator permit

33. (1) Before issuing an operator permit in terms of section 31(4), the Minister must, on the recommendation of the Board, be satisfied that the agreement between the licensee 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— 5

- (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); 10
- (c) the facilities that the operator must provide in order to enable the 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. 15

(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

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34. The operator must, on behalf of the licensee—

- (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 plans approved by the Minister and any other relevant authority; 25
- (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; 30
- (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; 35
- (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 Board; 40
- (i) ensure that any business located within the Special Economic Zone is approved in terms of section 37 and achieves the purpose of the Special Economic Zones contemplated in section 4;
- (j) apply to the Minister for finance and support measures contemplated in section 21 in the form and manner prescribed; 45
- (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 50
- (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

35. (1) The Minister may withdraw or suspend an operator permit if the operator— 55

- (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.
- (2) Before suspending or withdrawing an operator permit in terms of subsection (1)(a), (b) or (c), the Minister must— 5
- (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 make representations to the Minister. 10
- (3) 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 15

- 36.** (1) An operator may 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. 20
- (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 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. 25
- (5) The Minister may make regulations regarding—
- (a) the procedure to transfer an operator permit; and 30
 - (b) any other matter necessary in order to ensure the effective transfer of an operator permit.

Application to locate in Special Economic Zone

- 37.** (1) Any person who intends to conduct a business in a Special Economic Zone must apply to the Minister, in the manner and form prescribed, to locate the business in the Special Economic Zone. 35
- (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 23(5);
 - (b) indicate the extent to which the applicant's business achieves the purpose of Special Economic Zones set out in section 4; and 40
 - (c) comply with any other criterion that the Minister may prescribe.
- (3) The Minister may, after considering the recommendations of the Board in respect of the application, approve the decision of the operator to locate to the applicant's business within that Special Economic Zone, with or without conditions. 45

CHAPTER 7

GENERAL PROVISIONS

Transitional provisions and savings

- 38.** (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. 50
- (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.

(3) Any IDZ operator permit issued under the IDZ Regulations which is in force immediately before this Act comes into operation, remains in force for a period of five years from the date on which this Act came into operation and must thereafter be converted to an operator permit issued in terms section 31(4).

(4) 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. 5

Guidelines 10

39. (1) The Minister may, after consultation with the 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.

(2) The guidelines—

- (a) may not be inconsistent with the provisions of this Act; 15
- (b) must be published in the *Gazette*; and
- (c) are not binding on the Minister.

Regulations

40. (1) The Minister may, after consultation with the Board, make regulations regarding— 20

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (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— 25

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

Short title and commencement

41. This Act is called the Special Economic Zones Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SPECIAL ECONOMIC ZONES BILL, 2013

1. BACKGROUND

- 1.1 The Industrial Development Zones Programme was gazetted in 2000 as an incentive programme under the Manufacturing Development Act, 1993 (Act No. 187 of 1993), so as to establish industrial development zones, a type of special economic zone providing special provisions to develop industrial growth in particular geographical areas.
- 1.2 The Department of Trade and Industry (“the Department”) is of the view that the Industrial Development Zones (IDZ) Programme has performed below expectation. In 2006, the Department commenced a policy review process to review the challenges experienced by the IDZ Programme. This review process identified the following factors as key contributors to the shortcomings of the IDZ Programme: a weak policy and legislative framework; poor institutional and governance arrangements; *ad hoc* funding arrangements that render long term planning in the IDZ impossible, lack of IDZ specific incentives; lack of targeted investment promotion, lack of programme definition and strategic direction and poor coordination and integration.
- 1.3 South African policies for economic growth and development recognise that responding to challenging global and domestic economic conditions demands a sharper focus on new sources of competitiveness which will be achieved through innovation and productivity, with an entrenched base in skills, infrastructure and efficient and responsive state action.
- 1.4 Measures must be implemented to enhance domestic and regional demand and to extend export promotion strategically while at the same time strengthening the South African industrial base and promoting a labour-absorbing industrialisation path.
- 1.5 The Department has identified Special Economic Zones as a mechanism that can contribute towards the realisation of these economic growth and development goals. The Bill seeks to address some of the deficiencies of the IDZ Programme by creating a legislative framework to regulate the designation and operation of Special Economic Zones.

2. PURPOSE OF BILL

The Bill seeks to—

- (a) provide for the planning, designation, development, promotion, operation and management of Special Economic Zones;
- (b) provide for the establishment of the Special Economic Zones Advisory Board;
- (c) regulate the application and issuing of Special Economic Zones operator permits; and
- (d) provide for the establishment of the Special Economic Zones Fund and support measures.

3. CLAUSE BY CLAUSE EXPLANATION OF BILL

3.1 Chapter 1: Interpretation, objects and application

(a) Clause 1: Definitions

This clause defines terms used repeatedly in the Bill.

(b) Clause 2: Objects of Act

The objects of the Act are—

- to provide for the determination of Special Economic Zones policy and strategy;
- to provide for the designation, promotion, development, operation and management of Special Economic Zones;
- to provide for the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
- to provide for regulatory measures and tax and business incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and
- to provide for simplified procedures for the development and operation of Special Economic Zones by providing a single window clearance facility.

(c) **Clause 3: Application of Act**

This clause provides for the application of the Bill once it is promulgated and comes into operation as an Act of Parliament. The Act will apply to Special Economic Zones established in the Republic in terms of the Act.

3.2 Chapter 2: Special Economic Zones Purpose, Policy and Strategy

(a) **Clause 4: Purpose of Special Economic Zones**

- (i) A Special Economic Zone is an economic development tool to promote economic growth by using support measures to attract targeted foreign and domestic investments and technology.
- (ii) The purpose for establishing Special Economic Zones includes—
 - facilitating the creation of an industrial complex having strategic economic advantage;
 - providing the location for the establishment of strategic investments;
 - enabling the beneficiation of mineral and natural resources;
 - taking advantage of existing industrial and technological capacity, promoting integration with local industry and increasing value-added production;
 - promoting regional development; and
 - creating decent work and other economic and social benefits in the region in which it is located and promoting skills and technology transfer.

(b) **Clause 5: Special Economic Zones policy**

This clause empowers the Minister to determine and, when necessary, review, policy for the designation, promotion, development, operation and management of Special Economic Zones, after consultation with the Special Economic Zones Advisory Board (“the Board”).

(c) **Clause 6: Special Economic Zones strategy**

This clause requires the Minister to determine and, when necessary, review, a Special Economic Zones strategy after consultation with the Board. The strategy must address the strategic designation of Special Economic Zones and industrial clustering that will best support industrialisation and economic growth strategies.

3.3 Chapter 3: Special Economic Zones Advisory Board

(a) **Clause 7: Establishment of Board**

This clause provides for the establishment of the Board, reporting to the Minister and comprising representatives from government, organised business, labour and civil society as well as independent experts with skills and expertise in areas relevant to Special Economic Zones.

(b) **Clause 8: Terms of office of Board members**

Board members hold office for five years and are eligible for reappointment on expiry of their term of office for only one additional term of office.

(c) **Clause 9: Disqualification from membership of Board**

This clause provides the grounds on which a person is disqualified from being a member of the Board.

- (d) **Clause 10: Vacation of office and filling of vacancies on Board**
A member of the Board vacates office on resignation, if he ceases to qualify for appointment or is removed from office by the Minister.
- (e) **Clause 11: Functions of Board**
The functions of the Board include, amongst others—
- advising the Minister on policy and strategy in order to promote, develop, operate and manage Special Economic Zones as well as reporting to the Minister on an annual basis on the implementation of policy and strategy;
 - considering applications for designation as a Special Economic Zone, developer permits, transfer of permits and location of businesses within Special Economic Zones and recommending to the Minister whether or not to approve applications;
 - liaison with developers on the implementation of strategic plans;
 - assessing and reviewing the success of Special Economic Zones in achieving the purpose of the Act;
 - reporting to the Minister on progress relating to the development of Special Economic Zones,
 - advising the Minister on initiatives to market Special Economic Zones; and
 - conducting investigations on any matter arising out of the application of the Act.
- (f) **Clause 12: Fiduciary duties of Board members**
Board members are required—
- to comply with the code of conduct and disclosure obligations contemplated in the Bill; and
 - not to 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.
- (g) **Clause 13: Code of conduct and disclosure of interests by Board members**
The Minister is required to approve a code of conduct for the members of the Board. The members of the Board must make full disclosure of any conflict of interest including any potential conflict of interest, which must be recorded in the minutes of the Board.
- (h) **Clause 14: Meetings of Board**
This clause provides for the manner of convening and conducting Board meetings. Furthermore, the Board is required to hold at least four ordinary meetings each year.
- (i) **Clause 15: Resolution of Board without meeting**
The Board is empowered to adopt a resolution without a meeting.
- (j) **Clause 16: Committees of Board**
The Board is empowered to establish committees to assist in the performance of its functions.
- (k) **Clause 17: Secretariat of Board**
The Director-General is required to establish a secretariat in the Department to support and assist the Board in the performance of its functions in terms of the Act.
- (l) **Clause 18: Expenditure, remuneration and allowances paid to 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, is entitled to be paid such remuneration and allowances as determined by the Minister with the approval of the Minister of Finance from money voted by Parliament as part of the appropriation of the Department.
- (m) **Clause 19: Dissolution of Board**
This clause empowers the Minister to dissolve the Board or a committee of the Board after consultation with the Board on any reasonable ground. Furthermore, the Department or the Board, as the case may be, is required to assume and to perform the functions of the Board or a committee of the Board, as the case may be, on the dissolution of the Board or a committee of the Board.

3.4 Chapter 4: Financing and support measures

(a) Clause 20: Special Economic Zones Fund

This clause empowers the Minister to establish a Special Economic Zones Fund to support the promotion and development of Special Economic Zones from money voted by Parliament as part of the appropriation of the Department.

(b) Clause 21: Support measures

The Minister is empowered to determine and implement support measures and other support programmes, including incentive schemes, for Special Economic Zones' developers and businesses operating within Special Economic Zones.

3.5 Chapter 5: Designation of Special Economic Zones

(a) Clause 22: Application for designation

(i) The following entities are entitled to apply to the Minister for a specified area to be designated as a Special Economic Zone:

- national government;
- a provincial government;
- a municipality;
- a public entity;
- a municipal entity;
- a public-private partnership,

acting alone or jointly.

(ii) The applicant is required to demonstrate that the designation will further government's industrial development objectives and complies with stipulated criteria. Upon designation the Minister issues a licence to the applicant.

(b) Clause 23: Designation of Special Economic Zones

The Minister is empowered to—

- after considering the recommendation of the Board, designate a geographically defined area suitable for the development of a Special Economic Zone;
- initiate, on his or her own accord, the process for the designation of a geographically defined area suitable for development of a Special Economic Zone in pursuance of strategic national interests;
- determine different categories of Special Economic Zones;
- prescribe criteria and guidelines for the designation, development, operation and management for each category of Special Economic Zones.

(c) Clause 24: Governance and management of Special Economic Zone

(i) This clause requires an individual Special Economic Zone licensee to appoint a board responsible for the governance and management of the Special Economic Zone.

(ii) Furthermore, an individual Special Economic Zone licensee is required to appoint an operator to develop, operate and manage the Special Economic Zone on behalf of the licensee, following a fair and transparent procurement process.

(d) Clause 25: Strategic plan for Special Economic Zone

This clause requires the licensee to develop and implement a strategic plan within the framework of the Special Economic Zones strategy to achieve the mandate of, perform the functions of and comply with the conditions for that Special Economic Zone.

(e) Clause 26: Business and financial plan of Special Economic Zone

A licensee is required to submit to the Minister for approval a business and financial plan.

(f) Clause 27: Reporting and financial statements of Special Economic Zone

A licensee is required to prepare financial statements and keep records of accounts and submit these to the Auditor-General and the Minister.

(g) Clause 28: Taking over administration of Special Economic Zones

This clause empowers the Minister to appoint an administrator to take over the administration or perform the functions of a Special Economic Zone under certain circumstances.

(h) Clause 29: Suspension or withdrawal of designation

- (i) This clause empowers the Minister to suspend or withdraw any designation of an area as a Special Economic Zone which does not further government's industrial development objectives.
- (ii) The lawful activities of any business located within a Special Economic Zone and incentives granted are not affected by the suspension or withdrawal of the designation if the business—
 - has entered into a written agreement with the operator;
 - is situated in the custom controlled area of the Special Economic Zone.

3.6 Chapter 6: Special Economic Zone Operator**(a) Clause 30: Special Economic Zone operator**

This clause empowers a licensee to appoint an operator to develop, operate and manage a Special Economic Zone on behalf of the licensee following a fair, equitable, transparent, competitive and cost-effective procurement process.

(b) Clause 31: Application for Special Economic Zone operator permit

This clause provides that a Special Economic Zone may only be developed, operated and managed by a person who holds a Special Economic Zone operator permit issued, on application, by the Minister.

(c) Clause 32: Requirements for applications for Special Economic Zone operator permit

An applicant for an operator permit must meet various requirements stipulated in the Bill, including—

- being a company registered in South Africa specifically for the development, operation and management of a Special Economic Zone;
- having sufficient capital and expertise to develop, operate and manage a Special Economic Zone;
- indicate its ownership structure through the submission of a shareholders' agreement.

(d) Clause 33: Special Economic Zone operator permit

This clause provides for conditions that must be stipulated in an operator permit.

(e) Clause 34: Functions of Special Economic Zone operator

This clause provides for the functions that an operator performs on behalf of the licensee which include—

- the implementation of a strategic plan for the Special Economic Zone;
- the making of improvements to the Special Economic Zone site and its facilities;
- providing or facilitating provision of infrastructure and other services required for the Special Economic Zone to achieve its strategic and operational goals;
- the provision of adequate enclosures to segregate the zone area from any applicable customs territory;
- the provision of adequate security on the site, at offices and at all facilities of the zone;
- the adoption of rules and regulations for businesses within the zone area in order to promote their safe and efficient operation;
- the promotion of the relevant Special Economic Zone as a foreign and domestic direct investment destination; and
- the facilitation of a single window clearance facility.

(f) Clause 35: Suspension or withdrawal of Special Economic Zone operator permit

This clause empowers the Minister to suspend or withdraw an operator permit under certain circumstances.

(g) Clause 36: Transfer of Special Economic Zone operator permit

This clause empowers the Minister to transfer an operator permit under certain circumstances.

- (h) **Clause 37: Application to locate in Special Economic Zone**
This clause regulates the application by any person to locate a business in a Special Economic Zone.

3.7 Chapter 7: General Provisions

- (a) **Clause 38: Transitional provisions and savings**
This clause provides for transitional provisions in respect of the designation of an Industrial Development Zone and issuing of an Industrial Development Zone operator permit under the Industrial Development Zone Programme Regulations published under Government Notice R1224 in Government *Gazette* 21803 of 1 December 2000.
- (b) **Clause 39: Guidelines**
This clause empowers the Minister to 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.
- (c) **Clause 40: Regulations**
This clause empowers the Minister to make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed.
- (d) **Clause 41: Short title and commencement**
This clause provides for the citation or short title of the Bill once it is promulgated and comes into operation as an Act of Parliament.

4. BODIES AND ORGANISATIONS CONSULTED

- 4.1 The Department has consulted with the following bodies and organisations:
- provincial departments responsible for economic development under the auspices of MINMEC;
 - various national government departments, including the National Treasury, South African Revenue Services and the Department of Economic Development;
 - existing Industrial Development Zones; and
 - municipalities represented by the South African Local Government Association at meetings of MINMEC.
- 4.2 The Department also consulted with members of the public through public hearings convened in various provinces from 23 January to 22 March 2012.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, since it falls within one or more of the functional areas of *concurrent national and provincial legislative competence* listed under Schedule 4 to the Constitution, namely “*Industrial promotion*” or “*Trade*” or both.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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