

DEPARTMENT OF TRADE AND INDUSTRY

NO. 790

03 AUGUST 2018

SPECIAL ECONOMIC ZONES ACT NO. 16 OF 2014

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT AMENDMENT REGULATIONS ON GOVERNANCE AND COMPOSITION OF SPECIAL ECONOMIC ZONES (SEZs), IN TERMS OF SECTION 41 OF THE SPECIAL ECONOMIC ZONES ACT, 2014 (ACT NO. 16 OF 2014)

I, Dr Rob Davies, Minister of Trade and Industry, having consulted with the Advisory Board in terms of section 41 of the Special Economic Zones Act No. 16 of 2014, (SEZ Act), hereby publish the draft Amendment Regulations on Governance and Composition of Special Economic Zones (SEZs) for broader public comments, to remedy the complexities in the administration and implementation of the SEZ Act, as set out in the Schedule hereto.

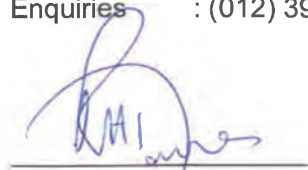
Members of the public are invited to submit to the Minister, within thirty (30) days from the date of publication of this notice in the Government Gazette, written inputs or comments on the proposed Amendment Regulations to the following addresses:

By post to : The Director-General: Department of Trade and Industry
Attention: Mr Maoto Molefane
Private Bag x 84
Pretoria
0001

By hand at : **the dti** Campus, Block A, 77 Meintjies Street, Sunnyside, Pretoria

By email : MMolefane@thedti.gov.za

Enquiries : (012) 394 5026



Dr Rob Davies (MP)

Minister of Trade and Industry

Date: 4/8 /2018

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SCHEDULE

1. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act bears the meaning assigned to it in the Act, unless the context indicates otherwise-

“SEZ entity” means the Special Economic Zone (SEZ) entity established in terms of section 25; or the Industrial Development Zone (IDZ) designated as a Special Economic Zone in terms of section 39 (2) of the Special Economic Zones Act (SEZ Act) 2014 (Act No. 16 of 2014);

“Minister” means the Minister responsible for trade and industry;

“the Act” means the Special Economic Zones Act (SEZ Act), 2014 (Act No. 16 of 2014);
and

“Regulation” includes the Schedule and any Table included within or referred to in the Regulations.

2. Application of the Regulations

(a) These Regulations shall apply to SEZ entities administering and implementing the Special Economic Zones Act, 2014 (Act No. 16 of 2014).

(b) The Regulations shall have retrospective operation in SEZ entities established *prior* and coming into effect of these Regulations.

3. Options, requirements, processes and timeframes for transition in governance and composition of SEZ entities and operators

(a) The SEZ entity must operate as the SEZ operator in a manner provided for, in section 32 of the SEZ Act, as at the effective date of these Regulations.

(b) Within thirty (30) days of receipt of a Notice of Intent contemplated in these Regulations 3(b) and FORM **SEZ 1**, the SEZ entity must comply by notifying the Minister of its intent

to transform the governance and composition of the SEZ entities in one or more of the following options, for:

- (i) the management and operation of the IDZ entity not be separated;
- (ii) the existing SEZ operator or entity to hold a license and permit to function as both the management entity and state owned operator; or
- (iii) the separation of the SEZ entity from the operator, where a private company is appointed to either operate the SEZ wholly or in part, in terms of section 32(2) of the SEZ Act,

for purposes of proper implementation and administration of SEZs, in terms of section 41 of the SEZ Act.

- (c) The SEZ entity must make a Declaration of Intent, stating what the SEZ intends to do, to be submitted to the Minister of Trade and Industry as contemplated in these Regulations and FORM **SEZ 2**, within a period of thirty (30) days from the effective date of these Regulations.
- (d) At least seven (7) days before the expiry of the period of thirty (30) days contemplated in Regulation 3(d), the SEZ entity may request an extension of not more than seven (7) days, contemplated in these Regulations and FORM **SEZ 4**, to put in place preparations for transition in governance and composition of the entity, for proper implementation and administration.
- (e) Within three (3) days of the submission of the Declaration of Intent to transform the governance and composition of the SEZ, the entity must in terms of these Regulations notify entities that may be impacted by the transition of the SEZ entity as contemplated in Regulation 3(b).

4. Submission of the Declaration of Intent by the IDZ/SEZ

- (a) The SEZ must, with or without receipt of the Notice of Intent, contemplated in Regulation 3(b) above, make a Declaration of Intent to the Minister of Trade and Industry, anytime about its course of composition and governance contemplated in Regulation 3(b), within seven (7) days after the effective date of these Regulations.
- (b) If the SEZ fails to submit the information within even (7) days as contemplated in Regulation 3(b), it must not implement any decision without prior approval by the Minister.

- (c) The Minister must not use the Declaration of Intent by the SEZ, submitted in terms of Regulations 3(b), for any reason other than for purposes of these Regulations.
- (d) The SEZ must after submitting the Declaration of Intent, not operate as an entity separate from the operator, a conduct that these Regulations seek to address.

5. Compliance - Reporting and Monitoring

- (a) The SEZ entity must within three (3) months of the effective date of these Regulations and annually thereafter, make a submission of a Compliance Notice contemplated in these Regulations and FORM SEZ 3 to the Minister, containing the following information:
 - (i) Confirmation of the SEZ' state of governance and composition, contemplated in these Regulations;
 - (ii) A transitional plan, a quarterly financial and performance report or any report as proof of the effectiveness and compliance with these Regulations;
 - aa. The reports shall be evidence of proof based on verified information, reflecting the state of compliance in respect of the transformation of governance and composition of the SEZ entity for purposes of proper implementation and administration of the SEZ Act as required in these Regulations.
 - (iii) Recommendations if any, of appropriate measures to be implemented by the SEZ entity including, timeframes for implementation and full compliance with these Regulations.
- (b) If upon consideration of the compliance notice submitted in terms of these Regulations, the Minister is of the view that the SEZ entity complied or failed to comply with the requirements of these Regulations, the Minister must notify the entity concerned in a prescribed FORM SEZ 5, in line with these Regulations for non-compliance.

6. Duties and obligations of the SEZ entities

- (a) Irrespective of the transition made in the functions and operations of the SEZ, the SEZ remains liable to meet its obligations in respect of these Regulations, consistently with the SEZ Act.

7. Information and communication to affected entities

- (a) The SEZ entities that require information or clarity in regard to these Regulations may contact the Minister of Trade and Industry at –

(i) **Delivered by hand to:**

The Department of Trade and Industry
77 Meintjies Street
Sunnyside
Pretoria
Republic of South Africa

(ii) **Addressed by post to:**

Department of Trade and Industry
Private Bag X 84
Pretoria
0002
Republic of South Africa

Attention: Mr Maoto Molefane

Email: MMolefane@thedti.gov.za

- (b) The SEZ entities that are affected by these Regulations are as listed in Annexure A of these Regulations, but not limited to the list in Annexure A:

8. Non-adherence

- (a) Non-adherence to these Regulations will be handled in terms of the processes and procedures under the SEZ Act.

9. Title and effective date

- (a) These Regulations shall be called the Governance and Composition of the Special Economic Zones Regulations, 2018 and shall come into effect upon publication in the Government Gazette.

ANNEXURE A

DESIGNATED IDZ/SEZ IN SOUTH AFRICA

Name of the SEZ	SEZ Operator	Province	Year of designation	Tel	Fax	Email
Coega IDZ	COEGA Development Corporation (Pty) Ltd	Eastern Cape	2001	0861026342 / 0414030400	0414030401	contactcentre@coega.co.za
East London IDZ	East London Industrial Development Zone SOC Ltd	Eastern Cape	2002	0437028200	0437028251	info@elidz.co.za
Richards Bay IDZ	Richards Bay Industrial Development Zone Company SOC Ltd	KwaZulu-Natal	2002	0357972600	0357880578,	info@rdidz.co.za
Dube Trade Port SEZ	Dube TradePort Corporation (DTPC)	KwaZulu-Natal	2016	0328140000	0328140100	info@dubetradeport.co.za
Saldanha Bay IDZ	Saldanha Bay IDZ Licensing Company SOC Ltd	Western Cape	2013	0227140206 / 0870950261	0227140827	info@sbidz.co.za
Gauteng IDZ	Gauteng Industrial Development Zone SOC Limited	Gauteng	2002	0110852417	N/A	info@gidz.co.za
Maluti-a-Phofung SEZ	Maluti-a-Phofung Industrial Development Zone SOC Ltd	Free State	2014	0514000880	N/A	maphoka@maps ez.co.za
Musina-Makhado SEZ	Musina-Makhado SOC LTD	Limpopo	2017	0156334700	0156334854	information@lieda.co.za

ANNEXURE B

FORMS TO REGULATIONS

SPECIAL ECONOMIC ZONES

FORM: SEZ 1

NOTICE OF INTENT

(in terms of Regulation 3(b))

Date:

To:

(Insert the name and registration number of the SEZ entity)

On the..... of 20 ..., the Minister of Trade and Industry issued a Notice of Intent, contemplated in Regulations 3(b), requesting the SEZ entity to notify the Minister of its intent to transit in governance and composition of the entity, for purposes of proper implementation and administration of the entity, in terms of section 41 of the SEZ Act.

The Minister of Trade and Industry is satisfied that the reply to the Notice of Intent by the SEZ entity, is consistent with the options set out in Regulations 3(b)

OR

The Minister of Trade and Industry is satisfied with the reply to the Notice of Intent submitted by the SEZ entity

The Minister of Trade of Industry

Signature:

Date: _____

SPECIAL ECONOMIC ZONES

DECLARATION OF INTENT
(in terms of Regulation 3(c))

FORM: SEZ 2

Date: _____

The Special Economic Zone (SEZ) declares and commits to carry out its functions in terms of the Special Economic Zones Act (SEZ) 2014 (Act No. 16 of 2014), and as contemplated in Regulations 3(b).

COMMITMENT

1. In view of this, commit to –
 - 1.1 Perform the functions governed by the terms contained in the SEZ Act, these Regulations, read with relevant legal prescripts.

2. The declaration, read together with the relevant legislations, shall be coverage in respect of any directive which may be issued from time to time consistent with the SEZ Act.

3. There shall be cooperation and consultation with the Minister with regards to –
 - 3.1 the declaration and work pertaining to the SEZ Act and these Regulations;
 - 3.2 any compliance required with a view to putting into effect the objectives of the SEZ Act and implementing these Regulations; and
 - 3.3 issuing of any communication which initiates, guides, governs action or procedure regarding the functions or performance of the SEZ entities.

4. Notwithstanding anything to the contrary contained in the Declaration, the SEZ entity shall act on further directive which shall be deemed to include the Declaration by reference.

Name and Title of the person signing on behalf of the SEZ

Authorized Signature:

_____ Date: _____

SPECIAL ECONOMIC ZONES**COMPLIANCE NOTICE**
(in terms of Regulations 5(a))

FORM: SEZ 3

SECTION A: DETAILS OF ENTITYName of entity/organization [*Special Economic Zone (SEZ)*]

Registration number:

Physical address:

Telephone number:

Email address:

SECTION B: REPORT VERIFIED BY THE MINISTER OF TRADE AND INDUSTRY

TICK	PERIOD	CONTENT
	Three (3) Months after the Promulgation of the Regulations	Option for transition in governance and composition of the SEZ
	Annual Submission	Status of the SEZ

Indicate type of entity/organization eg. SEZ entity or operator	Date of establishment as SEZ entity	Date of issuance of an operator's permit	Option of operation eg. as both SEZ entity and operator

*A report must indicate how the IDEZ/SEZ entity functions

SECTION C: REPORT**1. ATTACHMENT OF A REPORT – TRANSITIONAL PLAN, PERFORMANCE AND ACCOUNTING DETAILS:**

- Accounting officer's name:
- Address:
- Transitional plan, Financial report and Annual report stating eg. the change in the SEZ, the work of the SEZ operating as both the SEZ entity and operator? OR

2. ATTACHMENT OF A COPY OF A REPORT AS PROOF OF THE WORK OF THE SEZ ENTITY [In the absence of the above report]

Name and Title of the person signing on behalf of the SEZ

Authorized Signature:

_____ Date: _____

SPECIAL ECONOMIC ZONES

FORM: SEZ 4

EXTENSION OF TIME FOR COMPLIANCE

(In terms of Regulation 3(d))

Date:

From:

(insert Names of the IDZ/SEZ)

CONCERNING:

EXTENSION OF TIME FOR COMPLIANCE

For the reasons set out below the Special Economic Zone (SEZ) hereby requests the Minister of Trade and Industry an extension of time for a period of _____ for further preparation and compliance with these Regulations for proper implementation and administration of the SEZ Act.

The particulars, circumstances and reasons for the extension of time for compliance by the SEZ entity are -

(insert a concise statement of the circumstances, and particulars of the request)
.....
.....
.....
.....
.....
.....
.....

Name and Title of the person signing on behalf of the SEZ

Authorized Signature:

_____ Date: _____

SPECIAL ECONOMIC ZONES

FORM: SEZ 5

NOTICE OF NON-COMPLIANCE
(in terms of Regulation 5(b))

Date :

To :

The Minister of Trade and Industry believes on reasonable grounds that the Special Economic Zone (SEZ) entity named above, has contravened these Regulations. In particular, the Minister states that the entity has failed to comply with these Regulations. Specifically:

(details of the nature and extent of the conduct that is the subject of this Notice)

The entity is required to take the steps set out in the attached statement to bring the entity's conduct into compliance with the SEZ Act and these Regulations within thirty (30) days.

Failure to comply with this Notice may result in further action being taken against the entity.

The Minister of Trade of Industry

Signature:

Date: _____