



# GUIDELINES ON TRANSITIONAL MEASURES FOR INDUSTRIAL DEVELOPMENT ZONES INTERMS OF SECTION 39 OF THE SEZ ACT NO. 16 OF 2014 (the Act) AND REGULATIONS MADE IN TERMS OF THE ACT

## 1. Background

- 1.1 The Special Economic Zones Act, No. 16 of 2014 (the Act) commenced by Presidential Proclamation on 9 February 2016. The Act introduces a new regulatory framework for the planning, design, development, management and operations of Special Economic Zones. This new regulatory framework replaces the old regulatory framework for Industrial Development Zones, which was based on the Industrial Development Zones Regulations.
- 1.2 The gap between the new Special Economic Zones regulatory framework and the old Industrial Development Zones regulatory framework is so significant that it is unlikely for most industrial development zones to comply with the new requirements since the commencement of the Act.
- 1.3 The Guidelines on Transitional Measures for Industrial Development Zones are therefore necessary to facilitate a smooth transition for IDZs so that they can gradually and systematically move towards and achieve full compliance with the new regulatory framework, without compromising their operations.

## 2. Key Sections Impacting on Transition

Since the commencement of the Act, **the dti** has been engaging IDZ Operators and affected provinces. In these engagements, it became apparent that while transitional measures may arise from the application of certain sections of the Act, there are some elements of the transition that are

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more challenging for the IDZ Operators and Provinces. Sections 25, 31 and 39 of the Act are the sections that directly impact on transitional measures, and thus require more attention due to some complexities with regards to both interpretation and implementation.

### **3. Section 25**

3.1 This Section regulates the establishment of an SEZ Entity by the licensee. The key issues in this Section are the following:

- (i) The Establishment of an SEZ Entity to take responsibility for the overall strategic direction, focus and operations of the relevant zone;
- (ii) The SEZ Entity must have full ownership or control of the designated area;
- (iii) The schedule status of the SEZ Entity; and
- (iv) The appointment of a Board for the SEZ Entity, referred to as the SEZ Board.

3.2 New applications for the designation of Special Economic Zones will always indicate who the SEZ Entity (the envisaged SEZ License Holder) shall be. However, with respect to the old IDZs, an IDZ Operator would have been designated in the application instead of an SEZ License Holder.

3.3 The separation of a SEZ Entity (Licensee) and the SEZ Operator can be achieved without necessarily creating a new agency. A province may designate any of its existing agencies to assume the role of the SEZ Entity.

### **4. Section 31**

4.1 This Section mainly regulates the appointment of a SEZ Operator by the Holder of a SEZ License. It must be noted that this Section does not directly affect any transitional issue, though such inferences arising out of misinterpretation seem to be common. The key provisions in this Section are:

- (i) Appointment of an SEZ Operator through a process that is fair, equitable, transparent, competitive and cost effective; and
- (ii) The additional provision in this Section is that a Public-Private Partnership arrangement is possible for an SEZ Operator.

4.2 The main challenges for current IDZ Operators and provinces with respect to this Section purely arise from misinterpretation and consequently lead to the following wrong conclusions:

- (i) Following the process may lead to the demise of the existing operators as their appointment is not guaranteed; and
- (ii) Consequently, this may lead to the loss of capacity that took years to develop and accumulate.

## 5. Section 39

5.1 This Section mainly regulates the transitional process and specifies key themes as follows:

5.1.1 **Applicability:** The transitional measures and requirements are only applicable to:

- (i) Industrial Development Zones designated in terms of the Industrial Development Zones Regulations and operational when the new SEZ Act becomes effective;
- (ii) Industrial Development Zones Enterprises duly approved to locate in an IDZ, and fully operational on the date of commencement of the Act; and
- (iii) Provincial authorities which oversee the operations of an Industrial Development Zone.

5.1.2 **Duration of the transition period:** The period of the transition is three years from the date of commencement of the Act.

5.1.3 **Topics:** The following topics are covered in the Section:

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- (i) Conversion of an Industrial Development Zone into a Special Economic Zone;
- (ii) Conversion of an Industrial Development Zone into a Special Economic Zone Operator Permit;
- (iii) Conversion of an Industrial Development Zone Enterprise into a Special Economic Zone Enterprise; and
- (iv) Development and submission of a Transitional Plan (covered in the SEZ Regulations).

#### **5.1.4 Incidental Transitional matters**

5.1.4.1 There are many sections of the Act that may indirectly impact on transitional arrangements, depending on the policy and strategy choices that Provinces, through the relevant Executive Authority, and IDZs may opt for.

5.1.4.2 It is important to note that it is not a “MUST” for these matters to be included in the transitional arrangements. They will only arise from decisions taken, and should such matters arise, they should be included in the transitional arrangements or Transitional Plan.

5.1.4.3 The following are examples and should be read and interpreted as ONLY EXAMPLES and such incidents are not expected or encouraged to occur:

- (a) A decision to discontinue the services of a current IDZ Operator will trigger some or all of the following:
  - (i) The appointment of a new SEZ Operator in the manner outlined in Section 31;
  - (ii) Transfer of Operator Permit from the current Operator to the NEW OPERATOR; or
  - (iii) Application for a new SEZ Operator Permit.
  
- (b) A decision to dissolve the Board of an IDZ Operator will trigger the appointment of a new Board.

- (c) A decision to shift the geographic boundaries of an IDZ will trigger the following:
  - (i) The withdrawal of the designation of that IDZ, and possibly; and
  - (ii) An application to designate the new geographic location.

## 6. The Guidelines

6.1 In order to contribute to efforts to address the identified challenges, the Guidelines have to deal with both interpretation and substantive issues, and thus provide a clear set of actions that are required in each case.

6.2 Section 25 matters and their implications in respect of existing Industrial Development Zones:

<b>Issue</b>	<b>Requirement</b>	<b>Action</b>	<b>Responsibility</b>
1. Establishment of an SEZ Entity	The License Holder to establish an SEZ Entity which will take overall responsibility for the strategic direction and performance of the zone, as well as other related responsibilities.	Each province must designate an entity which will be the SEZ License Holder.	MECs responsible for Economic Development
		Note that a government department cannot be a SEZ Licensee as the Licensee (SEZ Entity) must have its own Board.	
		Each province must then notify the Minister in writing as to which entity	MECs responsible for Economic Development

		has been designated by the Province.	
		Minister issues the SEZ License to the designated entities.	Minister of Trade and Industry
2. Appointment of an SEZ Board for the SEZ Entity	License Holder must appoint an SEZ Board which must be responsible for the efficient governance and management of the business affairs of the SEZ Entity.	The Licensee appoints the Board following the standard process but taking into account the diversity and complexity of skills required for the purposes of SEZ planning, design, development, management and operations.	MEC responsible for Economic Development
3. Scheduling of the SEZ Entity as a business enterprise	Section 25(2) states that: In case of a national or provincial government or public entity; the SEZ Entity must be a business enterprise as contemplated in section 1 of the PFMA (3D).	(1) SEZ Entity applies to National Treasury for the scheduling of the SEZ Entity.	SEZ Entity Management/Board
		(2) Note that the	

		<p>scheduling of public entities is the competence of National Treasury and not <b>the dti</b>. Therefore <b>the dti</b> shall accept any scheduling decision by National Treasury.</p>	
<p>4. Attaining full ownership or control of the designated area</p>	<p>Section 25(1)(b) states that: the Licensee must provide resources for the operations of the envisaged zone including the transfer of ownership or control of the designated area.</p>	<p>Ownership of the designated area: (1) Transfer of title deed of the land to the SEZ Entity following due process for the disposal of public assets.</p>	<p>Licensee and development partners (e.g. a municipality or Dept. of Public Works, etc.</p>
		<p>Control of the designated area: (2) SEZ Entity and Landowner to enter into a lease agreement giving full rights to use and develop the</p>	<p>SEZ Entity and Land owner</p>

		land to the SEZ Entity.	
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6.3 Section 39 matters

Issue	Requirement	Action	Responsibility
1. Conversion of an Industrial Development Zone into a Special Economic Zone	Any Industrial Development Zone designated in terms of the IDZ Regulations and operational immediately before the SEZ Act becomes operational, must be converted into an SEZ in terms of the SEZ Act.	None – Section 39(2) states: Any designation of an IDZ which is force prior to the new Act, remains in force and must be regarded as a designation under the new Act.	
2. Conversion of an IDZ Operator Permit into an SEZ Operator Permit	Any IDZ Operator Permit issued in terms of the IDZ Regulations must be converted into an SEZ Operator Permit in terms of the SEZ Act.	None – Section 39(3) states: Any IDZ Operator Permit issued under IDZ Regulations which is in force immediately before the new Act comes into operation; remains in force and must be regarded as an SEZ Operator Permit issued	

		under the new Act. It should also be noted that there is no expectation that a new process of appointing an SEZ Operator after the three (3) years of the transitional period.	
3. Issuing of SEZ License	Minister of Trade and Industry must issue an SEZ License to an SEZ Entity.	Each province must designate an entity which will be the SEZ License Holder.	MECs responsible for Economic Development
		Each province must then notify the Minister in writing as to which entity has been designated by the Province.	MECs responsible for Economic Development
		Minister issues the SEZ License to the designated entities.	Minister of Trade and Industry
4. Conversion of an IDZ Enterprise into an SEZ Enterprise	Enterprises approved to locate and operating in an Industrial Development Zone, and operational when the SEZ Act becomes	None - Section 39(4) states that: Any IDZ enterprise approved to be located in an IDZ under the IDZ Regulations before this Act comes into operation, must be regarded as a	

	operational must be converted into SEZ Enterprises.	business approved to be located in a Special Economic Zone in terms of this Act.	
		However, it must be noted that approval to locate in an SEZ is not a qualification for SEZ incentives as these are conditional.	
5. Transitional Plan	IDZs designated in terms of the IDZ Regulations must ensure development of a Transitional Plan.	Development of a IDZ Transitional Plan.	IDZ CEO
		Approval of the Transitional Plan by IDZ Board and MEC.	IDZ CEO
	Submission of IDZ Transitional Plan to Director-General of Trade and Industry	Submission of the IDZ Transitional Plan to Director-General of Trade and Industry by 28 <sup>th</sup> Feb 2017.	IDZ CEO
	Implementation of IDZ Transitional Plan.	Implementation of all actions identified in the IDZ Transitional Plan.	IDZ CEO/Economic Development Dept/Other Agencies
	Reporting on the implementation of the IDZ	Submission of an Annual Report to DG – Trade and Industry.	IDZ CEO/Economic Development

	Transitional Plan.		Dept/Other Agencies
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