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Trade and Industry  
REPUBLIC OF SOUTH AFRICA

**Briefing by SEZ & ET to the Portfolio Committee on  
Trade and Industry on 10 February 2016 –  
The Final SEZ Regulations in terms of the Special Economic  
Zones Act, 2014**



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# Presentation Outline

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## Background

- **The SEZ Act 16 of 2014 was enacted by the State President in May 2014**
- **Sec 41(1) of the Act allows the Minister, after consultation with the Advisory Board, to make Regulations relating to: -**
  - “(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.”
- **According to Sec 41 (2), the Minister must, prior to the making of such Regulations –**
  - “(a) publish the draft regulations in the Gazette;
  - (b) grant the public a period of at least 30 days to submit written comments to the Minister on the draft regulations; and
  - (c) consider the written comments contemplated in paragraph (b).”
- **Other critical regulations:** NT has to issue regulations in relation to industries qualifying for tax incentives, while SARS has to issue regulations in relation to administrative arrangements for tax incentives



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## Key Highlights

- **SEZ Act in place, and Proclaimed by the President in January 2016**
- **SEZ Regulations approved are in the process of being *gazetted***
- **SEZ incentive package has been developed and approved;**
- **SEZ Fund Guidelines have been developed and approved;**
- **SEZ Board established**
- **Draft SEZ planning Guidelines developed**
- **M&E Framework developed**
- **NT working on regulations in relation to industries that are excluded from the tax incentives**
- **SARS working on regulations regarding tax administration arrangements to implement tax incentives**



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# Sources of Funds of the SEZ Fund

**The SEZ Fund consists of money voted for by Parliament as part of an appropriation of the Department and potential interest on investments.**



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# Administration and Management of the SEZ Fund

- 1) Administered and managed in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999).**
- 2) Minister is required to establish an Adjudication Committee (chaired by the DG) to:-**
  - a) consider applications for funding; and**
  - b) recommend to the Minister applications to be approved for funding.**
- 3) Any SEZ Fund money not required immediately may be invested in accordance with a PFMA aligned investment policy approved by the Minister, and may be drawn when required.**





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# Distribution of Money from the SEZ Fund

**All monies distributed from the Fund must be used to achieve the objectives and purposes of Special Economic Zones as contemplated in section 2 & 4 of the Act.**



**The DG is required to 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**



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# Distribution of Money from the SEZ Fund Cont..

1. The monies from the SEZ fund may be distributed for:-
  - a) Feasibility Studies;
  - b) Start-up Costs;
  - c) Site Preparation;
  - d) Infrastructure Development;
  - e) Business Incubation;
  - f) Skills Development; and
  - g) Business Development and Performance Improvement;
  
2. The funds on offer are in the form of conditional grants.

***NB: THE FUND APPLICATION REQUIREMENTS ARE OUTLINED IN SECTION 5 OF THE REGULATIONS***





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## Who May Apply for Funding Support from the SEZ Fund

- 1) **Any Sphere of Government, a public entity, a municipal entity or a PPP wishing to establish an SEZ**
- 2) **SEZ Entity/SEZ License holder**
- 3) **An SEZ operator appointed by a Public Private Partnership**
- 4) **State Owned Operators; and**
- 5) **Qualifying enterprises already located within the Special Economic Zones.**



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# Support Measures for Operators Within An SEZ

- 1) Tax relief applicable to a business 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); or
- 2) Any other support measure applicable to qualifying operators as may be determined from time to time.

**NB: An operator must comply with this Act and criteria stipulated in other relevant legislation, including the Income Tax Act, 58 of 1962, the Employment Tax Incentive Act, 26 of 2013, the Value Added Tax Act, 89 of 1991, Customs and Excise Act, 91 of 1964 and the Customs Duty Act 30 of 2014 in order to qualify for the support measures.**



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# Support Measures for Businesses Located Within an SEZ

1. 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);
2. Tax relief 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 the Customs Duty Act 2014 (Act 30 of 2014); or
3. Any other support measure applicable to a business prescribed in terms of section 24(4) of the Act, as may be determined from time to time.

***NB: A business must comply with this Act and criteria stipulated in other relevant legislation, including the Income Tax Act, the Employment Tax Incentive Act, 26 of 2013, the Value Added Tax Act, 89 of 1991, Customs and Excise Act, 91 of 1964 and the Customs Duty Act 30 of 2014 in order to qualify for the support measures.***



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# APPLICATION FOR DESIGNATION OF AN AREA AS AN SEZ

- 1) Any Sphere of Government, a public entity, a municipal entity or a PPP may apply to the Minister for specified area to be designated as an SEZ**
- 2) An application must comply with the requirements in section 23(2) and section 23(3) of the Act by indicating the following:-**
  - a) Manufacturing activity or internationally tradable service that the SEZ intends to engage in;
  - b) Whether the SEZ intends to target a local or export market; and
  - c) Where the SEZ intends to be located
- 3) An application must be accompanied by a feasibility study required in terms of section 23(3)(b) of the Act; and Schedule 1 of the Regulations**



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## APPLICATION FOR DESIGNATION OF AN AREA AS AN SEZ Cont...

### **(5) The Advisory Board on designation process:-**

- 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 in terms of the applicant or any other party related to the applicant as may be deemed necessary in the circumstances.



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## **APPLICATION FOR DESIGNATION OF AN AREA AS AN SEZ**

- (6) The Advisory Board must consider the application and recommend to the Minister whether or not an area must be designated as a SEZ , within five (5) months of receipt of the complete application as contemplated in sub-regulation (5)(b) above.**
- (7) The Minister must, within two (2) months of receipt of the recommendation of the Advisory Board, as contemplated in sub-regulation (6) above, decide whether or not to designate an area as a SEZ as contemplated in section 23(6) of the Act.**
- (8) The time period contemplated in sub-regulations (6) and (7) above may be extended on good cause shown.**
- (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) An 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.**





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# Types of Services and Businesses that May Locate in SEZs

- (1) The following types of service or business are eligible to apply to locate in a SEZ:-**
  - (a) a business conducting manufacturing activities;
  - (b) a business performing internationally tradable services; or
  - (c) a business providing warehousing, distribution and logistic services.
  
- (2) A service or business, other than a service or business contemplated Regulations 9(1), may apply to locate in a SEZ provided that such a service or business: -**
  - (a) provides services or sells goods which support the businesses located in the SEZ; and
  - (b) the number of services or businesses and the area they occupy in the SEZ does not exceed the number and area provided for in the Guidelines.
  
- (3) A business that has been approved to locate in the SEZ shall not by virtue of such approval qualify for support measures contemplated in Regulation 7.**



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# Application to Locate in an SEZ

- 1) **An application to locate in a SEZ must be in writing and must be submitted to the Chairperson of the relevant SEZ Entity Board,**
- 2) **An application to this effect must also comply with the Act and the Guidelines in these Regulations, and must contain (i) the licenses, registrations or permits required by the service or business to conduct its operations; as well as (ii) a business plan,**
- 3) **The SEZ Entity Board:**
  - (a) Must provide the applicant with a written acknowledgement of receipt within 7 days of receipt of the application;
  - (b) 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, within thirty days after receipt of the application; and
  - (c) may conduct such investigation and/or inspection of the applicant or request the applicant to make oral submissions to the SEZ Entity Board as may be deemed necessary in the circumstances



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# Governance and Management of an SEZ

**The Founding Documents of a SEZ entity Board must provide for the following matters:**

- 1) Board role and responsibilities;**
- 2) Board membership and term;**
- 3) Chairperson of Board;**
- 4) Board committees;**
- 5) Board meetings;**
- 6) Board performance;**
- 7) Conflict of interest; and**
- 8) Review of founding documents**



**The Code of Conduct for the SEZ entity Board Shall Regulate the Following Matters:**

- 2) Obligation to comply with Code of Conduct;**
- 3) Compliance with laws and policies;**
- 4) Conflict of interest;**
- 5) Care and diligence**
- 6) Confidentiality;**
- 7) Reporting unlawful and unethical conduct; and**
- 8) Review of Code of Conduct.**



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# Operator Permit

- 1) An application for a SEZ operator permit must be in writing and must be submitted to the Chairperson of the Advisory Board:**
- 2) An application for a SEZ Operator permit must contain:**
  - a) the name, address, and contact information of the applicant;
  - b) confirmation in writing that the SEZ Entity Board has complied with section 31 of the Act when appointing the applicant;
  - c) the proposed contractual agreement between the applicant and the SEZ Entity Board;
  - d) an operational plan;
  - e) information on the applicant's current size, capacity, financial status, access to financial resources, references and operational standards;
  - f) (information on the applicant's experience, skills and qualifications of the applicant's management team;
  - g) information on the proposed number of employees, skills and proposed organogram of the applicant.



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# Operator Permit

## 3) The Advisory Board:

- a) must provide the applicant with a written acknowledgement of receipt within seven days of receipt of the application;
- b) 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, within thirty days after receipt of the application; and
- c) may conduct such investigation and/or inspection of the applicant or request the applicant to make oral submissions to the Advisory Board as may be deemed necessary in the circumstances

## 4) If the Minister decides not to grant the application for an operator permit he shall:

- a) Inform the applicant of his decision in writing;
- b) Provide the applicant with reasons for the decision

## 5) The unsuccessful applicant may submit a new application for an operator permit, as provided for in these Regulations.



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# Reporting Duty of Advisory Board

- 1. The Advisory Board shall report to the Minister twice in any financial year on the progress relating to the establishment and development of Special Economic Zones in the Republic.**
- 2. The Report must include: -**
  - a) the number of applications for designation as SEZs during the period under review;
  - b) the number of applications for designation as SEZs that have been approved during the period under review;
  - c) the number of applications for operators permit received during the period under review;
  - d) the number of applications for operators permit that have been approved during the period under review;





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# Reporting Duty of Advisory Board

- a) the number of applications for transfer of operators permit received during the period under review;
- b) the number of applications for transfer of operators permit that have been approved during the period under review;
- c) a summary of the status, operations and progress in each designated SEZ;
- d) a summary of any challenges in establishing and developing SEZs including proposals on dealing with the challenges identified; and
- e) any other matter relating to the establishment and development of SEZs.



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# Transitional Arrangements

1. **An industrial development zone operator must, within twelve months of commencement of the Act, submit a plan with timelines to the Director-General on the how the industrial development zone will comply with the framework regulating Special Economic Zones as contemplated in section 39(5) of the Act including:**
  - a) compliance with the governance and management obligations for an SEZ as contemplated in section 25 of the Act;
  - b) compliance with reporting obligations for an SEZ as contemplated in sections 26, 27 and 28 of the Act;
  - c) compliance with the obligations to appoint an operator as contemplated in section 31 of the Act;
  - d) compliance with the functions of an operator contemplated in section 35 of the Act; and
  - e) compliance by businesses located in the industrial development zone with the obligations contemplated in section 24(4) and section 38 of the Act.



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# Compliance of the Feasibility Study with Guidelines

**A feasibility study as contemplated in section 23(3)(b) of the Act must comply with the published Guidelines and must provide amongst other things:**

- a) Statement of intent and executive summary;
- b) General overview of the area where the proposed SEZ is to be located;
- c) Economic rationale for the application for designation of the proposed SEZ;
- d) Social impact of the proposed SEZ;
- e) Business plan for the proposed SEZ; and
- f) Risk profile of the proposed SEZ.



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# Guidelines for SEZ Designation process

- 1 • Submit Concept note which will be evaluated, analysed and reported on to inform a decision to continue
- 2 • Submit Pre-Feasibility.
- 3 • Submit a comprehensive Feasibility Study
- 4 • Submit a Business Plan complete application for SEZ designation and licence
- 5 • Appraisal of the submission, which involves technical evaluation and analysis
- 6 • Recommendation to the SEZ Advisory Board for a final decision
- 7 • Recommendation submitted to the Minister for approval
- 8 • Minister publish his intention to do so in the *gazzete* and also give public 30 days to submit written comments
- 9 • Minister consult with cabinet concerning the application for designation
- 10 • SEZ designated and licence issued by the Minister of **the dti**



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**THANK YOU!!!**