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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

**Briefing to the Select Committee on Trade and
International Relations
02 March 2016**

REGULATIONS IN TERMS OF THE SPECIAL ECONOMIC ZONES ACT, 2014



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PRESENTATION OUTLINE

- 1. Background**
- 2. Key Highlights**
- 3. Sources of Funds of the SEZ Fund**
- 4. Administration and Management of the SEZ Fund**
- 5. Distribution of Money from the SEZ Fund**
- 6. Who May Apply for Funding Support from the SEZ Fund**
- 7. Support Measures for Operators Within SEZ**
- 8. Support Measures for Operators Within a Special Economic Zone**
- 9. Application For Designation of an area as A SEZ**
- 10. Type of Service and Business that May Locate in a SEZ**
- 11. Application by Business or Service to Locate in the SEZ**
- 12. Governance and Management of an SEZ**
- 13. SEZ Operator Permit**
- 14. Reporting Duty of Advisory Board**
- 15. Transitional Arrangements**
- 16. Compliance of the Feasibility Study**



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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 operational as of 09 February 2016**
- **SEZ Regulations approved and *gazetted on 09 February 2016***
- **SEZ incentive package has been developed and approved;**
- **SEZ Fund Guidelines have been developed and approved;**
- **SEZ Board established**
- **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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ESTABLISHMENT OF THE SEZ FUND

The SEZ Fund consists of money voted by the Parliament as part of an appropriation of the Department and 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 objects and for purposes of the SEZ Act.
- The DG is required to monitor the use of funds distributed and report to the Minister 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

- 1) Any sphere of Government state owned entity or PPP wishing to establish an SEZ;**
- 2) A Licensee/ SEZ Entity;**
- 3) an 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 SEZ OPERATORS

- 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.



APPLICATION FOR DESIGNATION

- 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, either anywhere in the SA, port of entry or in a custom controlled area.
- 3) An applicant must be accompanied by a feasibility study required in terms of the SEZ Act and the Regulations**
- 4) An applicant must submit an application addressed to the Chairperson of the Advisory Board**



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APPLICATION FOR DESIGNATION Cont...

(5) The Advisory Board:-

- a) Must provide the applicant with a written acknowledgement of receipt of the application within five (5) days of receipt of application;
- b) Must assess the application to determine whether the application is complete and must inform the applicant in writing of any outstanding information or documents required within thirty (30) days of receipt of the application;
- c) May request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary;
- d) May conduct such investigation in terms of the Act into any matter related to the application as may be deemed necessary in the circumstances; and
- e) May conduct such inspection in terms of the applicant or any other party related to the applicant as may be deemed necessary in the circumstances.



APPLICATION FOR DESIGNATION Cont...

- (6) **The Advisory Board must consider the application and recommend to the Minister whether or not an area must be designated as an 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 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 an SEZ as provided for in the Act.**



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TYPES OF BUSINESSES THAT MAY LOCATE IN SEZ

- (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 an 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 An SEZ must be in writing and must be**
- 2) **submitted to the Chairperson of the relevant SEZ Board, as follows:**
- 3) **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**
- 4) **The SEZ 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 Board as may be deemed necessary in the circumstances



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 Board has complied with section 31 of the Act when appointing the applicant;
 - c) the proposed contractual agreement between the applicant and the SEZ 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 SEZ in the Republic.**
- 2. The Report must include: -**
 - a) the number of applications for designation as an SEZ during the period under review;
 - b) the number of applications for designation as an SEZ 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 CONT...

- 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 SEZ including proposals on dealing with the challenges identified; and
- e) any other matter relating to the establishment and development of SEZ.



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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;
 - b) compliance with reporting obligations for an SEZ;
 - c) compliance with the obligations to appoint an operator;
 - d) compliance with the functions of an operator; and
 - e) compliance by businesses located in the industrial development zone.



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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
- 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
- 5 • Complete application for SEZ designation
- 6 • Appraisal of the submission, which involves technical evaluation and analysis
- 7 • Recommendation to the SEZ Advisory Board for a final decision
- 8 • Recommendation submitted to the Minister for approval
- 9 • Minister publish his intention to do so in the *gazzete* and also give public 30 days to submit written comments
- 10 • Minister consult with cabinet concerning the application for designation
- 11 • SEZ designated and licence issued by the Minister of **the dti**



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THANK YOU!!!