

DEPARTMENT OF TRADE AND INDUSTRY

NO. 390

29 MARCH 2018

**NOTICE IN TERMS OF SECTION 25(7) OF THE SPECIAL ECONOMIC ZONES
ACT, 2014 (ACT NO.16 OF 2014)**

By virtue of the powers vested in me in terms of Section 25(7) of the Special Economic Zones Act, 2014 (Act No. 16 of 2014) I, Dr Rob Davies, Minister of Trade and Industry, hereby:

- a) Make the Governance and Management Regulations following hereunder.
- b) Determine that the Regulations will come into effect on the date of publication of this Notice.



Dr Rob Davies, MP
Minister of Trade and Industry
16 February 2018

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**SPECIAL ECONOMIC ZONES GOVERNANCE AND MANAGEMENT
REGULATIONS IN TERMS OF THE SPECIAL ECONOMIC ZONES ACT, 2014**

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**SPECIAL ECONOMIC ZONES GOVERNANCE AND MANAGEMENT
REGULATIONS IN TERMS OF THE SPECIAL ECONOMIC ZONES ACT, 2014**

REGULATING THE RESPONSIBILITIES, POWERS AND FUNCTIONS OF A BOARD OF A
SPECIAL ECONOMIC ZONE

Short title

These Regulations may be cited as the *Special Economic Zones Regulations*.

1. Interpretation

- 10 (1) In these Regulations, unless the context indicates otherwise -
- (a) **“the Act”** means the Special Economic Zones Act, 2014 (Act No. 16 of 2014).
- (b) **“Board”** means a Special Economic Zone Board appointed by a licensee in terms of section 25(5) of the Act.
- 15 (2) A word or expression that is defined in the Act bears the same meaning in these Regulations as in the Act, unless the context indicates otherwise.

2. Governance and management of a Special Economic Zone

- (1) A Special Economic Zone Board appointed in terms of section 25(5) of the Act, must comply with the governance principles set out herein.
- 20 (2) Where more than one Special Economic Zone is established, the Board may exercise powers, duties and responsibilities of governance and management for each Special Economic Zone.

3. Membership of the Special Economic Zone Board

- 25 (1) The licensee must appoint not less than three and not more than ten (10) persons with diverse skills, knowledge, experience and expertise relevant to Special Economic Zones, as members of the Board.

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- (2) At least one member of the Board of the Special Economic Zone referred to in sub-regulation (1) must be a representative of the national department responsible for trade and industries.
- (3) The operator or representative of the Special Economic Zone operator, shall be an ex-officio member of the Board.
- (4) The chairperson of the Board shall be appointed by the licensee from one of the members of the Board.
- (5) The composition of the Board must be broadly representative on the grounds of race, gender and geographical regional representation, experience and expertise.

4. Terms of office of Board members

- (1) A member of the Board shall -
- (a) hold office for a period of five years from the date of appointment as a member; and
- (b) on expiry of the term of office, be eligible for reappointment for only one additional term of office.
- (2) No more than fifty percent (50%) of the members of the Board may be reappointed for an additional term in terms of sub-regulation (1)(b).

5. Appointment of the Chief Executive Officer

- (1) The Board may appoint the Chief Executive Officer of the entity.
- (2) The Chief Executive Officer shall hold the office for a period which may be determined by the Board.
- (3) Where the Board fails to determine such term of office, the Chief Executive Officer shall -
- (a) be appointed for a period of five years; and

(b) be eligible for appointment for a further period of five years.

6. Disqualification from membership of the Board

(1) A person may not be appointed as a member of the Board if that person -

(a) is an un-rehabilitated insolvent;

5 (b) has been declared by a High Court with jurisdiction to be mentally ill;

(c) has been convicted of an offence –

(i) in the Republic or elsewhere, other than an offence committed prior to 27 April 1994;

10 (ii) associated with a political objective and sentenced to imprisonment without the option of a fine; or

(iii) relating to fraudulent activities or any other offence involving dishonesty and sentenced to a fine or imprisonment, or both a fine and imprisonment;

15 (d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or

(d) is otherwise disqualified in terms of section 69 of the Companies Act, 2008 (Act No. 71 of 2008).

7. Vacation of office and filling of vacancies in the Board

(1) A member of the Board vacates office if the member -

20 (a) resigns in writing;

(b) ceases to qualify for appointment to the Board in terms of Regulation 6;

(c) is removed from office by the licensee -

(i) for a just cause;

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(ii) after consulting the Board; or

(iii) after a fair hearing.

- (2) A vacancy arising from the death of a member or from circumstances referred to in sub-regulation 1 above, 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 licensee.

8. Role and responsibilities of the Board

(1) The Board shall -

- (a) manage the business and affairs of the Special Economic Zone entity;
- (b) exercise its powers, carry out its duties and perform any of the functions of the Special Economic Zone;
- (c) develop and review the strategic plan for the Special Economic Zone, as contemplated in section 26 of the Act;
- (d) develop, implement and review a business and financial plan for the Special Economic Zone as contemplated in section 27 of the Act;
- (e) submit the strategic plan of the Special Economic Zone to the Minister, as contemplated in section 26 of the Act;
- (f) submit performance reports as may be required by the Advisory Board in the fulfilment of its functions;
- (g) submit such other information and documentation that the Minister may reasonably require, in accordance with the affairs of the Special Economic Zone entity; and
- (h) provide effective corporate governance that includes managing the relationships between the management of the Special Economic Zone and relevant stakeholders.

9. Fiduciary duties of Board members

(1) A member of the Board -

(a) must act honestly, in good faith and in the best interest of the Special Economic Zone;

5 (b) has a duty of care and diligence in fulfilling the functions and exercising the powers assigned to the Board members;

(c) must not act in a way that is inconsistent with the functions of the Board in terms of this Act; and

10 (d) must not use the position, privilege or confidential information obtained as a member of the Board for personal gain or to improperly benefit another person.

(2) Confidential information received by a member of the Board in the course of performing the functions or exercising the duties of the Board remains the property of the Special Economic Zone.

15 (3) No member of the Board shall be entitled to disclose confidential information, except where required to do so in terms of the law, without the prior written consent of the Board.

10. Disclosure of interest by a Board member

(1) The licensee must approve a code of conduct for the members of the Board.

20 (2) A member of the Board -

(a) must make full disclosure to the Board of any conflict of interest including, any potential conflict of interest;

25 (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

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- (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 purposes of this section, a member has a conflict of interest if the member, or a family member, partner or business associate of the member -
- 5 (a) applies for a license to develop, operate or manage the Special Economic Zone; a Special Economic Zone operator permit, the transfer of an operator permit or location of a new investment in the Special Economic Zone;
- (b) has a financial or other interest in an entity relating to the Special Economic Zone; or
- 10 (c) 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.
- (4) Any disclosure in terms of sub-regulation 9(3) and any decision of the Board in terms of that sub-regulation, must be recorded in the minutes of the Board.
- 15 (5) For purposes of this section, a “**family member**”, in relation to a member of the Board, means the 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.
- 20 **11. Meetings of the Board**
- (1) The Board must hold at least four ordinary meetings each year, at times and places determined by the chairperson of the Board.
- (2) The chairperson of the Board -
- (a) may convene special meetings of the Board; and

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- (b) must convene a special meeting within fourteen (14) days of receipt of a written request to do so, signed by the majority of Board members.
- (3) The request referred to in sub-regulation (2)(b) must clearly state the reason for the request and only a matter that is stated may be discussed at the special meeting.
- 5 (4) The licensee may request the Board to convene a meeting in relation to governance, management, or any other matter, at any time, where necessary.
- (5) If the chairperson is not present at the meeting of the Board, members of the Board present must appoint another member to preside at the meeting.
- (6) At any meeting, the majority of the members of the Board constitute a quorum.
- 10 (7) A decision of the majority of members present at any meeting that forms a quorum, constitute the decision of the Board.
- (8) In the event of an equality of votes, the chairperson of the meeting has a casting vote, in addition to a deliberative vote.
- (9) Minutes of the proceedings of every meeting of the Board must be -
- 15 (a) recorded and 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.
- (10) The Board may -
- 20 (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; or
- (b) invite any person to attend a meeting for purposes of advising or informing the Board on any matter.
- (11) The Board may, by resolution, make rules to further regulate its meetings.

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12. Resolution of the Board without meeting

- (1) The Board may adopt a resolution without a meeting if there is clear intention of support for the resolution by the majority of the members of the Board in accordance with a procedure determined by the Board.

5 13. Committees of Board

- (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.

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- (2) The Board may appoint suitably qualified persons to serve on a committee including, persons in the full-time employment of government, members of the judiciary or state institutions.

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

- (4) The Board must establish -

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- (a) an Audit Committee; and
(b) a Remuneration Committee.

14. Expenditure, remuneration and allowances paid to members of the Board and committees

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- (1) A member of the Board or a member of any committee of the Board, who is not in the full-time employment of government, may be paid such remuneration and allowances as determined by the Board, on recommendation of the Remuneration Committee.

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15. Where a Special Economic Zone entity is registered in terms of the Companies Act, 2008 (Act No. 71 of 2008), the Memorandum of Incorporation governing the entity shall not be in conflict with the governance principles set out in these Regulations.

16. Dissolution of the Board

- 5 (1) The licensee must, after consultation with the Board, dissolve the Board on any reasonable grounds.
- (2) The licensee must, within thirty (30) days of the dissolution of the Board, appoint an interim Board consisting of at least four persons, as contemplated in Regulation 3(1) and (2).
- 10 (3) The interim Board assumes, and must perform the functions of the Board in terms of the Act and these Regulations.
- (4) The licensee must, within six months of the appointment of the interim Board, appoint members of the newly constituted Board.