

Approved for tabling.

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SNA
3/11/2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 03 NOV 2020	DAY: Tuesday
BY: Hon. Muriuki Njagagua Vice-Chairperson	THE TABLE: Evans Oanda

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION

**REPORT ON THE CONSIDERATION OF THE
SPECIAL ECONOMIC ZONES (AMENDMENT)
REGULATIONS, 2020**

(Legal Notice No. 33 of 2020)

NOVEMBER, 2020

Paper laid
by Hon. Muriuki
Njagagua

A handwritten signature in blue ink, followed by the date "3/11/2020".

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ABBREVIATIONS

LN	Legal Notice
SEZ	Special Economic Zones
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 39 of the Special Economic Zones Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development made the Special Economic Zones (Amendment) Regulations, 2020 which were published on 20th March, 2020.

The Regulations were submitted to the Clerk of the National Assembly on 17th April, 2020, laid before the House on 22nd April, 2020 and subsequently referred to the Committee on Delegated Legislation for consideration on the same date.

The Regulations seek to fill the gaps identified in the SEZ Regulations, 2016 by giving clarity to investors and sector players on SEZ operating legal framework and provide a more conducive business environment for investors.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority on 29th October, 2020, represented by Ms. Betty Maina, Cabinet Secretary for Industrialization, Trade and Enterprise Development and other Ministry officials including the Chief Executive Officer of the Special Economic Zones Authority, 2020. The Committee also gave audience to Tatu City Ltd. management who claimed to be aggrieved by the Regulations.

Having examined the examined the Special Economic Zones (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (No. 23 of 2013), the Committee **resolved to annul the Regulations for failing to demonstrate that sufficient public participation was undertaken contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.**

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Special Economic Zones (Amendment) Regulations (Legal Notice No. 33 of 2020).**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. William Kamoti, M.P.

Rabai Constituency

Orange Democratic Movement

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

The Hon. Munene Wambugu, M.P.

Kirinyaga Central Constituency

Jubilee Party

The Hon. Patrick Mariru, M.P.

Laikipia West Constituency

Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Clerk Assistant II

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE SPECIAL ECONOMIC ZONES (AMENDMENT) REGULATIONS, 2020

2.1 Introduction

5. In exercise of the powers conferred by section 39 of the Special Economic Zones Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development published the Special Economic Zones (Amendment) Regulations, 2020 on 20th March, 2020.
6. The Regulations were submitted to the Clerk of the National Assembly on 17th April, 2020 and tabled before the House on 22nd April, 2020.

2.2 Object and Purpose of the Regulations

7. The Regulations seek to fill the gaps identified in SEZ Regulations, 2016 by giving clarity to investors and sector players on SEZ operating legal framework and provide a more conducive business environment for investors.

2.3 Summary of the Regulations

8. Part I (Regulation 2) - definition of new terms.
9. Part III (Regulations 11&13) - designation and gazetting of SEZ - Criteria for Evaluation.
10. Part VII (Regulation 32)– One Stop Shop - One Stop Service.
11. Part VIII (Regulation 34) Investment Rules for SEZ - Obligation of SEZ Resident.
12. Part IX (Regulations 38,41,42,43,44,45) – Land Use Rules.
13. Introduction of new Part IX A – Condition for Entry into Special Economic Zones.
14. New Regulation 54 on Part XI – Implementation of the Regulations.

2.4 Legal Basis for Scrutiny

15. The Committee examined the Special Economic Zones (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (*No. 23 of 2013*).
16. The scrutiny was undertaken following publication in the Gazette vide Legal Notice No. 33 of 2020 on 20th March, 2020; submitted to the Clerk of the National Assembly on 17th April, 2020 and tabled before the House on 22nd April, 2020.

2.5 Conferring with the Regulation Making Authority

17. In accordance with section 16 of the Statutory Instruments Act, 2013, the Committee held a meeting with the regulation making authority on 29th October, 2020, represented by Ms. Betty Maina, Cabinet Secretary for Industrialization, Trade and Enterprise Development and other Ministry officials including the Chief Executive Officer of the Special Economic Zones Authority, 2020.
18. She informed the Committee that the Ministry undertook stakeholder consultations on the said Regulations as required by the Constitution and the Statutory Instruments Act, 2020

through an advertisement on the print media on 7th January 2020 and uploaded the stakeholders' comments form on the Ministry website. Public stakeholders' fora were held at the Sarova Panafric Hotel, Nairobi on 13th and 15th January, 2020, respectively.

2.6 Submissions by Tatu City Ltd.

19. Mr. Chris Barron, Chief Country Head for Rendeavour, the majority owner of Tatu City appeared before the Committee on 29th October, 2020 and submitted to the Committee THAT –

- (i) **Regulation 2:** The Regulations propose to introduce new SEZ entities such as SEZ investor, SEZ resident, SEZ visitor, SEZ worker, and SEZ business permit holder. Tatu City's submission is that Parliament should not entertain the creation of statutory entities or categories of citizens through subsidiary legislation. The Cabinet Secretary ought to have invited Parliament to make a substantive decision on such a weighty proposal through an amendment to the Special Economic Zones Act, 2015.
- (ii) **Regulation 4:** The provisions relating to minimum investment and the land size for an SEZ should be provided for in the SEZ Act so as to provide greater transparency to applicants. Developing a Special Economic Zone is an expensive venture and it is necessary to create certainty for developers by ensuring that all conditions precedent to a declaration of a SEZ zone are anchored in a statute. Additionally, such proposals should contain a transitional clause in respect of already gazetted Special Economic Zones.
- (iii) **Regulation 5:** The bulk of the services proposed to be offered under the One Stop Shop require substantive regulations to operationalize. These include SEZ work visa and permits for expatriates; SEZ development and construction permits and certificates of occupancy; SEZ customs administration procedures, among others. The absence of comprehensive legislative provisions is part of the reason the Commissioner of Customs and Border Control is struggling and attempting to design "Guidelines" that fail to appreciate how Special Economic Zones operate.
- (iv) **Regulation 50C (4):** The SEZ Authority should consult SEZ developers when issuing guidelines for the standards, criteria and procedures for the issuance and revocation of the SEZ residence permits.
- (v) **Part IX A - Conditions for entry into Special Economic Zones:** This part imposes a limitation on the right to freedom of movement that is guaranteed under Article 39 of the Constitution of Kenya. Under Article 24 of the Constitution of Kenya, "a right or fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom". While the intentions of the Cabinet Secretary under this part may not be faulted, nonetheless, only Parliament through legislation can limit the freedom of movement of a Kenyan.

Tatu City submitted that the limitation imposed by the Cabinet Secretary in the said Regulations is *ultra vires* to the Constitution of Kenya and ought to be annulled in order to remedy the situation.

- (vi) **Lack of Public Participation:** Tatu City Ltd. also submitted that stakeholders were not consulted before publication of the Regulations and that the document submitted to them for consultations was different from the published Regulations.

3.0 COMMITTEE OBSERVATIONS

20. Having examined the Special Economic Zones (Amendment) Regulations, 2020, against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (*No. 23 of 2013*), the Committee observed THAT –

3.1 Statutory Timelines – Section 11 of the SI Act

- 1) The Regulations were published in the gazette as L.N. No. 33 of 2020 on 20th March, 2020, submitted to the Clerk of the National Assembly on 17th April, 2020 and laid before the House on 22nd April, 2020, being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

3.2 Consultations/Public Participation – Section 5 of the SI Act

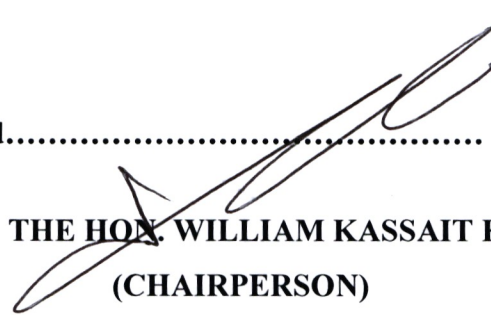
- 2) The Regulations contravene Articles 10 and 118 of the Constitution and sections 5, 5A, of the Statutory Instruments Act which require the regulation-making authority to conduct sufficient consultation with the industry stakeholders and persons likely to be affected by the Regulations.
- 3) During the deliberations between the Ministry and Tatu City Ltd., it emerged that the Regulations that were presented for public participation were different from the ones that were published vide L.N. No. 33 of 2020. In addition, public participation was rushed and stakeholders were not afforded adequate time to make written presentations. Further, the signed attendance registers were not consistent with the invitation for public participation.

4.0 COMMITTEE RECOMMENDATION

21. Having examined the Special Economic Zones (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (*No. 23 of 2013*), **the Committee recommends that the House annuls in entirety the said statutory instrument for failing to demonstrate that sufficient public participation was undertaken, contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.**

Signed.....

Date..... 03/11/2020


THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)

ANNEXURES

- 1. Adoption List**
- 2. Paper Laid: Legal Notice No. 33 of 2020 and Explanatory Memorandum**
- 3. Submissions by Tatu City Ltd.**
- 4. Committee Minutes**

COMMITTEE ON DELEGATED LEGISLATION

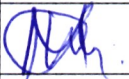
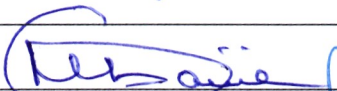
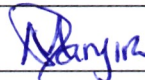
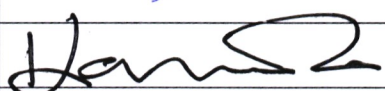
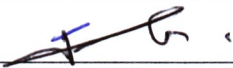
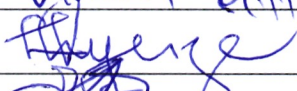
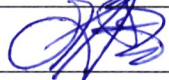
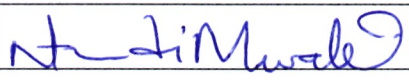
ADOPTION LIST

Adoption of the Report on the consideration of the Special Economic Zones (Amendment) Regulations, 2020

Legal Notice No. 33 of 2020

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 3 November 2020

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	Virtual attendance
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Waihenya Ndirangu, MP	Virtual attendance
4.	Hon. Robert Mbui, MP	/
5.	Hon. Alice Wahome, MP	/
6.	Hon. Cecily Mbarire, MGH, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. William Cheptumo, MP	/
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	/
11.	Hon. William Kamoti, MP	
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Tonui, MP	Virtual attendance
14.	Hon. Munene Wambugu, MP	
15.	Hon. Gideon Mulyungi, MP	Virtual attendance
16.	Hon. Edith Nyenze, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Murugara, MP	/
19.	Hon. Jennifer Shamalla, MP	/
20.	Hon. (Dr.) Wilberforce Oundo, MP	/
21.	Hon. Robert Gichimu, MP	/
22.	Hon. Sammy Seroney, MP	/
23.	Hon. Tindi Mwale, MP	

**MINUTES OF THE 50TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON THURSDAY, 29TH OCTOBER, 2020 AT 9.00 A.M. IN
TAMANISHA CONFERENCE ROOM AT THE WHITESANDS RESORT, MOMBASA.**

PRESENT

- | | | |
|--|---|----------------------------------|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson (Virtual attendance) |
| 2. The Hon. Muriuki Njagagua, M.P. | - | Vice Chairperson |
| 3. The Hon. George Murugara, M. P | | |
| 4. The Hon. Robert Mbui, M.P. | | |
| 5. The Hon. Patrick Mariru, M.P. | | |
| 6. The Hon. Waihenya Ndirangu, M.P. | | |
| 7. The Hon. Alice Wahome, M.P. | | |
| 8. The Hon. Cecily Mbarire, MGH, M.P. | | |
| 9. The Hon. Daniel Maanzo, M.P. | | |
| 10. The Hon. Kamoti Mwamkale, M.P. | | |
| 11. The Hon. Martha Wangari, M.P | | |
| 12. The Hon. Ronald Tonui, M.P. | | |
| 13. The Hon. Timothy Wanyonyi, M.P. | | |
| 14. The Hon. (Dr.) Wilberforce Oundo, M.P. | | |
| 15. The Hon. Edith Nyenze, M.P | | |
| 16. The Hon. Munene Wambugu, M.P. | | |
| 17. The Hon. Robert Gichimu, M.P. | | |
| 18. The Hon. Sammy Seroney, M.P. | | |
| 19. The Hon. Abdi Tepo, M.P. | | |
| 20. The Hon. Tindi Mwale, M.P. | | |

ABSENT WITH APOLOGY

1. The Hon. William Cheptumo, M.P
2. The Hon. Gideon Mulyungi, M.P.
3. The Hon. Jennifer Shamalla, M.P.

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Jimale | - | Clerk Assistant II |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Mr. Joshat Motonu | - | Fiscal Analyst I |
| 5. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 6. Mr. Anthony Wamae | - | Serjeant-at-Arms |
| 7. Ms. Alice Kitur | - | Executive Secretary |
| 8. Ms. Mary Otieno | - | Office Superintendent |
| 9. Ms. Fiona Wanjiru | - | Pupil |

Ministry of Industry, Trade and Enterprise Development

- | | | |
|-------------------------------|---|---|
| 1. Ms. Betty Maina | - | Cabinet Secretary |
| 2. Dr. F.O Owino | - | Principal Secretary, Industrialization |
| 3. Lt. Col. (Rtd) B. Njiraini | - | MD & Council Secretary – KEBS |
| 4. Mr. Meshack Kimeu | - | CEO, Special Economic Zones |
| 5. Mr. Bernard N'gayo | - | Ag. Director, Quality and Assurance, KEBS |
| 6. Mr. Mwambwanga Brian | - | HoD, Legal – KEBS |
| 7. Mr. Martin Masibo | - | Technical PA KEBS |
| 8. Ms. Helen Amina | - | Advisor to CS Betty Maina |
| 9. Mr. Geoffrey Okal | - | Senior Assistant Secretary |
| 10. Mr. Olem Edward | - | Communications Officer |
| 11. Ms. Evy Wagara | | |

Tatu City Ltd

- | | | |
|-----------------------|---|----------------------------|
| 1. Mr. Chris Barron | - | CEO, Rendeavour/ Developer |
| 2. Mr. Justus Kariuki | - | Senior Advisor, Rendeavour |
| 3. Mr. Zaki Sheikh | - | Consultant |
| 4. Mr. Evans Dimba | - | Tatu city staff |

MIN.NO. /NA/CDL/2020/299

PRAYER AND RELIMINARIES

Pursuant to Standing Order 188, the Members present unanimously elected Hon. (Dr.) Wilberforce Oundo, MP to chair the meeting as proposed by Hon. Robert Mbui, MP and seconded by Hon. Edith Nyenze, MP. He thereafter assumed the seat and called the meeting to order at 9.15 a.m. and requested Hon. Tindi Mwale, M.P to pray.

MIN.NO. /NA/CDL/2020/300

OPENING REMARKS

Remarks by the Vice Chairperson, Committee on Delegated Legislation

The Vice Chairperson of the Committee on Delegated Legislation welcomed the delegation from the Ministry of Industry, Trade and Enterprise Development led by the Cabinet Secretary, Ms. Betty Maina and Tatu City Ltd, led by Mr. Chris Barron. He then requested all participants to introduce themselves.

He thereafter invited the Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development to make her remarks.

Remarks by the Cabinet Secretary, Ministry of Industry, Trade and Enterprise Development

The Cabinet Secretary thanked the Committee for the invitation to confer on the matters before the Committee, namely the Standards (Verification of Conformity to Standards and Other Applicable Regulations) Order, 2020 and the Special Economic Zones (Amendment) Regulations, 2020. She added that the Legal Notices under deliberation are crucial for implementation of government policies and that the engagements will strengthen the partnership between the Ministry and the Committee on Delegated Legislation.

MIN.NO. /NA/CDL/2020/301

CONSIDERATION OF THE STANDARDS (VERIFICATION OF CONFORMITY TO

STANDARDS & OTHER APPLICABLE REGULATIONS) ORDER, 2020 (L.N. 78 OF 2020)

The Committee was informed that the Cabinet for Industry, Trade and Enterprise Development on 28th April 2020 published “The Standards (Verification of Conformity to Standards and Other applicable Regulations Order, 2020” vide Legal Notice Number 78 of 2020.

The Order seeks to enhance the efficiency of cargo clearance process by enabling KEBS to –

- 1) Undertake appropriate quality assessment and to allow KEBS to profile the consignment before importation and thus determine the appropriate interventions;
- 2) Reduce the cost of destination inspection for mixed consignments by limiting the fee applicable to be based on the value of only those products that have not been certified rather than basing the fee on the entire consignment.
- 3) Provide for fair treatment for importers whose failure to obtain PVOC certification is not of their own making but stems from unavailability of services in the country of exportation.
- 4) Remove duplication of processes in the country of exportation where other Government agencies have similar mechanisms for determining compliance.

Plenary

The Members sought the following clarifications regarding the Regulations –

1. Regulation 10 gives the Cabinet Secretary powers to grant exemption from the inspection of conformity to standards. It was submitted that there is established a Committee which recommends exemption and some of the criteria it applies includes: Spare parts and material for national projects, some specialized and customized vehicles, donations to charitable organizations, special purpose vehicles such as ambulances, fire engines and safari rally vehicles, etc., vehicles for the United Nations and its missions; re-imported vehicles; and vehicles for expatriates and supplies for diplomatic use; among others.
2. The Committee was informed that sometimes products may be subjected to re-inspection as a risk mitigation surveillance measure if there is cause to believe that the standards status of some products may have changed during the transshipment or such like reasons.

Committee Resolution

Having examined the Standards (Verification of Conformity to Standards & Other Applicable Regulations) Order, 2020, the Committee satisfied itself that the Regulations are in accord with the Standards Act (Cap 496), the Interpretations and the General Provisions Act (Cap 2) and the Statutory Instruments Act (No 23 of 2013) pursuant to which they are made and therefore resolved to **approve** them.

The decision to approve was proposed by Hon. Abdi Tepo, M.P. and seconded by Hon Tindi Mwale, M.P.

The Committee was informed that the Special Economic Zones (Amendment) Regulations, 2020 were published by the Cabinet Secretary for Industrialization, Trade and Enterprise Development on 20th March, 2020 in exercise of the powers conferred by section 39 of the Special Economic Zones Act, 2015.

Submissions by the Cabinet Secretary & SEZ Authority

The Regulations seek to fill the gaps identified in SEZ Regulations, 2016 by giving clarity to investors and sector players on SEZ operating legal framework and provide a more conducive business environment for investors.

Summary of the Regulations

Part I (Regulation 2) - definition of new terms.

Part III (Regulations 11&13) - designation and gazetting of SEZ - Criteria for Evaluation.

Part VII (Regulation 32)– One Stop Shop - One Stop Service.

Part VIII (Regulation 34) Investment Rules for SEZ - Obligation of SEZ Resident.

Part IX (Regulations 38,41,42,43,44,45) – Land Use Rules.

Introduction of new Part IX A – Condition for Entry into Special Economic Zones.

New Regulation 54 on Part XI – Implementation of the Regulations.

Public Participation

She informed the Committee that the Ministry undertook stakeholder consultations on the said Regulations as required by the Constitution and the Statutory Instruments Act, 2020 through an advertisement on the print media on 7th January 2020 and uploaded the stakeholders' comments form on the Ministry website. Public stakeholders' fora were held at the Sarova Panafric Hotel, Nairobi on 13th and 15th January, 2020, respectively.

Submissions by Tatu City Ltd.

Mr. Chris Barron, Chief Country Head for Rendeavour, the majority owner of Tatu City submitted to the Committee THAT –

- 1) Regulation 2 proposes to introduce new SEZ entities such as SEZ investor, SEZ resident, SEZ visitor, SEZ worker, and SEZ business permit holder. Tatu City's submission is that Parliament should not entertain the creation of statutory entities or categories of citizens through subsidiary legislation. The Cabinet Secretary ought to have invited Parliament to make a substantive decision on such a weighty proposal through an amendment to the Special Economic Zones Act, 2015.
- 2) Regulation 4: The provisions relating to minimum investment and the land size for an SEZ should be provided for in the SEZ Act so as to provide greater transparency to applicants. Developing a Special Economic Zone is an expensive venture and it is necessary to create

certainty for developers by ensuring that all conditions precedent to a declaration of a SEZ zone are anchored in a statute. Additionally, such proposals should contain a transitional clause in respect of already gazetted Special Economic Zones.

- 3) Regulation 5: The bulk of the services proposed to be offered under the One Stop Shop require substantive regulations to operationalize. These include SEZ work visa and permits for expatriates; SEZ development and construction permits and certificates of occupancy; SEZ customs administration procedures, among others. The absence of comprehensive legislative provisions is part of the reason the Commissioner of Customs and Border Control is struggling and attempting to design “Guidelines” that fail to appreciate how Special Economic Zones operate.
- 4) Regulation 50C (4): The SEZ Authority should consult SEZ developers when issuing guidelines for the standards, criteria and procedures for the issuance and revocation of the SEZ residence permits.
- 5) Part IX A - Conditions for entry into Special Economic Zones: This part imposes a limitation on the right to freedom of movement that is guaranteed under Article 39 of the Constitution of Kenya. Under Article 24 of the Constitution of Kenya, “a right or fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. While the intentions of the Cabinet Secretary under this part may not be faulted, nonetheless, only Parliament through legislation can limit the freedom of movement of a Kenyan.

Tatu City submitted that the limitation imposed by the Cabinet Secretary in the said Regulations is ultra vires to the Constitution of Kenya and ought to be annulled in order to remedy the situation.
- 6) Lack of Public Participation: Tatu City Ltd. also submitted that stakeholders were not consulted before publication of the Regulations and that the document submitted to them for consultations was different from the published Regulations.

COMMITTEE OBSERVATIONS

Having examined the examined the Special Economic Zones (Amendment) Regulations, 2020, against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (No. 23 of 2013), the Committee observed THAT –

i) Statutory Timelines – Section 11 of the SI Act

The Regulations were published in the gazette as L.N. No. 33 of 2020 on 20th March, 2020, submitted to the Clerk of the National Assembly on 17th April, 2020 and laid before the House on 22nd April, 2020, being within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act, 2013.

ii) Consultations/Public Participation – Section 5 of the SI Act

The Regulations contravene Articles 10 and 118 of the Constitution and sections 5, 5A, of the Statutory Instruments Act which require the regulation-making authority to conduct sufficient consultation with the industry stakeholders and persons likely to be affected by the Regulations.

During the deliberations between the Ministry and Tatu City Ltd., it emerged that the Regulations that were presented for public participation were different from the ones that were published vide L.N. No. 33 of 2020. In addition, public participation was rushed and stakeholders were not afforded adequate time to make written presentations. Further, the signed attendance registers were not consistent with the invitation for public participation. The Special Economic Zones (Amendment) Regulations are published pursuant to Section 39 of the Special Economic Zones Act, 2015.

Committee Resolution

Having examined the Special Economic Zones (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Special Economic Zones Act, 2015 and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to annul the Regulations entirety for failing to demonstrate that sufficient public participation was undertaken, contrary to Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act.

The decision to approve was proposed by Hon. Tindi Mwale, M.P. and seconded by Hon. Patrick Mariru, M.P.

MIN.NO. /NA/CDL/2020/303

CONSIDERATION OF THE SPECIAL ECONOMIC ZONES GUIDELINES, 2020

On the Special Economic Zone Guidelines, 2020, the CS informed the Committee that consultations on the matter were ongoing and therefore premature to discuss them. It was however noted that the Special Economic Zones Authority wrote to various SEZs on 4th September, 2020 to comply with the said Guidelines issued by the Commissioner of Customs and Border Control. It is on this basis that the Tatu City Ltd. Management sought intervention from the National Assembly citing lack of public participation and requested the Committee to consider the Guidelines in accordance with the SI Act.

The Committee deferred decision making on this matter.

MIN.NO. /NA/CDL/2020/304

ADJOURNMENT

The meeting was adjourned at 1.35 p.m. to be reconvened the same day at the same venue.

Signed.....

HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

Date.....

(Legislative Supplement No. 16)

LEGAL NOTICE NO. 33

THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

IN EXERCISE of powers conferred by section 39 of the Special Economic Zones Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Regulations—

THE SPECIAL ECONOMIC ZONES (AMENDMENT)
REGULATIONS, 2020

1. These Rules may be cited as the Special Economic Zones (Amendment) Regulations, 2020. Citation.
2. Regulation 2 of the Special Economic Zones Regulations, 2016 hereinafter referred to as “the principal Regulations” is amended—
L.N. 147/2016.
 - (a) by inserting the following new definitions in proper alphabetical sequence—

“special economic zone residence permit” means a permit issued by the Authority authorising the holder to reside within a special economic zone;

“special economic zone investor” means an individual or business licensed by the Authority to carry out business as a developer, operator, enterprise or business permit holder within a special economic zone;

“special economic zone resident” means any individual who resides within a special economic zone and has been registered as a resident by the Authority;

“special economic zone visitor” means any individual who has been registered with the Authority by a special economic zone resident or entity to be temporarily present in the special economic zone;

“special economic zone worker” means any individual working for a developer, operator, enterprise, resident or business service permit holder, whether as an employee or independent contractor; and
 - (b) in the definition of “special economic zone end user” by inserting the following paragraph immediately after paragraph (e)—
 - (f) special economic zone business permit holder.
3. Regulation 11 of the principal Regulations is amended by inserting the following new sub paragraph immediately after sub paragraph (d)—
Amendment of regulation 11 of L.N. 147/2016.

- (da) evidence of the capability to finance the planned development outlined in the feasibility study which may include financial analysis, track-record and organizational systems and procedures;
- 4. Regulation 13 of the principal Regulations is amended by inserting the following new sub paragraph immediately after sub paragraph (g) —
 - (h) satisfy minimum investment and land size threshold criteria as provided for by the Authority from time to time.

Amendment of regulation 13 of L.N. 147/2016.
- 5. Regulation 32 of the principal Regulations is amended —
 - (a) by deleting paragraph (1) and substituting therefor the following new paragraph—
 - (1) Notwithstanding regulation 31, the one-stop shops shall offer the following services —
 - (a) process special economic zone resident registration and business licensing documents and related reporting information required of special economic zone end users, and issue related licenses or certifications;
 - (b) process and issue work visa and permits for expatriates operating within the special economic zones;
 - (c) process and issue development and construction permits and certificates of occupancy;
 - (d) process and issue environmental permits in accordance with the Regulations and the requirements of the relevant Authority;
 - (e) evaluate proposals to designate areas as special economic zones;
 - (f) evaluate registration applications for special economic zone developers and operators;
 - (g) facilitate tax and customs administration requirements for special economic zone end users on behalf of the Kenya Revenue Authority;
 - (h) facilitate labour reporting obligations;
 - (i) perform inspections and other enforcement activities or coordinate enforcement activities with the relevant government entities;
 - (j) provide prompt answers to all questions regarding all government requirements or services;
 - (k) respond to complaints by special economic zone end users in relation to special economic zones;
 - (l) information on production, marketing, operating plans, finance, export opportunities, recruitment, and training; and

Amendment of regulation 32 of L.N. 147/2016.

- (m) any other services as deemed necessary by the Authority.
- (b) by inserting the following new paragraph immediately after paragraph (1) —
 - (2) The Authority may enter into service-level agreements with other government or private entities to effect the following —
 - (a) make all applications for activities not on the negative list pre-recommended by the Commissioner of Customs in fulfilment of section 27(2) of the Act so that no further recommendation is required;
 - (b) ensure that the one-stop shop has the authority and resources to provide as many public services as possible;
 - (c) make available representatives dedicated to the one-stop shop from other relevant government entities;
 - (d) offer utility services and assistance, whether provided by government or private entities through the one-stop shop including connection and payment services, via website, phone, email and through in-person representatives at on-site service centres.
- 6. Regulation 34 of the principal Regulations is amended —
 - (a) by inserting the words “developers, operators, enterprises, business service permit holders and” immediately after the word “zone”;
 - (b) by inserting the words “as appropriate” immediately after the words “residents shall”;
 - (c) in paragraph (c) by inserting the words “or registration granted” immediately after the word “issued”;
 - (d) in paragraph (d) —
 - (i) by inserting the words “or permit” immediately after the words “date the licence”;
 - (ii) by inserting the words “or permit” immediately after the words “in the licence”;
 - (e) in paragraph (j) by inserting the words “operator or developer immediately after the word “enterprise”.

Amendment of regulation 34 of L.N. 147/2016.
- 7. Regulation 38 of the principal Regulations is amended in paragraph (1) by inserting the expression “, any relevant national government agency” immediately after the word “planning”.

Amendment of regulation 38 of L.N. 147/2016.
- 8. Regulation 41 of the principal Regulations is amended in paragraph (2)(b) by deleting the word “enterprises” and substituting therefor the words “end users”.

Amendment of regulation 41 of L.N. 147/2016.
- 9. Regulation 42 of the principal Regulations is amended by deleting paragraph (2).

Amendment of regulation 42 of L.N. 147/2016.

10. Regulation 43 of the principal Regulations is amended by deleting paragraph (7).

11. Regulation 44 of the principal Regulations is amended by deleting paragraph (5).

Amendment of regulation 45 of L.N. 147/2016.

12. Regulation 45 of the principal Regulations is amended by deleting paragraph (4).

13. The principal Regulations are amended by inserting the following new Part IXA immediately after Part IX —

Insertion of a new Part IXA in L.N. 147/2016

PART IX A – CONDITIONS FOR ENTRY INTO SPECIAL ECONOMIC ZONES

Entry of persons into Special Economic Zones.

50A. (1) Access to a special economic zone is restricted and shall be subject to the —

- (a) presentation of a pass card at the entry point of the special economic zone;
- (b) terms and conditions applicable to the respective pass card.

(2) The Authority or a developer subject to the approval of the Authority, shall establish the type and form of pass cards for —

- (i) special economic zone workers;
- (ii) special economic zone visitors; and
- (iii) special economic zone residents.

(3) A person who wishes to enter a special economic zone shall apply for a pass card in the application form set out in the Schedule.

(4) The Authority may amend the application form set out in paragraph (3) from time to time.

(5) The Authority may charge a fee for the issuance of a pass card as it may determine.

(6) Developers may, subject to approval of the Authority, issue further guidelines regarding access to the special economic zones.

Special Economic Zone Workers.

50B. (1) The Authority or special economic zone developer as the case may be, shall grant a special economic zone worker's pass card to a worker of any nationality where the worker is legally employed by a special economic zone developer, operator, enterprise or business service permit holder.

(2) An application for a special economic worker's pass card shall be accompanied by —

- (a) a certified copy of the worker's employment contract; and

(b) any required authorizations relating to labour or immigration.

(3) The Authority shall have power to request for additional information and where necessary, summon the applicants and require the production of supporting documents before granting a pass card.

(4) The pass card shall be renewable annually.

(5) The Authority or special economic zone developer may revoke the pass card if the worker is in contravention of any provisions of the Act or these Regulations.

Special Economic
Zone Residence
Permits.

50C. (1) The following are eligible for special economic zone residence permits subject to the holder satisfying the following conditions —

- (a) be eligible for a permanent residence permit under the applicable laws.
- (b) be in possession of a valid work permit for the applicable special economic zone;
- (c) is the owner of a special economic zone enterprise or holder of a business service permit;
- (d) any other category of persons as may be approved by the Authority

(2) Special economic zone residence permits shall be valid for the period specified in the permit unless where the permit is revoked.

(3) There shall be no limit or quota on the number of special economic zone residence permits issued by the Authority.

(4) The Authority may issue guidelines to provide for the standards, criteria and procedures for the issuance and revocation of special economic zone residence permits.

(5) The holder of a special economic zone residence permit shall notify the Authority of any changes in his or her residential address within three working days of the date of the change.

Special Economic
Zone Residence
Pass.

50D. (1) The Authority or developer shall grant a special economic zone residence pass card to any persons with a valid special economic zone residence permit.

(2) An application for a special economic zone residence pass card shall be accompanied by a certified copy of a lease or other document validating a right to the residential property.

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(3) Where a resident has acquired and maintained a special economic zone residence permit, the special economic zone resident's spouse and dependants shall acquire and maintain the status of special economic zone residence during the period that the principal resident maintains his or her status as a special economic zone resident under these Regulations.

(4) The residence pass shall allow holders access to their place of residence.

(5) The residence pass shall be renewable annually.

Special Economic
Zone Visitor Pass.

50E. (1) The Authority or developer may grant a special economic zone visitor pass card to a special economic zone visitor.

(2) Recipients of special economic zone visitor pass cards shall be subject to specific terms and conditions as may be determined by the Authority.

14. The principal Regulations are amended by inserting the following new regulation immediately after regulation 53 —

Maintenance of an
Electronic Register.

54. (1) Any non-Kenyan intending to invest, do business, work or reside in a special economic zone shall register his or her presence at the one-stop shop within five days of arrival in the special economic zone.

(2) A Kenyan applying for a special economic zone residence permit shall register his or her presence at any one stop shop service centre no later than thirty days of relocation into the special economic zone.

(3) The Authority shall for the purposes of this regulation maintain an electronic register.

SCHEDULE

r.50A(3)



SPECIAL
ECONOMIC
ZONES
AUTHORITY

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Nairobi, Kenya
Tel: +254 20 7863971
Email: info@sezauthority.go.ke
Website: www.sezauthority.go.ke

Part 1-Special Economic Zones Pass Card Application Requirements

(Applications must be completed in NEAT AND LEGIBLE manner)

1. Please Select one of the Special Economic Zone Pass Card Types

Worker ☐Visitor ☐Resident ☐

Application Date (dd/mm/yyyy): ____ / ____ / ____

Have you ever received a Special Economic Zones Pass Card? YES/ NO (please circle)

If yes, please provide the Card

No.: _____

2. PERSONAL DETAILS:

Mrs/Mr/Miss/Ms (please circle) First Name: Middle Name: Last Name:

Gender (please circle): M / F Date of Birth (dd/mm/yyyy): ____ / ____ / ____

Nationality: _____ ID (Kenyan Citizens): _____

Passport Number (Non Kenyans): _____ Expiry

Date (dd/mm/yyyy): ____ / ____ / ____

KRA PIN Number: _____ Telephone Number: _____ Email Address: _____

Postal Address: _____ Postal

Code: _____ City: _____

Physical Residential Address: Street _____

City _____ County/State _____

Country _____

3. PERSON/ENTITIES TO BE VISITED:

Name of Person/Entity

: _____

Relationship with Person/Entity to be visited: _____

Reason Access is requested:

Street Address / Building:

Do you need vehicle access? YES/NO If yes please provide Reg. No.

Own Vehicle ☐ / Company Vehicle ☐ / Hired Vehicle ☐ / Government Vehicle ☐

4. AUTHORISATIONS FROM EMPLOYER / SPONSOR

Name:

Position: _____ Organization: _____

Contact Number: _____

Signature: _____

Declaration (to be signed by applicant)

1. I declare that the information contained within this application and any attachments is true and correct and that if I willingly omit or provide information that is false I will be denied access to all SEZ facilities and SEZA can initiate legal action against me.

2. The issuer or SEZA reserves the right to restrict or deny access to any SEZ facility if operational needs of access cannot be established by the applicant

Signature Date (dd/mm/yyyy): ____ / ____ / ____

5. OFFICE USE ONLY

Application received (dd/mm/yyyy): ____ / ____ / ____ Input

By: _____

Approval (circle one): Y / N Approved by: _____ Access Pass
Card No. : _____

Date of Issue:(dd/mm/yyyy): ____ / ____ / ____ Validity

Period:(dd/mm/yyyy): ____ / ____ / ____

6. GUIDELINES

1. Cards **MUST BE DISPLAYED AT ALL TIMES** within restricted access areas while in a Special Economic Zone.
2. Cards cannot be shared or borrowed.
3. Any lost cards are to be reported immediately to the Authority or Issuer as applicable
4. Lost cards can be replaced on producing a valid Kenya Police Services Abstract and payment of a replacement fee as applicable.
5. Cards **MUST BE USED** at all times to enter and exit the Special Economic Zones
6. Pass Holders **MUST USE** their card every time they enter and exit a Special Economic Zone, even if they are a passenger in a vehicle.
7. Vehicles must enter through designated vehicle access gates
8. Pedestrians **MUST ENTER** using designated pedestrian access gates.
9. Any person who does not have a Special Economic Zone Access Pass Card and wishes to enter a restricted access areas **MUST** make prior arrangements with the zone Security Office through their host. Temporary passes may be processed at the Zone Security at the gates.
10. 48 HOURS notice required to facilitate registration of an Access Card as required.
11. No person shall be authorized to access restricted access areas unless they are engaged in legitimate related business.
12. The Special Economic Zones Pass Card remains the property of issuer and it can be withdrawn by the issuer or SEZA without any notice and whenever deemed necessary. **"IT MUST BE SURRENDERED BY THE APPLICANT ON CESSATION/TERMINATION OF EMPLOYMENT OR REASON FOR ISSUANCE OF PASS CARD"**
13. Worker/Resident Access cards are valid for 1 year from date of issue.
14. Visitor Access Cards are temporary and only valid for period specified.

IMPORTANT TO NOTE

Any person failing to comply with the conditions of entry and terms of pass card usage will have their access rights for the Special Economic Zone withdrawn.

Developers may, subject to approval of the Authority, issue specific application forms with further guidelines regarding access to the special economic zones they are licensed to develop and operate. Such application forms must include the above requirements.

Dated the 11th March, 2020.

BETTY MAINA,
*Cabinet Secretary for Industrialization,
Trade and Enterprise Development.*

SPECIAL ISSUE

2517

Kenya Gazette Supplement No. 130

5th August, 2016

(Legislative Supplement No. 61)

LEGAL NOTICE No. 147

THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

THE SPECIAL ECONOMIC ZONES REGULATIONS 2016

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PART I—PRELIMINARY

Regulations

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2—Interpretation.

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AND INSTITUTIONS

3—Business regulatory environment.

4—Measures by Authority to ease registration.

5—Enforcement of the Act.

6—Sanctions.

7—Factors to guide determination of sanctions.

8—Consultation with other stakeholders.

9—Delegation by Authority.

PART III—DESIGNATION AND GAZETTING OF SPECIAL
ECONOMIC ZONES

10—Preliminary review by the Authority on designation of an area.

11—Requirements for proposal to designate .

12—Review by the Cabinet Secretary.

13—Criteria for evaluation.

14—Determination of types of zones.

15—Addition of territory to an existing special economic zone.

16—Revocation and expiration of special economic zone designation.

17—Conversion of export processing zones to special economic zones.

18—Recognition by government entities.

PART IV—LICENSING OF SPECIAL ECONOMIC ZONE
DEVELOPERS AND OPERATORS

19—Development and operation of a special economic zone .

20—Review of applications.

21—Issue of licenses to special economic zones developers and
operators.

22—Exercise of rights and obligations of special economic zones
developers and operators.

23—Rules for special economic zones.

24—Co-operation requirements.

PART V—LICENSING OF SPECIAL ECONOMIC ZONE
ENTERPRISES

25—Electronic methods of registration.

26—Application and approval requirements.

27—Requirements for issue of special economic zones enterprise licence.

28—Negative list.

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29—Registration requirements for special economic zones end users.

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31—One-stop shop.

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34—Obligations of special economic zone residents.

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UTILITY CONTROLS

38—Master plans and zoning orders.

39—Maps, surveys, deeds and lease registry.

40—Regulation of construction activity.

41—Environmental regulation.

42—General environmental management and regulatory responsibility.

43—Initial environmental management of special economic zones ..

44—Environmental and social management system.

45—Impact assessments and mitigation plans.

46—Issuance of special economic zones environmental permits.

47—Enforcement activities.

48—Dealing with non-compliance.

49—Public health.

50—Coordination with other ministries.

PART X—AUTHORITY FUND, SANCTIONS AND FEES

51—Fees.

52—Collection of fees..

PART XI—IMPLEMENTATION OF THE REGULATIONS

53—Cooperation agreements with other government entities.

THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

IN EXERCISE of the powers conferred by section 39, 27(7)(b) and 28 (c) of the Special Economic Zones Act, 2015 the Cabinet Secretary for Industry, Trade and Cooperatives makes the following Regulations:—

THE SPECIAL ECONOMIC ZONES REGULATIONS, 2016

PART I—PRELIMINARY

1. These Regulations may be cited as the Special Economic Zones Regulations 2016. Citation.
2. In these Regulations unless the context otherwise requires— Interpretation
- “Act” means The Special Economic Zones Act, 2015; No. 16 of 2015.
- “business activity” means any activity regularly carried on for the production of income from the sale of goods or the performance of services within a special economic zone;
- “Chief Executive Officer” means the chief executive officer appointed under section 16 of the Act;
- “environmental performance” means measurable results of the Authority or special economic zones end user environmental practices, policies, safeguards, and procedures, based on established environmental quality standards;
- “facility” means any location in a special economic zones in which business activities are carried out;
- “interest” when used in relation to land and related assets, means any legal right to such assets, including, but not limited to, a freehold interest, leasehold interest, concessionary interest, license, franchise, easement, right of way, security interest, future interest, or any other right of occupancy, use, or development;
- “maximum load capacity” means the maximum amount of a pollutant that an environmental media, such as air, land or water, can absorb without exceeding environmental quality standards;
- “one-stop shop” means the service of the Authority fully authorised to define, perform, facilitate or mediate all regulatory requirements under applicable law, including those by all relevant government entities, for all special economic zones end users as provided in the Regulations;
- “outside party” means a party not within the Authority, but includes all other government, private-sector, foreign governmental, and non-governmental entities;
- “service level agreement” means a legally binding agreement among government entities defining the operational framework among them in implementation of the special economic zones programme;

“special economic zones end user” means—

- (a) a holder of a special economic zones expatriate entry authorisation as defined in these Regulations;
- (b) a special economic zones enterprise;
- (c) a special economic zones investor;
- (d) a special economic zones worker; or
- (e) a special economic zones visitor; and

“special economic zones land” means land and other immovable assets within a special economic zone, including infrastructure, buildings, and other facilities.

PART II—ADMINISTRATION OF SPECIAL ECONOMIC ZONES AND INSTITUTIONS

3. The Authority shall in accordance with the principles of openness and competitiveness under section 3(b) of the Act, maintain an open investment environment within the special economic zones to facilitate and encourage business activity:

Business
regulatory
environment.

Provided that the business activity does not raise any public interest concerns relating to health, safety, environment, national security, consumer protection, culture or financial stability.

4. The Authority shall take the appropriate measures to establish simple, flexible and transparent procedures for the registration of special economic end users.

Measures by
Authority to ease
registration.

5. (1) Pursuant to its functions under section 11 of the Act, the Authority shall have the powers to administer, investigate, enforce and sanction any activity in order to ensure compliance with the Act.

Enforcement of
the Act.

(2) Notwithstanding the generality of paragraph (1), the Authority may—

- (a) monitor and conduct inspections of the facilities and activities of all persons registered under the Act; and
- (b) seize property and close facilities in accordance with the provisions of the Fair Administrative Action Act, 2015 and upon the order of the court.

No. 4 of 2015

(3) The special economic zones developers and operators shall cooperate and provide assistance to the Authority when the Authority undertakes any enforcement action under the Act.

(4) The Authority shall give a notice of twenty four hours to a special economic zone end user before an inspection is carried out and the Authority may grant any reasonable request by the special economic zones end user to avoid undue interruption to the business activities of the special economic zones end user.

(5) Notwithstanding paragraph (4), the Authority may without notice and at any hour conduct an inspection if it has reasonable cause to believe the relevant laws have been breached.

(6) The Authority shall coordinate its investigations with all relevant agencies and provide the necessary information in a timely manner to relevant agencies.

(7) The Authority on the order of a court shall have the right to be reimbursed for any expenses incurred to investigate or remedy an offence under the Act.

6. (1) Where a special economic zones end user fails to comply with any directives of the Authority or with any provisions of the Act or these Regulations, the Authority shall recommend to the Cabinet Secretary the imposition of an appropriate sanction. Sanctions.

(2) Notwithstanding paragraph (1), the Authority may —

- (a) delay sanctions for a limited time if the action giving rise to the sanctions is under investigation or is being prosecuted and the imposition of the sanction may be excessive; or
- (b) waive sanctions if the action giving rise to the sanctions has been adequately punished or redressed by the national or county authorities.

(3) The Cabinet Secretary may impose the following sanctions against special economic zones end users —

- (a) issue a written directive to remedy the breach, omission or violation;
- (b) restrict the special economic zones end user from engaging in specified activities, despite the existence of a valid licence;
- (c) suspend the registration;
- (d) cancel or revoke the registration;
- (e) seek appropriate redress in a court of law; or
- (f) apply any other type of sanction, the Authority is authorised to impose under any relevant law.

(4) Sanctions may not be imposed for an action or omission that was beyond the control of any party or that was not reasonably foreseeable by any party.

(5) The Cabinet Secretary may impose one or more of the sanctions under paragraph (3) in addition and without prejudice to any sanction, judgment, order, fine, penalty or punishment imposed by any other relevant government entity as long as the rules of natural justice and the rule of law is observed.

7. The following factors shall guide a determination of sanctions against a special economic zones end user —

Factors to guide determination of sanctions.

- (a) the damage directly or proximately caused by the violation, action or omission, including any harm to —

- (i) other special economic zones end users;
 - (ii) the Authority or other relevant government entities;
 - (iii) persons outside the special economic zones; and
 - (iv) the environment, animals or natural resources inside or outside the special economic zones;
- (b) the appropriate sanction to deter similar conduct by the person or other persons in similar circumstances, taking into account—
- (i) the risk of similar violations, omissions or breaches under similar circumstances going undiscovered or undetected or of the person otherwise not suffering loss for having committed the violation, omission or breach except that the person's purchase of insurance to cover the loss shall not be considered in the determination of sanctions;
 - (ii) the potential benefit the person stood to gain from committing a violation, omission or breach or from not taking adequate precautions to avoid a violation, omission or breach; and
 - (iii) the ease with which precautions could have been taken to prevent or reduce the risk of committing the violation, omission or breach.

8. In the performance of its functions and exercise of its powers, the Authority shall, where appropriate, consult with the relevant government agencies and the users of the facilities and services of the Authority.

Consultation with other stakeholders.

9. The Authority shall in writing, delegate as much responsibility as is practically feasible for the provision of non-regulatory functions conferred to it under any relevant laws to the special economic zones developer, special economic zones operator or any other contracted private-sector services providers.

Delegation by Authority.

(2) The Authority may delegate the administrative or regulatory functions assigned to it under the relevant laws to a government agency or other service provider by a service level agreement, provided that delegating such functions—

- (a) would improve the quality or effectiveness of the function;
- (b) would not diminish the cost-efficiency with which such functions are carried out;
- (c) would not impose undue burden on the entities being regulated or interfere with the performance of such a function;
- (d) would not result in a conflict of interest; and
- (e) would not be contrary to the public interest or in any way impact the environment, national security, morality, human or animal health in a negative manner.

PART III—DESIGNATION AND GAZETTING OF SPECIAL ECONOMIC ZONES

10. (1) A proposal for the designation of an area as a special economic zone may be submitted by any person to the Authority.

Preliminary review by the Authority on designation of an area.

(2) The Authority shall—

- (a) no later than thirty days after receipt of the proposal, inform the person whether the proposal is complete in accordance with the considerations set out under section 5 of the Act and regulation 11; and
- (b) no later than ninety days after receipt of a complete proposal, consider and determine whether to recommend to the Cabinet Secretary, that an area be designated as a special economic zone.

11. (1) A proposal under regulation 10 shall be considered complete if it is accompanied by a feasibility study report containing the following—

Requirements for proposal to designate.

- (a) a market-demand analysis;
- (b) a schematic master plan;
- (c) an economic impact assessment;
- (d) a strategic environmental and social-impact assessment in accordance with these Regulations; and
- (e) any other information necessary for the Authority to evaluate the project under each of the criteria set out in section 5 of the Act.

(2) Notwithstanding paragraph (1), where applicable, any additional requirements under the Public Private Partnerships Act, 2013 and the law relating to procurement shall be complied with.

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(3) If an outside party submits a proposal to the Authority under regulation 10, the outside party shall in addition submit, with regard to the same territory—

- (a) a special economic zones developer application;
- (b) a special economic zones operator application, if the area is already developed and no additional development activity is planned; or
- (c) a special economic zones developer and operator application.

12. (1) The Cabinet Secretary shall review a proposal and recommendation to designate within thirty days of the recommendation by the Authority and—

Review by the Cabinet Secretary.

- (a) approve the recommendation; or
- (b) reject the recommendation.

(2) Where the Cabinet Secretary rejects a recommendation, the Cabinet Secretary shall—

- (a) set out the reasons for the decision in writing; or
- (b) recommend that the proposal is modified so that it may comply with the Act or these Regulations before it is approved; and
- (c) retain a copy of the proposal and recommendation and protect the confidentiality of the contents of the proposal.

(3) Where a designation is likely to raise public interest concerns, the Cabinet Secretary shall publish a preliminary notice, which shall—

- (a) provide the geographical location, boundary specifications, map coordinates, property registration information, and proposed economic activities of the planned special economic zones; and
- (b) invite any person that may be affected by the designation to submit written comments to the Cabinet Secretary no later than thirty days of the publication date of the notice.

(4) No later than sixty days after publication of the notice under paragraph (3), the Cabinet Secretary shall evaluate the comments, data and any other information based on the evaluation criteria under regulation 13 and the criteria in section 5 of the Act and approve or reject the proposal to designate the area as a special economic zone.

(5) Where the Cabinet Secretary recommends modifications to the proposal to designate under paragraph (2), he or she shall consult with the Authority and, if the proposal was submitted by an outside party, the respective outside party and if the Authority and the applicant agree in writing to the proposed modifications, the Cabinet Secretary shall, no later than twenty days of receiving communication from the Authority to this effect, publish the declaration of the special economic zone in the Gazette.

(6) Where the Authority makes a negative determination regarding a proposal to designate by an outside party, the outside party may appeal to the Cabinet Secretary.

13. The Cabinet Secretary shall designate an area as a special economic zone if it meets the following conditions—

Criteria for evaluation.

- (a) land availability, including—
 - (i) sufficient dimension of the proposed special economic zone to support a diverse and competitive business environment;
 - (ii) ease of identifying interests in the land of the proposed special economic zones and ease of resolving any potential disputes and claims; and

- (iii) ability to expand the capacity of the land in the proposed special economic zones in the event of positive special economic zones investment uptake and economic impact;
- (b) industrial economics and dynamics criteria including the presence of business activity and multiple enterprises engaged in formal, registered economic activity within proximity of the boundaries of the proposed special economic zone which could be potential partners of or anchor tenants in the special economic zones;
- (c) accessibility and connectivity criteria including—
 - (i) access roads within proximity of the boundaries of the proposed special economic zone;
 - (ii) reasonable access to an airport, railway, dry-port, seaport or border post within proximity of the boundaries of the proposed special economic zone;
 - (iii) reasonable access to adequate labour and consumption markets within proximity of the boundaries of the proposed special economic zone;
 - (iv) upstream raw materials or distribution centres for semi-finished inputs within proximity of the boundaries of the proposed special economic zone; or
 - (v) downstream processing or distribution points for special economic zones' exports within proximity of the boundaries of the proposed special economic zone;
- (d) infrastructure criteria including—
 - (i) fresh surface water, aquifers, or water-distribution networks within proximity of the boundaries of the proposed special economic zone;
 - (ii) existing or reliably planned access to waste water treatment and sewerage within reasonable proximity of the proposed special economic zone;
 - (iii) roads inside or outside the proposed special economic zone within proximity of the boundaries of the proposed special economic zones;
 - (iv) social infrastructure, including schools, hospitals, hotels, retail business, and places of worship within proximity of the boundaries of the proposed special economic zone;
 - (v) structures within the boundaries of the proposed special economic zone that may be converted for special economic zone use; or
 - (vi) suitable distance of proposed special economic zones assets from dangerous infrastructure;

- (e) socio-environmental criteria including—
 - (i) compliance with socio-environmental requirements under any relevant laws;
 - (ii) suitable climate for the expected activities in the proposed special economic zone;
 - (iii) absence of significant flooding risk to the proposed special economic zone site;
 - (iv) suitability of the proposed site in light of its cultural context and the perspectives and rights of local communities;
 - (v) adequate security conditions in the area;
 - (vi) presence of significant religious, cultural, or similar assets that can be properly integrated into the special economic zones planning framework;
 - (vii) absence of any significant health risks within the area of the proposed special economic zone; and
 - (viii) ability to relocate population in a socio-economically acceptable manner if the proposed special economic zone would involve population displacement as well as to relocate agricultural, commercial or other industrial activities in a cost-effective manner;
- (f) topographical and construction constraints, including—
 - (i) level and grading;
 - (ii) soil and subsidence conditions;
 - (iii) erosion conditions;
 - (iv) soil contamination; and
 - (v) other construction constraints;
- (g) development impact potential, including the likelihood of—
 - (i) raising the quality of life and expanding opportunities for lower-income populations;
 - (ii) producing positive social and economic spillover effects outside the proposed special economic zones;
 - (iii) positively influencing regional or national infrastructure planning;
 - (iv) coherence with other development projects in the area;
 - (v) coherence with land-use master plans;
 - (vi) skills-development and training of workforce;
 - (vii) increased economic diversification;

- (viii) national employment generation;
- (ix) increased wages and working standards; and
- (x) reliable testing and catalysing of beneficial reforms for nation-wide implementation.

(2) The Cabinet Secretary shall, publish in the Gazette, the appropriate distance dimensions of the special economic zones from the proximity-based criteria set out in paragraph (1).

14. (1) The Cabinet Secretary may designate a special economic zone on public or private land.

Determination of types of zones.

(2) The Cabinet Secretary may classify a special economic zone as one or more of the types of zones specified in section 4(6) of the Act if the information submitted in support of designation demonstrates that—

- (a) there is strong market demand for the specialisation indicated by the classification;
- (b) the specialisation advances the identified development goals of Kenya;
- (c) the location to be designated is well suited for the specialisation; and
- (d) the designation has been requested by the special economic zone developer or special economic zone operator.

(3) The Authority shall by notice in the Gazette prescribe the descriptions and standards for classifying special economic zones under section 4(6) of the Act and the applicable services, infrastructure, and policies applicable to these classifications.

(4) All special economic zones, regardless of their type, shall be open to all business activities eligible for special economic zone enterprise licenses under these Regulations.

15. (1) A special economic zones developer or operator may apply to the Cabinet Secretary to add land to an existing special economic zone in accordance with these Regulations.

Addition of territory to an existing special economic zone.

(2) The procedures and requirements for the designation of an additional special economic zone shall apply when evaluating an application under paragraph (1) except that any relevant information that may have been submitted shall be taken into account by the Authority in order to expedite the evaluation.

16. (1) The Cabinet Secretary may revoke a declaration under section 4(2) of the Act from any portion or all of the territory of a special economic zone upon the recommendation of the Authority and where the Authority presents evidence establishing that—

Revocation or expiry of a special economic zone designation.

- (a) the designation no longer serves the objectives of the Act;
- (b) the revocation would not amount to discrimination; and
- (c) the revocation will be carried out in accordance with due process of the law and ensure the protection of private

property and guarantees against expropriation as are provided for under any relevant laws.

(2) Unless otherwise stated in the final designation of the special economic zone, a special economic zone designation shall expire if after three years after the designation, the Authority has not licensed a special economic zones developer in accordance with the Act and these Regulations.

17. Any export processing zones developer, export processing zones operator or export processing zones enterprise may apply for designation as a special economic zones developer or special economic zones operator or special economic zones enterprise subject to the provisions of the Act and these Regulations.

Conversion of export processing zones to special economic zones.

18. All relevant government entities, including national and county governments, shall recognize and comply with the Cabinet Secretary's designation of special economic zones under the Act and these Regulations.

Recognition by government entities.

PART IV — LICENSING OF SPECIAL ECONOMIC ZONES DEVELOPERS AND OPERATORS

19. (1) For the development of a designated public or private public private partnership based special economic zone, the Authority shall select and conclude an agreement with a special economic zones developer for the development of a special economic zone.

Development and operation of a special economic zone.

(2) The Authority shall permit the special economic zones developer selected under paragraph (1) to—

- (a) operate the special economic zone provided that the developer has been licensed as a special economic zones operator under the Act; or
- (b) select one or more special economic zones operators to operate the special economic zone.

(3) Where a special economic zones developer selects a special economic zones operator, the special economic zones developer shall conclude an operator agreement with the special economic zones operator and—

- (a) the Authority shall not be party to the operator agreement and shall only regulate the special economic zones operator to the same extent as special economic zones enterprises:

Provided that—

- (i) the special economic zones developer maintains legal responsibility and liability for all actions of the special economic zones operator and all sub-contractors of the special economic zones operator; and
 - (ii) the provisions of the operator agreement are consistent with the developer agreement;
- (b) the Authority shall issue a license to the special economic zones operator in accordance with the Act and these Regulations.

(4) Where the special economic zones developer declines to select a special economic zones operator, the Authority shall, following the provisions of the developer agreement, select one or more special economic zones operators and conclude operator agreements with them for the operation, management and provision of services for the special economic zones.

(5) The Authority shall publish in the Gazette, the selection criteria and procedures for the operator agreement.

(6) Where there is an existing special economic zone, the Authority may select a special economic zones operator in accordance with the criteria and procedures set out in the notice under paragraph (5).

(7) Where a special economic zones operator of an existing special economic zones intends to expand the project, the Authority may —

- (a) allow the special economic zones operator to develop the land itself, provided the operator has been licensed as a special economic zones developer;
- (b) allow the special economic zones operator to select one or more special economic zones developers; or
- (c) select one or more special economic zones developers in accordance with these Regulations.

(8) Where the special economic zones operator selects a special economic zones developer, the special economic zones operator shall conclude a developer agreement with the special economic zones developer and —

- (a) the Authority shall not be party to the special economic zones developer agreement and shall regulate the special economic zones developer to the same extent as other special economic zones enterprises:

Provided that —

- (i) the special economic zones operator maintains legal responsibility and liability for all actions of the special economic zones developer and all sub-contractors of the special economic zones developer; and
 - (ii) all the provisions of the developer agreement are consistent with the operator agreement;
- (a) the Authority shall issue a license to the special economic zones developer in accordance with the Act and these Regulations.

20. The Authority shall, by notice in the Gazette provide the procedures and criteria for the review of applications for licences for special economic zone developers and operators.

Review of
applications.

21. (1) Upon conclusion of an agreement under these Regulations and the payment of such licensing fees as shall be specified by the Authority, the Authority shall issue the special economic zones developer or operator with a special economic zones developer's or operator's license.

Issue of licences to special economic zone developers and operators.

(2) The special economic zones developer's or operator's license shall authorise the developer or operator as the case may be to conduct the activities described in the agreement.

(3) The special economic zones developer's or operator's licenses shall remain valid for an indefinite period of time unless the—

- (a) special economic zones developer's or operator's land lease or concession term expires;
- (b) special economic zones developer's or operator's agreement term expires; or
- (c) licence is revoked by the Authority.

(4) The Authority shall publish in the Gazette, the standards and procedures for suspension, revocation and reinstatement of the licences.

22. The special economic zones developers and operators licensed under the Act shall—

Exercise of rights and obligations of special economic zones developers and operators.

- (a) develop and operate their respective special economic zones—
 - (i) in a commercial manner;
 - (ii) in conformity with international good practices and applicable laws; and
 - (iii) in consistence with the long-term sustainable economic and human development goals of Kenya;
- (b) comply with the conditions in their respective agreements;
- (c) not sell or lease special economic zones land to any person other than a special economic zones developer, operator or resident unless authorised by the Authority;
- (d) develop and implement an effective environmental and social management system approved by the Authority in accordance with the Regulations;
- (e) ensure equal treatment and avoidance of discrimination in the delivery of services to special economic zones end users;
- (f) monitor and supervise activities in the special economic zones for compliance with the Act and these Regulations;
- (g) notify the Authority immediately upon becoming aware of any violation or non-compliance with the Act and these Regulations within their respective areas of operation; and

- (h) comply with all of the obligations imposed on special economic zones enterprises under the Act and these Regulations.

23. (1) Special economic zones developers and operators shall coordinate with the Authority to develop, deliver services and maintain facilities used by the Authority including the one-stop centre headquarters and other one-stop shops established in the respective special economic zones.

Rules for special economic zones.

(2) The Authority may delegate to a special economic zones developer or operator the responsibility for establishing and enforcing special economic zones rules on the following matters—

- (a) building structure design, aesthetics, density, and height;
- (b) obstructions of public areas;
- (c) vehicle movement and parking;
- (d) use of hazardous or flammable materials;
- (e) hours of operation;
- (f) noise and disturbance;
- (g) disposal of waste;
- (h) maintenance requirements;
- (i) compulsory insurance;
- (j) security and access;
- (k) public billing and signage; and
- (l) any other matter approved by the Authority and is compatible with the relevant laws.

(3) Notwithstanding paragraph (2), the Authority may only delegate the responsibility for making the rules if a developer or operator has the capacity to monitor compliance with the rules.

(4) The special economic zones developers and operators may recommend sanctions or other measures to the Authority against special economic zones end users for violations, breaches or omissions of rules made pursuant to these Regulations.

(5) The special economic zones developers and special economic zones operators may enforce sanctions to ensure compliance with the rules.

24. Government entities, including national and county governments, shall—

Cooperation requirements.

- (a) recognise the rights and obligations vested on the special economic zones developers or operators and other service providers for special economic zones, under the Act and the relevant developer or operator agreements;

- (b) allow and provide reasonable access to areas around designated special economic zones for the development of supporting infrastructure for the special economic zones and the Authority shall allow and provide reasonable access to areas inside special economic zones; and
- (c) conclude service level agreements as are necessary, to coordinate the required capacity and timeframe of infrastructure and utilities delivery.

PART V—LICENSING OF SPECIAL ECONOMIC ZONE ENTERPRISES

25. (1) The Authority shall design an electronic system to facilitate the registration process and other administrative matters under the Act or these Regulations.

Electronic methods of registration.

(2) An electronic signature shall be valid for any registration or licensing requirement under the Act or these Regulations.

(3) An applicant may make an application for registration through the one-stop shop.

(4) Notwithstanding paragraphs (1) and (2), the Authority may require an applicant or their agent to appear in person, or to participate in a telephone, video or voice over internet protocol conference, for an interview.

26. (1) The Authority shall by notice in the Gazette specify the required information for registration, license and permit applications for special economic zones enterprises and residents and the procedures for approving such applications.

Application and approval requirements.

(2) There shall be no limit or quota on the number of special economic zone enterprises or residents registered or on the number of licenses issued for special economic zone enterprises, provided that all applicants secure an approval from their relevant special economic zone operators in accordance with the procedures set out in the Gazette and the requirements of the specific special economic zone master plan and zoning plans.

(3) A licence for a special economic zone enterprise may be issued—

- (a) to investments of a prescribed minimum size as may be determined by the Authority;
- (b) regardless of whether the applicants are new businesses, expansions of existing businesses or relocations of existing businesses; and
- (c) regardless of whether the special economic zone is the business's primary place of business.

(4) The Authority shall enter into service level agreements with county and the relevant national government entities, in order to—

- (a) co-ordinate information sharing;

- (b) consolidate and streamline procedures; and
- (c) support the regulatory functions of relevant government entities with respect to the activities of special economic zone enterprises and residents:

Provided that the service level agreements shall, to the extent possible, not impose of any additional burdens on the special economic zone enterprises and residents.

27. When evaluating an application for a special economic zone enterprise licence, the Authority shall ensure the following requirements are met—

Requirements for
issue of special
economic zones
enterprise licence

- (a) technical health or safety requirements as prescribed by the Authority in accordance with international standards, except that different or more stringent standards may be imposed where the Authority is certain, for reasons relating to the special economic zone's specific physical, social, economic, or cultural characteristics or context, that such standards do not fulfil the required level of protection;
- (b) policy requirements for the protection of public health, national or public security, labour, safety, consumer protection or general financial matters for instance financial institutions, commercial banks, and insurance companies;
- (c) environmental protection requirements, which may incorporate measures included in the applicant's environmental impact statement as provided in these Regulations and the relevant laws; and
- (d) requirements directly related to mitigating potential threats to consumer protection, culture and financial stability.

28. (1) The Cabinet Secretary shall, on receiving a recommendation from the Authority, publish a negative list of activities that are prohibited or restricted from being undertaken within the special economic zones.

Negative list.

(2) The restricted activities under paragraph (1), shall include, any activity likely to pose a substantial threat to health, safety, environment, national security, consumer rights, culture and financial stability.

(3) The Authority may approve the conduct of any restricted activity provided the applicant demonstrates that it can adequately mitigate or avoid the risks set out under paragraph (2).

(4) The Authority shall provide the necessary assistance to any person intending to make an application for the conduct of restricted activity including providing a description of the information and documents necessary to support an application for each type of restricted activity.

(5) The prohibited activities under paragraph (1) shall include those activities that pose a threat to health, safety, environment,

national security, consumer protection, culture and financial stability and for which there is no possibility of avoiding or mitigating the threat.

(6) The Cabinet Secretary shall regularly review the negative list of activities.

(7) A special economic zones licensee seeking to expand its activities and undertake an activity that is not in the negative list, may notify the Authority of this intention but the licensee need not apply for a new licence to conduct the new activity.

(8) A special economic zones licensee seeking to expand its activities and undertake a restricted activity shall apply for a separate permit for that activity.

PART VI—INFORMATION REQUIREMENTS FROM SPECIAL ECONOMIC ZONES END USERS

29. (1) The Authority shall specify the information to be provided by a person applying for a special economic zones end user licence.

Registration
requirements for
special economic
zones end users.

(2) A person applying for a permit to engage in business activities within the special economic zone shall provide similar information to that required for approval for a licence under the Act except that the Authority may waive certain requirements based on the nature of activity to be carried out.

(3) The Authority shall from time to time publish in the Gazette, the fees to be paid by an applicant.

(4) An applicant for special economic zone resident status, shall file and annually update this information as shall be specified by the Authority.

(5) Every special economic zone enterprise shall be required to provide such information as is required to help the Authority monitor and evaluate the performance of the special economic zone programme and the Authority shall protect the confidentiality of this information.

(6) The Authority shall prescribe the information required in paragraph (5).

30. All special economic zone developers, operators and enterprises shall annually submit to the Authority the following information with regard to the relevant special economic zone—

Annual Returns.

- (a) special economic zone investments undertaken during the preceding calendar year and the investments projected for the forthcoming calendar year, including number, size, employment, investment level, and business activities of all special economic zone enterprises;
- (b) total area of special economic zone land, buildings and infrastructure under development, and the projects being constructed thereon;
- (c) all performance indicators specified in the special economic zone developer agreement or special economic

- zone operator agreement, and required by the Authority for monitoring and evaluation purposes;
- (d) letters of continued financial good standing from the special economic zone developer's or special economic zone operators' financial institutions; and
- (e) any other information that the Authority may require.

PART VII—ONE-STOP SHOP

31. (1) Pursuant to section 11 (h) of the Act, the Authority shall administer a one-stop shop for each special economic zone and a central coordinating one-stop shop at the headquarters of the Authority to facilitate performance of all the functions, powers, and responsibilities assigned to the Authority. One-stop shop.

(2) The Authority shall—

- (a) deploy such number of staff; and
- (b) request the relevant government entities deploy such number of staff as may be required for the performance of the functions of the one-stop shops.

(3) Each special economic zone developer or special economic zone operator shall provide sufficient space for the one-stop shop at no cost within the special economic zone they operate and comply with the requirements of the Authority with regards to the one-stop shops.

32. (1) Notwithstanding regulation 32, the one-stop centre and one-stop shops shall offer the following services— One-stop shop services.

- (a) process special economic zone resident registration and business licensing documents and related reporting information required of special economic zone end users, and issue related licenses or certifications;
- (b) process and issue work visas and permits for expatriates operating within the special economic zones;
- (c) process and issue development and construction permits and certificates of occupancy;
- (d) process and issue environmental permits in accordance with the Regulations and the requirements of the Authority;
- (e) evaluate proposals to designate areas as special economic zones;
- (f) evaluate registration applications for special economic zone developers and operators;
- (g) facilitate tax and customs administration requirements for special economic zone end users on behalf of the Kenya Revenue Authority;
- (h) facilitate labour reporting obligations;

- (i) perform inspections and other enforcement activities or coordinate enforcement activities with the relevant government entities;
 - (j) provide prompt answers to all questions regarding all government requirements or services;
 - (k) receive payments, applications, and requests on behalf of the Authority or other relevant government entities; and
 - (l) respond to complaints by special economic zone end users in relation to special economic zones.
 - (m) assistance with start-up, operation, and closing of economic activities within the special economic zones;
 - (n) technical assistance programmes for new and young entrepreneurs;
 - (o) business training, general assistance, and counselling;
 - (p) feasibility studies and markets research;
 - (q) financial advisory services and grant assistance;
 - (r) information on production, marketing, operating plans, finance, export opportunities, recruitment, and training; and
 - (s) financial support for domestic small businesses.
33. To develop and maintain the capacity of the one-stop shops to fulfil its purposes, the Authority shall—
- (a) have the powers and oversight responsibilities necessary to effectively manage staff deployed to the one-stop shops;
 - (b) issue and enforce internal rules and regulations, standard operating procedures, and codes of conduct for staff deployed to the one-stop shop; and
 - (c) charge user fees and charges for the services offered at the one-stop shop.
- Authority oversight of one-stop shops.

PART VIII—INVESTMENT RULES FOR SPECIAL ECONOMIC ZONES

34. Special economic zone residents shall—
- (a) provide updated information to the one-stop shops on any change in the particulars submitted for registration or licensing, no later than fifteen days after the change;
 - (b) upon request by the Authority or any relevant government entity provide proof of registration;
 - (c) notify the Authority prior to any change in activities that relate to the conditions upon which the licence was issued;
- Obligations of special economic zone residents.

- (d) acquire and take possession of real estate within the relevant special economic zones no later than sixty days after the date the licence is issued, unless otherwise stated in the licence;
- (e) commence construction or business activities authorised by the licence no later than one year after the date the licence is issued unless otherwise stated in the licence, failing which the licence shall expire;
- (f) manage any waste produced as a result of its activities;
- (g) maintain company books, records, accounts, and financial statements in accordance with the International Financial Reporting Standards and such books, records, accounts, and financial statements shall be subject to independent audits as required under the relevant laws;
- (h) record, in an automated inventory-control and record keeping system, any information required under the laws relating to customs;
- (i) promptly notify the Authority of any actual or potential discrepancy discovered between its records and those of the Kenya Revenue Authority;
- (j) maintain separate records for activities within special economic zones and activities outside special economic zones, if the special economic zones enterprise conducts simultaneous economic activities within and outside the special economic zones;
- (k) assume full responsibility, as well as tax and penal liability, for all goods that cannot be accounted for, including such liability as may result from a presumption that such goods were leaked from a special economic zone into the customs territory;
- (l) cooperate with the Authority and all other relevant government entities by granting such entities access to its premises and records to inspect and verify compliance with the relevant laws; and
- (m) comply with the laws relating to tax.

35. (1) The Authority and all other relevant government entities shall accord to special economic zones end users of foreign nationality, treatment equal to that accorded to nationals with respect to all business activities, in accordance with the Constitution and the relevant laws.

National
treatment.

(2) All special economic zones enterprises, including special economic zones developers and operators shall—

- (a) be entitled to freely exercise any business activity open to similar domestic or foreign businesses as approved by the Authority;

- (b) not be subject to any minimum capital requirements when reinvesting profits in new or existing projects; and
 - (c) not be subject to any foreign ownership limits or domestic-ownership requirements.
36. (1) The Government may only appropriate an interest in land where the expropriation— Expropriation.
- (a) serves a significant public purpose;
 - (b) has not been carried out in a discriminatory manner;
 - (c) has been carried out in accordance with the due process of law; and
 - (d) complies with all other principles of applicable law, including the principles of full protection, security and fair and equitable treatment.
- (2) Where possible, the property shall be returned when the seizure is no longer necessary.
- (3) For the purposes of this section, a “public purpose” includes seizures made out of necessity in response to war, grave disturbance of public order or urgent social interest.
37. (1) A special economic zone developer shall not sell or lease land within the special economic zone to any person other than a special economic zone enterprise or resident without authorisation by the Authority and may only sell or lease subject to the applicable master plans and zoning requirements. Safeguards against speculation.
- (2) Any construction or development activity on land leased or purchased under paragraph (1) shall commence within two years of the date of purchase or in accordance with the terms specified in applicable agreements between the parties or whichever is the lesser.
- (3) If the Authority establishes that any action under paragraph (1) was committed to encourage speculative investment in special economic zone land, the Authority shall take one or more of the following actions as may be considered appropriate for the determination of sanctions under these Regulations—
- (a) impose on the purchaser the payment of the fair market value of the transferred title or lease less the inflation-adjusted cost if the transfer was on a freehold basis;
 - (b) void and rescind the applicable initial lease or sale agreement;
 - (c) seize the purchaser’s interest in the special economic zone land and convey it to the party that validly transferred the interest to the purchaser initially; and
 - (d) impose on the purchaser the payment of rent on the transferred special economic zone land for six months until another special economic zone enterprise or resident purchases or leases the land:

Provided that the rent shall be paid to the benefit of the party that validly transferred the interest to the special economic zone land initially.

(4) For purposes of implementing these Regulations, the Authority shall keep track of the annual fair market value of special economic zone lands.

PART IX—LAND USE RULES AND BUILDING AND UTILITY CONTROLS

38. (1) The Authority shall consider proposed land use master plans submitted by applicants for a special economic zone developer or operator licence as well as any proposed master plans emanating from the Authority itself, and shall collaborate with the county government officer responsible for planning and selected special economic zone developers and operators to finalise the master plan and the zoning orders for each special economic zone.

Master plans and zoning orders.

(2) The Authority shall ensure that all master plans and zoning plans within the special economic zones do not conflict with existing land use controls for the areas surrounding the special economic zones or related development objectives of the neighbouring county governments.

(3) For any land within a designated special economic zone, any master plan and zoning order made by the Authority shall supersede any previous conflicting land use controls for the same land.

(4) The Authority shall, by notice in the Gazette, prescribe the procedures and criteria for approving or rejecting land use master plans and zoning criteria developed by special economic zone developers or operators.

39. (1) The Authority shall establish and maintain a registry of special economic zones maps, surveys, deeds and leases within one year of its operationalization.

Maps, surveys, deeds and lease registry.

(2) The registry established under paragraph (1) shall include a comprehensive map containing data on all real property in the special economic zones and the registered interests in those properties.

(3) The Authority shall publish in the Gazette, the information required under paragraph (2).

(4) The registry established under paragraph (1) shall be accessible to the public.

(5) The Authority shall enter into service level agreements with the Ministry responsible for matters relating to lands or the relevant county government in order to address any inter-governmental technical matters required for the implementation of these Regulations.

40. (1) The Authority shall by notice in the Gazette prescribe a Building Code, development and construction permits, certificates of occupancy, procedures and criteria for the approval of development and construction works for special economic zones.

Regulation of construction activity.

(2) The one-stop shops shall facilitate the manner in which all the permits under paragraph (1) can be obtained from the respective authorized entities by an applicant.

(3) All the relevant government entities, including the county governments, shall cooperate with the Authority in any matter related to land use planning, development and regulation of construction in order to give effect to the Act.

41. (1) The Authority or the relevant government entity shall not permit the following within the special economic zones— Environmental Regulation.

- (a) the emission of any substance beyond specified thresholds into water, air, or land;
- (b) noise above the specified decibel limits set by the Authority for particular areas;
- (c) intensive exploitation of natural resources over *de minimis* levels prescribed by the Authority for particular resources;
- (d) nuisance affecting the ability of special economic zone end users or persons outside the special economic zones to enjoy or use their property; and
- (e) contributions to ozone depletion or global warming over *de minimis* levels prescribed by the Authority.

(2) The enforcement of this regulation including permits, waivers, monitoring, inspections, audits and enforcement shall be the responsibility of—

- (a) the National Environment Management Authority with regards to the operations of special economic zone developers and operators; and
- (b) the Authority with regards to special economic zone enterprises.

(3) Notwithstanding paragraph (2), the Authority and the National Environment Management Authority shall conclude a service level agreement to facilitate the execution of their respective roles and responsibilities under the Act and the application of all applicable standards, procedures, fees and charges within the special economic zones.

42. (1) The National Environment Management Authority or the Authority shall issue environmental permits to authorize certain activities under the Act and may publish a list of activities that do not require special economic zone environmental permits. General environmental management and regulatory responsibility.

(2) The list of activities that do not require special economic zone environmental permits shall include the activities that are not reasonably predicted to have a significant impact on the environment, either because of their nature or because of the scale under which they will be performed.

(3) A special economic zone developer or operator shall not undertake any activity that requires environmental permits without the environmental permit.

(4) Notwithstanding the generality of paragraph (1) the activities that require an environmental permit shall include, but not be limited to—

- (a) the construction, installation, operation, modification, or extension of sewage works;
- (b) the construction, installation, operation, modification, or extension of any new transmission or release outlet for the release of pollutants;
- (c) the construction, installation, operation, modification, or extension of any infrastructure projects or industrial or commercial facilities where such activities will cause an increase in the release of pollutants or otherwise alter the physical, chemical, or biological properties of land, air, or water in any manner not already authorised under applicable law; and
- (d) any increase in volume of released pollutants in excess of the permitted volume specified under any existing permit.

(5) The Authority and the National Environment Management Authority, as the case may be, shall only issue special economic zone environmental permits upon approval of an environmental impact assessment.

(6) For the avoidance of doubt, the special economic zone environmental permit issued under these Regulations shall comply with the requirements of the Environment Management and Coordination Act, 2015.

No. 5 of 2015.

43. (1) Prior to the operationalisation of a special economic zone, on the basis of a baseline environmental survey of the land, air, and water in the special economic zone submitted by the special economic zone developer, the Authority, in consultation with the National Environment Management Authority, shall establish special economic zones environmental quality standards and maximum load capacities for specified pollutants, applicable to a specific special economic zone project site.

Initial
environmental
management of
special economic
zones.

(2) The standards and load capacities developed under paragraph (1) shall form the basis for the volume of pollutants and wastes permitted to be released.

(3) The National Environment Management Authority shall in consultation with the Authority, review the special economic zones environmental quality standards at least once every three years to determine their adequacy in light of current national environmental priorities and revise them as appropriate.

(4) The standards determined under paragraph (1) shall not be below the prescribed national levels, but may be set at a higher or stricter level.

(5) Upon completion of the baseline environmental survey and establishment of the environmental quality standards, the National

Environment Management Authority shall identify and establish procedures for addressing the existing environmental challenges and concerns in collaboration with the relevant special economic zones developer or operator and the Authority.

(6) The National Environment Management Authority, in consultation with the Authority, shall have the power to designate protected areas within special economic zones to protect water supplies, bio diversity or other environmental resources.

(7) The Authority in consultation with the National Environment Management Authority, shall, by notice in the Gazette, provide further procedures and standards for environmental management consistent with these Regulations.

44. (1) Prior to commencing any works or extension works on the land within a special economic zone, the special economic zones developer, in coordination with the relevant special economic zones operator, shall develop an environmental and social management system for the special economic zones.

Environmental
and social
management
system.

(2) The environmental and social management system shall be appropriate to the nature and scale of the proposed development, operational activities and the level of foreseen social and environmental impacts.

(3) The social and environmental management system, including all environmental and social audit reports and hazard or risk assessment reports, shall be prepared in accordance with the relevant laws and accepted international practice.

(4) Notwithstanding paragraph (3), the standards shall comply with the ISO14001 Environmental Management Systems, Occupational Health and Safety Standards 18001, Social Accountability (humane workplace and worker human rights) SA8000 standards and the United Nations Convention on the Rights of Persons with Disabilities.

(5) The Authority shall, in consultation with the National Environment Management Authority, by notice in the Gazette, provide further requirements for special economic zones' social and environmental management systems.

45. (1) In order to ensure that the environmental burdens resulting from development or other activities are reduced as much as possible—

Impact
assessment and
mitigation plans.

- (a) every special economic zone developer shall submit an environmental and social impact assessment; and
- (b) all other persons applying for a special economic zone environmental permit shall submit an environmental impact assessment to the National Environment Management Authority and a copy to the Authority in accordance with this regulation.

(2) Once all significant impacts have been identified, the applicants shall develop a mitigation action that contains the strategies for addressing the identified environmental social risks and impacts.

(3) Upon completion of the impact assessment and mitigation action plan, special economic zones' developers and operators shall prepare an environmental and social impact statement and the other applicants shall prepare an environmental impact statement.

(4) The Authority, in consultation with the National Environment Management Authority, shall by notice in the Gazette specify the required elements for impact assessments, mitigation action plans, impact statements, the criteria and procedures for approving the assessments, plans, and guidelines for implementing them.

46. (1) If the National Environment Management Authority or the Authority approves an impact statement, the Authority shall issue a special economic zone environmental permit, which shall allow the applicant to conduct the activities specified in the impact statement, subject to all specified mitigation action plans and permit conditions.

Issuance of
special economic
zones
environmental
permits.

(2) The Authority may impose conditions on the special economic zones environmental permits to limit the permit to certain procedures, releases or other activities based on the impact statement.

(3) The National Environment Management Authority or the Authority, as the case may be, shall ensure that the conditions imposed under paragraph (2), limit the amount of permitted releases by assigning each relevant permit holder, a load allocation and the load allocation shall be determined based on—

- (a) the maximum load capacities such that the sum total of each pollutant, waste or other substance allowed to be released into air, land, or water under the permits does not exceed any maximum load capacity;
- (b) the amount of releases reasonably necessary for the type of industry applying for the permit as demonstrated in the impact statement; and
- (c) the expected number of industries that will need similar permits in and around the special economic zone in the future.

47. (1) The Authority based on information collected from the special economic zone end users, shall compile a special economic zone environmental database and conduct annual inventories, which shall be shared with the National Environmental Management Authority and be used to monitor special economic zone permit holders' compliance with environmental obligations.

Enforcement
activities.

(2) A special economic zone environmental permit holder shall every six months, report compliance with all permit conditions in the manner specified in the impact statement and submit the report to the Authority and a copy to the National Environment Management Authority.

(3) The Authority may inspect any special economic zone facility at any time, with or without notice, to gather information on the environmental performance of the special economic zone end users or on all environmental aspects to their activities for the purpose of monitoring and enforcing compliance with the relevant laws.

(4) The Authority may, at reasonable time of day, access and copy records retained by the operator of the facility, inspect any monitoring equipment or methods to determine accuracy, and acquire environmental samples.

(5) The National Environment Management Authority may conduct related inspections provided that these inspections are coordinated through the one-stop shops so as to minimise disruption and avoid unnecessary duplication.

(6) In order to ensure compliance with the relevant laws,—

- (a) the Authority may conduct environmental audits of facilities within the special economic zones; and
- (b) the National Environment Management Authority may conduct environmental audits of facilities within the special economic zones and any area surrounding the special economic zones.

(7) The audits under paragraph (6), shall be prioritised for areas or facilities that—

- (a) engage in activities that have potentially serious negative environmental impacts;
- (b) have had previous poor environmental performances;
- (c) have been subjected to or caused, or are suspected to have been subjected to or caused, serious environmental harm; or
- (d) are in environmentally sensitive locations or near vulnerable communities based on the data obtained from baseline assessments and environmental and social impact assessments.

48. (1) If the Authority or the National Environment Management Authority as the case may be, discovers non-compliance with the relevant laws, including any permit condition, it shall notify the special economic zones end user and the relevant special economic zone developer or operator, if different from the special economic zones end user concerned.

Dealing with noncompliance.

(2) The National Environment Management Authority in coordination with the Authority shall make rules to enforce paragraph (1).

49. (1) The Authority shall, in coordination with the relevant government entities responsible for public health ensure the protection of human, animal and plant life from diseases and any other harm in accordance with the relevant laws.

Public Health.

(2) The Authority in consultation with the relevant government entities responsible for public health, shall issue the applicable procedures for the inspection and control of persons, baggage, carriers and merchandise entering the special economic zones that may pose a threat to human, animal, or plant health and the inspections and

controls shall be conducted by the personnel of the relevant government entities.

50. (1) The Authority and the ministries responsible for environment, water and natural resources shall share any information requested by either party and shall attach, second or deploy staff and provide technical assistance and training to each other as requested.

Coordination with other ministries.

(2) The Authority may conclude service level agreements with the Ministries responsible for environment, water and natural resources for the conduct of any of the functions under these Regulations.

PART X—AUTHORITY FUND, SANCTIONS AND FEES

51. (1) The Authority shall publish a schedule of the fees that the Authority may charge for any of the authorised activities under the Act, including any fees for registration, permitting, and licensing.

Fees.

(2) The Authority shall regularly update the fee schedule as necessary to comply with the Regulations and to facilitate an effective regulatory system.

52. (1) The Authority shall publish a schedule of all the fees, levies and charges owed to the relevant government entities in connection with the establishment and operation of a business within a special economic zone, including any registration, permitting, and licensing fees.

Collection of fees.

(2) The fees under paragraph (1) shall include the following—

- (a) incorporation or registration of companies charges;
- (b) fees for legal and professional services related to the company operations;
- (c) socio-environmental impact assessment and mitigation plan filing and evaluation fees and the annual information update fees;
- (d) land rates and land rent;
- (e) public utility connection charges;
- (f) visa fees;
- (g) national social security fund levies;
- (h) national hospital insurance fund levies; and
- (i) the Training Levy; and
- (j) any other statutory fee applicable for activities authorised under the Act.

(3) The Authority may consolidate the fees, levies or charges imposed on special economic zone enterprises as may be required under the relevant laws.

(4) The fees under this Regulation may be paid through the one-stop shop and the Authority shall remit the fees to the relevant government entities in accordance with the terms of service level agreements entered into by the Authority and the relevant government entities.

(5) The Authority shall regularly update the fee schedule to comply with the Regulations and facilitate an effective regulatory system.

PART XI—IMPLEMENTATION OF THE REGULATIONS

53. (1) All relevant government entities shall cooperate with the Authority in the implementation of the Act and these Regulations by entering into service level agreements with the Authority, to—

Cooperation agreements with other government entities.

- (a) facilitate the processing of permits, licenses, registrations, and other approvals;
- (b) facilitate the collection of any fees, fines or penalties;
- (c) coordinate, monitor, inspect or otherwise enforce any provision of the Act; and
- (d) undertake any activity that may be lawfully undertaken jointly by the them
- (e) facilitate the training of the one-stop centre staff to perform their functions effectively;
- (f) share information with the Authority through shared electronic databases and other means as necessary;
- (g) hold regular meetings to coordinate activities and facilitate communication as often as necessary;
- (h) regulate the attachment, secondment or deployment of staff to the special economic zones; and
- (i) coordinate inspections or investigations so as to avoid unnecessary disruption or interference with the normal and lawful activities of special economic zones end users.

(2) The Authority may take measures with regard to any of the matters provided for under the Act and the Regulations if—

- (a) the relevant government entities do not form a service level agreement or other agreement adequately addressing all needs, constraints, or special economic zones end user demands within one financial year after the date of operational effectiveness of the Authority; or
- (b) the Authority determines that any service level agreement or other agreement executed with a relevant government entity has not been fulfilled in whole or in part.

Dated the 30th June, 2016.

ADAN MOHAMED,
Cabinet Secretary for Industry, Trade and Co-operatives.



THE REPUBLIC OF KENYA

LAWS OF KENYA

SPECIAL ECONOMIC ZONES ACT

NO. 16 OF 2015

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SPECIAL ECONOMIC ZONES ACT

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NO. 16 OF 2015

SPECIAL ECONOMIC ZONES ACT

[Date of assent: 11th September, 2015.]

[Date of commencement: 15th December, 2015.]

AN ACT of Parliament to provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments, and for connected purposes

[Act No. 16 of 2015, Act No. 38 of 2016.]

PART I – PRELIMINARY

1. Short title and commencement.

This Act may be cited as the Special Economic Zones Act, 2015 and shall come into operation upon the expiry of ninety days from the date of its publication.

2. Interpretation

In this Act, unless the context otherwise requires—

“**agricultural zone**” means a special economic zone declared as such under section 4 to facilitate the agricultural sector, its services and associated activities;

“**Authority**” means the Special Economic Zones Authority established under section 10;

“**Board**” means the Board of Directors of the Authority established under section 12;

“**business processing outsourcing**” means the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement amongst other services;

“**business service park**” means a special economic zone declared as such under section 4 to facilitate the provision of services including but not limited to regional headquarters, business processing outsourcing centres, call centres, shared service centres, management consulting and advisory services and other associated services;

“**business service permit**” means an administrative grant of authority to operate services within a special economic zone for which no benefits accruing under this Act are granted;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to industrialization;

“**company**” has the meaning assigned to it by section 2 of the Companies Act (Cap. 486.) and includes a company incorporated outside Kenya but registered in Kenya under that Act;

“**customs control**” means the measures applied to ensure compliance with the laws and regulations under the East African Community Customs Management Act, 2004;

“customs controlled area” means the special economic zone where certain enterprises carry out customs controlled operations;

“customs territory” means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the East African Community under Article 3 of the Treaty for the Establishment of the East African Community, but does not include a special economic zone;

“duty” means duty as defined under the East African Community Customs Management Act;

“export” means to take or cause to be taken out of the customs territory or into a special economic zone;

“export duties” means customs duties and other charges having an effect equivalent to customs duties payable on the exportation of goods;

“Freeport zone” means a designated area placed at the disposal of the special economic zone or freeport authority where goods introduced into the designated area are generally regarded, in so far as import duties are concerned, as being outside the customs territory;

“free trade zone” means a special economic zone customs controlled area where goods are off-loaded for transshipment, storage and may include bulk breaking, repacking, sorting, mixing, trading or other forms of handling excluding manufacturing and processing;

“Fund” means the General Fund established under section 21;

“goods” include all kinds of wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence and where any such goods are sold under this Act, the proceeds of such sale;

“import” means to bring or cause to be brought into the customs territory or a special economic zone;

“import duties” means any customs duties and other charges of equivalent effect levied on imported goods;

“industrial park” means a special economic zone declared as such under section 4 with integrated infrastructure to facilitate the needs of manufacturing and processing industries;

“information communication technology park” means a special economic zone declared as such under section 4 to facilitate the information communication technology sector, its services and associated activities;

“infrastructure” means roads, power, water, drainage, telecommunication, sanitation or water treatment plants, networks, buildings or other facilities, necessary for the development and operations of special economic zones and appropriate to their particular sector or cluster focus;

“Kenya Revenue Authority” means the Authority established by section 3 of the Kenya Revenue Authority Act (Cap. 469);

“licence” means a licence issued under this Act;

“livestock zone” means a special economic zone declared as such under section 4, in which the following activities are carried out: livestock marshalling and inspection; livestock feeding or fattening, abattoir and refrigeration; deboning; value addition; manufacture of veterinary products, and other related activities;

“manufacture” means to make, produce, fabricate, assemble, process or bring into existence by manual, mechanical, chemical or biochemical methods into a new product having a distinctive name, character or use and includes processes such as refrigeration, cutting, polishing, blending, beneficiation, re-making and re-engineering;

“negative list” means a list of activities not allowed to be undertaken by special economic zone enterprises under the laws of Kenya and those of the East African Community;

“proper officer” means any officer whose right or duty is to perform or require the performance of the acts referred to in the East African Community Customs Management Act, 2004;

“regional headquarters” means a special economic zone enterprise engaged in headquarters management activities to oversee, manage and control their local, regional and global operations by providing managerial, supervisory, shared services centre and other support services to affiliate companies;

“science and technology park” means a special economic zone declared as such under section 4 to facilitate the science and technology sector, its services and its associated activities;

“services” means tradable services which are covered under the General Agreement on Trade in Services annexed as 1B to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994, and any successor agreements or amendments thereto;

“special economic zone” means a zone declared as such under section 4;

“special economic zone enterprise” means a corporate body which has been licensed under this Act;

“special economic zone developer” means a corporate body which is engaged in or plans on developing, and which may or may not also operate or plan to operate, a special economic zone under this Act;

“special economic zones operator” means a corporate body engaged in the management of a special economic zone and designated as such under the provisions of this Act; and

“tourist and recreation centre” means a special economic zone declared as such under section 4 to facilitate tourism and recreation sector, its services and associated activities.

3. Object and purpose of Act.

The object and purpose of this Act is to provide for —

- (a) an enabling environment for the development of all aspects of special economic zones including—

- (i) development of integrated infrastructure facilities;
 - (ii) creation of incentives for economic and business activities in areas designated as special economic zones;
 - (iii) removal of impediments to economic or business activities that generate profit for enterprises in areas designated as special economic zones; and
- (b) the regulation and administration of activities within the special economic zones with due regard to the principles of openness, competitiveness and transparency.

PART II – THE SPECIAL ECONOMIC ZONES

4. Declaration of special economic zones.

(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.

(2) A declaration of a special economic zone under subsection (1) shall —

- (a) define the limits of the zone; and
- (b) remain in force until revoked by an order in the Gazette by the Cabinet Secretary and on the recommendation of the Authority.

(3) Where upon receipt of a recommendation under subsection (1), the Cabinet Secretary considers that gazettelement of a special economic zone would infringe upon the public interest, the Cabinet Secretary may refer the recommendation back to the Authority to ensure the protection of that public interest.

(4) A special economic zone shall be a designated geographical area where business enabling policies, integrated land uses and sector-appropriate on-site and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory and wherein the benefits provided under this Act apply.

(5) Any public land declared as a special economic zone shall not be alienated for private use except to special economic zone developers, operators or enterprises or other bodies established within a special economic zone.

(6) An area declared as a special economic zone under this section may be designated as a single sector or multiple sector special economic zone, and may include, but not limited to —

- (a) free trade zones;
- (b) industrial parks;
- (c) free ports;
- (d) information communication technology parks;
- (e) science and technology parks;
- (f) agricultural zones;
- (g) tourist and recreational zones;
- (h) business service parks;

- (i) livestock zones;
- (j) convention and conference facilities.

[Act No. 38 of 2016, s. 66.]

5. Criteria for designating special economic zones.

The Authority shall, in designating and determining the special economic zone project proposals that qualify for licensing, take into account the following considerations as may be appropriate —

- (a) nature of the proposed project;
- (b) intended size and perimeter of the proposed special economic zone;
- (c) availability of land and unencumbered land titles;
- (d) geographical location and topography;
- (e) proximity to resources, population centres and infrastructure;
- (f) infrastructure and other utility requirements from national and county governments including water, power, sewage, telecommunication, solid waste and waste water management;
- (g) provision of medical, recreational, security fire safety, customs, and administrative facilities;
- (h) impact on off-site infrastructure, utilities and services;
- (i) approvals of land uses and zoning requirements to facilitate the special economic zones;
- (j) environmental standards and requirements; and
- (k) any other criteria as may be prescribed in the regulations.

6. Goods to be considered as be exported and imported into Kenya.

Unless otherwise provided under this Act, or any other written law —

- (a) goods which are taken out from any part of the customs territory and brought into the special economic zone or services provided from part of the customs territory to a special economic zone shall be deemed to have been exported from Kenya; and
- (b) goods which are brought out of a special economic zone and taken into any part of the customs territory for use therein or services provided from a special economic zone to any part of the customs territory shall be deemed to be imported into Kenya.

7. Goods and services within a special economic zone.

Subject to section 6—

- (a) goods and services within a special economic zone, which shall constitute a customs controlled area, shall not be taken out of the zone except —
 - (i) for export;
 - (ii) for entry into the customs territory, subject to the regulations and procedures on customs;
 - (iii) for removal to any other customs controlled area with the approval of the proper officers, and subject to any conditions as may be imposed; or

- (iv) for repair and maintenance or processing or conversion with prior approval of the proper officer and subject to any conditions as may be imposed;
- (b) where goods are manufactured outside Kenya, such goods shall be clearly labelled as products of the country where such goods were manufactured;
- (c) services provided by a special economic zone enterprise may be provided to —
 - (i) persons outside Kenya;
 - (ii) other special economic zone enterprises in furtherance of the export activities of such enterprises subject to approval of the Authority; or
 - (iii) persons in the customs territory subject to approval of the Authority.

8. Removal of goods from a special economic zone.

(1) Subject to this Act as well as applicable customs laws of the East African Community, goods within a special economic zone may be —

- (a) stored, sold, exhibited, broken up, repackaged, assembled, distributed, sorted, graded, cleaned, mixed, or otherwise manipulated or manufactured in accordance with the provisions of this Act; or
- (b) destroyed under the supervision of the proper officer; or
- (c) removed, under the supervision of the proper officer from the special economic zone for export or sent into another special economic zone or bonded factory, either in its original package or otherwise.

(2) Subject to this Act and the customs laws of the East African Community, goods of any description which would be used in the activities of a licensed special economic zone enterprise may be brought into a special economic zone.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding twenty million shillings or imprisonment for a term not exceeding three years or both and the goods shall be forfeited under the East African Community Customs Management Act.

(4) The special economic zone enterprise shall also operate in conformity with the specific regulations issued under the relevant provisions of the East African Community Customs Management Act.

9. Receipts and payments of special economic zone enterprises.

Unless otherwise provided under this Act or any other applicable law, payments and receipt of funds by a special economic zone enterprise shall be subject to the provisions of the Central Bank of Kenya Act (Cap. 491) and the Banking Act (Cap. 488).

PART III – THE SPECIAL ECONOMIC ZONES AUTHORITY

10. Establishment of the Authority.

(1) There is established a body to be known as the Special Economic Zones Authority.

(2) The Authority shall be a body corporate, with perpetual succession and a common seal, and shall, in its corporate name, be capable of —

Special Economic Zones

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property in and out of Kenya;
- (c) entering into contracts;
- (d) borrowing or receiving money including having its own Fund; and
- (e) doing or causing to be done or performing all such things or acts for the proper performance of its functions under this Act, as may be lawfully done or performed by a corporate body.

11. Functions of the Authority.

The functions of the Authority shall be to —

- (a) make recommendations to the Cabinet Secretary on all aspects of designation, approval, establishment, operation and regulation of special economic zones;
- (b) implement the policies and programmes of the Government with regard to special economic zones;
- (c) identify, map and, where necessary, procure or avail to developers and operators the areas of land to be, or which have been, designated as special economic zones;
- (d) determine investment criteria including investment threshold;
- (e) undertake or approve the development, operation or maintenance, as well as finance, appropriate infrastructure up to the perimeter of, or within, select special economic zones, as and when deemed necessary;
- (f) review applications and grant licences to special economic zone developers, operators and enterprises;
- (g) promote and market special economic zones to potential special economic zone developers, operators, or other investors;
- (h) administer a "one-stop" centre through which special economic zone enterprises can channel all their applications for permits, approvals, licences and facilities not handled directly by the Authority, coordinating with such other Government or private entities as may be necessary through agreements with the entities or procedures defined in implementing regulations or such other prescribed procedures;
- (i) exclusively perform under time-bound conditions as may be prescribed, all administrative business regulations and services functions in relation to the designated special economic zones;
- (j) maintain current data on the performances of the programme in each individual special economic zone and enterprise;
- (k) establish and enhance inter-agency collaboration among relevant State agencies to ensure compliance with all applicable laws, procedures and other applicable requirements;
- (l) recommend to the Cabinet Secretary a negative list of activities that are prohibited in the special economic zones including an additional set of, restricted activities under the regulations made thereunder;
- (m) recommend to the Cabinet Secretary to suspend or cancel the licences of a special economic zone enterprise or a special economic

zone developer which is in the violation of this Act, the East African Community Customs Management Act or the Value Added Tax Act;

- (n) regulate the access of non-licensed service providers from the customs territory as may be required in order to service individual enterprises;
- (o) regulate, implement, monitor and supervise all aspects of the special economic zones regime set forth in this Act;
- (p) maintain a register of enterprises and residents domiciled in the special economic zones; and
- (q) any other functions as may be directed by the Board.

12. Board of Directors.

(1) The Authority shall be administered by a Board of Directors which shall consist of —

- (a) a Chairperson to be appointed by the President;
- (b) the Principal Secretary of the ministry for the time being responsible for matters relating to industrialization and trade or his designated alternate;
- (c) the Principal Secretary to the treasury or his designated alternate;
- (d) the Chairperson of the National Land Commission or his designated alternate;
- (e) the Commissioner General of the Kenya Revenue Authority or his designated alternate;
- (f) four other directors appointed by the Cabinet Secretary, from the private sector or any other public institution being persons who have distinguished service, relevant experience, and expertise.
- (g) the Chief Executive Officer who shall be an *ex officio* member.

(2) No person shall be appointed under subsection (1) (f) unless such person satisfies the requirements of Chapter Six of the Constitution of Kenya.

13. Conduct of business and affairs of the Board.

(1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Second Schedule.

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

14. Powers of the Board.

(1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to —

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

- (d) open such banking accounts for the funds of the Authority as may be necessary;
- (e) invest any of the funds of the Authority not immediately required for its purposes in the manner provided in section 25;
- (f) perform all such other acts or undertake any activity as may be incidental or conducive to the attainment or fulfilment of any of the functions of the Authority under this Act.

15. Remuneration of directors.

The Authority shall pay its directors such remuneration, fees or allowances as it may determine upon the advice of the Cabinet Secretary.

16. Chief Executive Officer.

(1) There shall be a Chief Executive Officer of the Authority who shall be appointed competitively by the Board.

(2) No person shall be appointed under this section unless such person —

- (a) possesses a relevant degree from a recognized institution and has at least ten years working experience in matters relating to industry, trade, law, finance, economics, management, entrepreneurship or engineering;
- (b) satisfies the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall —

- (a) be the secretary to the Board; and
- (b) subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

17. Staff of the Authority.

The Authority may appoint such officers and other Authority staff as are necessary for the proper discharge of its functions under this Act, whether directly or through one-stop shops, upon such terms and conditions of service as the Board may determine and on the advice of the Salaries and Remuneration Commission.

18. Delegation by the Authority.

The Board may, by resolution either generally or any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

19. Protection from personal liability.

(1) The staff of the Authority shall not be personally liable for an act which is done or purported to be done in good faith on the direction of the Authority or the Board in the performance or intended performance of any duty or in the exercise of any power under this Act.

(2) Any expenses incurred by a person referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act on the direction of the Board shall, if the court holds that that act was done in good faith be paid out of the Fund, unless the expenses are recovered by him in that suit or prosecution.

(3) The provisions of this section shall not relieve the Authority of the liability in tort or contract, to pay compensation or damages to any person for any injury

to him, his property or any of his interests caused by the exercise of any power conferred by this Act, or any other written law.

20. Common seal.

(1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2), the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART IV – FINANCIAL PROVISIONS

21. Establishment of the Fund.

(1) There is established a Fund of the Authority to be known as the General Fund which shall vest in the Authority and shall be administered by the Board.

(2) There shall be paid into the Fund —

- (a) monies provided by Parliament for that purpose, towards expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act;
- (b) such fees, monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (c) all monies from any other source provided for or donated or lent to the Authority.

(3) There shall be paid out of the funds of the Authority all such sums of money required to defray the expenditure incurred by the Authority in the exercise, discharge and performance of its objectives, functions and duties under this Act.

(4) The balance of the funds of the Authority at the end of the financial year shall be utilized as directed by the National Treasury.

22. Financial year.

The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in each year.

23. Annual estimates.

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

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(2) The annual estimates shall make provisions for all the estimated expenditure of the Authority for the financial year and in particular the estimates shall provide for —

- (a) the payment of allowances and the charges in respect of the directors and the salaries, allowances and other charges in respect of staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate;
- (f) the funding of promotion and marketing of special economic zones;
- (g) the funding of training, research and development activities of the Authority; and
- (h) any other expenditure incurred by the Authority in the exercise, discharge, and performance of its functions this Act.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not vary the annual estimates of the Authority without the consent of the Cabinet Secretary.

24. Accounts and audit.

(1) The Board shall cause to be kept all proper books and records of income, assets of the Authority.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor- General or to an auditor appointed under this section the account of the Authority together with —

- (a) a statement of the income and expenditure of the authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003 (No.12 of 2003).

(4) The Authority shall within four months of the closure of the financial year, submit to the Cabinet Secretary, a report on the operations of the Authority during that year.

25. Investment of funds.

The Authority may invest its funds in government securities, in which for the time being trustees may by law invest in trust funds, or in any other securities which the National Treasury may, from time to time, approve for that purpose.

PART V – REGULATORY PROVISIONS**26. Licence to operate in special economic zone.**

A person shall not —

- (a) carry on business as a special economic zone developer or operator or enterprise;
- (b) hold himself out as providing or maintaining activities or facilities within a special economic zone,

except under and in accordance with a licence issued under this Act.

27. Application and issue of licence.

(1) A person who, intends to carry on business as a special economic zone developer, operator or enterprise, shall apply in the prescribed form to the Authority for an appropriate licence or for a renewal of the licence.

(2) On receiving an application for licence or for a renewal of a licence, the Authority, may on the recommendation of the Commissioner of Customs and upon payment of the prescribed fee, issue to the applicant the appropriate licence or renew the licence.

(3) In evaluating applications for special economic zone developer, operator and enterprise licences, the Authority shall assess the specific engineering and financial plans, financial viability, and environmental and social impact of the applicant's proposed special economic zone project, as appropriate.

(4) The Authority shall expeditiously render its decisions on licensing under this Act within one month from the date on which the duly completed application form is submitted together with relevant supporting documents.

(5) A licence issued under this section shall —

- (a) be in the prescribed form;
- (b) authorize the licensee to carry on business as a special economic zone developer, operator or enterprise;
- (c) be specific with regard to the activity to be carried out under the licence;
- (d) be valid for such period as the Authority may prescribe;
- (e) contain such other conditions as the Authority deems necessary.

(6) A licence issued under this section may —

- (a) be amended at any time on written notice to the holder by the authority, if in its opinion the amendment is necessary; or
- (b) be suspended or revoked by the Authority if the holder fails to comply with the conditions contained in the licence laid down in this Act or in any regulations made thereunder and where a licence is suspended or revoked, the holder shall take such steps as may be recommended by the Authority.

(7) The Cabinet Secretary shall —

- (a) publish in the Kenya Gazette all approved applications to establish , a special economic zone; and
- (b) within one hundred and eighty days of the coming into force of this Act, publish regulations on the application, issuance, suspension,

revocation and appeal process on licensing of special economic zones.

28. Qualifications of a special economic zone developer and operator.

A special economic zone developer shall, in addition to such other criteria and requirements as may be prescribed —

- (a) be a company incorporated in Kenya, for the purpose of undertaking special economic zone activities;
- (b) have the financial capacity, technical and managerial expertise, and associated track record of relevant development or operational projects, required for developing or operating the special economic zone; and
- (c) own or lease land or premises within the special economic zone as stipulated under the Special Economic Zones (Land Use) Regulations to be enacted within one hundred and eighty days of the coming into force of this Act.

29. Special economic zone enterprises.

(1) The benefits prescribed in Part VI of this Act shall not accrue to any enterprise unless it holds a valid licence issued by the Authority.

(2) The Authority shall grant a licence if the application meets the objectives of this Act, and if the proposed business enterprise —

- (a) is incorporated in Kenya whether or not it is one hundred per cent foreign owned;
- (b) proposes to engage in any activity or activities eligible to be undertaken by a special economic zone enterprise in the special economic zone;
- (c) does not have a negative impact on the environment or engage in activities impinging on national security or presenting a health hazard; and
- (d) conducts business in accordance with the laws for the time being in force save for any exemptions under this Act.

30. Register of licences.

(1) The Authority shall keep in a form as it considers appropriate, a register of the holders of current licences issued under this Act, which shall include —

- (a) the company name; and
- (b) the physical address at which the company carries on its business.

(2) Where —

- (a) the holder of the licence ceases to carry on the business to which the licence relates; or
- (b) a change occurs in any particulars which are required to be entered in the register of licence holders with respect to the holder of a licence,

the holder shall within fourteen days of the occurrence of the event concerned give to the Authority particulars of the change in the prescribed form.

**PART VI – RIGHTS AND OBLIGATIONS
OF SPECIAL ECONOMIC ZONE ENTITIES**

31. Activities permitted within a special economic zone.

The Authority shall, subject to section 5, give notice to the Kenya Revenue Authority of every special economic zone, developer, operator or enterprise licensed under this Act specifying —

- (a) the activities in respect of which the enterprise is licensed; and
- (b) any conditions attached to the licence.

32. Facilities within a special economic zone.

(1) Taking into account the general intent of the special economic zone developer licence, the Authority may require the special economic zone developer to provide and maintain in a special economic zone such facilities including adequate enclosure to separate a special economic zone from the customs territory, as it may consider necessary for the proper and efficient function of the zone.

(2) The Authority shall not issue an order for cessation of any activities or removal of any goods without first giving the concerned enterprise an opportunity of being heard.

(3) The proper officers in each special economic zone shall offer on-site inspection to the special economic zone for imports into, and exports out of, the special economic zone.

(4) The Authority shall be responsible for the monitoring and enforcement of all rules, within special economic zones.

33. Rights and obligations of an economic zone developer or operator.

(1) A special economic zone developer shall have the right to —

- (a) act or appoint a special economic zone operator to undertake management and administration of the special economic zone on its behalf subject to subsections (2), (3) and (4) of this section, section 28 (b) and such other licensing requirements as may be prescribed;
- (b) lease, sub-lease or sell land or buildings to licensed special economic zone operators and, enterprises, and charge rent or fees for other services that may be provided;
- (c) acquire, dispose or transfer special economic zone lands or other assets;
- (d) develop, operate and service special economic zone lands and other assets in conformity with applicable law and its licence;
- (e) provide utilities and other services in the special economic zone, in accordance with its licence, and to charge fees for such services;
- (f) provide utilities and other services outside the special economic zone in conformity with applicable law;
- (g) enjoy the benefits that may accrue under the provisions of this Act;
- (h) enter into contracts with private third parties for the development, operation, and servicing of special economic zone lands and other assets, including on-site and off- site infrastructure;

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- (i) enter and freely participate in international financial markets, without any legal impediments or restrictions, to obtain funds, credits, guarantees and other financial resources; and
- (j) advertise and promote the special economic zone for which it holds a licence to potential investors and service providers.

(2) A special economic zone developer shall, in such manner as may be prescribed —

- (a) perform such physical development works or make such improvements to the special economic zone site and its facilities as may be required according to the plans approved by the Authority;
- (b) provide adequate enclosures to segregate the zone area from the customs territory for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving the zone;
- (c) provide or cause to be provided, adequate security on the site, as may be determined by the Authority in its licence;
- (d) adopt and enforce such rules and regulations within the special economic zone that promote safe and efficient business operations;
- (e) maintain adequate and proper accounts, and other records in relation to its activities, employment statistics, business and report on zone activities, performance and development to the Authority on a periodic basis or as required by the Authority; and
- (f) register all leases with the Authority.

(3) The accounts and records required under paragraph (e) of subsection (2) shall be maintained in any of the official languages.

(4) A special economic zone developer or a special economic zone operator who fails to maintain adequate and proper accounts and other records as required by this section commits an offence and is liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

34. Rights of special economic zone enterprises.

A licensed special economic zone enterprise shall enjoy —

- (a) the full protection of its property rights against all risks of nationalization or expropriation;
- (b) the right to fully repatriate all capital and profits, without any foreign exchange impediments;
- (c) the right of protection of industrial and intellectual property rights, in particular patents, copyrights, business names, industrial designs, technical processes and trademarks;
- (d) the right to admit into the special economic zone for which it is licensed, to export and sell in the customs territory all classes or kinds of goods and services in accordance with the custom laws of the East African Community;
- (e) the right to transact and carry on business with a non special economic zones enterprise;
- (f) the right to transact and carry on business with non-special economic zone enterprises;

- (g) the right to contract with any other enterprise, to buy, sell, lease, sub-let or otherwise exercise, manage, or transfer land or buildings within a special economic zone, subject to the said enterprise's own property rights;
- (h) the right to contract with any other enterprise, to buy, sell, lease, sub-let or otherwise exercise, manage or transfer land or buildings within a special economic zone subject to the provisions of the East African Community Customs Management Act and applicable regulations in respect of the activities of such enterprise within the special economic zone;
- (i) the right to determine the prices of any of its goods or services sold inside or outside the special economic zone for which it is licensed;
- (j) the benefits in the national context of an open, free, competitive investment environment including the right to freely engage with the special economic zone for which it is licensed in any business, trade, manufacturing or service activity not prohibited by this Act; and
- (k) all other rights and benefits granted to licensed special economic zones enterprises under this Act.

35. Benefits accruing to special economic zone enterprises, developers and operators.

(1) All licensed special economic zones enterprises, developers and operators shall be granted tax incentives as specified in the respective tax laws.

(2) Subject to subsection (1), the licensed special economic zone enterprises, developers and operators shall be granted the following exemptions from —

- (a) stamp duty on the execution of any instrument relating to the business activities of special economic zone enterprises, developers and operators;
- (b) the provisions of the Foreign Investments and Protection Act (Cap. 518) relating to certificate for approved enterprise;
- (c) the provisions of the Statistics Act, 2006 (No. 4 of 2006.);
- (d) the payment of advertisement fees and business service permit fees levied by the respective County Governments' finance Acts;
- (e) general liquor licence and hotel liquor licence under the Alcoholic Drinks Control Act, 2010 (No. 4 of 2010);
- (f) manufacturing licence under the Tea Act (Cap. 343);
- (g) licence to trade in unwrought precious metals under the Trading in Unwrought Precious Metals Act (Cap. 309);
- (h) filming licence under the Films and Stages Plays Act (Cap. 222);
- (i) rent or tenancy controls under the Landlord and Tenant (Shops, Hotels and Catering establishments) Act (Cap. 301); and
- (j) any other exemption as may be granted under this Act in consultation with the Cabinet Secretary for that matter, by notice in the Gazette.

(3) The licensed special economic zone enterprises, developers and operators shall be entitled to work permits of up to twenty per cent of their full-time employees;

(4) Despite subsection (3), on the recommendation of the Authority, additional work permits may be obtained for specialised sectors.

[Act No. 38 of 2016, s. 67.]

PART VII – MISCELLANEOUS PROVISIONS

36. Powers of the Cabinet Secretary.

The Cabinet Secretary may from time to time direct the Authority to furnish in such form as may be prescribed returns, accounts and any other information with respect to the work and activities of the Authority.

37. Dispute resolution.

(1) Where a dispute arises between a special economic zone developer, operator or enterprise and the Authority or the Government in respect of the special economic zone entity, all efforts shall be made to settle the dispute through negotiations and mutual agreement for an amicable settlement within thirty days.

(2) Where a dispute under subsection (1) is not settled, the parties may submit it to arbitration in accordance with any of the following methods as may be mutually agreed by the parties —

- (a) in accordance with the rules of procedure set forth for arbitration by the United Nations Commission on International Trade Law, the International Chamber of Commerce in Paris or the International Center for Settlement of Investment Disputes Resolution; or
- (b) within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or
- (c) in accordance with the Arbitration Act, 1995 (No. 4 of 1995).

(3) If the parties do not agree to the mechanisms of settlement of dispute under subsection 2 (a) and (b) within fourteen days, the Arbitration Act shall apply.

38. Exemption from Stamp duty.

The Authority shall be exempt from payment of any stamp duty chargeable under the Stamp Duty Act (Cap. 480) for land transactions.

39. Regulations.

(1) The Cabinet Secretary shall, upon the recommendation by the Authority, make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) Without prejudice to the generality of subsection (1), the regulations may —

- (a) determine criteria for the designation and gazetting of all special economic zones;
- (b) determine the application process, criteria, conditions, terms and procedures for designation of special economic zones and licensing of special economic zone developers, operators and enterprises;
- (c) determine the form of licences to be issued under this Act and the procedures from amendment and revocation of the licences;
- (d) determine the general conditions of entry of persons into a special economic zone;
- (e) require information from special economic zone developers, operators and enterprises;

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- (f) determine the rules pertaining to the establishment, functioning, operations and procedures for the special economic zones one-stop-shops;
- (g) determine the investment rules for special economic zones;
- (h) determine the land use rules for special economic zones, development and building controls as well as utility provisions and operations; and
- (i) determine the fees to be levied under this Act.

40. Transition.

A corporate body shall be deemed to be a special economic zone developer on the commencement of this Act if it has —

- (a) been approved by the Cabinet Secretary to engage in the development or management of integrated infrastructure facilities on public, private or public-private partnership basis; and
- (b) undertaken significant steps to commence development or management of the integrated infrastructure facilities.

FIRST SCHEDULE

[Section 4(1).]

TYPES OF SPECIAL ECONOMIC ZONES

1. The Authority shall permit multiple sector or single sector Special Economic Zones including but not limited to the following —

- (a) Free Trade Zones (FTZ)
- (b) Industrial Parks
- (c) Free Ports
- (d) Information Communication and Technology Parks (ICT Parks)
- (e) Science and Technology Parks
- (f) Agricultural Zones
- (g) Tourist and Recreational Zones
- (h) Business Service Parks

SECOND SCHEDULE

[Section 13.]

**PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE BOARD****1. Tenure of office**

The Chairperson or a director other than an *ex-officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but may be eligible for re-appointment for one further term.

2. Vacation of office

A director other than an *ex officio* member may —

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the director —
 - (i) has been absent from three consecutive meetings of the Board without its permission;
 - (ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;
 - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
 - (iv) contravenes Chapter Six of the Constitution; or
 - (v) is otherwise unable or unfit to discharge his functions.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least three directors, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be half of the total directors including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board but the directors present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the directors present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the directors thereof

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. Committees of the Board

(1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its directors.

(3) The Board may, where it deems appropriate, coopt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

5. Disclosure of interest

(1) A director who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A director who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

6. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Explanatory Memorandum and Evidence of Public Participation – SEZ Regulations (amendments) 2020

Background:

The Kenya Special Economic Zones Program was established by Special Economic Zones Act No. 16 of 2015 to provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments, and for connected purposes. The SEZ Authority oversees the implementation of the program in Kenya.

SEZA noted the need for further regulations to provide clarity on the operations of various actors and to help facilitate the provision of services within and from the Special Economic Zones. In this regard, the Authority in consultation with the Ministry has developed the 2020 Amendments to the SEZ Regulations.

Justification

Section 27 (7) b of the SEZ Act 2015 tasked the Cabinet Secretary to publish regulations on the application, issuance, suspension, revocation and appeal process on licensing of special economic zones within one hundred and eighty days of the Act coming into force. Further, the SEZ Act 2015 39 (2) provided that Cabinet Secretary would make regulations as advised by the Authority to:

- a) determine criteria for the designation and gazetting of all special economic zones;
- b) determine the application process, criteria, conditions, terms and procedures for designation of special economic zones and licensing of special economic zone developers, operators and enterprises;
- c) determine the form of licences to be issued under this Act and the procedures from amendment and revocation of the licences;
- d) determine the general conditions of entry of persons into a special economic zone;
- e) require information from special economic zone developers, operators and enterprises;
- f) determine the rules pertaining to the establishment, functioning, operations and procedures for the special economic zones one-stop shops;
- g) determine the investment rules for special economic zones;
- h) determine the land use rules for special economic zones, development and building controls as well as utility provisions and operations; and
- i) determine the fees to be levied under this Act.

SEZ Regulations were gazetted vide Legal Notice No. 147, Kenya Gazette Supplement No. 130 of 5th August 2016. While the SEZ Regulations, 2016 provided the framework for SEZA to identify / gazette Special Economic Zones and to license Special Economic Zone Developers, Operators and Enterprises, the Authority has noted the need for further regulations.

Specifically, although the Authority can currently gazette sites and license the developers, operators and enterprises, Regulations to guide the movement of people, goods and services within the Special Economic Zones are not provided. Further, the Authority needed to review the current regulations for clarity on matters raised by stakeholders.

The Development and Review Process:

Development of the Proposed Regulations and Regulatory Amendments

With the identification of the need for further regulation, SEZA supported by IFC undertook a comprehensive review of the current regulations to identify gaps therein and to inform the development of supplemental regulations.

SEZA finalized proposals for Amendments to 2016 Regulations and Supplemental Regulation in November 2019.

(a) Statement on the proof and demonstration that sufficient public consultations was conducted

The Ministry and Special Economic Zones Authority ensured that sufficient public participation was undertaken starting with meetings with internal stakeholders, collection of views from stakeholders and public participation as follows: -

From December 2019 to January 2020 the Authority engaged various stakeholders to seek feedback on the regulations as follows:

- i. In January 2020, the Authority sought input from KEPSA, KAM and KNCC via written notification on the draft regulations
- ii. The Ministry made available through its Ministry portal the draft regulations and stakeholder comments form in January 2020.
- iii. A Public Notice was issued through the Government Gazette on Tuesday January 7th 2020 alerting the public to provide comments on the draft regulations and the public stakeholder workshop.
- iv. An internal Government Stakeholder Workshop was conducted on Monday January 13th 2020 (attendance register and rapporteurs report attached)
- v. A Public Stakeholder Workshop was conducted on Wednesday January 15th 2020 with nearly 140 stakeholders participating (attendance register and rapporteurs report attached)

(b) Brief statement of all the consultations undertaken before the regulations were made

After the enactment of the SEZ Act in 2015 and gazette of the SEZ regulations in August 2016, Special Economic Zones Authority and other stakeholders including the gazetted and licenced SEZ developers/operators identified various gaps in the SEZ regulations which required urgent attention. To address these gaps the Ministry and SEZA sort assistance of IFC for support of review of the SEZ regulations as per the attached Advisory Agreement between the Ministry and IFC.

(c) Brief statement of the way the consultation was carried out

The Ministry and Special Economic Zones Authority ensured that sufficient public participation was undertaken starting with meetings with internal stakeholders (i.e. Public Departments and Agencies which have direct impact to the SEZ Act. They include Attorney General Office, KRA, Immigration and Labour Department

This was followed by public participations which was then followed by a retreat with officers from Ministry, SEZA, Attorney General and Law Reform Commission to consolidate all the input from various stakeholders and other inputs received by SEZA in Maanzoni Lodge in January 2020.

(d) Outline of the results of the consultations

While draft supplemental regulations were submitted to the Board for consideration in December 2019, applicants, licensees and other stakeholders expressed concern with the development of multiple sets of reference documents that stakeholders would need to track in engaging with SEZA. As such, it was noted that it would be important to incorporate all new regulatory provisions as amendments to the existing regulations rather than creating new supplementary regulations

The results of the consultations were the attached reviewed SEZ regulations forward to the Ministry.

(e) Brief explanation of any changes made to the legislation as a result of the consultations

The key changes are outlined in the attached matrix. A summary of key areas affected by the changes are as follows: -

i. Definitions

Provide key definitions under the SEZ Act and Regulations that clarify the intent of the law and regulations and the applicability of various provisions to specific person / entities within the program including Special Economic Zone Resident, Special Economic Zone Visitor, Special Economic Zone Worker and Special Economic Zone End Users

ii. Guidelines for SEZ applicants

To limit speculations, this is to require applicants to demonstrate the capacity to undertake the development of their proposed zones and to provide some timelines in this regard.

iii. Requirements for Gazettement

To ease the operations of the Authority, it seeks to allow for publishing, rather than gazetteement of various process and procedures that may be applicable within the program

iv. Coordination with Other Government Agencies

To clarify the coordination role that the Authority will undertake while allowing for other government agencies to provide their services within their legal mandates

v. Entry of Persons into Special Economic Zones

A new section was added to guide the movement of persons into the Special Economic zones.

Benefits/Conclusion of the SEZ (Amendment) Regulations, 2020

The SEZ Regulations are expected to further contribute to the improvement of the enabling business environment provided by the SEZ programme. The SEZ Regulations would enable SEZ Developers, Operators and Enterprises to operate smoothly in view of a clear regulatory framework.



Career Opportunity

The Kenya Revenue Authority (KRA) is the principal revenue collector for the Government of Kenya with the primary goal to deliver Kenya to financial self-sufficiency through effective tax revenue mobilization. KRA is seeking a result-oriented, self-driven individual of high integrity to fill the position of Deputy Commissioner – Technology Innovation and Artificial Intelligence.

Purpose of the job:

The Deputy Commissioner Technology Innovation & Artificial Intelligence will be responsible for defining the technologies necessary to attain KRA's objectives and the transitional processes for implementing new technologies in response to changing needs.

Key Responsibilities of the job:

1. **Strategy** - Lead the creation and evolution of an enterprise architecture function.
2. **Innovation and Continuous Improvement** - Oversees research and information gathering to monitor the industry solution landscape.
3. **Business Partnering** - Provide advisory to senior management on required investment to drive key application integration initiatives across KRA.
4. **Big Data Capture & Analytics** - Drive the technical planning, research, and architectural design for KRA's big data platform, including big data lifecycle management, big data storage systems, data security and data governance.
5. **Database Integration** - Develop a data modelling and design capability that effectively integrates data and support new data development, ensuring consistency and integration with existing data structures.
6. **People Leadership** - Lead cross-functional teams on software and application technology selection, design considerations, evaluation criteria, due diligence requirements, and any other related software technology selection and adoption techniques.

Candidate profile

The job holder should possess the following minimum qualifications:

1. Bachelor's degree in Computer Science, Information Technology, Engineering or any other related field.
2. A minimum of ten (10) years working experience in IT enterprise/application/information architecture.
3. A Certification by a relevant professional body e.g. a Certified Information Security Manager (CISM) or Certified Information Systems Auditor (CISA).

Interested candidates are advised to visit our website (www.kra.go.ke) for a more detailed job description for the role. All applications from qualified candidates must be submitted online. The application process is on the Careers page on the KRA website. Closing date for applications is 20th January, 2020.

KRA does not charge any application, processing, interviewing or any other fee in connection with the recruitment or the application process.

Disclaimer: Applicants are notified that KRA will not accept responsibility for payments not received, credited and reflected in the relevant Kenya Revenue Authority accounts. Contact Centre: +254 (020) 4 599 595, +254 (0711) 888 888. Email: admission@kra.go.ke Complaints & Information Center: +254 (0) 20 281 7750 (toll-free). Email: complaints@kra.go.ke

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Tulipe Ushuru, Tujitegemee!



REPUBLIC OF KENYA

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

REQUEST FOR PUBLIC COMMENTS ON KENYA SEZ SUPPLEMENTARY REGULATIONS

The mandate of the Ministry of Industry, Trade and Cooperatives is to promote Industrialization and Enterprise Development in Kenya.

Vision 2030, which aims to transform Kenya into a globally competitive and newly industrialized middle-income country by 2030, incorporates Special Economic Zones as a strategic element. In line with this, the Kenya Special Economic Zones Program was established by Special Economic Zones Act No. 16 of 2015.

The Cabinet Secretary has noted the need for further regulations to provide clarity on the operations of various actors, including to guide the movement of people, goods and services within the Special Economic Zones. In this regard, the Ministry on the advice of the Authority has developed:

1. Supplemental Special Economic Zones Regulations 2019.
2. Proposed Amendments to the SEZ Regulations 2016

These documents are ready for review and can be downloaded at the Ministry's website, www.industrialization.go.ke. All Stakeholders are requested to take review the aforementioned documents and to provide feedback that will be considered for incorporation in the Final Supplemental Regulations that will be gazetted.

The Ministry has organized stakeholder consultations to be held on **Friday 10th January, 2020** in Nairobi from **9:00 am – 4:00 pm** in Nairobi. Details on the exact venue for the consultative meetings will be communicated to registrants and uploaded on the Ministry's website as soon as possible.

We request that your input using the template/memorandum tool provided on the ministry website be received by **Friday 10th January, 2020**. Written memoranda can be delivered to the Authority's offices at **UAP Old Mutual Tower, Upper Hill Nairobi, 14th Floor** during official working hours from **8.00am - 5.00pm** on week days or by email to info@sezauthority.go.ke.

Further inquiries regarding the consultative meetings could be channeled to **Mr Brian Muli Tel: 0710325160**, email: bemuli@sezauthority.go.ke.

PUBLIC PARTICIPATION REGISTRATION FORM

NAME OF PERSON:
 PASSPORT OR ID NO.: Email:
 ORGANIZATION:
 TITLE:
 SIGNATURE: DATE:



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BRANDING AGENCY

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31ST JANUARY 2020



Make It Kenya

Mwongozo guidelines, Chapter 6 of the constitution, Public Officer Ethics Act and Leadership and integrity Act 2012, BrandKE's Board members, employees or close family members such as a spouse, child, parent or sibling are not eligible to apply as a conflict of interest may arise that could improperly influence performance, official duties and responsibilities.





SPECIAL ECONOMIC ZONES AUTHORITY

STAKEHOLDER COMMENTS FORM

The Supplemental Special Economic Zones Regulations 2019.

Vision 2030, launched with the aim to transform Kenya into a globally competitive and newly industrialized middle-income country by 2030, incorporates Special Economic Zones as a strategic element to promote the Macro and Economic Pillar through the various sectors provided and moreover seeks to realize the Big Four Agenda. The Special Economic Zones Programme is also referenced in Kenya's Medium Term Plans.

The Kenya Special Economic Zones Program was established by Special Economic Zones Act No. 16 of 2015 to provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments, and for connected purposes. The SEZ Act 2015 39 (2) provided that Cabinet Secretary would make regulations as advised by the SEZ Authority to implement the provisions of the Act. The SEZ Regulations 2016 were gazetted vide Legal Notice No. 147, Kenya Gazette Supplement No. 130 of 5th August 2016.

The Authority has noted the need for further regulations to provide clarity on the operations of various actors, including to guide the movement of people, goods and services within the Special Economic Zones. The Draft Supplemental Special Economic Zones Regulations are ready. As a stakeholder, we request you to review the documents and to provide feedback that will be considered for incorporation in the Final Supplemental Regulations that will be gazetted. We request your that input be received by Friday 10th January, 2020 on email info@sezauthority.go.ke.

NO.	REGULATION	COMMENT	PROPOSED CHANGE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

(Add more rows further comments)

Submitted By:	Name	Designation	Organization	Date



SPECIAL ECONOMIC ZONES AUTHORITY
Office of the Chief Executive Officer

Fax No: +254-(0)-20-340700
Telephone: +254-20-2731510
Email: info@sezauthority.go.ke
ceo@sezauthority.go.ke

When replying please quote:

UAP, OLD MUTUAL TOWERS
P O BOX 30418-00100
NAIROBI
KENYA

Ref: SEZA/LEGAL/VOL.!

Date: 07th January, 2020

Chief Executive Officer

Kenya Private Sector Alliance (KEPSA)
Shelter-Afriq House
NAIROBI

Chief Executive Officer

Kenya Association of Manufacturers
Kenya Association of Manufacturers House
NAIROBI

Chief Executive Officer

Kenya National Chamber of Commerce and Industry
Heritan House
NAIROBI

Dear

**RE: INVITATION TO A PUBLIC STAKEHOLDER REVIEW WORKSHOP ON
THE SUPPLEMENTAL SPECIAL ECONOMIC ZONES REGULATIONS 2019**

The Kenya Special Economic Zones Program was established by the Special Economic Zones Act No. 16 of 2015 to spur socio economic activity through provision of fiscal and administrative incentives, promote foreign direct investment, creation of employment opportunities and disposable incomes, technology and knowledge transfer, development of physical infrastructure and other factors.

In line with this, the SEZ act provides for the establishment of the Special Economic Zones Authority with the mandate to oversee the implementation of the program in Kenya.

The SEZ Authority is in the process of developing supplemental SEZ Regulations to provide clarity on the operations of various actors and to help facilitate the provision of services within and from the Special Economic Zones. In this regard, the Authority has developed:

1. Supplemental Special Economic Zones Regulations 2019.
2. Proposed Amendments to the SEZ Regulations 2016

These documents are ready for review and attached. Note that soft copies are available on the Ministry of Industry website at www.industrialization.go.ke.

By way of this letter, we would like to request you to:

1. Review the documents and to provide feedback for incorporation in the Final Supplemental Regulations that will be gazetted. We request for any written feedback to be received by Friday January 10th on email info@sezauthority.go.ke. Kindly use the Stakeholder Comments Form provided in the aforementioned Ministry website.
2. Accept our invitation and nominate your portfolio of Investors, particularly Medium, Large Companies and Multinational Companies, to our Public Stakeholder Review Workshop to be held on 10th January 2019 from 9.00 am - 4 pm, where they will have an opportunity to appreciate the programme and provide feedback/ input for the Authority's consideration into the final Supplemental Regulations before gazettelement. Details on the venue will be communicated to all confirmed participants.
3. Provide name of participant, organization and contact details of nominated persons through email to bmuli@sezauthority.co.ke or info@sezauthority.go.ke.

We hope for your continued cooperation and please find attached the following documents;

1. Supplemental Special Economic Zones Regulations 2019.
2. Proposed Amendments to the SEZ Regulations 2016
3. SEZ Supplemental Regulations Stakeholder Comments Form
4. Draft Public Notice

Yours


for: Dr. Meshack Kimeu, PhD
AG. CHIEF EXECUTIVE OFFICER



SPECIAL ECONOMIC ZONES AUTHORITY
Office of the Chief Executive Officer

Fax No: +254-(0)-20-340700
Telephone: +254-20-2731510
Email: info@sezauthority.go.ke
ceo@sezauthority.go.ke

When replying please quote:

UAP, OLD MUTUAL TOWERS
P O BOX 30418-00100
NAIROBI
KENYA

Ref: SEZA/LEGAL/VOL.1

Date: 07th January, 2020

International Finance Corporation
Delta Centre Menegai Road, Upper Hill
P O Box 30577-00100
NAIROBI, KENYA

Attn: Sarah Ruth Ochieng

**RE: INVITATION TO A PUBLIC STAKEHOLDER REVIEW WORKSHOP ON
THE SUPPLEMENTAL SPECIAL ECONOMIC ZONES REGULATIONS 2019**

The Kenya Special Economic Zones Program was established by the Special Economic Zones Act No. 16 of 2015 to spur socio economic activity through provision of fiscal and administrative incentives, promote foreign direct investment, creation of employment opportunities and disposable incomes, technology and knowledge transfer, development of physical infrastructure and other factors.

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By way of this letter, we would like to request you to:

1. Review the documents and to provide feedback for incorporation in the Final Supplemental Regulations that will be gazetted. We request for any written feedback to be received by Friday January 10th on email info@sezauthority.go.ke. Kindly use the Stakeholder Comments Form provided in the aforementioned Ministry website.
2. Accept our invitation and nominate your portfolio of Investors, particularly Medium, Large Companies and Multinational Companies, to our Public Stakeholder Review Workshop to be held on 10th January 2019 from 9.00 am - 4 pm, where they will have an opportunity to appreciate the programme and provide feedback/ input for the Authority's consideration into the final Supplemental Regulations before gazettment. Details on the venue will be communicated to all confirmed participants.
3. Provide name of participant, organization and contact details of nominated persons through email to bmuli@sezauthority.co.ke or info@sezauthority.go.ke.

We hope for your continued cooperation and please find attached the following documents;

1. Supplemental Special Economic Zones Regulations 2019.
2. Proposed Amendments to the SEZ Regulations 2016
3. SEZ Supplemental Regulations Stakeholder Comments Form
4. Draft Public Notice


for: Dr. Meshack Kimeu, PhD
AG. CHIEF EXECUTIVE OFFICER



MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES
State Department for Industrialization
Office of the Principal Secretary

Telephone: 020-2731531-9

0704097021/23

0788484840/41

Fax: 020-2731511

Email: ps.moied@gmail.com

Social Security House Block A

Bishops Road, Capital Hill

P.O. Box 30418 - 00100

NAIROBI

Ref: **MITC/SDI/5/18**

Date: 3 January 2020

The Principal Secretary

Ministry of Interior and Citizen Services

Harambee House

NAIROBI

Principal Secretary

State Department for Labour

NSSF Building

NAIROBI

Commissioner General

Kenya Revenue Authority

KRA Towers

NAIROBI

Managing Director

Kenya Bureau of Standards

NAIROBI

Chief Executive Office

Council of Governors

Delta House, Westland

NAIROBI

Chief Executive Officer

KenTrade

NAIROBI

Executive Director

National Construction Authority (NCA)

NAIROBI

Director General

National Environment Management Authority

NAIROBI

Managing Director

Kenya Railways Corporation

NAIROBI

Managing Director

Kenya Ports Authority

MOMBASA

Managing Director

Kenya Airports Authority

NAIROBI

Director General

Kenya Maritime Authority

MOMBASA

Managing Director

Kenya Investment Authority

NAIROBI

Ag. Director General

Business Registration Service

NAIROBI

Ag. Executive Director

Industrial and Commercial Development Corporation
NAIROBI

**INPUT INTO THE DRAFT KENYA SUPPLEMENTARY SPECIAL
ECONOMIC ZONE (SEZA) REGULATIONS**

Kenya Special Economic Zones Program was established by Special Economic Zones Act No.16 of 2015 to provide for the establishment of special economic zones; promotion and facilitation of global and local investors; development and management of enabling environment for such investments, and for connected purposes

The SEZ Act, 2015 Section 39 (2) provides that Cabinet Secretary would make regulations as advised by the SSEZ Authority to implement the provisions of the Act. The SEZ Regulations 2016 were gazetted vide Legal Notice No.147, Kenya Gazette Supplement No.130 of 5th August 2016 and provides the framework for SEZA to identify/gazette Special Economic Zones and to license Special Economic Zone Developers, Operators and Enterprises.

The Ministry has noted the need for further regulations to provide clarity on the operations of various actors and to help facilitate the provision of services within and from the Special Economic Zones. In this regard, the Ministry has developed:

1. Supplementary Special Economic Zones Regulations 2019
2. Proposed amendments to the SEZ Regulations 2016

These documents are ready for review and comments. Soft copies are anchored on the Ministry's website on www.industrialization.go.ke.

The purpose of this letter is to request you to:

Review the documents and provide feedback for incorporation into the final Supplementary Regulations that will be gazetted. We request for written feedback, if any to be received by Friday 10th January 2020 through email to info@sezauthority.go.ke

Nominate a representative to participate in an internal government stakeholders meeting to be held on Wednesday **13th January 2020** from 9am to 4pm in Nairobi. Details of the venue to be communicated in due course.



DR. F. O. OWINO, PhD, CBS
PRINCIPAL SECRETARY

Copy to:

Hon. Peter G. Munya, MGH
Cabinet Secretary
Ministry of Industry, Trade and Cooperatives
NSSF Building
NAIROBI



MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

INTERNAL STAKEHOLDER FORUM ON THE KENYA SEZ SUPPLEMENTARY REGULATIONS

Monday January 13th 2020

Program

Time	Agenda
8:00 am – 9:00 am	Registration
9:00 am – 9:30 am	Opening Session Hezekiah Okeyo, Industrialization Secretary Dr. Meshack Kimeu, AG. CEO Special Economic Zones Authority Key Note Dr. F. Owino, PS, State Department of Industrialization
9:30 am – 10:00 am	Presentation on the SEZ Program in Kenya Lewell Njihia
10:00 am – 10:30 am	Presentation of the 2016 SEZ Regulations Francis Gitau
10:30 am – 10:45 am	Tea Break
10:45 am – 11:45 am	Plenary Moderator: P. Nderitu
11:45 am – 12:15 pm	Presentation of the Draft Supplementary Regulations P. Tonui
12:15 pm – 1:30 pm	Plenary Moderator: P. Nderitu
1:30 pm – 2:30 pm	Lunch
2:30 pm – 4:00 pm	Consultations Individual Agency Consultations



SPECIAL ECONOMIC ZONES AUTHORITY

RAPPORTEUR'S REPORT ON

**SEZA INTERNAL GOVERNMENT STAKEHOLDER REVIEW
WORKSHOP ON THE SUPPLEMENTAL SEZ REGULATIONS 2019**

VENUE: PANAFRIC HOTEL

DATE OF WORK SHOP: 13/01/2020

January, 2020

SEZA INTERNAL GOVERNMENT STAKEHOLDER REVIEW ON THE PROPOSED SUPPLEMENTAL SEZ REGULATIONS

Background

The Kenya Special Economic Zones Program was established by the **Special Economic Zones Act No. 16 of 2015** to provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments, and for connected purposes. The Special Economic Zones (SEZ) Authority oversees the implementation of this program in Kenya.

The SEZ Act 2015, Section 39 (2) provides that the Cabinet Secretary would develop Regulations as advised by the SEZ Authority in order to implement the provisions of the Act. Thus, the SEZ Regulations 2016 were gazetted vide Legal Notice No. 147, Kenya Gazette Supplement No. 130 of 5th August 2016. In regards to this, The SEZA noted the need for further regulations to provide clarity on the operations of various actors, and provide a guideline on the movement of people, goods and services within the Special Economic Zones. Therefore, on the advice of the SEZA, the Ministry of Industry, Trade and Cooperatives developed the following for gazettment:

1. **Supplemental Special Economic Zones Regulations 2019.**
2. **Proposed Amendments to the SEZ Regulations 2016.**

Through the Ministry of Industry Trade and Cooperatives, the SEZA invited Government Agencies to the Internal Government Stakeholder review workshop in order to present the aforementioned documents for comments and feedback.

Following is the rapporteurs report of the Internal Government Stakeholder Forum held on Monday January 13th 2020 at the Sarova Panafric Hotel

Attendance

The forum had nearly 30 participants from over 10 government agencies that have a role in the development and operation of SEZs in Kenya. The registration list is attached

Summary of Opening Remarks made at the Review Workshop

The Government Stakeholder Review Workshop was opened by the SEZA CEO, Dr Meshack Kimeu. Through a speech, he provided the background of the SEZ program, the Authority, and the Authority's goals and objectives. He acknowledged the program has significant potential to positively impact the socio-economic environment and actualize government agendas such as Vision 2030 and the Big Four. Nevertheless, the CEO recognized the need for a strong foundation in order to realise National goals, such as a clear regulatory environment, thus the development of proposed regulations and amendments. The

SEZA CEO concluded his speech by welcoming all participants and officially commencing the workshop by encouraging participants to provide an interactive session.

After providing apologies on behalf of the State Department of Industrialization Principal Secretary Dr F. Owino, the Ag. Industrialization Secretary Mr Hezekiah Okeyo provided his opening remarks touching on the status of the economy, regulatory environment and National Agendas in regard to the SEZ Programme.

The Ag. Industrialization Secretary acknowledged the global impact SEZs have shown on economies citing examples such as Asian regions and Sub-Saharan Africa countries such as Rwanda and Egypt. Nevertheless, Mr Okeyo cited that such impacts are yet to be seen in the country stating the slow progress of operationalizing gazetted SEZs and vague laws as causes for concern. He observed that even though National strategies such as manufacturing and knowledge and technology transfer have been put in place through such programs, the current state of the socio economic environment is yet to improve and still requiring resuscitation. This was brought to light through examples such as the decline of the GDP, slow increase in FDI without manufacturing playing a significant role, inadequate job opportunities and multiple bottle necks in the business environment and underachieving of National Agendas such as the Big Four. He also raised a concern on the lack of clarity the Legal Environment should provide on accessing the single East African Community market and the African market with the impending African Continental Free Trade Area.

Presentations showcased during the Review Workshop

The following presentations were made with the objective of further acquainting participants to the review workshop.

Presentation on the SEZ Program in Kenya

Mr Lewell Njehia from the SEZA provided an overview the SEZ program in Kenya, noting that the SEZA Act come into enforcement in 2016, directed for the establishment of SEZs in Kenya and the SEZA with the mandate of implementing the program. He noted the Authority is in operation, undertaking its roles as stated with in the Act such as providing Administrative and Fiscal incentives to its investors. Gazetted areas, licensed Enterprises and Developers were showcased. The definition of a SEZ was also illuminated stating that a gazetted area is a Customs Controlled Area that provides a conducive environment for setting up businesses through removal of bottle necks.

Presentation of the 2016 SEZ Regulations

Participants were showcased with the already Gazetted SEZ Regulations 2016 by Mr. Francis Gitau from the SEZA. The regulations seek to clarify on the Authority's role towards: Administration of SEZs and Institutions; Designation and Gazetting of SEZs; Licensing of SEZ Developers, Operators and Enterprises; Information Requirements from SEZ End Users; One Stop Shops; Investment Rules for SEZs; Land Use Rules and Building and Utility Controls and other guidelines.

Presentation of the Draft Supplemental Regulations

The proposed Supplemental Regulations was showcased to participants for review and feedback by Mr Patrick Tonui from IFC World Bank. It was noted that the Supplemental Regulations have been developed with the aim towards providing clarity on the roles of various actors located in a SEZ and provide a guideline on the movement of people, goods and services within Special Economic Zones. It was also noted that the Supplemental Regulations was not meant to replace the already gazetted SEZ Regulations 2016, but would only act as a Second Set of Regulations towards the SEZ Act.

Plenary Session/Comments from Participants

The SEZA received feedback on the proposed amendments for the SEZA Regulations 2016 (which were dispatched via soft and hard copy to participants); the proposed Supplemental Regulations and the SEZA Act. The following are observations made and comments received during the Internal Government Stakeholder Review:

- 1) Implementation of Fiscal Incentives.
 - a) It was indicated that some of the incentives provided by the SEZ Act are enforced as payable in other laws. An example raised was non-payment for Liquor License as it was incentivised in the SEZA Act but is a payable license under County Laws. This remains an issue to be resolved.
- 2) Need for incorporating SEZA laws into other regulations to ensure the program is facilitated by affected stakeholders.
 - a) This was alluded as noted in the previous comments.
 - b) The Regulations touch on environmental laws such as when to provide a SEA, even though EMCA has been legislated and developed by NEMA to provide for the framework law on environmental management and conservation.
 - c) The Supplemental Regulations provide for labour rules (Part V) even though there are National Labour Laws. Participants felt there is a need to be inclusive of other labour rules and not selective on a few.
 - d) Part V also allows a licenced investor to employ any individual including both Kenyan Nationals and Non-Nationals. Participants were against this regulation as they felt this could bar locals from job opportunities within a SEZ. However, this regulation is also facilitated by the act, as Section 35 (3) of the SEZ Act only allows 20% of workforce as foreign nationals.
- 3) Concern on recognition of participatory role as investors in regards to County Governments. The scope of investment is not limited to private entities only. This concern was resolved by the SEZA, as the Authority provides for Private and Public SEZs.
- 4) Clarity on provision for duty exemptions.
 - a) EACCMA does not facilitate duty exemptions for SEZs which remains a key issue hindering the implementation of this provision.
- 5) Concern on Regulation 11 (Rights of Borrowers and Creditors) on Supplemental Regulations

- a) The view presented was that such matters should not be regulated upon by the Authority.
- 6) Concern on contribution of the program towards National Agendas such as Big Four and Vision 2030.
 - a) With reference to declining GDP growth rates and stagnating Employment opportunities, participants indicated the Manufacturing Sector and other sectors of the economy are not being impacted by the program. More emphasis needs to be done in this regard
- 7) Provision of clarity on conversion of EPZs to SEZs.
 - a) This matter remains to be substantially addressed, particularly to include the customs and tax authorities
- 8) Provision of a Service Charter within regulations.
 - a) The guiding framework with respect to coordination and facilitation between government agencies at SEZs particularly noting that each agency has its own guiding laws and regulations needs to be consider.
- 9) Multiple sets of laws may prove as deterrent to investors.
 - a) The use of multiple documents generated by the Authority was raised as a concern particularly noting the need to reduce red tape. Instead of subjecting investors to multiple laws/regulations eg the SEZ Act; The SEZ Regulations;
 - b) Removal of unnecessary regulations that have been provided in either the SEZ Regulations 2016 or The SEZ Act. Section 5 (4).
 - c) It was emphasized that the Supplemental Regulations further referenced matters already provided for in the SEZ Regulations 2016. Comments noted that this was a risk of overregulation.
- 10) Recommendation to consolidate
 - a) It was proposed to consolidate and maintain the minimal number of documents. The proposed Supplemental Regulation were recommended to be implemented as amendments to the existing regulations.



SPECIAL ECONOMIC ZONES AUTHORITY

RETREAT: SPECIAL ECONOMIC ZONES SUPPLEMENTARY REGULATIONS

VENUE: SAROVA PANAFRIC HOTEL

DATE: 13TH January, 2020

S/No.	Name	Designation	Email Address	Telephone	Signature
1.	Philip N. Githugi	Advisor SEZ	pghndanla1@gmail.com	0711223354	
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3.	Felister Munyaga	IFC/INBG	fmunyaga@worldbank.org	0721846619	
4.	Pius Rotich	KenInvest	piusrotich@invest.go.ke	726 863905	
5.	Onesmus Nzuki	URA	onesmus.nzuki@ura.go.ke	0723 467799	
6.	Patricia Tanyi	SEZA	patricia.tanyi@seza.go.ke	0705 257801	
7.	Anthony Kanani	KENIRADE	kanani@kenirade.go.ke	0725154726	
8.	Joseph Kung'u	COG-PO	joseph.kungu@cof.go.ke	0723134763	
9.	Joan Kimani	COG - LEGAL OFFICER NCA	joan.kimani.tunde@cof.go.ke	0720062940	
10.	CINDY OGOLA		c.ogola@nca.go.ke	0722154192	
11.	Francis Gitau	SEZA	fgitau@sezaauthority.go.ke	0722246255	
12.	Charles Ombuki	DDP	charlesombuki@yahoo.com	0724715455	
13.	Amal Njoroge	KenInvest	njoroge@invest.go.ke	0722-772760	
14.	Samuel Ng'ang'a	KOTIDA Sales off	Samuel@kotida.go.ke	0712926952	



SPECIAL ECONOMIC ZONES AUTHORITY

RETREAT: SPECIAL ECONOMIC ZONES SUPPLEMENTARY REGULATIONS

VENUE: SAROVA PANAFRIC HOTEL

DATE: 13TH January, 2020

S/No.	Name	Designation	Email Address	Telephone	Signature
1.	Leah Kosgei	INTERIOR Assistant Secretary	leahkosgei@gmail.com	0723165253	
2.	Aileen M. Kendeli	SEZA	mitchelegc@gmail.com	0705016068	
3.	Brian K Muti	SEZA	bmuti@sezaauthority.gov.ke	0710325160	
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5.	Mary W Mbugua	SEZA	mmbugua@sezaauthority.gov.ke	0724397913	
6.	Barbara Lunani	ICDC	kheikas@icdc.co.ke	0733777720	
7.	Lewell Ujehia	SEZA	lewellynjehia@gmail.com	0722490822	
8.	Emmah Ogero	IKR	ogero@krc.co.ke	0721661509	
9.	Ehind Wambui	Kentwest			
10.	Mama Kagaga	MITC	manakagaga@gmail.com	072618832	
11.	Titus Mwendet	DRIVER	mwendetitho@gmail.com	0724581852	
12.	Peter Biain	SEZA	gababirai@gmail.com	0713970127	
13.	H. B. Okeke	IS-MOITC	hbowayo@gmail.com	0788841605	
14.	Mechack Kinyen	AS C-50 SEZA	mkinyen@sezaauthority.gov.ke	072-837937	



MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

STAKEHOLDER FORUM ON THE KENYA SEZ SUPPLEMENTARY REGULATIONS

Wednesday January 15 2020

Program

Time	Agenda
8:00 am – 9:300 am	Registration
9:00 am – 9:30 am	Opening Session Hezekiah Okeyo, Industrialization Secretary Carole Kariuki, Board Chairperson Special Economic Zones Authority Key Note Dr. F. Owino, PS, State Department of Industrialization
9:30 am – 10:30 am	Presentation on the SEZ Program in Kenya Lewell Njihia
10:30 am – 10:50 am	Tea Break
10:50 am – 11:30 am	Presentation of the 2016 SEZ Regulations Francis Gitau
11:30 am – 12:30 pm	Plenary Moderator: P. Nderitu
12:30 pm – 1:30 pm	Lunch
1:30 pm – 2:15 pm	Presentation of the Draft Supplementary Regulations P. Tonui
2:15 pm – 3:30 pm	Plenary Moderator: P. Nderitu
3:30 pm – 4:00 pm	Rapporteurs Report



SPECIAL ECONOMIC ZONES AUTHORITY

RAPPORTEUR'S REPORT ON

**SEZA PUBLIC STAKEHOLDER REVIEW WORKSHOP ON THE
SUPPLEMENTAL SEZ REGULATIONS 2019**

VENUE: PANAFRIC HOTEL

DATE OF WORK SHOP: 15/01/2020

January, 2020

SEZA PUBLIC STAKEHOLDER REVIEW ON THE PROPOSED SUPPLEMENTAL SEZ REGULATIONS

Background

The Kenya Special Economic Zones Program was established by the **Special Economic Zones Act No. 16 of 2015** to provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments, and for connected purposes. The Special Economic Zones (SEZ) Authority oversees the implementation of this program in Kenya.

The SEZ Act 2015, Section 39 (2) provides that the Cabinet Secretary would develop Regulations as advised by the SEZ Authority in order to implement the provisions of the Act. Thus, the SEZ Regulations 2016 were gazetted vide Legal Notice No. 147, Kenya Gazette Supplement No. 130 of 5th August 2016. In regards to this, The SEZA noted the need for further regulations to provide clarity on the operations of various actors, and provide a guideline on the movement of people, goods and services within the Special Economic Zones. Therefore, on the advice of the SEZA, the Ministry of Industry, Trade and Cooperatives developed the following for gazettelement:

1. **Supplemental Special Economic Zones Regulations 2019.**
2. **Proposed Amendments to the SEZ Regulations 2016.**

The SEZA invited Private Organizations and members of the Public for a Stakeholder review workshop in order to present the aforementioned documents for comments and feedback.

Following is the rapporteurs report of the External Stakeholder Forum held on Wednesday January 15th 2020 at the Sarova Panafric Hotel

Attendance

The forum had nearly 150 participants including representatives from Private Sector Associations, current participants in the SEZ program and civil society.

Summary of Opening Remarks made at the Review Workshop

The Public Stakeholder Review Workshop was opened by the SEZA CEO, Dr Meshack Kimeu. Through a speech, he provided the background of the SEZ program, the Authority, and the Authority's goals and objectives. He acknowledged the program has significant potential to positively impact the socio-economic environment and actualize government agendas such as Vision 2030 and the Big Four. Nevertheless, the CEO recognized the need for a strong foundation in order to realise National goals, such as a clear regulatory environment, thus the development of proposed regulations and amendments. The SEZA CEO concluded his speech by welcoming all participants and officially commencing the workshop by encouraging participants to provide an interactive session.

The State Department of Industrialization Principal Secretary Dr F. Owino provided the key note. The Principal Secretary indicated the potential of SEZs revolutionizing the National economy as it has done for other economies around the globe, thus its implementation in National agendas. In regards to this, he raised a concern on realizing National Agendas, stating that the GDP has been on a continuous decline, low employment opportunities and the poor participation of manufacturing costing FDIs. Dr Owino thanked the participants for acknowledging their invitations and hoped for an enlightening session.

Presentations showcased during the Review Workshop

The following presentations were made with the objective of further acquainting participants to the review workshop.

Presentation on the SEZ Program in Kenya

Mr Lewell Njehia from the SEZA provided an overview the SEZ program in Kenya, noting that the SEZA Act come into enforcement in 2016, directed for the establishment of SEZs in Kenya and the SEZA with the mandate of implementing the program. He noted the Authority is in operation, undertaking its roles as stated with in the Act such as providing Administrative and Fiscal incentives to its investors. Gazetted areas, licensed Enterprises and Developers were showcased. The definition of a SEZ was also illuminated stating that a gazetted area is a Customs Controlled Area that provides a conducive environment for setting up businesses through removal of bottle necks.

Presentation of the 2016 SEZ Regulations

Participants were showcased with the already Gazetted SEZ Regulations 2016 by Mr. Francis Gitau from the SEZA. The regulations seek to clarify on the Authority's role towards: Administration of SEZs and Institutions; Designation and Gazetting of SEZs; Licensing of SEZ Developers, Operators and Enterprises; Information Requirements from SEZ End Users; One Stop Shops; Investment Rules for SEZs; Land Use Rules and Building and Utility Controls and other guidelines.

Presentation of the Draft Supplemental Regulations

The proposed Supplemental Regulations was showcased to participants for review and feedback by Mr Patrick Tonui from IFC World Bank. It was noted that the Supplemental Regulations have been developed with the aim towards providing clarity on the roles of various actors located in a SEZ and provide a guideline on the movement of people, goods and services within Special Economic Zones.

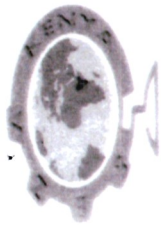
Plenary Session/Comments from Participants

The SEZA received feedback on: proposed amendments for the SEZA Regulations 2016 (which were dispatched via soft and hard copy to participants); the proposed Supplemental Regulations and the SEZA Act. The following are observations made and comments received during the Public Stakeholder Review:

1. Clarity on goals, objectives and vision for the program in regard to the Country.

- a. Participants indicated the need for the SEZA to clearly indicate its agenda towards the country in order to oblige investors on the same.
 - b. The Authority was advised to ensure socio-economic elements such as Knowledge and Technology transfer, Physical Infrastructure and employment opportunities are facilitated for within the law.
2. Prioritization of local content.
 - a. Participants raised concern that while the regulations provided for the rights of SEZ investors to import and export their goods and services with ease, the role of local content was not provided for
 - b. Raw materials furnished locally and employment opportunities for qualified locals were emphasized to be provided for within SEZs.
 - c. The Authority was recommended to develop policies that ensure research institutions and skill transfers are facilitated for with in the program.
3. SEZ Incentives - Utilities
 - a. Participants noted the government announcements with respect to electricity rates available in Naivasha.
 - b. Sought support to ensure preferential rates for energy within SEZs, not only Naivasha SEZ but generally.
4. Tax and duty exemptions.
 - a. Current investors noted the current challenge they are facing with respect to access all the incentives as provided by the SEZ program
 - b. Poor clarity on facilitation of duty exemptions was raised as a concern with coordination between government agencies and recognition of the SEZ program by customs authorities raised as a concern.
 - c. Participants inquired on the possibility of SEZ licensed investors passing on tax and duty exemptions to their customers.
 - d. Participants sought to understand the technical guidance with respect to the management of asset and transfer pricing between related entities participating in the SEZ program.
5. Clarification on real estate development in SEZs.
 - a. Participants indicated SEZA's reluctance towards facilitating investments in housing inside SEZs.
 - b. It was clarified that housing was not under sectors currently supported by SEZ law
 - c. While such investment could be provided with Business Service Permits instead of SEZ Enterprise licenses, incentives would likely not be applicable
6. Mediation mechanisms.
 - a. Participants indicated clauses on mediation matters provided in the Supplemental Regulations lacked clarity with respect to the legal framework and precedence of any SEZ mediation mechanism. This section needed review and clarification
7. Market access, custom control and custom treatments of goods and services.
 - a. Participants proposed SEZ law to incorporate ROO in order to ease market access of the E.A region and better clarify on custom control and treatment of goods and services.

- b. Participants stated the ratification process of facilitating SEZs into EACCMA as bureaucratic thus were weary of the cost of time and likelihood of this being resolved in the short term
- 8. Conversion of EPZ enterprises to SEZ Enterprises
 - a. The SEZ Regulations 2016 provide conversion of EPZs to SEZs, participants sought guidelines on the matter.
- 9. Investment Facilitation
 - a. Participants sought clarification on purpose of OSS and their jurisdictions.
- 10. Multiple Regulations
 - a. Participants noted that SEZA was developing another regulation that investors would need to be aware of and track. Guided this was not investor friendly
 - b. Sought that SEZA should as much as possible reduce the number of documents that we are developing and if possible, maintain only 1 set of regulations.



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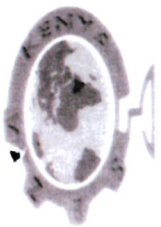
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VENUE: SAROVA PANAFRIC HOTEL

DATE: 15TH January, 2020

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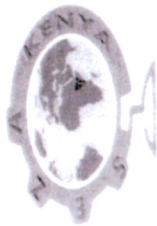
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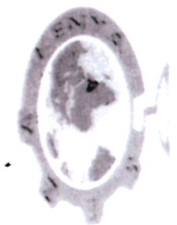
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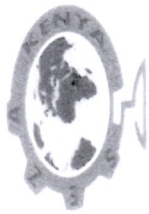
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Special Economic Zones Authority



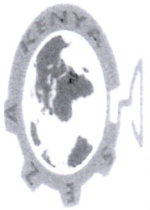
SPECIAL ECONOMIC ZONES AUTHORITY

RETREAT: SPECIAL ECONOMIC ZONES SUPPLEMENTARY REGULATIONS

VENUE: MAANZONI HOTEL, MACHAKOS

DATE: 16TH January, 2020

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4.	Philip G. Ndabeni	MOTIC	pndabeni@gmail.com	0717223354	
5.	Christine Mutatya	AG & DOS	cmutatya@gmail.com	0726994278	
6.	Brian K. Muli	SEZA	brianli@sezathority.gov.les	0710325168	
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Special Economic Zones Authority



WORLD BANK GROUP
Trade & Competitiveness

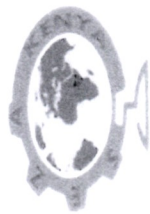
SPECIAL ECONOMIC ZONES AUTHORITY

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VENUE: MAANZONI HOTEL, MACHAKOS

DATE: 16TH January, 2020

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2.					
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Special Economic Zones Authority



SPECIAL ECONOMIC ZONES AUTHORITY

RETREAT: SPECIAL ECONOMIC ZONES SUPPLEMENTARY REGULATIONS

VENUE: MAANZONI HOTEL, MACHAKOS

DATE: 17TH January, 2020

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ANNEXE 4

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004 GUIDELINES FOR APPOINTMENT / OPERATING SPECIAL ECONOMIC ZONES (SEZ)

PURSUANT to the provisions of Section 12 of the East African Community Customs Management Act, 2004, the Commissioner of Customs and Border Control (herein referred to as the commissioner) prescribes the Guidelines set out hereto as the conditions to be fulfilled by an applicant to operate a Customs Area carrying on the business of a Special Economic Zone:

PART A - SEZ DEVELOPER

1. The developer shall make an application to the Special Economic Zones Authority (SEZA) for the licensing and gazettment of a SEZ with a copy to the Commissioner.
2. A site visit shall be made by the Commissioner and the CEO of the SEZA to assess the suitability of a zone before licensing and gazettment by the Ministry Responsible for SEZs.
3. Once gazetted and licensed by SEZA, the developer shall make an application to the Commissioner for issuance of an Import Export Code, before any SEZ operations can be undertaken. The application shall be supported by the SEZA licence, the Gazette Notice, layout map, architectural drawings, coordinates, survey (satellite) map, Title or lease documents, Tax Compliance Certificate (TCC) for the company and all directors, current List of Directors (CR12) and any other document the Commissioner may deem necessary.
4. The developer shall also submit to the Commissioner a development plan which shall include phased development where applicable, a detailed Master List and the Bills of Quantities for the materials to be used in the development of the SEZ or the projected phase. The developer shall ensure that the SEZ has access to a National Highway and/or Railway line.
6. Upon completion of construction, whether phased or complete the developer shall ensure the following before the Commissioner can allow operations:
 - a) A properly graveled and /or paved road or railway connection between the zone/developed area and the national highway or railway line.
 - b) A strong perimeter fence of at least 2.5 meters from the ground made from:
 - (i) Masonry/concrete blocks
 - (ii) Chain link
 - (iii) Steel mesh

- (iv) Electric fence
 - (v) A combination of any of the above
 - c) All designated entry and exit points at the SEZ are manned at all times (during and after the specified hours of business) by armed government security and /or a reputable security service provider.
 - d) Reasonable functional floodlights installed to light up the SEZ/developed .
 - e) A suitable one stop shop office accommodation including proper sanitation facilities for use by the Kenya Revenue Authority (KRA) officers and staff from other Relevant Government Agencies as well as other authorized users of the facility.
 - f) Computer facilities compatible and with access to the KRA online/electronic systems and such other suitable office equipment for use by the resident KRA officers. The offices or spaces shall include but not limited to Main Office, Entry & Exit Gate offices, CCTV surveillance room & parking space.
 - g) A Customs Gatehouse in and out of the Customs Control Area to enhance Customs operations.
 - h) A Customs warehouse of a minimum of 3000 Square Feet, with spacious office space, computer facilities, internet connectivity, CCTV cameras, strong room and washrooms.
 - i) Weighbridge or such other suitable weighing scales or machines as appropriate.
7. A SEZ operator appointed by the developer or the SEZA shall assume the roles, responsibilities and functions of the developer. The Commissioner shall hold the developer liable for any non-compliance to the customs laws and regulations arising from the activities of his or her appointed operator.
 8. A person shall not be qualified for licensing to develop a SEZ if that person, or where the applicant is a company, the company or its director(s) have been found to engage in tax fraud activities or found to have outstanding tax liabilities.
 9. These conditions shall apply alongside any other condition that the Ministry Responsible for SEZs may impose from time to time.
 10. Upon application for de-gazettment of the SEZ, the Commissioner will approve and notify SEZA after payment of taxes. The taxes shall cover input and materials used in the development of the SEZ, raw materials, semi and finished products, plant, machinery and any other item allowed into or used in the establishment of a SEZ.

11. Companies already licensed by SEZA before this Gazette Notice shall make an application to the Commissioner in accordance with these guidelines before the Commissioner can approve their operations.
12. The Commissioner may review and revise the above conditions from time to time.

PART B - SEZ ENTERPRISE

1. The SEZ Enterprise shall make an application to the Special Economic Zones Authority (SEZA) for the licensing of a SEZ Enterprise with a copy to the Commissioner.
2. Once licensed by SEZA, the Enterprise shall make an application to the Commissioner for issuance of an Import Export Code before any SEZ operations can be undertaken. The following documents shall support the application: SEZA licence, the Gazette Notice, layout map, architectural drawings, coordinates, survey (satellite) map, title or lease documents, current List of Directors (CR12), Tax Compliance Certificate for the company and all directors and any other document the Commissioner may deem necessary.
3. For Enterprises who also wish to develop, they shall provide the Commissioner with a developer licence as per Part A of these Guidelines.
4. The SEZ Enterprise shall ensure provision of adequate security for the goods and personnel in the SEZ facility and shall take all necessary measures to ensure their security. CCTV surveillance and a reputable security service provider shall keep the premises and means of access under permanent security.
5. The Enterprise shall ensure that the SEZ facility has suitable office accommodation including proper sanitation facilities for use by the KRA officers. The offices shall be furnished with suitable office equipment for use by the resident KRA officers and installed with computer facilities compatible and with access to the KRA online/electronic systems.
6. Once the Commissioner approves operations, the Enterprise shall install and maintain a Stock Management System of a standard accepted by the Commissioner. Records kept in this system shall be availed for inspection, verification and reconciliation by a Proper Officer at all times.
7. The Enterprise shall maintain stock records of all receipts and removals including raw materials and finished products (where applicable) in a Monthly Returns Register of

Finished and Semi-Finished Goods and a Raw Materials Register or in any other approved manner.

8. The Enterprise shall submit monthly returns on the stocks held to the Proper Officer in a prescribed manner, on or before the 15th day of the following month.
9. Where, on inspection of the records and physical stocktaking, goods are found missing and the Enterprise cannot give a satisfactory explanation to the Proper Officer, the Enterprise shall be liable to taxes on the missing goods as well as penalties as will be determined by the Commissioner.
10. Upon approval by the Commissioner, the SEZ Enterprise shall execute Security Bonds to cover the taxes and duties of the goods in the Enterprise's warehouse as well as for the movement of goods into and out of the Enterprise as the Commissioner may determine and pay the prescribed fees thereof.
11. The Enterprise shall comply with the conditions and guidelines issued by the Commissioner including proper accounting for the goods, security checks, spot checks, stop and search of any person or vehicle entering or leaving the Enterprise.
12. Goods entering, leaving or being transferred from one SEZ Enterprise to another shall be entered using the appropriate Customs Declaration Forms.
13. Goods subject to customs control entering or leaving a SEZ Enterprise shall be transported in sealed vehicles except those of exceptional loads of one or more heavy or bulky objects which because of weight, size or nature cannot normally be carried in a closed or sealed vehicle or transport unit and which can be so readily identified to the satisfaction of the Proper Officer; or those goods authorized by the Commissioner.
14. Goods exported to the Customs Territory from the SEZ Enterprise shall be treated as if the goods were imported and shall be entered using the appropriate Customs Declaration Forms and taxes due fully paid.
15. Disposal or destruction of wastes and residues resulting from a manufacturing process shall be carried out within the SEZ Enterprise under the supervision of the proper officer. Where proper facilities of disposal do not exist within the SEZ Enterprise, the wastes may be destroyed at another site on approval by the Proper Officer.
16. Upon the destruction of the wastes, the proper officer shall issue a Certificate of Destruction after payment of the prescribed fees.
17. Where wastes and rejects are sold in the Customs territory, the movement of the wastes or rejects shall be subject to the normal importation procedures in the customs territory and the appropriate taxes paid.

18. The Commissioner may impose conditions on the activities carried out by a SEZ Enterprise, having regard to the nature of the goods concerned or the requirements of Customs control.
19. The SEZ Enterprise shall provide the necessary guarantees for compliance with the provisions of the Customs Laws and Regulations before undertaking any activities.
20. A person shall not be qualified for licensing as a SEZ Enterprise if that person, or where the applicant is a company, the company or its director(s) have been found to engage in tax fraud activities or found to have outstanding tax liabilities.
21. The SEZ Enterprise shall notify the Commissioner in writing of the intention to wind up.
22. The SEZ Enterprise shall be required to provide manual stock levels and estimated values of all assets including, but not limited to, raw materials and machinery. The same will be confirmed and validated through the customs system.
23. The assets shall be disposed of in either of the following ways;
 - i. Entered for home use
 - ii. Re-Exported
 - iii. Transferred to another SEZ enterprise
 - iv. Any other way the Commissioner may deem fit.
24. Upon completion and accounting for all taxes and cancelation of relevant bonds, the Commissioner will issue a clearance letter, which shall be presented to SEZA. The SEZ Enterprise will be suspended in the system.
25. These conditions shall apply alongside any other condition that the Ministry Responsible for SEZs may impose from time to time.
26. The Commissioner may review and revise the above conditions from time to time.

