

LEGAL NOTICE NO. 147

THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

THE SPECIAL ECONOMIC ZONES REGULATIONS 2016

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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.

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(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;