

SPECIAL ECONOMIC ZONES ACT, 2015

No. 13



of 2015

ARRANGEMENT OF SECTIONS

SECTION

Part I — Preliminary

1. Short title and commencement
2. Interpretation

Part II — Establishment and Functions of Special Economic Zones Authority

3. Establishment of Authority
4. Objectives of Authority
5. Functions and powers of Authority
6. Seal of Authority
7. Board of Authority
8. Powers and functions of Board
9. Direction by Minister
10. Tenure of office for members
11. Disqualification, removal and resignation of members
12. Vacation of office by members
13. Filling of vacancy
14. Remuneration and allowances of members
15. Restrictions on members

Part III — Meetings and Proceedings of Board

16. Meetings of Board
17. Conflict of interest
18. Confidentiality
19. Co-opted members
20. Committees of Board

Part IV — Staff of Authority

21. Appointment of Chief Executive
22. Appointment of senior officers and other staff

Part V — *Financial Provisions*

23. Funds of Authority
24. Financial year
25. Accounts and audit
26. Submission of accounts to Minister
27. Annual report
28. Pension and other funds

Part VI — *Establishment of Special Economic Zones*

29. Establishment of special economic zones
30. Purpose and objectives of special economic zones

Part VII — *Licensing*

31. Duty to obtain licence
32. Requirements for special economic zone status
33. Issuance, variation, revocation, cancellation or suspension of licences
34. Appeals

Part VIII — *Management and Investment in Special Economic Zones*

35. Management of special economic zones
36. Obligations of special economic zones investors
37. Charge for services rendered

Part IX — *General*

38. Settlement of disputes
39. Indemnity
40. Regulations

An Act to make provision for the establishment, development and management of special economic zones; for creating a conducive environment for local and foreign investment; to facilitate expansion of employment opportunities, attainment of economic growth targets and to provide for matters related therewith and incidental thereto.

Date of Assent: 29.09.2015

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Special Economic Zones Act, 2015, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“authorised officer” means an officer authorised by the Commissioner General to administer customs matters in the special economic zones;
“Authority” means the Special Economic Zones Authority established under section 3;
“Board” means the Special Economic Zones Board of the Authority established under section 7;

Interpretation

- “developer” means an investor with right over land in a special economic zone held for purposes of development of special economic zones infrastructure;
- “enterprise zone” means the revitalisation of distressed urban or rural areas through the provision of tax incentives and financial grants;
- “export processing zone” means an industrial estate aimed primarily at foreign markets;
- “free port” means activities including tourism and retail sales, permit on-site residence, and providing a broader set of incentives and benefits;
- “investor” means a person licensed by the relevant licensing authority to carry on business in a special economic zone;
- “licence” means a permit granted by the Authority pursuant to the provisions of section 31 to conduct business transactions in a particular special economic zone;
- “member” means a member of the Board;
- “single factory economic zone” means schemes providing incentives to individual enterprises regardless of location and in which factories do not have to locate within a designated zone to receive incentives and privileges;
- “special economic zone” means an area of land established as such under section 29;
- “specialised zone” includes science or technology parks, petrochemical zones, logistics parks or airport-based zones; and
- “zone management company” means a company registered under the Companies Act and subcontracted by the developer to manage a special economic zone.

Cap. 42:01

Part II – Establishment and Functions of Special Economic Zones Authority

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

Establishment of Authority

(2) The Authority shall be a body corporate with full capacity to sue or be sued in its own name, and to do all such things as bodies corporate may, by law, do and as may be necessary or incidental to the exercise of its powers and the performance of its functions under this Act.

4. (1) The Authority shall be responsible for overall coordination and implementation of activities related to the establishment and development of special economic zones.

Objectives of Authority

- (2) Notwithstanding the generality of subsection (1), the Authority shall —
 - (a) diversify the economic and export base of Botswana;
 - (b) provide a business environment that offers investors a competitive edge in world markets;
 - (c) establish a one-stop business environment that caters for the needs of all businesses inside the special economic zone areas;
 - (d) create business development opportunities for small, medium and micro-enterprise suppliers that will meet the expanding needs of special economic zone enterprises;

- (e) develop a portfolio of public sector, private sector and public-private sector partnership special economic zone as dictated by the market;
- (f) develop special economic zones that are integrated into the domestic, regional and international markets;
- (g) cluster business enterprises according to their trade to achieve mutually beneficial inter-sectoral linkages and economies of agglomeration within the special economic zone;
- (h) provide special economic zone incentive packages that are consistent with Botswana's domestic and international trade obligations;
- (i) propose special economic zone labour laws that are consistent with International Labour Organisation core labour standards;
- (j) create employment through the development of suitable special economic zones; and
- (k) regulate all entities and activities being carried out within a special economic zone.

Functions and powers of Authority

5. (1) The Authority shall initiate, develop and manage the operations of the special economic zones on behalf of the Government, and shall carry out duties and perform the functions as stipulated under this section.

(2) For purposes of initiating, developing and managing operations of the special economic zones, the Authority shall —

- (a) acquire land;
- (b) sub-lease land to investors for undertaking thereon the special economic zones licensed businesses for such period as may be prescribed;
- (c) develop primary infrastructure and provide within the special economic zones roads, utilities, a sewerage system, drainage and removal of refuse and waste for the benefit of special economic zones investors and other users;
- (d) lease buildings erected on land acquired under paragraph (a) to investors for undertaking thereon the special economic zones licensed businesses;
- (e) prepare national and international programmes for appropriate promotion of the special economic zones;
- (f) determine priority sectors to be promoted in a particular special economic zone;
- (g) approve specific financing requirements for the development of special economic zones;
- (h) approve detailed development plans of special economic zones; and
- (i) establish an administrative committee in each special economic zone to monitor the compliance of such special economic zone with this Act and other relevant written laws.

Seal of Authority

6. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Chief Executive or the Board Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorised in that regard by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Authority by the Chairperson or any other person authorised by the Board to do so.

7. (1) The Board of the Authority shall consist of the following members —
- (a) the Permanent Secretary in the ministry responsible for finance or his or her representative at permanent secretary level;
 - (b) the Permanent Secretary in the ministry responsible for trade and industry;
 - (c) the Chief Executive Officer of Botswana Investment and Trade Centre;
 - (d) the Permanent Secretary in the ministry responsible for labour and home affairs; and
 - (e) five members of the private sector appointed by the Minister.

Board of
Authority

(2) The Minister shall appoint the Chairperson of the Board from among the members appointed under subsection (1) (e) and the members shall appoint the Vice-Chairperson, who shall not be a public officer, from among their number.

(3) The Chief Executive shall be an *ex-officio* member of the Board and shall not have any voting rights.

8. The Board shall —

- (a) prepare a five year strategic plan for the Authority;
- (b) approve such annual business plans as are necessary for the efficient operation of the Authority;
- (c) determine and approve the annual budget for the Authority;
- (d) monitor and seek ways to improve the efficiency of the special economic zones and services in the special economic zones;
- (e) periodically review the performance of the Chief Executive in accordance with the provisions of his or her contract of employment;
- (f) approve the acquisition and disposal of property as may be necessary for the efficient operation of the Authority; and
- (g) do anything connected with the matters set out in this section as may be required for the effective operation of the Authority.

Powers and
functions of
Board

9. (1) The Minister may give the Board written directions, of a general or specific nature, regarding the exercise of its powers, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Board.

Direction by
Minister

(2) The Board shall give effect to the Minister's directions given in accordance with subsection (1).

10. Subject to the provisions of section 11, each member appointed under section 7 (1) (c) or (e) shall hold office for a period not exceeding five years and shall be eligible for re-appointment for one further term.

Tenure of office
for members

11. No person shall be appointed as a member, nor shall any person be qualified to hold office as a member who —

Disqualification,
removal and
resignation of
members

- (a) has, in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has been convicted —
 - (i) in Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
 - (ii) outside Botswana, of an offence, which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for one month or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and in respect of which he or she has not received a free pardon;
- (c) has, within two years immediately preceding the date of his or her proposed appointment, worked as a chairperson of, or director or senior manager in, or has provided full-time independent consultation services to, any investor, developer or zone management company or any affiliate of that investor, developer or zone management company, whether situated within or outside Botswana;
- (d) is the holder of any office in any party, movement or organisation of a political nature in Botswana;
- (e) holds office in any district, city or town council;
- (f) is an executive or non-executive chairperson, director or officer for an investor, a developer or a zone management company;
- (g) holds any controlling interest in any company in a special economic zone connected with an investor, a developer or a zone management company, or is the holder of a licence issued by the Authority, other than a licence required for his or her personal use;
- (h) is a serving member of the judiciary within Botswana;
- (i) is not a citizen of Botswana, unless there is no citizen of Botswana who possesses the relevant skills and qualifications required;
- (j) is an employee of the Authority; or
- (k) has been required to resign his or her position in accordance with section 12.

Vacation of
office by
members

12. (1) A member shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 11 to hold office as a Board member;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board, without the permission of the Board or providing reasonable excuse to the Board, or is present at less than half of the Board meetings in any one calendar year;
- (d) upon his or her death;
- (e) upon the expiry of three months' notice given in writing to the Minister, of his or her intention to resign from office;

- (f) if he or she becomes mentally or physically incapable of performing his or her duties as a member provided that if there arises any doubt as to whether he or she is physically or mentally incapable, he or she shall either submit himself or herself, or at the request of the remaining members, shall submit to a medical examination by two registered medical practitioners who are not personally known to him or her;
- (g) if he or she acts in anyway so as to bring the name of the Authority into disrepute;
- (h) if his or her term of office comes to an end, and, being eligible for re-appointment for a further term of office, he or she is not re-appointed for such further term of office;
- (i) if he or she fails to disclose any material fact that would have disqualified him or her from appointment as a member;
- (j) if he or she is found guilty of unprofessional conduct by a committee, board or other body constituted for the purpose of adjudicating on matters of discipline or conduct; or
- (k) if he or she is required to resign in accordance with the provisions of section 11.

(2) The Minister shall, in writing, immediately suspend from office a member against whom criminal proceedings are instituted for any offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any allowances as a member.

(3) The Minister shall revoke any suspension imposed under subsection (2) immediately in writing in the event that the Director of Public Prosecutions discontinues the proceedings against the member, or the proceedings against the member are dismissed by the court or the member is acquitted.

13. When a member vacates office pursuant to section 12 of the Act, the Chairperson shall inform the Minister in writing and the Minister shall appoint another member:

Filling of
vacancy

Provided that this section shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

14. (1) A member may be paid such remuneration and other allowances and such travelling, accommodation and subsistence expenses incurred during his or her service on the Board as may be determined by the Minister.

Remuneration
and allowances
of members

(2) Members shall receive the same remuneration except for the Chairperson and the Vice Chairperson who shall receive remuneration commensurate with their positions.

15. A person shall not, during a period of 12 months after the expiration or termination of his or her term of office as a member —

Restrictions
on members

- (a) enter into any contract of employment or directorship or contract for the supply of services in a special economic zone; or
- (b) acquire or hold any financial interest, in excess of 5 per cent of the issued share capital of any company licensed to operate in a special economic zone.

Part III — Meetings and Proceedings of Board

Meetings of Board

16. (1) Subject to the provisions of this Act, the Board shall regulate its own procedure for meetings.

(2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions, and such meetings shall be held at such places and times and on such days as the Chairperson may determine in consultation with the Chief Executive.

(3) Notwithstanding subsection (2), there shall be at least one ordinary meeting in each quarter of the year.

(4) Meetings of the Board shall be called by the Chairperson giving at least 14 days' notice.

(5) The Chairperson shall call a special meeting of the Board within seven days of receipt of a request in writing of at least three members of the Board for such special meeting to be held.

(6) Five members of the Board shall form a quorum.

(7) Where the members form a quorum, the proceedings of any meeting of the Board shall not be considered invalid by reason of the fact that there exists a vacancy in its number.

(8) At any meeting of the Board, the Chairperson shall preside, and in his or her absence, the Vice Chairperson and in the absence of both the Chairperson and the Vice Chairperson, the members present shall elect from among their number, a chairperson for the purposes of that meeting.

(9) The decisions of the Board shall be by a majority of votes, and in the event of an equality of votes, the Chairperson, or the Vice Chairperson, or such other person as shall be presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(10) Minutes of each meeting of the Board shall be kept and shall be confirmed at a subsequent meeting of the Board.

(11) Where a member is disqualified from sitting in a meeting in terms of section 11 of the Act and where the members present form a quorum there shall not be considered to be any defect in the proceedings of the Board.

(12) The minutes of a meeting of the Board shall record in full any decision taken by the Board, including decisions concerning the resolution of disputes, together with the factual and legal basis for such decision.

Conflict of interest

17. (1) If a member is present at a meeting of the Board at which any matter in which the member is directly or indirectly interested in a private capacity is the subject of consideration, he or she shall, as soon as practicable after the commencement of the meeting, declare such interest and shall not, unless the Board otherwise directs, take part in any discussion or voting of the Board on such matter.

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

(3) Where a member fails to disclose his or her interest in accordance with subsection (1), and a decision by the Board is made benefitting such member, such decision shall be void to the extent that it benefits such member.

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

18. (1) A member shall not disclose any confidential information relating to the affairs of the Board, which he or she acquired during the performance of his or her duties under this Act.

Confidentiality

(2) Notwithstanding the provisions of subsection (1), a member may disclose information relating to the affairs of the Board acquired during the performance of his or her duties —

- (a) within the scope of his or her duties under this Act; or
- (b) when required to —
 - (i) by an order of court,
 - (ii) under any written law, or
 - (iii) in the investigation of an offence.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

19. (1) Subject to section 11, the Board may invite any person, not being a member, to attend any Board meeting or otherwise assist it with its deliberations, and any person so invited shall not have any voting or other rights on the Board.

Co-opted members

(2) The provisions of sections 17 and 18 shall, with necessary modifications, apply to a co-opted member.

20. (1) The Board may establish such committees as it considers appropriate, and may delegate to any such committee, such of its functions as it considers necessary.

Committees of Board

(2) The Board may appoint to the committees constituted under subsection (1), such number of persons as it considers appropriate, and such persons shall hold office for such period as the Board shall determine.

(3) Subject to any specific or general directions given by the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

(5) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities in writing.

(6) A member of a committee shall be paid such remuneration and other allowances, if any, from the Authority's funds, as the Board may determine.

(7) Any committee appointed by the Board shall have advisory powers only and shall not be authorised —

- (a) to take and implement decisions of the Board; or
- (b) to resolve disputes.

(8) The committee appointed by the Board shall transmit to the Board, in writing, its recommendations for the resolution of a dispute by the Board.

(9) The members of a committee shall appoint the chairperson from among their number.

(10) The provisions of sections 11, 12, 13, 17 and 18 shall with necessary modifications apply to a member of a committee.

Part IV — *Staff of Authority*

Appointment of
Chief Executive

21. (1) There shall be a Chief Executive of the Authority, who shall be appointed by the Minister, on the recommendation of the Board, on such terms and conditions as may be specified by the Board.

(2) No person shall be qualified for appointment to the position of Chief Executive unless he or she —

- (a) has business development skills in areas such as investment, investment promotion, enterprise development, market research or trade;
- (b) has management skills; or
- (c) does not either himself or herself, or through a family member, have a direct or indirect financial interest in a special economic zone.

(3) The Chief Executive shall, subject to such specific directions on matters of policy as may be given by the Board, be charged with the overall responsibility for the efficient administration and organisation of the Authority and shall report directly to the Board.

(4) The Chief Executive shall report to the Board on issues of risk management, internal controls, corporate governance and shall —

- (a) implement the strategic plan, annual business of the Authority and any other decision of the Board;
- (b) develop the vision and goals of the Authority and recommend any alterations to these which are required by changes in the law, technology or the markets in which the special economic zone operates;
- (c) monitor and seek ways to improve the efficiency of the services provided by the Authority, both for the benefit of consumers and companies operating in a special economic zone;
- (d) periodically review the performance of senior officers of the Authority in accordance with the provisions of their contracts of employment;
- (e) coordinate functions of various institutions with duties and responsibilities in the development and operation of special economic zones;
- (f) monitor and evaluate the general development and operations of special economic zones; and
- (g) devise a consultative mechanism among implementing institutions in the special economic zones.

(5) The Chief Executive may delegate to any senior officer of the Authority, the exercise of any powers which he or she is authorised to exercise under this Act.

(6) The Chief Executive may resign from office by giving three months notice in writing to the Minister.

(7) Notwithstanding the provisions of subsection (6), the Minister may, on the recommendation of the Board, remove the Chief Executive from office at any time, without giving notice if he or she —

- (a) misconducts himself or herself or demonstrates incompetence;
- (b) is involved in such a conflict of interest as shall warrant his or her removal from office;
- (c) is bankrupt or insolvent;
- (d) absents himself or herself from his or her duties without reasonable cause or explanation;
- (e) is convicted of a criminal offence which carries with it the possibility of a term of imprisonment, whether or not such term is imposed, or if imposed, is suspended, and such conviction is not overturned on appeal or a free pardon is granted; or
- (f) either himself or herself, or through a family member, has a direct or indirect financial interest in a special economic zone.

22. (1) The Board shall appoint the senior officers of the Authority on the recommendations of the Chief Executive, on such terms and conditions as the Board shall determine, and in making such appointments, the Board shall have regard to the need for such officers to have the appropriate knowledge and experience to perform their duties.

Appointment
of senior
officers and
other staff

(2) The Chief Executive shall appoint such other officers and staff as may be necessary for the proper discharge of the functions of the Authority on such terms and conditions as the Board shall determine.

(3) The Board shall appoint a Board Secretary who shall attend meetings of the Board without the right to vote and shall —

- (a) advise the Board on all legal, procedural and corporate governance issues in respect of its responsibilities, deliberations and decisions; and
- (b) be responsible for the accurate and complete recording of the Board's proceedings and decisions.

(4) The dismissal of senior officers shall be made by the Board on the recommendation of the Chief Executive, and the dismissal of all other officers and staff shall be made by the Chief Executive or such other senior officers as he or she may delegate to perform that function.

(5) The terms and conditions of employment, benefits, gratuities or other allowances of the staff of the Authority shall be as determined by the Board on the recommendation of the Chief Executive and shall be paid from the Authority's revenues.

Part V — *Financial Provisions*

23. (1) The Authority's funds shall consist of —

- (a) such fees as the Authority may impose for goods and services provided under this Act or any Act permitting the Authority to charge for such goods and services;
- (b) subject to subsection (2), grants, contributions, donations and endowments from any source;
- (c) subject to subsection (3), monies appropriated from the National Assembly;
- (d) returns on investments in special economic zones infrastructure;
- (e) proceeds from rent and other service charges derived from the activities in any special economic zone; and
- (f) such other fees as the Authority may at any time lawfully raise or impose under this Act.

Funds of
Authority

	<p>(2) The Authority shall not accept any grant, contribution, donation or endowment that is received from any company in a special economic zone or its associated companies or subsidiaries.</p> <p>(3) The Authority shall manage its own budget through —</p> <p style="padding-left: 40px;">(a) a loan from Government; or</p> <p style="padding-left: 40px;">(b) a loan guaranteed by Government,</p> <p>until such time that the Authority is able to source its own funding.</p>
Financial year	<p>24. The financial year of the Authority shall be a period of 12 months commencing on 1st April each year and ending on 31st March of the following year.</p>
Accounts and audit	<p>25. (1) The Authority shall keep proper accounts and records in relation to its funds and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities and income and expenditure of the Authority in a form which shall conform to the best practice commercial accounting standards.</p> <p>(2) The Board shall appoint a reputable firm of independent auditors to audit accounts of the Authority in respect of each financial year, within three months or such extended time after the end thereof as the Minister may direct.</p> <p>(3) The auditor shall report in respect of each of the accounts for each financial year, in addition to any other matter on which he or she deems it pertinent to comment, whether or not —</p> <p style="padding-left: 40px;">(a) he or she has received all the information and explanations, which to the best of the auditor's knowledge and belief, were necessary for the performance of his or her duties as auditor;</p> <p style="padding-left: 40px;">(b) the accounts and related records of the Authority have been properly kept;</p> <p style="padding-left: 40px;">(c) the Authority has complied with all the financial provisions of this Act with which it is the duty of the Authority to comply; and</p> <p style="padding-left: 40px;">(d) the statement of accounts prepared by the Authority was prepared on a basis consistent with that of the preceding year and represents a true view of the transactions and financial affairs of the Authority.</p>
Submission of accounts to Minister	<p>26. (1) The Board shall submit a copy of the audited accounts of the Authority to the Minister, together with the report of the auditor, within 14 days of their completion, or such extended time as the Minister may determine on application by the Authority.</p> <p>(2) The Minister shall, within 30 days of receipt of the account and reports under subsection (1), lay the auditor's report and accounts before the National Assembly.</p>
Annual report	<p>27. (1) The Authority shall, within a period of six months after the end of the financial year or such extended time after the end thereof as the Minister may direct, submit to the Minister a comprehensive report on its operations during such year.</p> <p>(2) The Authority shall cause the report to be published and made available for sale to members of the public for a prescribed fee.</p>
Pension and other funds	<p>28. The Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.</p>

Part VI — *Establishment of Special Economic Zones*

29. (1) The Authority shall establish and maintain special economic zones.

Establishment
of special
economic
zones

(2) For the purpose of establishment of a special economic zone, priority shall be given to economic activities that have potential to promote the objectives at section 30 (1).

(3) The location of a special economic zone shall target areas that provide comparative advantages for attracting investments.

(4) A person shall not, within a special economic zone, conduct retail trade or any other business activity without the approval of the Authority.

(5) For the purposes of establishing a special economic zone under subsection (1), the Authority shall, in consultation with the Ministry responsible for lands, the local authority within which that special economic zone is proposed to be established and any other relevant authority, identify suitable land and submit a proposal to that effect to the local authority for approval.

(6) Where the local authority approves the proposal under subsection (5), the Minister shall, by notice published in the *Gazette*, declare that area to be a special economic zone.

(7) The notice under subsection (6) shall include —

- (a) the location and boundaries of the special economic zone;
- (b) the nature of activities to be promoted in the special economic zone; and
- (c) any other information as the local authority may deem necessary.

(8) Where the local authority refuses to approve the proposed area under subsection (5) as a special economic zone, it shall give reasons for such refusal.

(9) The local authority shall, within 60 days from the date of submission of the proposal by the Authority pursuant to subsection (5), make a decision on the proposal to declare the proposed area of land to be a special economic zone.

30. (1) The purpose and objectives for which a special economic zone may be established are to —

Purpose
and
objectives
of special
economic
zones

- (a) enhance —
 - (i) productivity,
 - (ii) competitiveness,
 - (iii) economic growth,
 - (iv) export promotion, and
 - (v) employment creation;
- (b) increase government revenue and foreign exchange earnings;
- (c) offer investors a simplified and conducive environment to do business;
- (d) facilitate the development of infrastructure; and
- (e) facilitate technology transfer and skills upgrade.

(2) Subject to subsection (1), a special economic zone may be established in selected areas which may be developed into —

- (a) free trade zones or commercial special economic zones;
- (b) export processing zones;
- (c) enterprise zones;
- (d) free ports;
- (e) single factory economic zones;

- (f) specialised zones; and
- (g) such other zones as may be determined by the Authority.

PART VII — *Licensing*

Duty to obtain licence

31. (1) Any person who wishes to carry on any business activity in any special economic zone shall apply to the Authority for approval to operate in any special economic zone.

(2) Notwithstanding any provision in any other written law, the Minister shall prescribe a single application form for applying for a licence to operate in any special economic zone.

(3) The Authority shall maintain a register of licences under this section in such a manner as may be prescribed.

(4) A person who contravenes the provisions of this section is liable —

- (a) where such a person is an individual, to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both; or
- (b) where such a person is not a natural person, to a fine not exceeding P500 000.

(5) Any person who —

- (a) in connection with an application for granting of a licence under this Act; or
- (b) for purposes of obtaining any investment incentives, permit or approval under this Act,

makes any false statement which he or she knows to be false or has reasons to believe it is false or knowingly furnishes any false information, commits an offence and is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding five years, or to both.

Requirements for special economic zone status

32. The Authority shall consider the following in evaluating an application to operate within a special economic zone —

- (a) development requirements, such as adequacy of the master plan and investment attraction plan;
- (b) minimum land area and finance based on demand and well-costed project plans;
- (c) any environmental protection standards;
- (d) industrial clustering based on well-considered locational advantages;
- (e) recourse for non-compliance with standards;
- (f) minimum infrastructure requirements;
- (g) indicative performance standards, such as target investment, utilisation, production and exports;
- (h) the amount of targeted investment to be brought into the country;
- (i) the geographical location of the special economic zone and investment;
- (j) the target industry, sector and product;
- (k) the target export volumes, values and their markets;
- (l) an investor's compatibility with the industry or sector cluster;
- (m) the maximum time allowed between land acquisition and commencement of operations to minimise land hoarding;

- (n) the mechanisms for penalising or removing investors who fail to meet such criteria as may be prescribed;
- (o) the expected benefits from the investment in terms of production and exports;
- (p) employment creation; and
- (q) any other criteria as may be determined by the Authority.

33. (1) The Minister may prescribe the issuance, variation, revocation, cancellation or suspension of a licence issued under section 31.

Issuance, variation, revocation, cancellation or suspension of licence

(2) Notwithstanding subsection (1), a holder of a licence may submit an application to the Authority requesting variation of a licence, where such variation shall cause the holder to better carry out the business activity for which such a licence is issued.

(3) The Authority may, after due consideration of the application by a holder of a licence pursuant to subsection (1) and subject to conditions as it may prescribe, vary the conditions of the licence.

34. (1) Any person who is aggrieved by a decision of the Authority in rejecting an application or variation of a licence, or the cancellation or suspension of a licence, may appeal, in writing, against such decision before the Minister within 30 days of such decision being made.

Appeals

(2) Any person who is aggrieved by a decision of the Minister in rejecting an application or variation of a licence, or the cancellation or suspension of a licence, may appeal against such decision before the High Court within 30 days of such decision being made.

PART VIII — *Management and Investment in Special Economic Zones*

35. (1) The Authority may sub-contract the administration or management of a special economic zone to a zone management company.

Management of special economic zones

(2) Where a special economic zone is under the occupation of a person other than the Authority, the management of the special economic zone shall be under such person.

36. An investor shall —

- (a) provide suitable markings defining the area of the zone which is under his or her control;
- (b) provide free of charge office accommodation and suitable weighing scales, measures, signs, security and other facilities for examining and taking account of goods, and for securing them as an authorised officer may reasonably require;
- (c) keep records of all types of plant, machinery, equipment, raw materials and goods manufactured or processed in a special economic zone; and
- (d) provide all necessary labour and materials for the storing, examining, packing, marking, weighing and taking stock of the goods in a special economic zone whenever the authorised officer may reasonably require.

Obligations of special economic zones investors

Charge for services rendered

37. The Authority may charge rent, dues and impose fees and charges for services rendered or facilities provided in a special economic zone.

PART X — *General*

Settlement of disputes

38. (1) Where a dispute arises between a foreign investor and the Authority, developer or the licensing authority in respect of licensed investment in a special economic zone, all efforts shall be made to settle the dispute through negotiations for an amicable settlement.

(2) A dispute stated under subsection (1) which is not settled through negotiations may be referred to the High Court.

Indemnity

39. No matter or thing done or omitted to be done by a member or a member of staff of the Authority shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Authority, render a member or member of staff personally liable to an action, claim or demand.

Regulations

40. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Notwithstanding the generality of subsection (1), the Minister may make regulations for —

- (a) the development of special economic zones infrastructure; and
- (b) the management of special economic zones.

PASSED by the National Assembly this 7th day of August, 2015.

BARBARA N. DITHAPO,
Clerk of the National Assembly.