

SPECIAL ECONOMIC ZONES ACT, 2018

*Date of commencement: 18th May, 2018*

*Arrangement of Sections*

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Application of Act.
4. Purpose of special economic zones.

PART II

SPECIAL ECONOMIC ZONES COMMITTEE

5. Establishment of the Special Economic Zones Committee.
6. Composition of the Committee.
7. Functions of the Committee.
8. Secretariat of the Committee.
9. Implementation agreement.
10. Protection from personal liability.

PART III

DECLARATION AND DESIGNATION OF SPECIAL ECONOMIC ZONES

11. Declaration of special economic zones.
12. Criteria for designating special economic zones.
13. Enclosure of special economic zones.

PART IV

SPECIAL ECONOMIC ZONE DEVELOPER AND OPERATOR

14. Qualifications of a special economic zone developer.
15. Requirements for operating a special economic zone.

PART IV

LICENSING

16. Special economic zone licence.
17. Payment of fees.
18. Facilities within a special economic zone.

## PART V

## RIGHTS AND OBLIGATIONS OF SPECIAL ECONOMIC ZONE OPERATORS

19. Rights of special economic zones operators.
20. Obligations of special economic zones operators.

## PART VI

## GENERAL PROVISIONS

21. Guidelines.
22. Regulations.
23. Tribunal.
24. Review by the High Court.
25. Transitional provisions and savings.
26. General Penalty.
27. Amendment of schedules.

First Schedule Investment Incentives

Second Schedule

Third Schedule

*An Act to provide for the establishment of special economic zones; Special Economic Zones Committee; Special Economic Zones Tribunal and incidental matters.*

## PART I

## PRELIMINARY

*Short title and commencement.*

1. (1) This Act may be cited as the Special Economic Zones Act, 2018.  
(2) This Act shall come into force on a date to be appointed by the Minister by notice in the *gazette*.

*Interpretation.*

2. In this Act, unless the context otherwise requires —  
“agricultural zone” means a special economic zone declared as such under section 11 to facilitate the agricultural sector, its services and associated activities;  
“business service park” means a special economic zone declared as such under section 11 to facilitate the provision of services including but not limited to

business processing outsourcing centres, call centres, shared service centres, management consulting and advisory services and other associated services;

“company” means a company registered in terms of the law regulating Companies, which carries on business or has an office or place of business in Eswatini;

“Committee” means the Special Economic Zones Committee established under section 5;

“developer” means a holder of a special economic zone developer licence issued in terms of section 16;

“duty” means the fiscal, customs or excise duty leviable under any Act;

“enforcement officer” means a customs and excise officer, an officer of the Ministry responsible for Finance or of the Ministry responsible for Commerce and Industry, designated in writing by their respective Minister as an enforcement officer for purposes of this Act;

“export” has the same meaning ascribed to it in the law regulating Customs and Excise;

“export product” means a product or produce in respect of which a declaration has been made;

“import” has the same meaning ascribed to it in the law regulating Customs and Excise;

“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 and storage and may include bulk breaking, repackaging, sorting, mixing, trading or other forms of handling excluding manufacturing and processing;

“industrial park” means a special economic zone declared as such under section 11 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 11 to facilitate the information communication technology sector, its services and associated activities;

“livestock zone” means a special economic zone declared as such under section 11, in which the following activities are carried out —

- (a) livestock marshalling and inspection;
- (b) livestock feeding or fattening;
- (c) abattoir and refrigeration;

- (d) deboning;
- (e) value addition;
- (f) manufacture of veterinary products; and
- (g) other related activities.

“Minister” means the Minister responsible for Commerce, Industry and Trade;

“production day” means the day on which an export enterprise commences, or is deemed to have commenced, its operations;

“licence” means the holder of a special economic zone licence issued in terms of section 16;

“operator” means the holder of a special economic zone operator licence issued in terms of section 16;

“public-private partnership” means a contractual agreement between Government or public enterprises or other Government entities and the private sector whereby the private sector provides services or facilities in sectors and services traditionally provided by the public sector;

“science and technology park” means a special economic zone declared as such under section 11 to facilitate the science and technology sector, its services and its associated activities;

“Special Economic Zone” means a designated geographical area or building declared under section 11 of this Act to be a special economic zone where integrated land uses and sector-appropriate on-site and off-site infrastructure and utilities are 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 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;

“value adding or value added” includes the enhancement of, packaging or re-packaging of and beneficiation added to a product before the product is offered to the end-user.

#### *Application of Act.*

3. This Act applies to special economic zones declared in terms of this Act.

#### *Purpose of special economic zones.*

4. (1) A special economic zone shall be used for the purpose of economic development by attracting foreign and domestic investments and ensuring the transfer of technology and for the purpose of exporting products produced in the special economic zone.

- (2) A special economic zone shall —

- (a) facilitate the creation of an industrial complex, having strategic national economic advantage for targeted investments and industries in the manufacturing sector and tradable services;

- (b) develop infrastructure required to support the development of targeted industrial activities; and
- (c) provide the location for the establishment of targeted investments.

(3) For the purpose of this section, “targeted investments” includes investments in support of national economic and industrial development policies.

## PART II

### SPECIAL ECONOMIC ZONES COMMITTEE

#### *Establishment of the Special Economic Zones Committee.*

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

(2) The Committee shall be appointed by the Minister, after consultation with Cabinet, and shall be composed of not more than nine (9) members.

(3) The Committee shall hold office for a period not exceeding three (3) years.

(4) The Committee may co-opt any person who may have any technical knowledge on any matter which the Committee is seized with.

(5) A co-opted member shall not have any voting rights.

#### *Composition of the Committee.*

6. (1) The Committee shall be composed of —

(a) a representative from the Ministry responsible for Commerce, Industry and Trade;

(b) a representative from the Ministry responsible for Finance;

(c) a representative from the Ministry responsible for Economic Planning;

(d) a representative from the Ministry responsible for Information Communications and Technology;

(e) a representative from the Ministry responsible for Labour and Social Security;

(f) a representative from the Ministry responsible for Agriculture;

(g) a representative from the Ministry responsible for Housing and Urban Development; and

(h) a representative from the Eswatini Revenue Authority.

(2) The Chairperson of the Committee, who shall be a public officer, shall be appointed by the Minister.

(3) The Committee members appointed under this section shall be persons who are qualified in at least one of the following professions —

(a) accounting;

(b) economics;

(c) law;

(d) business administration; or

(e) any other business or investment related field.

*Functions of the Committee.*

7. (1) The Committee shall —
- (a) advise the Minister on the special economic zones policy and strategy in order to promote, develop, operate and manage the special economic zones;
  - (b) monitor the implementation of the special economic zones policy and strategy and report to the Minister on an annual basis on the implementation of the special economic zones policy and strategy;
  - (c) consider an application for declaration or designation of a special economic zone and recommend to the Minister whether or not to approve the application and grant a special economic zone licence to the applicant;
  - (d) consider an application for a developer permit and recommend to the Minister whether or not to approve that application;
  - (e) consider an application for the transfer of an operator permit and recommend to the Minister whether or not to approve that application with or without any condition;
  - (f) maintain current data on the performance of the programme in each individual special economic zone and enterprise;
  - (g) report in the prescribed manner to the Minister on progress relating to the development of special economic zones; and
  - (h) advise the Minister on minimum norms and standards required for the provision of a one-stop shop in a special economic zone;
- (2) The Committee may —
- (a) conduct investigations on any matter arising out of the application of this Act; and
  - (b) perform such other functions consistent with the objectives of the Act as the Minister may determine.
- (3) The Committee shall be responsible for the monitoring and enforcement of all rules within a special economic zone.

*Secretariat of the Committee.*

8. (1) The Minister shall designate a department under the Ministry responsible for Commerce, Industry and Trade to act as the secretariat of the Committee.
- (2) The Minister shall ensure that the Committee has the necessary resources to execute their functions.

*Implementation Agreement.*

9. (1) The Committee may, after consultation with the Minister, enter into an implementation agreement with any organ of state that the Minister may deem appropriate, including —
- (a) the Ministry responsible for Environmental Affairs;
  - (b) the Ministry responsible for Home Affairs;
  - (c) the Ministry responsible for Labour and Social Security; or
  - (d) the Ministry responsible for Finance.

- (2) The implementation agreement may deal with —
- (a) implementation and operation of a one-stop shop; or
  - (b) any other matter requiring the co-ordination of the functions of organs of state that may be appropriate or required for the proper regulation and development of special economic zones.

*Protection from personal liability.*

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

(2) The provisions of this section shall not relieve the Committee from any delictual or contractual liability, to pay compensation or damages to a person for an injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or any other written law.

PART III

DECLARATION AND DESIGNATION OF SPECIAL ECONOMIC ZONES

*Declaration of special economic zones.*

11. (1) The sites or areas listed in the Third schedule are for purposes of this Act declared as special economic zones.

(2) The Committee shall after consideration of an application forward the application to the Minister for a decision.

(3) The Minister shall after the approval of Cabinet —

- (a) determine the extent of the area to be declared as a special economic zone; and
- (b) declare that area as a special economic by notice in the *Gazette*.

(4) The 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 the Minister by notice in the *Gazette*, on the recommendation of the Committee.

(5) Where upon receipt of a recommendation under subsection (2), the Minister considers that the declaration of a special economic zone would infringe upon public interest, the Minister may refer the recommendation back to the Committee to ensure the protection of that public interest.

(6) 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.

(7) An area which is 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; or
- (i) livestock zones.

(8) The Minister shall not publish a notice under subsection (3)(a) without first publishing a notification in the *Gazette* and a newspaper circulating in the area concerned advising the public of the details of the notice the Minister intends to publish and the reasons for publishing that notice and inviting any person to submit any representations which that person wishes to make to the Minister by a time to be specified in such notification.

*Criteria for designating special economic zones.*

12. The Committee shall, in designating a special economic zone, consider project proposals that qualify for licensing and take into account the following —

- (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 public utility requirements including water, power, sewage, telecommunications, solid and water waste management;
- (g) provision of medical, recreational, security, fire safety, customs, and administrative facilities;
- (h) impact on off-site infrastructure, utilities and services;
- (i) approval of land uses and zoning requirements to facilitate the special economic zones; environmental standards and requirements; and
- (k) any other criteria as may be prescribed in the regulations.

*Enclosure of special economic zones.*

13. A special economic zone developer shall take necessary measures —

- (a) to ensure that the special economic zone allocated to that developer is properly enclosed and the enclosure is properly maintained and guarded; and
- (b) to determine the appropriate entry and exit points in a special economic zone to the satisfaction of the Minister.



PART IV

SPECIAL ECONOMIC ZONE DEVELOPER AND OPERATOR

*Qualifications of a special economic zone developer.*

14. A special economic zone developer shall, in addition to such other criteria and requirements as may be prescribed —
- (a) be a company registered in Eswatini, 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) be an owner or lessee of land or premises within the special economic zone.

*Requirements for operating a special economic zone.*

15. (1) The benefits prescribed under Part V of this Act shall not accrue to any operator of a special economic zone unless the operator holds a valid licence issued by the Minister.
- (2) The Minister shall grant a licence if the application meets the objectives of this Act, and if the proposed business enterprise —
- (a) is incorporated in Eswatini whether or not it is one hundred (100%) 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.

PART V

LICENSING

*Special economic zone licence.*

16. (1) A person shall not —
- (a) carry on business as a special economic zone developer or operator;
  - (b) hold oneself 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.

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

(3) On receiving an application for a licence or for renewal of a licence, the Minister, may after the approval of Cabinet and upon payment of the prescribed fee, issue the appropriate licence or renew a licence.

(4) In evaluating an application by a special economic zone developer or operator, the Committee 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.

(5) The Minister shall expeditiously make its decisions on licensing under this Act within One (1) month from the date on which the duly completed application form together with relevant supporting documents, is submitted.

(6) 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, or operator;
- (c) be specific with regards to the activity to be carried out under the licence;
- (d) be valid for such period as the Minister may prescribe; and
- (e) contain conditions which are deemed necessary.

(7) The Committee shall, give notice to the Eswatini Revenue Authority of even special economic zone, developer or operator licensed under this Act specifying —

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

(8) A licence issued under this section may —

- (a) be amended by the Minister at any time by giving written notice to the holder, if in the opinion of the Minister, the amendment is necessary; or
- (b) be suspended or revoked by the Minister if the holder fails to comply with the conditions contained in the licence, this Act or regulations made thereunder this Act.

(9) Where a licence is suspended or revoked, the holder shall take such steps as may be recommended by the Minister.

#### *Payment of fees.*

17. Where an application or renewal for a special economic zone licence is approved, the applicant shall pay the annual fee as prescribed by the Minister.

#### *Facilities within a special economic zone.*

18. Taking into account the general intent of the special economic zone developer licence, the developer shall provide and maintain in a special economic zone such facilities including adequate enclosure to separate a special economic zone from the common customs territory, as it maybe necessary for the proper and efficient functioning of the special economic zone.

PART VI

RIGHTS AND OBLIGATIONS OF SPECIAL ECONOMIC ZONE OPERATORS

*Rights of special economic zones operators.*

19. (1) The Minister 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.

(2) The relevant enforcement officer 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.

(3) A licenced 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 licenced, to export and sell in the customs territory, all classes or kinds of goods and services in accordance with the customs laws,
- (e) the right to transact and carry on business with a non-special economic zones enterprise;
- (f) 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 property rights of that enterprise;
- (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 relevant law;
- (h) 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 licenced;
- (i) 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 licenced in any business, trade, manufacturing or service activity not prohibited by this Act;
- (j) the investment incentives listed in the first schedule; and
- (k) all other rights and benefits granted to licenced special economic zones enterprises under this Act.

[ISSUE 1]

*Obligations of special economic zones operators.*

20. A licenced special economic zone enterprise, where applicable, shall —
- (a) enable the beneficiation of mineral and natural resources;
  - (b) utilize local existing industrial and technological skill, promoting integration with local industry and increasing value-added production;
  - (c) create employment and other economic and social benefits in the region in which it is located, including the broadening of economic participation by skills and technology transfer;
  - (d) generate new and innovative economic activities; and
  - (e) adhere to the obligations listed in the second schedule.

## PART VI

## GENERAL PROVISIONS

*Guidelines.*

21. (1) The Minister may, in consultation with the Committee, issue guidelines regarding any matter in respect of which the Minister deems necessary or expedient in order to achieve the objects or purpose of this Act.
- (2) The guidelines —
- (a) shall not be inconsistent with the provisions of this Act; and
  - (b) shall be published by notice in the *Gazette*.

*Regulations.*

22. The Minister may, in consultation with the Committee, make regulations regarding —
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) criteria for the designation and declaration of all special economic zones;
  - (c) the application process, criteria, terms, conditions, and procedures for designation of special economic zones and licensing of special economic zone developers, operators and enterprises;
  - (d) the form of licences to be issued under this Act and the procedures for amendment and revocation of the licences;
  - (e) the general conditions of entry of persons into a special economic zone;
  - (f) information required from special economic zone developers, operators and enterprises;
  - (g) the rules pertaining to the establishment, functioning, operation and procedures for the special economic zones one-stop shops;
  - (h) the investment rules for special economic zones;
  - (i) the land use rules for special economic zones, development and building controls as well as utility provisions and operations;
  - (j) the fees to be levied under this Act; and
  - (k) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

*Tribunal.*

23. (1) The Minister shall establish a tribunal.
- (2) The tribunal shall be composed of three (3) members.
- (3) One member shall be an admitted attorney who shall be the chairperson, one representing the business sector and one appointed based on their knowledge of special economic zones.
- (4) The tribunal shall hear matters decided by the Minister on appeal.
- (5) A person aggrieved by the decision of the Minister may lodge an appeal with the Tribunal within twenty one (21) days of that decision.
- (6) The decision of the tribunal shall be final and binding on all the parties until set aside by the High Court on review.
- (7) The Minister shall appoint a secretary for the Tribunal.
- (8) The Tribunal shall be paid such allowances as determined by the Minister after consultation with the Minister for Finance.

*Review by the High Court.*

24. A person aggrieved by the decision of the tribunal may apply for review at the High Court within thirty (30) days of that decision.

*Transitional provisions and savings.*

25. (1) 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 Minister 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.
- (2) A corporate body or company which undertakes the business of a special economic zone which does not meet the requirements prescribed under this Act shall within one (1) month of coming into force of this Act apply to the Minister to be declared or designated as a special economic zone.

*General Penalty.*

26. A person who contravenes this Act commits an offence and shall on conviction be liable to a penalty to be determined by the Court.

*Amendment of Schedules.*

27. The Minister may, after approval of Cabinet, by notice in the *Gazette*, amend the schedules to this Act for the better carrying out of the purposes and provisions of this Act.

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FIRST SCHEDULE  
INVESTMENT INCENTIVES  
(Under Section 20)

*Investment incentives.*

1. An Investor in the special economic zone shall be entitled to the following incentives
- 
- (a) exemption from the payment of corporate tax for an initial period of twenty years and thereafter a corporate tax shall be charged at the rate of five percent;
  - (b) remission of customs duty, value added tax and any other tax payable in respect of goods purchased for use as raw material, equipment, machinery including all goods and services directly related to manufacturing in the special economic zones;
  - (c) exemption from foreign exchange control or restriction on operations carried on in a special economic zone;
  - (d) be entitled to unrestricted repatriation of profits;
  - (e) be entitled to green technology allowance;
  - (f) be entitled to claim an allowance on constructed buildings;
  - (g) exemption from training levy, for an investor who has trained local employees; and
  - (h) be entitled to an allowance for research and development.

*Offloading into the customs territory.*

2. (1) An investor shall be allowed to sell up to twenty percent (20%) of total production of goods produced in the special economic zone into the customs territory.
- (2) The Minister may, depending on the nature of the industry or goods and market circumstance, authorize an investor to sell in the customs territory the amount exceeding that prescribed under sub section (1).
- (3) All goods offloaded for sale into the customs territory shall be liable to all applicable duties and taxes.
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SECOND SCHEDULE  
(Under Section 21)

Requirements of an investor who intends to locate in a special economic zone

An investor intending to settle in a special economic zone shall —

- (a) ensure decent employment for employees;
- (b) ensure that ninety percent (90%) of the employees are within the taxable bracket;
- (c) ensure that the minimum employment quota of Swati citizens is two thirds (2/3);
- (d) the minimum capital investment is not less than thirty million Emalangeni (E30 000 000.00) for sole companies and not less than seventy million Emalangeni (E70 000 000. 00) for joint ventures;
- (e) ensure that the localization policy is adhered to; and
- (f) ensure skills transfer.

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THIRD SCHEDULE  
(Under Section 11)

Areas or sites declared or designated as Special Economic Zones

1. The following sites are declared and designated as Special Economic Zones —

- (a) Royal Science and technology Park; and
- (b) King Mswati III international airport.

2. The Minister shall determine the extent of the land to be declared as a Special Economic Zone.

