



FREE MARKET FOUNDATION

PO Box 4056 | Cramerview 2060  
011 884 0270 | [gailday@fmfsa.org](mailto:gailday@fmfsa.org)

## **Free Market Foundation submission on Special Economic Zones ACT**

To: Committee 1 (Triple Challenges of Inequality, Poverty and Unemployment)  
High Level Panel on the Assessment of Key Legislation

By: Free Market Foundation

### **1. The Free Market Foundation**

The Free Market Foundation (FMF) is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

### **2. Introduction**

The FMF is perhaps the only civil society institution in South Africa which has argued consistently for the duration of its existence for the creation of special economic zones (SEZs). The Special Economic Zones Act (16 of 2014) came into being on 19 May 2014 when the President signed it into law. Before the assent, the FMF did submit comments on the Bill, in March 2012.

South Africa has attempted programs similar to SEZs in the past; including growth points, border industries and industrial development zones (IDZs) which failed to produce benefits exceeding costs. For SEZs to work as intended, we must understand why earlier efforts failed and look to international best practice.

The FMF welcomes the government's intention to create SEZs throughout South Africa to spur economic growth and development, but believes much of the Act, as it now stands, will not achieve that objective because it does not reflect appreciation of what makes successful special zones "special", especially in East Asia.

### **3. What a SEZ is supposed to be**

In its March 2012 submission, the FMF explained some of the key characteristics that should form part of any SEZ initiative. SEZs must not be subject to regulations and taxes that discourage growth and investment. Among other things, foreign exchange controls, labour laws, certain taxes, immigration controls, and minimum standards, should not apply in the SEZ. SEZs must be fully "offshore".

SEZ policy should signal to foreign and domestic entrepreneurs and businesses that it will be to their benefit to come to South Africa, rather than to a potentially much more beneficial SEZ in China. Talks about nationalisation, expropriation, custodianship and prohibitive labour regulation like minimum wages, do not inspire confidence and certainty in the mind of a potential investor. They seek, above anything else, to conduct their business freely without excessive government interference and policy uncertainty. This is undoubtedly a difficult principle to accept for a democratic government. However, if the government is unwilling or unable to give meaning to the "special" in "special economic zone", it should not proceed with a dilution doomed to fail.

#### **4. Where the SEZ Act fails**

In section 4 the Act should more clearly enunciate the fact that the Act is intended to create a friendlier business environment, whereas it now lists clinical objectives with little meaning to the business community. We recommend that a provision be inserted that states the purpose of SEZs is to free businesses from onerous government regulations and give them the necessary room to operate without undue interference or tax.

The Act generally gives the Minister too much discretionary power. In section 5 and 6 the Minister has free reign in determining how SEZs would be constituted and implemented. This problem is exacerbated by the fact that the Minister, in consultation with an overtly political SEZ Advisory Board, may withdraw the designation of an area as an SEZ. For SEZs to succeed, the SEZ authority must be a "one stop shop" empowered without reference to other departments to grant exemption from all listed laws and taxes.

In section 30, the ability of the Minister to withdraw the designation of a SEZ appears to be too liberal. It is our recommendation that provisions be entered into this section providing for criteria that must be met, with an explicit right of appeal to the courts, before the Minister may withdraw such a designation.

The definitions of the SEZ designations of free ports, free trade zones (especially), and sector development zones, are too narrow. As regards to free trade zones, it is merely defined as a duty free area offering storage and distribution facilities for value-adding activities within the SEZ for subsequent export. Nothing in section 24 creates the impression that SEZs would be open to any kind of business which seeks to benefit from the friendlier business environment.

Section 38(2)(c) gives the Minister virtual carte blanche in refusing applications by businesses to operate within SEZs, over and above the SEZ Board for that particular area. Such power is incompatible with the rule of law, where all businesses should feel confident that they will be judged according to the same objective standards and criteria. We recommend that this subsection be repealed.

The Act, generally, is laden with red tape bureaucracy with which businesses would need to comply. What does not appear in the text of the Act is the vast regulations which the Minister is empowered by section 41 to make. Indeed, the point of an SEZ should be a distinguishing lack of regulation and bureaucracy, rather than the business-as-usual approach of the Act. We recommend that the power to make regulations be limited to the SEZ Board of each particular SEZ, and that the SEZ Board's discretion (in section 38) in granting a business permission to operate within the SEZ be limited to specific disqualifying criteria.

#### **5. Conclusion**

The main points of this submission are thus:

1. The SEZ Act does not go far enough and, indeed, does not make special economic zones "special" in any substantial manner.
2. The Act must be variously amended to further qualify the powers of the Minister and SEZ Board, expand what could be included in the "free trade zone" designation, and generally streamline and make the process of gaining permission to operate in a SEZ more transparent.

#### **Attachments**

1. Proposed amendments to Special Economic Zones Act 2014
2. Proposed additional legislation
3. Extract from Habits of Highly Effective Countries: China syndrome

## **Addendum 1 to Free Market Foundation submission on Special Economic Zones ACT**

### **ACT**

**To provide for the designation, promotion, development, operation and management of Special Economic Zones; to provide for the establishment, appointment of members and functioning of the Special Economic Zones Advisory Board; to provide for the establishment of the Special Economic Zones Fund; to regulate the application, issuing, suspension, withdrawal and transfer of Special Economic Zones operator permits; to provide for functions of the Special Economic Zones operator; to provide for transitional arrangements; and to provide for matters connected therewith.**

### **PREAMBLE**

**WHEREAS** South African policies for economic growth and development recognise that responding to challenging global and domestic economic conditions demand a focus on new sources of competitiveness that lie in innovation and productivity, with an entrenched base in skills, infrastructure and efficient, responsive state action;

**AND RECOGNISING** that measures must be implemented to enhance domestic and regional demand, increase foreign direct investment and extend export promotion strategically to rapidly growing economies, while at the same time strengthening the South African industrial base and promoting a labour-absorbing industrialisation path;

**AND REALISING** the impact of Special Economic Zones in driving employment, and industrial and economic growth, the Government has identified Special Economic Zones as a mechanism that will contribute towards the realisation of these economic growth and development goals and is committed to support and facilitate the designation, regulation and development of Special Economic Zones in South Africa;

**AND SINCE** Special Economic Zones will be designated areas to promote targeted economic activities, supported through special exemptions from certain legislative measures arrangements and support systems including incentives, business support services, streamlined approval processes and infrastructure,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

*(English text signed by the President)*

*(Assented to 16 May 2014)*

## ARRANGEMENT OF SECTIONS

### Sections

#### CHAPTER 1

##### Definitions, Objects and Application

1. Definitions
2. Objects of Act
3. Application of Act

#### CHAPTER 2

##### Purpose, Policy and Strategy of Special Economic Zones

4. Purpose of Special Economic Zones
5. Special Economic Zones policy
6. Special Economic Zones strategy

#### CHAPTER 3

##### Special Economic Zones Advisory Board

7. Establishment of Special Economic Zones Advisory Board
8. Terms of office of Advisory Board members
9. Disqualification from membership of Advisory Board
10. Vacation of office and filling of vacancies on Advisory Board
11. Functions of Advisory Board
12. Fiduciary duties of Advisory Board members
13. Code of good conduct and disclosure of interests by Advisory Board members
14. Meetings of Advisory Board
15. Resolution of Advisory Board without meeting
16. Committees of Advisory Board
17. Secretariat of Advisory Board
18. Expenditure, remuneration and allowances paid to members of Advisory Board and committees
19. Dissolution of Advisory Board

#### CHAPTER 4

*(Note: entries in the Table of Contents should be the same as actual headings in the text.)*

##### Inapplicability, Suspension or Relaxation of Legislative Financing and Support Measures

20. Inapplicability, suspension or relaxation of certain legislative measures in Special Economic Zones ~~Fund~~
21. Inapplicability, suspension or relaxation of other legislative Support measures
22. Implementation protocol

## **CHAPTER 5**

### **Designation of Special Economic Zones**

- 23. Application for designation
- 24. Designation of Special Economic Zones
- 25. Governance and management of Special Economic Zone
- 26. Strategic plan for Special Economic Zone
- 27. Business and financial plan of Special Economic Zone
- 28. Reporting and financial statements of Special Economic Zone
- 29. Taking over administration of Special Economic Zones
- 30. Withdrawal of designation

## **CHAPTER 6**

### **Special Economic Zone Operator**

- 31. Special Economic Zone operator
- 32. Application for Special Economic Zone operator permit
- 33. Requirements for application for Special Economic Zone operator permit
- 34. Special Economic Zone operator permit
- 35. Functions of Special Economic Zone operator
- 36. Suspension or withdrawal of Special Economic Zone operator permit
- 37. Transfer of Special Economic Zone operator permit
- 38. Application to locate in Special Economic Zone

## **CHAPTER 7**

### **General Provisions**

- 39. Transitional provisions and savings
- 40. Guidelines
- 41. Regulations
- 42. Short title and commencement

## CHAPTER 1

### DEFINITIONS, OBJECTS AND APPLICATION

#### Definitions

1. In this Act, unless the context indicates otherwise—

**“Advisory Board”** means the Special Economic Zones Advisory Board established by section 7;

**“company”** means a company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

**“Department”** means the Department of Trade and Industry;

**“Director-General”** means the Director-General of the Department or his or her authorised representative;

**“enterprise”** means any person carrying or intending to carry on any business in a Special Economic Zone;

**“industrial development zone”** means a purpose built industrial estate that leverages domestic and foreign fixed direct investment in value-added and export-oriented manufacturing industries and services;

**“licensee”** means the holder of a Special Economic Zone licence issued in terms of section 23(6);

**“Minister”** means the Minister responsible for trade and industry;

**“municipal entity”** means a municipal entity as defined in section 1 of the Municipal Systems Act;

**“Municipal Finance Management Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“operator”** means the holder of a Special Economic Zone operator permit issued in terms of section 32(4);

**“operator permit”** means an operator permit issued in terms of section 32(4);

**“prescribed”** means prescribed by regulation made in terms of section 41;

**“public entity”** means a public entity as defined in section 1 of the Public Finance Management Act and listed in Schedules 2 and 3 to that Act;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“public-private partnership”** means a public-private partnership contemplated in regulation 16 of the Treasury Regulations issued in terms of the Public Finance Management Act or section 120 of the Municipal Finance Management Act and any regulations issued in terms of the last-mentioned Act;

**“Special Economic Zone”** means an area designated as a ~~the~~ Special Economic Zone in terms of section 23(6);

**“Special Economic Zone Board”** means the board of directors of an individual Special Economic Zone entity appointed in terms of section 25(5);

**“this Act”** includes any regulation made in terms of section 41;

**“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.

## Objects of Act

2. The objects of this Act are to provide for—

- (a) the determination of Special Economic Zones policy and strategy;
- (b) the establishment of the Advisory Board;
- (c) the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
- (d) the designation, promotion, development, operation and management of Special Economic Zones;
- (e) exemption from certain regulatory measures and incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and
- (f) the establishment of a single point of contact or one stop shop that delivers the required government services to businesses operating in Special Economic Zones in order to lodge applications to various government authorities and agencies and to receive information on regulatory requirements from such authorities and agencies.

## Application of Act

3. This Act applies to Special Economic Zones established in the Republic in terms of this Act.

## CHAPTER 2

### PURPOSE, POLICY AND STRATEGY OF SPECIAL ECONOMIC ZONES

#### Purpose of Special Economic Zones

4. (1) A Special Economic Zone is an economic development tool to promote national economic growth employment and exports by using exemptions from certain legislative measures and support measures in order to attract ~~targeted~~ foreign and domestic and technology.

(2) The purpose of establishing Special Economic Zones includes—

- (a) facilitating the creation of an industrial complex, having strategic national economic advantage for targeted investments and industries in the manufacturing sector and tradable services;
- (b) developing infrastructure required to support the development of targeted industrial activities;
- (c) attracting foreign and domestic direct investment;
- (d) providing the location for the establishment of Special Economic Zones targeted investments;
- (e) enabling the beneficiation of mineral and natural resources;
- (f) taking advantage of existing industrial and technological capacity, promoting integration with local industry and increasing value-added production;
- (g) promoting regional development;

(h) creating employment decent work and other economic ~~and social~~ benefits in the region in which it is located and promoting skills and technology transfer.

(3) For the purpose of this section—

(a) “**regional development**” means linkages to, or integration with, ~~the host province’s growth strategies;~~ local economic development. ~~of the host municipality and any other relevant cross-provincial economic initiatives; and.~~

~~(b) “targeted investments” includes investments in support of government’s economic and industrial development policies.~~

### Special Economic Zones policy

5. The Minister may determine policy for the designation, promotion, development, operation and management of Special Economic Zones after consultation with the Advisory Board and may, when necessary, review such policy.

### Special Economic Zones strategy

6. (1) The Minister must determine a Special Economic Zones strategy after consultation with the Advisory Board and may, when necessary, review such strategy.

(2) The strategy contemplated in subsection (1) must address the designation of Special Economic Zones that will best support ~~industrialisation and~~ economic growth or employment ~~strategies~~.

## CHAPTER 3

### SPECIAL ECONOMIC ZONES ADVISORY BOARD

#### Establishment of Special Economic Zones Advisory Board

7. (1) The Special Economic Zones Advisory Board is hereby established.

(2) The Minister must appoint not more than 15 persons as members of the Advisory Board, ~~including consisting of—~~

(a) one representative of the Department;

(b) one representative of the South African Revenue Services;

(c) one representative of the National Treasury;

(d) one representative of the department responsible for economic development public enterprises; and

~~(e) one representative of Transnet SOC Limited;~~

~~(f) one representative of Eskom SOC Limited;~~



~~(g) one representative of the Industrial Development Corporation;~~  
~~(h) three persons, each representing organised business, labour and civil society~~  
~~appointed on the basis of their knowledge and experience relevant to, and~~  
~~involvement in, Special Economic Zones; and~~

*(Note: SEZ policy entails very specific measures of a nature not suited to trying to reconcile a fruit salad of diverse vested interests. They require expertise on one thing and only one thing: what works. Since SEZs are economically “offshore”, they should not be treated as if they are just another industrially zoned area requiring inputs from all local role-players.)*

(i) ~~five~~ independent persons appointed on the basis of their knowledge, experience and expertise relevant to Special Economic Zones.

(3) For the purposes of appointing the persons contemplated in subsection (2)(e), the Minister must, by notice in the Gazette and in two newspapers published and circulating nationally, invite nominations for membership of the Advisory Board.

(4) The notice contemplated in subsection (3) must specify a period of at least 30 days for nominations to be submitted to the Minister.

(5) The Minister must—

(a) appoint the persons contemplated in subsection (2)(e) as members of the Advisory Board from nominations submitted in response to the notice;

(b) strive to ensure that the composition of the Advisory Board is broadly representative, with due regard to ~~race, gender and regional representation,~~ experience and expertise; and

(c) publish the names of persons appointed as members of the Advisory Board and the dates of commencement of their terms of office in the newspapers contemplated in subsection (3).

(6) No person below the position of Director-General or, where appropriate, Deputy Director-General or an equivalent position may be appointed as a member of the Advisory Board in terms of subsection (2)(a) to (g).

(7) (a) The Minister must appoint an alternate member for each of the members contemplated in subsection (2)(a) to (h), to attend a meeting of the Advisory Board in the event that a member concerned is unable to attend the meeting.

(b) In case of a member contemplated in subsection (2)(a) to (g), the alternate member may not be below the position of Deputy Director-General or an equivalent position.

(8) The Minister must appoint a chairperson of the Advisory Board from one of the members contemplated in subsection (2)(i).

### Terms of office of Advisory Board members

8. (1) Members of the Advisory Board contemplated in section 7(2)(h) and (i)—

(a) hold office for a period of five years from the date of their appointment by the Minister; and

(b) may be eligible for reappointment on expiry of their term of office for one additional term of office only.

(2) Members of the Advisory Board contemplated in section 7(2)(a) to (g) are appointed to office by virtue of their offices.

(3) Despite subsection (1), the Minister may by notice in the *Gazette* extend the period of office of such members of the Advisory Board for a maximum period of 12 months.

#### **Disqualification from membership of Advisory Board**

9. A person may not be a member of the Advisory Board if that person—

- (a) is an ~~unrehabilitated~~ rehabilitated insolvent;
- (b) has been declared by a High Court with jurisdiction to be mentally ill;
- (c) has been convicted of an offence in the Republic or elsewhere, other than an offence committed prior to 27 April 1994 associated with a political objective, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both a fine and imprisonment;
- (d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or
- (e) is otherwise disqualified in terms of section 69 of the Companies Act, 2008 (Act No.71 of 2008).

#### **Vacation of office and filling of vacancies on Advisory Board**

10. (1) A member of the Advisory Board vacates office if the member—

- (a) resigns in writing to the Minister;
- (b) ceases to qualify for membership of the Advisory Board in terms of section 9;
- (c) is removed from office by the Minister—
  - (i) in the public interest and for just cause;
  - (ii) after consulting the Advisory Board; and
  - (iii) after a fair hearing.

(2) A vacancy arising from the death of a member or from circumstances referred to in subsection (1) must, within three months of the vacancy occurring, be filled for the unexpired portion of that member's term of office by a suitable person appointed by the Minister in terms of a procedure contemplated in section 7, with the changes required by the context.

#### **Functions of Advisory Board**

11. (1) The Advisory Board must—

- (a) advise the Minister on policy and strategy in order to promote, develop, operate and manage 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 such policy and strategy;
- (c)* consider an application for designation as 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 an operator permit and recommend to the Minister whether or not to approve the application;
- (e)* consider an application for the transfer of an operator permit and recommend to the Minister whether or not to approve such application with or without any condition;
- (f)* liaise with a Special Economic Zone Board and an operator on the implementation of the Special Economic Zone strategic plans;
- (g)* report in the prescribed manner to the Minister on progress relating to the development of Special Economic Zones;
- (h)* advise the Minister on minimum norms and standards required for the provision of a one stop shop in a Special Economic Zone;
- (i)* advise the Minister on initiatives to market Special Economic Zones; and
- (j)* assess and review the success of Special Economic Zones in achieving the purpose referred to in section 4.

(2) The Advisory Board 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 determined by the Minister.

#### **Fiduciary duties of Advisory Board members**

12. A member of the Advisory Board—

- (a)* must comply with the code of conduct and disclosure obligations contemplated in section 13;
- (b)* may not act in a way that is inconsistent with the functions of the Advisory Board in terms of this Act; and
- (c)* may not use the position or privileges of, or confidential information obtained as, a member of the Advisory Board for personal gain or to improperly benefit another person.

#### **Code of good conduct and disclosure of interests by Advisory Board members**

13. (1) The Minister must approve a code of conduct for the members of the Advisory Board.

(2) Members of the Advisory Board—

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

(b) may not vote, attend or participate in any proceedings of the Advisory Board in relation to any matter before the Advisory Board in respect of which they have a conflict or potential conflict of interest; and

(c) must comply with any decision of the Advisory Board as to whether or not they are entitled to participate in any particular proceedings of the Advisory Board.

(3) For the purposes of this section, a member has a conflict of interest if—

(a) the member, or a family member, partner or business associate of the member—

(i) is applying for a license to develop, operate and manage a Special Economic Zone, a Special Economic Zone operator permit, or the transfer of an operator permit; or

(ii) has a financial or other interest in an entity that is involved with a Special Economic Zone; or

(b) the member has any other interest that may preclude, or may reasonably be perceived as precluding, the member from performing the functions of a member of the Advisory Board in a fair, unbiased and proper manner.

(4) Any disclosure in terms of subsection (2)(a) and any decision of the Advisory Board in terms of subsection (2)(c) must be recorded in the minutes of the Advisory Board.

(5) For the purposes of this section, “family member”, in relation to a member of the Advisory Board, means his or her parent, sibling, child, including an adopted child, or spouse, and includes a person living with that member as if they were married to each other, and any person separated from the member by no more than two degrees of natural or adopted consanguinity or affinity.

### Meetings of Advisory Board

14. (1) The Advisory Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Advisory Board.

(2) The chairperson of the Advisory Board—

(a) may convene special meetings of the Advisory Board; and

(b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of Advisory Board members.

(3) The request referred to in subsection (2)(b) must clearly state the reason for the request and only a stated matter may be discussed at the special meeting in question.

(4) The Minister may request that a meeting of the Advisory Board be convened at any time, should the need arise.

(5) If the chairperson is not present at a meeting of the Advisory Board, the members present must appoint another member to preside at the meeting.

(6) At any meeting, a majority of the members of the Advisory Board constitutes a quorum.

(7) A decision of the majority of members present at any quorate meeting constitutes a decision of the Advisory Board and, in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to a deliberative vote.

(8) Minutes of the proceedings of every meeting of the Advisory Board must be—

- (a) recorded and must be kept in a manner that cannot be altered or tampered with; and
- (b) submitted to the next meeting of the Advisory Board for consideration and, if adopted, signed by the chairperson.

(9) The Advisory Board may—

- (a) permit members to participate in a particular meeting by telephone or via audio-visual technology and any member who participates in this manner is regarded as being present at the meeting; and
- (b) invite any person to attend a meeting for the purpose of advising or informing the Advisory Board on any matter.

(10) The Advisory Board may, with the approval of the Minister, by resolution, make rules to further regulate its meetings.

#### **Resolution of Advisory Board without meeting**

15. (1) The Advisory Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in a manner and in accordance with a procedure determined by the Advisory Board.

(2) Section 14(8) applies with the changes required by the context in respect of subsection (1).

#### **Committees of Advisory Board**

16. (1) The Advisory Board may establish committees to assist the Advisory Board in the performance of its functions and may determine their composition, terms of reference, procedures and duration.

(2) The Advisory Board may appoint suitably qualified persons to serve on a committee, including persons in the full-time employment of the State.

(3) Any committee established in terms of subsection (1) must be chaired by a member of the Advisory Board.

#### **Secretariat of Advisory Board**

17. The Director-General must—

- (a) establish a dedicated secretariat in the Department to support and assist the Advisory Board in the performance of its functions in terms of this Act; and
- (b) provide the secretariat with the human resources, financial and other resources necessary to enable the secretariat to effectively render the support and assistance contemplated in paragraph (a).

### **Expenditure, remuneration and allowances paid to members of Advisory Board and committees**

18. (1) Expenditure incidental to the performance of the functions of the Advisory Board must be defrayed from money voted by Parliament as part of the appropriation of the Department.
- (2) A member of the Advisory Board or a member of any committee of the Advisory Board, who is not in the full-time employment of the State, may be paid such remuneration and allowances as determined by the Minister with the concurrence of the Minister of Finance.

### **Dissolution of Advisory Board**

19. (1) The Minister may, after consultation with the Advisory Board, dissolve the Advisory Board on any reasonable ground.
- (2) Within 30 days of the dissolution of the Advisory Board, the Minister must appoint an interim Advisory Board consisting of at least four persons contemplated in section 7(2)(a) to (g).
- (3) The interim Advisory Board assumes, and must perform, the functions of the Advisory Board in terms of this Act.
- (4) The Minister must, within six months of the appointment of the interim Advisory Board, appoint the members of the newly constituted Advisory Board.

## **CHAPTER 4**

*(Note: These changes are suggested because SEZs should not be rendered "viable" by virtue of money diverted from wealth-creating activities to wealth-consuming activities. That would be entirely counter-productive. The logic of viable and sustainable SEZs is that what makes them "special" is a favourable regulatory and fiscal environment that makes attracts people investing and risking their own resources.)*

### **INAPPLICABILITY, SUSPENSION OR RELAXATION OF LEGISLATIVE FINANCING AND SUPPORT MEASURES**

#### **Inapplicability, suspension or relaxation of certain legislative measures in Special Economic Zones Fund**

20. The laws mentioned in Schedule 1 do not apply in any Special Economic Zone, or are suspended or relaxed therein, to the extent set out in the Schedule. ~~(1) The Minister may, with the concurrence of the Minister of Finance, from money voted by Parliament as part of the appropriation of the Department, establish a Special Economic Zones Fund to support the promotion and development of Special Economic Zones.~~
- ~~(2) The Minister may, with the concurrence of the Minister of Finance, make regulations regarding the additional source of money for the fund, and the administration, management and criteria for distribution of money from the Fund.~~

### Inapplicability, suspension or relaxation of other legislative ~~Support~~ measures

21. The Minister may, on application by an operator or any enterprise carrying on business in any Special Economic Zone, with the concurrence of the Minister of any relevant government department and the approval of the Cabinet, by notice in the Gazette render inapplicable in that Special Economic Zone any law governing a matter listed in Schedule 2, or suspended or relax any such law in that Special Economic Zone, to the extent set out in the notice.

(1) The Minister may determine and implement support measures, including incentive schemes, for operators and businesses operating within Special Economic Zones.

(2) The Minister may, with the concurrence of the Minister of any relevant government department, design and administer support measures or other support programmes necessary, including incentive schemes, to support the development and operation of different categories of Special Economic Zones.

(3) Nothing in this section precludes a municipality, provincial government or public entity from designing their own support measures and incentive schemes to support the development and operation of Special Economic Zones.

### **Implementation protocol**

22. (1) The Minister may, in terms of section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), enter into an implementation protocol with any organ of state that the Minister may deem appropriate, including—

(a) the Minister responsible for environmental affairs;

(b) the Minister responsible for home affairs;

(c) the Minister responsible for labour; or

(d) the Minister responsible for finance.

(2) The implementation protocol 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.

(3) The Minister must, in the annual report of the Department referred to in section 40(1)(d) of the Public Finance Management Act, include a report on the conclusion and implementation of the protocols contemplated in subsection (1), if any, and the implementation of one stop shops in Special Economic Zones.

## CHAPTER 5

### DESIGNATION OF SPECIAL ECONOMIC ZONES

#### Application for designation

23. (1) ~~Any enterprise or other person, including the national~~ **National** government, a provincial government, a municipality, a public entity, a municipal entity or a public-private partnership acting alone or jointly, may apply to the Minister in the form and manner prescribed for a specified area to be designated as a Special Economic Zone.

(2) In its application, the applicant ~~must demonstrate that the designation of the area as a Special Economic Zone will further national government's industrial development objectives and~~ must specify the extent to which the designation of the area as a Special Economic Zone seeks to achieve any objective mentioned in section 4(2). —

~~(a) achieve the provisions of section 4(2);~~

~~(b) be consistent with any applicable national policies and laws; and~~

~~(c) comply with any other prescribed criteria.~~

(3) The applicant must—

(a) have sufficient access to financial resources and expertise for the development, operation, management and administration of a Special Economic Zone;

(b) submit to the Minister a comprehensive feasibility study;

(c) indicate the extent to which it owns or controls the area to be considered for designation as a Special Economic Zone; and

(d) in the case of a public-private partnership, indicate its ownership structure through the submission of a shareholders' agreement, indicating shareholding, percentages of shareholding, requirements for transfer of shares and requirements for the distribution of assets upon liquidation or deregistration.

(4) The Advisory Board must—

(a) consider the application; and

(b) recommend to the Minister whether or not the area is suited to be designated as a Special Economic Zone, in that it is reasonably likely that designation of the area as a Special Economic Zone would contribute to the attainment of an objective in section 4(2).

(4A) An area shall not be unsuited to be designated as a Special Economic Zone merely by reason of the size thereof, and any area may be so designated, including an area comprising —

(a) one or more municipalities or part thereof;

(b) one or more pieces of land or part thereof on which an enterprise carries or intends to carry on business.

(5) The Advisory Board may request further information and documents from the applicant for the purposes of considering the application.



(6) The Minister, after considering the recommendation of the Advisory Board and after consultation with the Minister of Finance—

(a) may designate an area as a Special Economic Zone by notice in the *Gazette* with or without conditions; and

(b) must issue the applicant with a Special Economic Zone licence if the area is so designated.

(7) Before designating an area as a Special Economic Zone, the Minister must—

(a) publish his or her intention to do so in the *Gazette* for public comments; and

(b) give the public 90 days to make written comments on his or her intention to designate

### Designation of Special Economic Zones

24. (1) Despite section 23, the Minister may, on his or her own accord, designate an area as a Special Economic Zone in pursuance of the objectives in section 4(2) strategic national interests.

(2) The Minister may prescribe different categories of Special Economic Zones, which may include—

(a) a free port;

(b) a free trade zone;

(c) an industrial development zone; and

(d) a sector development zone.

(3) The Minister may prescribe—

(a) criteria and guidelines for the designation of each category of Special Economic Zones; and

(b) conditions that may be imposed on each category of Special Economic Zones.

(4) The Minister may, after consultation with the Minister of Finance, prescribe the type of service and business that may be located in a Special Economic Zone in order to achieve the purpose of Special Economic Zones set out in section 4.

(5) For the purposes of this section—

(a) **“free port”** means a duty free area adjacent to a port of entry where imported goods may be unloaded for value-adding activities within the Special Economic Zone for storage, repackaging or processing, subject to customs procedures;

(b) **“free trade zone”** means a duty free area offering storage and distribution facilities for value-adding activities within the Special Economic Zone for subsequent export;

(c) **“port of entry”** means a place designated as a place of entry for the control of vessels, aircraft, trains, vehicles, goods and persons entering the Republic; and

(d) **“sector development zone”** means a zone focused on the development of a specific sector or industry through the facilitation of general or specific industrial infrastructure, incentives, technical and business services primarily for the export market.

## Governance and management of Special Economic Zone

25. (1) Upon designation of an area as a Special Economic Zone, the licensee must—

(a) establish an entity to manage the Special Economic Zone, and

(b) provide the entity with the resources and means necessary to manage and operate the Special Economic Zone, including the transfer of ownership or control of the land comprising the area designated as a Special Economic Zone.

(2) In the case of a national or provincial government or a public entity licensee, the entity must be established as a national government business enterprise or a provincial government business enterprise contemplated in section 1 of the Public Finance Management Act.

(3) In the case of a municipality or municipal entity licensee, the entity must be established as a municipal entity contemplated in section 1 of the Municipal Systems Act.

(4) In the case of a public-private partnership licensee, the entity must be established as a company.

(5) A licensee must appoint a Special Economic Zone Board which must be responsible for the efficient governance and management of the business affairs of that Special Economic Zone entity.

(6) The Special Economic Zone Board must manage that Special Economic Zone entity—

(a) in accordance with the Public Finance Management Act, if the licensee is National a provincial government or a public entity;

(b) in accordance with the Municipal Systems Act and the Municipal Finance Management Act, if the licensee is a municipality or municipal entity; or

(c) if the licensee is a public-private partnership—

(i) at national or provincial government level, its board of directors must manage that Special Economic Zone in accordance with regulation 16 of the National Treasury Regulations issued under the Public Finance Management Act and the Companies Act, 2008 (Act No. 71 of 2008); or

(ii) at municipal level, its board of directors must manage that Special Economic Zone in accordance with the provisions of section 120 of the Municipal Finance Management Act and any relevant regulations issued in terms of that Act.

(7) The Minister must make regulations regarding the governance principles that must be complied with when an entity is established as envisaged in subsections (2), (3) and

(4) respectively, including—

(a) the constitution of Special Economic Zone Boards;

(b) the term of Office of Special Economic Zone Board members;

(c) codes of conduct for Special Economic Zone Boards; and

(d) disclosure of interest by Special Economic Zone Board members.

### **Strategic plan for Special Economic Zone**

26. (1) The Special Economic Zone Board must develop and implement a strategic plan within the framework of the Special Economic Zones strategy contemplated in section 6 in order to achieve the mandate of, perform the functions of and comply with the conditions for that Special Economic Zone.
- (2) The strategic plan contemplated in subsection (1) must be reviewed on an annual basis and submitted to the Minister at least three months before the end of each financial year or at a later date determined by the Minister.
- (3) The Special Economic Zone Board must provide the Minister with such information and documentation as the Minister may reasonably require in connection with the affairs of that Special Economic Zone entity.

### **Business and financial plan of Special Economic Zone**

27. A Special Economic Zone Board must, at least two months before the end of each financial year or at a later date determined by the Minister, submit to the Minister for approval a business and financial plan—
- (a) containing a projection of the revenue and expenditure of that Special Economic Zone entity in respect of the ensuing financial year; and
  - (b) covering the affairs of that Special Economic Zone entity for each of the two immediately following financial years.

### **Reporting and financial statements of Special Economic Zone**

28. (1) A Special Economic Zone Board must—
- (a) keep full and proper records of the financial affairs of the Special Economic Zone entity contemplated in section 25;
  - (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice;
  - (c) submit those financial statements within three months after the end of the financial year to the Auditor-General for auditing; and
  - (d) submit within five months of the end of the financial year to the Minister—
    - (i) an annual report on the activities of that Special Economic Zone entity during that financial year;
    - (ii) audited financial statements of that Special Economic Zone entity for the previous financial year; and
    - (iii) the report of the Auditor-General on those statements.
- (2) The annual report and financial statements referred to in subsection (1) must—

(a) fairly present the state of affairs of that Special Economic Zone entity and its performance against predetermined objectives for the financial year concerned; and

(b) include particulars of—

- (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year concerned;
- (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
- (iii) any losses recovered or written off; and
- (iv) any other matter that may be prescribed.

#### **Taking over administration of Special Economic Zone**

29. (1) The Minister may, after consultation with the Advisory Board, the Special Economic Zone Board and the licensee concerned, appoint an administrator to take over the administration or to perform the functions of a Special Economic Zone Board if—

(a) the Special Economic Zone Board has failed to comply with any condition prescribed by the Minister in terms of section 24(3)(b);

(b) the Special Economic Zone Board fails or is unable to perform its functions; or

(c) there is mismanagement of the finances of that Special Economic Zone entity.

(2) The Minister must publish a notice in the *Gazette* appointing an administrator and in that notice the Minister must determine the powers, duties and the term of appointment of the administrator.

(3) The Minister may act in terms of subsection (1) without consulting the Advisory Board, the Special Economic Zone Board and the licensee concerned if there is financial mismanagement of that Special Economic Zone entity and the delay caused by the consultation would be detrimental to the functioning of that Special Economic Zone entity.

(4) Where the Minister acts in terms of subsection (3), the Minister must review the appointment of the administrator within 90 days of the appointment and after consultation with the Advisory Board, the Special Economic Zone Board and the licensee concerned.

(5) The costs associated with the appointment of the administrator in terms of this section will be for the Special Economic Zone entity concerned.

#### **Withdrawal of designation**

30. (1) Notwithstanding section 29, the Minister may, after the holding of a hearing with the Special Economic Zone licensee and after considering a recommendation of the Advisory Board, and by notice in the *Gazette*, withdraw any designation of an area as a Special Economic Zone which does not further any objective mentioned in the purpose set out in the section 4(2), on such terms and conditions as the Minister may determine.

(2) Before withdrawing a designation in terms of subsection (1), the Minister must—

(a) inform the affected licensee, Special Economic Zone Board, operator and businesses located in the affected Special Economic Zone of the intention to withdraw the designation and the reasons for the intended withdrawal; and

(b) give the affected licensee, Special Economic Zone Board, operator and businesses 30 days to submit written comments to the Minister.

(3) The lawful activities of any business located within a Special Economic Zone that has entered into a written agreement with the operator are not affected by the withdrawal of the designation of that Special Economic Zone in terms of this section.

(4) Nothing contained in this Act precludes the Minister from re-designating an area whose designation as a Special Economic Zone has been withdrawn.

## **CHAPTER 6**

### **SPECIAL ECONOMIC ZONE OPERATOR**

#### **Special Economic Zone operator**

31. (1) A Special Economic Zone Board must follow a fair, equitable, transparent, competitive and cost-effective procurement process, when appointing an operator to develop, operate and manage that Special Economic Zone on behalf of the Special Economic Zone Board.

(2) Notwithstanding subsection (1), only a Special Economic Zone entity established by a public-private partnership licensee may also develop, operate and manage the Special Economic Zone concerned.

#### **Application for Special Economic Zone operator permit**

32. (1) A Special Economic Zone may only be developed, operated and managed by a person who holds a Special Economic Zone operator permit issued in terms of this section.

(2) Any person appointed by a Special Economic Zone Board to develop, operate and manage a Special Economic Zone in terms of section 31 must apply to the Minister for a Special Economic Zone operator permit in the form and manner prescribed.

(3) The Advisory Board—

(a) must consider the application;

(b) may require an applicant to supply additional information necessary to consider the application;

(c) may request an applicant to appear before it for the purpose of making an oral submission at the applicant's expense;

(d) may require any interested party, including an organ of state, affected by such application to comment on the application in writing; and

- (e) must recommend to the Minister whether or not the applicant is eligible for an operator permit.
- (4) The Minister may, after considering the recommendation of the Advisory Board, issue a person with an operator permit, with or without conditions.
- (5) The Minister may make regulations regarding—
  - (a) the procedure and time periods applicable to applications for operator permits; and
  - (b) the information that must be provided in any application for an operator permit.

#### **Requirements for application for Special Economic Zone operator permit**

- 33. (1)** An applicant for an operator permit must—
- (a) be a person appointed by a Special Economic Zone Board to develop, operate and manage that Special Economic Zone in terms of section 31;
  - (b) be a person registered as a company in the Republic;
  - (c) have sufficient financial resources and expertise to develop, operate and manage a Special Economic Zone; and
  - (d) comply with such other criteria and requirements as may be prescribed.
- (2) The Minister may make regulations regarding—
- (a) additional criteria for applications for operator permits;
  - (b) any condition that may be imposed on operator permits, including conditions relating to businesses that may be operated in Special Economic Zones;
  - (c) any measure to promote the effective monitoring of the conditions contained in operator permits; and
  - (d) any other matter necessary to facilitate the issuing of an operator permit.

#### **Special Economic Zone operator permit**

- 34. (1)** Before issuing an operator permit in terms of section 32(4), the Minister must, on the recommendation of the Advisory Board, be satisfied that the written agreement between the Special Economic Zone Board and the operator adequately provides for the duties, terms and conditions for the development, operation and management of that Special Economic Zone by the operator, including—
- (a) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within that Special Economic Zone;
  - (b) the security measures that the operator must take and maintain in or around a customs controlled area defined in section 21A(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
  - (c) the facilities that the operator must provide in order to enable the Advisory Board or a Special Economic Zone Board, as the case may be, to exercise its functions within that Special Economic Zone; and

- (d) the construction timetable and milestone schedule for that Special Economic Zone.
- (2) The Minister must determine the duration of an operator permit.
- (3) The Minister may prescribe any other requirement or condition in respect of an operator permit.

#### **Functions of Special Economic Zone operator**

35. The operator must, on behalf of the Special Economic Zone Board—

- (a) implement the strategic plan for that Special Economic Zone within the framework of the Special Economic Zones strategy;
- (b) make improvements to that Special Economic Zone and its facilities according to the written agreement contemplated in section 34(1);
- (c) provide or facilitate provision of infrastructure and other services required for that Special Economic Zone to achieve its strategic and operational goals;
- (d) provide adequate demarcation of the Special Economic Zone from any applicable customs territory for the protection of revenue together with suitable provision for the movement of conveyances, vessels and goods entering or leaving that Special Economic Zone;
- (e) provide adequate security for all facilities in the Special Economic Zone;
- (f) adopt rules and regulations for businesses within the Special Economic Zone in order to promote their safe and efficient operation;
- (g) maintain adequate and proper accounts and other records in relation to its business and report in the manner prescribed or required on the activities, performance and development of the Special Economic Zone to the Minister and as required under any other legislation;
- (h) ~~where promote~~ the Special Economic Zone is established as a foreign and domestic direct investment destination, promote the Special Economic Zone in consultation with the Advisory Board;
- (i) recommend to the Special Economic Zone Board whether or not to approve an application by a business to locate within the Special Economic Zone in terms of section 38;
- (j) apply to the Minister for finance and support measures contemplated in section 21 in the form and manner prescribed;
- (k) facilitate a single point of contact or one stop shop that delivers the required government services to businesses operating in the Special Economic Zone in order to provide simplified procedures for the development and operation of that Special Economic Zone and for setting up and conducting business in that Special Economic Zone; and
- (l) undertake any other activity within the scope of this Act to promote the effective functioning of the Special Economic Zone.

### **Suspension or withdrawal of Special Economic Zone operator permit**

**36. (1)** The Minister may withdraw or suspend an operator permit if the operator—

- (a)* fails to comply with the terms and conditions of the operator permit;
- (b)* contravenes any provision of this Act or any other law of the Republic;
- (c)* contravenes or fails to comply with the customs and excise rules and procedures that are applicable to that operator and the Commissioner of the South African Revenue Services notifies the Minister accordingly; or
- (d)* requests the Minister to withdraw the operator permit.

**(2)** Before suspending or withdrawing an operator permit in terms of subsection

**(1)(a), (b) or (c),** the Minister must—

- (a)* inform the affected operator of the intention to withdraw or suspend the operator permit and the reasons for the intended withdrawal or suspension; and
- (b)* give the affected operator 30 days to submit written comments to the Minister.

**(3)** The Minister must inform the Special Economic Zone Board in writing of the decision to suspend or withdraw an operator permit in terms of this section.

**(4)** The Minister may make regulations regarding—

- (a)* the procedure to suspend or withdraw an operator permit; and
- (b)* any other matter necessary in order to ensure the effective suspension or withdrawal of an operator permit.

### **Transfer of Special Economic Zone operator permit**

**37. (1)** An operator may, subject to section 31(1), transfer an operator permit to another person, if such other person—

- (a)* applies to the Minister for a transfer in terms of the provisions of this section; and
- (b)* satisfies the requirements for an operator permit in terms of this Chapter.

**(2)** The transferee must in its application clearly stipulate any changes to the original development, business and operating plan of the Special Economic Zone in question.

**(3)** The Minister may, after considering the recommendations of the Advisory Board, transfer an operator permit from one operator to another.

**(4)** Upon the transfer of an operator permit, the new operator must comply with all the obligations placed on an operator in terms of this Act, and the new operator has all the rights and obligations conferred or imposed on the operator in terms of this Act and the operator permit in question.

**(5)** The Minister may make regulations regarding—

- (a)* the procedure to transfer an operator permit; and



- (b) any other matter necessary in order to ensure the effective transfer of an operator permit.

#### **Application to locate in Special Economic Zone**

38. (1) Any person who intends to conduct a business in a Special Economic Zone must apply to the Special Economic Zone Board, in the manner and form prescribed, to locate the business in the Special Economic Zone.

(2) In the application the applicant must—

(a) provide information to show that the applicant conducts a business or renders a service prescribed by the Minister in terms of section 24(4);

(b) indicate the extent to which the applicant's business achieves the purpose of Special Economic Zones set out in section 4; and

(c) comply with any other criteria that the Minister may prescribe.

(3) The Special Economic Zone Board may, after considering the recommendations of the operator, approve the application of a business to locate within that Special Economic Zone, with or without conditions.

## **CHAPTER 7**

### **GENERAL PROVISIONS**

#### **Transitional provisions and savings**

39. (1) In this section, "IDZ Regulations" means the Industrial Development Zone Programme Regulations published under Government Notice R1224 in *Government Gazette* 21803 of 1 December 2000, as amended.

(2) Any designation of an industrial development zone under the IDZ Regulations which is in force immediately before this Act comes into operation, remains in force and must be regarded as a designation of a Special Economic Zone under this Act.

(3) Any industrial development zone operator permit issued under the IDZ Regulations which is in force immediately before this Act comes into operation, remains in force and must be regarded as a Special Economic Zone operator permit issued under this Act.

(4) Any industrial development zone enterprise approved to be located in an industrial development zone under the IDZ Regulations before this Act comes into operation, must be regarded as a business approved to be located in a Special Economic Zone in terms of this Act: Provided that such a business must comply with the criteria in section 24(4) and section 38(3).

(5) Notwithstanding subsections (2), (3) and (4), any industrial development zone operator must ensure that the industrial development zone complies with the framework regulating Special Economic Zones in terms of this Act, within three years of commencement of this Act.

(6) Any application for the designation of an industrial development zone or for the issuing of an operator permit made under the IDZ Regulations which is not finalised immediately before this Act comes into operation,

must be dealt with as an application for designation as a Special Economic Zone or an application for an operator permit, as the case may be, in terms of this Act.

#### **Guidelines**

**40.** (1) The Minister may, after consultation with the Advisory Board, issue guidelines regarding any matter in respect of which the Minister deems it necessary or expedient in order to achieve the objects or purpose of this Act.

(2) The guidelines—

- (a) may not be inconsistent with the provisions of this Act;
- (b) must be published in the *Gazette*; and
- (c) are not binding on the Minister.

#### **Regulations**

**41.** (1) The Minister may, after consultation with the Advisory Board, make regulations regarding—

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before making any regulation contemplated in subsection (1), the Minister must—

- (a) publish the draft regulations in the *Gazette*;
- (b) grant the public a period of at least 30 days to submit written comments to the Minister on the draft regulations; and
- (c) consider the written comments contemplated in paragraph (b).

#### **Short title and commencement**

**42.** This Act is called the Special Economic Zones Act, 2014, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## Schedule 1

### INAPPLICABILITY, SUSPENSION OR RELAXATION OF CERTAIN LEGISLATIVE MEASURES IN SPECIAL ECONOMIC ZONES

#### [Section 20]

<u>Law</u>	<u>Extent to which law not applicable or is suspended or relaxed</u>
<u>Currency and Exchanges Act, 1933 (Act No. 9 of 1933)</u>	<u>The whole, including Exchange Control Regulations, 1961 under Government Notice R.1111 of 1 December 1961.</u>
<u>Income Tax Act, 1962 (Act No. 58 of 1962)</u>	<u>To extent set out in Special Economic Zones (Exemption from Certain Taxes and Duties) Act, 2013.</u>
<u>Customs and Excise Act, 1964 (No. 91 of 1964)</u>	<u>To extent set out in Special Economic Zones (Exemption from Certain Taxes and Duties) Act, 2013.</u>
<u>Value-Added Tax Act, 1991 (Act No. 89 of 1991)</u>	<u>To extent set out in Special Economic Zones (Exemption from Certain Taxes and Duties) Act, 2013.</u>
<u>Labour Relations Act, 1995 (Act No. 66 of 1995)</u>	<u>The whole.</u>
<u>Electricity Regulation Act, 2006 (Act No. 4 of 2006)</u>	<u>1. Chapter III (Electricity licences and registration).</u> <u>2. Section 35 (Regulations, rules, guidelines, directives and codes of conduct and practice) and any such measures thereunder, except section 35(4)(n) and regulations thereunder in so far as they set standards relating to health, safety and the environment.</u>

## Schedule 2

### INAPPLICABILITY, SUSPENSION OR RELAXATION OF OTHER LEGISLATIVE MEASURES

#### [Section 21]

#### Laws governing—

- (a) Building standards.
- (b) Business licensing.
- (c) Credit.
- (d) Consumer affairs.
- (e) Financial and Intermediary Services.
- (f) Financial institutions.
- (g) Land tenure.
- (h) Land use and zoning.
- (i) Property development.
- (j) Transport.

## Addendum 2 to Free Market Foundation submission on Special Economic Zones ACT

### Proposal for a Special Economic Zones (Exemption from Certain Taxes and Duties) Act

Notes:

#### Extracts from the Constitution, 1996

**73. All Bills.**—(1)...

(2) ... only the Cabinet member responsible for national financial matters may introduce ... a money Bill; ...

**77. Money Bills.**—(1) A Bill is a money Bill if it—

- (a) appropriates money;
- (b) imposes national taxes, levies, duties or surcharges;
- (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
- (d) authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.

(2) A money Bill may not deal with any other matter except—

- (a) a subordinate matter incidental to the appropriation of money;
- (b) the imposition, abolition or reduction of national taxes, levies, duties or surcharges;
- (c) the granting of exemption from national taxes, levies, duties or surcharges; or
- (d) the authorisation of direct charges against the National Revenue Fund.

(3) ...

#### Extracts from Minister of Finance's Budget Speeches:

##### Budget Speech, February 2012:

*"Special economic zones*

"The Minister of Trade and Industry has published draft legislation to provide for the creation of **special economic zones**. Tax relief is under consideration for businesses that invest in these zones, including a reduction in the corporate income tax rate and support for employment and training expenses."

##### Budget Speech, February 2013:

"And following careful consideration of inputs from various stakeholders, [there] will be tabled in the House ... a proposed employment incentive for **special economic zones**.

"... [A tax] incentive is proposed for eligible workers of all ages within **special economic zones**."

**Proposed draft**

**Special Economic Zones (Exemption from Certain Taxes and Duties) Act**

**Income tax holiday scheme for companies in Special Economic Zones**

*[—based on the now-repealed s. 37H of the Income Tax Act, 1962]*

1. (1) For the purposes of this section—

- (a) **“Board”** means the board established by section 2 of the Special Economic Zones Act, 2014;
- (b) **“commencement date”** means 1 April 2014;
- (c) **“qualifying company”** means a company which carries on any economic activity as classified in the Standard Industrial Classification of all Economic Activities (Fifth Edition) issued by the Central Statistical Services in January 1993;
- (d) **“tax holiday scheme”** means a scheme in terms of which qualifying companies enjoy tax holiday status;
- (e) **“tax holiday status”** means the status whereby in respect of a year of assessment ending after 31 March 2013, the rate of normal tax on each rand of the taxable income received by or accrued to or in favour of a qualifying company is fixed at a rate of zero per cent in terms of section 5 of the Income Tax Act, 1962 (Act No. 58 of 1962).

(2) Where the board has approved a project to be carried on by a company as a qualifying project, the tax holiday status of such company shall be a period of ten consecutive years of assessment.

(3) The tax holiday status of a qualifying company shall commence as from the commencement of the first year of assessment during which such qualifying company derives a taxable income.

(4) The board may require any company contemplated in subsection (4) to furnish the board with any such information or documents as are necessary for the board to perform its functions in terms of this section.

(5) Any word or expression in this section to which a meaning is assigned in the Income Act, 1962, shall bear the same meaning in this section, unless the context indicates otherwise.

**Exemptions from customs duty and value added tax**

*[—based on the now-withdrawn reg. 36 of the Industrial Development Zone Programme regulations prescribed by Govt. Notice R.1224 of 1 December 2000 under s. 10 (1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993)]*

2. (1) For the purposes of the Customs and Excise Act, 1964 (No. 91 of 1964)—

- (a) customs duties, levies, fees or similar financial obligations shall not apply to imports to a Special Economic Zone (hereinafter referred to as an “SEZ”) established in terms of the Special Economic Zones Act, 2014, from outside the customs territory or to exports from an SEZ to a destination outside the customs territory, including imports or exports of capital equipment, construction equipment, machinery, tools, spare parts, raw materials, office equipment and furniture, intermediate goods, supplies, packaging materials, consumer goods appropriate to the industrial or service activity of the IDZ operator or enterprise, equipment and materials for the health and benefit of employees, commercial and industrial samples, and operations-related transportation equipment; and
- (b) sales from the customs territory to an SEZ shall be deemed to be exports from South Africa, and shall receive benefits and incentives granted to exporters under South African law.

(2) For the purposes of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)—

- (a) goods imported into the SEZ by a registered vendor situated therein shall be exempt from value-added tax in terms of section 13 read with the First Schedule to the that Act;
- (b) the supply under sale or instalment credit agreement of goods consigned or delivered by a vendor in the Republic, to a registered vendor in the SEZ shall, subject to the provisions of section 11(3) of that Act, be subject to value-added tax at the rate of zero percent in terms of section 11(1)(a) of that Act; and
- (c) goods supplied under sale or instalment sale agreement and removed by a registered vendor situated in the SEZ shall be subject to a refund of value-added tax in accordance with the provisions of section 44(9) of that Act.

(3) Any word or expression in this section to which a meaning is assigned in the Customs and Excise Act, 1964, or the Value-Added Tax Act, 1991, shall bear the same meaning in this section, unless the context indicates otherwise.

—oooOooo—

### Addendum 3 to Free Market Foundation submission on Special Economic Zones ACT

#### SEZs in China: China Syndrome

Extracted from: *Habits of Highly Effective Countries: Lessons for South Africa* by Leon Louw

China has the world's most interesting and potentially most instructive economy. One in four of the world's population live there; it has the world's highest sustained growth rate – if official figures are to be believed – and, if it continues growing at present rates, it will soon be the world's biggest economy. Within a generation, it will account for half the planet's GDP. It seems destined to become the world's dominant 'super power', at least economically.

Discourse about China is reminiscent of debates during the 1970s, 1980s and 1990s about the 'Asian Tigers' (Japan, Taiwan, Hong Kong, Singapore and South Korea). They were the world's highest growth economies, and people of every persuasion claimed them as examples of *their* system outperforming alternatives. Initially, capitalists and socialists disagreed about which countries were succeeding, but the view that socialist economies were more successful, especially those with extreme forms of socialism and communism, became unsustainable after the collapse of international socialism at the end of the 1980s.

Both sides now claim China as an example of their system succeeding. Many commentators predict that the Chinese 'bubble' will burst. Meanwhile every observer is dazzled, and no one seems to be sure what to make of the phenomenon. Close on China's heels is India, also rising from the ashes of a century of mass destitution at extraordinary growth rates. Maybe concerns about the sustainability of these two impressive growth rates is misplaced, given the enduring nature of spectacular growth over many decades in such so-called economic miracles as the Asian Tigers, Ireland and Mauritius.

Because of its unique significance, we wondered whether China really is a special case, and reached the surprising conclusion that, not only is there nothing conspicuously distinctive about China's success factors, but that it is perhaps *the* definitive exemplar of which policies coincide with which outcomes.

China's growth is consistent with and predicted by its economic freedom score, rather than its civil and political liberties score (FH). It does indeed grow faster than its nominal economic freedom score predicts, but that is typical of what happens when countries move 'in the right direction'. They often experience an 'acceleration effect'.

Conversely, countries that are relatively free but increasingly less so, tend to contract disproportionately. Zimbabwe is an obvious example. Its economy started deteriorating before it slipped from modest levels of economic freedom during its first decade of independence to now being one of the least free economies in the world.

What we found is of considerable importance for policy makers. Firstly, China cannot be thought of as a single economy or even as a single country as far as its economy is concerned. The diversity of



economic systems within China, from one province to another, is bigger than the diversity of economic systems internationally. Secondly, almost all its growth (industrialisation, investment, etc) is not only confined to provinces with high scores on the 'marketisation index', but to a few special zones. Thirdly, these zones have the freest economies on earth, if not the freest economies the world has ever known.

These are dramatic statements. We do not make them lightly, and took great care to check our facts.

Given the extreme multiplicity of economic systems *within* China, it can be thought of as the world's most federal country, that is, as the country with most internal diversity and devolution of power. Given these extreme differences, China is, for present purposes, close to a controlled experiment in social science. It is possible to see how diverse systems compare within a single country with most potentially confounding variables constant. Reliable data is notoriously difficult to obtain in China, but to the extent that it is available, economic performance varies as widely as and in sympathy with economic diversity.

China's freest province (Guandong) is nearly as free as the world's freest economy, Hong Kong, and its least free province (Qinghai) is less free than the world's least free indexed country, Myanmar. In other words, China has a bigger range of economic systems internally than the world has internationally.

The great diversity of systems within provinces explains only half the story. Almost all China's prosperity, especially capital formation (investment,) is in a wide variety of special zones in the South and East. The most important of these are five *Special Economic Zones* (SEZs), followed by three *Key Economic Hubs* (KEHs), and thirteen *Economic and Technical Development Hubs* (ETDH). The SEZs are probably the freest economies on earth, and may be the freest economies that have ever existed. They have extended tax-free holidays and, for practical purposes, no labour, competition, consumer, licensing or minimum standards laws. There are no trade barriers or foreign currency controls, not even reporting requirements. In the absence of accurate data, there is no needless anguishing about the "balance of payments" or "foreign debt".

Other special zones and special status attaching to individual enterprises include *Open Cities*, *Free Ports*, *Export Processing Zones* and *Special Economic Status*, each of which has distinctive characteristics.

Not surprisingly, variations in living standards, and in regional or geographic product (GGP), are extreme, ranging from areas with annual growth rates often exceeding 20% to backward areas in the hinterland and north-west where people live in primitive conditions. Encouraged by the fact that wealth has been doubling every three to four years in the most successful areas (since the concept was introduced in 1979), the government has been increasing the number and diversity of zones throughout the country, to the point where practically all workers will be able to access new jobs with rapidly rising incomes and improving working conditions.

The evidence is compelling that China's extraordinary success is explained by its extreme internal diversity combined with the dramatic increase of economic freedom in selected areas (especially in the

South-East). By virtue of localised increases in economic freedom, the country as a whole is, on average, more free, its marketisation index having increased from 4.87 in 1999 to 5.98 in 2002.

China's policy reforms predict its rapid progress towards modernisation.

Like South Africa, China has moved towards greater trade openness, but much more so. The next chart shows China's average trade openness. Some special zones have no tariff protection.

There is a widespread belief that globalisation harms African economies by way of cheap imports with which they supposedly cannot compete. Why African industry should not, with its abundant human and other resources, be competitive, is unclear. China is regarded as the most serious threat to Africa's indigenous industry but its imports from Africa have increased at roughly the same rate as its exports to the continent.

Many of the facts about China are also true of India. The new economic freedom index for India's states seems to explain their varied performance. States with freer economies are growing at faster rates than the national average, while less-free states stagnate.

The high-growth counterpart of China and India in Africa is South Africa's neighbour, Botswana. In some senses it is an even more impressive success story. Like China, Botswana is achieving sustained high growth at rates in excess of those that coincide with its economic system. As with China, this appears to be a function of the acceleration effect described above. Botswana has been followed by Uganda, and, more recently, Tanzania and Mozambique.

The first African country to become an 'economic miracle' in recent times is Mauritius. Twenty-five years ago, it was one of the poorest countries on earth. It is a small, remote island in the Indian Ocean off the east coast of Africa, without resources. At the time, it was considered a hopeless case that would be in need of foreign aid indefinitely.

Its government implemented policies that we now know coincide with high growth, and it was rewarded accordingly. It became Africa's first 'economic miracle' and achieved high living standards with full employment.