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SPECIAL ECONOMIC ZONES ACT

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SPECIAL ECONOMIC ZONES ACT

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NO. 16 OF 2015

SPECIAL ECONOMIC ZONES ACT

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

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

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

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

PART I – PRELIMINARY

1. Short title and commencement.

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

2. Interpretation

In this Act, unless the context otherwise requires—

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

"Authority" means the Special Economic Zones Authority established under section 10;

"Board" means the Board of Directors of the Authority established under section 12;

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

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

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

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to industrialization;

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

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

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

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

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

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

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

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

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

"Fund" means the General Fund established under section 21;

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

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

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

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

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

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

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

"licence" means a licence issued under this Act;

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

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

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

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

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

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

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

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

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

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

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

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

3. Object and purpose of Act.

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

- (a) an enabling environment for the development of all aspects of special economic zones including—
 - (i) development of integrated infrastructure facilities;

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

PART II – THE SPECIAL ECONOMIC ZONES

4. Declaration of special economic zones.

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

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

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

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

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

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

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

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

- (j) convention and conference facilities.

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

5. Criteria for designating special economic zones.

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

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

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

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

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

7. Goods and services within a special economic zone.

Subject to section 6—

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

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

8. Removal of goods from a special economic zone.

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

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

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

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

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

9. Receipts and payments of special economic zone enterprises.

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

PART III – THE SPECIAL ECONOMIC ZONES AUTHORITY**10. Establishment of the Authority.**

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

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

- (a) suing and being sued;

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

11. Functions of the Authority.

The functions of the Authority shall be to —

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

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

12. Board of Directors.

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

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

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

13. Conduct of business and affairs of the Board.

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

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

14. Powers of the Board.

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

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

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

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

15. Remuneration of directors.

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

16. Chief Executive Officer.

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

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

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

(3) The Chief Executive Officer shall —

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

17. Staff of the Authority.

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

18. Delegation by the Authority.

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

19. Protection from personal liability.

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

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

(3) The provisions of this section shall not relieve the Authority of the liability in tort or contract, to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act, or any other written law.

20. Common seal.

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

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

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

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

PART IV – FINANCIAL PROVISIONS**21. Establishment of the Fund.**

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

(2) There shall be paid into the Fund —

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

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

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

22. Financial year.

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

23. Annual estimates.

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

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

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

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

24. Accounts and audit.

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

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

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

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

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

25. Investment of funds.

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

PART V – REGULATORY PROVISIONS

26. Licence to operate in special economic zone.

A person shall not —

- (a) carry on business as a special economic zone developer or operator or enterprise;

- (b) hold himself out as providing or maintaining activities or facilities within a special economic zone,

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

27. Application and issue of licence.

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

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

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

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

(5) A licence issued under this section shall —

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

(6) A licence issued under this section may —

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

(7) The Cabinet Secretary shall —

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

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

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

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

29. Special economic zone enterprises.

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

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

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

30. Register of licences.

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

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

(2) Where —

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

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

PART VI – RIGHTS AND OBLIGATIONS
OF SPECIAL ECONOMIC ZONE ENTITIES

31. Activities permitted within a special economic zone.

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

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

32. Facilities within a special economic zone.

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

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

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

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

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

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

- (a) act or appoint a special economic zone operator to undertake management and administration of the special economic zone on its behalf subject to subsections (2), (3) and (4) of this section, section 28 (b) and such other licensing requirements as may be prescribed;
- (b) lease, sub-lease or sell land or buildings to licensed special economic zone operators and, enterprises, and charge rent or fees for other services that may be provided;
- (c) acquire, dispose or transfer special economic zone lands or other assets;
- (d) develop, operate and service special economic zone lands and other assets in conformity with applicable law and its licence;
- (e) provide utilities and other services in the special economic zone, in accordance with its licence, and to charge fees for such services;
- (f) provide utilities and other services outside the special economic zone in conformity with applicable law;
- (g) enjoy the benefits that may accrue under the provisions of this Act;
- (h) enter into contracts with private third parties for the development, operation, and servicing of special economic zone lands and other assets, including on-site and off- site infrastructure;
- (i) enter and freely participate in international financial markets, without any legal impediments or restrictions, to obtain funds, credits, guarantees and other financial resources; and
- (j) advertise and promote the special economic zone for which it holds a licence to potential investors and service providers.

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

- (a) perform such physical development works or make such improvements to the special economic zone site and its facilities as may be required according to the plans approved by the Authority;

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

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

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

34. Rights of special economic zone enterprises.

A licensed special economic zone enterprise shall enjoy —

- (a) the full protection of its property rights against all risks of nationalization or expropriation;
- (b) the right to fully repatriate all capital and profits, without any foreign exchange impediments;
- (c) the right of protection of industrial and intellectual property rights, in particular patents, copyrights, business names, industrial designs, technical processes and trademarks;
- (d) the right to admit into the special economic zone for which it is licensed, to export and sell in the customs territory all classes or kinds of goods and services in accordance with the custom laws of the East African Community;
- (e) the right to transact and carry on business with a non special economic zones enterprise;
- (f) the right to transact and carry on business with non-special economic zone enterprises;
- (g) the right to contract with any other enterprise, to buy, sell, lease, sub-let or otherwise exercise, manage, or transfer land or buildings within a special economic zone, subject to the said enterprise's own property rights;
- (h) the right to contract with any other enterprise, to buy, sell, lease, sub-let or otherwise exercise, manage or transfer land or buildings within a special economic zone subject to the provisions of the East African Community Customs Management Act and applicable regulations in respect of the activities of such enterprise within the special economic zone;

- (i) the right to determine the prices of any of its goods or services sold inside or outside the special economic zone for which it is licensed;
- (j) the benefits in the national context of an open, free, competitive investment environment including the right to freely engage with the special economic zone for which it is licensed in any business, trade, manufacturing or service activity not prohibited by this Act; and
- (k) all other rights and benefits granted to licensed special economic zones enterprises under this Act.

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

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

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

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

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

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

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

PART VII – MISCELLANEOUS PROVISIONS

36. Powers of the Cabinet Secretary.

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

37. Dispute resolution.

(1) Where a dispute arises between a special economic zone developer, operator or enterprise and the Authority or the Government in respect of the

special economic zone entity, all efforts shall be made to settle the dispute through negotiations and mutual agreement for an amicable settlement within thirty days.

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

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

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

38. Exemption from Stamp duty.

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

39. Regulations.

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

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

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

40. Transition.

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

Special Economic Zones

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

FIRST SCHEDULE [Section 4(1)]

TYPES OF SPECIAL ECONOMIC ZONES

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

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

SECOND SCHEDULE [Section 13.]

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

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

2. Vacation of office

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

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

3. Meetings

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

- (2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least three directors, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be half of the total directors including the Chairperson or the person presiding.
- (5) The Chairperson shall preside at every meeting of the Board but the directors present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the directors present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the directors thereof.
- (8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. Committees of the Board

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

- (2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its directors.
- (3) The Board may, where it deems appropriate, coopt any person to attend the deliberations of any of its committees.
- (4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

5. Disclosure of interest

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

- (2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.
- (3) A director who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

6. Contracts and instruments

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