

PRE-INCORPORATION CLAUSE

Governance and management of Special Economic Zone

25.

...

(8) A licensee may enter into a written agreement in the name of, or purport to act in the name of, or on behalf of, the Special Economic Zone entity that is contemplated to be incorporated in terms of subsection (1), but does not yet exist at the time.

(9) The licensee who does anything contemplated in subsection (8) is jointly and severally liable for liabilities created as provided for in the contract contemplated in subsection (8) while so acting, if—

(a) the contemplated Special Economic Zone entity is not subsequently incorporated; or

(b) after being incorporated, the Special Economic Zone entity rejects any part of such an agreement or action.

(10) If, after its establishment, the Special Economic Zone entity enters into an agreement on the same terms as, or in substitution for, an agreement contemplated in subsection (8), the liability of the licensee in respect of the substituted agreement is discharged.

(11) Within three months after the date on which the Special Economic Zone entity was established the Special Economic Zone board may completely, partially or conditionally ratify or reject any agreement or action purported to have been made or done in its name or on its behalf, as contemplated in subsection (8).

(12) If, within three months after the date on which the Special Economic Zone entity was established, the Special Economic Zone board has neither ratified nor rejected a particular agreement or action purported to have been made or done in the name of the Special Economic Zone entity, or on its behalf, as contemplated in subsection (8), the Special Economic Zone entity will be regarded to have ratified that agreement or action.

(13) To the extent that an agreement or action has been ratified or regarded to have been ratified in terms of subsection (11)—

(a) the agreement is as enforceable against the Special Economic Zone entity as if the Special Economic Zone entity had been a party to the agreement when it was made; and

(b) the liability of the licensee under subsection (9) in respect of the ratified agreement or action is discharged.

(14) If the Special Economic Zone entity rejects an agreement or action contemplated in subsection (8), the licensee may assert a claim against the Special Economic Zone entity for any benefit it has received, or is entitled to receive, in terms of the agreement or action.

OTHER TECHNICAL AMENDMENTS – A BILL

CLAUSE 1

Definition reads:

“this Act” includes any regulation made in terms of section 40;

A-Bill

14. On page 4, in line 55, to omit “section 40” and to substitute “this Act”

B-Bill

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

Recommendation

To avoid using the word defined in its own definition, no amendment is made. Clause 40 incorporates all references to “regulations” or “prescribe” in the Bill

CLAUSE 30

(Will become Clause 31 - Special Economic Zone operator)

New Clause proposed in the A-Bill:

“(2) Notwithstanding subsection (1) and subject to section 31(1), only a Special Economic Zone of a public-private partnership licensee may be developed, operated and managed by that Special Economic Zone entity.”

Concern

No mention is made of a Special Economic Zone entity in Clause 30 (now 31), save for this sub-clause. The word “that” thus refers in a void. It is recommended that it be made clear which entity is referred to.

Recommendation

“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) and subject to section 31(1), only a Special Economic Zone entity established by of a public-private partnership licensee may also be developed, operated and managed ~~by that Special Economic Zone entity.~~”

CLAUSE 38

(Will become clause 39 – Transitional Provisions)

No definition is given for the term “IDZ” used by itself and with “operator” and “enterprise”

Recommendation

“...

2. On page 15, from line 49, to omit all the words after “section”, up to and including “amended” in line 51 and to substitute:

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(a) “IDZ” means Industrial Development Zone as contemplated in the IDZ Regulations; and

(b) “IDZ Regulations” means the Industrial Development Zone Programme Regulations published under Government Notice R1224 in Government Gazette 21803 of 1 December 2000, as amended.”

