

LEGAL NOTICE NO. 147

THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

THE SPECIAL ECONOMIC ZONES REGULATIONS 2016

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THE SPECIAL ECONOMIC ZONES ACT

(No. 16 of 2015)

IN EXERCISE of the powers conferred by section 39, 27(7)(b) and 28 (c) of the Special Economic Zones Act, 2015 the Cabinet Secretary for Industry, Trade and Cooperatives makes the following Regulations:—

THE SPECIAL ECONOMIC ZONES REGULATIONS, 2016

PART I—PRELIMINARY

1. These Regulations may be cited as the Special Economic Zones Regulations 2016.

Citation.

2. In these Regulations unless the context otherwise requires—

Interpretation

“Act” means The Special Economic Zones Act, 2015;

No. 16 of 2015.

“business activity” means any activity regularly carried on for the production of income from the sale of goods or the performance of services within a special economic zone;

“Chief Executive Officer” means the chief executive officer appointed under section 16 of the Act;

“environmental performance” means measurable results of the Authority or special economic zones end user environmental practices, policies, safeguards, and procedures, based on established environmental quality standards;

“facility” means any location in a special economic zones in which business activities are carried out;

“interest” when used in relation to land and related assets, means any legal right to such assets, including, but not limited to, a freehold interest, leasehold interest, concessionary interest, license, franchise, easement, right of way, security interest, future interest, or any other right of occupancy, use, or development;

“maximum load capacity” means the maximum amount of a pollutant that an environmental media, such as air, land or water, can absorb without exceeding environmental quality standards;

“one-stop shop” means the service of the Authority fully authorised to define, perform, facilitate or mediate all regulatory requirements under applicable law, including those by all relevant government entities, for all special economic zones end users as provided in the Regulations;

“outside party” means a party not within the Authority, but includes all other government, private-sector, foreign governmental, and non-governmental entities;

“service level agreement” means a legally binding agreement among government entities defining the operational framework among them in implementation of the special economic zones programme;

“special economic zones end user” means—

- (a) a holder of a special economic zones expatriate entry authorisation as defined in these Regulations;
- (b) a special economic zones enterprise;
- (c) a special economic zones investor;
- (d) a special economic zones worker; or
- (e) a special economic zones visitor; and

“special economic zones land” means land and other immovable assets within a special economic zone, including infrastructure, buildings, and other facilities.

PART II—ADMINISTRATION OF SPECIAL ECONOMIC ZONES AND INSTITUTIONS

3. The Authority shall in accordance with the principles of openness and competitiveness under section 3(b) of the Act, maintain an open investment environment within the special economic zones to facilitate and encourage business activity:

Business
regulatory
environment.

Provided that the business activity does not raise any public interest concerns relating to health, safety, environment, national security, consumer protection, culture or financial stability.

4. The Authority shall take the appropriate measures to establish simple, flexible and transparent procedures for the registration of special economic end users.

Measures by
Authority to ease
registration.

5. (1) Pursuant to its functions under section 11 of the Act, the Authority shall have the powers to administer, investigate, enforce and sanction any activity in order to ensure compliance with the Act.

Enforcement of
the Act.

(2) Notwithstanding the generality of paragraph (1), the Authority may—

- (a) monitor and conduct inspections of the facilities and activities of all persons registered under the Act; and
- (b) seize property and close facilities in accordance with the provisions of the Fair Administrative Action Act, 2015 and upon the order of the court.

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(3) The special economic zones developers and operators shall cooperate and provide assistance to the Authority when the Authority undertakes any enforcement action under the Act.

(4) The Authority shall give a notice of twenty four hours to a special economic zone end user before an inspection is carried out and the Authority may grant any reasonable request by the special economic zones end user to avoid undue interruption to the business activities of the special economic zones end user.

(5) Notwithstanding paragraph (4), the Authority may without notice and at any hour conduct an inspection if it has reasonable cause to believe the relevant laws have been breached.

(6) The Authority shall coordinate its investigations with all relevant agencies and provide the necessary information in a timely manner to relevant agencies.

(7) The Authority on the order of a court shall have the right to be reimbursed for any expenses incurred to investigate or remedy an offence under the Act.

6. (1) Where a special economic zones end user fails to comply with any directives of the Authority or with any provisions of the Act or these Regulations, the Authority shall recommend to the Cabinet Secretary the imposition of an appropriate sanction.

Sanctions.

(2) Notwithstanding paragraph (1), the Authority may—

- (a) delay sanctions for a limited time if the action giving rise to the sanctions is under investigation or is being prosecuted and the imposition of the sanction may be excessive; or
- (b) waive sanctions if the action giving rise to the sanctions has been adequately punished or redressed by the national or county authorities.

(3) The Cabinet Secretary may impose the following sanctions against special economic zones end users—

- (a) issue a written directive to remedy the breach, omission or violation;
- (b) restrict the special economic zones end user from engaging in specified activities, despite the existence of a valid licence;
- (c) suspend the registration;
- (d) cancel or revoke the registration;
- (e) seek appropriate redress in a court of law; or
- (f) apply any other type of sanction, the Authority is authorised to impose under any relevant law.

(4) Sanctions may not be imposed for an action or omission that was beyond the control of any party or that was not reasonably foreseeable by any party.

(5) The Cabinet Secretary may impose one or more of the sanctions under paragraph (3) in addition and without prejudice to any sanction, judgment, order, fine, penalty or punishment imposed by any other relevant government entity as long as the rules of natural justice and the rule of law is observed.

7. The following factors shall guide a determination of sanctions against a special economic zones end user—

Factors to guide determination of sanctions.

- (a) the damage directly or proximately caused by the violation, action or omission, including any harm to—