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CONTENTS .INHOUD

No.	Page No.	Gazette No.
GOVERNMENT NOTICE		
Trade and Industry, Department of		
<i>Government Notice</i>		
R. 1224 Manufacturing Development Act (187/1993): industrial development zone programme	2	21803

G O V E R N M E N T N O T I C E

DEPARTMENT OF TRADE AND INDUSTRY

No. R. 1224

1 December 2000

MANUFACTURING DEVELOPMENT ACT No. 187 of 1993

1, Alexander Erwin, Minister of Trade and Industry, by virtue of the powers vested in my by section 10 (1) of the Manufacturing Development Act no. 187 or 1993, as amended, establish a Industrial Development Zone programme and promulgate a notice in the schedule to the Act.

SCHEDULE

INDUSTRIAL DEVELOPMENT ZONE PROGRAMME

To establish an Industrial Development Zone programme as contemplated by the Manufacturing Development Act (no. 187 of 1993); to administer the application and appointment of Industrial Development Zone operators and enterprises; to administer Industrial Development Zones; and to provide for matters incidental thereto.

CHAPTER I: GENERAL PROVISIONS	3
CHAPTER II: DESIGNATION OF INDUSTRIAL DEVELOPMENT ZONE	5
CHAPTER III: ADMINISTRATION OF THE IDZ PROGRAMME BY THE BOARD	6
CHAPTER IV PERMITTING AND FUNCTIONS OF PROVISIONAL IDZ OPERATORS	9
CHAPTER V: PERMITTING AND FUNCTIONS OF IDZ OPERATORS	14
CHAPTER VI: DEVELOPMENT AND OPERATION OF AN ID	20
CHAPTER VII: PERMITTING AND FUNCTIONS OF IDZ ENTERPRISES	23
CHAPTER VIII: THE INDUSTRIAL DEVELOPMENT ZONE PROGRAMME	27
CHAPTER IX. CUSTOMS RULES AND PROCEDURES	29
CHAPTER X: RESTRICTIONS ON IDZ ACTIVITIES AND GOODS	38
CHAPTER XI: ENFORCEMENT AND DISPUTE SETTLEMENT	38
CHAPTER XIII: FINAL PROVISIONS	40

CHAPTER 1: GENERAL PROVISIONS*Regulation 1.**Definitions*

In these Regulations –

- (a) "Act" shall mean the Manufacturing Development Act (Act no. 187 of 1993).
- (b) "Board" shall mean the Manufacturing Development Board as provided for in the Act.
- (c) "Chairperson" shall mean the Chairperson of the Board or his or her authorized representative.
- (d) "company" shall mean a company incorporated and registered in terms of the Companies Act (Act no. 61 of 1973), a close corporation incorporated and registered in terms of the Close Corporations Act (Act no. 69 of 1984), or an external company registered in terms of Chapter XIII of the Companies Act (Act no. 61 of 1973).
- (e) "Constitution" shall mean the Constitution of the Republic of South Africa (Act no. 108 of 1996).
- (g) "customs secured area" or "CSA" shall mean a designated area within an Industrial Development Zone subject to special customs legislation.
- (9) "customs territory" shall mean the territory of the Republic of South Africa.
- (h) "goods" shall mean all wares, articles, merchandise, animals, matter or things.
- (i) "Industrial Development Zone" or "IDZ" shall mean an area designated by the Minister as an Industrial Development Zone in terms of and in accordance with this Regulation.
- (j) "industries and services area" shall mean the area of an Industrial Development Zone that is not designated as a customs secured area.
- (k) "IDZ customs office" shall mean the customs office established by the South African Revenue Service within an Industrial Development Zone to render customs services to a Customs Secured Area.
- (l) "IDZ enterprise" shall mean a company holding a valid IDZ enterprise permit issued by the Board.
- (m) "IDZ enterprise permit" shall mean the permit granted by the Board to a company authorizing such company to

locate in an IDZ and enjoy the benefits provided to IDZ enterprises under this Regulation.

- (n) "IDZ operator" shall mean a company holding a valid IDZ provisional IDZ operator permit or IDZ operator permit.
- (o) "provisional IDZ operator permit" shall mean the permit granted by the Board to a company authorizing such company to prepare to develop a new IDZ under this Regulation.
- (p) "IDZ operator permit" shall mean the permit granted by the Board to a company authorizing such company to develop and operate a new or existing IDZ under this Regulation.
- (q) "IDZ user" shall mean an IDZ operator or an IDZ enterprise.
- (r) "manufacture" shall mean the process defined within section 1 of the Customs and Excise Act, (no. 91 of 1964, as amended).
- (s) "Minister" shall mean the Minister of Trade and Industry.
- (t) "New IDZ" shall mean an IDZ which has been designated but not made operational at the time of issue of a provisional or final IDZ operator permit or an area which is pending designation as an IDZ at the time of issue of a provisional IDZ operator permit.
- (u) "operational" shall mean capable of being occupied by IDZ enterprises wishing to manufacture goods from designated premises.
- (v) "*organ of state*" shall mean any department of state or administration in the national, provincial or local sphere of government, or any other functionary institution -
 - (1) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (2) exercising a public power or performing a public function in terms of any legislation, but not including a court or judicial officer.
- (w) "operate" or "operation" shall mean administer, manage, maintain, control and cause to function.
- (x) "Programme" shall mean the IDZ programme established, implemented and administered by means of this Regulation.
- (y) "Regulation" shall mean these Industrial Development Zone Programme Regulations and any amendments thereto made from time to time.
- (z) "sales" shall mean sales of goods and/or services.

(aa) "subject IDZ" shall mean the IDZ to which an IDZ user corresponds.

Regulation 2.

Legal Authority, Purpose and Application.

- (a) These Regulations are issued by the Minister under the authority provided by section 10 of the Act.
- (b) The purpose of these Regulations is to establish an Industrial Development Zone programme consisting of the development and operation of Industrial Development Zones within the Republic.
- (c) These Regulations shall apply to the regulation, development and operation of Industrial Development Zones established in the Republic in terms of these Regulations.
- (d) These Regulations may be amended from time to time by the Minister, with the advice of the Board through notice in the *Gazette*.
- (e) These Regulations shall be read in conjunction with the Manufacturing Development Act (Act no. 187 of 1993), interpreted, implemented and administered in accordance with the law of the Republic.

CHAPTER 11: DESIGNATION OF INDUSTRIAL DEVELOPMENT ZONE

Regulation 3.

Designation of Industrial Development Zone by the Minister

- (a) The Minister may, by notice in the *Gazette*, proclaim an **area to be suitable for development as an Industrial Development Zone if the Minister is satisfied that designation of the area as a prospective Industrial Development Zone will –**
 - (1) facilitate the creation of an industrial complex having strategic economic advantage;
 - (2) provide the location for the establishment of strategic investments;
 - (3) enable the exploitation of resource-intensive industries;
 - (4) take advantage of existing industrial capacity, promote integration with local industry and increase value-added production;
 - (5) create employment and other economic and social benefits in the region in which it is located; and
 - (6) be consistent with any applicable national policies and law, as determined by appropriate environmental, economic and technical analyses.

- (b) The Minister shall only proclaim an area as suitable for development as an Industrial Development Zone in terms of sub-section (a) if –
- (1) the Minister has consulted with the provincial and local governments in the area in which the proposed Industrial Development Zone is to be located, and with the Board;
 - (2) a notice has been published in the *Gazette* stating that the Minister is considering the area for designation as an industrial Development Zone and allowing interested parties 60 (sixty) days to comment on the proposed designation;
 - (3) the Cabinet has ratified the decision to designate the area as an Industrial Development Zone.
- (c) Interested parties may approach the Minister to motivate for an area linked to a port with customs facilities to be considered for designation as an Industrial Development Zone.
- (d) The Minister may, with the advice of the Board, proclaim that an Industrial Development Zone shall no longer be an IDZ, if-
- (1) No provisional permit or operator permit has been granted in respect of a new IDZ for 12 (twelve) months;
 - (2) No operator permit has been granted in respect of an operating IDZ that has ceased to operate and for which an operator permit has expired;
 - (3) The establishment or operation of an IDZ contravenes any law of the Republic:

PROVIDED THAT:

The responsibility of the Board to enforce current environmental and health legislation in respect of such a former IDZ shall not cease until the former IDZ fails to contravene any law of the Republic.

CHAPTER III:

ADMINISTRATION OF THE IDZ PROGRAMME BY THE BOARD

Regulation 4.

General Responsibility for the IDZ Programme

The Board shall develop, manage, administer and implement the IDZ programme, as provided in section five of the Act, subject to direction by the Minister **and** in accordance with this Regulation.

Regulation 5.

Specific Functions Related to the IDZ Program

Subject to provisions of section five of the Act:

- (a) The functions of the Board in respect of its responsibilities for the IDZ programme shall be to –
- (1) advise the Minister on the designation of Industrial Development Zones and on any matter concerning the IDZ programme;
 - (2) issue provisional IDZ operator permits, IDZ operator permits and IDZ enterprise permits;
 - (3) regulate the activities of IDZ operators and enterprise;
 - (4) suspend, withdraw and amend a permit issued to an IDZ operator or IDZ enterprise in terms of paragraph (2);
 - (5) coordinate, as far as practically possible, the provision of infrastructure for Industrial Development Zones;
 - (6) facilitate and coordinate the exercise of the functions of organs of state in respect of Industrial Development Zones;
 - (7) monitor the development and operation of Industrial Development Zones, including receiving periodic reports from IDZ operators, and
 - (8) perform any other function prescribed by this Regulation,
- (b) The Board shall exercise such powers as the Minister may direct, and shall perform any duties that are reasonably necessary for or incidental to the performance of the functions listed in sub-section (a).
- (c) The Board may establish a local office in any area in which an Industrial Development Zone is located or shall be located in order to perform its functions in respect of that Industrial Development Zone.

Regulation 6.

Obligations Related to the IDZ Programme

- (a) In performing functions related to the IDZ programme, the Board and its employees shall serve the public impartially and carry out its powers and duties in good faith and without favour, bias, or prejudice.
- (b) In performing their functions related to the IDZ programme, no member of the Board or employee of the Board shall --
- (1) engage in any activity that may undermine the integrity of the Board;
 - (2) participate in the adjudication of any application or any function of the Board or any other matter related to the board's work in which they have a direct financial interest or any similar personal interest;
 - (3) make private use of, or profit from, any confidential information gained as a result of performing their functions within the Board;

- (4) divulge any confidential information to any third party, except as required as part of their functions within the Board.

Regulation 7.

Cooperative Governance

- (a) The Board may conclude a cooperation agreement with any organ of state concerning the efficient and effective exercise by that organ of state of its functions in respect of Industrial Development Zones.
- (b) A cooperation agreement concluded in terms of subsection (a) may specify –
 - (1) the manner in which the Board and the organ of state shall cooperate;
 - (2) the manner in which the organ of state shall perform its functions within a specified Industrial Development Zone;
 - (3) the facilities that shall be made available to the organ of state within the Industrial Development Zone;
 - (4) the recordal of procedures so as to ensure the efficient provision of services by the organ of state within a specified IDZ;
 - (5) any other relevant matter.
- (c) A cooperation agreement concluded in terms of this Regulation 7 shall not diminish any obligation, liability or responsibility on IDZ operators or IDZ enterprises in terms of this Regulation or any other law.
- (d) Where an agreement is not concluded in terms of subsection (a), the Minister may, in consultation with the Minister responsible for an organ of state, make regulations concerning the manner in which that organ of state must exercise its functions in respect of Industrial Development Zones.

Regulation 8.

Assessment of Fees

- (a) The Board may recover its operating expenses related to the administering of the IDZ programme from any or all of the following sources:
 - (1) application fees, payable upon submission of an application to the Board for a provisional IDZ operator or IDZ operator permit;
 - (2) contributions from funds appropriated annually by Parliament for this purpose.
- (b) An application fee shall be levied upon each application for a provisional IDZ operator or IDZ operator permit and shall be paid by the applicant together with its application.
- (c) The following application fees shall be payable:

- (1) the fee payable upon submission of an application for a provisional IDZ operator permit shall be R50000.00;
 - (2) the fee payable upon submission of an application for an IDZ operator permit by the holder of a provisional IDZ operator permit shall be R100000.00;
 - (3) the fee payable upon submission of an application for an IDZ operator permit shall be R1 50000.00.
- (d) Nothing in sub-sections (b) and (c) shall require an applicant for an IDZ operator permit to pay the prescribed application fee more than once in respect of a subject IDZ.
- (e) The Minister may, upon advice from the Board, revise the application fees and contributions payable in terms of his regulation 8, provided that each revision shall not occur at intervals of less than 1 (one) year.

CHAPTER IV: PERMITTING AND FUNCTIONS OF PROVISIONAL IDZ OPERATORS

Regulation 9.

Registration of interest to develop an Industrial Development Zone

- (a) Each Industrial Development Zone must be developed and operated by a company, which company must have complied with the requirements of this Regulation.
- (b) Save as provided in regulation 9 (e), below, no company shall be entitled to contract for economic and/or material benefit in respect of any IDZ unless it shall have received a provisional IDZ operator permit.
- (c) No company shall be entitled to commence the development or operation of an IDZ unless it shall have received an IDZ operator permit, as contemplated in regulation 17, below.
- (d) Companies wishing to prepare for the submission of an application for a provisional IDZ Operator Permit, as contemplated in regulation 10, below, shall, prior to the commencement of their preparations register with the Board (in the manner prescribed from time to time by the Board).
- (e) Upon registration, as described in regulation 9(d), above, the Board shall issue to the company so registered written confirmation of such registration, which confirmation shall contain evidence as to the company's intentions to prepare for its submission of an application for a provisional IDZ Operator Permit.

- (f) Following receipt of the confirmatory letter referred to regulation in 9 (e), above, a company shall be entitled to:
 - (1) make all necessary enquiries and collate all such necessary information to prepare its submission of an application for a provisional IDZ Operator Permit, as contemplated in regulation 10, below;
 - (2) conclude agreements in relation to any IDZ, which agreements must be suspensive upon their obtaining a provisional IDZ operator's permit, as contemplated in regulation 10, below.

Regulation 10.

Application for a provisional IDZ Operator Permit

- (a) A provisional IDZ operator permit shall be required in order to commence making arrangements for the development of a new Industrial Development Zone or assume the responsibility to develop and operate an existing Industrial Development Zone, whether or not the Industrial Development Zone is fully or partially developed, if the license of the previous operator has been withdrawn or transferred to the new operator with the permission of the Board.
- (b) Any party interested in obtaining a provisional IDZ operator permit shall submit a provisional IDZ operator permit application to the Board. The application shall be made in the form and manner prescribed by the Board and shall be submitted to the Board together with the application fee.
- (c) An applicant for a provisional IDZ operator permit must have positively identified the land under application to be developed within the area designated as an IDZ.
- (d) An application for an provisional IDZ operator permit must include the following submissions –
 - (1) details of the applicant;
 - (2) details of the shareholders, directors and management of the applicant;
 - (3) details of the applicants resources to be applied to the establishment of the IDZ; and
 - (4) a statement outlining services to be performed for the establishment and demonstration of the viability of the IDZ, including –
 - (i) an outline business plan for the establishment and development of the IDZ;
 - (ii) demonstration of access to the land to be developed as an IDZ;
 - (iii) demonstration of access to the necessary municipal services and utilities;
 - (iv) demonstration of steps to obtain the necessary development rights for the land to be developed as an IDZ;
 - (v) outline plan for financing internal service infrastructure and support infrastructure;

- (vi) demonstration of legal and physical access to international port by means of a common boundary or access through a corridor;
 - (vii) outline marketing plan identifying industrial focus for the IDZ and services to promote investment that take account of Government programmed to assist economic development;
 - (viii) outline of environmental approvals required consequent to fulfillment of the proposed industrial focus; and
 - (ix) time frames for the development of the zone with verifiable milestones.
- (e) Each applicant shall submit 4 (four) copies of the application to the Board, 1 (one) copy of which must be an original.
- (f) The Chairperson of the Board shall be entitled to return incomplete applications to applicants for subsequent completion or request further information regarding an applicant's application prior to its consideration by the Board.

Regulation 11.

Review of the provisional IDZ Operator Application

- (a) The Board shall within 60 (sixty) days of receipt of a correctly completed application for a provisional IDZ operator permit consider the application,
- (b) In considering the application, the Board shall have regard to the following:
- (1) whether the area for the proposed Industrial Development Zone has received IDZ designation by the Minister in terms of regulation 3 of this Regulation;
 - (2) whether the applicant is a company as defined in terms of this Regulation;
 - (3) whether the scope of work and statement of services to be performed to establish and show viability and sustainability of the IDZ submitted by the applicant indicate that the project, in the opinion of the Board, is feasible and that it is possible to proceed in accordance with this Regulation and all applicable laws, including those governing the environment, land use, health and safety; and
 - (4) the findings of credit worthiness and criminal record investigations
- (c) The Board, when considering an application for a provisional IDZ operator permit –
- (1) may require an applicant, at the applicant's expense, to supply additional information necessary to complete the review process;
 - (2) may request any organ of state or other person affected by the application to comment on the

- application; and
- (3) may request an applicant to appear before it for the purposes of making oral enquiry at the expense of the applicant.
- (d) Provided that the Board shall have been satisfied as to the content and accuracy of an application, the Board shall issue a provisional IDZ operator permit to the successful applicant
- (e) A provisional IDZ operator permit shall contain the duties, terms and conditions for commencing making arrangements for the Industrial Development Zone by the provisional IDZ operator, including:-
- (1) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within the IDZ.
- (f) Should the Board deem the application to be non-compliant with the requisite criteria contained in this sub-section of the Regulations, the Board shall notify the applicant in writing by registered mail that its application has been declined.
- (g) Such notification in terms of sub-section (f) shall contain the reasons for the application's failure.
- (h) The applicant may, within 15 (fifteen) days of the Board's notification in terms of sub-section (g), re-submit its application, amended or amplified, to the Board and request a further consideration by the Board, which shall:
- (1) reconsider the application in accordance with the procedure provided in sub-section 11 (b) of this Regulation;
- (2) advise the applicant within 30 (thirty) days as to the success of its application by registered mail.
- (i) Provided that the applicant shall have complied with the objective targets and other requirements contained within the provisional IDZ operator permit, the Board shall issue a provisional IDZ operator permit within a period of 30 (thirty) days of approval by the Board.
- (j) The provisional IDZ operator permit shall contain the duties, terms and conditions for commencement of the Industrial Development Zone by the provisional IDZ operator and shall include any special requirements which the Board may impose upon the provisional IDZ operator.
- (k) The Board may withdraw a provisional IDZ operator permit should the provisional IDZ operator:
- (1) fail to accomplish any of the milestones set in their business plan;
- (2) contravene this Regulation or any law of the Republic;
- (3) contravene the procedures applicable to a provisional

- IDZ operator by means of this Regulation, and
(4) the applicant requests that withdrawal.

Regulation 12.

Rights of a provisional IDZ Operator

- (a) After obtaining a provisional IDZ operator permit from the Board, a provisional IDZ operator may:
- (1) commence making arrangements for the development of an Industrial Development Zone in the area designated in the provisional IDZ operator permit, including all infrastructure, utilities, buildings, warehouses, factory shells and other facilities and improvements necessary for its operation;
 - (2) investigate the provision of utilities and services to IDZ enterprises;
 - (3) liaise between public and private service providers for the provision of infrastructure, utilities and other services to the IDZ;
 - (4) liaise between any organ of state to apply for any regulatory approval necessary for the IDZ operation;
 - (5) liaise between any organ of state or other person to perform any of its functions in terms of this Regulation or the provisional IDZ operator permit;
 - (6) draw up rules to apply within the IDZ to promote its safe, healthy and efficient operation in terms of all applicable legislation; and
 - (7) exercise any other right, incentive or benefit accorded to a provisional IDZ operator in terms of this Regulation or any other legislation.
- (b) A rule made in terms of sub-section 12(a)(6) shall be invalid if it is not in compliance with any applicable law or standard or the IDZ operator permit.

Regulation 13.

Responsibilities of a provisional IDZ Operator

- (a) A provisional IDZ operator must -
- (1) comply with this Regulation, all other applicable legislation and standards and the terms of the provisional IDZ operator permit;
 - (2) maintain adequate and proper financial records and accounts and other records relating to the operation of the IDZ; and
 - (3) report to the Board on the development and operation of the IDZ as required by its provisional IDZ operator permit or by written notice from the Board.
- (b) A contract concluded between a provisional IDZ operator and another person to perform any of its functions shall not relieve the provisional IDZ operator of its responsibilities under this Regulation, any other legislation or the IDZ operator permit.

*Regulation 14.**Transfer of a provisional IDZ Operator Permit*

- (a) A provisional IDZ operator may transfer its interests in an IDZ to another company, provided such company is the holder of a valid provisional IDZ operator permit or IDZ operator permit.
- (b) For the purposes of taking transfer of the interests referred to in sub-section (a), the transferee shall:
- (1) Comply with the requirements contained in regulations 9 and 10 of this Regulation;
 - (2) Apply for a provisional IDZ operator permit in the manner prescribed by regulation 11 of this Regulation;
 - (3) Indicate within its application any changes that it wishes to make to the original scope of work and statement of conditions and business plan of the subject IDZ.

CHAPTER V

PERMITTING AND FUNCTIONS OF **IDZ**
OPERATORS*Regulation 15.**Authorisation of Industrial Development Zone Operator*

- (a) Subject to that provided for in regulation 9, an IDZ operator permit shall be required in order to:
- (1) develop and operate a new IDZ;
 - (2) assume the responsibility to develop and operate an existing IDZ, whether or not the Industrial Development Zone is fully or partially developed, if the license of the previous operator has been withdrawn or transferred to the new operator with the permission of the Board.

*Regulation 76.**Application for IDZ Operator Permit*

- (a) Any party interested in obtaining an IDZ operator permit shall submit a completed IDZ operator permit application to the Board. The application shall be made in the form and manner prescribed by the Board and shall be submitted to the Board together with the correct application fee.
- (b) An applicant for an IDZ operator permit must show its control of the land within an existing IDZ or within the area under application designated for development as an IDZ or within a new IDZ pertinent to its application through its:
- (1) ownership of the land or servitude over the land; or
 - (2) lease of the land, in which instance:
 - i. such lease shall be for a minimum period of 30 (thirty) years from the beginning of the month following the month in which the application is submitted in the case of a new

- IDZ; or
- ii. such lease shall be for a minimum period so as to permit an existing IDZ to remain in operation for a minimum period of 30 (thirty) years from the date of its inception; or
 - (3) holding of an option over the land, which option is enforceable at the instance of the applicant and which option, once exercised, shall grant the applicant ownership of the land or a servitude over the land; or
 - (4) holding of an option over the land, which option is enforceable at the instance of the applicant and which option, once exercised, shall grant the applicant a lease where:
 - i. such lease shall be for a minimum period of 30 (thirty) years from the beginning of the month following the month in which the application is submitted in the case of a new IDZ; or
 - ii. such lease shall be for a minimum period so as to permit an existing IDZ to remain in operation for a minimum period of 30 (thirty) years from the date of its inception;
 - (5) Provided that all such leases shall be registered against the title deeds of the IDZ property or capable of such registration.
- (c) An application for an IDZ operator permit must include the following submissions -
- (1) details of the applicant;
 - (2) details of the shareholders, directors and management of the applicant;
 - (3) a comprehensive feasibility study, including -
 - i. a business plan for the establishment and operation of the IDZ showing:
 - proposed ownership and management structure;
 - an estimate of demand and market/sector orientation;
 - a five year financial analysis and projections;
 - leasing or sale arrangements and proposed rates;
 - ii. a physical master plan of the proposed IDZ, showing:
 - precise geographic and physical location
 - location and boundary of industries and services area
 - location and boundary of customs secured area
 - proposed facilities
 - planned infrastructure
 - footprint layout of the IDZ

- . proposed security measures to ensure lawful operation in accordance with this Regulation and other applicable law;
- (4) evidence that the applicant has the financial capacity, organizational ability and managerial expertise to develop and operate the IDZ,
 - (5) an audited statement of paid-up share capital and proposed loan capital in the company;
 - (6) a copy of the title deed or correctly executed agreement of lease or option agreement, in accordance with sub-section (b) above, demonstrating that the applicant has control of or an option to control the land within the proposed IDZ;
 - (7) a construction timetable and delivery schedule with milestones, including the date on which the initial phase of the IDZ shall be operational, and the anticipated implementation of subsequent phases of the proposed IDZ;
 - (8) demonstration that the development and operation of the IDZ will comply with applicable laws including, amongst others, those governing labour relations, conditions of employment, human resource development, zoning, land use, public health and safety, infrastructure requirements and environmental protection;
 - (9) any strategic environmental assessment and or environmental management system, engineering or technical analysis or similar plan required in terms of any applicable law to demonstrate that the soil conditions, hydrology, infrastructure availability, vegetation, and area land-use are compatible with the proposed type of Industrial Development Zone, together with evidence of its approval by the relevant organ of State as required by the applicable law;
 - (10) a demonstration of the applicant's ability to provide utilities, including the supply of electricity, water, effluent treatment, hazardous waste facilities, refuse disposal facilities and telecommunications, subject to applicable licensing required by the applicable law.
- (d) Each applicant shall submit 4 (four) copies of the application to the Board, 1 (one) copy of which must be an original.
- (e) The Chairperson of the Board shall be entitled to return incomplete applications to applicants for subsequent completion or request further information regarding an applicant's application prior to its consideration by the Board.

Regulation 17.

Review of the IDZ Operator Application

- (a)** The Board shall within 90 (ninety) days of receipt of a

correctly completed application for an IDZ operator permit consider the application.

- (b) In considering the application, the Board shall have regard to the following:
- (1) whether the area of the proposed Industrial Development Zone has received IDZ designation by the Minister in terms of regulation 3 of this Regulation;
 - (2) whether the applicant is a company as defined in terms of this Regulation;
 - (3) whether the applicant has demonstrated control of the land in terms of regulation 16, sub-section (b) of this Regulation;
 - (4) whether the project feasibility study and the physical and engineering information submitted by the applicant indicate that the project, in the opinion of the Board, is financially feasible, business plan milestones are achievable under good and poor conditions and that construction and operation will proceed in accordance with this Regulation and all applicable laws, including those governing labour relations, environmental, safety, and infrastructure requirements;
 - (5) whether the financial and other information contained within the application demonstrate the applicant's financial and technical capability;
 - (6) whether, in the case of a new IDZ development, the applicant shall have financial resources equal to 20% (twenty percent) of the development costs of the first phase of the IDZ at the time of issue of the IDZ operator permit; and
 - (7) the findings of credit worthiness and criminal record investigations.
- (c) The Board, when considering an application for an IDZ operator permit -
- (1) may require an applicant, at the applicant's expense, to supply additional information necessary to complete the review process;
 - (2) may request any organ of state or other person affected by the application to comment on the application; and
 - (3) may request an applicant to appear before it for the purposes of making oral enquiry at the expense of the applicant.
- (d) Provided that the Board shall have been satisfied as to the content and compliance of an application, the Board shall issue a IDZ operator permit to the successful applicant, which shall henceforth be deemed to be an IDZ operator.
- (e) An IDZ operator permit shall contain the duties, terms and conditions for development and operation of the Industrial Development Zone by the IDZ operator, including:-
- (1) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within

- the IDZ;
- (2) the security measures that the IDZ operator is required to install and maintain in or around the customs secured area;
 - (3) the facilities that the IDZ operator must provide to enable the Board to exercise its functions within the Industrial Development Zone;
 - (4) the duration of the IDZ operator permit;
 - (5) the date by which the IDZ operator must exercise an option to buy or lease land in the IDZ in terms of regulation 6 sub-section (b) of this Regulation; and
 - (6) the construction timetable and milestone schedule which the Board, in its discretion, deems appropriate to assess the progress required of the IDZ operator between the issue date of the IDZ permit and the date upon which IDZ enterprises are able to take occupation of the IDZ.
- (f) Should the Board deem the application to be non-compliant with the requisite criteria contained in this sub-section of the regulations, the Board shall notify the applicant in writing by registered mail that its application has been declined.
- (g) Such notification in terms of sub-section (f) shall contain the reasons for the application's failure.
- (h) The applicant may, within 15 (fifteen) days of the Board's notification in terms of sub-section (f), **re-submit** its application, amended or amplified, to the Board and request a further consideration by the Board, which shall:
- (1) reconsider the application in accordance with the procedure provided in sub-section 17 (b) of this regulation;
 - (2) advise the applicant within 30 (thirty) days as to the success of its application by registered mail
- (i) The IDZ operator permit shall contain the duties, terms and conditions for development and operation of the Industrial Development Zone by the IDZ operator and shall include any special requirements that the Board may impose upon the IDZ operator.
- (j) The Board may withdraw an IDZ operator permit should the IDZ operator:
- (1) fail to accomplish any of the milestones set in their business plan;
 - (2) contravene this Regulation or any law of the Republic;
 - (3) contravene the customs and excise rules and procedures applicable to an IDZ operator by means of this Regulation, and
 - (4) the applicant request that withdrawal.

Regulation 18.

Rights of an IDZ Operator

- (a) After obtaining an IDZ operator permit from the Board, an IDZ operator may:-
- (1) develop and operate an Industrial Development Zone in the area designated in the operator permit, including all infrastructure, utilities, buildings, warehouses, factory shells and other facilities and improvements necessary for its operation;
 - (2) freely make investments and earn money from investments made in connection with the Industrial Development Zone;
 - (3) sell, lease or sublet property within the IDZ, including land and buildings, to IDZ enterprises or IDZ service providers;
 - (4) impose and collect rent, service charges and other fees from IDZ enterprises;
 - (5) assign the rights to the revenue of the IDZ to any person as security for a loan to fund the development or expansion of the IDZ;
 - (6) assign the rights to the property of the IDZ to any person as security for a loan to fund the development or expansion of the IDZ;
 - (7) provide and co-ordinate the provision of utilities and services to IDZ enterprises;
 - (8) advertise and promote the IDZ to potential local and foreign investors, businesses and service providers;
 - (9) contract with public and private service providers for the provision of infrastructure, utilities and other services to the IDZ;
 - (10) contract with any other person to perform any of its functions in terms of this Regulation or the IDZ operator permit;
 - (11) adopt and apply rules within the IDZ to promote its safe, healthy and efficient operation in terms of all applicable legislation;
 - (12) exercise any other right, incentive or benefit accorded to an IDZ operator or an IDZ enterprise in terms of this Regulation or any other legislation.
- (b) A rule made in terms of Regulation, 18 sub-section (a)(10) shall be invalid if it is not in compliance with any applicable law or standard or the IDZ operator permit.

Regulation 19.

Responsibilities of an IDZ Operator

- (a) An IDZ operator must -
- (1) install and maintain an information system to record the movement of material and components imported into and exported from the CSA for the purposes of reporting to the South African Revenue Service;

- (2) obtain authorisation from the South African Revenue Service to establish a licensed warehouse and provide guarantees for duties payable on imports into the CSA;
- (3) comply with this Regulation, all other applicable legislation and standards and the terms of the operator permit;
- (4) ensure that IDZ enterprises within the Industrial Development Zone comply with this Regulation and other applicable legislation and standards;
- (5) maintain adequate and proper financial records and accounts and other records relating to the operation of the IDZ; and
- (6) report to the Board on the development and operation of the IDZ as required by its IDZ operator permit or by written notice of the Board.

(b) A contract concluded between an IDZ operator and another person to perform any of its functions shall not relieve the IDZ operator of its responsibilities under this Regulation, any other legislation or the IDZ operator permit.

Regulation 20.

Transfer of an IDZ Operator Permit

- (a) An IDZ operator may transfer its interests in an IDZ to another company, provided such company is the holder of a valid IDZ provisional or IDZ operator permit.
- (b) For the purposes of taking transfer of the interests referred to in sub-section (a), the transferee shall:
- (1) Comply with the requirements contained in regulations 5 and 16 of this Regulation;
 - (2) Apply for an IDZ operator permit in the manner prescribed by regulation 17 of this Regulation;
 - (3) Indicate within the application any changes that it wishes to make to the original development, business and operating plan of the subject IDZ;
 - (4) Notwithstanding the contents of regulation 17, sub-section (b) (6) of this Regulation, be required to hold financial resources equal to 20% (twenty percent) of the remaining total development costs of the subject IDZ at the time of issue of a provisional or final IDZ operator permit.

CHAPTER VI:

DEVELOPMENT AND OPERATION OF AN **IDZ**

Regulation 21.

Progression from Provisional to Operator Permit

- (a) Provided that the provisional IDZ operator shall have reached the milestones set out in its business plan and complied with requirements contained in the provisional IDZ operator permit, a provisional IDZ permit holder shall have automatic right of progression to an IDZ operator

permit issued by the Board in terms of regulation 17 upon lodging an application compliant with regulation 16.

- (b) An IDZ operator shall be required to obtain an IDZ operator permit within 12 (twelve) months of the issue of a provisional IDZ permit, failing which the Board shall be entitled to withdraw the provisional IDZ operator permit.
- (c) Should reasons beyond the control of the provisional IDZ operator prevent the IDZ operator from obtaining the IDZ operator permit within 12 (twelve) months of the issue of a provisional IDZ permit, the Board may, in its sole discretion, extend the period by which the provisional IDZ operator permit holder shall obtain the IDZ operator permit to 24 (twenty four) months, provided that:
 - (1) the provisional IDZ operator shall have furnished written motivation to the board not later than 6 (six) months after the issue of a provisional IDZ permit as to the reasons why the provisional IDZ operator permit holder will not progress to obtain an IDZ operator permit;
 - (2) the reasons furnished in accordance with regulation 21, sub-section (c) (1), are, in the Board's sole discretion, beyond the control of the IDZ operator;
- (d) No further extensions shall be granted by the Board to the provisional IDZ operator permit holder.
- (e) The Board shall consider the provisional IDZ operator permit holder's requirement for an extension as contemplated in sub-section (b) within 60 (sixty) days of receipt thereof.
- (f) The Board may, at its sole discretion during the extended period, amend the terms of the provisional IDZ operator permit issued in terms of regulation 12 of this Regulation.
- (g) The Board may, only during an extension period contemplated by regulation 21, consider further applications in respect of IDZ permits with regard to the subject IDZ, if, in the sole discretion of the Board, the IDZ operator is unlikely to progress to obtain an IDZ operator permit or make the IDZ operational within such extended period.

Regulation 22.

Enforcement of internal Rules and Procedures

- (a) An IDZ operator shall enforce internal rules and procedures to govern activities within the IDZ in compliance with the customs, security, environmental, and any other requirements in terms of any applicable law.
- (b) The IDZ operator shall ensure compliance by IDZ enterprises with these internal rules and procedures

through a system of sanctions for violators of such rules.

Regulation 23.

External Maintenance Requirements

- (a) IDZ operators shall remain responsible for maintaining the aesthetic appearance of the entire subject IDZ, including all buildings, roadways and walkways, pause areas, refuse areas and parking areas.
- (b) The responsibility described in sub-section (a) shall include maintaining the areas and buildings specified therein and keeping the areas and buildings specified therein free of refuse and waste materials.
- (c) Nothing in this regulation shall preclude the IDZ operator from delegating the responsibilities contained herein to IDZ enterprises within the subject IDZ, provided that the IDZ operator shall, at all times, remain responsible therefor.

Regulation 24.

Physical Security and Safety Requirements

- (a) In order to protect the safety of persons and goods, each IDZ must be constructed in accordance with the following requirements:
 - (1) A barrier, approved by customs officers to provide physical security shall be built around the entire perimeter of any customs secured area. This barrier may comprise metal fencing and/or masonry construction.
 - (2) An entrance and exit for persons and goods shall be located on the same segment of the CSA barrier, and shall be guarded on a permanent basis.
 - (3) The IDZ customs office shall be located within the IDZ at the entrance to the CSA in order to facilitate the inspection of in-coming and out-going persons and goods.
 - (4) All industrial and office buildings shall be constructed at least five (5) meters from the CSA barrier.
 - (5) Entrances and roads within the IDZ, including the CSA, shall be built in such a way as to facilitate the expedient movement of vehicles, machines, persons, and customs and security personnel.
 - (6) Adequate lighting, which must be operational at all times, shall be installed on a permanent basis throughout the IDZ and must illuminate the barrier surrounding the CSA.
- (b) Access into the IDZ shall be controlled by the IDZ security personnel, which security personnel shall be employed or contracted to the IDZ operator. Access into the CSA shall be controlled by the IDZ security personnel and by the customs officers assigned to that zone by the South African Revenue Service

*Regulation 25.**IDZ Entry/Exit Procedures*

- (a) It is a requirement of an IDZ operator that entrance and egress of an IDZ be strictly controlled.
- (b) It shall at all times be the responsibility of the IDZ operator to control entrance and egress to an IDZ and a CSA by requiring any person entering an IDZ or the CSA within it to display an identification badge at all times in accordance with the following categories:
- (1) IDZ operator personnel;
 - (2) IDZ enterprise personnel;
 - (3) IDZ security personnel;
 - (4) Customs officers;
 - (5) Temporary personnel (such as contractors and temporary personnel within categories 1 to 5 of regulation 25 sub-section (b)); and
 - (6) Visitors.

CHAPTER VII: PERMITTING AND FUNCTIONS OF IDZ ENTERPRISES

*Regulation 26.**The Industrial Development Zone Enterprise*

An IDZ enterprise permit shall be required for a company to operate a trading concern from within an IDZ.

*Regulation 27.**Application for IDZ Enterprise Permit*

- (a) All parties interested in obtaining an IDZ enterprise permit must submit an **IDZ enterprise permit application in the manner and form prescribed by the Board**. The application must also state whether the applicant wishes to locate an enterprise within the industries and services area or the CSA.
- (b) An applicant for an IDZ enterprise permit must be a company that –
- (1) has concluded an in principle lease or sale agreement with an IDZ operator in respect of premises within the subject IDZ; or
 - (2) is the holder of an enforceable option to lease or purchase premises within the subject IDZ, which option must be exercised if the permit is granted;
 - (3) In the case of an applicant for an IDZ enterprise permit entitling the bearer to operate an enterprise within the GSA,
 - (i) the land or building referred to in sub-sections, (b)

- (1) and (b) (2) must be within the CSA, and
 - (ii) have registered for import - export purposes with the South African Revenue Service.
- (c) The applicant shall submit three (3) copies of the application to the IDZ operator, one of which must be an original.
- (d) The IDZ operator shall within 15 (fifteen) days determine whether such application has been completed correctly and:
- (1) submit completed applications to the Board for subsequent review;
 - (2) return incomplete applications to the applicant for completion, detailing the missing information and/or contents.

Regulation 28.

, Review of the IDZ Enterprise Application

- (a) The Board shall within 60 (sixty) days of receipt of an application for an IDZ enterprise permit assess such application.
- (b) In reviewing the application, the Board shall have regard to the following:
- (1) whether the applicant is a company as defined in terms of this Regulation;
 - (2) whether the applicant has an agreement with an IDZ operator for purchase or lease of premises within the subject IDZ in terms of regulation 27(b);
 - (3) whether the applicant will engage in any activity that is prohibited within the IDZ by this Regulation or any other applicable law;
 - (4) whether the applicant has prepared, and had approved by the relevant organ of state, any environmental management assessment or similar plan required in terms of any applicable law; and
 - (5) the findings of credit worthiness and criminal record investigations.
- (c) Declarations made in the application shall be incorporated as part of the terms of the permit issued by the Board.
- (d) The Board shall not unreasonably withhold issuing of an IDZ enterprise permit to applications from enterprises falling within the industry focus of the subject IDZ.
- (e) If the Board decides that the application is compliant and satisfies the criteria for designation as an IDZ enterprise, the Board shall issue an IDZ enterprise permit to the applicant. The IDZ enterprise permit shall designate the applicant as an IDZ enterprise and shall state the duties, terms and conditions of the IDZ enterprise permit, including: –

- (~) the economic activities which the enterprise has been approved to conduct in the IDZ, as stated on the application or as otherwise amended by the Board;
 - (2) whether the IDZ enterprise may locate within the custom secured area;
 - (3) the duration of the IDZ enterprise permit which, in the case of leased premises, will match the length of the lease agreement;
 - (4) the date by which the IDZ enterprise must exercise an option to purchase or lease premises in the subject IDZ in terms of regulation 27(b) of this Regulation.
- (f) Should the Board deem the application to be non-compliant with the requisite criteria contained in this sub-section of the Regulations, the Board shall notify the applicant in writing by registered mail that its application has been declined.
- (g) Such notification in terms of sub-section (9) shall contain the reasons for the application's failure.
- (h) The applicant may, within 15 (fifteen) days of the Board's notification in terms of sub-section (9), re-submit its application, amended or amplified, to the Board and request a further consideration by the Board, which shall:
- (1) reconsider the application in accordance with the procedure provided in sub-section 28 (b) of this regulation;
 - (2) advise the applicant within 30 (thirty) days as to the success of its application by registered mail.
- (i) The Board may withdraw an IDZ enterprise permit should the successful applicant:
- (1) contravene this Regulation or any law of the Republic;
 - (2) contravene the customs and excise rules and procedures applicable to an IDZ enterprise by means of this Regulation.

Regulation 29.

Modification of IDZ Enterprise Activities

- (a) Any IDZ enterprise wishing to undertake activities that are substantially different from those stated on its permit must complete a new IDZ enterprise application and submit it to the IDZ operator, who shall convey it promptly to the Board. The Board shall review the application and provide the applicant with written notification of its decision to approve or decline the application within 60 (sixty) days of its receipt by the Board.
- (b) The Board shall have regard to the following in its review of an application by an IDZ enterprise to modify its trading activities:

- (1) The requirements of an applicant described in regulation 28 (b) of this Regulation;
- (2) The contents of the agreement between the IDZ operator and the IDZ enterprise.

Regulation 30.

Rights of an IDZ Enterprise

- (a) After receiving an IDZ enterprise permit from the Board, an IDZ enterprise shall have the right to:
 - (1) conduct within the IDZ, the economic activities and ancillary activities incidental thereto for which it has been authorised by means of an IDZ enterprise permit;
 - (2) contract with the IDZ operator or with another IDZ enterprise to buy, sell, lease or otherwise transfer premises within the subject IDZ;
 - (3) lease, own and make improvements to premises within the subject IDZ, subject to the restrictions imposed upon the IDZ by any agreement or relevant law;
 - (4) sell or sub-let any land or buildings to any company permitted to conduct business within the IDZ;
 - (5) subject to the provisions of the Customs and Excise Act, its regulations and this Regulation, import and export goods;
 - (6) contract for the purposes of conducting business from the subject IDZ;
 - (7) obtain financing for its enterprise, and
 - (8) enjoy any other right or privilege accorded to an IDZ enterprise in terms of this Regulation.
- (b) An IDZ enterprise having a permit authorizing it to be located in a customs secured area shall also have the right to:
 - (1) conduct any economic activities in the CSA that it is entitled to perform in terms of its permit;
 - (2) enjoy all rights and benefits accorded to IDZ enterprises located within the CSA of the subject IDZ;
 - (3) sell, lease or transfer any item, good or service to any IDZ enterprise located within an alternative CSA.

Regulation 31.

Responsibility of an IDZ Enterprise

An IDZ enterprise must operate its business in compliance with this Regulation and any other applicable legislation and standards, the rules established for the IDZ and in terms of its IDZ enterprise permit.

Regulation 32.

Transfer of an IDZ Enterprise Permit

- (a) An IDZ enterprise may transfer its interests in an IDZ to another company, provided such company is the holder of a valid IDZ enterprise permit.

- (b) For the purposes of taking transfer of the interests referred to in sub-section (a), the transferee shall:
- (1) comply with the requirements contained in regulations 27 and 28 of this Regulation;
 - (2) apply for an IDZ enterprise permit in the manner prescribed by regulation 28 of this Regulation;
 - (3) indicate within its application any changes it wishes to make to the original enterprise business and operating plan.

CHAPTER VIII: THE INDUSTRIAL DEVELOPMENT ZONE PROGRAMME

Regulation 33. Entitlement to industrial Development Zone Benefits

- (a) All IDZ operators and enterprises are entitled to the benefits and incentives of the South Africa IDZ programme in terms of this Regulation and other applicable law and as prescribed from time to time by the Minister.
- (b) All IDZ operators and enterprises conducting business in the customs secured area shall also enjoy the benefits and incentives attaching to businesses in the CSA in terms of this Regulation and other applicable law and as prescribed from time to time by the Minister.

Regulation 34. Eligibility for Benefits and Incentives

An IDZ operator or IDZ enterprise shall be entitled to apply for any other benefits or incentives offered from time to time by the Republic of South Africa

Regulation 35. One Stop Center

The IDZ operator, in co-operation with the relevant organs of state, and within the framework of cooperative agreements provided for in regulation 7, will establish a one-stop center at a central location within the Industrial Development Zone for receiving all applications and declarations by IDZ enterprises, ensuring their processing by the appropriate authorities and distributing all permits and approvals.

Regulation 36. Import/Export Incentives

The following import/export incentives shall apply within each customs secured area subject to the rules provided in this Regulation and other applicable law --

- (a) customs duties, levies, fees or similar financial obligations,

except for IDZ funding mechanisms provided under this Regulation, shall not apply to imports to a customs secured area from outside the customs territory and exports from a customs secured area to a destination outside the customs territory, including 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, provided that:

- (1) imported used capital equipment, machinery, tools and parts and vehicles shall not benefit from this exemption; and
 - (2) imported passenger and private cars and fuel imported shall not benefit from this exemption unless used solely within the CSA.
- (b) For the purposes of the Value-Added Tax Act (Act no. 89 of 1991), (the "VAT" act):
- (1) goods imported into the customs secured area of an IDZ 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 VAT Act;
 - (2) the supply under sale or installment credit agreement of goods consigned or delivered by a vendor in the Republic, to a registered vendor in the customs secured area of an IDZ shall, subject to the provisions of section 11(3) of the VAT Act, be subject to value-added tax at the rate of zero percent in terms of section 11(1)(a) of the VAT Act;
 - (3) goods supplied under sale or installment sale agreement and removed by a registered vendor situated in the customs secured area of an IDZ shall be subject to a refund of value-added tax in accordance with the provisions of the Export Incentive Scheme and section 44(9) of the VAT Act; and
 - (4) supplies of goods out of an IDZ into the Republic shall be subject to value-added tax when cleared for home consumption in the Republic by the Controller for Customs in the Industrial Development Zone.
- (c) Sales from a customs secured area to the customs territory shall be deemed to be imports governed by the Customs and Excise Act (Act 91 of 1984) ("the Customs and Excise Act") and related legislation and subject to normal customs policy.
- (d) Sales from the customs territory to a customs secured area shall be deemed to be exports from South Africa, and as such, shall be governed by the Customs and Excise Act and related legislation and subject to normal customs

policy. Such **sales** shall receive benefits and incentives granted to exporters under South African law provided that such sales shall not qualify for support within the Export Marketing and Investment Assistance Scheme.

CHAPTER IX. CUSTOMS RULES AND PROCEDURES

Regulation 37.

Extra-territoriality of CSA for Customs Purposes

- (a) The customs secured area of an Industrial Development Zone shall be deemed to be an export country for customs purposes.
- (b) The Customs and Excise Act and related legislation shall be enforced in respect of the entry of goods into and exit of goods from the customs secured area.
- (c) The Commissioner for the South African Revenue Services may make rules in terms of section 120 of the Customs and Excise Act to provide efficient and expedited customs procedures for Industrial Development Zones consistent with the purposes of this Regulation and the rules of this Chapter.

Regulation 38.

Customs Offices within IDZS

- (a) Each IDZ shall contain a IDZ customs office, which office shall be staffed by customs officers.
- (b) An IDZ customs office shall have the following responsibilities with respect to the CSA –
 - (1) the enforcement of physical security measures;
 - (2) random inspections of incoming merchandise when such merchandise is unloaded at the premises of any IDZ user;
 - (3) random inspections of outgoing merchandise when such merchandise is loaded at the premises of any IDZ enterprise;
 - (4) the inspection of IDZ produced merchandise in the inventories of any IDZ user;
 - (5) maintaining records of IDZ produced merchandise entering and leaving the CSA;
 - (6) preparing and submitting reports as required by this Regulation and other applicable law.
- (c) The operational and equipment costs of the IDZ customs office in each IDZ shall be borne by the IDZ operator of a subject IDZ. Each IDZ operator will provide customs officers with appropriate office facilities located within, and at the entrance of, the CSA. In order to expedite customs

formalities, these office facilities shall be equipped with the equipment required for their operation, including computer terminals and printers appropriate for customs record-keeping requirements, as well as telephone, telex, and facsimile machines. The facilities to be provided shall be defined in the operational manual for the administration of a CSA prepared by the South African Revenue Service.

- (d) The salaries of customs officers during normal working hours shall be paid by the South African Revenue Service. All work conducted by customs officers outside of normal working hours shall be paid for directly by the IDZ operator.
- (e) IDZ operators and enterprises located within a CSA shall permit customs officers access to their premises, facilities and accounting records in order to conduct merchandise examinations and inventory checks, to review records, and to carry out other lawful tasks. IDZ operator and enterprise personnel will provide customs officers with explanations of all records and operating procedures as needed, furnish special equipment necessary for conducting such inspections such as weighing equipment or protective clothing, and will cooperate with customs officers to ensure the prompt completion of customs duties.

Regulation 39.

Customs Procedures to Facilitate IDZ Operations

- (a) Except under exceptional circumstances, customs approvals, inspections and controls shall be carried out within 24 hours from the time that the documents are received for processing by the competent IDZ customs office.
- (b) Official documents forwarded to an IDZ customs office by facsimile, as well as photocopied documents, shall be valid for administrative purposes and must be processed in order to provide the requested service timeously. However, the originals of such documents must be retained by the IDZ user and made available to customs officers upon request.

Regulation 40.

Physical Controls

- (a) Customs officers assigned to each IDZ customs office shall be responsible for ensuring that the physical and security requirements of CSAS are maintained at all times.
- (b) Customs officers shall enforce the security requirements of a CSA required by this regulation by means of:
 - (1) the posting of security personnel and/or customs officers at strategic locations throughout the CSA;
 - (2) the control of entrance and egress to the CSA;

- (3) the use of appropriate documentation which regulates the entrance and egress of merchandise and materials.

Regulation 41.

Procedures Regarding Imports

- (a) The IDZ entry declaration for the transfer of goods into an IDZ shall include detailed documentation stating the origin, destination, identity, quantity and value of the goods concerned. This documentation shall consist of all normal international shipping documents and shall include the following:
- 1) commercial invoice;
 - 2) bill of lading (either an airbill or waybill);
 - 3) packing list;
 - 4) certificate of origin; and
 - 5) any other commercial documentation which establishes the merchandise identity, quantity, owner, value, source, destination, and other associated information.
- (b) Pro-forma invoices or other documents will be accepted only in unusual situations and only for provisional use until the final documents are made available.
- (c) The entry declaration and accompanying documentation may be submitted to the customs officers at the port of entry either at the time of arrival of the goods, or when the supporting documentation becomes available. The customs office at the port of entry will accept and process the entry declaration and supporting documentation as soon as it is received, even if submitted before the arrival of the goods, and customs policies and personnel shall encourage and support pre-arrival processing whenever possible.
- (d) The customs officers shall review the entry declaration to ascertain compliance with the provisions of the Customs and Excise Act and, in case of conformity, process and accept the entry thereby awarding release of the merchandise. Such acceptance shall amount to authorization for such goods to leave the port of entry and to be transferred to the IDZ. No other authorization shall be necessary. The customs officers shall verify that the container seal is intact and release the merchandise from the port of entry, without inspection, to the zone of destination under the authority of the consignee, owner, or designated agent.
- (e) The deferral of merchandise inspection and examination at the port of entry is a privilege provided by the government to all IDZ entities that have not violated pertinent laws and regulations and have not otherwise demonstrated a lack of

competency and/or trustworthiness. This privilege may be temporarily suspended for IDZ operators or enterprises that have been found to violate such laws and refutations under the procedures provided in this Regulation.

- (f) Until the merchandise arrives at the IDZ destination, the consignee or owner shall retain all responsibility for ensuring the safety of the merchandise and will be required to pay all duty, import taxes, and any assessed fines and penalties on merchandise that does not arrive at the IDZ. The owner or consignee, however, shall not be required to post a bond or guarantee for the goods during transit.
- (g) A copy of the entry declaration shall be presented to the customs officer at the IDZ to document the arrival of the merchandise at the IDZ and to enable the entry of the goods into the CSA. The entry declaration shall be supported by detailed documentation establishing the identity, quantity, and origin of such goods.
- (h) Upon the arrival of the goods at the premises of the recipient within the CSA, the IDZ entry and supporting documents must be presented to the IDZ customs office before the container or merchandise is unloaded or unpacked. If deemed necessary, a customs officer may conduct random inspections during the breaking of the customs seal and the opening and examining of the container or package. The customs officer shall verify that no prohibited or restricted articles or materials are included in the shipment, and that the accompanying documentation is in accordance with the actual goods being inspected.
- (i) Upon the entry of the goods into the CSA and following inspection and verification by the IDZ customs office, the IDZ customs office shall prepare a report on the results of its verification clearly showing the quantities received, surpluses, possible deficits, and consistency with the related commercial documents.
- (j) Should any discrepancies be detected by customs inspectors between the shipping documents and the content of the goods, the Board must be notified of such discrepancies at this time.

Regulation 42.

Procedures Regarding Exports

- (a) The IDZ entry and supporting documents must be presented to the IDZ customs office before the goods are packed for export. Such exports from a customs secured area to a destination outside the customs territory shall be inspected by customs officers, if deemed necessary, before they are removed from the CSA;
- (b) Prior to the loading and shipment of goods for export, the

representative of the IDZ enterprise shall submit to the IDZ customs office an application for the transfer of goods from the zone for export. All transfers from the CSA shall be reported and authorized on a copy of the applicable IDZ declaration upon which the merchandise was originally entered into the CSA.

- (c) The IDZ customs office shall, when deemed necessary, take steps to examine the goods to be transferred to ensure that no prohibited articles are included, and to ensure that the merchandise corresponds with the accompanying documentation. Should such examination be undertaken, it shall be conducted at the premises of the IDZ user exporting the goods, prior to loading. Once the customs supervision is completed and approval obtained, the IDZ enterprise may package or containerize the material in preparation for shipment.
- (d) Following the packaging or containerizing of the goods, the customs officer may choose to witness the sealing of the packages or containers and allow the shipment to be transferred to the port of exit. The seal will be verified at the port of exit on request by the IDZ customs office. The approved IDZ transfer declaration, bearing the stamp of customs approval, shall be the only authority needed for the IDZ enterprise to remove the merchandise from the zone and transfer it to the international carrier.
- (e) Until proof is furnished to the effect that the merchandise has been transferred to the port of embarkation, the consignor or owner shall assume all responsibility for ensuring the safety of the merchandise and will be required to pay all applicable duties, import taxes, and any assessed fines or penalties on merchandise which does not arrive at the port of embarkation. The owner or consignor, however, shall not be required to post a bond or guarantee for the goods during transit.
- (g) Once the goods have exited the CSA, the IDZ customs office shall prepare a detailed report, indicating the description, quantities, and destination of the goods in question.
- (g) The procedures provided in sub-sections (b) to (f) above shall also apply in the case of sales and transfer of goods between customs secured areas.
- (h) Merchandise arriving at the port of exit shall be placed under the custody of the local customs personnel, pending loading on the exporting vessel. The customs officers at that location shall ensure that the custom seals are unbroken. If the seals are unbroken, the customs officers shall immediately authorize, under customs supervision, the loading of the goods for export.

- (i) The customs officers at the port of exit shall not open the container or package or inspect IDZ merchandise destined for export unless the customs seals are broken or otherwise show evidence of tampering.
- (j) The deferral of merchandise inspection and examination at the point of embarkation is a privilege provided to all IDZ enterprises and operators that have not violated pertinent laws and regulations, and that have not otherwise demonstrated a lack of competency and/or trustworthiness. This privilege may be temporarily suspended for IDZ enterprises and operators that have been found to violate such laws and regulations in accordance with the procedures provided in this Regulation.

Regulation 43.

Sales to the Customs Territory

- (a) Sales from the CSA into the customs territory shall be considered as imports and assessed for all applicable custom duties and taxes as provided for in the Customs and Excise Act and other applicable legislation.
- (b) Prior to the loading and shipment of goods for consumption in the customs territory, the representative of the IDZ enterprise transferring the goods into the customs territory shall submit to the IDZ customs office an application for the transfer of goods from the CSA to the customs territory.
- (c) The IDZ customs office shall, at their discretion, examine the goods to be transferred and supervise the loading at the premises of the IDZ user exporting the goods. Upon approval of the supervising customs officer, the IDZ user may package or containerize the material in preparation for shipment. The customs officer may witness the sealing of the container if deemed necessary.
- (d) Goods entering the customs territory from a CSA will be accompanied by the approved zone transfer declaration bearing the stamp of customs approval, and an entry declaration for consumption prepared in accordance with the applicable regulations. At the time of entry of such goods into the national customs territory, customs officers shall assess such taxes and duties as may be due.
- (e) IDZ enterprises and operators shall be able to sell damaged, sub-standard, or sample goods without restriction to the customs territory, subject to the payment of all applicable taxes and duties and in conformance with all applicable legislation and standards.

Regulation 44.

Temporary Entry of IDZ Goods into the Customs Territory

- (a) IDZ enterprises and operators shall be permitted to

temporarily import duty-free goods from the CSA into the customs territory for maintenance and repairs or for exhibition at publicity events or for other promotional purposes. Such imports may be made in small quantities only, may not include samples of goods which are intended to be distributed as promotional items, and may not be imported for a period of longer than 2 weeks.

- (b) IDZ enterprises and operators wishing to import temporarily such goods must provide the IDZ customs office with a detailed list of such goods, including complete descriptions, sizes, and quantities to be imported. Customs shall inspect such temporary imports upon entry into South Africa from a CSA.
- (c) Customs shall inspect such temporary imports upon their return to the CSA. Any discrepancy between these items and the list of goods originally submitted to customs will be the responsibility of the IDZ user, and full duties and any other taxes shall be assessed on these missing items.

Regulation 45.

/report of Goods from the Customs Territory

IDZ enterprises and operators shall keep separate accounting books for goods purchased from within the customs territory, and shall be able, at any time, to identify such goods held within and those transferred from the CSA.

Regulation 46.

Transfer of Goods Between CSAS

- (a) Duty-free merchandise may be transferred from one CSA to another CSA, in the same or another IDZ, on a permanent basis if documented with the proper transfer declaration and carried out in accordance with customs review and approval procedures governing imports into a CSA prescribed in regulation 41.
- (b) Duty-free merchandise may be transferred from one CSA to another CSA, in the same or another IDZ, for temporary purposes such as, but not limited to, repair, equipment loans, or cleaning services. Temporary transfers must be supported by the appropriate declaration and will be subject to customs review and approval procedures governing imports into a CSA prescribe in regulation 41 of this Regulation.

Regulation 47.

Record-Keeping Requirements

- (a) IDZ users shall keep complete accounting and inventory records relating to transfer of merchandise, equipment, and materials to and from the IDZS in a computer system capable of automatically exchanging information with the

IDZ operator.

- (b) The records shall clearly show the identity of all goods exempted from custom duties and taxes, be they of local or foreign origin. The records shall specify, in particular, if such goods have been received, shipped or stored; if they are manufactured within the CSA concerned; if they have been damaged within the said CSA, or if they have been lost or used within the CSA. All records shall be kept on a current basis and will be made available to customs officers for review and verification of actual inventory on-hand.
- (c) The IDZ operator shall operate an information system that collates the records of each IDZ enterprise on a current basis and capable of automatically exchanging information with the South African Revenue Services information system. The IDZ operator, and each IDZ enterprise located within a CSA, shall submit to the IDZ customs office, on a monthly basis, a complete report on the flow of goods, specifying:
- (1) the quantity and description of local or foreign goods that are available within the CSA at the beginning of the month in question;
 - (2) the quantity and description of local or foreign goods that are used within the CSA during that period;
 - (3) the quantity and value of goods imported into the CSA;
 - (4) the quantity and description of material consumed or wasted in the CSA with appropriate segregation of waste into valuable and non-valuable waste;
 - (5) the quantity and value of exports from the CSA and the country of export; and
 - (6) the stock of goods remaining in the CSA at the end of the period.
- (d) Failure by an IDZ enterprise to account for the consumption, **wastage** or sales of imports that it brought into a customs secured **area tax and** duty free shall constitute prima facie proof that such imports were transferred illegally to the customs territory, and the user concerned shall be liable for all duties, taxes and fines applicable under the Customs and Excise Act and related legislation.
- (e) Each IDZ customs office shall prepare and forward to the South African Customs Department, on a monthly basis, a complete report on the movement of incoming and outgoing goods within their respective zones, and consistent with their customs registers, inspection reports as well as authorization forms processed during that period. The report shall be submitted no later than 15 (fifteen) days after the end of the month in question. A copy of the report shall be provided to the Board at the same time.

- (f) The South African Customs Department shall prepare on a quarterly basis a consolidated report, comparing the monthly reports of IDZ operators and enterprises with those submitted by the IDZ customs offices, and prepare a summary report on IDZ customs activities. This report shall be made available to the Minister no later than 30 (thirty) days after the end of the quarter in question.

Regulation 48.

Fines and Penalties for Violations of Customs Procedures

- (a) Irregularities on the part of IDZ users may give rise to fines or penalties where they result from acts which result in:
- (1) prejudicing the amount of duties and taxes owed to the South African Revenue Service;
 - (2) introducing unauthorized goods and items into the IDZ or into the customs territory; or
 - (2) evading the provisions of this Regulation or other applicable legislation or standards.
- (b) IDZ enterprises and operators shall report to the IDZ customs office all shortages, overages, damaged merchandise, or other discrepancies noticed during or after the unloading of goods. The presence of a customs officer during the unloading process will not relieve the IDZ user of this responsibility.
- (c) The designated IDZ user will be responsible for all merchandise entered into its IDZ facilities and will be liable for duty, import taxes, and any fines and penalties for any merchandise determined to be missing or discovered to have exited the CSA without proper documentation and approvals.
- (d) IDZ users shall not be penalized for discrepancies between actual available quantities and the quantities shown on the official documents if it can be shown that a shortage resulted from reasonable causes. If, however, the Customs office is not satisfied that relief from liability is warranted, the IDZ user will be responsible for payment of all appropriate import duties and taxes as if the merchandise had been imported into the national customs territory for consumption, together with any applicable fines and penalties.
- (e) In each appropriate case, adequate adjustments shall be made to the books regarding discrepancies in the quantities of goods for which enterprises are to be subsequently accountable.
- (f) The Customs office shall be entitled to apply a system of fines and penalties against offenders of regulation 47 and regulation 48 in accordance with the Customs and Excise Act.

- (g) The Customs office shall, in its sole discretion, be entitled to suspend the benefits afforded IDZ users by this Regulation, should it be of the opinion that such benefits are being abused by the said IDZ users.
- (h) The Board shall be entitled to suspend or withdraw IDZ operator and enterprise permits, should it be of the opinion that the benefits afforded an IDZ user by this Regulation are being abused.

CHAPTER X: RESTRICTIONS ON IDZ ACTIVITIES AND GOODS

Regulation 49.

Prohibited Activities and Goods

- (a) All activities, and the manufacture of all goods in contravention of any South African Act shall be prohibited within an IDZ and a contravention of this regulation 49 (a) shall attract the penalties prescribed by law.
- (b) No person or company shall bring into or cause to be brought into an IDZ a substance or good, the possession of which is considered illegal or illicit or items prohibited by the laws of South Africa or binding international conventions to which South Africa is a signatory.
- (c) Companies who wish to manufacture goods, the manufacture of which requires special permits, license or legislative consent, shall acquire such special permit, license or legislative consent prior to the commencement of production and shall disclose their intention to manufacture such goods within their IDZ enterprise permit application.

CHAPTER XI: ENFORCEMENT AND DISPUTE SETTLEMENT

Regulation 50.

Enforcement of IDZ Requirements

- (a) IDZ users shall be required to comply with the requirements of the Act and this Regulation as well as all standards, conditions of permit and rules issued in respect of the subject IDZ. The Chairperson shall have the right to appoint an investigating officer to investigate any and all violations of this Regulation and or Act by IDZ users, without prior notice, in terms of powers granted in the Act.
- (b) It shall be the responsibility of the Board to enforce the requirements of the Act and this Regulation as contemplated in the Act.

- (c) The Board shall investigate or cause to be investigated any irregular conduct by an IDZ user.

Regulation 51.

Violation and Sanction

- (a) Should an investigation implemented in terms of regulation 50 (c), above, provide *prima facie* evidence of misconduct (including, but not limited to a contravention of regulations 49 and 50, above), then the Board shall:
- (1) perform its duties with due diligence and concern as to the rights of IDZ users;
 - (2) give written notice to the IDZ user deemed to have acted inappropriately and require, within 14 (fourteen) days of the date of such written notice, a written submission thereon;
 - (3) be entitled to suspend an IDZ user's permit, pending further investigation of the *prima facie* misconduct of such IDZ user;
 - (4) institute legal proceedings or cause legal proceedings to be instituted, as it may deem to be appropriate;
 - (5) in its sole discretion, be permitted to revoke an IDZ permit, where such action is deemed necessary.
- (b) Where the Board has suspended or revoked an IDZ permit in terms of regulation 51 (a), above, the prior holder of such IDZ permit may, within 30 (thirty) days of such suspension or revocation, appeal the Board's decision in writing and the Board shall consider such appeal within 7 (seven) days of the receipt thereof.
- (c) Nothing in this regulation 51 shall limit an IDZ user's right to legal recourse.

Regulation 52.

Dispute Settlement

- (a) Should a dispute pertaining to the administration of the IDZ programme in terms of this regulation arise between the Board and an IDZ user, and such dispute remain unresolved for a period of longer than 7 (seven) days, the parties shall refer such dispute to a mutually agreed upon practicing advocate, (or, failing agreement, by an advocate appointed by the president of the relevant bar association) who shall act as an expert and not as an arbitrator, in order to resolve such dispute expediently.
- (b) The parties to such dispute shall be guided by the decision of the advocate referred to in regulation 52 (a), above, but shall be entitled to seek legal recourse, as it may deem appropriate, save that, should the parties agree in writing to be bound by the decision of the advocate referred to in regulation 52 (a), above, then the parties to a dispute shall not be entitled to seek further recourse and such decision is final and binding.

- (c) IDZ users shall be required to include mechanisms for the resolution of disputes which may arise between IDZ enterprises and IDZ operators and IDZ enterprises *inferred*, provided that such disputes shall not be permitted to prejudice the operations of an IDZ.

Regulation 53.

Bankruptcy and Liquidation Measures

- (a) The liquidation of IDZ operators and enterprises shall be carried out in accordance with the laws and regulations relating to liquidations in force in the Republic of South Africa.
- (b) All liabilities incurred for reasons relating to liquidation shall be governed by the appropriate provisions of South African law.

CHAPTER XIII: FINAL PROVISIONS

Regulation 54.

Issuance of Board Decisions and Circulars

As needed, the Board may issue decisions and circulars in order to notify interested parties regarding the clarification, updating, or any other changes in procedures, rules, regulations and fines, or other matters pertinent to the operation of the South African IDZ programme.

Regulation 55.

Information Collection and Monitoring

- (a) Each IDZ operator and enterprise shall, in terms of their permit, provide the Board with all the relevant information required for monitoring the performance of the IDZ programme.
- (b) The Board shall publish, on a regular basis, a report discussing the progress and developments of the IDZ programme. Statistical data on IDZs shall be published only in aggregate form in a manner that does not violate the confidentiality of individual IDZ users or applicants.

Regulation 56.

Date of Effectiveness of the IDZ Regulations

These Regulations shall take effect upon issuance by the Minister and publication in the *Gazette*.

A. Erwin
Minister of Trade and Industry

17 November 2000