

PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 6 OF 2016

BY THE

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

**COMMENCEMENT OF THE SPECIAL ECONOMIC ZONES ACT, 2014
(ACT NO. 16 OF 2014)**

In terms of section 42 of the Special Economic Zones Act, 2014 (Act No. 16 of 2014), I hereby determine that the Act shall come into operation on the date of publication of this proclamation.

Given under my Hand and the Seal of the Republic of South Africa at PRETORIA this 27 day of JANUARY Two Thousand and Sixteen.



PRESIDENT

By order of the President- in-Cabinet

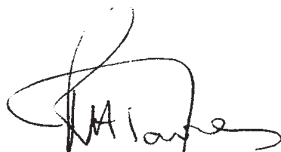


MINISTER OF THE CABINET

5 **DEPARTMENT OF TRADE AND INDUSTRY**

10 **REGULATIONS MADE IN TERMS OF SECTION 41 OF THE SPECIAL
ECONOMIC ZONES ACT, 2014
(ACT NO. 16 OF 2014)**

- 15 1. By virtue of the powers vested in me in terms of section 41 of the Special Economic
Zones Act, 2014 (Act No. 16 of 2014), I Rob Davies, Minister of Trade and
Industry, hereby –
- (a) make the Regulations embodied in Schedule A hereto; and
 - (b) determine that the Regulations will come into effect on the date of
20 commencement of the Special Economic Zones Act, 2014 (Act No. 16 of
2014).

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**DR ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY**

30 **DATE: 11/12/15**

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SCHEDULE A
REGULATIONS IN TERMS OF THE SPECIAL ECONOMIC ZONES ACT, 2014

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SCHEDULE 1: FEASIBILITY IN TERMS OF SECTION 23(3)(b) OF THE ACT

1. Interpretation

(1) In these Regulations, unless the context indicates otherwise-

(a) “**Business incubators**” means physical, or virtual facilities that support the development of early stage small and medium enterprises through a combination of business development services, funding and access to the physical space necessary to conduct business;

(b) “**Fund**” means the Special Economic Zones Fund contemplated in section 20 of the Act;

(c) “**Income Tax Act**” means the Income Tax Act, 58 of 1962,

(d) “**Infrastructure development**” includes land preparation, clearing and levelling land, storm water drainage, connecting and access roads, electrical sub-stations, storage treatment and pumping of water and sewerage, fencing, landfills, security, lighting, communications infrastructure, waste to energy co-generation and clean energy infrastructure;

(e) “**Site preparation**” means site preparation necessary to enable businesses to locate within the Special Economic Zone including:

(i) costs associated with enabling utility connections to bulk utility supply and providing road access to businesses within that Special Economic Zone; or

(ii) specialist infrastructure for the benefit of one or more businesses locating in that Special Economic Zone, including a top structure that enhances the service capability and competitiveness of that Special Economic Zone.

(f) “**SMEs**” means small and medium enterprises; and

(g) “**the Act**” means the Special Economic Zones Act, 16 of 2014.

(2) A word or expression that is defined in the Act bears the same meaning in these Regulations as in the Act, unless the context indicates otherwise.

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- (3) A reference to a section number in these Regulations refers to the corresponding section of the Act.

2. Sources of funds of the Special Economic Zones Fund

5 The Special Economic Zones Fund consists of money voted by Parliament as part of the appropriation of the Department and interest on investments.

3. Administration and management of the Special Economic Zones Fund

- (1) The Special Economic Zones Fund must be administered and managed in accordance with the Public Finance Management Act.

- 10 (2) The Minister shall establish an Adjudication Committee, chaired by the Director-General, to consider applications for monies from the Fund and make recommendations to the Minister.

- 15 (3) Any money in the Special Economic Zones Fund not required for immediate use may be invested in accordance with an investment policy approved by the Minister that complies with the requirements of the Public Finance Management Act and may be withdrawn when required.

4. Distribution of money from the Special Economic Zones Fund

- (1) All monies distributed from the Fund must be used to achieve the objects of the Act contemplated in section 2 of the Act and purpose of Special Economic Zones contemplated in section 4 of the Act.

- 20 (2) Monies in the Fund may be distributed for:

- (a) feasibility studies;
- (b) start-up costs;
- (c) site preparation;
- (d) infrastructure development;

- (e) business development and performance improvement;
- (f) business incubators;
- (g) skills development; and
- (h) initiatives to support industrialisation and economic growth and achieve the purpose of Special Economic Zones as identified in the Special Economic Zones Policy (referred to in section 5 of the Act) and Strategy (referred to in section 6 of the Act).

(3) **Feasibility studies**

An applicant contemplated in section 23(1) of the Act may apply for monies from the Fund to conduct a feasibility study to support the establishment, planning and development of a Special Economic Zone.

(4) **Start-up costs**

(a) An applicant contemplated in section 23(1) or a licensee contemplated in section 23(6) of the Act may apply for monies from the Fund for non-recurring start-up costs associated with setting up the Special Economic Zone, including accountant's fees, legal fees, registration charges, marketing costs and employee training.

(b) An applicant or licensee will only be eligible for start-up costs incurred in the first three years of operation of the Special Economic Zone.

(5) **Site preparation**

An applicant may apply for monies from the Fund for site preparation necessary to enable businesses to locate within the Special Economic Zone.

(6) **Infrastructure development**

An applicant may, apply for monies from the Fund for infrastructure development within a Special Economic Zone.

(7) **Business development and performance improvement**

(a) An applicant may apply for monies from the Fund for business development and performance improvement of a Special Economic Zone including expenditure associated with:

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(i) improving supplier and supply chain competitiveness;

(ii) initiatives that reduce time between operating cost and revenue breakeven;

(iii) initiatives that reduce utility and facility maintenance costs and result in improved operating models; and

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(iv) environmental impact improvement initiatives including green building compliance, emission control, water preservation, waste management and control, waste-to-energy initiatives and energy co-generation initiatives.

(8) **Skills development**

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An applicant may apply for monies from the Fund for skills development programmes and initiatives.

(9) **Business incubators**

An applicant may apply for monies from the Fund in order to deliver services offered by a business incubator to SMEs.

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(10) **Funding options and funding agreement**

(a) Monies in the Fund may be awarded in the following manner:

(i) a grant, with conditions;

(ii) a matching, grant with conditions, in terms of which the Fund will provide a portion of the funds applied for and the applicant will provide either:

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- (aa) funds equal to the amount provided by the Fund; or
- (bb) the remaining portion of the total application for funds.
- (b) A successful applicant for funds must conclude a funding agreement with the Department regulating the terms and conditions upon which the funds have been granted including:
- (i) the purpose for which the funds have been granted;
- (ii) the manner in which the use of the funds will be monitored, to ensure compliance with the purpose and terms and conditions on which the funds have been granted; and
- (iii) remedies for breach of the funding agreement which may include repayment of funds granted to the applicant and instituting legal proceedings against the applicant to recover funds granted.
- (11) The Director-General must monitor the implementation and use of the monies distributed from the Fund and report to the Minister on an annual basis on how the monies distributed from the Fund have been used.

5. Requirements for an application for monies from the Special Economic Zones Fund

- (1) The Minister must, from time to time, publish the procedure to be followed when applying for monies from the Fund.
- (2) An applicant must submit the application to the Director General:
- (a) at the street address of the Department, or
- (b) by registered post remitted to the postal address of the Department.
- (3) An applicant must submit the following information and documents:
- (a) the name, address, and contact information of the applicant;
- (b) full and detailed grounds on which the application is based;

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- (c) a project motivation that explains the importance of the initiative for which the applicant is seeking funds;
 - (d) a detailed business plan and budget for the project; and
 - (e) a feasibility study as contemplated in Schedule 1 to the Regulations, unless the application is for funding for a feasibility study.
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- (4) The Adjudication Committee may, after receipt of an application –
 - (a) provide the applicant with a written acknowledgement of receipt of the application within 3 days of receipt of the application;
 - (b) request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary within 7 days of receipt of the application; and
 - (c) conduct such investigation and/or inspection of the applicant as may be deemed necessary in the circumstances.
 - (5) The Adjudication Committee must consider an application and recommend to the Minister whether or not to approve the application for funds.
 - (6) The Minister, after considering the recommendation of the Adjudication Committee:
 - (a) may grant the application, with conditions; and
 - (b) must inform the applicant in writing of the decision.
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6. Support measures for operators operating within a Special Economic Zone

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- (1) An operator operating within a Special Economic Zone may qualify for the following support measures:
 - (a) tax relief applicable to a business in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), the Customs and Excise Act, 1964 (Act 91 of 1964) and the Customs Duty Act 2014 (Act 30 of 2014); or

(b) any other support measure applicable to qualifying operators as may be determined from time to time.

(2) An operator must comply with this Act and criteria stipulated in other relevant legislation, including the Income Tax Act, 58 of 1962, the Employment Tax Incentive Act, 26 of 2013, the Value Added Tax Act, 89 of 1991, Customs and Excise Act, 91 of 1964 and the Customs Duty Act 30 of 2014 in order to qualify for the support measures.

7. Support measures for businesses located within a Special Economic Zone

(1) A business prescribed in terms of section 24(4) of the Act that is located within a Special Economic Zone may qualify for the following support measures:

(a) tax incentives in terms of the Income Tax Act and Employment Tax Incentive Act, 2013 (Act 26 of 2013);

(b) tax relief applicable to a business in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), the Customs and Excise Act, 1964 (Act 91 of 1964) and the Customs Duty Act 2014 (Act 30 of 2014); or

(c) any other support measure applicable to a business prescribed in terms of section 24(4) of the Act, as may be determined from time to time.

(2) A business located within a customs controlled area of a Special Economic Zone as defined in Section 21A (1) of the Customs and Excise Act, 91 of 1964 may be subject to such controls and procedures as the Commissioner for the South African Revenue Services may prescribe by rule, which may include exemption from customs duties and levies and exemption from Value Added Tax.

(3) A business must comply with this Act and criteria stipulated in other relevant legislation, including the Income Tax Act, the Employment Tax Incentive Act, 26 of 2013, the Value Added Tax Act, 89 of 1991, Customs and Excise Act, 91 of 1964 and the Customs Duty Act, 30 of 2014 in order to qualify for the support measures.

8. Application for designation

- (1) National government, a provincial government, a municipality, and a public entity a municipal entity or a public-private partnership may apply to the Minister for a specified area to be designated as a Special Economic Zone.
- 5 (2) An application for designation must be in writing and must comply with the requirements in section 23(2) and section 23(3) of the Act. In addition, the applicant must indicate:
- (a) the manufacturing activity or internationally tradable service that the Special Economic Zone intends to engage in;
- 10 (b) whether the Special Economic Zone intends to target a local or export market; and
- (c) where the Special Economic Zone intends to be located, either anywhere in the Republic of South Africa, a port of entry or in a custom controlled area.
- (3) An applicant must address the matters in Schedule 1 to the Regulations when
15 preparing a feasibility study required in terms of section 23(3)(b) of the Act.
- (4) An applicant must submit an application addressed to the Chairperson of the Advisory Board:
- (a) at the street address of the head office of the Advisory Board, or
- (b) by registered post remitted to the Chairperson of the Advisory Board at the
20 postal address of the head Advisory Board.
- (5) The Advisory Board:–
- (a) must provide the applicant with a written acknowledgement of receipt of the application within five days of receipt of application;
- (b) must assess the application to determine whether the application is complete
25 and must inform the applicant in writing of any outstanding information or documents required within 30 days of receipt of the application;

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- (c) may request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary;
- (d) may conduct such investigation in terms of the Act into any matter related to the application as may be deemed necessary in the circumstances; and
- (e) may conduct such inspection in terms of the Act of the applicant or any other party related to the application as may be deemed necessary in the circumstances.
- (6) The Advisory Board must consider the application and recommend to the Minister whether or not an area must be designated as a Special Economic Zone, within five months of receiving the complete application as contemplated in sub-regulation (5)(b) above.
- (7) The Minister must, within two months of receiving the recommendation of the Advisory Board as contemplated in sub-regulation (6) above, decide whether or not to designate an area as a Special Economic Zone as contemplated in section 23(6) of the Act.
- (8) The time period contemplated in sub-regulations (6) and (7) above may be extended on good cause shown.
- (9) If the Minister decides not to grant the application to designate a specified area as a Special Economic Zone, the Minister must:
- (a) inform the applicant of the decision in writing; and
- (b) provide the applicant with reasons for the decision.
- (10) An unsuccessful applicant may submit a new application for a specified area to be designated as a Special Economic Zone, as provided for in the Act.

9. Type of service and business that may locate in a Special Economic Zone

(1) The following types of service or business are eligible to apply to locate in a Special Economic Zone:

- (a) a business conducting manufacturing activities;
- (b) a business performing internationally tradable services; or
- (c) a business providing warehousing and distribution and logistics services.

(2) A service or business, other than a service or business contemplated in Regulation 9(1), may apply to locate in a Special Economic Zone provided that such a service or business:

- (a) provides services or sell goods which support the businesses located in the Special Economic Zone; and
- (b) the number of services or businesses and the area they occupy in the Special Economic Zone does not exceed the number and area provided for in the Guidelines.

(3) A business that has been approved to locate in the Special Economic Zone shall not by virtue of such approval qualify for the support measures contemplated in Regulation 7.

10. Application by business or service to locate in a Special Economic Zone

(1) An application by a business or service to locate in a Special Economic Zone must be in writing and must be submitted to the Chairperson of the Special Economic Zone Board:

- (a) at the street address of the head office of the Special Economic Zone Board, or
- (b) by registered post remitted to the Chairperson of the Special Economic Zone Board at the postal address of the head Special Economic Zone Board.

(2) An application by a business or service to locate in a Special Economic Zone must comply with the Act these Regulations and must contain:

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- (a) the licences, registrations or permits required by the business or service to conduct its operations; and
 - (b) a business plan.

(3) The Special Economic Zone Board:

- 5 (a) must provide the applicant with a written acknowledgement of receipt within seven days of receipt of the application;
- (b) may request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary, within thirty days after receipt of the application; and
- 10 (c) may conduct such investigation and/or inspection of the applicant or request the applicant to make oral submissions to the Special Economic Zone Board as may be deemed necessary in the circumstances.

11. Governance and management of a Special Economic Zone

- 15 (1) The founding documents of a Special Economic Zone Board must provide for the following matters:
 - (a) Board role and responsibilities;
 - (b) Board membership and term;
 - (c) Chairperson of Board;
 - (d) Board committees;
 - 20 (e) Board meetings;
 - (f) Board performance;
 - (g) conflict of interest; and
 - (h) review of founding documents.

(2) The Code of Conduct shall regulate the following matters:

- (a) purpose;
- (b) obligation to comply with Code of Conduct;
- (c) compliance with laws and policies;
- 5 (d) conflict of interest;
- (e) care and diligence
- (f) confidentiality;
- (g) reporting unlawful and unethical conduct; and
- (h) review of Code of Conduct.

10 **12. Special Economic Zone operator permit**

(1) An application for a Special Economic Zone operator permit must be in writing and must be submitted to the Chairperson of the Advisory Board:

- (a) at the street address of the head office of the Advisory Board, or
- 15 (b) by registered post remitted to the Chairperson of the Advisory Board at the postal address of the head office of the Advisory Board.

(2) An application for a Special Economic Zone operator permit must contain-

- (a) the name, address, and contact information of the applicant;
- (b) confirmation in writing that the Special Economic Zone Board has complied with section 31 of the Act when appointing the applicant;
- 20 (c) the proposed contractual agreement between the applicant and the Special Economic Zone Board;
- (d) an operational plan;

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- (e) information on the applicant's current size, capacity, financial status, access to financial resources, references and operational standards;
- (f) information on the applicant's experience, skills and qualifications of the applicant's management team;
- 5 (g) information on the proposed number of employees, skills and proposed organogram of the applicant.
- (3) The Advisory Board:
- (a) must provide the applicant with a written acknowledgement of receipt within seven days of receipt of the application;
- 10 (b) may request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary, within thirty days after receipt of the application; and
- (c) may conduct such investigation and/or inspection of the applicant or request the applicant to make oral submissions to the Advisory Board as may be
- 15 deemed necessary in the circumstances.
- (4) If the Minister decides not to grant the application for an operator permit he shall:
- (a) inform the applicant of the decision in writing;
- (b) provide the applicant with reasons for the decision.
- (5) The unsuccessful applicant may submit a new application for an operator permit, as
- 20 provided for in these Regulations.

13. Reporting duty of Advisory Board

- (1) The Advisory Board shall report to the Minister twice in any financial year on the progress relating to the establishment and development of Special Economic Zones in the Republic.
- 25 (2) The Report must include-

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- (a) the number of applications for designation as a Special Economic Zone during the period under review;
 - (b) the number of applications for designation as a Special Economic Zone that have been approved during the period under review;
 - (c) the number of applications for operator permits received during the period under review;
 - (d) the number of applications for operator permits that have been approved during the period under review;
 - (e) the number of applications for transfer of operator permits received during the period under review;
 - (f) the number of applications for transfer of operator permits that have been approved during the period under review;
 - (g) a summary of the status, operations and progress in each designated Special Economic Zone;
 - (h) a summary of any challenges in establishing and developing Special Economic Zones including proposals on dealing with the challenges identified; and
 - (i) any other matter relating to the establishment and development of Special Economic Zones.

14. Transitional arrangements

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- (1) An industrial development zone operator must, within twelve months of commencement of the Act, submit a plan with timelines to the Director-General on the how the industrial development zone will comply with the framework regulating Special Economic Zones as contemplated in section 39(5) of the Act including:
 - (a) compliance with the governance and management obligations for a Special Economic Zone as contemplated in section 25 of the Act;

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- (b) compliance with reporting obligations for a Special Economic Zone as contemplated in sections 26, 27 and 28 of the Act;
 - (c) compliance with the obligations to appoint an operator as contemplated in section 31 of the Act;
 - (d) compliance with the functions of an operator contemplated in section 35 of the Act; and
 - (e) compliance by businesses located in the industrial development zone with the obligations contemplated in section 24(4) and section 38 of the Act.

SCHEDULE 1: FEASIBILITY IN TERMS OF SECTION 23(3)(b) OF THE ACT**15. Compliance of feasibility study with Guidelines**

5 A feasibility study as contemplated in section 23(3)(b) of the Act must comply with the published Guidelines.

16. Feasibility study

- (1) A feasibility study contemplated in section 23(3)(b) of the Act must provide amongst other things:
- (a) A statement of intent and executive summary;
 - 10 (b) A general overview of the area where the Special Economic Zone is intended to be located, including information on and analysis of:
 - (i) demographic profile of the population of the area;
 - (ii) socio-economic profile of the area including the rate of unemployment, education, health and human development profile;
 - 15 (iii) economic profile of the area including an analysis of existing enterprises by size and sector within the municipal boundaries of the proposed Special Economic Zone; and
 - (iv) availability of utilities at municipal and provincial level.
 - 20 (c) Economic rationale for the application for designation of a Special Economic Zone including information on and analysis of, amongst other things:
 - (i) projected outputs and expected key outcomes of the Special Economic Zone;
 - (ii) projected economic impact of the Special Economic Zone on the local, district, provincial and national economies;

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- (iii) projected employment to be created during the various phases of the establishment of the Special Economic Zone, the sectors within which employment will be created and the nature of the employment which may be:
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- (aa) permanent or temporary employment; or
- (bb) direct or indirect employment.
- (iv) industrial activity targeted by the Special Economic Zone and the sectors targeted;
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- (v) additionality that the targeted industrial activities will create in the economy by demonstrating amongst other things:
- (aa) extent of export of value-added products;
- (bb) extent of import substitution;
- (cc) beneficiation of raw materials and mineral resources;
- (dd) skills training and transfer;
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- (ee) innovation and intellectual property development including the scope for new markets and manufacturing or distribution innovations;
- (ff) alignment with existing initiatives on training, business development, retention and expansion and infrastructure upgrades;
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- (gg) use of and impact on processing and manufacturing technologies.
- (vi) nature and maturity of manufacturing technology to be used by businesses intending to locate in the Special Economic Zone;
- (vii) localisation plan including:

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- (aa) impact on supplier development and potential to develop a cluster of enterprises to achieve commercial viability;
- (bb) projected procurement including the use of local materials, technologies and labour.
- 5 (d) Social impact of the proposed Special Economic Zone including information on and analysis of, amongst other things:
- (i) housing;
- (ii) education;
- (iii) health care;
- 10 (iv) access to public transportation;
- (v) safety and security;
- (vi) availability of basic services.
- (e) Business plan for the Special Economic Zone, including information on and analysis of, amongst other things:
- 15 (i) Special Economic Zone strategy;
- (ii) ownership structure of the Special Economic Zone including a shareholders' agreement indicating nature and extent of shareholding, requirements for transfer of shares and requirements for the distribution of assets upon liquidation or deregistration;
- 20 (iii) comprehensive market analysis identifying the following in relation to the proposed Special Economic Zone:
- (aa) strengths, weaknesses, opportunities, threats;
- (bb) local and external clients;
- (cc) potential markets and competitors;

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- (dd) future prospects;
- (ee) attractiveness to potential investors to locate in the Special Economic Zone;
- 5 (iv) Special Economic Zone Operating Plan including information on and analysis of, amongst other things:
- (aa) how the applicant will develop, operate and maintain the Special Economic Zone; and
- 10 (bb) identifying suppliers that will provide services necessary to operate the Special Economic Zone and the contractual arrangements that will be entered into with these service providers;
- (cc) facility management arrangements;
- 15 (dd) identifying engineering and development alignment gaps and priorities in infrastructure located outside the Special Economic Zone in relation to infrastructure to be located within the Special Economic Zone;
- (ee) providing plans for energy balancing, greenhouse gas abatement and clean energy generation including the use of wind and solar power;
- 20 (ff) providing for green building design certification as required by the Green Building Council of South Africa;
- (v) Special Economic Zone Business Attraction and Retention Plan identifying the businesses that the applicant has attracted to locate within the Special Economic Zone including signed letters of intent from businesses to locate within the Special Economic Zone;
- 25 (vi) Special Economic Zone Marketing Plan identifying, amongst other things, how the applicant will market the Special Economic Zone in

order to attract businesses to locate in the Special Economic Zone and source Foreign Direct Investment to the Special Economic Zone;

(vii) Special Economic Zone Financial Plan including information on and analysis of, amongst other things:

5 (aa) projected total cost of the establishing the Special Economic Zone;

(bb) sources of funding to establish the Special Economic Zone;

(cc) projected 10-year income statement, balance sheet and cash flow statement for the Special Economic Zone;

10 (dd) projected return indicators on capital;

(ee) projected revenue and operational costs with breakeven projections for various with scenarios;

15 (ff) access by the applicant to financial resources equal to at least 20% of the development cost of the proposed Special Economic Zone and supporting documents demonstrating access;

(gg) access by the applicant to financial resources to fund operational expenditure of the Special Economic Zone for 5 years and supporting documents demonstrating access;

20 (hh) indicate the extent to which the applicant owns or controls the area to be considered for designation as a Special Economic Zone.

(viii) Special Economic Zone Physical Infrastructure Plan including information on and analysis of, amongst other things:

25 (aa) physical master plan of the proposed Special Economic Zone, including its physical location, location and boundary of industries and services area, location and boundary of customs controlled area;

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- (bb) geotechnical study;
 - (cc) environmental impact assessment;
 - (dd) availability of natural resources and services;
 - (ee) availability and analysis of existing infrastructure to support Special Economic Zone development including access to land, and availability of municipal services, telecommunications services and utilities;
 - (ff) infrastructure development and construction plan within the Special Economic Zone
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- (gg) project management methodology to monitor and control development of physical infrastructure within the Special Economic Zone;
- (f) Risk profile of the Special Economic Zone including the level of the risk and remedial action available to mitigate the risk, on amongst other things:
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- (i) operational risks;
 - (ii) financial risks;
 - (iii) market, environmental and regulatory risks;
 - (iv) utilities, quality, costs and continuity management risks;
 - (v) governance and institutional risks
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